

**AMBROSIO DIAMALON ALIAS AMPUANG DIAMALON,
COMPLAINANT, VS. HON. JESUS QUINTILLAN, RESPONDENT.***Adm. Case No. 116. August 29, 1969*

Ponente: FERNANDO, J.

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A complaint for serious misconduct in office against respondent Judge Jesus Quintillan, filed on March 29, 1967, was based on the allegation that complainant, a certain Ambrosio Diamalon, who allegedly was only an eye-witness, was thereafter included in an information for murder without having the opportunity to appear and to defend himself, the serious misconduct imputed consisting in the issuance of such warrant of arrest and causing the unlawful detention by respondent Judge without the observance of the due process of law requirement.

On April 7, 1967, this Court required respondent Judge to file within ten days an answer to the above complaint against him. In the answer filed by him on June 21, 1967, he disputed the charge that his actuation was offensive to the due process clause in this manner: "That the undersigned also denies the allegations of paragraphs 10, 11, 12 and 13 of the complaint on the ground that the undersigned had fully investigated and fairly appreciated the evidence against the complainant herein before the issuance of the warrant of arrest, and that previous to the occasion of the issuance of the warrant of arrest against him, undersigned was of the sincere belief and opinion that the presence of the accused before the issuance of the warrant of arrest was not necessary as Rule No. 112, Section 13 provides that the undersigned may simultaneously conduct the preliminary examination and preliminary investigation in cases that are directly filed with him. While it is true that the said section provides that the procedure shall be in the manner provided for municipal judges, yet the preceding sections provide that in cases of preliminary examination for the purpose of the issuance of the warrant of arrest, the presence of the accused is not necessary. Therefore, if the preliminary examination by the municipal judge is for the purpose of the issuance of the warrant of arrest, the presence of the accused is not necessary, and the judge of the Court of First Instance is authorized to conduct simultaneously, upon the filing of the case before him, the preliminary examination and preliminary investigation, in the honest opinion of the undersigned the warrant of arrest may be issued without the presence of the accused. Even now, in the preliminary examination conducted by the Justice of the Peace for the issuance of the warrant of arrest, the presence of the accused is not necessary, such presence being indispensable only at the second stage of the preliminary investigation. Therefore, it is respectfully submitted that the presence of the accused is not necessary before the issuance of the warrant of arrest by the undersigned." [1] His prayer was for the dismissal of the complaint.

Thereafter, in a resolution of August 30, 1967 we considered the case as submitted for decision. Then came, on August 7, 1969, an urgent petition for dismissal. As alleged therein: "That the above-entitled case should be dismissed not only because of the fact that, as explained in respondent's answer, complainant has no valid cause to complain against the respondent as judge but also because of the fact that respondent has already resigned from his position on August 12, 1967 and it was accepted by the President of the Philippines on August 24, 1967, which resignation was made effective at the close of the office hours on August 31, 1967, as shown by the letter

of Mr. Gilberto M. Duavit, Assistant Executive Secretary, * * *." [2] The communication from Assistant Executive Secretary Gilberto M. Duavit, addressed to respondent Judge, reads as follows: "With reference to your letter dated August 12, 1967 tendering your resignation as District Judge of the Court of First Instance of Cotabato, Branch II, I wish to inform you that the President hereby accepts the same effective at the close of office hours on August 31, 1967." [3]

This petition for dismissal or for the definite termination of the case is likewise based on the plea that the respondent Judge's application for his retirement gratuity cannot be favorably acted upon in view of the pendency of this pending administrative case. Information is likewise furnished this Court in said petition that respondent Judge "has been sick for sometime already and is now very seriously ill and is presently confined at the Brokenshire Memorial Hospital at Davao City so that it would be to the best interest of simple and christian justice that the above-entitled case be dismissed and/or decided as soon as possible to facilitate the processing of respondent's application for Retirement Gratuity." [4]

In the light of the above, the petition for dismissal must be granted. There is no need to inquire further into the charge im-puted to respondent Judge that his actuation in this particular case failed to satisfy the due process requirement. As an administrative proceeding is predicated on the holding of an office or position in the Government and there being no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for.

WHEREFORE, the urgent petition for dismissal filed on August 7, 1969 by respondent Judge is granted. Without pronounce-ment as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Capistrano, Teehankee, and Barredo, JJ., concur. Reyes, J.B.L., J., on official leave.

[1] Answer, par. 8.

[2] Urgent Petition to Dismiss and/or Decide Case, par. 3.

[3] Ibid, Annex A.

[4] Ibid, par. 5.

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