

MALACAÑANG  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 314

REMOVING MR. SALVADOR M. GAA FROM OFFICE AS ASSISTANT CITY FISCAL OF MANILA.

This is an administrative case against Assistant City Fiscal Salvador M. Gaa of Manila filed by Angel Alora for grave misconduct and/or conduct prejudicial to the best interest of the service. The case was formally investigated by State Prosecutor Jesus R. de Vega of the Department of Justice.

The case was the offshoot of criminal complaint I.S. No. 69-18444 for slight physical injuries filed by herein complainant against Valentin Samonte before the City Fiscal's Office of Manila on August 12, 1969. On August 22, 1969, respondent set the case for investigation, which was later postponed to September 9, 1969. However, on September 5, 1969, respondent dismissed the case for lack of merit and insufficiency of evidence even before he had terminated the preliminary investigation thereof. On October 2, 1969, complainant filed with the City Fiscal's Office a motion for reconsideration, which was denied by First Assistant City Fiscal Carlos C. Gonzales who concurred in the finding and recommendation of respondent. Fiscal Gonzales' finding and recommendation was likewise concurred in by Second Assistant City Fiscal Roberto D. Cabrera and thereafter approved by City Fiscal Jose L. Gamboa.

Not satisfied with the decision, complainant appealed personally to this Office on October 14, 1969, seeking assistance in the reinvestigation of the case, which was accordingly referred for appropriate action to the City Fiscal of Manila. On the same day, complainant filed a letter-complaint with the Secretary of Justice assailing the legality and/or regularity of the dismissal of the case because of respondent's apparent bias in the disposition thereof.

On November 3, 1969, the Department of Justice required respondent to submit his comment on said complaint. In his letter-answer dated November 19, 1969, respondent denied the charge and claimed that he dismissed the case for insufficiency of evidence because (a) the complaint did not conform to the regulations of the City Fiscal's Office that the complaint be subscribed before the investigating fiscal, as it was subscribed and sworn to before a notary public; (b) the medical certificate was not formally

offered in evidence; and (c) the affidavit of the accused, Valentin Samonte, clearly showed that the injury sustained by complainant was due to his own fault.

A preliminary inquiry into the records of the case was made by State Prosecutor Jesus R. de Vega who found respondent's explanation unsatisfactory and lacking in merit, as there was an evident pattern indicating that he acted with questionable bias and partiality in his investigation and resolution of the case. In view thereof, he recommended that respondent be formally investigated and charged with grave misconduct and/or conduct prejudicial to the best interest of the service.

The formal investigation of the case was conducted on February 25 and March 13, 1971. On the latter date and when complainant was supposed to be cross-examined by respondent, complainant's counsel submitted an "Affidavit of Desistance" (Exh. H) signed by complainant dated February 22, 1971, virtually absolving respondent from the charges and asking that he be commended for dismissing the case. Thereafter, the parties submitted the case for decision with a prayer for the dismissal thereof.

After a careful review of the case, I agree with the Secretary of Justice that complainant's affidavit of desistance does not warrant the dismissal of the instant administrative case against respondent. It is a settled rule in administrative proceedings that when a case is filed against a government employee, it ceases to be private in nature and becomes an offense against public interest whereby the Department of Justice may motu proprio initiate the corresponding investigation, the complainant being considered a mere witness.

Likewise, the affidavit of desistance does not ipso facto discharge respondent from any liability if the record shows preponderant evidence of his guilt. Alora's sworn complaint and the supporting medical certificate present an actionable or prima facie case for slight physical injuries so that when respondent dismissed the case on September 5, 1969, or before the scheduled hearing on September 9, 1969, he acted precipitately and with clear bias and/or abuse of discretion.

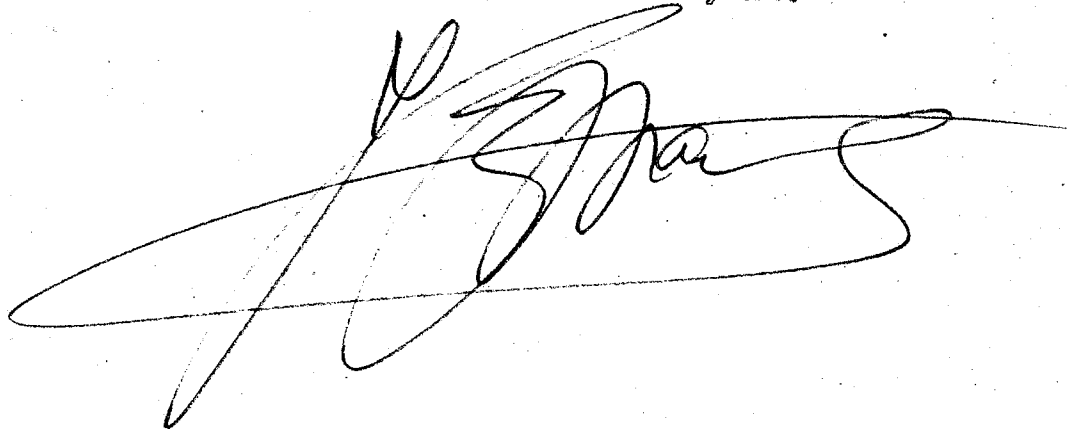
Respondent's claim that the complaint was not subscribed before the investigating fiscal and that the medical certificate was not offered in evidence is untenable. Granting that the complaint was not subscribed before respondent, it was easy to rectify the error by having it re-subscribed before him. The medical certificate need not be formally offered in evidence, as it formed part of the record and could be judicially taken cognizance of, or respondent could have advised complainant to offer it in evidence. Such minor defects

in form and procedure could have been corrected if respondent was really cognizant of his duty. It is therefore clear that these flimsy grounds were raised by respondent to conceal his bias created by complainant's refusal to settle the case amicably as repeatedly broached by him. Consequently, in giving credence to the affidavit of the accused that he did not inflict any physical injury on complainant, respondent acted with questionable partiality in his investigation and resolution thereof. Respondent's allegation that he still continued the hearing set for September 9, 1969, after he had already dismissed Alora's complaint on September 5, 1969, is grossly misleading.


In view of the foregoing, I find respondent guilty of the charges which warrant his dismissal from the service.

WHEREFORE, and as recommended by the Secretary of Justice and the investigator, Mr. Salvador M. Gaa is hereby removed from office as Assistant City Fiscal of Manila, effective upon receipt of a copy of this order.

Done in the City of Manila, this 29th day of November, in the year of Our Lord, nineteen hundred and seventy-one.



By the President:



ALEJANDRO MELCHOR  
Executive Secretary