

[ADMINISTRATIVE ORDER NO. 341, September 27, 1972]

REMOVING MR. ENRIQUE A. CUBE FROM OFFICE AS ASSISTANT CITY FISCAL OF PASAY CITY

This is an administrative case against Assistant City Fiscal Enrique A, Cube of Pasay City for gross misconduct and dereliction of duty. The charges were formally investigated by the Department of Justice.

This case stemmed from the dismissal with prejudice on November 11, 1971, by the Judge of the Circuit Criminal Court of the Seventh Judicial District of the case of People vs. Chandru Jethanand Lalchandani (CCC-VT-903-P.C.), prosecuted by respondent Assistant City Fiscal Cube for failure of the prosecution "to present its evidence in spite of the fact that this case has already been postponed for four times, all at the request of the Prosecuting Fiscal." The Secretary of Justice, viewing with grave concern Fiscal Cube's failure to prosecute the case in accordance with his oath, which resulted in the dismissal thereof, charged him with gross misconduct and dereliction of duty.

At the formal investigation of the case conducted by Senior State Prosecutor Francisco L. Santos, it was established that respondent Fiscal filed an information against the aforementioned accused with the Circuit Criminal Court at Pasig, Rizal on August 23, 1971, charging the accused, .an incoming passenger of PAL Flight 307 from Hongkong, of smuggling into the Philippines 102 assorted wrist watches and 105 bracelets valued at P11,569 in concept of duties, other charges and taxes due the Philippine Government, by omitting to declare the aforementioned articles to the attending customs examiner.

On .August 24, 1971, counsel for the accused moved for a reinvestigation of the case, alleging that the accused was not given the right to a full and formal preliminary investigation. Respondent expressed his conformity thereto on the same date, and afterwards conducted the reinvestigation prayed for. Arraignment day came on August 25, 1971, with the accused, through counsel, forthwith moving that the arraignment be deferred. However, the notion was denied by the trial court, which insisted that the accused plead. The accused then entered a plea of not guilty.

On September 11, 1971, respondent herein submitted a resolution to Pasay City Fiscal Jose B. Flaminiano setting forth his findings in the case and recommending its dismissal on the ground that the State had failed to make out a prima facie case against the accused.

Trial of the case began on September 24, 1971, on which date respondent Fiscal moved for postponement of at least ten (10) days, alleging in support thereof that his resolution of September 11, 1971, was still pending review by the City Fiscal and, moreover, that he was not ready. This motion was granted by the Court, which

set the ferial of the case for the next day, September 25, 1971. For reasons that do not appear on record, the next hearing was held not on September 25, 1971, as scheduled, but on October 2, 1971, at which hearing respondent Fiscal again asked for postponement for seven (7) days, stating that the City Fiscal had instructed him to ask for postponement, allegedly because the City Fiscal was still required to elevate the case for review to the Department of Justice, in accordance with a circular of the Secretary of Justice that all smuggling cases recommended for dismissal by provincial and city Fiscals be transmitted to the Department for review. A second reason advanced by respondent fiscal for asking deferment was that he needed time for some soul-searching with himself. Though quite flabbergasted with respondent's manifestation, the presiding Judge acceded to his motion to reset the case for October 11, 1971.

In the hearing of October 11, 1971, the Government was represented by State Prosecutor Cornelio Melendres who, for the third time, presented a motion for indefinite postponement, averring that the prosecution was still waiting for action on respondent's resolution of September 11, 1971, recommending dismissal of the charges against the accused. Counsel for the accused was likewise absent from the hearing. The court granted the motion and set the case for hearing on November 11, 1971. This hearing opened with respondent Fiscal asking for a fourth. postponement for the State, putting forward his old excuse that the case was still pending review by the City Fiscal who, in turn, would still forward the records of the case to the Department of Justice. The Court overruled this plea, reminding respondent Fiscal that the case had been pending before it for three months, and then commanded the latter to present his evidence. The deputy clerk of court then called some prosecution witnesses, none of whom was there. There was, however, one prosecution witness who was present but respondent did not call him. The court even asked respondent if the latter wanted "to present the (prosecution) witnesses present now," but respondent declined, saying that "the documents are not with me." At this point, counsel for the accused moved to dismiss the case; and the court, "considering that this case has been postponed for four times already by the prosecuting Fiscal," which circumstance it apparently deemed the equivalent of "failure of the State to prosecute," ordered the case "dismissed with prejudice."

Respondent argues that his requests for postponement were due to "a pending reinvestigation granted by the Office of the City Fiscal," obviously referring to the August 24, 1971, motion for reinvestigation of the accused to which he expressed his conformity; that in his said reinvestigation he was of the honest opinion that as the accused was a bona fide tourist, the latter was not required to declare whatever items he brought with him to the Philippines; and that on November 11, 1971, the date of the last hearing, he refused to present his evidence which prompted the court to dismiss the case.

This Office, like the Department of Justice, cannot accept respondent's contention that the case for sculling against the accused stood on shaky grounds supposedly upon the authority of Executive Order No. 408, series of 1960, which provides, among other things, that ". . . bona fide foreign tourist, documented as such, shall be exempt iron customs examination if an oral examination proves satisfactory." By respondent Fiscal's own findings (Vide: Resolution dated September 11, 1971, recommending to City Fiscal Jose B. Flaminiano the dismissal of the charges against the accused), the accused Chandru Jethanand Lalchandani came by plane from Hongkong to the Philippines with the smuggled articles in question concealed in the