

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 114

REMOVING FROM OFFICE DISTRICT JUDGE GREGORIO D.
MONTEJO OF THE COURT OF FIRST INSTANCE OF
ZAMBOANGA CITY.

This is an administrative proceeding instituted before the Supreme Court by Porfirio E. Doctor against the Honorable Gregorio D. Montejo, District Judge of the Court of First Instance of Zamboanga City, for abuse of judicial authority, ignorance of the law and the advancement of personal interests thru judicial acts. Asked to explain the charges, the respondent judge did not deny the acts imputed to him, but put up reasons and circumstances in justification therefor. The investigator designated by the Supreme Court to investigate the charges, Mr. Justice Carmelino Alven- dia of the Court of Appeals, did not find it necessary to conduct a formal hearing because, in his words, the respondent judge has "admitted the commission of all the acts complained of and x x x the only question left to be resolved is whether or not the reasons given by the respondent to justify his actuations are valid and meritorious." The charges against the respondent as well as the conclusions of the investigator and the Supreme Court shall be discussed later.

It appears that in Administrative Case No. 74, the Supreme Court in its resolution of March 30, 1962, found the herein respondent judge to have committed the following acts:

First. In Civil Case No. 256, respondent judge failed to resolve a motion for a bill of particulars until after the lapse of seven months, and yet filed his certificate of service every 15th day and end of each month during the said period. The Supreme Court then advised him that, since he found it unnecessary to hear the parties, the motion as well as the reply thereto need not be set for hearing, and should have been acted upon without delay or within a reasonable period of time.

Second. In Criminal Case No. 989, the respondent found in his decision that the accused "really attempted to commit the act of sexual intercourse on the person of Morita Ambon," yet, he did not convict the accused of attempted rape but of mere acts of lasciviousness.

Third. In Criminal Case No. 810, for rape, the respondent said in his decision that "there was an attempt made by the accused to disrupt the virginity of the offended party, Morita Djurian, but an attempt is not a crime of rape as stated in the information." Instead of sentencing the accused for attempted rape there being a finding to that effect, the respondent rendered a judgment of acquittal which, in the language of the Supreme Court, was "a clear case of miscarriage of justice."

Fourth. In Criminal Case No. 420, for murder with triple frustrated murders, the respondent found the accused guilty as charged, but imposed a penalty other than the one prescribed by law.

The Supreme Court in said Administrative Case No. 74 resolved "to admonish him to be more careful in the future with the warning that a repetition of similar errors will not be countenanced and will be the subject of a stern disciplinary action." (Resolution of March 30, 1962.)

In the present administrative case, the charges levelled against the respondent judge, and which he did not deny, are the following:

Charge No. 1. In Criminal Case No. 1008 of the Court of First Instance of Basilan City, Hadji Abdurajak and Mohamad Latib, father and son, were accused of smuggling. The indictment avers that the defendants were apprehended in the possession, custody and control of two boxes containing 100 cartons of untaxed Union cigarettes. The respondent's decision in the case promulgated on September 8, 1960, mentions the manifestation of the counsel for the accused that the "accused Hadji Abdurajak is willing to plead guilty to the information, thereby exculpating his son Mohamad Latib, from the charge." After declaring that the "accused waived their right of arraignment after

the admission by Hadji Abdurajak that the cigarettes in question belong to him," the respondent sentenced the accused Hadji Abdurajak to pay a fine of ₱100.00, with subsidiary imprisonment in case of insolvency. The other accused, Mohamad Latib, was acquitted.

On the same date, September 8, 1960, the respondent judge, acting on a verbal motion of the defense counsel, ordered the return of the 100 cartons of Union cigarettes to the accused, justifying his act by stating that the case has already been terminated and that there was no objection on the part of the prosecution.

Under Section 174 of Commonwealth Act No. 466, as amended by Section 15 of Republic Act No. 1608, violation thereof is punishable "by a fine of not less than three times the amount of the specific tax due on the articles found but not less than ₱200.00 nor more than ₱5,000.00, or by imprisonment of from four months and one day to four years and two months, or both." Normally, therefore, the impossible fine should be not less than ₱200.00. But since the accused in said Criminal Case No. 1008 is a Muslim, the fine of ₱100.00 imposed by the respondent was justified under Section 106 of the Administrative Code for Mindanao and Sulu which authorizes a judge to impose on Moros and non-Christians a penalty lower than the minimum prescribed by law.

The respondent, however, erred grievously in concluding that Hadji Abdurajak's plea of guilty exculpated the latter's son, Mohamad Latib. No principle of law can be found to sustain the proposition that a plea of guilty by one accused cancels out the criminal liability of his co-accused. More condemnable is respondent judge's order returning the contraband cigarettes to the accused, after finding him guilty. Since the possession of untaxed cigarettes is specifically prohibited and punished by Section 174 of the Tax Code, as contraband articles, they should have been forfeited in favor of the government. Indeed, I cannot but view the respondent's acts in said Criminal Case No. 1008 as a serious

drawback to the campaign being waged by this administration to stamp out smuggling.

Charge No. 2. In Criminal Case No. 1036, Patrolman Rodolfo Aquino was accused of slight physical injuries. After trial, respondent judge found the accused guilty of the crime charged and sentenced him to a prison term of 20 days. On the day the sentence was read, the accused moved that the penalty of 20 days imprisonment be modified and, instead, that a fine of ₱100.00 be imposed upon him. The respondent judge amended the sentence and did the accused one better by reducing the penalty to a fine of ₱30.00.

The penalty for slight physical injuries is "arresto menor or a fine not exceeding ₱200.00 and censure." (Art. 266, par. 2, Revised Penal Code.) In his decision, the respondent found that the commission of the crime was attended by the aggravating circumstance of abuse of official functions because the accused was a policeman and was in uniform at the time. Instead of applying the penalty in the maximum degree, since the aggravating circumstance was not offset by any mitigating circumstance, he modified the corporal penalty of 20 days imprisonment to a mere fine in the insignificant amount of ₱30.00, even much less than the amount of ₱100.00 prayed for by the accused. The sentence did not even include censure. The respondent judge's justification was that the prosecution did not oppose the accused's motion for modification of the sentence. This is clearly untenable. The failure of the State to oppose the motion is no license for the judge to apply the law incorrectly.

Charge No. 3. This charge refers to a petition for habeas corpus filed in the respondent's court. The petitioner therein, Jose Carmen, prayed that the respondents Fausta Dulap and Victorino Samson be directed to return to him the person of his estranged wife, Trinidad de Leon. Fausta Dulap is the daughter of Trinidad de Leon. In his decision rendered on August 24, 1960, Judge Montejo found that the respondents Fausta Dulap and Victorino Samson "did not

restrain and deprive said Trinidad de Leon of her liberty"; and that they took her only from petitioner's home "because she was sick" and they "wanted to serve her." The decision goes on to say that counsel for both parties were in agreement that "anything now done by Trinidad de Leon is done thru the promptings and insinuations of her daughter Fausta Dulap," and that Trinidad de Leon "is now under the moral spell of Fausta Dulap, and the actuations of said Trinidad de Leon are but undue submissions to the will of Fausta Dulap." The judge then concluded that the petitioner had "a more rightful custody over Trinidad de Leon considering that he is the legal husband," and disposed of the case by ordering the respondents "to return to the petitioner Jose Carmen, the person of Trinidad de Leon, the former being the legal custodian of the said Trinidad de Leon who is his legal wife." Judge Montejo then issued a writ of execution on September 13, 1960, after denying a motion for reconsideration filed by the respondents.

The rule is now established that habeas corpus is available only if there exists "undue restraint or deprivation of liberty," a "moral or nominal restraint" not being sufficient. (Zagala vs. Ilustre, 48 Phil. 282, 283.) And just as settled is the doctrine that a wife may not be compelled to live with her husband "where even without legal justification she establishes her residence apart from that provided for by" the husband. (Atilano vs. Chua Ching Beng, 103, 255, 260.) While the judge in his decision found that Trinidad de Leon was merely under the "moral spell" of Fausta Dulap, and that the "actuations of Trinidad de Leon were but undue submissions" to the will of Fausta Dulap - findings that indubitably show that Trinidad de Leon was not actually restrained or deprived of her liberty - he granted the petition for habeas corpus, ordered the respondents Fausta Dulap and Victorino Samson to return to the petitioner Jose Carmen, the person of Trinidad de Leon, and thereby compelled the latter, against her will, to live with her husband Jose Carmen.

Subsequent events to the disposition of the habeas corpus case revealed the respondent judge's personal interest in having Trinidad de Leon returned

to the custody of Jose Carmen. When the petition for habeas corpus was filed on July 6, 1960, there existed a deed of absolute sale covering a parcel of coconut land at Isabela, Basilan City, lacking only the thumbmark of Trinidad de Leon to finalize the document. The vendee named in the deed is Maria D. Palacio, a niece of the respondent's wife Rosalia Mendiola. After Trinidad de Leon was returned to Jose Carmen's custody pursuant to the order of the respondent judge in the habeas corpus proceeding, the deed of absolute sale was consummated with the thumbmark of Trinidad de Leon affixed on the document. On December 8, 1960, Maria D. Palacio sold the same parcel of land to her aunt Rosalia Mendiola Montejo. The corresponding deed of sale to the respondent's wife was registered in the Office of the Register of Deeds of Basilan City on December 15, 1960, and TCT No. T-1058 was issued in the name of "Rosalia Mendiola Montejo, married to Gregorio D, Montejo."

By the facts adduced the following situation is thus depicted: Jose Carmen wanted to sell a piece of real property but could not finalize the necessary deed of sale because he could not get the thumbmark of his wife Trinidad de Leon - who was living with the latter's daughter - affixed to the document. Jose Carmen petitioned the respondent judge in a habeas corpus proceeding to have the person of Trinidad de Leon delivered to his custody. The respondent judge, though finding that Trinidad de Leon was not being deprived of her liberty, and against established precedents on the matter, ordered the person of Trinidad de Leon returned to Jose Carmen. After this was accomplished, the deed of absolute sale of the property abovementioned was finalized by the affixing of Trinidad de Leon's thumbmark on the document and the property was transferred to Maria D. Palacio, Judge Montejo's niece-in-law. And less than three months after the habeas corpus decision was executed, the property finally found its way into the hands of the respondent judge's wife, Rosalia Mendiola Montejo.

A judge is an arbiter of the law. His office requires him at all times to be alert in his rulings

and in the conduct of the business of his court to make it useful to litigants and to the community. A judge's conduct should, therefore, be above reproach; "he should not allow outside matters or his private interests to interfere with the prompt and proper performance of his office;" (Canon 31, Canons of Judicial Ethics) and he "should abstain from participating in any judicial act in which his personal interests are involved." (Canon 28, id.) As forcefully expressed by the Supreme Court:

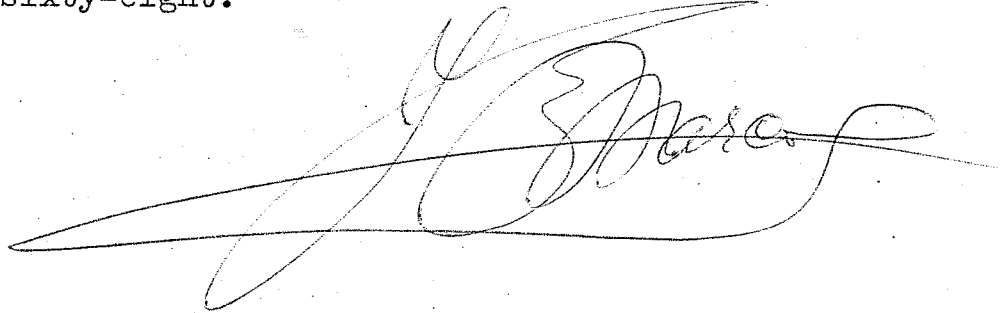
"These precepts deserve more than passing consideration. The temper of the times requires full faith and confidence in the judiciary. Prevailing conditions in our society can ill-afford judges insensible to the rule of law. Judicial power, if unbridled in exercise, can become a frightful weapon of injustice. To be underscored is that preamble of the Canons of Professional Ethics sets a serious tone when it warns that: 'The future of the Republic, to a great extent, depends upon our maintenance of justice pure and unsullied.' Some such thoughts must have galvanized the mind of Aristotle centuries ago to say that 'justice is the first concern of mankind.'"

I find Judge Montejo to have betrayed the high trust of his judicial office and seriously undermined public faith in the impartiality of the judiciary. He disregarded a well-known legal tenet in directing the return of the contraband cigarettes to an accused who pleaded guilty to a charge of illegal possession thereof. He misapplied the law by imposing a mere fine which is short of the penalty prescribed by law and lower than what the accused prayed for. He committed gross misconduct in approving a habeas corpus petition upon unjustifiable grounds, to facilitate the consummation of the sale of a piece of land which ultimately ended up in the hands of his wife.


Wherefore, and upon the recommendation of the Supreme Court, Judge Gregorio D. Montejo is hereby

removed from office as District Judge of Zamboanga City effective upon his receipt of a copy of this order but not later than March 6, 1968.

Done in the City of Manila, this 5th day of March, in the year of Our Lord, nineteen hundred and sixty-eight.

A large, stylized handwritten signature in black ink, likely belonging to the President mentioned in the text below.

By the President:

A handwritten signature in black ink, appearing to read 'Rafael M. Salas', positioned above the typed name.

RAFAEL M. SALAS
Executive Secretary