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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 15, 2020** which reads as follows:*

“A.C. No. 11443 – (DIONISIO A. CAÑETE v. PROS. VAN RUSSEL INOPIQUEZ and PROS. GANDHI B. TRUYA)

Antecedents

Complainant Dionisio A. Cañete, for and on behalf of Academy of Eskrima Martial Arts, Inc. (AEMAI), filed before the Office of the City Prosecutor – Cebu City a complaint-affidavit charging Lucy F. Garcia with estafa under Article 315 of the Revised Penal Code. Complainant essentially averred:

(a) Garcia offered to lease to his nephew Michael Cañete six (6) parcels of land she alleged she owned in Malubog, Cebu City. Although they were initially not interested, their outlook changed when they subsequently realized the potential of the properties for a zip line business. Consequently, they eventually negotiated with Garcia for lease of the properties.¹

(b) Considering that the business would be capital intensive and required two (2) years to build, they asked for a long term lease of at least ten (10) years. Garcia, however, wanted the contract to have a five (5) year term only, but she assured them they could lease the properties for as long as they wanted. She even gave them preferential right to purchase the properties. Thus, on June 15, 2009, Garcia, as President of Cebu City MSK Traders, and complainant, as President

¹ Rollo, p. 8.

of AEMAI entered into a five (5) year contract of lease, renewable for another five (5) years upon the parties' mutual agreement.²

(c) Assured that they could use the property for a number of years, AEMAI constructed on the property a martial art edifice and zip line equipments worth Php7,000,000.00. Owing to the success of their zip line business, they planned on installing more lines by the start of 2014.³

(d) On January 8, 2014, however, Garcia informed them that she would no longer renew the lease contract. On June 30, 2014, Garcia posted several guards on the leased properties and on September 15, 2014, Garcia ordered these guards to padlock the gates.⁴

(e) Several days after, Garcia also filed a complaint for unlawful detainer against them. As they read the annexes of the complaint, however, they learned that neither Garcia nor Cebu City MSK Traders was the owner of the leased properties. It was actually one Luvimin Cebu Mining Corp. Claiming that Garcia made false pretenses prior to or simultaneously with the execution of the contract of lease, they charged Garcia with estafa.⁵

By Resolution⁶ dated July 30, 2015, respondent Prosecutor Van Russel Inopiquez dismissed the complaint for lack of probable cause. Prosecutor Inopiquez held that when the parties entered into the lease contract, AEMAI through complainant, knew very well that Garcia was signing as representative of a family corporation. Thus, there was no deceit nor damage to speak of. The contract of lease specifically provided it was effective for five (5) years and may be renewed only by mutual agreement of the parties.

The Resolution was reviewed by respondent Prosecutor Gandhi B. Truya and approved by City Prosecutor Maria Luisa G. Ratilla.

Allegation in the Complaint-Affidavit

In his verified Complaint-Affidavit⁷ dated March 16, 2016, complainant charged Prosecutors Inopiquez and Truya with grave

² *Id.* at 8-9.

³ *Id.* at 9.

⁴ *Id.*

⁵ *Id.* at 10.

⁶ *Id.* at 66-67.

⁷ *Id.* at 5-6.

misconduct, gross incompetence, and conduct unbecoming of a lawyer. He mainly averred:

(a) Respondent prosecutors committed corruption when they issued the “*poster resolution*” dismissing his complaint in exchange for a “*certain consideration*.”

(b) What is shocking in the subject resolution was not only the dismissal of the complaint but also the findings of respondent prosecutors.

(c) In the same resolution, investigating Prosecutor Inopiquez stated that a subpoena was sent to Garcia directing her to file her counter-affidavit, but the latter failed to file one. Yet, in the following paragraph, Prosecutor Inopiquez specifically stated that Garcia denied the allegations in the complaint. Worse, in the dispositive portion of the Resolution, Prosecutor Inopiquez wrote “*from the parties’ respective submission and the evidence on file, the undersigned finds no probable cause to indict (Garcia) of the crime of estafa.*” Three (3) public prosecutors signed the resolution, yet, not one of them corrected these conflicting statements, which led him to believe that the same was merely a “*poster resolution by corrupt prosecutors.*”

(d) It was ironic for him, a former member of the Philippine Bar and perhaps the longest serving President of the Integrated Bar of the Philippines, to be a victim of a “*syndicated travesty of justice.*” If this could happen to him, then what would happen to ordinary litigants who want to obtain justice?⁸

For his part, Prosecutor Inopiquez countered in the main:⁹ immediately after the complaint was assigned to him, he sent a subpoena to Garcia to respond to the complaint-affidavit. But Garcia never filed her counter-affidavit. He was constrained to resolve the case within the sixty (60) day period set by the Department of Justice (DOJ), specifically on December 29, 2014, sans Garcia’s counter-affidavit. His resolution mentioned the fact that a subpoena was sent to Garcia but the latter failed to respond to the complaint. On review, however, Prosecutor Gidayawan returned the records to him with specific instruction to re-open the preliminary investigation on account of Garcia’s Ex-Parte Motion for Extension of time to File Counter-Affidavit filed on December 29, 2014. Garcia also filed her Counter-Affidavit. Records also bore complainant’s Reply-Affidavit.

⁸ *Id.* at 6.

⁹ *Id.* at 44-50.

Thereafter, he issued a new resolution based on the arguments and evidence submitted by Garcia and complainant. Instead of drafting a new resolution, however, he merely edited the first resolution he prepared. Unfortunately, he inadvertently forgot to delete the paragraph saying that Garcia failed to file counter-affidavit despite receipt of subpoena. It was a simple mistake though. Nothing therein suggested that he had received any consideration from Garcia for the dismissal of the complaint.

Prosecutor Truya, on the other hand, corroborated the events that took place leading up to the dismissal of the complaint for estafa against Garcia. He averred that he replaced Prosecutor Gidayawan as reviewing officer when Prosecutor Inopiquez submitted his second draft resolution for approval. He stressed that Prosecutor Inopiquez's failure to delete the portion in the resolution stating that Garcia did not file a counter-affidavit was a mere oversight in the editing process. It did not constitute a factual or legal error nor abuse of discretion as to warrant a reversal of the resolution. The questioned portion was also not material since it did not affect the conclusion therein. The mistake, therefore, did not equate to either grave misconduct, gross incompetence, or conduct unbecoming of a lawyer. The mistake escaped his attention as it did not refer to a factual or a legal issue. It did not even concern matters of evidence appropriate for review. Unfortunately, complainant made a mountain out of a mole hill and exaggerated a simple oversight for the purpose of imputing corruption on them. Complainant even went to print and social media to ventilate his malicious arguments. He posted several derogatory articles naming them and some other public servants calling them corrupt and members of a syndicate.¹⁰

By Resolution¹¹ dated July 19, 2017, the Court referred the present complaint to the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD) for investigation, report, and recommendation.

Proceedings Before the IBP-CBD

During the proceedings before the IBP-CBD, Prosecutors Inopiquez and Truya manifested¹² that the Office of the City Prosecutor – Cebu City through Resolution¹³ dated April 21 2016, already denied complainant's motion for reconsideration of the

¹⁰ *Id.* at 82-87.

¹¹ *Id.* at 101-102.

¹² See Conference Brief dated March 6, 2018, IBP-CBD Record, pp. 2-9.

¹³ *Id.* at 11-13.

resolution dismissing his complaint for estafa. Too, DOJ Undersecretary Reynante B. Orceo dismissed complainant's Petition for Review under Resolution¹⁴ dated June 20, 2017. Lastly, under Resolution¹⁵ dated January 9, 2017, this Court further dismissed, for lack of prima facie case, a similar administrative complaint complainant filed against approving Prosecutor Ratilla. By its subsequent Resolution¹⁶ dated July 3, 2017, the Court denied with finality complainant's motion for reconsideration.

In its Report and Recommendation dated July 23, 2018, the IBP-CBD recommended the dismissal of the administrative action for lack of merit. It opined that the supposed inconsistent and conflicting findings of Prosecutor Inopiquez were innocuous and did not make him liable for violation of the lawyer's oath or any provision of the Code of Professional Responsibility. It also emphasized the fact that the DOJ itself affirmed the dismissal of the complaint for estafa initiated by petitioner. The IBP-CBD also noted that the Court had already dismissed a similar administrative action filed by complainant against approving Prosecutor Ratilla.

Recommendation of the IBP-Board of Governors

Through Resolution dated December 6, 2018, the IBP-Board of Governors adopted the IBP-CBD's findings and recommendation.

Issue

Does the Court have jurisdiction over the complaint for grave misconduct, gross incompetence, and conduct unbecoming of a lawyer filed against Prosecutors Inopiquez and Truya in relation to the discharge of their official duty as public prosecutors?

Ruling

The Court resolves to adopt the IBP recommendation for dismissal of the present Complaint but for two (2) other reasons.

First. The allegations in the Complaint-Affidavit reveal that the charges against Prosecutors Inopiquez and Truya involve their official duties as public prosecutor. In *Trovela v. Robles et al.*,¹⁷ the Court

¹⁴ *Id.* at 14-19.

¹⁵ *Id.* at 24.

¹⁶ *Id.* at 25.

¹⁷ A.C. No. 11550, June 04, 2018, 864 SCRA 1, 7-9.

dismissed the administrative complaint filed against respondent prosecutors therein because:

The acts complained of undoubtedly arose from the respondents' performance or discharge of official duties as prosecutors of the Department of Justice. Hence, the authority to discipline respondents Robles, Obuñgen, Ang and Arellano exclusively pertained to their superior, the Secretary of Justice. In the case of Secretary De Lima, the authority to discipline pertained to the President. In either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (*Ombudsman Act of 1989*). **Indeed, the accountability of respondents as officials performing or discharging their official duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate them as such lawyers.**

The Court has recently made this clear in *Alicias, Jr. v. Macatangay* by holding as follows:

Republic Act No. 6770 (R.A. No. 6770), otherwise known as "The Ombudsman Act of 1989," prescribes the jurisdiction of the Office of the Ombudsman. Section 15, paragraph 1 of R.A. No. 6770 provides:

Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such act or omission appears to be illegal, unjust, improper, or inefficient. **The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials "in every case where the evidence**

warrants in order to promote efficient service by the Government to the people." In *Samson v. Restrivera*, the Court ruled that the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and non-feasance committed by any public officer or employee during his or her tenure. **Consequently, acts or omissions of public officials relating to the performance of their functions as government officials are within the administrative disciplinary jurisdiction of the Office of the Ombudsman.**

In *Spouses Buffe v. Secretary Gonzales*, the Court held that the IBP has no jurisdiction over government lawyers who are charged with administrative offenses involving their **official duties**. In the present case, the allegations in Alicias' complaint against Atty. Macatangay, Atty. Zema, Atty. Ronquillo, and Atty. Buenaflor, which include their (1) failure to evaluate CSC records; (2) failure to evaluate documentary evidence presented to the CSC; and (3) non-service of CSC Orders and Resolutions, all relate to their misconduct in the discharge of their official duties as government lawyers working in the CSC. Hence, the IBP has no jurisdiction over Alicias' complaint. These are acts or omissions connected with their duties as government lawyers exercising official functions in the CSC and within the administrative disciplinary jurisdiction of their superior or the Office of the Ombudsman. (Emphasis supplied)

Verily, though, complainant's remedy should have been with the Office of the Ombudsman against respondent's alleged misfeasance or non-feasance.

Second. Complainant's remedy against the respondent prosecutors' assailed resolution is a petition for review before the Department of Justice (DOJ) and thereafter, a petition for certiorari before the Court of Appeals.¹⁸ Notably, complainant availed of a

¹⁸ See *Juanito Chan v. Secretary of Justice, et al.*, 572 Phil. 118, 130-131 (2008), viz.: "Thus, the findings of the Justice Secretary may be reviewed through a petition for certiorari under Rule 65 based on the allegation that he acted with grave abuse of discretion."; Also see *Atty. Allan S. Hilbero v. Florencio A. Morales, Jr.*, 803 Phil. 220, 246 (2017), viz.: "Nonetheless, the Court agrees with petitioner that the Court of Appeals should have dismissed respondent's Petition for Certiorari in CA-G.R. SP No. 111191 for being the wrong remedy. The proper remedies respondent should have availed himself to assail Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was to file a motion for reconsideration of said Resolution with the DOJ and, in case such motion is denied, then to file an appeal before the OP." x x x "No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, **except those involving offenses punishable by reclusion perpetua to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/order/resolution**, in which case the President may order the Secretary of Justice to reopen/review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such

petition for review before the DOJ which unfortunately for him, under Resolution¹⁹ dated June 20, 2017, affirmed the dismissal of his estafa complaint against Garcia, viz.:

As it is, there is nothing on record that evidence was presented to substantiate complainant-appellant's claim that respondent-appellee is liable for the crime of estafa. Likewise, the allegation of complainant-appellant that respondent committed fraud has no basis.

x x x x x x x x x

At most, the allusions of complainant-appellant are bare unsupported allegations, being without any persuasive evidence to substantiate them; hence, it cannot serve as basis of any criminal liability on the part of respondent-appellee. x x x²⁰

Indeed, when the remedy is judicial or quasi-judicial in nature, the filing of a disbarment suit is improper, hence, dismissible. On this score, *Achernar B. Tabuzo v. Atty. Jose Alfonso M. Gomos*,²¹ is apropos:

The filing of an administrative complaint against an adjudicator is *not* the proper remedy for assailing the legal propriety of an adverse decision, order, resolution or recommendation, in the case of administrative complaints against lawyers. More importantly, the reckless practice of filing baseless administrative complaints against fellow lawyers undeniably degrades rather than cleanses the ranks of the legal profession.

x x x x x x x x x

At any rate, the Court evinces its observation that the complainant's charge of delay in the resolution of the subject unsanctioned pleadings of the complainant appears to be a *mere retaliation* on the adverse Resolution No. XXI-205-074 dated January 31, 2015 in CBD Case No. 12-3457. The Court had already declared that an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. Similarly, an administrative complaint is not the proper remedy for an adverse decision, order or resolution of an administrative adjudicator deemed by a complaining party as erroneous; especially when there are other remedies under the ordinary course of law such as a motion for reconsideration. x x x

notice." Here, the crime charged was not punishable by reclusion perpetua to death. Thus, complainant's remedy was to file a petition for certiorari under Rule 65 before the Court of Appeals.

¹⁹ IBP-CBD Record, pp. 14-19.

²⁰ *Id.* at 16.

²¹ A.C. No. 12005, July 23, 2018.

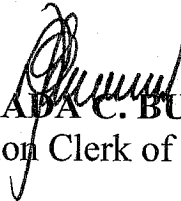
More important, the Court under Resolution²² dated January 9, 2017 in A.C. No. 11418, dismissed for lack of *prima facie* case a similar administrative complaint which complainant separately filed against City Prosecutor Maria Luisa G. Ratilla for approving the dismissal of his estafa complaint against Garcia.

Surely, the Court cannot depart from this disposition *vis-a-vis* the present complaint involving as it does exactly the same issue, facts, and subject matter as in the case against City Prosecutor Ratilla in A.C. No. 11418. So must it be.

WHEREFORE, the complaint for grave misconduct, gross incompetence, and conduct unbecoming of a lawyer filed by Dionisio Cañete against Prosecutor II Van Russel Inopiquez and Prosecutor II Gandhi B. Truya is **DISMISSED**.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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²² IBP-CBD Record, p. 24.