SECOND DIVISION

[A.M. No. RTJ-97-1385. January 8, 1998]

RAMON T. ARDOSA, *complainant, vs.* JUDGE LOLITA O. GAL-LANG and CLERK OF COURT NENITA R. GRIJALDO, Branch 44, Regional Trial Court, Manila, *respondents*.

D E C I S I O N

MENDOZA, *J.:*

This is a complaint against Judge Lolita O. Gal-Lang of the Regional Trial Court at Manila, Branch 44, for grave abuse of authority, manifest bias, gross ignorance of the law, knowingly rendering an unjust judgment and grave misconduct and Atty. Nenita R. Grijaldo, branch clerk of court, for grave misconduct, gross ignorance, disrespect for the Rules of Court, malfeasance, and misfeasance in public office.

Complainant was complainant in Criminal Case No. 95-146559 for illegal recruitment, which was assigned to respondent Judge Gal-lang. The prosecutor initially recommended bail for ₱8,000.00 for the provisional release of the accused but later changed his recommendation to no bail.

On December 11, 1995, the accused filed a motion for reinvestigation and prayed that in the meantime issuance of the warrant of arrest be held in abeyance. It appears, however, that the warrant had already been issued on that day, although it could not be served on the accused (Rene C. Tabia, Ruben S. Fajardo, Per Jurgensen, Birger Jurgensen, Jose M. Nieto, Edwin Marasigan, Franklin Roger Lee Sun, Ricardo J. Romulo and Ramon Espejo, of the Maersk Tabacalera Crewing Agency) as they were not at the Maersk office on 900 Romualdez St., Ermita, Manila.

Upon learning of the issuance of the warrant against them, the accused filed on December 13, 1995 an Urgent Motion to Recall the Warrant of Arrest. They alleged that the warrant of arrest had been prematurely issued because they had a pending opposition to the issuance of a warrant of arrest and motion for reinvestigation. The accused argued that some of them were not officers and members of the board of the Maersk Tabacalera yet when the act being complained of was allegedly committed.[1]

Since the prosecutor was present and had been furnished copy of the motion, the judge decided to hear the motion on the same day it was filed. Complainant also happened to be in court at that time to file a motion for the issuance of a hold order and an entry of appearance as private prosecutor. He was persuaded by respondent clerk of court, Nenita Grijaldo, to attend the hearing on the motion.

Complainant appeared in court but requested that the hearing be reset on another day because he had not been informed of the hearing nor furnished copies of the motion

beforehand. He cited the absence of his counsel. But Judge Gal-lang proceeded with the hearing.[ii][2]

On December 14, 1995, respondent judge granted the motion of the accused and recalled the warrant of arrest, even as she ordered a reinvestigation of the case.

On December 20, 1995, complainant, as private prosecutor, moved for a reconsideration of the courts ruling. The hearing on his motion was held on December 22, 1995. An order purporting to have been made on the same day was later issued, denying complainants motion. Complainant claims that he received a copy of the order only on January 18, 1996 despite the fact that he had been asking the court for a copy many times before. He accuses respondent judge of antedating her order to make it appear it had been made shortly after the hearing.

Complainant also takes respondent judge to task for holding a hearing on the motion of the accused for the recall of the warrant of arrest despite the fact that it was served only on the day of the hearing. Complainant claims that clerk of court Grijaldo, in collusion with the counsel of the accused, inveigled him to attend the hearing.

In their comment, respondents allege that Judge Gal-lang heard the motion to recall warrant of arrest on December 13, 1995 because of its urgent character. She points out that anyway the public prosecutor had been furnished copy of the motion and was present, as were the counsel for the accused and the complainant himself. Respondents further contend that complainant and his counsel filed a motion for reconsideration of the order recalling the warrant of arrest without the conformity of the public prosecutor, who had control of the prosecution of cases, and that during the hearing of his motion complainant made offensive gestures at the court for which his counsel had to make an apology.

Respondent judge denies she antedated her order of December 22, 1995 denying complainants motion for reconsideration. She claims that she prepared the order in the afternoon of December 22, 1995 but it was released only on January 3, 1996 because December 22, 1995 was a Friday and, on the next business day, she went on vacation leave. Copy of the order was sent to complainant and his counsel by registered mail on January 3, 1996, presumably after respondent had returned from her vacation. Respondents claim that when complainant followed up the resolution of his motion by phone on January 8, 1996, he was told that the order had been sent by mail.

Respondents deny that they were prejudiced against complainant. They claim that anyway respondent judge has inhibited herself from the consideration of the criminal case and there should be no further question regarding this case. On June 19, 1997 they informed the Court that the criminal case against the accused had been dismissed by the Regional Trial Court of Manila, Branch 49. The dismissal was based on the resolution of the Secretary of Justice reversing and setting aside the resolution of the City Prosecutor of Manila and ordering the withdrawal of the information filed in court against the accused.

The Office of the Court Administrator finds respondent judge guilty of abuse of discretion in hearing the motion to recall the warrant of arrest on the same day the motion was filed and recommends that respondent be admonished to be more circumspect and warned that repetition of the incident would be dealt with more severely. While holding that the provision of Rule 15, 4 on the three-day notice is too basic for respondent judge not to know, the OCA nonetheless finds respondent judges liability somewhat mitigated by the fact that notice of the motion was at least given to complainant. Thus, Deputy Court Administrator Reynaldo L. Suarez states in his memorandum:

Complainant was never deprived of the fundamental rule of due process which requires that a person be accorded notice and an opportunity to be heard. (Rubenecia *v.* CSC, 244 SCRA 640) He was properly represented by counsels in the persons of Prosecutors Erlinda Alvaro and Nestor Gonzales. Notice was also served to the Office of the Prosecutor and both parties were allowed to argue during the hearing of the motions dated December 13, 1995. This will mitigate respondents actuation.

With respect to respondent clerk of court, the OCA finds no evidence to support the charge against her.

First. Complainant charges that respondent judge antedated her order denying reconsideration of her previous order recalling the warrant of arrest by making it appear that it was made on December 22, 1995 when the fact was that in the first week of January 1996, when complainant called up the court to inquire about the resolution of his motion for reconsideration, he was told by respondent judge to just wait. As already stated, respondent judge denies the allegation. She claims that her order was actually prepared on December 22, 1995 but it was mailed to complainant only on January 3, 1996 because she had gone on leave the week after December 22, 1995.

If the order of December 22, 1995 was really made on that day, it is hard to see why a copy could not have been sent to complainant earlier. The service of orders and other court processes after all is the ministerial function of the clerk of court. The fact that the judge had to go on leave was not a reason for court employees to wait for her return. It would therefore appear that the order was prepared only on January 3, 1996 and not on December 22, 1995 as it purports to have been made. Be that as it may, we find no delay in the resolution of complainants motion. Between December 22, 1995 (date of hearing) and January 3, 1996 (date of mailing of the order) was just 12 days.

Second. We agree with the Office of the Court Administrator that respondent judge committed an abuse of discretion in hearing the motion of the accused on the same day the motion was filed. Rule 15, 4 of the former Rules of Court states:

Notice. - Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause

may hear a motion on shorter notice, specially on matters which the court may dispose of on its own.

Thus, although a motion may be heard on short notice (*i.e.,* less than three days after it is filed) it must be for good cause shown. In this case, respondent judge defends her decision to hear the motion of the accused for the recall of the warrant of arrest on the same day it was filed on the ground that anyway the public prosecutor was present. This is not a good reason for hearing the motion on short notice. Of course the opposing party must be served a copy of the motion. But the question is whether he was given sufficient time to prepare for the hearing. That the public prosecutor was present was a mere happenstance. In fact he asked for fifteen (15) days to comment on the motion to recall the order of arrest against the accused because obviously he was unprepared.

Indeed the failure to observe the three-day notice rule is not excused by the fact that parties happen to be present. The only excuse for dispensing with it is if the matter to be heard is urgent. In this case a hearing on the previous motion of the accused for reinvestigation and their opposition to the issuance of a warrant of arrest was set the next day, December 14, 1995. There is no reason why the matter could not just wait for that hearing during which respondent could have also heard the motion to recall the warrant of arrest. After all, the grounds for the two motions were substantially the same. That the accused might have appeared to respondent judge to be innocent of the charges, as indeed the case against them was subsequently dismissed, was no reason for respondent judge to resort to procedural shortcuts.

Third. Respondent judge contends that complainants motion for reconsideration of the order of December 13, 1995 recalling the warrant of arrest did not have the conformity of the public prosecutor. This is another matter, however. The question here is whether respondent judge delayed the dispositions of complainants motion for reconsideration.

Moreover, complainant, through the private prosecutor, had been allowed to intervene. While his intention was subject to the supervision of the public prosecutor, it cannot be said that opposition to the recall of the warrant of arrest was something the public prosecutor did not like. The fact is that he asked for time to oppose or at least comment on the motion to recall the warrant of arrest.

Fourth. As already stated, the OCA finds no evidence to hold respondent clerk of court administratively liable. Indeed, the only act she is accused of is that of convincing complainant to attend the hearing by respondent clerk of court. If he appealed in court on December 13, 1995 it was because he had decided to. His decision was voluntary.

Considering the foregoing, as recommended by the Office of the Court Administrator, the Court finds respondent judge GUILTY of misconduct and hereby REPRIMANDS her, with warning that repetition of the same conduct will be dealt with more severely in the future. The complaint against respondent clerk of court is dismissed for lack of merit.

SO ORDERED.

Regalado, (Chairman), Puno, and Martinez, JJ., concur.

---

i[1] *Rollo*, p. 228.

ii[2] TSN of Dec. 13, 1995; *id*., pp. 73-104.