

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 106

IMPOSING ON ASSISTANT PROVINCIAL FISCAL MOHAMMADJAN SARAJAN OF JOLO, SULU, THE PENALTY OF SUSPENSION FROM OFFICE FOR A PERIOD OF NINETY (90) DAYS WITHOUT PAY.

This is an administrative case against Assistant Provincial Fiscal Mohammadjan Sarajan of Jolo, Sulu, for alleged serious misconduct and gross ignorance of the law, dereliction of duty, grave abuse of discretion and infidelity in the custody of official document.

The case stemmed from the complaint, dated October 5, 1987, filed with the Tanodbayan by Judge Nabdar J. Malik of the Municipal Trial Court, Ninth Judicial Region, Jolo, Sulu, charging respondent fiscal with serious misconduct and gross ignorance of the law, dereliction of duty and grave abuse of discretion for having dismissed for lack of jurisdiction on September 10, 1987, Criminal Case No. 728, entitled "People of the Philippines versus Muharrisin Muharran, Accused", for violation of P.D. No. 9, as amended (Illegal Possession of Live Fragmentation Handgrenade), and ordered the release of the accused, a civilian, from legal custody.

Upon referral thereof, Chief State Prosecutor Artemio Tuquero, in a 1st indorsement of October 27, 1987, directed respondent to answer the complaint within five (5) days from receipt thereof. Subsequent thereto, or on November 10, 1987, complainant charged respondent with another count for infidelity in the custody of official document for having removed, destroyed or concealed the 4th indorsement, dated September 9, 1987, of Sulu Provincial Commander/Police Superintendent Col. Romeo A. Abendan advising respondent to refer to the proper civil court Criminal Case No. 728, it appearing that upon the ratification of the new (1987) Constitution, military tribunals have ceased to exist, much less acquire jurisdiction over civilians.

After due investigation, and in the light of respondent's written answer to the charges, the Secretary of Justice, in a letter-resolution, dated June 8, 1988, found respondent guilty of the charges, except that for infidelity in the custody of official document, he not being the official custodian of the aforementioned 4th indorsement of September 9, 1987. Accordingly, the Justice Secretary recommended that respondent be suspended from office for ninety (90) days without pay.

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As found by the Secretary of Justice:

"Fiscal Sarajan, despite the assertions of the officers of the JAGO to the contrary, insisted that civil courts do not have jurisdiction over the case based on the wrong notion that the phrase 'any person' in PD 9 includes civilians.

"Apparently, Fiscal Sarajan is not aware of the recent ruling of the Supreme Court in the case of Animas vs. Minister of the Ministry of National Defense, 146 SCRA 406, where it was held:

'In spite or because of the ambiguous nature of the decrees insofar as civilian takeover of jurisdiction was concerned and notwithstanding the shilly-shallying and vacillation characteristic of its implementation, this Court relied on the enunciated policy of normalization in upholding the primacy of civil courts. This policy meant that as many cases as possible involving civilians being tried by military tribunals as could be transferred to civil courts should be turned over immediately. In case of doubt, the presumption was in favor of civil courts always trying civilian accused.'

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"Also Fiscal Sarajan is not aware of the fact that Proclamation No. 2045 which took effect in January, 1981 dissolved all military tribunals upon final determination of cases pending therein which may not be transferred to the civil courts without irreparable prejudice to the state in view of the rules on double jeopardy or other circumstances which render further prosecution of cases difficult, if not impossible.

"Fiscal Sarajan abused his discretion in dismissing the case outright without first ascertaining the correctness of the contentions of the officers of the JAGO that the case should be tried by the civil courts. He further abused his discretion in ordering the release of the accused from the provincial jail. Fiscals do not have the power to do so.

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"Fiscal Sarajan's use of strong and offensive language in his correspondences is unbecoming of a person of his position and status which discredits his personality.

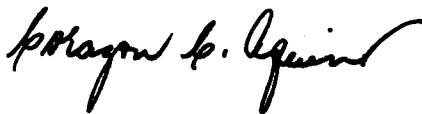
"On the other hand, we cannot hold him liable for Infidelity in the Custody of Document since he is not the custodian of the records allegedly lost.

"We believe that Fiscal Sarajan either abused his discretion or acted with ignorance of the law when he insisted that civil courts have no jurisdiction over violations of PD 9 as amended."

After a careful review of the case, I fully agree in the above findings and recommendation of the Secretary of Justice, supported, as they are, by the evidence on record.

WHEREFORE, and as recommended by the Secretary of Justice, Assistant Provincial Fiscal Mohammadjan Sarajan of Jolo, Sulu, is hereby suspended from office without pay for a period of ninety (90) days, effective upon receipt of a copy hereof.

Done in the City of Manila, Philippines, this 16th day of January, in the year of Our Lord, nineteen hundred and eighty-nine.



By the President:



CATALINO MACARAIG, JR.
Executive Secretary