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WHEREFORE, the decision of the Court of Appeals, dated November 29, 2000, is AFFIRMED with the MODIFICATION that petitioner is found guilty of the crime of homicide and is sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and to pay the heirs of the victim, Freddie Ganancial, ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-01-1642. March 6, 2002]
(Formerly OCA IPI No. 00-921-RTJ)

P/SUPT. SEVERINO CRUZ and FRANCISCO MONEDERO, *complainants, vs.* **JUDGE PEDRO M. AREOLA and BRANCH CLERK OF COURT JANICE YULO-ANTERO,** *respondents.*

SYNOPSIS

A warrant of arrest was issued by respondent Judge and released by respondent Branch Clerk of Court against the accused in the criminal case for estafa pending before the *sala* of respondent Judge. Respondent Judge issued another order deferring the implementation of the warrant of arrest against the accused pending the resolution of her motion for reinvestigation. Respondent Judge granted accused's motion for reconsideration and directed the Branch Trial Prosecution to conduct a reinvestigation of the case. The Office of the City Prosecutor recommended that the case be set for trial. Accused

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filed an urgent *ex-parte* motion to suspend proceedings and to hold in abeyance the issuance of a warrant of arrest as she intended to file a motion for reconsideration of the resolution of the reinvestigation or a petition for review before the Secretary of Justice. Respondent Judge granted accused's motion and suspended further proceedings in the said case. On the basis of the foregoing orders issued by respondent Judge, complainants filed the instant complaint charging both respondent Judge and his Branch Clerk of Court with ignorance of the law.

The administrative complaint was referred to Justice Romeo A. Brawner of the Court of Appeals, who recommended the dismissal of the complaint against the respondents.

The Supreme Court agreed with the findings and recommendation of the investigating Justice. The arrest of the accused can be ordered only in the event the prosecutor files the case and the judge of the Regional Trial Court finds probable cause for the issuance of a warrant of arrest. It is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, even after having personally examined the complainant and his witnesses in the form of searching questions and answers, for the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his sound judgment or discretion.

On her part, respondent Branch Clerk of Court cannot be faulted for performing a ministerial function, that is, releasing orders duly signed by respondent Judge.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; KINDS.— The 1987 Constitution provides that no warrant of arrest shall issue except upon probable cause to be determined *personally* by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce. In numerous instances, this Court had ruled that: "x x x Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation

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proper which ascertains whether the offender should be held for trial or released... *The determination of probable cause for the warrant of arrest is made by the judge.* The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the Prosecutor. x x x We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge." In making the required personal determination, a judge is not precluded from relying on the evidence earlier gathered by responsible officers. The extent of the reliance depends on the circumstances of each case and is subject to the judge's sound discretion.

2. **ID.; ID.; ARREST; WARRANT OF ARREST; ISSUANCE THEREOF MERELY DISCRETIONARY UPON THE INVESTIGATING JUDGE.**— The arrest of the accused can be ordered only in the event the prosecutor files the case and the judge of the Regional Trial Court finds probable cause for the issuance of a warrant of arrest. It is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, even after having personally examined the complainant and his witnesses in the form of searching questions and answers, for *the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order not to frustrate the ends of justice, is left to his sound judgment or discretion.*

DECISION

PUNO, *J.*:

This is an administrative complaint filed by P/Supt. Severino Cruz and Francisco Monedero against Judge Pedro M. Areola of Regional Trial Court, Branch 85, Quezon City and his Branch

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Clerk of Court for Ignorance of the Law relative to Criminal Case No. Q-99-80446 entitled "*People of the Philippines vs. Marilyn A. Carreon*" for Estafa pending before the *sala* of the respondent Judge.

The records show that on November 26, 1998, the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman issued a Resolution[1] recommending the filing of an Information for Estafa as defined and penalized under Art. 315, par.1(b) of the Revised Penal Code against Marilyn Carreon, an employee of the Land Transportation Office based on the complaint filed by herein complainants. Upon the filing of the Information, the case was docketed as Criminal Case No. Q-99-80446 and was raffled to Branch 85.

On January 19, 1999, accused Marilyn Carreon filed with the trial court an Urgent Motion for Reinvestigation. In his Order dated January 25, 1999, the respondent Judge considered the said motion a mere scrap of paper for non-compliance with Sections 4 and 5, Rule 15 of the 1997 Rules of Civil Procedure. On the same date, a Warrant of Arrest was issued by the respondent Judge and released by respondent Branch Clerk of Court.

On February 10, 1999, respondent Judge issued another Order deferring the implementation of the Warrant of Arrest against the accused pending the resolution of her Motion for Reinvestigation. On June 16, 1999, respondent Judge granted Carreon's Motion for Reconsideration and directed the Branch Trial Prosecutor to conduct a reinvestigation of the case.[2]

The Office of the City Prosecutor issued a Resolution finding no cogent reason to reverse, modify, or alter the resolution of the Office of the Ombudsman and recommended that the case be set for trial.

On September 20, 1999, Carreon filed an Urgent *Ex-Parte* Motion to Suspend Proceedings and to Hold in Abeyance the

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[1] *Rollo*, pp. 15-17.

[2] *Id.*, p. 33.

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Issuance of Warrant of Arrest as she intended to file a Motion for Reconsideration of the Resolution of the Reinvestigation or a petition for review before the Secretary of Justice. In his Order dated September 27, 1999, respondent Judge granted Carreon's motion and suspended further proceedings in the said case.[3]

On the basis of the foregoing Orders issued by the respondent Judge, complainants filed the instant complaint[4] charging both respondent Judge and his Branch Clerk of Court with ignorance of the law.

In their Joint Comment,[5] respondent Judge manifests that the issuance of a warrant of arrest is not a ministerial function of a judge as he is mandated to determine the existence of probable cause before issuing a warrant. Respondent Branch Clerk of Court, on the other hand, claims that it is a ministerial duty on her part to release duly signed orders, resolutions and decisions of the presiding judge of her branch.

The sole issue in this case is whether or not the orders of respondent Judge and the release thereof by respondent Branch Clerk of Court constitute ignorance of the law.

On August 6, 2001, we referred the administrative complaint to Justice Romeo A. Brawner of the Court of Appeals for investigation, report and recommendation.[6]

In compliance with the Court's Resolution, Justice Brawner submitted his Report and Recommendation dated February 5, 2002. In recommending the dismissal of the complaint against the respondents, Justice Brawner elucidates, thus:

"Complainants take issue of the fact that although respondent Judge already issued a warrant of arrest, he still deferred its implementation to give way to a reinvestigation of the case on motion of the accused.

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[3] *Id.*, p. 39.

[4] *Id.*, pp. 1-4.

[5] *Id.*, pp. 92-93.

[6] *Id.*, p. 106.

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Moreover, complainants argued, the Office of the City Prosecutor already resolved the issue of the existence of probable cause against the accused three times but respondent Judge still suspended the proceedings pending the petition for review filed by the accused.

It must be stressed that the 1987 Constitution requires the judge to determine probable cause 'personally,' making it the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause (*Mayor Abdula vs. Judge Guiani*, G.R. No. 118821, February 18, 2000, 326 SCRA 1).

What complainants believe is that there is no longer any reason why the respondent Judge should withhold the issuance of a warrant of arrest considering that the Office of the City Prosecutor already made a finding that there exists probable cause to indict the accused.

The determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, *i.e.,* whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused for an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than

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Issuance of Warrant of Arrest as she intended to file a Motion for Reconsideration of the Resolution of the Reinvestigation or a petition for review before the Secretary of Justice. In his Order dated September 27, 1999, respondent Judge granted Carreon's motion and suspended further proceedings in the said case.[3]

On the basis of the foregoing Orders issued by the respondent Judge, complainants filed the instant complaint[4] charging both respondent Judge and his Branch Clerk of Court with ignorance of the law.

In their Joint Comment,[5] respondent Judge manifests that the issuance of a warrant of arrest is not a ministerial function of a judge as he is mandated to determine the existence of probable cause before issuing a warrant. Respondent Branch Clerk of Court, on the other hand, claims that it is a ministerial duty on her part to release duly signed orders, resolutions and decisions of the presiding judge of her branch.

The sole issue in this case is whether or not the orders of respondent Judge and the release thereof by respondent Branch Clerk of Court constitute ignorance of the law.

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[3] *Id.*, p. 39.

[4] *Id.*, pp. 1-4.

[5] *Id.*, pp. 92-93.

[6] *Id.*, p. 106.

283 (1998); *People vs. CA*, 301 SCRA 475 (1999).

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"x x x Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released... *The determination of probable cause for the warrant of arrest is made by the judge.* The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the Prosecutor.

x x x x x x x x x

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge."[10]

In making the required personal determination, a judge is not precluded from relying on the evidence earlier gathered by responsible officers. The extent of the reliance depends on the circumstances of each case and is subject to the judge's sound discretion.[11]

The arrest of the accused can be ordered only in the event the prosecutor files the case and the judge of the Regional Trial Court finds probable cause for the issuance of a warrant of arrest. It is not obligatory, but merely discretionary, upon the investigating judge to issue a warrant for the arrest of the accused, even after having personally examined the complainant and his witnesses in the form of searching questions and answers, for *the determination of whether a probable cause exists and whether it is necessary to arrest the accused in order*

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[10] *People vs. Inting*, 187 SCRA 788 (1990), pp. 792-794.

[11] *Lim, Sr. vs. Felix*, 194 SCRA 292 (1991).

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not to frustrate the ends of justice, is left to his sound judgment or discretion.[12]

It appears from the records that the challenged Orders issued by the respondent Judge were not at all baseless. The respondent Judge merely exercised his sound discretion in not immediately issuing the warrant of arrest and in suspending further proceedings pending reinvestigation of the case. On her part, respondent Branch Clerk of Court cannot be faulted for performing a ministerial function, that is, releasing Orders duly signed by the respondent Judge.

IN VIEW WHEREOF, the administrative complaint against respondents Judge Pedro M. Areola and Branch Clerk of Court Janice Yulo- Antero is DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C. J., (Chairman), Kapunan, and *Ynares-Santiago, concur.*

FIRST DIVISION

[G.R. No. 126437. March 6, 2002]

JOSUE ARLEGUI, *petitioner, vs.* **HON. COURT OF APPEALS and SPOUSES GIL AND BEATRIZ GENGUYON,** *respondents.*

SYNOPSIS

The object of the controversy is a residential apartment unit which was formerly owned by Serafia Real Estate, Incorporated

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[12] *Flores vs. Sumaljag,* 290 SCRA 568 (1998); *Samulde vs. Salvani, Jr.,* 165 SCRA 734 (1988).