Supreme Court E-Library



**THIRD DIVISION**

[A.M. No. RTJ-99-1493. June 20, 2000]

**JAIME L. CO,** *complainant, vs.* **JUDGE DEMETRIO D. CALIMAG, JR.,** *respondent.*

**SYNOPSIS**

This is an administrative complaint filed against Judge Demetrio Calimag, Jr. for serious misconduct and inefficiency in office. Complainant anchored his charge of serious misconduct against respondent on the latter's lack of authority to take cognizance of the legal separation case filed by his wife, Eva Co, when the respondent issued a writ of injunction in a complaint for legal separation, as well as the respondent's alleged extortion attempt against complainant.

The Court ruled that the charge of misconduct due to lack of authority to take cognizance of the case leveled against respondent had no leg to stand on, as the respondent still had the authority to take cognizance of old and newly filed cases in the Echague court during that period, notwithstanding the appointment of a new judge to said sala, as the new judge did not hear or try cases during the questioned period. With respect to the charge of extortion, the Court ruled that complainant's allegation deserved scant consideration as it was supported only by the affidavit and testimony of Norma Cariño, an employee of respondent. However, notwithstanding the above findings, the Court found sufficient ground to support the charge of inefficiency filed against respondent, for his failure to observe proper court procedure in the issuance of the order of injunction on December 29, 1998. Accordingly, the Court rendered judgment imposing a fine of ₱1,000.00 on respondent judge for inefficiency in office, with the warning that repetition of the same or similar acts in the future will be dealt with more severely.

**SYLLABUS**

1. **LEGAL AND JUDICIAL ETHICS; JUDGES; CHARGE OF SERIOUS MISCONDUCT NO LEG TO STAND ON IN CASE AT BAR.**— While it is true that Judge Bonifacio Ong formally assumed office on November 9, 1998, it must be pointed out that,

Supreme Court E-Library



per the certification issued by the Clerk of Court of the Echague court, Judge Ong did not hear and/or try cases from November 9 to December, 1998 because he was still undergoing orientation and immersion during said period. Thus, respondent still had the authority to take cognizance of old and newly filed cases in the Echague court during that period, notwithstanding the appointment of a new judge to said *sala*. In the words of the Court Administrator, in a memorandum dated August 9, 1999. "[a]n Acting Presiding Judge can take action on old and newly filed cases in the *sala* assigned to him, especially so in this particular instance where the newly appointed judge was still undergoing orientation and/or immersion program." The charge of misconduct due to lack of authority to take cognizance of cases leveled against respondent, thus, has no leg to stand on.

2. **REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; TRIAL-TYPE HEARING IS NOT AT ALL TIMES AND ALL INSTANCES ESSENTIAL IN PETITIONS FOR PRELIMINARY INJUNCTION.**— Under Section 5 of Rule 58 of the 1997 Rules of Civil Procedure, "[n]o preliminary injunction shall be granted without hearing and prior notice to the party or party sought to be enjoined..." This does not mean, however, that all petitions for preliminary injunction must undergo a trial-type hearing, it being hornbook doctrine that "a formal or trial-type hearing is not at all times and in all instances essential to due process" (*NFL VS. NLRC,* 283 SCRA 275 [1997]). Due process means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor (*Ginete vs. CA*, 296 SCRA 38 [1998]). In the instant case, there is no dispute that complainant was given opportunity to be heard, having submitted his counter-affidavit and memorandum in support of his position. Complainant cannot, thus, claim that he was denied due process by respondent.

3. **CRIMINAL LAW; BRIBERY; ACCUSATION OF EXTORTION NOT PROVEN IN CASE AT BAR.**— As stated in this Court in *Castaños vs. Escaño, Jr.* (251 SCRA 174 [1995]), "an accusation of bribery is easy to concoct and difficult to disprove, thus, to our mind, the complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the bench, the quantum of proof required should be more than substantial." In the same case, we

Supreme Court E-Library



further declared that "[i]n order that the allegation of a charge of this nature may not be considered a fairy tale, evidence other than the doubtful and questionable verbal testimony of a lone witness should be adduced. Entrapment should have been pursued. Evidence of a reasonable report to police authorities should been presented. Record of where the bribe money came from, its specific denominations and the manner respondent accepted and disposed of it should have been clearly shown." Complainant has failed to comply with any of the above requirements, thereby constraining this Court to give but scant consideration to his charge of extortion.

4. **LEGAL AND JUDICIAL ETHICS; JUDGES; ISSUANCE OF TEMPORARY RESTRAINING ORDER NOT A GROUND FOR SUBJECTING RESPONDENT JUDGE TO DISCIPLINARY ACTION.**— The fact that respondent believed the allegations of complainant's wife in the legal separation case, enough to issue a temporary restraining order, is hardly ground for subjecting respondent to disciplinary action. "Respondent, or any other member of the bench for that matter, is presumed to have acted regularly and in the manner that preserves the ideal of the cold neutrality of an impartial judge implicit in the guarantee of due process" (*People vs. Castillo,* 289 SCRA 213 [1998]). As a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action even though such acts are erroneous, provided he acts in good faith and without malice (*Equatorial Realty v. Anunciation, Jr.,* 280 SCRA 571 (1997).

5. **ID.; ID.; RESPONDENT IS GUILTY OF INEFFICIENCY FOR FAILURE TO OBSERVE PROPER COURT PROCEDURE.**— The Court finds sufficient ground to support the charge of inefficiency filed against respondent, for his failure to observe proper court procedure in the issuance of the order of injunction on December 29, 1998. Pursuant to Section 8, Rule 138 of the Revised Rules of Court respondent should have first endorsed the December 29, 1998 writ of preliminary injunction to the clerk of court so that the same could be properly recorded in the general docket. Rather than doing so, however, respondent personally and immediately furnished complainant's wife, Eva Co, a copy of the order of injunction on the same date that he signed and issued the same. As correctly pointed out by Investigating Justice Candido V. Rivera, citing *Usman vs. Cabe* (280 SCRA 7 [1997]), "there are reasons for these rules and in this case, we cannot overemphasize the necessity for a regulated, orderly, and careful handling of court

Supreme Court E-Library



records the loss, tampering, or any other form of alteration or destruction of which does not only contribute to inordinate delay in judicial proceedings but more importantly erodes upon the credibility and reliability of our courts."

**6. ID.; ID.; RESPONDENT'S ACT OF PERSONALLY FURNISHING A PARTY COPIES OF ORDERS ISSUED, WITHOUT THE SAME PASSING THROUGH THE COURT'S DOCKET IS HIGHLY IRREGULAR.—** Respondent's act of personally furnishing a party copies of orders issued, without the same passing through the court docket, is highly irregular, giving rise to the suspicion that the judge is partial to one of the parties in the case pending before him. Canon 2 of the Code of Judicial Conduct enjoins judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety. They must conduct themselves in such a manner that they give no ground for reproach (*San Juan vs. Bagalacsa,* 283 SCRA 417 [1997]). A magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice (*Cortes vs. Agcaoili,* 294 SCRA 423 [1998]). Respondent's act of immediately furnishing complainant's wife a copy of the injuction order hardly qualifies with the above standard.

**APPEARANCES OF COUNSEL**

*Dionisio E. Bala, Jr.* for complainant.

## RESOLUTION

**MELO, *J.*:**

Respondent Judge Demetrio Calimag, Jr. stands charged with serious misconduct and inefficiency in office in this administrative complaint filed by complainant Jaime L. Co.

On June 23, 1998, the Court designated respondent judge, then presiding over Branch 35 of the Regional Trial Court stationed in Santiago City, as Acting Presiding Judge of the Regional Trial Court of Echague, Isabela in addition to his regular duties. Later that year, however, Judge Bonifacio Ong took over as the regular judge of the Echague court.

Supreme Court E-Library



On December 2, a complaint for legal separation was filed by Eva Co against her husband, herein complainant Jaime L. Co. The suit, wherein it was also prayed that a temporary restraining order be issued, was filed with the Echague court. Despite Judge Ong's having already assumed office as presiding judge thereof, respondent immediately took cognizance of the case. Considering the prayer for issuance of a temporary restraining order to be one of extreme urgency, respondent in *ex parte* proceedings, temporarily enjoined herein complainant "from incurring any obligations, collecting rentals/overdue obligations from debtors, disposing, transferring, administering or managing the conjugal properties and the family business of the spouses, real or personal found in the Philippines" (*Rollo*, p. 8). In conjunction therewith, respondent set the summary hearing of the application for restraining order for the next day, December 3. With complainant failing to appear, respondent extended the operation of the temporary restraining order and set the hearing of the application for preliminary injunction for December 10, 1998.

On December 10, 1998, complainant filed a motion to suspend the hearing, raising Article 58 of the Family Code as basis therefor. Likewise, he filed an Objection to the Temporary Restraining Order/Injunction and Administration. Eva Co, on the other hand, filed a supplemental motion for the issuance of a preliminary injunction. Respondent required the parties to submit, within five days, their respective affidavits or memoranda in support or denial of the aforesaid motion to suspend hearing.

Complainant now alleges that on December 26, 1998, respondent called him up at around 8 to 8:30 p.m. to tell him that he (respondent) would not issue an injunction in exchange for some money to be purportedly used for respondent's confinement in the hospital. Complainant claims that the next morning, he gave an envelope containing ₱10,000.00 to Norma Cariño, an employee of his, with instructions to give the same to respondent. However, upon receiving the envelope and counting the cash contained therein, respondent allegedly returned the same to Norma Cariño, saying "This is not the amount we talked about. You return this to Mr. Co" (TSN, Dec. 1, 1999, p. 15).

Supreme Court E-Library



On December 29, 1998, respondent issued a writ of injunction and, immediately after signing the same, furnished a copy to Eva Co. The latter likewise immediately disseminated said order to all the debtors of the conjugal partnership.

Complainant anchors his charge of serious misconduct against respondent on the latter's alleged lack of authority to take cognizance of the legal separation case filed by Eva Co against complainant, as well as the respondent's alleged extortion attempt against complainant.

While it is true that Judge Bonifacio Ong formally assumed office on November 9, 1998, it must be pointed out that, per the certification issued by the Clerk of Court of the Echague court, Judge Ong did not hear and/or try cases from November 9 to December, 1998 because he was still undergoing orientation and immersion during said period. Thus, respondent still had the authority to take cognizance of old and newly filed cases in the Echague court during that period, notwithstanding the appointment of a new judge to said *sala*. In the words of the Court Administrator, in a memorandum dated August 9, 1999, "[a]n Acting Presiding Judge can take action on old and newly filed cases in the *sala* assigned to him, especially so in this particular instance where the newly appointed judge was still undergoing orientation and/or immersion program." The charge of misconduct due to lack of authority to take cognizance of cases leveled against respondent, thus, has no leg to stand on.

Likewise, complainant claims that he was denied due process when respondent, instead of conducting a hearing on the question of whether or not to issue a writ of preliminary injunction, required the parties to submit their affidavits/counter-affidavits and thereafter, considered the motion submitted for resolution.

Under Section 5 of Rule 58 of the 1997 Rules of Civil Procedure, "[n]o preliminary injunction shall be granted without hearing and prior notice to the party or party sought to be enjoined . . ." This does not mean, however, that all petitions for preliminary injunction must undergo a trial-type hearing, it being hornbook doctrine that "a formal or trial-type hearing is not at all times and in all instances essential to due process" (*NFL vs. NLRC*, 283 SCRA 275 [1997]).

Supreme Court E-Library



Due process means giving every contending party the opportunity to be heard and the court to consider every piece of evidence presented in their favor (*Ginete vs. CA,* 296 SCRA 38 [1998]). In the instant case, there is no dispute that complainant was given opportunity to be heard, having submitted his counter-affidavit and memorandum in support of his position. Complainant cannot, thus, claim that he was denied due process by respondent.

With respect to the charge of extortion, complainant's allegation is supported only by the affidavit and testimony of Norma Cariño to the effect that she delivered an envelope containing money to respondent on December 27, 1998, but that the same was returned allegedly because it was not in the amount agreed upon by complainant and respondent. In corroboration, complainant presented in evidence the envelope which purportedly contained the money delivered to respondent.

Firstly, there is no proof that said envelope was even handled by respondent, complainant not having subjected the same to fingerprint analysis by experts. Without the envelope, this case becomes a matter of Norma Cariño's word against that of respondent. We are, however, disinclined to believe Norma Cariño. Not only is she an employee of complainant, she was also earlier removed from employment by Eva Co, complainant's wife. These circumstances render suspect the veracity of her uncorroborated narrative.

As stated by this Court in *Castaños vs. Escaño, Jr.* (251 SCRA 174 [1995]), "an accusation of bribery is easy to concoct and difficult to disprove, thus, to our mind, the complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a misconduct so grave that, if proven, it would entail dismissal from the bench, the quantum of proof required should be more than substantial." In the same case, we further declared that "[i]n order that the allegation of a charge of this nature may not be considered a fairy tale, evidence other than the doubtful and questionable verbal testimony of a lone witness should be adduced. Entrapment should have been pursued. Evidence of a reasonable report to police authorities should been presented. Record of where

Supreme Court E-Library



the bribe money came from, its specific denominations and the manner respondent accepted and disposed of it should have been clearly shown." Complainant has failed to comply with any of the above requirements, thereby constraining this Court to give but scant consideration to his charge of extortion.

Finally, complainant charges respondent with bias in the issuance of a temporary restraining order, and later, of a writ of preliminary injunction, in favor of complainant's wife, Eva Co. Other than his allegation that respondent asked for money from him, complainant has failed to adduce any other evidence to support his claim of partiality on the part of respondent. Complaint has not shown that animosity or hostility exists between him and respondent as to disable the latter from exercising the cold neutrality of an impartial judge. Nor has he shown that respondent is closely related to, or acquainted with, complainant's wife or that respondent has a personal interest in the legal separation case as to suggest that respondent could no longer be fair and impartial in deciding the case.

In the absence of proof, the fact that respondent believed the allegations of complainant's wife in the legal separation case, enough to issue a temporary restraining order, is hardly ground for subjecting respondent to disciplinary action. "Respondent, or any other member of the bench for that matter, is presumed to have acted regularly and in the manner that preserves the ideal of the cold neutrality of an impartial judge implicit in the guarantee of due process" (*People vs. Castillo*, 289 SCRA. 213 [1998]). As a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action even though such acts are erroneous, provided he acts in good faith and without malice (*Equatorial Realty v. Anunciacion, Jr.*, 280 SCRA 571 (1997).

Notwithstanding the above findings, however, we find sufficient ground to support the charge of inefficiency filed against respondent, for his failure to observe proper court procedure in the issuance of the order of injunction on December 29, 1998.

Section 8, Rule 138 of the Revised Rules of Court provides that:

Supreme Court E-Library



Section 8. *General Docket.* — The clerk shall keep a general docket, each page of which shall be numbered and prepared for receiving all entries in a single case, and shall enter therein all cases, numbered consecutively in the order in which they were received, and, under the heading of each case and a complete title thereof, the date of each paper filed or issued, of each order or judgment entered, and of each other step taken in the case, so that by reference to a single page the history of the case may be seen.

Pursuant to the above, respondent should have first endorsed the December 29, 1998 writ of preliminary injunction to the clerk of court so that the same could be properly recorded in the general docket. Rather than doing so, however, respondent personally and immediately furnished complainant's wife, Eva Co, a copy of the order of injunction on the same date that he signed and issued the same. As correctly pointed out by Investigating Justice Candido V. Rivera, citing *Usman vs. Cabe* (280 SCRA 7 [1997]), "there are reasons for these rules and in this case, we cannot overemphasize the necessity for a regulated, orderly, and careful handling of court records the loss, tampering, or any other form of alteration or destruction of which does not only contribute to inordinate delay in judicial proceedings but more importantly erodes upon the credibility and reliability of our courts." Respondent's act of personally furnishing a party copies of orders issued, without the same passing through the court docket, is highly irregular, giving rise to the suspicion that the judge is partial to one of the parties in the case pending before him. Canon 2 of the Code of Judicial Conduct enjoins judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety. They must conduct themselves in such a manner that they give no ground for reproach (*San Juan vs. Bagalacsa,* 283 SCRA 417 [1997]). A magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice (*Cortes vs. Agcaoili,* 294 SCRA 423 [1998]). Respondent's act of immediately furnishing complainant's wife a copy of the injunction order hardly qualifies with the above standard.

Supreme Court E-Library



**WHEREFORE**, judgment is hereby rendered imposing a FINE of One Thousand (₱1,000.00) Pesos on Judge Demetrio Calimag, Jr. for inefficiency in office, with the *WARNING* that a repetition of the same or similar acts in the future will be dealt with more severely. All other charges are hereby *DISMISSED*.

**SO ORDERED.**

*Panganiban, Purisima* and *Gonzaga-Reyes, JJ.*, concur.

*Vitug, J.*, abroad, on official business.

---

**THIRD DIVISION**

[G.R. No. 121668. June 20, 2000]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JOEL TAÑEZA *y* DACAL,** *accused-appellant.*

**SYNOPSIS**

Accused-appellant was charged with murder for the fatal shooting of Emerson Umandam. Appellant pleaded not guilty and interposed the defense of alibi. He was, however, identified by Aida Esgrina, employer of the deceased, as the person who shot the deceased while sleeping. The prosecution presented the *ante mortem* statement thumbmarked by the deceased identifying appellant as his assailant, and signed by witness Aida Esgrina and who identified the document in court. Judgment was thereafter rendered finding appellant guilty as charged with the qualifying circumstance of treachery. Hence, this appeal which assailed the credibility of the witness and the *ante mortem* statement which failed to state that the deceased was at the brink of death when he executed the statement.

Findings of the trial court on credibility of witnesses are entitled to great respect and that the degree and seriousness of the