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SECOND DIVISION

[A.M. No. MTJ-98-1167. March 31, 2000]

EMILY M. SANDOVAL, *complainant, vs.* **JUDGE FELICISIMO S. GARIN, Atimonan-Plaridel, Quezon,** *respondent.*

SYNOPSIS

Complainant Emily M. Sandoval alleged in her letter complaint that Judge Garin issued a warrant of arrest and hold departure order against her without conducting preliminary investigation and without due process. The warrant resulted from a criminal charge of estafa filed by Mr. And Mrs. Anecito Andaya against Emily for her failure to return the money she allegedly borrowed from them. As a result of the warrant issued against her, Emily was forced to give up her new employment contract, and post bail, only for the case to be dismissed later. The Office of the Court Administrator directed respondent to comment on the complaint. In his comment, Judge Garin alleged that he set the case for preliminary examination and sent copies of the complaint to the accused. He asserted that the accused did not submit her counter-affidavit and was absent during the preliminary examination. Besides, the existence of any irregularity in the issuance of the warrant of arrest was waived when the accused voluntarily surrendered and posted bail. Emily, however, denied the allegation that she received notice of preliminary hearing since she was actually in Hong Kong at that time. The Court Administrator found that there was abuse of discretion, ignorance of the law, and serious misconduct on the part of Judge Garin. The Office of the Court Administrator recommended that Judge Garin be found guilty as charged and fixed the amount of forty thousand pesos.

The Supreme Court agreed with the findings of the Court Administrator. The respondent judge by his own admission was guilty of gross ignorance of the law. He violated Section 5 of Rule 112 of the Rules of Court. The fine, however, was reduced to ten thousand pesos.

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SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; DUTY OF INVESTIGATING JUDGE; VIOLATED UPON FAILURE TO TRANSMIT RESOLUTION AS REQUIRED BY SECTION 5 OF RULE 112 OF THE RULES OF COURT; CASE AT BAR.** — Respondent Judge, by his own admission in his comment, is guilty of gross ignorance of the law. He violated Section 5 of Rule 112 of the Rules of Court. He held on to the case for over four (4) months and set the arraignment only on September 30, 1996, in his court, when the case was outside of his jurisdiction. As observed in the memorandum of the Office of the Court Administrator submitted on September 4, 1998, which merits the Court's approval – "Respondent Judge's failure to transmit the resolution and the records of the case disregards the clear mandate of the aforesaid Section 5 of Rule 112. Under this provision, it is mandatory for the investigating judge to transmit to the provincial or city prosecutor within ten (10) days after concluding the preliminary investigation his resolution of the case, dismissing or admitting the complaint, together with the entire records of the case. Such duty is ministerial." In his comment dated September 11, 1997, respondent judge mentioned the Manifestation and Motion filed by Atty. Cerilla, counsel for Emily Sandoval, which he granted, to stress that said counsel in effect waived any irregularity in the issuance of the warrant of arrest and any further preliminary investigation. Such admission on his part only aggravates the charges against him for, again, the Court adverts to the findings in the memorandum of the Office of the Court Administrator, to wit: "In adapting the foregoing statements of Atty. Cerilla, respondent judge not only admitted but insisted that Criminal Case No. MCTC-96-2689(A) was filed with his court only for the purpose of conducting preliminary investigation. From these statements of Atty. Cerilla, sticking out like a sore thumb is the prudently worded request by the latter that "xxx the supposed arraignment set for September 30, 1996 be cancelled and that the case be forwarded without delay to the Provincial Prosecutor xxx." Without making any direct referral thereto, the request was granted by respondent judge in his Order dated September 25, 1996 (p.76, *Rollo*). The arraignment set by the respondent for

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September 30, 1996 is not covered by the latter's jurisdiction which is limited only to conducting the preliminary investigation of the case. Arraignment is supposed to be part of the proceedings to be undertaken by the trial court and not by the court conducting the preliminary investigation. These same statements of Atty. Cerilla, adapted by respondent judge as part of his comment, confirms the latter's silent admission that the records of Criminal Case No. MCTC-96-2689 (A) filed with his court on March 22, 1996 for preliminary investigation was eventually transmitted to the Office of the Provincial Prosecutor only on September 25, 1996."

2. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ABUSE OF AUTHORITY; PRESENT WHEN THERE WAS HASTE IN THE ISSUANCE OF ARREST WARRANT AND HOLD DEPARTURE ORDER; CASE AT CASE.**– The Court agrees with the Court Administrator, that it would be futile to assail the validity of the issuance of the warrant of arrest since the complainant, by posting a bail, had deemed waived whatever irregularity in the issuance of the warrant of arrest against her. But this does not alter our findings of the administrative culpability of the respondent judge. Respondent judge had abused his authority when he hastily issued an Order dated March 27, 1996 on the same day the complaint was filed, set the preliminary investigation the day after, and issued a warrant of arrest against the accused the same date. The notice to the accused was reportedly received by the Cuenca Post Office (Batangas) only on April 1, 1996. On April 2, 1996, the respondent judge issued a Hold Departure Order. The respondent judge did not explain the haste with which he issued the hold order.

RESOLUTION

QUISUMBING, *J.*:

In a sworn letter complaint dated May 23, 1997,[1] complainant Emily M. Sandoval charged Judge Felicisimo S. Garin of the Municipal Circuit Trial Court of Atimonan-Plaridel, Quezon,

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[1] *Rollo*, p. 1.

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with Abuse of Discretion and other irregularities relative to Criminal Case No. MCTC-96-2689(A), entitled *"People of the Philippines vs. Emily M. Sandoval"* for Estafa.

Complainant Emily M. Sandoval alleged in her letter that Judge Garin issued a Warrant of Arrest and a Hold Order against her without conducting preliminary investigation and without due process.

The criminal complaint stems from the allegations by the offended parties, Mr. and Mrs. Anecito Andaya, that in February 1994, Emily[2] Sandoval went to their residence at Barangay Sapaan, Atimonan, Quezon to borrow HK$15,000.00, or the equivalent of ₱50,000.00 she will use as "SHOW MONEY" when she leaves for Hong Kong. They gave her the amount but the latter did not return the money despite their repeated demands, when payment became due.

In her letter, complainant denied the charges and claimed that she could not have gone to the residence of the spouses because she did not even know their residence, and she was still in Hong Kong at that time. She further stated that on August 16, 1996, she was not able to start on her new employment contract in Hong Kong because of the Hold Departure Order of the Bureau of Immigration based on Judge Garin's Order dated April 2, 1996. Because of the warrant of arrest issued against her, she was forced to give up her new employment contract, and post bail, only for the case to be dismissed upon the Order dated November 18, 1996 issued by Assistant Provincial Prosecutor Rommel D. Peñalosa of the Office of the Provincial Prosecutor of the Province of Quezon.

On August 8, 1997, the Office of the Court Administrator directed the respondent judge to comment on the complaint.[3] Judge Garin submitted his comment on September 11, 1997.[4]

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[2] Spelled EMELY in the Complaint, *Rollo*, p. 28.

[3] *Id.* at 43.

[4] *Id.* at 46-55.

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He denied the charge claiming that the criminal complaint which precipitated the filing of the instant administrative complaint is cognizable by the Regional Trial Court and that he substantially complied with the requirements of Sections 5 and 6 (b) of Rule 112[5] on preliminary investigation.

According to respondent judge, he issued an Order dated March 27, 1996 pursuant to the aforecited rule, set the case for preliminary examination on March 28, 1996, sent copies of the complaint with the supporting affidavits to the accused, and required her to submit counter-affidavits within ten (10) days from notice. These were received by the accused on April 1, 1996. Despite due notice, accused Sandoval did not submit her counter-affidavit. On March 28, 1996, he conducted the preliminary hearing and found the existence of probable cause. He directed the issuance of a warrant for the arrest of the accused-and fixed the amount of the bail at ₱8,500.00. He asserts that

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[5] SEC.5. *Duty of investigating judge.* — Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, stating briefly the findings of facts and the law supporting his action, together with the entire records of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

Should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail, but he must explain his action in writing furnishing the parties with copies of his resolution, not later than thirty (30) days from receipt of the records from the judge. If the accused is detained, the fiscal shall order his release.

SEC. 6. x x x

(b) *By the Municipal Trial Court.* — If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest.

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the absence of the accused during the preliminary examination did not result in denial of due process as there is no rule requiring an MTC Judge to wait for the submission of the counter-affidavit of the accused before a warrant of arrest could be issued.

Besides, the existence of any irregularity in the issuance of the warrant of arrest was waived by the accused when she voluntarily surrendered before Judge Vicente F. Landicho of the Regional Trial Court, Branch 12, Lipa City, and deposited the amount of ₱8,500.00 as Cash Bond which was approved by Judge Landicho in his Order dated August 29, 1996. He also mentioned that on September 19, 1996 Atty. Leovigildo L. Cerilla, counsel for Emily Sandoval, filed a motion manifesting that the case is cognizable by the Regional Trial Court and prayed that the records of the case be forwarded to the Provincial Prosecutor. He granted the motion in his Order dated September 25, 1996 and the records were subsequently forwarded to the Provincial Prosecutor on September 27, 1996. This being so, complainant in effect waived any irregularity in the issuance of the warrant of arrest and any further preliminary investigation.

As to the Hold Departure Order dated April 2, 1996, respondent judge explained that he had no knowledge of the action taken thereon by the Commissioner of Immigration who has exclusive authority and discretion to implement the hold order.

Complainant sent another letter dated September 23, 1997,[6] to the Office of the Court Administrator. She denied the allegation that she received notice of preliminary hearing since she was actually in Hong Kong at that time. Neither did her family in Cuenca, Batangas, receive the notice. She pointed out that the Court received the criminal complaint on March 27, 1996. On the same date, respondent judge issued an Order setting the case for preliminary hearing. On March 28, 1996, a warrant of arrest was issued. These proceedings transpired even before the notice of the preliminary hearing was allegedly received by the Post Office of Cuenca, Batangas, only on April 1, 1996.

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[6] *Id.* at 120.

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Another letter dated October 4, 1997,[7] was sent by the complainant to the Court to clarify certain documents she received from the respondent judge. In the said letter, complainant stated that the complaining witness Merlyn Andaya, could not have given her sworn statement before SPO2 Benjamin Baute in the Police Station at Atimonan, Quezon, on March 22, 1996, as Andaya left the Philippines for Hong Kong on August 30, 1995, and was not known to have returned to the country before April 29, 1996. Neither could Andaya have signed the pleading for the issuance of a Hold Departure Order as she was in Hong Kong at that time.

On October 21, 1998, we required the parties to inform the Court whether they were willing to submit this case for resolution on the basis of the pleading already filed. The complainant informed the Court, through her letter dated November 23, 1998,[8] that she did not have other documents to submit. Respondent judge submitted his Compliance and Manifestation dated November 24, 1998,[9] praying that the case be submitted for resolution, on January 19, 1999. He also submitted before this Court an Addendum[10] to his earlier compliance and manifestation stating that a criminal complaint for Perjury, docketed as MCTC-97-2919(A), was filed by Emily Sandoval against her accusers, Merlyn Andaya and Anecito Andaya, and that copies thereof were also attached.

The Office of the Court Administrator submitted two(2) evaluation reports.[11]

In both reports, the Court Administrator found that there was abuse of discretion, ignorance of the law, and serious misconduct on the part of Judge Garin. The Office of the Court

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[7] *Id.* at 127.

[8] *Id.* at 148.

[9] *Id.* at 151.

[10] *Id.* at 153.

[11] *Id.* at 131-136 and 139-145.

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Administrator recommended that the respondent judge be found GUILTY as charged and a FINE in the amount of Forty Thousand Pesos (₱40,000.00) be imposed upon him with a warning that a repetition of the same or similar acts will be dealt with more severely.

After careful examination of the records of the case, and a thorough evaluation of the respective contentions of the parties, we find no reason to disagree with the OCA's recommendation.

Respondent judge, by his own admission in his comment,[12] is guilty of gross ignorance of the law. He violated Section 5 of Rule 112 of the Rules of Court. He held on to the case for over four (4) months and set the arraignment only on September 30, 1996, in his court, when the case was outside of his jurisdiction.

As he observed in the memorandum of the Office of the Court Administration submitted on September 4, 1998, which merits our approval —

"Respondent Judge's failure to transmit the resolution and the records of the case disregards the clear mandate of the aforesaid Section 5 of Rule 112. Under this provision, it is mandatory for the investigating judge to transmit to the provincial or city prosecutor within ten(10) days after concluding the preliminary investigation his resolution of the case, dismissing or admitting the complaint, together with the entire records of the case. Such duty is ministerial."[13]

In his comment[14] dated September 11, 1997, respondent judge mentioned the Manifestation and motion filed by Atty. Cerilla, counsel for Emily Sandoval, which he granted, to stress that said counsel in effect waived any irregularity in the issuance of the warrant of arrest any further preliminary investigation. Such admission on his part only aggravates the charges against him for, again, we advert to the findings in the memorandum of the Office of the Court Administrator, to wit:

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[12] *Id.* at 47-48.

[13] *Id.* at 142.

[14] *Id.* at 52.

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"In adapting the foregoing statements of Atty. Cerilla, respondent judge not only admitted but insisted that Criminal Case No. MCTC-96-2689(A) was filed with his court only for the purpose of conducting preliminary investigation.

From these statements of Atty. Cerilla, sticking out like a sore thumb is the prudently worded request by the latter that "x x x the supposed arraignment set for September 30, 1996 be cancelled and that the case be forwarded without delay to the Provincial Prosecutor x x x." Without making any direct referral thereto, the request was granted by respondent judge in his Order dated September 25, 1996 (p.76, *Rollo*)

The arraignment set by the respondent for September 30, 1996 is not covered by the latter's jurisdiction which is limited only to conducting the preliminary investigation of the case. Arraignment is supposed to be part of the proceedings to be undertaken by the trial court and not by the court conducting the preliminary investigation. These same statements of Atty. Cerilla, adapted by respondent judge as part of his comment, confirms the latter's silent admission that the records of Criminal Case No. MCTC-96-2689 (A) filed with his court on March 22, 1996 for preliminary investigation was eventually transmitted to the Office of the Provincial Prosecutor only on September 25, 1996."[15]

We agree with the Court Administrator, that it would be futile to assail the validity of the issuance of the warrant of arrest since the complainant, by posting a bail, had deemed waived whatever irregularity in the issuance of the warrant of arrest against her.[16] But this does not alter our findings of the administrative culpability of the respondent judge. Respondent judge had abused his authority when he hastily issued an Order dated March 27, 1996 on the same day the complaint was filed, set the preliminary investigation the day after, and issued a warrant of arrest against the accused the same date.[17] The notice to the accused was reportedly received by the Cuenca Post

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[15] *Id.* at 144.

[16] *Luna vs. Plaza*, 26 SCRA 310, 321-322 (1968).

[17] See *Daiz vs. Asadon*, 290 SCRA 56, 565 (1998)

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Office (Batangas) only on April 1, 1996. On April 2, 1996, the respondent judge issued a Hold Departure Order. The respondent judge did not explain the haste with which he issued the hold order.

We are, however, not convinced that respondent judge tried to cover-up his failure to comply with the procedural rules. There were no evidence to support the claim that he did.[18]

WHEREFORE, this *COURT* finds respondent judge *GUILTY* of Abuse of Discretion and Gross Ignorance of the Law. Accordingly, a fine of Ten Thousand Pesos (₱10,000.00) is hereby imposed upon respondent with a stern warning that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Bellosillo, Mendoza, Buena, and *De Leon, Jr., JJ.*, concur.

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[18] *Rollo*, p. 143.