

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 34

SUSPENDING MR. JOSUE C. GASPAR FROM OFFICE AS ASSISTANT
PROVINCIAL FISCAL OF NUEVA ECIJA.

This refers to the administrative complaint filed by Mrs. Juana Rimando de Calix against Nueva Ecija Assistant Provincial Fiscal Josue C. Gaspar for grave misconduct, ignorance of the law and inefficiency.

Sometime in 1975, complainant bought an irrigation pump set under a financing arrangement with the Development Bank of the Philippines. On May 24, 1976, she entered into an agreement with one Eduardo Viernes whereby the latter undertook to apply with the bank for the transfer of her rights and to assume all her loan accountabilities. Without filing the agreed application and without complainant's knowledge and consent, Viernes took the irrigation pump set and sold it. With the assistance of the Integrated National Police, complainant was able to trace and find the irrigation engine in the possession of Francisco Pascual and, with Pascual's consent, recovered possession of the engine.

On April 27, 1977, she filed a criminal complaint for estafa (I.S. No. 19-G-77) against Viernes and Santiago Manangkil with the Provincial Fiscal's Branch Office at Guimba, Nueva Ecija. In the course of the preliminary investigation, respondent, as the investigating fiscal, ordered complainant to bring the engine to the fiscal's office, which she did on October 4, 1977. On November 7, 1977, respondent released the engine to Pascual upon the latter's request, prompting complainant to charge respondent with grave misconduct, ignorance of the law and inefficiency for (a) his failure to resolve her complaint for estafa as of the date of her administrative complaint and within the period prescribed under Presidential Decree No. 911, and (b) releasing the engine to Pascual even during the pendency of the preliminary investigation.

Respondent denied the charges and claimed that he had resolved the criminal complaint "as of November 3, 1978", and recommended the filing of the corresponding information. Respondent further averred that he ordered the release of the engine to Pascual out of compassion to save the latter's standing crop and prevent the destruction of the engine by disuse.

After due investigation, or on October 22, 1980, the then Ministry (now Department) of Justice found respondent guilty of the charges and recommended that he be suspended from office for one (1) month without pay. The then Deputy Minister (now Undersecretary) of Justice reiterated the foregoing recommendation in his letter of December 6, 1986.

After a review of the case, we concur in the findings and recommendation of the Justice Department. There is no question that the complaint for estafa was filed on April 27, 1977, and resolved, per respondent's admission, only on November 3, 1978, or after the lapse of approximately one (1) year and seven (7) months after its filing. Clearly therefore, the case was resolved way beyond the period prescribed by Presidential Decree No. 911. Respondent, however, maintains that the delay was neither wilfull nor deliberate but was caused by his efforts to identify and have the vital witness (referring to Pascual) testify, by the absence of his stenographer, and by work overload. The engine was released to Pascual on November 7, 1977. Obviously, Pascual must have appeared and testified at the preliminary investigation prior thereto, thus completing complainant's evidence. And yet, it took respondent almost a year thereafter to resolved the case.

Lack of personnel and work overload may constitute a plausible justification for a reasonable period of delay, but certainly not for a period of almost one (1) year and seven (7) months. The delay in the resolution of the case may not have been wilfull or deliberate as claimed by respondent, but the stubborn fact remains that there was an unwarranted delay attributable to no other than respondent's fault or negligence.

Respondent disputes the allegations that it was complainant alone who brought the engine to his office and asserts that she was accompanied by Pascual. We are more inclined to believe complainant's allegation. The engine was then in the factual and legal possession of complainant, and respondent knew for a fact that it was the very same engine that was the subject of the estafa complaint. While respondent had the authority to release the engine for good and valid reasons, such authority involved the exercise of proper discretion. The engine should have been released to complainant who had the legal title or, at least, a better claim thereto. Respondent's release of the engine in effect divested complainant, who had the legal title or better claim to its possession, and transferred that possession to one who had not established his claim or right thereto. Complainant's title or better right to the engine, already demonstrated by the evidence presented, was in fact recognized in the respondent's ultimate finding of a prima facie case for estafa. The release of the engine to Pascual by respondent was

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an improper exercise of discretion and cannot be sanctioned by the supposed "humanitarian" and "practical" reasons claimed by respondent. Humanitarian reasons must be applied not just to one party but to all parties. Practical reasons cannot sanction what is illegal.

WHEREFORE, and as recommended by the Secretary of Justice, Mr. Josue C. Gaspar is hereby suspended from office as Assistant Provincial Fiscal of Nueva Ecija for one (1) month without pay, effective upon receipt of a copy of this Order.

Done in the City of Manila this 21st day of September in the year of Our Lord, nineteen hundred and eighty-seven.

Gregorio B. Aquino

By the President:

Catalino Macaraig, Jr.
CATALINO MACARAIG, JR.
Acting Executive Secretary