



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CITY PROSECUTOR
ARMANDO P. ABANADO,
Complainant,

A.M. No. MTJ-12-1804
(Formerly A.M. OCA I.P.I. No. 09-2179-MTJ)

Present:

- versus -

LEONARDO-DE CASTRO,*
Acting Chairperson,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR., and
PERLAS-BERNABE,** JJ.

JUDGE ABRAHAM A.
BAYONA, Presiding Judge,
Municipal Trial Court in Cities,
Branch 7, Bacolod City,
Respondent.

Promulgated:

30 JUL 2012

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DECISION

LEONARDO-DE CASTRO, J.:

The case now before this Court sprang from Criminal Case No. 09-03-16474, entitled *People of the Philippines v. Cresencio Palo, Sr.*¹ On March 24, 2009, complainant City Prosecutor Armando P. Abanado filed the Information² in the Municipal Trial Court in Cities, Bacolod City, which was

* Per Special Order No. 1226 dated May 30, 2012.

** Per Special Order No. 1227 dated May 30, 2012.

¹ For Violation of Section 12, Republic Act No. 6539 or the Anti-Carnapping Act of 1972.

² *Rollo*, pp. 17-18.

eventually raffled to Branch 7 thereof presided by respondent Judge Abraham A. Bayona.

On April 13, 2009, respondent issued the following order in Criminal Case No. 09-03-16474 in connection with the issuance of a warrant of arrest against the accused therein:

Pursuant to [Section] 6, paragraph (a) in relation to [paragraph] b, Rule 112 of the Revised Rules of Criminal Procedure, the Office of the City Prosecutor of Bacolod City is hereby ordered to present additional evidence, relevant records and documents to enable this Court to evaluate and determine the existence of probable cause, to wit:

1. Copy of the Memorandum of Preliminary Investigation;
2. Resolution of the Investigating Prosecutor on Record, Prosecutor Dennis S. Jarder [Jarder Resolution];
3. Memorandum of the transfer of case assignment from designated Investigating Prosecutor to the City Prosecutor; [and]
4. Exhibit to the Court, the copies of all documents submitted by the complainant and the respondents [therein] for comparison, authentication and completeness of the photocopies attached to the information.

Compliance is required within five (5) days from receipt of this Order.³

On April 29, 2009, the Office of the City Prosecutor submitted a copy of the Memorandum of Preliminary Investigation and informed respondent that the documents submitted by the parties for preliminary investigation were already appended to the complaint, thus, taking care of items 1, 2, and 4 required by the April 13, 2009 Order.

With respect to item 3 thereof, complainant, in a letter also dated April 29, 2009, explained that there was no memorandum of transfer of the

³ Id. at 19.

case from the investigating prosecutor, Assistant City Prosecutor (ACP) Dennis S. Jarder, to him.⁴ In his aforementioned letter, complainant discussed that the case was initially handled by ACP Jarder who found no probable cause against Cresencio Palo, Sr., accused in Criminal Case No. 09-03-16474. However, complainant, upon review pursuant to Section 4, Rule 112 of the Revised Rules of Criminal Procedure,⁵ found otherwise; that is, there was probable cause against Palo. Thus, complainant disapproved ACP Jarder's Resolution and filed the Information in court.⁶

Respondent was nonetheless dissatisfied with the explanation of the Office of the City Prosecutor. In an Order dated May 5, 2009,⁷ respondent stated that the Jarder Resolution (dismissing the complaint) was part and parcel of the official records of the case and, for this reason, must form part

⁴ Id. at 22. Signed by Associate Prosecution Attorney I Lady Liza Rodrigazo-Placido.

⁵ RULES OF COURT, Rule 112, Section 4 provides:

Section 4. *Resolution of investigating prosecutor and its review.*—If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied.)

⁶ *Rollo*, pp. 20-21.

⁷ Id. at 23-25.

of the records of the preliminary investigation. He further stated that because there was a conflict between Jarder's and complainant's resolutions, those documents were necessary in the evaluation and appreciation of the evidence to establish probable cause for the issuance of a warrant of arrest against Palo.

WHEREFORE, in view of the foregoing premises, [complainant] is hereby ordered to complete the records of this case by producing in Court this official and public document (Resolution of the Investigating Prosecutor Dennis S. Jarder), required by the Revised Rules o[f] Criminal Procedure, Rules of Court. Compliance is required within five (5) days from receipt hereof. Fail not under the pain of Contempt.⁸

On May 11, 2009, in view of the foregoing order, the Office of the City Prosecutor again sent a letter⁹ explaining the impossibility of submitting the Jarder Resolution to the court. The letter stated that the Jarder Resolution was no longer part of the records of the case as it was disapproved by complainant and it attached a letter of Chief State Prosecutor Jovencito Zuño which reads:

This refers to your letter dated April 18, 2008. For your information, all resolutions prepared by an Investigating Prosecutor after preliminary investigation shall form part of the record of the case. But if they have been disapproved by the Provincial/City Prosecutor, the same shall not be released to the parties and/or their counsels. Thus, only resolutions approved by the Provincial/City Prosecutor for promulgation and release to the parties shall be made known to the parties and/or their counsel.¹⁰

Respondent did not accept the explanations made by the Office of the City Prosecutor and insisted instead that the Jarder Resolution should form part of the records of the case. Thus, in an Order¹¹ dated May 14, 2009, he required complainant to explain within five days from the receipt thereof

⁸ Id. at 25.

⁹ Id. at 26.

¹⁰ Id. at 92.

¹¹ Id. at 27-29.

why he should not be cited for contempt under Section 3, Rule 71 of the Rules of Court.¹²

Complainant received the aforementioned order on May 15, 2009 and requested for a ten-day extension to comply with it.¹³

In an Order¹⁴ dated May 19, 2009, respondent denied the request of a ten-day extension and set the hearing for the contempt charges on May 26, 2009. He likewise ordered the Clerk of Court to issue a *subpoena duces tecum ad testificandum* to ACP Jarder directing him to testify on the existence of his resolution dismissing the case against Palo and to Office of the City Prosecutor's Records Officer Myrna Vañegas to bring the entire record of the preliminary investigation of the Palo case.

¹² RULE OF COURT, Rule 71, Section 3 provides:

SEC. 3. *Indirect contempt to be punished after charge and hearing.*—After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

¹³ *Rollo*, p. 30.

¹⁴ *Id.* at 30-31.

Aggrieved, complainant immediately filed a motion for inhibition¹⁵ against respondent on May 20, 2009 claiming:

4. That [Complainant] is now in a quandary because despite the fact that the production of the disapproved resolution is not required under Circular Resolution No. 12 for purposes of issuance of warrant of arrest[,] the Court is very much interested in its production and adding insult to injury in foisting to cite in contempt the City Prosecutor for its non-production.

5. That the issuance of said order is capricious and whimsical and issued with grave abuse of discretion. Because as it appears now, the presiding judge is very much interested in the outcome of this case, thereby showing bias and prejudice against the prosecution.¹⁶

Complainant likewise filed a petition for *certiorari* with a prayer for the issuance of a temporary restraining order (TRO) to restrain respondent from proceeding¹⁷ with the May 26, 2009 hearing of the contempt proceedings. Complainant's prayer for a TRO was granted in an Order dated May 25, 2009 by Presiding Judge Pepito B. Gellada of the Regional Trial Court, Branch 53, Bacolod City.

In an Order¹⁸ dated June 15, 2009, Judge Gellada granted the petition for *certiorari* (Gellada Order) holding that:

[W]hen a city or provincial prosecutor reverses the investigating assisting city or provincial prosecutor, the resolution finding probable cause replaces the recommendation of the investigating prosecutor recommending the dismissal of the case. The result would be that the resolution of dismissal no longer forms an integral part of the records of the case. It is no longer required that the complaint or entire records of the case during the preliminary investigation be submitted to and be examined by the judge.

The rationale behind this practice is that the rules do not intend to unduly burden trial judges by requiring them to go over the complete records of the cases all the time for the purpose of determining probable

¹⁵ Id. at 32-33.

¹⁶ Id. at 33.

¹⁷ Docketed as Civil Case No. 09-13383.

¹⁸ *Rollo*, pp. 35-42.

cause for the sole purpose of issuing a warrant of arrest against the accused. **“What is required, rather, is that the judge must have sufficient supporting documents** (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) **upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause.** x x x.¹⁹ (Emphases supplied.)

The records thereafter make no mention of what happened in Criminal Case No. 09-03-16474.

On July 10, 2009, complainant executed the present administrative complaint and the same was received by the Office of the Court Administrator (OCA) on August 20, 2009.²⁰ Complainant alleged therein that respondent was guilty of gross ignorance of the law or procedure,²¹ gross misconduct,²² and violation of Supreme Court Circular No. 12 dated June 30, 1987.²³ He essentially asserted that respondent unduly burdened himself by obsessing over the production of the records of the preliminary investigation, especially the Jarder Resolution.

Respondent, in his Comment with Counter-Complaint for Disbarment of Prosecutor Abanado,²⁴ essentially reiterated the importance of the Jarder Resolution in deciding whether to issue a warrant of arrest in Criminal Case No. 09-03-16474. He stated that the document was “material and relevant in the proper conduct of preliminary investigation and the neutral, objective

¹⁹ Id. at 40-41.

²⁰ Id. at 2-10.

²¹ RULES OF COURT, Rule 140, Section 8(9).

²² Id., Section 8(3).

²³ A hearing is not necessary therefor. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge, following the established doctrine and procedure, shall either (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest, or (b) if on the face of the information he finds no probable cause, he may disregard the prosecutor's certification and require the submission of the supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. (*De los Santos-Reyes v. Judge Montesa, Jr.*, 317 Phil. 101, 111 (1995).

²⁴ *Rollo*, pp. 57-82; dated October 1, 2009.

and circumspect appreciation of the Judge of the evidence x x x for a proper and just determination whether probable cause exist[s] or not for [the] possible issuance of a warrant of arrest.”²⁵ As for respondent’s countercharge, he claimed complainant should be disbarred for (a) filing a malicious and unfounded administrative complaint; (b) disrespect and disobedience to judicial authority; (c) violation of the sanctity of public records; (d) infidelity in the custody of documents; and (e) misconduct and insubordination.²⁶

In a Reply²⁷ dated October 8, 2009, complainant vehemently denied respondent’s charges against him and claimed that they were merely meant to discourage him from pursuing his just and valid administrative complaint.

On February 2, 2011, the OCA submitted its report and recommendation.²⁸ It noted the June 15, 2009 Gellada Order which held that the resolution of the city or provincial prosecutor finding probable cause replaces the recommendation of the investigating prosecutor. In such case, the resolution recommending the dismissal is superseded, and no longer forms an integral part of the records of the case and it need not be annexed to the information filed in court. Thus, the OCA held that complainant cannot be held guilty of contempt. Nevertheless, because there was no showing that respondent was motivated by bad faith and settled is the rule that the acts of a judge in his judicial capacity are not subject to the disciplinary action, it recommended that:

- (a) The administrative complaint against [respondent] be **RE-DOCKETED** as a regular administrative case; and,

²⁵ Id. at 61.

²⁶ Id. at 79-80.

²⁷ Id. at 102-107.

²⁸ Id. at 118-121.

- (b) [Respondent] be **REPRIMANDED** with **STERN WARNING** that a repetition of the same or similar offenses will be dealt with more severely.²⁹

We adopt the factual findings of the OCA but find reason not to impose the recommended penalty of reprimand on respondent.

We are tasked to determine whether respondent was administratively liable for gross ignorance of the law, gross misconduct and violation of Supreme Court Circular No. 12 dated June 30, 1987 for requiring the Office of the City Prosecutor to submit the Jarder Resolution to the court despite the reversal thereof.

The conduct of a preliminary investigation is primarily an executive function.³⁰ Thus, the courts must consider the rules of procedure of the Department of Justice in conducting preliminary investigations whenever the actions of a public prosecutor is put in question. An examination of the 2008 Revised Manual for Prosecutors of the Department of Justice-National Prosecution Service³¹ (DOJ-NPS Manual), therefore, is necessary.

The pertinent provisions of the DOJ-NPS Manual are as follows:

J. PREPARATION OF THE RESOLUTION

1. When There is Lack of Probable Cause

If the investigating prosecutor does not find sufficient basis for the prosecution of the respondent, he shall prepare the resolution recommending the dismissal of the complaint.

X X X X

3. Form of the Resolution and Number of Copies

²⁹ Id. at 121.

³⁰ *Metropolitan Bank and Trust Company v. Tobias*, G.R. No. 177780, January 25, 2012; *People v. Court of Appeals and Cerbo*, 361 Phil. 401, 410 (1999).

³¹ Superseding Department Order No. 153, s. 1996.

The resolution shall be written in the official language, personally and directly prepared and signed by the investigating prosecutor. It shall be prepared in as many copies as there are parties, plus five (5) additional copies.

X X X X

e. Contents of the Body of the Resolution

In general, the body of [the] resolution should contain:

1. a brief summary of the facts of the case;
2. a concise statement of the issues involved;
3. applicable laws and jurisprudence; and
4. the findings, including an enumeration of all the documentary evidence submitted by the parties and recommendations of the investigating prosecutor.

All material details that should be found in the information prepared by the Investigating Prosecutor shall be stated in the resolution.

X X X X

K. TRANSMITTAL OF THE RECOMMENDATORY RESOLUTION AND INFORMATION TOGETHER WITH THE COMPLETE RECORD OF THE CASE

The investigating prosecutor shall forward his [recommendation] and Information, together with the complete records of the case, to the Chief State/ Regional State/ Provincial/City Prosecutor concerned within five (5) days from the date of his resolution.

X X X X

3. Documents to be Attached to the Information

An information that is filed in court shall, as far as practicable, be accompanied by a copy of the resolution of the investigating prosecutor, the complainant's affidavit, the sworn statements of the prosecution's witnesses, the respondent's counter-affidavit and the sworn statements of his witnesses and such other evidence as may have been taken into account in arriving at a determination of the existence of probable cause.

4. Confidentiality of Resolutions

All resolutions prepared by an investigating prosecutor after preliminary investigation, whether his recommendation be for the filing or dismissal of the case, shall be held in strict confidence and shall not be made known to the parties, their counsels and/or to any unauthorized person until the same shall have been finally acted upon by the Chief State/Regional State/Provincial/City Prosecutor or his duly authorized assistant and approved for promulgation and release to the parties.

X X X X

L. ACTION OF THE CHIEF STATE/REGIONAL
STATE/PROVINCIAL OR CITY PROSECUTOR ON THE
RECOMMENDATORY RESOLUTION

The Chief State/Regional State/Provincial or City Prosecutor concerned shall act on all resolutions within a period of thirty (30) days from receipt thereof, extendible for another thirty (30) days in cases involving complex issues and/or heavy workload of the head of office, by either:

X X X X

3. reversing the recommendation of the investigating prosecutor, in which case, the Chief State/Regional State/Provincial or City Prosecutor
 - a. may file the corresponding Information in court (except the Regional State Prosecutor); or
 - b. direct any other state prosecutor or assistant prosecutor, as the case may be, to do so.

In both instances, there is no more need for the head of office concerned to conduct another preliminary investigation.
(Emphases supplied.)

Based on the foregoing, the guidelines for the documentation of a resolution by an investigating prosecutor, who after conducting preliminary investigation, finds no probable cause and recommends a dismissal of the criminal complaint, can be summed as follows:

- (1) the investigating prosecutor prepares a resolution recommending the dismissal and containing the following:

- a. summary of the facts of the case;
 - b. concise statement of the issues therein; and
 - c. his findings and recommendations.
- (2) within five days from the date of his resolution, the investigating fiscal shall forward his resolution to the provincial, city or chief state prosecutor, as the case may be, for review;
- (3) if the resolution of the investigating prosecutor is reversed by the provincial, city or chief state prosecutor, the latter may file the information himself or direct another assistant prosecutor or state prosecutor to do so;
- (4) the resolution of the investigating prosecutor shall be strictly confidential and may not be released to the parties, their counsels and/or any other unauthorized person until the same shall have been finally acted upon by the provincial, city or chief state prosecutor or his duly authorized assistant and approved for promulgation and release to the parties; and
- (5) that the resolution of the investigating prosecutor, the complainant's affidavit, the sworn statements of the prosecution's witnesses, the respondent's counter-affidavit and the sworn statements of his witnesses and such other evidence, *as far as practicable*, shall be attached to the information.

We find that there is nothing in the DOJ-NPS Manual requiring the removal of a resolution by an investigating prosecutor recommending the

dismissal of a criminal complaint after it was reversed by the provincial, city or chief state prosecutor.

Nonetheless, we also note that attaching such a resolution to an information filed in court is optional under the aforementioned manual. The DOJ-NPS Manual states that the resolution of the investigating prosecutor should be attached to the information only “as far as practicable.” Thus, such attachment is not mandatory or required under the rules.

In view of the foregoing, the Court finds that respondent erred in insisting on the production of the Jarder Resolution when all other pertinent documents regarding the preliminary investigation have been submitted to his court, and in going so far as to *motu proprio* initiating a proceeding for contempt against complainant.

However, not every judicial error is tantamount to ignorance of the law and if it was committed in good faith, the judge need not be subjected to administrative sanction.³² While complainant admitted that he erred in insisting on the production of the Jarder Resolution despite the provisions of the DOJ-NPS Manual, such error cannot be categorized as gross ignorance of the law as he did not appear to be motivated by bad faith. Indeed, the rules of procedure in the prosecution office were not clear as to whether or not an investigating prosecutor’s resolution of dismissal that had been reversed by the city prosecutor should still form part of the records.

Neither did respondent’s action amount to gross misconduct. Gross misconduct presupposes evidence of grave irregularity in the performance of

³² *Amante-Descallar v. Judge Ramas*, A.M. No. RTJ-08-2142, March 20, 2009, 582 SCRA 22.

duty.³³ In the case at bar, respondent's act of requiring complainant to explain why he should not be cited in contempt for his failure to submit the Jarder Resolution in court was in accordance with established rules of procedure. Furthermore, complainant did not abuse his contempt power as he did not pursue the proceedings in view of the May 29, 2009 and June 15, 2009 Gellada orders.³⁴ Lastly, as previously discussed, respondent issued those orders in good faith as he honestly believed that they were necessary in the fair and just issuance of the warrant of arrest in Criminal Case No. 09-03-16474.

As far as the disbarment charges against complainant are concerned, under the Rules of Court, complaints for disbarment against a lawyer are ordinarily referred to an investigator who shall look into the allegations contained therein.³⁵ However, in the interest of expediency and convenience, as the matters necessary for the complete disposition of the counter-complaint are found in the records of the instant case, we dispose of the same here. We find no merit in the countercharges. It appears from the records that complainant's non-submission of the Jarder Resolution was motivated by his honest belief that his action was in accord with the procedures in the prosecution office. It likewise cannot be said that the filing of the present administrative case against Judge Bayona was tainted with improper motive or bad faith.

ACCORDINGLY, the complaint against Judge Abraham A. Bayona of the Municipal Trial Court in Cities, Bacolod City, Branch 7 is **DISMISSED**.


³³ See *Ocampo v. Arcaya-Chua*, A.M. OCA I.P.I. No. 07-2630-RTJ, April 23, 2010, 619 SCRA 59, 92-93.

³⁴ Cf. *Tabujara III v. Gonzales-Asdala*, A.M. No. RTJ-08-2126, January 20, 2009, 576 SCRA 404, 413-414.

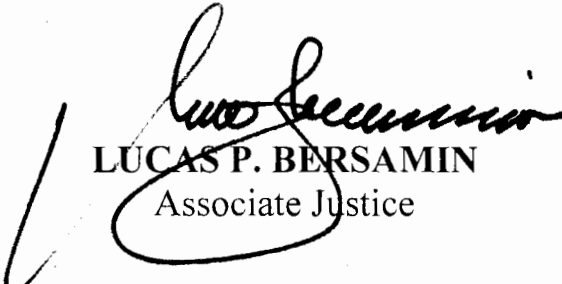
³⁵ See RULES OF COURT, Rule 139-B.

The counter-complaint against City Prosecutor Armando P. Abanado is likewise **DISMISSED**.

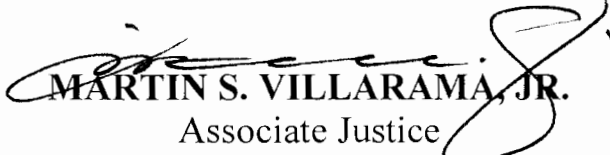
SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice