

**MARIETA B. BRIONES, COMPLAINANT, VS. NONILON A. CANIYA,
DEPUTY SHERIFF, BRANCH 22, REGIONAL TRIAL COURT, IMUS,
CAVITE, RESPONDENT.***Adm. Matter No. P-93-796. September 22, 1995*

Ponente: DAVIDE, JR., J.

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In her verified complaint dated 11 February 1993, the complainant, assisted by Atty. Mauricio C. Ulep, charges the respondent with grave misconduct and abuse of authority and prays that the respondent be dismissed from the service. She alleges therein that she was the plaintiff in a complaint for replevin filed with Branch 22 of the Regional Trial Court (RTC) of Cavite and that on 2 June 1992, the court issued a writ of replevin which was assigned to the respondent for service and enforcement. In January 1993, the respondent was able to seize from Arnold de Leon a motor vehicle with Plate No. NXW 535, which the respondent kept and used allegedly because the five-day period for any claimant to file a counter-replevin bond had not yet expired. After the expiration of the said period, however, the respondent, with abuse of authority, kept on using the motor vehicle for his own personal benefit without any intention of delivering it to her. She further alleges that every time she sought the respondent's assistance in recovering the vehicles subject of the writ, the respondent demanded money from her purportedly for gasoline and for his services, and at one time, she gave him a check for P2,000.00. She also claims that on 10 February 1993, the respondent practically stole from her garage one of the motor vehicles which was earlier seized by elements of the Constabulary Highway Patrol Group (CHPG). This he did on the pretext that the Presiding Judge of Branch 22 wanted to see one of the seized vehicles. When she refused to give one to him unless he could show her a court order, the respondent told a mechanic to start one of the motor vehicles to test it. After which, the respondent rode on it and took it to an undisclosed place, without issuing a receipt therefor. The whereabouts of the vehicle have remained unknown.

In his verified answer dated 20 May 1993, the respondent denies the charges and contends that after the lapse of the five-day period, he waited for the complainant or her representative to claim or receive the seized motor vehicle, and since she failed to do so, he "deposited for safekeeping" the said vehicle in his own garage in his residence. He asserts that he did not utilize it for his own purpose, use, and benefit, although there were some instances that he had to warm up the engine to preserve it, since a vehicle which remains idle for some time would malfunction. He insists that he did not ask or receive money from the complainant; neither did he steal a vehicle from her on 10 February 1993, as he only released the vehicle to a third-party claimant, Alice Afisco, upon a court order for its release.

Issues having been joined, this Court referred this case to Executive Judge Lucenito N. Tagle, RTC, Imus, Cavite, for investigation, report, and recommendation within sixty days from notice.

Executive Judge Tagle set the case for hearing, but the complainant failed to testify due to postponements caused by her or by her lawyer's failure to appear. At the hearing on 17 January 1994, her counsel manifested that she is

no longer interested in pursuing this case, and upon the court's inquiry, she personally confirmed the truth of such manifestation. The court then issued an order dismissing the case.

On 7 February 1994, this Court directed the complainant to submit a sworn explanation of her desistance within ten days from notice.

On 28 September 1994, this Court directed the investigating Judge to proceed with the investigation by at least ascertaining the reasons why the complainant desisted from further prosecuting the complaint, and required the complainant to show cause why she should not be disciplinary dealt with or held in contempt for initiating the complaint only to desist later on from prosecuting it.

At the hearing on 15 November 1994 before Executive Judge Tagle, neither the complainant nor her counsel appeared despite due notice. The hearing then was reset to 13 December 1994, which was again reset to 25 January 1995 due to the absence of a return of service of notice to the complainant and her counsel.

On 16 December 1994, the complainant submitted to the investigating Judge an Affidavit of Desistance wherein she stated:

- That, I am now [desisting] from further prosecuting this case and I am no longer interested in pursuing it in view of the fact that the case I filed against him [arose] merely out [of] a misunderstanding.

In his Report dated 25 January 1995, Executive Judge Tagle stated that in view of the above affidavit of the complainant, he had no other recourse but to recommend the dismissal of the instant case.

On 31 July 1995, we required the respondent to inform the Court whether he is willing to submit this case for decision on the basis of the pleadings already filed. In his letter of 23 August 1995, the respondent manifested that he is, but prayed that the recommendation of Executive Judge Tagle be maintained.

In its Memorandum submitted earlier, the Office of the Court Administrator makes the following observations and findings:

The undersigned does not agree with the recommendation of Executive Judge Tagle for the dismissal of the case on the basis of the desistance of the complainant. The Honorable Court in a number of cases held that mere desistance on the part of the complainant does not warrant the dismissal of administrative cases against members of the bench (A.M. No. MTJ-89-315 entitled "Godofredo de la Cruz vs. Judge Bonifacio Curso," 221 SCRA 66, A.M. No. RTJ-91-657 entitled "Lourdes Presado vs. Judge Manuel Genova," 223 SCRA 489). The withdrawal of complaint does not divest the Court of its jurisdiction nor strip it of its power to determine the veracity of the charges made (A.M. No. RTJ-89-343, February 20, 1990) and to discipline, such as the results of its investigation may warrant, an erring respondent (A.M. No. 1402-MJ entitled "Hermogenes and Angel Anguluan vs. Judge Henry Taguba," 93 SCRA 179). The Court's interest in the affairs of the judiciary is a paramount concern that must not know bounds (MTJ-94-962 entitled "Sps. Fernando and Elenita Marcelino vs. Judge Mariano Singson," April 25, 1995).

There is sufficient evidence to warrant a finding that respondent committed gross misconduct involving the vehicle in custodia legis. The intention of respondent Sheriff to make use of and benefit from the vehicle, a property in custodia legis was manifest. Respondent had no reason to go overboard by safekeeping the vehicle at his residence. The most that he could have done, if his real intention apart from its safeguard, was await the five (5) day period to expire, (thereafter it remained unclaimed) was to simply turn it over to the Office of the Clerk of Court. From that moment on the subject vehicle should no longer be in his hands. No logical inference could therefore be deduced from such action than respondent's desire to use and enjoy the seized vehicle for his benefit

and convenience. Obviously, respondent exhibited his manifest intent to gain from the subject vehicle.

Assuming, without admitting, that respondent was indeed acting in good faith in safekeeping the vehicle till after the expiry period of five (5) days, still the fact that he did not immediately turn over the subject vehicle to the complainant after the said period and/or to the Clerk of Court destroys his pretensions of good faith.

With respect to the charge that respondent has always been demanding certain sum of money from complainant, we do not find any clear and convincing evidence in the records that would establish the same. While it is true that complainant has submitted xerox copies of checks issued in the name of respondent Sheriff there is no other independent evidence which would prove complainant's allegations.

There is also no evidence that respondent ran away with one (1) vehicle from complainant's garage, for if this were so the likelihood is that she would have filed a criminal case instead of this administrative complaint or at least reported the same to the local police authorities.

Be that as it may the undersigned submits that the use of respondent Sheriff of the attached vehicle for his personal benefit and advantage constitutes misconduct and conduct prejudicial to the best interest of the service. Such conduct is condemnable for it violates the norm of public accountability and tends to diminish the people's faith in the Judiciary.

In A.M. No. P-87-72 entitled "Antonio Sy vs. Marcelo Academia, et al.," and A.M. No. P-90-481 entitled "Judge Bernardo Pardo vs. Marcelo Academia, Deputy Sheriff, RTC, Manila, Branch 27" the Honorable Court in its resolution dated July 3, 1991 held that:

This Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and would diminish or even just tend to diminish the faith of the people in the Judiciary.

Further, in A.M. No. P-141, entitled "Elias Jeroes, Jr. vs. Severiano Reblando, Sr., Clerk of Court, City Court, General Santos City, and Ex-Officio Sheriff" the Honorable Court likewise stressed in its resolution dated May 31, 1976 that:

We laid down the rule that the conduct and behavior of everyone connected with an office charged with the dispensation of Justice, like the court below, from the Presiding Judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His conduct at all times, must not only be characterized by propriety and decorum but above all else must be above suspicion.

Indeed, every employee of the Judiciary should be an example of integrity, uprightness and honesty (*Ablanida vs. Intia*, Administrative Matter No. R-770-P, May 17, 1988).

It then recommends that the respondent be declared guilty of misconduct and conduct prejudicial to the best interest of the service and be dismissed from office.

We are in full agreement with the above findings of the Office of the Court Administrator. However, considering that this appears to be the respondent's first offense during his twenty-five years of service in the government, a penalty of suspension and not of dismissal from the service would be appropriate. In *Natividad vs. Melgar* (213 SCRA 508 [1992]), this Court imposed a suspension for three months on the respondent sheriff who used for his personal benefit a vehicle seized by him pursuant to a writ of preliminary attachment.

We stress once more that the use by sheriffs for their own personal benefit or advantage of properties in custodia legis by virtue of court orders or processes such as writs of attachment and replevin constitutes misconduct and conduct prejudicial to the best interest of the service (*Natividad vs. Melgar*, *supra.*), or dishonesty and conduct

grossly prejudicial to the administration of justice (Rivera vs. Cagujas, 229 SCRA 145 [1994]).

Even as we discipline the respondent on the basis of the complainant's grievance, we have to express our displeasure on the latter's desistance to prosecute this case after she had involved this Court and the investigating Judge for some time into this matter. Administrative cases against public officers and employees are not private in nature. They are impressed with public interest, for they relate to public office, which is a public trust that, at all times, exacts from the holder thereof accountability to the people and demands utmost responsibility, integrity, loyalty, and efficiency (Section 1, Article XI, constitution). These cases transcend beyond the complainants' personal interest, pique or pride, whims and caprices. After this Court has taken cognizance of such complaints, the complainants are not anymore at liberty to dismiss or withdraw their complaints just because they filed the same out of a misunderstanding, as in this case as claimed by the complainant, or that they are no longer interested in prosecuting the said cases because the respondents have apologized for their misconduct (Zamora vs. Jumamoy, 238 SCRA 587 [1994]). Such withdrawal could only invite suspicions that the complaints were not filed with sincerity of purpose (Id.) but for some improper motives, or that the respondents entered into an amicable settlement with the complainants not necessarily to buy peace but to cover up their misconduct.

In this case, the complainant, assisted by counsel from the beginning, verified her complaint, and the records further show that she even filed in the replevin case motions to cite the respondent in contempt of court for improper releases of seized vehicles. She filed her affidavit of desistance only after several scheduled hearings. We thus find the ground for her desistance to be incredible and highly suspicious.

WHEREFORE, for misconduct and conduct prejudicial to the best interest of the service, respondent NONILON A. CANIYA, Deputy Sheriff, Branch 22 of the Regional Trial Court of Imus, Cavite, is hereby **SUSPENDED** from office for **THREE (3), MONTHS**, without pay. The suspension shall take effect upon his notice hereof.

The Office of the Court Administrator shall cause immediate service of this decision to the respondent.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on leave.

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