

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 237

REMOVING MR. TRANQUILINO O. CALO, JR., FROM OFFICE AS JUSTICE OF THE PEACE OF CARMEN, AGUSAN.

This is an administrative case against Mr. Tranquilino O. Calo, Jr., justice of the peace of Carmen, Agusan, for, among others, (1) ignorance of the law, (2) electioneering and (3) persecution of political enemies, which was investigated by the District Judge of Agusan.

I

It is alleged that respondent (1) promulgated indeterminate sentences for minimum periods less than a year, (2) committed to the provincial jail a prisoner sentenced to less than one-month imprisonment, (3) required defendants to pay the expenses of state witnesses and (4) ordered the confiscation of a bail bond for failure of the accused to appear at the preliminary investigation.

Respondent admitted the above allegations but explained that in imposing indeterminate sentences, he followed Cuevara's Commentaries on the Revised Penal Code; that he committed a municipal prisoner to the provincial jail because he had sentenced the prisoner to more than one month's imprisonment for another offense and he deemed it proper to have him serve both sentences in the provincial jail as he had escaped from the municipal jail during his temporary detention therein; that he required accused persons to pay the expenses of prosecution witnesses as a condition for granting their requests for postponement agreeably to a precedent set by the Court of First Instance of Agusan, and his orders were not appealed; and that the confiscation of a bail bond for failure of the defendant to appear at the preliminary investigation was legal, the Court of First Instance of Agusan having previously sustained a similar order of the Municipal Court of Butuan City.

Respondent's explanation under this charge is not satisfactory except as to the second and third counts thereof. The Indeterminate Sentence Law expressly exempts from its provision "those whose maximum term of imprisonment does not exceed one year." In the face of this clear language, his error can only be attributed to neglect to read the law or to sheer disregard thereof. However, his commitment to the provincial jail of a prisoner sentenced to

imprisonment for less than a month appears justified in view of the insecure condition of the municipal jail and the fact that the prisoner had escaped from it before.

Respondent's order requiring the defendants in a criminal case to pay the expenses of the prosecution witnesses as a condition for granting their request for postponement appears justified under the attendant circumstances and in the light of the ruling in *Arcache v. Chanani* (53 O.G. 105). However, as the bail bond does not require the accused to appear at the preliminary investigation, his failure to do so cannot give rise to its cancellation under the rules of Court.

I therefore find the respondent guilty of the charge of ignorance of the law.

II and III

The evidence shows that respondent went with his grandfather-in-law, Jose Malimit, campaign manager of the Liberal Party in that town, to the barrios of San Agustin, Gozo-on and Cahayagan where he allegedly participated in political meetings; that on election day of November 10, 1953, about 10:30 A.M., in Nasipit, he instructed Malimit's driver to put many chairs in the truck so that many people could be accommodated, which truck hauled electors from the sitios to the polling places; that when Mayor Arturo de Guzman asked the chief of police to stop the truck because it was not a TPU vehicle, respondent advised the driver not to be afraid and to go ahead with the hauling of electors; and that respondent accompanied electors to the polling place and exhorted them to vote for Liberal Party candidates.

It also appears that respondent issued on August 31, 1953, a warrant for the arrest of Mayor De Guzman for prohibition of peaceful meetings, had the warrant executed by a Philippine Constabulary soldier instead of the chief of police and had him committed directly to jail by written order without giving him opportunity to post bail. The provincial fiscal subsequently moved to dismiss the information for lack of cause.

Denying the electioneering charge, respondent explained that on election day he performed his official duties in connection with the inclusion and exclusion of voters in accordance

with the election law. His explanation is incredible because that day was an official holiday and no cases of exclusion nor inclusion of voters could have been decided by him on election day under the provisions of the election code. Moreover, advices on polling procedure were to be sought from the representatives of the Commission on Elections, and the respondent, whose family was deep in politics, must have known of this fact.

Any doubt as to whether the respondent engaged in electioneering is dispelled by the proof of his use of his office and powers to persecute a political adversary of his clan. The respondent could not deny that he caused the warrant of arrest he issued against then Nacionalista incumbent Mayor Arturo de Guzman to be executed by the Philippine Constabulary rather than the chief of police. This act could not have been made in good faith, considering that the offense charged was not serious and was certainly bailable and that said mayor could not have been believed to be a dangerous criminal who would evade the processes of justice.

Most serious of all, respondent signed an order for the commitment of the mayor to the provincial jail before the necessity for it arose. Respondent admitted signing the commitment order but explained that he kept it in his desk-drawer and did not give it to anyone. The fact, however, is that the commitment order was delivered by the Philippine Constabulary arresting officer to the provincial warden to whom the arrested mayor was brought. When the mayor asked to be brought to the justice of the peace so that he might post bail, he was told by the arresting officer that there was no use looking for the respondent as the latter was hiding from the mayor. The arresting officer could not have lied. He had an order of commitment signed by respondent justice of the peace. Respondent should have called said officer to deny the imputation not only because, having signed the order of commitment, he had the burden of evidence, but also because as justice of the peace he should have inquired into the truth of the alleged abuse in the execution of the warrant of arrest he issued. A presumption of suppression of evidence lies against him.

In view of the foregoing, I also find the respondent guilty of electioneering and persecution of political enemies as charged.

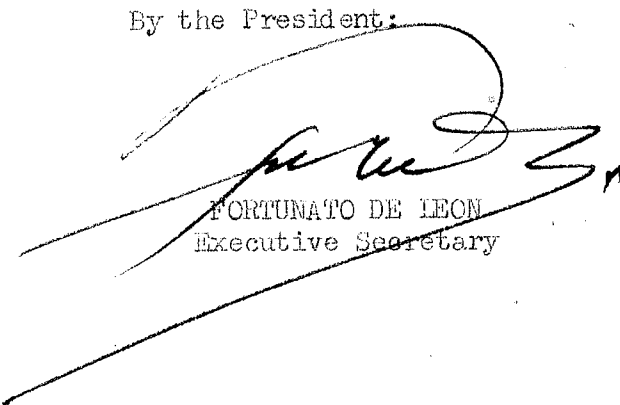
Wherefore, and upon the recommendation of the Secretary of Justice, Mr. Tranquilino O. Calo, Jr., is hereby removed from office as justice of the peace of Carmen, Agusan, effective

upon receipt of notice hereof.

Done in the City of Manila, this 31st day of March ,
in the year of Our Lord, nineteen hundred and fifty-seven, and of
the Independence of the Philippines, the eleventh.



By the President:



FORTUNATO DE LEON
Executive Secretary