Supreme Court E-Library

The procedures outlined by the Rules are meant to ensure that the innocents are spared from wrongful condemnation and that only the guilty are meted their just due. Obviously, these requirements cannot be taken lightly.

WHEREFORE, the instant administrative case is REMANDED to the Integrated Bar of the Philippines for further proceedings conformably with the above disquisition and to act on this referral with dispatch.

SO ORDERED.

Melo (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

EN BANC

[Adm. Matter No. MTJ-98-1153. February 29, 2000]

MAGDALENA M. HUGGLAND,* *complainant, vs.* **JUDGE JOSE C. LANTIN,** *respondent.*

SYNOPSIS

On November 14, 1997, a news item appeared in Manila Bulletin concerning the arrest by NBI agents of Judge Jose Lantin, presiding Judge of the Municipal Trial Court of San Felipe, Zambales, for allegedly having received marked money amounting to ₱5,000.00 from the complainant in exchange for the cancellation of the hold departure order issued by respondent against her. The Court required the respondent to comment thereon, and thereafter was referred to Justice Narciso Atienza for investigation, report and recommendation. On February 5, 1999, Justice Atienza found respondent guilty of grave and serious misconduct, which would have warranted his dismissal from the service had the investigation not been overtaken by his compulsory retirement. He then recommended that the retirement benefits, privileges and leave credits which respondent may be entitled be forfeited.

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* Also spelled as Hugglan.

Supreme Court E-Library

The Court found the recommendation well-taken. The culpability of the respondent judge for grave misconduct , gross dishonesty and conduct prejudicial to the best interest of the service and conduct unbecoming a judge has been established not just by substantial evidence which suffices in administrative investigation but by clear preponderance of evidence. Perforce, the penalty of dismissal from the service is the most appropriate penalty under the circumstances. However, since the respondent had reached the compulsory age of retirement during the pendency of the case, the imposition of that penalty has been rendered moot and academic. Nonetheless, respondent cannot go scot free and be forgiven for the damages he caused to the institution he was bound by his oath and the Canons of Judicial Ethics and the Code of Judicial Conduct to serve with utmost integrity. The accessory penalties in case of dismissal from the service, as established by jurisprudence , namely, forfeiture of all retirement benefits, including earned leave credits, and disqualification from employment in any branch, agency or instrumentality of the government including government-owned or controlled corporations must be given full force and effect.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A JUDGE HAS NO AUTHORITY TO ISSUE OR CANCEL A HOLD DEPARTURE ORDER IN THE COURSE OF THE PRELIMINARY INVESTIGATION.** — [R]espondent Judge should have known that he had absolutely no power or authority to cancel the hold departure order which he issued in the course of the preliminary investigation. In the first place, he never had that authority from the inception of the case. In the conduct of the preliminary investigation a judge exercises a non-judicial function, an exception to his general duties. This is because a preliminary investigation is basically an executive function Consequently, his findings are subject to review by the Provincial Prosecutor, whose findings in turn may, in appropriate cases, be reviewed by the Secretary of Justice.

2. **JUDICIAL ETHICS; JUDGES; DEMANDING AND RECEIVING MONEY IN CONSIDERATION OF THE ISSUANCE OF AN ORDER CANCELLING A HOLD-DEPARTURE ORDER WARRANTS DISMISSAL FROM SERVICE.** — That respondent Judge had asked for ₱25,000 in consideration of the issuance of an order cancelling the hold departure order

Supreme Court E-Library

and had in fact received the initial partial payment of ₱12,000 were proven by the release on 30 April 1997, of the order of cancellation. It is interesting to note that as can be gathered from the testimony of Clerk of Court Emilio Tapec, both the motion to quash the hold departure order and the order of cancellation were not filed in due course with his office. The failure of complainant to pay the balance of ₱13,000 was equally conclusively established by the issuance by respondent of a subpoena commanding her to appear before him on 30 October 1997 at 2:00 p.m. The explanation given by respondent that it was done to compel complainant to submit certified copies of documents showing that the case for which the hold departure order was issued had already been dismissed is simply incredible. If the documents were not yet ready on 30 April 1997 and these were necessary for the issuance of the cancellation order, respondent need only to defer the release thereof. Then, too, if these were still not presented on 30 April 1997, respondent could have simply revoked or set aside the cancellation. Finally, he knew that the records of the case had been forwarded to the Provincial Prosecutor and his court had long lost its Jurisdiction over the case, hence he could not validly issue a subpoena under the caption of the case. The time honored rule is that a public official whose duty is to apply the law and dispense justice, be he a judge of a lower court or tribunal or a justice of the appellate courts, should not only be impartial, independent and honest but should be believed and perceived to be impartial, independent and honest (Nazareno v. Almario, 268 SCRA 657 [1997]). Canon 3 of the Canons of Judicial Ethics solemnly mandates that the judge's official conduct should be free from the appearance of impropriety and his personal behavior, not only upon the bench and the performance of judicial duties, but also in his everyday life, should be beyond reproach.

3. ID.; ID.; A JUDGE SHOULD CONDUCT HIMSELF AT ALL TIMES IN A MANNER WHICH WOULD REASONABLY MERIT THE RESPECT AND CONFIDENCE OF THE PEOPLE. — We do not hesitate to conclude that respondent Judge had tainted the image of the judiciary to which he owes fealty and the obligation to keep it at all time unsullied and worthy of the people's trust (*Garcia vs. Dela Peña*, 229 SCRA 766 [1994]). A judge should conduct himself at all times, in a manner which would reasonably merit the respect and confidence of the people for he is the visible representation of the law. Rule 2.01 of Canon 2 of the Code of Judicial Conduct directs that a judge should

Supreme Court E-Library

behave at all times as to promote public confidence in the integrity and impartiality of the Judiciary.

4. ID.; ID.; DISMISSAL OF RESPONDENT JUDGE FROM SERVICE JUSTIFIED; WHERE PENALTY OF DISMISSAL WAS RENDERED ACADEMIC BY COMPULSORY RETIREMENT, ACCESSORY PENALTIES SHALL BE ENFORCED; CASE AT BAR. — Perforce, the penalty of dismissal from the service is the most appropriate penalty under the circumstances. However, since respondent had reached the compulsory age of retirement during the pendency of this case, the imposition of that penalty has been rendered academic. Nonetheless, respondent cannot go scot free and be forgiven for the damage he caused to the institution he was bound by his oath and the Canons of Judicial Ethics and the Code of Judicial Conduct to serve with utmost integrity. The accessory penalties in case of dismissal from the service, as established by jurisprudence, namely, forfeiture of all retirement benefits, including earned leave credits, and disqualification from employment in any branch, agency or instrumentality of the government including government-owned or controlled corporation, must be given full force and effect.

APPEARANCES OF COUNSEL

Perla Chan Abrenica Law Offices for complainant.

RESOLUTION

PER CURIAM:

On 14 November 1997, the Court Administrator recommended for inclusion in the agenda of the Court *en banc* the matter of the news item which appeared in the 14 November 1997 issue of the Manila Bulletin concerning the arrest by agents of the National Bureau of Investigation (NBI) of Judge Jose Lantin, Presiding Judge of the Municipal Trial Court of San Felipe, Zambales, for allegedly having received marked money amounting to ₱5,000 from one Magdalena Huggland who was implicated in a criminal case. The ₱5,000 was allegedly part of the ₱25,000 being asked by Judge Lantin for the cancellation of the hold departure order issued against Ms. Huggland.

Supreme Court E-Library

In the *en banc* resolution of 9 December 1997, the Court required the Court Administrator to recommend specific action against Judge Lantin.

In its *en banc* Resolution of 14 May 1998, the Court took note of the comment of Judge Lantin wherein he denied receipt of the marked money and condemned the search for the marked money conducted by the NBI. Considering the seriousness of the accusation against Judge Lantin, the Court resolved to redocket the case as a regular administrative matter, refer it to Justice Narciso Atienza, consultant of the Office of the Court Administrator, for investigation, report and recommendation, and placed Judge Lantin under preventive suspension for the duration of the investigation.

Justice Atienza conducted an investigation. On 5 February 1999 he submitted a 24-page Report and Recommendation, the pertinent portions thereof, with footnotes excluded, read as follows:

ANTECEDENTS

On October 30, 1997, the complainant filed a complaint for bribery against the respondent in the District Office of the NBI in Olongapo City. The complainant accomplished a Complaint Sheet, and executed an affidavit, claiming that the respondent demanded money in exchange of the cancellation of a hold departure order previously issued against her.

Based on said complaint, an entrapment was conducted on November 12, 1997. The respondent was arrested after the amount of ₱5,000.00, in ₱500.00 bills, was recovered from one (1) of the left drawers of his table while the envelope in which the money was placed was recovered near the chair.

A post operation statement was taken from the complainant while the arresting NBI agents executed a joint-affidavit which was utilized as the direct testimonies of the complainant and the witnesses, respectively. Clarificatory questions were asked before the complainant and the witnesses were cross-examined by the counsel for the respondent.

UNDISPUTED FACTS

The complainant, with three (3) others, were respondents in a complaint for Murder filed by SPO4 Lorenzo A. Feria in the Municipal

Supreme Court E-Library

Trial Court of San Felipe, Zambales for preliminary investigation, docketed as Crim. Case No. 3886. On July 21, 1995, SPO4 Feria filed a Motion for the Issuance of a Hold Departure Order against the complainant who was then at-large. In consonance with the motion, the respondent issued an order directing the Commission on Immigration and Deportation to include the name of the complainant in the hold departure list.

After preliminary investigation, the respondent resolved to recommend that an information for murder be filed against the complainant, and the three (3) others, without recommending bail, and transmitted the resolution of the case and the entire records to the Provincial Prosecutor of Zambales. The Provincial Prosecutor sustained the findings of the respondent and filed the corresponding information in the Regional Trial Court of Iba, Zambales on August 28, 1995. The case was docketed as Crim. Case No. 1797-1, and raffled to RTC Branch 69.

On motion of accused Eduardo Guanga, a re-investigation was ordered by the RTC judge on May 7, 1996. After re-investigation, Assistant Prosecutor Quintillan recommended that the names of the complainant, Gerry Suarez and Eduardo Guanga, Jr. be dropped from the information for insufficiency of evidence. The recommendation was approved by the Provincial Prosecutor.

EVIDENCE FOR THE COMPLAINANT

(1) *Magdalena Hugglan[d]* in her *Sinumpaang Salaysay*, alleged that she learned that a hold departure order was issued against her at the airport when she was prevented from leaving the country to visit her husband in Okinawa, Japan. She said that she immediately hired a lawyer to look into the matter, but in the meantime, she went to Cebu to wait for her husband. Her husband fetched her from Cebu when he returned to the Philippines, and they proceeded to Zambales. She learned in Zambales that the case against her had been dismissed. She went to the office of the respondent and presented to him documents to prove that the case for which the hold departure order was issued had been dismissed but the respondent demanded ₱25,000.00 from her in exchange of the cancellation of the hold departure order. She waited for five (5) days, and when the respondent did not issue the order of cancellation of the hold departure order, she went to his house in Botolan, Zambales on April 30, 1997, and delivered ₱12,000.00, and promised that the balance shall be given on a later date. Upon receipt of the ₱12,000.00, the respondent immediately signed the order of cancellation and handed it to her.

Supreme Court E-Library

Complainant claimed that the respondent came to her house twice, but on both occasions, she was out. In June, 1997, the respondent who happened to be her co-passenger in a Victory Liner bus called her, and asked: *"O, ano na?"* Knowing what respondent meant, she told him that she will just go to his place. When she did not go to the house of the respondent, she received a subpoena commanding her to appear in court at 2:00 o'clock in the afternoon on October 30, 1997. When she appeared in court on October 30, 1997, the respondent demanded from her the balance of ₱13,000.00. Complainant said that she told the respondent that she has no money, but she promised that she would give ₱5,000.00 on November 12, 1997. After pondering for sometime what to do, she decided to go to the office of the NBI and reported the matter. She gave the NBI agent ₱5,000.00 to entrap the respondent.

On November 12, 1997, the NBI agents instructed her to go to the office of the respondent to deliver the money. A female NBI agent accompanied her to the office of the respondent while other agents positioned themselves outside the office. When she told respondent about the money, respondent instructed her to put the envelope containing the money inside the left drawer of the table, which she did. The respondent got a piece of newspaper and used it as a cover in holding the envelope containing the money, and then, he shook it. The money fell inside the drawer and the respondent used the same piece of a newspaper in counting the money. After counting the money the respondent closed the drawer. Thereafter, she stood up and went outside the office.

2. *Jesusa D. Jamasali* Special Agent of the NBI, testified that, posing as a cousin of the complainant, she accompanied her to the office of the respondent when the entrapment was made on November 12, 1997. She said that after they entered the office of the respondent at about 3:00 o'clock in the afternoon, she sat on a chair in front of the respondent's table about eight (8) meters away while the complainant sat at the left side of the table. The complainant and the respondent talked for about fifteen (15) minutes, and then she saw the complainant dropped the envelope containing the money inside the drawer, and stood up. After complainant left the court room, she followed and gave the pre-arranged signal that pay-off had taken place to the other NBI agents. Thereafter, the NBI agents entered the court room, introduced themselves and told the respondent that he was under arrest for bribery, and informed him of his rights.

3. *David P. Golla*, an agent of the NBI testified that he knows the complainant because in October, 1997, she filed a complaint in

Supreme Court E-Library

their office in Olongapo City against a judge of San Felipe, Zambales because the judge tried to extract money from her in consideration of an order. The complainant's sworn statement was taken, and thereafter, Atty. Joel Curammeng planned the entrapment operation against the respondent which was scheduled on November 12, 1997. The plan was for agent Jamasali to pose as a cousin of the complainant while other agents will just stay outside the office to wait for the signal of agent Jamasali. He stated that Atty. Gamaliel Cabrera, a photographer and two other assets were with him. After agent Jamasali had given the pre-arranged signal, they entered the court room, introduced themselves as NBI agents, and informed the respondents that he is under arrest for bribery and violation of R.A. 3019. He claimed that he saw the money was recovered by agents Curammeng and Jamasali from one of the drawers of the respondent's table.

4. *Joel A. Curammeng,* the Supervising Agent of the NBI testified that he come to know the complainant when she filed a complaint in their office sometime in October, 1997. He said that the complainant accomplished a Complaint Sheet and subscribed it before him. He claimed that he took down the statement of the complainant after the entrapment operation while the elements of the NBI who conducted the entrapment executed a joint-affidavit. The money used in the entrapment was recovered from the left middle drawer of the respondent's table while the envelope was lying near the chair, and a torn piece of newspaper was on top of the table. They brought the respondent to their office in Olongapo City after the arrest where he (respondent) was finger printed and photographed. The peso bills were dusted with ultraviolet power but the respondent was not subjected to laboratory examination because the complainant told him that respondent did not touch the money.

Complainant rested [her case] with the admission of:

> Exhibit "A", *Sinumpaang Salaysay* of Magdalena Huggland; Exhibit "B", Joint-Affidavit of Arresting Officers; Exhibit "C", ₱500.00 No. DC-334074; Exhibit "C-1", ₱500.00 No. GL-845992; Exhibit "C-2", ₱500.00 No. CL 820491; Exhibit "C-3", ₱500.00 No. DA-364817; Exhibit "C-4", ₱500.00 No. CB-196729; Exhibit "C-5", ₱500.00 No. CL-845928; Exhibit "C-6", ₱500.00 No. BY-315335; Exhibit "C-7", ₱500.00 No. GF-857781; Exhibit "C-8", ₱500.00 No. CF-857784; Exhibit "C-9", ₱500.00 No. 845978; Exhibit "D" white envelope where the money was allegedly placed, and the testimonies of Complainant Magdalena Huggland, NBI agent Jesus D. Jamasali, Agent David Golla and Supervising Agent Joel A. Curammeng.

Supreme Court E-Library

EVIDENCE FOR THE RESPONDENT

(1) *Respondent Jose Lantin y Cabal*, gave a different version of the incident. In his comment dated January 23, 1998, surrounding his arrest by the NBI Agents, in the counter affidavit which he submitted in the Office of the Ombudsman in OMB-197-2114 dated December 18, 1997, and, in his Petition for Reconsideration dated August 21, 1998, which were utilized as his direct testimony, respondent claimed that he did not receive the marked money but it was allegedly recovered from one of the left drawers of his table immediately after complainant left. He asserted that it was a clear case of planting of evidence not an entrapment and a violation of his human rights. His table and all its drawers were ransacked and even his licensed firearm was confiscated without a warrant. He said that he was dragged out of his courtroom and when he protested, Atty. Curammeng and the other agents pushed him to force him to sit before his table with the alleged bribe money spread out for media propaganda because pictures were taken.

Respondent said that he heard Crim. Case No. 3886 on preliminary investigation, and after complying with the requirements, he issued a warrant for the arrest of the complainant without recommending bail, and issued a hold departure order. He said that his participation in the case ended after he has forwarded the records of the case to the Office of the Provincial Prosecutor of Zambales, until the complainant filed a motion to quash the hold departure order on April 28, 1997. He granted the motion on April 30, 1997, however, the cancellation is subject to the submission of the documents dismissing the charges. He required respondent to submit certified copies of the documents because he wanted the record complete for the issuance of the order of cancellation.

Respondent asserted that he did not demand ₱25,000.00 from the complainant for approving the motion to quash the hold departure order. He averred that the order should issue as a matter of course because the case against the complainant for which the hold departure order was issued was already dismissed. The allegation that he was given ₱12,000.00 on April 30, 1997, and the balance of ₱13,000.00 shall be paid later, are concoctions of the complainant who was very vocal in expressing her disgust against him for issuing the warrant of arrest without the provision for bail.

Respondent said that he did not go to the house of the complainant. He averred that sometime in October 1997, when he was

Supreme Court E-Library

checking on the inventory of his cases, he chanced upon the case of the complainant so he issued the subpoena addressed to all the accused for their appearance on October 30, 1997. On November 12, 1997, the complainant came to court and sat on the left side of his table. He had no occasion to talk to the complainant as his body was turned to the other side where he was getting some files, then all of a sudden, a person whom he came to know as NBI agent Curammeng, told him, "Judge you are under arrest." He was surprised especially when Agent Curammeng with a lady and another man who are also NBI Agents were pushing him from his table when he positioned himself in such a way that they (NBI Agents) cannot open the drawers of his table. At the office of the NBI in Olongapo City, one of the agents told him that the complainant was spending ₱50,000.00 to get him, and if he has ₱100,000.00, the matter could be arranged, but he told the agent that he is poor and he has no money.

Respondent claimed that the complainant has made several attempts to blackmail him by trying to extort One Million Pesos (₱1,000,000.00) from him which was reduced to Three Hundred Thousand Pesos (₱300,000.00) in consideration of the withdrawal of the criminal complaint in the Sandiganbayan as well as the administrative complaint before he filed his petition. He stated that he filed a case of Estafa against Ruben Sacaguing and his wife who is the brother of a highly placed NBI official in Manila. The complainant and spouses Ruben and Lydia Sacaguing, impelled by evil motives and vengeance, conspired together in fabricating the instant case utilizing the powerful investigative authority of the National Bureau of Investigation.

Juanita Florentino Lantin, 75 years old, married to Judge Jose C. Lantin, stated in her affidavit, which was utilized as her direct testimony, that she did not know nor have meet [*sic*] the complainant in her house and even in any part of Zambales. She said that her husband had strict instructions not to entertain visitors or strangers at their house especially those who are involved in the investigation and prosecution of cases under his jurisdiction. She claimed that she could not allow the receipt of bribe money by her husband because it is contrary to her moral values as President of the Catholic Women's League, while her husband is affiliated with the Holy Name Society. She averred that they are not in dire need of money because they have properties where they get considerable income, and they have an only child who is a Mechanical Engineer and gainfully employed.

Emilio R. Tapec, the Clerk of Court of the MTC, San Felipe, Zambales in his Incident Report dated November 18, 1997, which was

Supreme Court E-Library

utilized as his direct testimony, narrated that the respondent arrived in his office at 2:30 o'clock in the afternoon on November 12, 1997, and all the employees were present. At about 3:00 o'clock, the complainant accompanied by a low-profiled looking lady arrived. The complainant sat at the right corner of the respondent's table while her companion sat at the center table about eight (8) meters away. He saw the complainant stood up and sat nearer the respondent but he was too busy at that time that he did not see what transpired between the two. At about 3:40 o'clock in the afternoon the complainant stood up and the respondent shook hands with her but complainant showed her hatred towards the respondent. At about 3:45 o'clock in the afternoon, a group of men suddenly entered their office and went direct to the table of the respondent and announced that they are NBI agents and invited the respondent to go with them to their office in Olongapo City.

On cross-examination the witness testified that he is not familiar with the order of cancellation of the hold departure order dated April 30, 1996 [*sic*]. He is not sure who prepared the order, and he is not also sure if he has read the order before. The order has no initial of the person who typed it, and it is the policy in their court that the employee who types an order must put the initial on it. He was not the one who affixed the seal of the court in the order.

He had not encountered the Motion to Quash Hold Departure Order dated April 28, 1997. There is no showing that the Motion is stamped as proof that it was received in court. It is their policy that pleadings and documents filed in court must be stamped and initialed by the receiving employee.

Danny P. Borja, 29 years old a COMELEC employee in his *Salaysay* which was utilized in [*sic*] his direct testimony, narrated that the office where he works is in the same room occupied by the Municipal Trial Court and the DILG. The different offices are not separated by partitions. On November 12, 1997, when he reported to his office between 4:00 at 4:30 o'clock in the afternoon, he saw two (2) female persons entered and approached the table where the respondent was seated. One of the ladies sat near at the left side of the table of the respondent and the other lady moved away from the table, but while standing she was looking at the respondent and the lady who sat near him.

When the lady who sat near the respondent stood up, she was met by the other lady and was asked. "*Saan mo inilagay and*

Supreme Court E-Library

diyaryo"? He heard the lady answered. "*Naroon sa may drawer.*" The two ladies went out and later, he saw one of the ladies came back with male companions. He saw the crumpled newspaper on the floor outside the drawer of the respondent. The lady picked it up and placed it inside a big brown envelope while her male companions wanted the respondent to sit on his chairs but the respondent refused. They searched the drawers of the table of the respondent, grabbed his clutch bag and brought out a gun. Pictures were taken and they brought the judge out.

The respondent rested his case with the admission of Exhibit "1" Motion to quash Hold Departure Order; Exhibit "2", Order granting the Motion to Quash Hold Departure Order; Exhibit "3", *Malayang Sinumpaang Salaysay* of complainant; Exhibit "4, to "4-C", with submarkings are pictures of the Office of the Municipal Trial Court of San Felipe, Zambales, pp. 9-11 of Exh. 8; Exhibit "5", Hold Departure Order; Exhibit "6", Resolution of the Provincial Prosecutor dismissing the Murder Case against the complainant and her co-accused; Exhibit "7", Comment filed by the respondent; Exhibit "8", Counter-Affidavit submitted by respondent before the Ombudsman; Exhibit "9", Petition for reconsideration filed by the respondent; Exhibit "10", Subpoena issued by the respondent; Exhibit "12", 12-a, 12-g Official records of the BIR; Exhibit "13", Executive clemency extended by Pres. Aquino to respondent; Exhibit "14", Certification of Acquittal of respondent in a Criminal Case filed against him; Exhibit "15", Affidavit of the wife of the respondent; Exhibit " 16", Incident Report of Emilio Tapec, Clerk of Court of MTC, San Felipe, Zambales; Exhibit "17", Affidavit of Dany P. Borja and the testimonies of the respondent, Juanita Lantin, Emilio Tapec and Danny P. Borja.

ISSUE

The issue is whether this is a case of entrapment or planting of evidence.

For a clear presentation of the issue, let us distinguish entrapment from planting of evidence.

In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused and the law enforcement officials merely facilitate the commission of the offense, the accused cannot justify his conduct.

Planting of evidence or incriminating innocent person is committed by performing an act by which the offender directly incriminates or imputes to an innocent person the commission of a crime.

Supreme Court E-Library

DISCUSSION

From the testimonial and documentary evidence submitted by the parties, there is reason to believe that indeed, this is a case of entrapment not planting of evidence. The conclusion is based on the following:

(1) The subpoena was illegally issued;

(2) The Motion to Quash Hold Departure Order and the Order of Cancellation of the Hold Departure Order were prepared and typewritten by the respondent; and

(3) The Money used in the entrapment operation was recovered from one (1) of the left drawers of the respondent's table.

I. THE SUBPOENA WAS ILLEGALLY ISSUED

Subpoena is a process directed to a person requiring him to attend and testify at the hearing or the trial of an action, or at any investigation conducted under the laws of the Philippines or for the taking of his deposition. It may also require him to bring with him books, documents, or other things under his control, in which case it is called a subpoena *duces tecum.*

Under the definition, a subpoena can only be issued if there is a pending case in court. In the absence of a case in his court, a judge has absolutely no power or authority to issue a subpoena.

The complainant went to the District Office of the NBI in Olongapo City and filed a complaint for bribery against the respondent on October 30, 1997, after she came from the Municipal Trial Court of San Felipe, Zambales in obedience to the subpoena illegally issued by the respondent. The subpoena was issued in connection with an alleged motion to quash hold departure order dated April 28, 1997.

Complainant testified that she was constrained to file the complaint because when she appeared in court in obedience to the subpoena, the respondent demanded the balance of ₱13,000.00 which she promised to give after she received the order of cancellation of the hold departure order on April 30, 1997. Complainant claimed that the respondent demanded ₱20,000.00 from her in exchange of the order, but since she had only ₱12,000.00 at that time, respondent increased the demand to ₱25,000.00.

The respondent denied that he demanded ₱13,000.00 from the complainant when she appeared in court on October 30, 1997.

Supreme Court E-Library

Respondent claimed that she issued the subpoena to require complainant to submit certified copies of documents showing that the case for which the hold departure order was issued had already been dismissed.

The reason given by the respondent for issuing the subpoena is flimsy and should not be given weight. It is too shallow to inspire belief for the simple reason that he issued the order of cancellation of the hold departure order on April 30, 1997, while the subpoena commanding complainant to appear in court on October 30, 1997, was issued on October 23, 1997. In other words, the subpoena was issued five (5) months after he had issued the order of cancellation. When the respondent issued the subpoena, the entire records of the case, which was the basis for the issuance of the subpoena, was no longer in his possession. Respondent admitted this. He said that after he terminated his preliminary investigation of the case in which the complainant was one (1) of the respondents, he transmitted the resolution of the case and the entire records to the Provincial Prosecutor of Zambales on August 1, 1995.

The law requires the investigating judge to transmit the resolution of the case and the entire records to the Provincial or City Prosecutor within ten (10) days after the conclusion of the preliminary investigation. The transmittal of the resolution of the case and the entire records after preliminary investigation to the Provincial/City Prosecutor is only ministerial for the investigating judge. After transmittal of the resolution of the case and the records, the Municipal Trial Court of Zambales in which the respondent was the presiding judge lost jurisdiction over the case.

The respondent did not tell the truth when he stated in his counter-affidavit that while he was checking the inventory of cases for October, 1997, he chanced upon the records of the complainant, so he issued the subpoena. The canard was repeated when respondent testified during the investigation that he issued the subpoena because while going over certain documents, he saw the file of the complainant. How could the records of the complainant be with the inventory of cases for October, 1997, when said records had already been transmitted together with the resolution of the case to the Provincial Prosecutor of Zambales on August 1, 1995, or more than two (2) years earlier? Under the circumstances in which the respondent issued the subpoena, any person with unprejudiced mind would surely conclude that the subpoena was issued to compel complainant to pay the promised ₱13,000.00. Using the subpoena to compel the complainant

Supreme Court E-Library

to appear before him (respondent) was intended to sow fear in her mind because of the admonition in the subpoena: Fail not Under the Penalty of the Law.

For illegally issuing the subpoena alone, the respondent can be dealt with administratively.

(2) THE MOTION TO QUASH HOLD DEPARTURE ORDER AND THE ORDER OF CANCELLATION OF THE HOLD DEPARTURE ORDER WERE PERSONALLY PREPARED TYPEWRITTEN BY THE COMPLAINANT

The complainant testified that the order of cancellation of the hold departure order was signed by the respondent and it was given to her only after she gave the amount of ₱12,000.00 on April 30, 1997 in his house. The motion to quash departure order was also given to her by the respondent and asked her to sign it. She added, however, that she does not know where they were prepared.

The respondent denied having demanded money from the complainant in exchange of the issuance of the cancellation of the hold departure order. He also denied having received ₱12,000.00 from the complainant in his house on April 30, 1997. In support of such denials, respondent's wife was presented as a witness.

Mrs. Lantin's testimony, sad to say, could not be given much weight. Her credibility is seriously impaired in view of her relationship with the respondent. She had a very strong motive to testify falsely because she knew that an adverse findings against her husband would mean forfeiture of all retirement privileges and benefits, and more importantly, the stigma as a consequence.

Respondent claimed that he did not prepare the motion to quash hold departure order. He said that he first saw the motion on top of his table on April 29, 1997. Papers pass through in Clerk of Court, according to the respondent.

However, the denial was contradicted by his Clerk of Court, Emelio Tapec, who testified that he had not seen the motion to quash hold departure order before. He said that there is no showing that the motion was filed in the office for it does not bear the stamp that it was filed, and received in court. Tapec further testified that papers filed in court are stamped and initialed by the receiving court employee.

Since the motion to quash hold departure order did not bear the stamp nor the initial of any of the court's employee, it is

Supreme Court E-Library

unquestionable that the motion was not filed and received in court thus, giving credence to the testimony of the complainant that it was made by respondent, and she was only asked to sign it.

With respect to the cancellation of the hold departure order, witness Tapec testified that he had not seen nor had read it before. The witness observed that it has no initial of the person who typed it. He claimed that he did not type the order, and it is the policy in their office that papers issued by the court must be initialed by the typist. Since the order of cancellation of the hold departure order did not bear the signature of any of the employees of the court, it is indubitable that it was also typewritten by the respondent.

What is really intriguing is that the respondent issued the order of cancellation when he has no more power to issue the same. He knew that his authority to issue any order in connection with the case ceased after the entire records has been transmitted to the Provincial Prosecutor. When asked on cross examination why he did not refer the motion to his trial fiscal, the respondent answered:

> I would say that this case has been out of my jurisdiction already. It has been forwarded to the fiscal. The fiscal dismissed it after re-investigation, so I have no more authority whatsoever. As a matter of fact, I am of the honest belief that even if I do not grant that, I could have referred it to the RTC because the RTC has control over the case.

(3) THE MONEY USED IN THE ENTRAPMENT WAS RECOVERED FROM ONE (1) OF THE LEFT DRAWER OF THE RESPONDENT'S TABLE

There is no dispute that the money used in the entrapment operation was recovered from one (1) of the left drawers of the respondent's table. It may have been inserted into his drawer while he was looking for the Hugglan[d] case, not an entrapment according to the respondent. It was a well-planned vengeance of the complainant and the spouse Lydia and Ruben Sacaguing, a relative of a highly placed NBI official in the national office in Manila, at the instigation and connivance of the 2nd Assistant Provincial Prosecutor, the respondent asserted. The assertion, however, is worthless because respondent did not present evidence to substantiate his charge. No evidence was presented to prove that the spouses Sacaguing and the complainant knew each other on or before November 12, 1997. Respondent also failed to prove the alleged participation of a 2nd

Supreme Court E-Library

Assistant Provincial Prosecutor to the event that occurred on November 12, 1997, for which he was arrested. Conspiracy must be established by the same quantum of evidence as any other ingredient of the offense. The same degree of proof necessary to establish a finding of conspiracy, which is proof beyond reasonable doubt.

The entrapment was planned by NBI Supervising Agent Curammeng after the complainant filed a complaint for bribery against the respondent. Supervising Agent Curammeng is a lawyer, and to accuse him of employing illegal means to destroy the reputation of the respondent who is a judicial officer must be rejected, unless the accusation is supported by evidence. On the other hand, credence should be given to the narration of the incident by the NBI Agents because of the presumption that they have performed their duties in a regular manner in the absence of proof to the contrary.

The money used in the entrapment operation was recovered by the NBI Agents who immediately entered the courtroom after they received the pre-arranged signal from Agent Jamasali. The complainant said that she placed the money inside the drawer of the table after respondent pulled it open. The envelope, and the crumpled piece of newspaper which according to the complainant was used by the respondent in counting the money, were also recovered.

Respondent testified that he did not see the money on November 12, 1998. What he saw were xerox copies of the money in the office of the Ombudsman. His testimony is contrary to the testimonies of the NBI Agents who recovered the money. It contradicted his statements in his counter-affidavit submitted before the Ombudsman in OMB-1-97-2114, in which he stated: "He asked me to sit down on my chair with the money scattered."

Respondent also claimed that he was arrested without a warrant and his drawers were ransacked, his firearm with a permit to carry was confiscated and he lost his valuables and a Rolex watch.

His arrest and the search conducted were unlawful because they were made without a warrant, according to respondent. Respondent must have lost sight of the fact that the law authorizes a warrantless arrest when, in the presence of a police officer or even a private person, a person to be arrested has committed, is actually committing, or is attempting to commit an offense. A search incidental to a lawful arrest is also allowed. In a case the Court said:

Supreme Court E-Library

> There is no doubt that the warrantless search incidental to a lawful arrest authorizes the arresting officer to make a search upon the person of the person to be arrested. As early as 1909, the court has ruled that an officer making the arrest may take from the person to be arrested any money or property found upon his person which was used in the commission of the crime or was the fruit of the crime or which might furnish the prisoner with the means of committing violence or escaping, or which may be used as evidence in the trial of the cause.

With respect to the confiscation of the firearm, Supervising NBI Agent Curammeng testified that he took the firearm for safekeeping because the respondent is under custody and it is very dangerous for somebody under custody (sic) he has possession of a gun. The taking of the firearm for safekeeping is also legal.

The alleged loss of valuables and a Rolex watch is unworthy of belief. Respondent did not say what kind of valuables were lost, and where were the valuables and the Rolex watch kept when he was arrested on November 12, 1997. If the valuables and the Rolex watch were in one (1) of the drawers of the table of the respondent, why were they there? It is contrary to human experience to keep valuables and a Rolex watch inside the drawer of a table that is in a place open to the public. Besides, the alleged loss of valuables and Rolex watch was not mentioned by the respondent in his "Comment" dated January 23, 1998, and in Counter-Affidavit which he submitted in OMB-97-2114. The respondent could not claim that the loss of valuables and a Rolex watch skipped his mind when he prepared his "Comment" and executed his Counter-Affidavit.

The NBI Agents who testified were subjected to rigid and thorough cross-examination by the counsel for the respondent but he failed to discredit their testimonies. Full faith and credit should be given their testimonies because the respondent failed to show that the NBI Agents have been impelled by improper motive for them to testify against him. The testimonies of the NBI Agents carry with it (sic) the presumption of regular performance of official functions.

With respect to the complainant, her testimony is simple and straightforward, and so detailed brought about on cross-examination which cannot simply be ignored despite minor inconsistencies on dates (sic). The inconsistency cited by the respondent are insignificant to affect the veracity of complainant's testimony. While testifying,

Supreme Court E-Library

complainant did not conceal her anger and contempt for the respondent. Her actuation is understandable, but her anger against the respondent did not mean that she fabricated her testimony. There is no proof that complainant is so vindictive as to falsely incriminate the respondent with [the] serious charge of bribery simply because he issued the hold departure order. There is no evidence on record that complainant was induced or influenced by any improper motive when she filed the complaint against the respondent. It must be recalled that complainant filed the complaint on October 30, 1997 after she came from the court in obedience to a subpoena that was illegally issued by the respondent. From April 30, 1997, when she received the order of cancellation of the hold departure order after she gave the respondent ₱12,000.00, complainant did not bother to see the respondent until she received the subpoena. Complainant's testimony should be given full weight and credit.

The defense is denial. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law, and could not be given greater evidentiary value over the testimonies of witnesses who testified in the affirmative. Positive and forthright declaration is more worthy than (sic) mere uncorroborated and self-serving denials.

The respondent submitted in evidence a news item that appeared in the July 27, 1975 issue of the Manila Bulletin Today showing that he was a recipient of a special award from the Deputy Commissioner of the Bureau of Internal Revenue for his alleged leadership in implementing P.D. 213 and 370. Evidence was also presented that the respondent was dismissed from the service for dishonesty and misconduct while employed at the BIR but was given Executive Clemency on October 7, 1991. In connection of (sic) the case of dishonesty and misconduct in office the respondent was charged in the Circuit Criminal Court in Olongapo, Zambales but he was acquitted. These documents from Exhibits 12 to 14 are immaterial as far as the actuations of the respondent as a judge is concerned. Respondent cannot crow on his acquittal in the Circuit Criminal Court because the quantum of evidence necessary for the conviction of an accused in a criminal case is proof beyond reasonable doubt, while in an administrative investigation only substantial evidence is necessary.

In of the foregoing, the undersigned submits that respondent judge is guilty of grave and serious misconduct, which would have warranted his dismissal from the service had the investigation not [been] overtaken by his compulsory retirement.

Supreme Court E-Library

WHEREFORE, it is respectfully recommended that the retirement benefits, privileges and leave credits which respondent may be entitled to be forfeited.

The Court agrees with the findings, conclusion and recommendation of Justice Atienza.

The culpability of respondent Judge for grave misconduct, gross dishonesty, conduct prejudicial to the best interest of the service and conduct unbecoming a judge has been established not just by substantial evidence which suffices in administrative investigation (Sec. 5, Rule 133, Rules of Court), but by a clear preponderance of evidence.

Respondent's court, the Municipal Trial Court of San Felipe, Zambales, had only a preliminary jurisdiction over Criminal Case No. 3886. After the preliminary investigation was conducted, and respondent judge had recommended the filing of the corresponding information and forwarded the record of the case to the Provincial Prosecutor, the Court lost its preliminary jurisdiction over the case. The case was finally brought within the exclusive original jurisdiction of the Regional Trial Court of Iba, Zambales with the filing of the information on 28 August 1995.

Clearly then, respondent Judge should have known that he had absolutely no power or authority to cancel the hold departure order which he issued in the course of the preliminary investigation. In the first place, he never had that authority from the inception of the case. In the conduct of the preliminary investigation a judge exercises a non-judicial function, an exception to his general duties. This is because a preliminary investigation is basically an executive function (*People v. Navarro*, 270 SCRA 393 [1997]). Consequently, his findings are subject to review by the Provincial Prosecutor, whose findings in turn may, in appropriate cases, be reviewed by the Secretary of Justice (*Balagapo v. Duquilla*, 238 SCRA 645 [1994]).

From the established fact, the conclusion is ineluctable that when complainant came to see respondent to plead for the cancellation of the hold order, the latter saw it as an opportunity

Supreme Court E-Library

to illegally extract money from the former by making him believe that, indeed, since he issued the hold departure order, only he can cancel or set it aside.

If respondent had not been inspired by evil motive, he could have simply advised the complainant to see her lawyer to file the appropriate pleading with the Regional Trial Court to annul or set aside the hold departure order.

That respondent Judge had asked for ₱25,000 in consideration of the issuance of an order cancelling the hold departure order and had in fact received the initial partial payment of ₱12,000 were proven by the release on 30 April 1997, of the order of cancellation. It is interesting to note that as can be gathered from the testimony of Clerk of Court Emilio Tapec, both the motion to quash the hold departure order and the order of cancellation were not filed in due course with his office.

The failure of complainant to pay the balance of ₱13,000 was equally conclusively established by the issuance by respondent of a subpoena commanding her to appear before him on 30 October 1997 at 2:00 p.m. The explanation given by respondent that it was done to compel complainant to submit certified copies of documents showing that the case for which the hold departure order was issued had already been dismissed is simply incredible. If the documents were not yet ready on 30 April 1997 and these were necessary for the issuance of the cancellation order, respondent need only to defer the release thereof. Then, too, if these were still not presented on 30 April 1997, respondent could have simply revoked or set aside the cancellation. Finally, he knew that the records of the case had been forwarded to the Provincial Prosecutor and his court had long lost its jurisdiction over the case, hence he could not validly issue a subpoena under the caption of the case.

We do not hesitate to conclude that respondent Judge had tainted the image of the judiciary to which he owes fealty and the obligation to keep it at all time unsullied and worthy of the people's trust (*Garcia vs. Dela Peña*, 229 SCRA 766 [1994]). A judge should conduct himself at all times, in a manner which

Supreme Court E-Library

would reasonably merit the respect and confidence of the people for he is the visible representation of the law (*Chan vs. Agcaoili,* 233 SCRA 331 [1994]). Rule 2.01 of Canon 2 of the Code of Judicial Conduct directs that a judge should behave at all times as to promote public confidence in the integrity and impartiality of the Judiciary.

The time honored rule is that a public official whose duty is to apply the law and dispense justice, be he a judge of a lower court or tribunal or a justice of the appellate courts, should not only be impartial, independent and honest but should be believed and perceived to be impartial, independent and honest (*Nazareno v. Almario,* 268 SCRA 657 [1997]). Canon 3 of the Canons of Judicial Ethics solemnly mandates that the judge's official conduct should be free from the appearance of impropriety and his personal behavior, not only upon the bench and the performance of judicial duties, but also in his everyday life, should be beyond reproach.

Perforce, the penalty of dismissal from the service is the most appropriate penalty under the circumstances. However, since respondent had reached the compulsory age of retirement during the pendency of this case, the imposition of that penalty has been rendered academic. Nonetheless, respondent cannot go scot free and be forgiven for the damage he caused to the institution he was bound by his oath and the Canons of Judicial Ethics and the Code of Judicial Conduct to serve with utmost integrity. The accessory penalties in case of dismissal from the service, as established by jurisprudence, namely, forfeiture of all retirement benefits, including earned leave credits, and disqualification from employment in any branch, agency or instrumentality of the government including government-owned or controlled corporation, must be given full force and effect.

WHEREFORE, judgment is hereby rendered (a) finding respondent Judge Jose C. Lantin guilty of grave misconduct in office, gross dishonesty, conduct prejudicial to the best interest of the service and conduct unbecoming a judge; (b) holding that respondent Jose C. Lantin should have been dismissed from the service had the compulsory age of retirement not

Supreme Court E-Library

overtaken this case; (c) forfeiting all his retirement benefits, including leave credits; and (d) disqualifying him from employment in any branch, agency or instrumentality of the Government, including government-owned or controlled corporation.

Respondent is further directed to show cause within ten (10) days from receipt of copy of this Resolution why he should not be disbarred.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Gonzaga-Reyes, Ynares-Santiago, and *De Leon, Jr., JJ.*, concur.

Buena, J., is on leave.

FIRST DIVISION

[G.R. No. 112392. February 29, 2000]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **COURT OF APPEALS and BENJAMIN C. NAPIZA,** *respondents.*

SYNOPSIS

By way of accommodation and only for the purpose of clearing, Benjamin Napiza (private respondent herein), deposited a check in the amount of $2,500.00 in his dollar deposit with the petitioner Bank of the Philippine Islands. This check belongs to Henry Chan. Napiza delivered to Chan a signed blank withdrawal slip, with the understanding that as soon as the check is cleared, both of them would go to the bank to withdraw the amount of the check upon private respondent's presentation to the bank of his passbook. However, using the same blank withdrawal slip, a bank employee was able to withdraw the