

[ADMINISTRATIVE ORDER NO. 155, January 01, 1969]

REMOVING MR. ELIGIO C. DAJAO FROM OFFICE AS MUNICIPAL JUDGE OF OROQUIETA, MISAMIS OCCIDENTAL

This is an administrative case against Municipal Judge Eligio C. Dajao of Oroquieta, Occidental Misamis, filed by Provincial Fiscal Diosdado Bacolod, arising from their controversy in Criminal Case No. 7473 of respondent's court, when the latter denied the fiscal's motion to dismiss the case. As a result of the language used in the fiscal's motion for reconsideration, respondent charged and sentenced him for contempt. The fiscal, after having the execution of the contempt judgment enjoined, filed numerous administrative charges against respondent. The charges, which may be categorized into two main headings of bad moral character and abuse of authority, were investigated by District Judge Geronimo R. Marave.

After going over the records of the investigation, I find the following facts duly established:

I. GRAVE ABUSE OF AUTHORITY AND/OR NEGLIGENCE

A. On December 26, 1962, respondent sent his flat tire to the vulcanizing shop of Ricardo Baytion in Oroquieta, Misamis Occidental. After the tire was repaired by Jose Tubal, the vulcanizer of Baytion, respondent came and asked the latter the cost of the vulcanizing job and was informed that it was P1. When respondent asked why he was being charged P1 instead of P.50 only which he used to pay, the vulcanizer told him that Baytion raised the price in view of the increase in price of materials. Respondent then brought the tire home without paying the amount involved. The next morning (Dec. 27) Baytion sent the invoice (Exh. DD-4) to respondent for payment of P1, but instead of paying, respondent wrote on the face of the invoice: "To be verified yet if work actually done." Respondent then went back to Baytion's shop and inquired from Tubal whether he vulcanized his tire, claiming that no vulcanizing was done according to his houseboy. Tubal told him that the hole was in an old patch and he had to repair it again. Not satisfied with the explanation, respondent told Tubal to wait for him because he was going to fetch a policeman to get Tubal, who reported to Baytion that respondent was mad for having been charged of P1 instead of P.50. When the policeman arrived, Baytion accompanied Tubal to the municipal building where the latter was investigated by the police. Baytion then suggested that the tire be opened to verify if it was actually vulcanized, and it was found that there was really a new patch in it. This notwithstanding, respondent filed Criminal Case No. 7397 (for estafa of P1) against Baytion and Tubal in his own court. On the same day, they were arrested and would have been detained were they not able to promptly put up the necessary bail bond.

B. With respect to Criminal Case No. 7473, respondent (a) failed to furnish herein complainant fiscal with a copy of the order denying his motion to dismiss and setting

the case for trial; (b) cited him for contempt without sufficient cause and issued a warrant of arrest instead of a summons when he sent a reply to the contempt order in lieu of his personal appearance; (c) convicted him for contempt without filing formal charges and without hearing; (d) failed to forward the record of the case to the Court of First Instance within five days after receiving the notice of appeal; (e) issued another warrant of arrest for his alleged failure to appeal from the contempt judgment; (f) rejected a cash appeal bond tendered by him under official receipt; and (g) charged him again with contempt for an act already included in the previous judgment.

I agree with the investigating Judge that respondent erroneously penalized herein complainant for indirect contempt by using disrespectful language in his pleading when such act constitutes direct contempt. The investigating Judge also found proven the charge that respondent rejected herein complainant's cash appeal bond and that he failed for a period of over one year to forward the record of the case to the Court of First Instance after receiving herein complainant's notice of appeal. Respondent's inaction in the premises partook of grave abuse of authority or gross ignorance of the law.

As regards the other charges concerning Criminal Case No. 7473, respondent's decision finding herein complainant guilty of contempt admitted that there was delay in furnishing complainant fiscal with a copy of the order denying his motion to dismiss. It may also be noted that respondent's decision finding herein complainant guilty of contempt was reversed on appeal by the Court of First Instance.

Respondent's errors indeed showed that he acted with undue haste without commensurate deliberation in the contempt proceedings against herein complaining fiscal. Moreover, most of these errors could have been avoided had he carefully studied the law on the matter so as not to violate the specific provisions thereof. In this respect, therefore, the evidence shows negligence on respondent's part.

C. Respondent is charged with having granted sometime in September 1961 a usurious loan of P400 to Avelino Limpot and Nicolasa Babol, who actually received only P300; that for Limpot's failure to pay the loan on the ground that he was a mere guarantor, respondent in 1964 cancelled his bail bond in Criminal Case No. 7602 (for slight physical injuries) and ordered his detention, falsely stating that the taxes on the property offered by him had not been paid; and that when Limpot filed in the Court of First Instance a criminal case (Exh. BB-3) against respondent for arbitrary detention with falsification, the latter in retaliation ordered Limpot's arrest on a fabricated complaint for falsification.

The documentary evidence on the alleged usurious transaction entered into by respondent consists of a deed of sale of land with right to repurchase, executed by Avelino Limpot in favor of respondent's wife, the right of repurchase to expire after December 31, 1961. The deed was duly acknowledged before a notary public and one of the witnesses was Nicolasa Babol. Aside from respondent's denial of the charge of usury, the document signed by Limpot negated his testimony that the amount of the loan was less than that stated in the deed. It also appears in respondent's testimony under cross-examination that Babol testified to the truth of the statement in the deed. The charge of usury is therefore without basis.

Respondent's order cancelling the bail bond of Avelino Limpot in Criminal Case No. 7602 reads:

"The court has information that the property posted as bond by Avelino Limpot himself as a surety is in the possession of another person. It appears also that the tax declaration of said property is new and taxes thereon had not been paid in his name for the last three years. It is now the policy of this court to allow the accused to appear as surety to this own bailbond. In view of these considerations, the bond posted for Avelino Limpot is hereby cancelled and he is hereby detained until he puts a new bail bond with the proper sureties."

Respondent admitted that the taxes on the land had been paid for the last five years but explained that he was not aware of this fact, since the bail bond showed that the tax was only paid for the current year; that the accused did not present his tax receipts at the time of the cancellation of his bail; and that the land had been declared for taxation purposes in the name of the accused only six days before the execution of the bail bond, in violation of Circular No. 44 of the Department of Justice dated July 30, 1958, as reiterated in Circular No. 2 of January 23, 1964.

Respondent's explanation on the bail cancellation is entirely unsatisfactory. The record shows that the bail bond in question was previously approved by respondent and that no prior notice was given to Limpot of its cancellation for being allegedly defective despite the fact that taxes on the property had been paid as appearing on the face of the bond itself. Respondent's cancellation of the bond in question resulted in Limpot's arrest and detention for ten days for the minor offense of slight physical injuries which led the investigating Judge to conclude that "the cancellation of Limpot's bond must have been motivated by Limpot's refusal to pay Babol's debt."

Concerning the filing by respondent of Criminal Case No. 7804 (for falsification of public document) against Limpot, the investigating Judge found that on January 4, 1965, the respondent twice asked Limpot to withdraw his criminal case for arbitrary detention with falsification, but Limpot refused to do so. Thereafter, or on April 23, 1965, respondent ordered the municipal chief of police of Oroquieta to prosecute Limpot for falsification of public document for using his property twice to bail himself and another. On April 28, 1965, the corresponding criminal complaint was filed against Limpot and he was ordered arrested by respondent on the same date.

Under the circumstances, it is clear that the filing of Criminal Case No. 7804 against Limpot was in retaliation for the criminal case for arbitrary detention with falsification filed by Limpot against respondent, which he refused to withdraw when requested by respondent. Although the records show that on April 16, 1964, Limpot used the property in question to bail himself out in Criminal Case No. 7602 and that on May 18, 1964, he used the same property to bail out Mateo Gatab in Criminal Case No. 7617, respondent did not cancel Gatab's bail nor order his arrest as was done to Limpot. There is ample evidence that respondent was aware that the same property was used twice by Limpot, considering the proximity of the dates, i.e. April 16, and May 18, 1964, and yet it was only one year later or on April 23, 1965, that Limpot was charged with the criminal offense.

II. UNBECOMING CONDUCT

A. On October 17, 1962, spouses Meliton Gahunan and Dorotea Balauro sold with right to repurchase their lot located at Barrio Malindang, Oroquieta, for P2,500 to Bienvenido Caparas and Paz de Caparas. Subsequently, Gahunan obtained more