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KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

0464384736

OFFICE OF THE PROVINCIAL PROSECUTOR
IMUS, CAVITE

PCINSP CHRISTOPHER FALCULAN
OLAZO,

Complainant,

-versus-

LS. No. ITG-08-4391
For: Viol. Of PD 1866,
as amended

JOMEL AGANA Y TOYTOY,
RENATO ALVAREZ Y BAYBAY,
MARIO JOSON Y MAGLALANG,
FRANCO REMEROSO Y BL UNGAN,
YOLANDA CARAIG Y YUAN,
NESHLEY CRESINO Y CREENCIA,
JANICE JAVIER Y QUIACION,
BERNARDO DERAIN Y GONZALES,
AND PHILIP NARDO Y SUA,

Respondents.

X-----X

RESOLUTION

This refers to the complaint for Violation of Presidential Decree 1866, as amended by Republic Act 8294, PCINSP Christopher Falculan Olazo of the Silang Municipal, Police Station filed against Jomel Agana y Toytoy, Renato Alvarez y Baybay, Mario Joson y Maglalang, Franco Remeroso y Bilungan, Yolanda Caraig y Yuan, Neshley Cresino y Creencia, Janice Javier y Quiacion, Bernardo Derain y Gonzales, and Philip Nardo y Sua.

Submitted in support of the complaint are the sworn statements of P/INSP Wilson Balaitan, PO3 Ronald Orasco, and PO3 Raymark Baklopeña of Cavite SOG, Camp P. Garcia, Imus, Cavite; PO1 Marvin Restivera and PO1 Marvin Serrano of the 403rd PPMG, Tagaytay City; and PO1 Reynaldo L. Marquez, Jr. and PO1 Decto Abangan of Silang MPS, Silang, Cavite.

As appearing from the declarations of the operatives, on August 31, 2008, at around 3:30 a.m., a combined elements of Silang MPS, Cavite SOG, SWAT and 403rd PPMG was conducting a random checkpoint in Bgy. Pasong Lanca, Silang, Cavite in connection with the intensified campaign against criminality, anti-hijacking, and threats of terrorism and sabotage, when they spotted herein respondents' yellow Isuzu Mullicab which they noticed had no license plate number. The vehicle was approaching their line heading towards the direction of Tagaytay City.

When signaled to slow down, the vehicle accelerated and breezed past their checkpoint prompting them to give chase on board their vehicles. The vehicle stopped at vicinity of the Ming's Garden.

PO1 Declo Abangoen accosted the driver, respondent Mario Joson y Maglalang, and confronted him why his vehicle has no license plate no. He then issued him a traffic citation ticket. A male passenger, later identified as herein respondent Jemel Agana y Toytoy, hastily alighted from the vehicle and made a dash in an attempt to flee. PO1 Marvin Restivera however was quick enough to collar him. He recovered from Agana a .45 caliber pistol with serial no. 741382, with magazine loaded with seven pieces of live ammunition. At once, the rest of the passengers were ordered to disembark. PO1 Marvin Serrano recovered from respondent Renato Alvarez .9mm Daewoo pistol with a defaced serial number complete with a magazine loaded with 13 pieces live ammunition. PO3 Ray Anthony Baldopenia frisked respondent Franco Rememso and recovered from his possession a fragmentation grenade. For his part, PO3 Ronald Orosco recovered from inside the vehicle an undetermined quantity of explosives.

A certification issued by the Firearms and explosives Division was belatedly submitted showing that none of the herein respondents are duly authorized to possess firearms of any caliber.

Likewise submitted is Chemistry Report No. C-077-08-A showing that the 20 cylindrical plastic cartridges labeled "Powergel Magnum 3151" allegedly confiscated from the respondents were found positive for AMMONIUM NITRATE, an explosive ingredient, and PENTAERYTHRITOL TETRANITRATE, an explosive.

In separate counter-affidavits, respondents Yolanda Carag y Yaun, Renato B. Alvarez and Mario M. Joson deny the imputations against them. Mario M. Joson claims he is the owner of the Suzuki Multicab with plate no. GSA 619 and which is covered by Certificate of Registration No. 80045965 and O.R. No. 51995070. He uses the vehicle to earn a living. On the other hand, Respondents Yolanda Carag y Yaun and Renato B. Alvarez claim they are the Health Officer and a leader of the Kalipunan ng Magbubukid sa Kabite (KAMAGSASAKA-KA), a legitimate farmer's association. The KAMAGSASAKA-KA had just had a meeting that started at around 8 p.m. on August 30, 2008 in Bgy. Tartaria, Silang, Cavite. The gathering went through until late that night, and hence they decided to rent a vehicle of Mario M. Joson to take them home. When respondent Mario M. Joson arrived with his Suzuki Multi-cab vehicle in the early morning of August 31, 2008, they took off and hit the road at around 3 a.m. Not long after, they noticed a red car tailing them. After about ten minutes, a PNP mobile car, a white van, and the red car following them overtook and blocked their way in Pasong Langka, Dasmarinas, Cavite. Heavily armed men disembarked

from said vehicles and ordered to get out of the Multicab. Instantly, the police set up a checkpoint in the place. They were blindfolded, their hands were tied, and they were herded to a trailing vehicle.

For about an hour, they felt they were just going around. The vehicle stopped in an unknown place where they were interrogated and coerced into confessing their affiliation with the NPA. In the process, They were tortured. Fernando Derain and Philip Nardo were subjected to electric shocks. Philip Nardo was forced to dig a grave on the ground. Franco Remeroso was subjected to extreme physical pains by twisting his nipples and puncturing his scrotum and ears with staple wires.

Respondents' prolonged agony lasted up until the next day, Monday. In the afternoon of said day, they were allowed to meet their relatives and were later introduced to a lawyer, Atty. Dolor-Jubilo. Later, Asst. Provincial Prosecutor Peraña came over to investigate their case. Thereafter, they were transferred to Camp Crame where they remained until they were released on order coming from this office.

For her part, respondent Yolanda Carag y Yauri claims she was subjected to a heavy interrogation at the office of S/Sup. Wilfredo Reyes, Chief of the RSOG. S/Sup. Wilfredo Reyes asked what they were doing in Bgy. Tartana and whether they are planning to stage another bombing operation of the Globe she.

The rest of the respondents opted not to file any counter-affidavit despite notice.

We resolve.

In the face of the respondents' vehement denial and serious counter-allegations, it becomes imperative the scrutiny of the circumstances surrounding the arrest of the accused for only upon findings of an orderly discharge of official duties can the presumption of regularity in the performance of the same be accorded in favor of the arresting officers.

First note of observation is the lack of sufficient documents favoring the arresting officers' claim that they were dispatched and sent out to establish a checkpoint in Silang, Cavite.

Second, the claim of the arresting officers the Suzuki Multicab owned by respondent's Mario M. Josen had no license plate number is hardly credible. The vehicle is registered and sufficiently covered by LTO certificate of registration and official receipts and was at that time being driven by no less its owner. It would have been different if it was a camapped and a hot vehicle.

Third, respondent's Jomel Agana y Toytoy alleged attempt to flee right in the face of the accosting heavily armed men is also hard to believe. For then, it would be suicidal.

Reading between the lines, there's more than meets the eye in this case, particularly considering that respondents' arrest came in the aftermath of the release last August 28, 2008 of Axel Pinpin and free lance researcher Riel Custodio and the rest of the so-called "Tagaytay 5," after the Tagaytay City Regional Trial Court, Branch 18 under Judge Erwin Landa, Jr. found the rebellion case lodged against them to be "non-existent". Pinpin and Custodio are members of Kamagasaki-Ka or Farmers' Confederation in Cavite of which herein respondents Yolanda Carag y Yau, Renato B. Alvarez are admittedly ranking officers.

As we look over from a higher point of perspective, we can see more the overzealous intention and motive of the arresting officer in pinning down the respondents who are being suspected of being subversives. The issue here invokes the regularity of the latter's arrest, which to our mind is questionable given the above observations. And thus feel that whatever evidence seized in connection therewith is inadmissible in evidence for being the fruits of the poisoned tree.

This case had merited a closer look rather than a usual tangential attention because of the public impact and constitutional impression created by the previous one. Hence, we opt to be more careful here.

And we quote, "Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation in effect is a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for the production and weighing of evidence, and a decision rendered thereon." (Prospero A. Olivas vs. Office of the Ombudsman, et al., G.R. No. 102420.)

View the foregoing we find no probable cause to indict the respondents for the offenses charged against them.

WHEREFORE, PREMISES CONSIDERED, this case is hereby dismissed.

SO RESOLVED.

Inus, Cavite, 4 June 2009.


ELMER C. MADRIAGA
Deputy Provincial Prosecutor

RECOMMENDING APPROVAL:



ROSA ELMINA C. VILLARIN
Deputy Provincial Prosecutor

JUN 16 2009

09-04466

APPROVED:

JUN 16 2009


EMMANUEL Y. VELASCO, MNSA
Provincial Prosecutor

Copy Furnished:

1. P/SINSP WILSON BALAUTAN, PO3 RONALD OROSCO and PO3 RAY MARK BALDOPENA of Cavite SOG Camp p. Garcia, Inus, Cavite
2. PO1 MARVIN RESTRIVERA and PO1 MARVIN SERRANO of 403RD PPMG, Tagaytay City
3. PO1 REYNALDO L. MARQUINEZ Jr. and PO1 DECTO ABANGOEN of Silang MPS, Silang Cavite
4. JOMEL AGANA y TOYTOY - Baybay St., Brgy Wawa, Nasugbu, Batangas
5. RENATO ALVAREZ y BAYBAY - Brgy Tartaria, Silang, Cavite
6. MARIO JOSON y MAGLALANG - do-
7. FRANCO REMEROSO y BILUNGAN - Brgy Bucal 2, Maragondon, Cavite

8. YOLANDA CARAIG y YUAN - Brgy 5 Poblacion, Nasugbu,
Balangas
9. NESHLEY CRESINO y CREENCIA - Buna Cerca, Poblacion,
Indang, Cavite
10. JANICE JAVIER y QUIACION - Brgy 1 Poblacion, Tanauan
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/s/ Franz