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FIRST DIVISION

[A.M. No. MTJ-01-1386. December 5, 2001]
(A.M. No. 97-365-MTJ)

LOURDES R. LIGAD, *complainant, vs.* **JUDGE TEODORO L. DIPOLOG,** *respondent.*

SYNOPSIS

Complainant Lourdes R. Ligad charged respondent Judge Teodoro Dipolog with grave abuse of authority for his refusal to release on recognizance complainant's grandson, 13-year old Joey Sailan, who was charged with violation of Presidential Decree No. 1602. When required to comment, Judge Dipolog reiterated his reason for the denial of the motion for release on recognizance, that the accused had just been arrested and that he had not yet been in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged as provided for in Section 13, Rule 114 of the 1985 Rules on Criminal Procedure. By reason thereof, the Court Administrator found the respondent judge guilty as charged.

The Court agreed with the Court Administrator that respondent judge betrayed his "ignorance of the law" when he denied the release of Sailan to the custody of complainant. Respondent judge erroneously applied the second paragraph of Section 13 of Rule 114 of the 1985 Rules on Criminal Procedure. Had he been more circumspect in ascertaining the applicable laws, respondent judge would have known that Article 191 of P. D. No. 603 properly applies since Sailan is a minor. Respondent judge had failed to live up to the norms embodied in the Code of Judicial Conduct particularly that which enjoins judges to "be faithful to the law and maintain professional competence." Thus, respondent judge was fined Two Thousand Pesos (₱2,000.00).

SYLLABUS

1. **LEGAL AND JUDICIAL ETHICS; ADMINISTRATIVE CHARGES AGAINST JUDGES; IGNORANCE OF THE LAW; COMMITTED BY A JUDGE WHO FAILED TO APPLY ARTICLE 191 OF P.D. NO. 603 TO A DETENTION PRISONER WHO IS A MINOR.**— The Court shares [the view of the Court Administrator] that respondent judge betrayed his

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"ignorance of the law" when he denied the release of Sailan to the custody of complainant. Respondent judge erroneously applied the second paragraph of Section 13 of Rule 114 of the 1985 Rules on Criminal Procedure. Had he been more circumspect in ascertaining the applicable laws, respondent judge would have known that Article 191 of P.D. No. 603 properly applies in this case since Sailan was a minor.

2. **ID.; ID.; ID.; ID.; PENALTY.**— [R]espondent judge is hereby FINED Two Thousand Pesos (₱2,000.00) and STERNLY WARNED that a repetition of the same or similar infractions will be dealt with more severely.

3. **ID.; CODE OF JUDICIAL CONDUCT; JUDGES ARE ENJOINED TO BE FAITHFUL TO THE LAW AND MAINTAIN PROFESSIONAL COMPETENCE.**— [R]espondent judge had failed to live up to the norms embodied in the Code of Judicial Conduct particularly that which enjoins judges to "be faithful to the law and maintain professional competence." Indeed, respondent judge owes to the public and to the legal profession to know the law he is supposed to apply to a given controversy.

4. **CIVIL LAW; PRESIDENTIAL DECREE NO. 603 (THE CHILD AND YOUTH WELFARE CODE); MINOR MAY BE RELEASED ON RECOGNIZANCE TO THE CUSTODY OF HIS PARENTS OR OTHER SUITABLE PERSON; VIOLATED IN CASE AT BAR.**— Granting *arguendo* that there was no agency or center in the municipality where Sailan may be committed, still, the continued detention of Sailan in the municipal jail is not justified. Article 191 of P.D. No. 603, as amended, specifically authorizes that, upon recommendation of the DSWD, a minor may be released on recognizance to the custody of his parents or other suitable person. Notwithstanding the recommendation of the DSWD in this case, respondent judge denied the motion for the release on recognizance of Sailan by erroneously citing the second paragraph of Section 13, Rule 114 of the 1985 of Rules on Criminal Procedure. As earlier stated, said provision is not the applicable law in this case but Article 191 of P.D. No. 603, Sailan being a minor.

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RESOLUTION

KAPUNAN, *J.*:

In her letter, dated July 17, 1997, addressed to then Chief Justice Andres R. Narvasa, Lourdes R. Ligad (complainant) charged respondent Judge Teodoro Dipolog, Municipal Trial Court (MTC) of Plaridel, Misamis Occidental, with grave abuse of authority for his refusal to release on recognizance complainant's grandson, Joey Sailan, a minor.[1]

Sailan is the defendant in Criminal Case No. 284-96. He was charged with violating Presidential Decree (P.D.) No. 1602 (Prescribing Stiffer Penalties on Illegal Gambling). He was allegedly caught bringing *jai-alai* (locally known as "*masiao*") tips and tally sheets. On June 5, 1997, Atty. Mita Martinez of the Public Attorney's Office (PAO) filed a motion for release on recognizance of Sailan, who was then only thirteen (13) years old, to the custody of his maternal grandmother, complainant herein. Acting on the motion, respondent judge issued an Order, dated June 6, 1997, denying the same. He cited the second paragraph of Section 13 of Rule 114 of the 1985 Rules on Criminal Procedure,[2] the law then in effect, which stated:

> Section 13. Bail, when not required; reduced bail or recognizance –
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> x x x x x x x x x
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> A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court.

In denying his release on recognizance, respondent judge reasoned that Sailan "had not yet been in custody for a period

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[1] *Rollo*, p. 1.

[2] Now Section 16, Rule 114 of the Revised Rules of Criminal Procedure.

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equal to or more than the minimum of the principal penalty prescribed for the offense charged."[3]

On June 16, 1997, the Department of Social Welfare and Development, through Vivian Sanchez, Social Welfare Officer II, filed a manifestation with the said lower court recommending that Sailan be released on recognizance to his maternal grandmother in accordance with the provisions of P.D. No. 603 (The Child and Youth Welfare Code). The DSWD particularly cited Article 191 thereof providing that upon recommendation of the DSWD, "the court may release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required."[4] According to the complainant, when she followed this up with respondent judge, the latter "arrogantly" told her that "he is the law and everything is at his discretion."[5]

In compliance with the 1st Indorsement, dated August 22, 1997, of then Court Administrator Alfredo L. Benipayo, respondent judge submitted his Comment, dated October 10, 1997, on the letter-complaint. He denied the allegations therein explaining thus:

> [O]n October 11, 1996, [he] issued a Warrant of Arrest for the immediate arrest of accused JOEY SAILAN. However, accused JOEY SAILAN was not arrested for being at large and the Warrant of Arrest was returned unserved; On May 30, 1997, [he] issued an Order sending the records of this case to the file of the archived cases, and issued *Alias* Warrant of Arrest; On June 4, 1997, accused JOEY SAILAN was arrested; On June 5, 1997, accused JOEY SAILAN through counsel ATTY. MITA Q. MARTINEZ, from the Public Attorney's Office (PAO) filed a motion for release on Recognizance; On June 6, 1997, [respondent judge] citing Second Paragraph Section 13, Rule 114 of our 1985 Rules on Criminal Procedure denied said motion for release on Recognizance; that counsel for the accused inspite of having received a copy of said Order of Denial did not file any motion for reconsideration; On June 16, 1997, another motion for release on recognizance was filed by VIVIAN G. SANCHEZ

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[3] See Note 1, p. 2.

[4] *Id.*, at 8.

[5] *Id.*, at 1.

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– a Social Welfare Officer II; that because of the standing Order of Denial of this Court dated June 6, 1997 denying the first motion filed by PAO lawyer – ATTY. MITA Q. MARTINEZ has not been reconsidered because said lawyer did not ask for reconsideration , the second motion filed by VIVIAN G. SANCHEZ was denied by this Court in its Order dated June 17, 1997 and this second movant VIVIAN G. SANCHEZ inspite of having received the Order of Denial of this Court did not asked [sic] for a reconsideration.[6]

Respondent judge particularly denied the charge of abuse of authority stating that the denial of the release on recognizance of Joey Sailan was predicated on the second paragraph of Section 13, Rule 114 of the 1985 of Rules on Criminal Procedure. Moreover, the movants therein allegedly did not ask for reconsideration of the assailed orders. He likewise denied having uttered that "I am the law and everything is at my discretion." According to respondent judge, he merely advised the complainant to instruct her lawyers to file a motion for reconsideration.[7]

In his Memorandum, dated September 9, 1999, the Court Administrator made the following evaluation:

> Respondent Judge explains that accused could not be released on recognizance because he had just been arrested and that he had not yet been in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, as provided for in Section 13 of Rule 114 of the 1985 Rules on Criminal Procedure.
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> Respondent Judge's explanation is but proof of his ignorance of the law. Section 15, Rule 114 of the 1985 Rules on Criminal Procedure, as amended by Administrative Circular No. 12-94, effective October 1, 1994, provides that:
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> > "Whenever allowed pursuant to law or these Rules, the Court may release a person in custody on his own recognizance or that of a responsible person."
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> And being a youthful offender, he being but thirteen years of age at the time of arrest, under Article 191, P.D. 603 (The Child and Youth Welfare Code), he may be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention house.

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[6] *Id.*, at 17.

[7] *Id.*, at 17-18.

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> "A youthful offender held for physical or mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required; Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required.

Respondent Judge should have taken into consideration that as a minor the accused should not have been mingled with other detainees. His continued exposure to the harsh conditions prevailing in a prison would eventually affect his rehabilitation.[8]

The Court Administrator then recommended that a fine of two thousand pesos (₱2,000.00) be imposed on respondent judge with the warning that a repetition of the same or similar acts in the future would be dealt with more severely.[9]

Upon the instance of the Court, complainant and respondent judge respectively manifested that they were submitting the case for resolution on the basis of the pleadings already filed.

The findings and recommendation of the Court Administrator are well taken.

The Court shares his view that respondent judge betrayed his "ignorance of the law" when he denied the release of Sailan to the custody of complainant. Respondent judge erroneously applied the second paragraph of Section 13 of Rule 114 of the 1985 Rules on Criminal Procedure. Had he been more circumspect in ascertaining the applicable laws, respondent judge would have known that Article 191 of P.D. No. 603 properly applies in this

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[8] *Id.*, at 32-33.

[9] *Id.*

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case since Sailan was a minor. Said provision of law reads in full as follows:

Art. 191. Case of Youthful Offender Held for Examination or Trial — A youthful offender held for physical or mental examination or trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the Department of Social Welfare or the local rehabilitation center or a detention home in the province or city which shall be responsible for his appearance in court whenever required; Provided, That in the absence of any such center or agency within a reasonable distance from the venue of the trial, the provincial, city and municipal jail shall provide quarters for youthful offenders separate from other detainees. The court may, in its discretion, upon recommendation of the Department of Social Welfare and Development or other agency or agencies authorized by the Court, release a youthful offender on recognizance, to the custody of his parents or other suitable person who shall be responsible for his appearance whenever required. However, in the case of those whose cases fall under the exclusive jurisdiction of the Military Tribunals, they may be committed at any military detention or rehabilitation center.

The foregoing provision sets forth the following guidelines in cases where a minor is held or arrested:

1) Immediately upon arrest, the judge shall order that the minor be committed to the care of the DSWD, local rehabilitation center or a detention home in the said province or city. The said agency or center entity shall be responsible for the minor's appearance during trial;

2) In absence of such agency or center within a reasonable distance from the venue of the trial, the provincial, city or municipal jail shall provide quarters for the minor separate from the adult detainees;

3) Upon recommendation of the DSWD or any other authorized agency, the judge may, in his discretion, release the minor on recognizance to his parents or other suitable person who shall be responsible for his appearance when required; and

4) In those cases falling under the exclusive jurisdiction of the military tribunal, the minor may be committed at any military detention or rehabilitation.

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In this case, respondent judge, in clear violation of the above provision, did not order Sailan's commitment to the DSWD or any other rehabilitation center. Instead, as found by the Court Administrator, respondent judge allowed Sailan's continued detention in the municipal jail consequently exposing him to the harsh conditions therein.

Granting *arguendo* that there was no agency or center in the municipality where Sailan may be committed, still, the continued detention of Sailan in the municipal jail is not justified. Article 191 of P.D. No. 603, as amended, specifically authorizes that, upon recommendation of the DSWD, a minor may be released on recognizance to the custody of his parents or other suitable person. Notwithstanding the recommendation of the DSWD in this case, respondent judge denied the motion for the release on recognizance of Sailan by erroneously citing the second paragraph of Section 13, Rule 114 of the 1985 of Rules on Criminal Procedure. As earlier stated, said provision is not the applicable law in this case but Article 191 of P.D. No. 603, Sailan being a minor. Section 12, Rule 114 of the 1985 Rules on Criminal Procedure[10] in fact states that:

> Whenever allowed pursuant to law or these Rules, the court may release a person in custody on his own recognizance or that of a responsible person.

In fine, respondent judge had failed to live up to the norms embodied in the Code of Judicial Conduct particularly that which enjoins judges to "be faithful to the law and maintain professional competence."[11] Indeed, respondent judge owes to the public and to the legal profession to know the law he is supposed to apply to a given controversy.[12]

WHEREFORE, respondent judge is hereby *FINED* Two Thousand Pesos (₱2,000.00) and *STERNLY WARNED* that a

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[10] Now Section 15, Rule 114 of the Revised Rules on Criminal Procedure.

[11] Canon 3, Rule 3.01.

[12] *Marzan-Gelacio vs. Flores*, 334 SCRA 1 (2000).

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repetition of the same or similar infractions will be dealt with more severely.

SO ORDERED.

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

EN BANC

[G.R. No. 127182. December 5, 2001]

HON. ALMA G. DE LEON, Chairman, HON. THELMA P. GAMINDE, Commissioner, and HON. RAMON P. ERENETA, JR., Commissioner, Civil Service Commission, and SECRETARY RAFAEL M. ALUNAN, III, Department of Interior and Local Government, *petitioners, vs.* **HON. COURT OF APPEALS and JACOB F. MONTESA,** *respondents.*

SYNOPSIS

Applying the case of *Achacoso v. Macaraig*, this Court, in its decision dated January 22, 2001, ruled that private respondent Jacob F. Montesa's appointment as Ministry Legal Counsel - CESO IV of the Ministry of Local Government was temporary for failure to possess the required Career Executive Service (CES) eligibility for the said position. Hence, he can be transferred or reassigned without violating his right to security of tenure. Thus, private respondent filed the instant motion for reconsideration by invoking *res judicata*. He contended that his appointment can no longer be passed upon and controverted in the present case considering that the said issue had already been settled in the Minute Resolution of this Court dated March 17, 1992 in *Jacob Montesa v. Santos, et al.*, when his appointment was first contested. In that case, the Court ruled that the *Achacoso* case was not applicable to him since