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SECOND DIVISION

[A.M. No. 1150-MJ. June 30, 1976]

AMPARO REDONDO, *complainant, vs.* **RODOLFO B. DIMAANO, as Municipal Judge of Taal, Batangas,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY EXAMINATION; PURPOSE.** — The purpose of a preliminary examination is to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, to justify the issuance of a warrant of arrest.

2. **ID.; ID.; STRICT COMPLIANCE WITH SECTION 87(c) OF REPUBLIC ACT NO. 296, REQUIRED.** — Section 87(c) of Republic Act No. 296 requires that before a municipal judge issues a warrant of arrest, he should first satisfy himself that there is a probable cause by personally examining under oath the witnesses by searching questions and answers which are to be reduced in writing. Strict compliance by municipal or city judges of the afore-mentioned provision of the Judiciary Act of 1948, as amended by Republic Act 3828, is required "in order to avoid malicious or unfounded criminal prosecutions of persons."

3. **ID.; ID.; ID.; LIABILITY OF A JUDGE FOR FAILURE TO CONDUCT PRELIMINARY EXAMINATION.** — Where respondent judge required complainant to post bail for her provisional liberty without conducting the requisite preliminary examination of the case, the accused going through the trouble and expense of securing and posting bail for her liberty, and in securing her exoneration from the charge, when in fact there existed no sufficient evidence which would warrant the institution of the information and the prosecution of the case, as confirmed by the court of first instance when it dismissed the case, respondent judge should be admonished to comply strictly with the statutory requirements of Section 87(c) of the Judiciary Act, as amended.

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RESOLUTION

ANTONIO, *J.*:

Municipal Judge Rodolfo B. Dimaano, of Taal, Batangas, is charged by complainant Amparo Redondo with grave misconduct, abuse of authority and ignorance of the law, (a) in giving due course to a criminal complaint for perjury[1] filed by Mayor Pedro E. Gahol although the basis of the same was her verified complaint to the President of the Philippines complaining of the abuses committed by Mayor Gahol, thus partaking of the nature of a privileged communication; and (b) in fixing and accepting the bail submitted by the accused herein and in elevating the case to the Court of First Instance, without conducting the requisite preliminary examination.

Respondent, in his answer to the complaint, claimed that the same is without any basis, as it was politically motivated with the sole purpose of demeaning his integrity. He stated that according to the record of Criminal Case No. 94-74, the complaint was filed on October 10, 1974 by the Acting Chief of Police of Taal, Batangas, and the case was set for preliminary examination on October 17, 1974. This was cancelled, however, on October 16, 1974 because the accused posted the required bond for her provisional liberty. Thereafter, the case was set for arraignment and preliminary investigation, but since the accused waived her right to present evidence, respondent, "finding that there still exist a *prima facie* case, elevated the record of the case to the Court of First Instance of Batangas, Branch III, Lemery, Batangas, for further proceedings."

In Our view of the proceedings taken by respondent in Criminal Case No. 94-74, he should not have dispensed with the preliminary examination. The purpose of a preliminary examination is to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and if so, the issuance of a warrant of arrest.[2] Construing

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[1] Criminal Case No. 94-74, entitled "*People of the Philippines vs. Amparo Redondo for Perjury*".

[2] *Mayuga v. Maravilla,* 18 SCRA 1115, 1118.

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Section 87 (c) of Republic Act No. 296,[3] We emphasized in *Doce v. Court of First Instance of Quezon*,[4] that the statute requires that before a municipal judge issue a warrant of arrest, he should first satisfy himself that there is a probable cause by personally examining under oath the witnesses, and by searching questions and answers which are to be reduced to writing. Strict compliance by municipal or city judges of the afore-mentioned provision of the Judiciary Act of 1948, as amended by Republic Act No. 3828, is required "in order to avoid malicious or unfounded criminal prosecutions of persons"[5] Of course, respondent had not issued a warrant of arrest, but he has required complainant to post bail for her provisional liberty. Had respondent conducted the requisite preliminary examination of the case, the accused therein would have been saved the trouble and expense of securing and posting bail for her liberty, and in securing her exoneration from the charge, considering that according to the Office of the Provincial Fiscal, "there exist no sufficient evidence which would warrant the institution of the information and the prosecution of the case x x x." The absence of a probable cause was confirmed by the Court of First Instance when it dismissed the case on October 23, 1975. It appearing, however, that respondent was neither motivated by malice nor evident bad faith, as the same was mere error of judgment apparently done in good faith, this case should be dismissed.

WHEREFORE, in view of the foregoing, the administrative case is hereby dismissed, but respondent is admonished that before giving due course to criminal complaint, to comply strictly with the afore-mentioned statutory requirements of Section 87(c) of the Judiciary Act, as amended.

Aquino and *Martin, JJ.,* concur.

Fernado, Actg. C.J., concurs in both opinions.

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[3] Judiciary Act of 1948.

[4] 22 SCRA 1028, 1031.

[5] *Luna v. Plaza,* 26 SCRA 310.

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Concepcion, Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

BARREDO, *J., concurring*:

I concur.

Under this resolution, the Court is making it clear that even if a person charged before a judge with the commission of an offense should offer to put up a bail bond in order that a warrant may no longer be issued for his arrest, the judge is not supposed to assume that there is probable cause against such person just because of his offer of bail and thereby dispense with the duty of conducting the proper preliminary examination in the manner prescribed by the Constitution and the rules. The offer of a bail bond should not be deemed as an admission of probable cause, for in many instances, it is done only to avoid the inconvenience and embarrassment of being picked up by the police. In other words, a judge should not accept any offer of a bail bond as a matter of course, as if the person charged were waiving the preliminary examination. No person should be made to go thru any trouble or expense in a criminal proceeding, such as hiring a lawyer, putting up bail, *etc.* as long as the existence of probable cause against him has not been determined in accordance with law.