

MALACAÑANG  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 254

SUSPENDING MR. BERNABE L. DALAWES FROM OFFICE AS MUNICIPAL JUDGE OF PROSPERIDAD, AGUSAN.

This case stemmed from the formal recommendation of the District Judge, Court of First Instance of Agusan, for the removal of Mr. Bernabe L. Dalawes as Municipal Judge of Prosperidad, Agusan.

On June 30, 1966, a criminal complaint for homicide, Criminal Case No. 665, was filed in the court presided by respondent who, upon finding from the evidence the existence of a probable cause against the accused, ordered his arrest and fixed the bail bond for his provisional release at ₱8,000. On January 30, 1967, the prosecution moved for the dismissal of the case and thereafter, on February 2, 1967, the respondent issued an order dismissing the case provisionally on a ground not sanctioned by law, and in the same breath directing that all the records be remanded to the Court of First Instance for further dispositive action.

Finding the order of provisional dismissal irregular, the District Judge of Agusan ordered respondent to explain why he should not be dealt with administratively for ignorance of the law and rules on criminal procedure. Respondent adduced a written explanation alleging that the order in question was not intended as a dismissal of the case and that the phrase "provisionally dismissed" was a mere mistake. The District Judge held the explanation as unsatisfactory, and also found that the bail bond fixed by respondent for the provisional release of the accused in said Criminal Case No. 665 was contrary to the provisions of Circular No. 47(a) dated July 6, 1946, of the Department of Justice, and thereupon recommended the removal of respondent from office.

Instead of acting on the recommendation for respondent's removal, the Secretary of Justice returned the papers to the District Judge with the directive that a formal investigation be conducted so as to confront respondent with the findings of the District Judge and to give him (respondent) a chance to explain his side. Accordingly, a formal investigation was undertaken.

The records disclose that respondent gave due course to the criminal complaint in Criminal Case No. 665 by ordering the arrest of the accused therein. The issuance of the order of arrest implies the existence of a prima facie case against the accused. Based on this circumstance alone, it was erroneous for respondent to order the provisional dismissal of the case.

Invoked as reason for the dismissal of the aforesaid criminal case was that the relative of the deceased had expressed a desire in a sworn

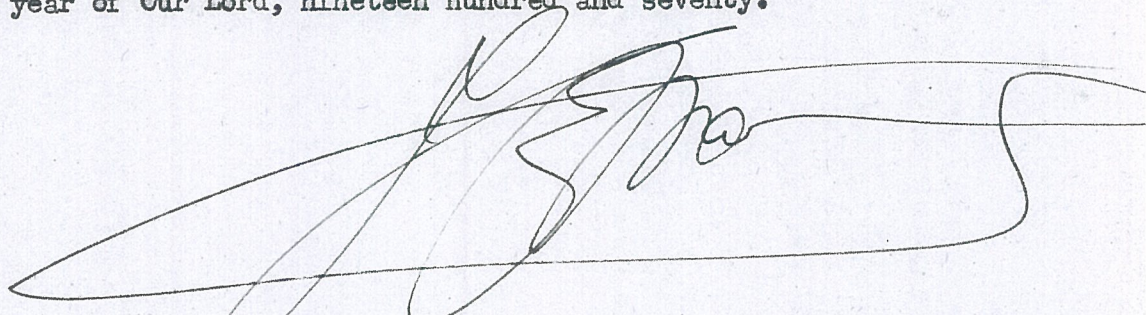
statement to have the case dismissed on the ground, among others, that the funeral and other expenses had been shouldered by the accused. Such consideration is neither a legal nor a valid reason for ordering the dismissal of the case. Indeed, in a criminal case the interest of the offended party extends only to the civil and not to the criminal aspect thereof which may be prosecuted de officio.

As regards the bail bond fixed by respondent for the release of the accused in said criminal case, it appears that he had originally fixed the same at ₱8,000 but reduced it to ₱5,000 upon request of the accused. Evidently, respondent failed to observe the provisions of Circular No. 47(a) dated July 6, 1946, of the Department of Justice to the effect that in the fixing of bail bonds for accused in criminal cases, the imposable penalty should be taken into account, which in this case is the medium period of reclusion temporal with a penalty range of from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months at ₱200 per month and ₱2,000 per year. The bail bond for the release of the accused is way below the amount required under said circular.

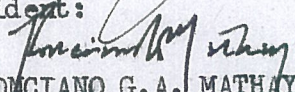
This Office, after considering the nature of the irregularities committed and the attendant circumstances, feels that respondent deserves to be suspended from office.

Wherefore, and as recommended by the Secretary of Justice, Mr. Bernabe L. Dalawas is hereby suspended from office as Municipal Judge of Prosperidad, Agusan, for a period of two (2) months without pay, effective upon receipt of a copy of this order. He is also warned to be more careful in his actuations in the future, otherwise he shall be dealt with more drastically.

Done in the City of Manila, this 12th day of December, in the year of Our Lord, nineteen hundred and seventy.



By the President:



POMCIANO G.A. MATHAY  
Acting Assistant Executive Secretary