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limited to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[17] Petitioner raises questions of fact, the determination of which is beyond the scope of *certiorari*.[18] Moreover, a special civil action for *certiorari* cannot and should not be a substitute for a lapsed appeal.[19]

WHEREFORE, the Petition is hereby *DISMISSED* and the assailed Order *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Melo (Chairman), Vitug, and *Sandoval-Gutierrez, JJ.*, concur. *Gonzaga-Reyes, J.,* on leave.

FIRST DIVISION

[A.M. No. MTJ-01-1349. July 12, 2001]

BERNADETTE MONDEJAR, *complainant, vs.* **JUDGE MARINO S. BUBAN, MTCC, Tacloban City Branch 1,** *respondent.*

SYNOPSIS

Respondent MTCC Judge issued a "hold departure order" against complainant charged with violation of Batas Pambansa Blg. 22 pending with his sala. This became the basis of an administrative complaint against him for gross ignorance of the law, partiality, serious irregularity and grave misconduct in violation of Supreme Court Circular No. 39-97.

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[17] *Buñag v. Court of Appeals*, 303 SCRA 591, February 25, 1999.

[18] *Philippine Tuberculosis Society, Inc. v. NLRC,* 294 SCRA 567, August 25, 1998; *Reyes v. Court of Appeals*, 321 SCRA 368, December 21, 1999.

[19] *GSIS v. Olisa,* 304 SCRA 421, March 10, 1999; *Mathay Jr. v. Civil Service Commission*, 312 SCRA 91, August 9, 1999.

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MTCC, a first level court, under Circular No. 39-97, has no authority to issue hold-departure orders in criminal cases, the same being lodged within the jurisdiction of regional trial courts, second level courts.

SYLLABUS

1. **CONSTITUTIONAL LAW; SUPREME COURT; CIRCULAR NO. 39-79; REGIONAL TRIAL COURTS, WITH EXCLUSIVE JURISDICTION TO ISSUE "HOLD DEPARTURE ORDERS"; FIRST LEVEL COURTS LIKE MTCC, WITHOUT AUTHORITY.**— Circular No. 39-97 limits the authority to issue hold-departure orders to criminal cases within the jurisdiction of second level courts. Paragraph No. 1 of the said circular specifically provides that "hold-departure orders shall be issued only in criminal cases *within the exclusive jurisdiction of the regional trial courts.*" Clearly then, criminal cases within the exclusive jurisdiction of first level courts do not fall within the ambit of the circular, and it was an error on the part of respondent judge to have issued one in the instant case.

2. **JUDICIAL ETHICS; JUDGES; SHOULD ALWAYS BE VIGILANT IN THEIR QUEST FOR NEW DEVELOPMENTS IN LAW.**— Canon 3, Rule 3.01 of the Code of Judicial Conduct exhorts judges to be "faithful to the law and maintain professional competence." The Court, in exercising administrative supervision of all lower courts, has not been remised in reminding the members of the bench to exert due diligence in keeping abreast with the development in law and jurisprudence. Besides, Circular No. 39-97 is not a new circular. It was circularized in 1997 and violation of which has been accordingly dealt with in numerous cases before the Court. Herein judge, therefore, cannot be excused for his infraction. Judges should always be vigilant in their quest for new developments in the law so they could discharge their duties and functions with zeal and fervor.

RESOLUTION

KAPUNAN, *J.*:

In a sworn letter complaint dated May 31, 1999, complainant Bernadette Mondejar charged Judge Marino S. Buban, MTCC,

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Tacloban City, Branch 1, with gross ignorance of the law, partiality, serious irregularity and grave misconduct relative to Criminal Case No. 98-07-CR-133 entitled "*People of the Philippines v. Bernadette Mondejar and Arlette Mondejar*" for violation of Batas Pambansa Blg. 22. She alleged that respondent judge issued a "hold departure order" against her on October 23, 1998 in violation of Supreme Court Circular No. 39-97 which provides that "hold departure orders" shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts. She further alleged that respondent judge did not give her an opportunity to be heard before issuing the questioned order.

When required to comment on the matter, respondent judge admitted having issued said order because he was not aware of the Supreme Court Circular No. 39-97. He alleged that he was not furnished a copy of the circular and managed to secure a copy only after he instructed his legal researcher to get one from the Executive Judge of the Regional Trial Court of Tacloban City. Accordingly, on April 14, 1997, he issued an order lifting and setting aside the hold departure order dated October 23, 1998. As regards the issue of denial of due process, respondent judge averred that complainant and her counsel were duly notified of the scheduled hearing but neither appeared on said date.

The Court Administrator after finding that respondent judge erred in issuing the assailed "hold departure order," recommended that he be severely reprimanded with a stern warning that a repetition of the same or similar act in the future shall be dealt with more severely.

The recommendation of the Court Administrator is well-taken.

Circular No. 39-97 limits the authority to issue hold-departure orders to criminal cases within the jurisdiction of second level courts. Paragraph No. 1 of the said circular specifically provides that "hold-departure orders shall be issued only in criminal cases *within the exclusive jurisdiction of the regional trial courts*." Clearly then, criminal cases within the exclusive jurisdiction of first level courts do not fall within the ambit of the circular, and it was an error on the part of respondent judge to have issued one in the instant case.

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In recent cases,[1] involving similar violations, this Court imposed the penalty of reprimand on erring judges. Hence, the same penalty should be imposed on respondent judge.

WHEREFORE, Judge Marino S. Buban is hereby *REPRIMANDED* with the warning that a repetition of the same and similar acts in the future will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo and *Ynares-Santiago, JJ.*, concur.

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[1] *Office of the Court Administrator v. Judge Salvador B. Mendoza,* A.M. No. 00-1281-MTJ, September 14, 2000; *Issuance of Hold Departure Order of Judge Luisito T. Adaoag, MTC, Camiling, Tarclac,* A.M. No. 98-8-126-MTC, September 22, 1999; *Hold Departure Order issued by Judge Eusebio M. Barot, MCTC, Branch 2, Aparri, Calayan, Cagayan,* A.M. No. 98-8-108-MTC, August 25, 1999; *Re: Hold Departure Order dated April 13, 1998 issued by Judge Juan C. Nartatez, Municipal Trial Court, Branch 3, Davao City*, 298 SCRA 710 (1998).