

**[ADMINISTRATIVE ORDER NO. 254, December
12, 1970]**

**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 P8,000. 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