

AUGUSTUS L. MOMONGAN, REGIONAL DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, REGION VIII, TACLOBAN CITY, PETITIONER, VS. JUDGE RAFAEL B. OMIPON, 6TH MUNICIPAL CIRCUIT...

A.M. No. MTJ-93-874. March 14, 1995

Ponente: ROMERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9cede9dec5dc/>

ROMERO, J.:

At around 10:00 o'clock of November 14, 1992, police officers of the Municipality of Hinunangan, Southern Leyte apprehended Dionisio Golpe while he was driving his truck loaded with illegally cut lumber. The truck and logs were impounded. A complaint was filed against Basilio Cabig, the alleged owner of the logs. After conducting the preliminary investigation, respondent Judge Rafael B. Omipon found that a prima facie case exists against Mr. Cabig but he ordered the release of the truck inasmuch as the owner/driver, Mr. Golpe, was not charged in the complaint.

Regional Director Augustus L. Momongan of the Department of Environment and Natural Resources filed the instant complaint against respondent Judge alleging that his order releasing the truck used in the transport of illegally cut forest products violated Presidential Decree 705, as amended by Executive Order No. 277, Section 68 and 68-A [1] and Administrative Order No. 59, series of 1990. [2] Complainant claims that respondent Judge has no authority to order the release of the truck despite the non-inclusion of Mr. Golpe in the complaint. The truck should have been turned over to the Community Environment and Natural Resources Office of San Juan, Southern Leyte for appropriate disposition as the same falls under the administrative jurisdiction of the Department of Environment and Natural Resources Office.

In his comment, respondent Judge explained that after conducting the preliminary investigation, he found that Golpe, the owner of the truck, is principally engaged in the hauling of sand and gravel and the delivery of hollow blocks. On his way home after delivering hollow blocks in Barangay Sto. Nino II, he met his friend Cabig who requested him to load sliced lumber and deliver the same at Brgy. Lungsod-daan, Hinundayan to be used for the construction of a barangay high school building. They were apprehended when the truck had a flat tire. After changing the tire, both the lumber and the truck were ordered deposited at the police station of Hinunangan.

Respondent Judge observed that Golpe has a lesser participation in the crime of Illegal logging and, being a mere accessory, he might be utilized by the Acting Chief of Police as prosecution witness against Cabig. More importantly, the fact that the complaint charged only Cabig, respondent Judge, in the exercise of his sound discretion, ordered the release of the truck owned by Golpe.

The Memorandum of the Office of the Court Administrator recommended that a formal investigation be conducted. An excerpt from its Memorandum states:

"We find the explanation of respondent unsatisfactory. While he is authorized to conduct preliminary

investigation in all cases of violations of P.D. 705, as amended, otherwise known as the Revised Forestry Code of the Philippines, Sec. 68-A thereof provides that it is the Department Head or his duly authorized representative who may order the confiscation and disposition of the forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

There may be some facts that are not extant in the records which can only come out during a formal investigation to better establish clear culpability or exoneration over the respondent.

In view thereof, and to give respondent an opportunity to clear himself, it is respectfully recommended that this matter be referred to Acting Executive Judge Leandro T. Loyao, Jr., RTC, Branch 26, San Juan, Southern Leyte, for investigation, report and recommendation within sixty days from receipt of the records." [3]

In the Resolution of November 8, 1993, the Court resolved to refer the case to Acting Executive Judge Leandro T. Loyao, Jr., RTC, Branch 26, San Juan, Southern Leyte, for investigation, report and recommendation, within sixty (60) days from receipt of the records. [4]

During the first two hearing dates, complainant was unable to attend but sent his representatives, DENR lawyer Constantino Esber and legal assistant Romeo Gulong. Respondent Judge appeared with his counsel. However, on the third hearing date, respondent Judge failed to appear as he suffered a stroke and was hospitalized. Thereafter, DENR counsel Esber manifested that their office has filed a motion for reinvestigation and for the turnover of the jeep to the PNP and subsequently, to the DENR. He also manifested that the complainant is submitting the administrative matter for resolution and recommendation without adducing evidence against respondent. Respondent's counsel did not object to complainant's manifestation. The counsel of both complainant and respondent jointly agreed to submit the case for appropriate action.

The Investigating Judge's confidential report, in part, states:

"In view of this development in the course of an intended investigation, this investigator could not elicit additional facts than are found in the records, whether inculpatory or exculpatory. Respondent was given an opportunity to explain the unfavorable circumstances against him but he was overtaken by a serious illness. So much was expected from the complainant to supply the facts not extant in the records, but he lost interest in substantiating his April 1993 report to the Supreme Court. In fact, he was submitting this administrative matter for resolution without adducing evidence against respondent.

Except for the 21 January 1994 motion for reinvestigation of DENR counsel Esber which sought for the inclusion of jeep owner and driver Dionisio Golpe in the criminal information, there is nothing new that can be added to the facts found by the Honorable Deputy Court Administrator as reflected in his Memorandum for the Honorable Chief Justice dated 12 October 1993.

There being no actual investigation conducted, no additional facts could be reported and consequently, there is no basis for a recommendation on the basis of facts.

This investigator can only recommend appropriate action by the Supreme Court on the basis of the facts already extant in the records with a prayer for consideration of respondent plight especially so since on account of this investigation his health has deteriorated and may affect his efficiency output as a judge. Perhaps, allowing him to bow out of the service with honor and corresponding benefits." [5]

During the pendency of this case, respondent Judge filed for disability retirement. His application was approved but his pension was not released pending the outcome of this case.

We find respondent Judge's order to release the truck owned and driven by Mr. Dionisio Golpe legally justifiable, hence, he is not subject to any disciplinary sanction.

According to the Revised Penal Code, Art. 45, first paragraph: "[E]very penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instrument or tools with which it was committed." However, this cannot be done if such proceeds and instruments or tools "be the property of a third person not liable for the offense." In this case, the truck, though used to transport the illegally cut lumber, cannot be confiscated and forfeited in the event accused therein be convicted because the truck owner/driver, Mr. Dionisio Golpe was not indicted. Hence, there was no justification for respondent Judge not to release the truck.

Complainant is correct in pointing out that based on Pres. Decree No. 705, Sec. 68-A and Adm. Order No. 59, the DENR Secretary or his duly authorized representative has the power to confiscate any illegally obtained or gathered forest products and all conveyances used in the commission of the offense and to dispose of the same in accordance with pertinent laws. However, as complainant himself likewise pointed out, this power is in relation to the administrative jurisdiction of the DENR.

We do not find that when respondent Judge released the truck after he conducted the preliminary investigation and satisfied himself that there was no reason to continue keeping the truck, he violated Pres. Decree No. 705 and Adm. Order No. 59. The release of the truck did not render nugatory the administrative authority of the DENR Secretary. The confiscation proceedings under Adm. Order No. 59 [6] is different from the confiscation under the Revised Penal Code, which is an additional penalty imposed in the event of conviction. Despite the order of release, the truck can be seized again either by filing a motion for reinvestigation and motion to include the truck owner/driver as co-accused, which complainant has done as manifested before the lower court or by enforcing Adm. Order No. 59. Section 12 thereof categorically states that "[t]he confiscation of the conveyance under these regulations shall be without prejudice to any criminal action which shall be filed against the owner thereof or any person who used the conveyance in the commission of the offense."

Petitioner is of the opinion that under the circumstances, respondent Judge should have turned over the truck to the Community Environment and Natural Resources Office (CENRO) of San Juan, Southern Leyte for appropriate disposition. No doubt, this would have simplified matters and prevented the present situation from occurring wherein one government official files a complaint against another. Under Sec. 4 of Adm. Order No. 59, if the apprehension is not made by DENR field offices, deputized military personnel and officials of other agencies apprehending illegal logs and other forest products and their conveyances shall notify the nearest DENR field offices and turn over said forest products and conveyances for proper action and disposition. A period of about two weeks lapsed from the time the seizure was made before a complaint was filed. During this period, the apprehending policemen had enough time to turn over the logs and the truck to the nearest DENR field office for proper action and disposition since the duty to turn over the truck to the nearest DENR field office rests on the officials apprehending the illegal logs. There being no mandatory duty on the part of respondent Judge to turn over the truck, he should not be visited with disciplinary sanction when he did not refer the same to the DENR field office in San Juan, Southern Leyte.

The Court takes this opportunity to enjoin the National Police, the DENR, the prosecutors, and the members of the bench to coordinate with each other for a successful campaign against illegal logging. It behooves all the concerned agencies to seriously strive for the attainment of the constitutionally-declared policy to "protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature" [7] in order to preserve our natural resources for the benefit of the generations still to come.

WHEREFORE, the complaint is DISMISSED.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Francisco, JJ., concur.

[1] Presidential Decree No. 705 - REVISING PRESIDENTIAL DECREE NO. 389, OTHERWISE KNOWN AS THE FORESTRY REFORM CODE OF THE PHILIPPINES.

SEC. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. - Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

SEC. 68-A. Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation. - In all cases of violations of this Code or other forest laws ruled and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

[2]

SUBJECT:

GUIDELINES IN THE CONFISCATION, FORFEITURE AND DISPOSITION OF CONVEYANCES USED IN THE COMMISSION OF OFFENSES PENALIZED UNDER SECTION 68, P.D. 705, AS AMENDED BY EXECUTIVE ORDER NO. 277, SERIES OF 1987 AND OTHER FORESTRY LAWS, RULES AND REGULATIONS.

X X X X X X X X

Section 2. Conveyances Subject to Confiscation and Forfeiture. All conveyance used in the transport of any forest product obtained or gathered illegally whether or not covered with transport documents found spurious or irregular in accordance with Section 68-A of P.D. 705, shall be confiscated in favor of the government or disposed of in accordance with pertinent laws, regulations or policies on the matter.

X X X X X X X X

Section 9. Disposition of Conveyance. All conveyances found to have been used in the transport of any forest product from illegal sources and/or covered by spurious documents shall be declared forfeited in favor of the government in accordance with Sec. 68-A of PD 705, as amended. Forfeited conveyances may be used, at the discretion of the DENR, in the forest protection and development activities, otherwise, the same shall be disposed of through public auction by the Secretary or the Regional Office, as the case may be, in accordance with existing policies and procedures for the disposition of government property.

[3] Rollo, pp. 2-3.

[4] Ibid., p. 9.

[5] Rollo, pp. 62-63.

[6] SEC. 7. Notice to Owner. For the purpose only of complying with due process, the Secretary, RED/PENRO/CENRO or their duly authorized representatives shall give the owner or his representative a written notice of the seizure and shall give him an opportunity to be heard in reference to the ground or reason for the seizure by requiring said owner or representative to submit sworn statements or affidavits within three (3) days from receipt of such written notice or they may elect to have a formal hearing conducted, but they must signify their intention in writing within the same period. For the purpose of such notice and all proceedings connected with confiscation, "representative" shall be deemed to include not only representative-in-fact of the owner but also any person having possession of the conveyance at the time of confiscation or seizure.

SEC. 8. Report/Recommendation. Upon receipt of the aforesaid sworn statement/affidavit of the owner or representative or if none is received despite due notice, the PENRO/CENRO or any authorized representative of the DENR for the matter shall determine if the seized conveyance was used in the commission of the offense as contemplated in Section 2 hereof, and shall render a report thereon within one week accompanied by the evidence he has gathered including his recommendations to the Secretary or the Regional Executive Director, as the case may be.

SEC. 9. Disposition of Conveyance. All conveyances found to have been used in the transport of any forest product from illegal sources and/or covered by spurious documents shall be declared forfeited in favor of the government in accordance with Sec. 68-A of PD 705, as amended. Forfeited conveyances may be used, at the discretion of the DENR, in the forest protection and development activities, otherwise, the same shall be disposed of through public auction by the Secretary or the Regional Office, as the case may be, in accordance with existing policies and procedures for the disposition of government property.

[7] Constitution, Art. 11, Sec. 16.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.