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is presumed to be subsisting. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner.[20] Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him.[21]

WHEREFORE, the petition is *GRANTED*. The order dated December 29, 1998 of the Regional Trial Court, Branch 226 of Quezon City is *REVERSED* and *SET ASIDE* and the trial court is ordered to *IMMEDIATELY* proceed with Criminal Case No. Q98-75611.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and *Pardo, JJ.*, concur.

THIRD DIVISION

[A.M. No. 00-1398-P. August 1, 2000]
(formerly OCA IPI No. 98-495-P)

ERLINDA N. SY, *complainant, vs.* **DANILO P. NORBERTE, Deputy Sheriff, Regional Trial Court, Branch 125, Caloocan City,** *respondent.*

SYNOPSIS

Complainant Erlinda N. Sy was the plaintiff in Civil Case No.

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[20] *Wiegel v. Hon. Sempio-Dy*, 143 SCRA 499, 501 (1986).

[21] *People v. Aragon*, 94 Phil. 357, 360 (1954).

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C-18354 for sum of money with prayer for preliminary attachment filed against spouses Carlos and Antoniette Galvez which was raffled to Branch 122 of the Regional Trial Court of Kalookan City. She claimed that respondent Danilo Norberte as sheriff of Branch 125 of the same court, together with Jocelyn N. Lucas and Erlinda A. Bantug, both of Branch 122, tipped off Antoniette Galvez regarding the issuance of a writ of preliminary attachment in the aforementioned case. As a consequence, Galvez promptly removed all her personal property from her place of business in order to avoid the said attachment. In fact, she personally saw respondent sheriff actively assisting and helping in the removal of the property which began at 8:00 o'clock in the evening of 29 June 1998 and was completed in the afternoon of the following day, thereafter, padlocking the said place. When the writ was served by Sheriff Ronaldo Morada of Branch 122, the place was found to be empty and padlocked. On the other hand, respondent sheriff denied all the allegations against him. While he admitted that Jocelyn Lucas was his aunt, he claimed that he did not talk to her for sometime. He also denied knowing spouses Galvez. He interposed alibi, claiming that from 5:30 in the afternoon of 29 June 1998 until 1:00 o'clock in the morning of the following day, he was at Café Caimito at 9th Ave., Kalookan City together with some lawyers. And the following day, he spent the whole day in their house.

The Court ruled that granting that respondent did not actually tip off Galvez on the issuance of a writ of preliminary attachment, his presence, however, when Galvez started to remove the property from her place of residence and business by no means could have been purely incidental. His *alibi* is unacceptable. Respondent had been positively identified not only by complainant but likewise by her witnesses who would have no reason to falsely implicate him. Respondent must have been aware that the questioned act of Galvez is not for anything else but to circumvent a valid court order. The Court agreed with the Office of the Court Administrator that respondent Sheriff's action - his very presence during the removal of the property of Galvez - was in itself censurable.

Respondent Danilo P. Norberte was suspended from service, without pay, for one (1) month.

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SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; COURT EMPLOYEES, CONDUCT AND BEHAVIOR SHOULD BE CHARACTERIZED WITH THE GREATEST OF CIRCUMSPECTION.**— The nature and responsibilities of officers and men of the judiciary, repeated every so often, are neither mere rhetorical words nor idealistic sentiments but working standards and attainable goals that should be matched with actual deeds. Their conduct and behavior, from the presiding judge to the sheriffs and the lowliest personnel, should be characterized with the greatest of circumspection. All are expected to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to conduct themselves with propriety and decorum at all times.

2. **ID.; ID.; ID.; ID.; ID.; SHERIFF'S PRESENCE DURING REMOVAL OF DEFENDANT'S PROPERTY IN ORDER TO AVOID ATTACHMENT IS CENSURABLE.**— Granting that respondent did not actually tip off Galvez on the issuance of a writ of preliminary attachment, his presence, however, when Galvez started to remove the property from her place of residence and business by no means could have been purely incidental. His *alibi* is unacceptable. Respondent has been positively identified not only by complainant but likewise by her witnesses who would have no reason to falsely implicate him. Respondent must have been aware that the questioned act of Galvez is not for anything else but to circumvent a valid court order. The Court agrees with the Office of the Court Administrator that respondent Sheriff's action – his very presence during the removal of the property of Galvez –was in itself censurable.

DECISION

VITUG, *J.*:

The case under consideration originated from a letter–complaint, dated 20 July 1998, filed by Erlinda N. Sy against Danilo P. Norberte, Sheriff IV, Branch 125, of the Regional Trial Court ("RTC") of Kalookan City. Sy was the plaintiff in Civil Case No. C-18354 ("*Erlinda N. Sy vs. Spouses Carlos and Antonietta*

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Galvez") for a sum of money with a prayer for preliminary attachment. The case was raffled to Branch 122.

According to complainant Sy, respondent Sheriff, together with Jocelyn N. Lucas and Erlinda A. Bantug, both with RTC Branch 122, tipped off Galvez regarding the issuance of a writ of preliminary attachment in Civil Case No. C-18354. Galvez promptly removed all personal property from her place of business/ residence at 104 Sampalukan Street, Kalookan City, in order to avoid attachment. Complainant saw respondent Sheriff actively assisting and helping in the removal of the property, which began at eight o'clock in the evening of 29 June 1998 and was completed in the afternoon of the following day, and in thereafter padlocking the place. The next day, she reported the matter to her lawyer and, on 01 July 1998, to Sheriff Ronaldo Morada of Branch 122. The latter forthwith left to serve the writ and, sure enough, found the place empty and padlocked.

In his answer to the complaint, respondent Sheriff countered that the charges against him were "completely false, prevaricated, concocted, contrived, unfounded and malicious." Admitting that Jocelyn Norberte Lucas was her aunt, he claimed that he seldom saw her and had not, in fact, talked to her for quite some time. He denied knowing the spouses Carlos and Antonietta Galvez. He said that on 29 June 1998, from 5:30 in the afternoon to 1:00 in the morning of the following day, he was with Attorney Davidson Sarmiento and some PAO lawyers at Cafe Caimito in 9th Avenue, Kalookan City, the next day being a special public holiday. He then went home where he spent the whole day. Respondent submitted an affidavit, dated 27 July 1998, executed by Attorney Sarmiento to bolster his statement. Asserting that he had been a Sheriff for 27 years, and his wife Cleofe, for a like period, had been with the Office of the Court Administrator, he certainly would not jeopardize his position, as well as his wife's integrity and reputation, by any wrongdoing.

In its resolution of 21 April 1999, the Court referred the case to Executive Judge Bayani S. Rivera of RTC, Kalookan City, Branch 129, for investigation, report and recommendation.

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In his report and recommendation, following an investigation, Executive Judge Rivera submitted his findings:

"Ranged against the positive identification of respondent not only by complainant herself but by 2 other witnesses (PO1 Luis Coderes & Mrs. Susan Nunez) as the one who assisted and helped Antonietta Galvez in the removal of her personal properties from her residence and business shop and in the transfer thereof to other places to defeat the forthcoming implementation of the writ of preliminary attachment in Civil Case No. C-18354, I cannot see how respondent's defense of alibi could help his claim to innocence. It is a matter of jurisprudence that aside from being inherently weak and easy to fabricate, alibi crumbles in the face of positive identification of the culprit by prosecution witnesses (*People vs. Narca*, 275 SCRA 696). Withal, for alibi to prosper, it is indispensable that there be credible and tangible proof of physical impossibility for the respondent to be at the scene of the offense (*People vs. Salvatierra*, 276 SCRA 55).

"In the instant administrative case, the witness who corroborated respondent's claim of alibi was Atty. Davidson Sarmiento who in effect indicated that it was 'no big deal' for family men like him and respondent to be in a drinking spree from 5:30 p.m. to 1:00 a.m. of the next day. I do not mean to cast aspersion on government personnel who indulge themselves in such bacchanalian orgy after office hours. After all, it is their time that they squander in ephemeral and unproductive activities. Even so, the short-lived entertainment which respondent and Atty. Sarmiento apparently take matter-of-factly touches on their sense of values and ultimately on their credibility. Simply stated, respondent and Atty. Sarmiento apparently believe that there was nothing wrong in what they *allegedly* did, more so in the instant case where it could be, as it was actually utilized, as an alibi, albeit unavailing.

"Even assuming *in gratia argumenti* that respondent and Atty. Sarmiento were in fact at Cafe Caimito from 5:30 p.m. to 1:00 a.m. of the next morning, still the defense of alibi in this case is futile. The restaurant-cocktail lounge on 9th Avenue is just a few minutes ride to Sampalukan St., Caloocan City where the removal of properties was done on the night of June 29, 1998. Ergo, the physical impossibility required in *People vs. Salvatierra, supra,* finds no application to this case.

"Another incredible testimonial evidence in this case is the sur-rebuttal testimony of Mr. Noel Mapue. This witness admitted that in order to help Antonietta Galvez defeat the impending implementation of a writ of preliminary attachment against her properties, he opened his warehouse

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on Doña Rita St., Caloocan City on the night of June 29, 1998 so that Galvez and her companions could transfer her knock-down lumber to said warehouse. If a person has no qualm or scruple about helping another violate a lawful court process, how could his testimony that he did not see respondent during the removal and transfer of Antonietta Galvez' properties be treated differently. A person who admittedly violates the law is certainly an incredible witness. His flimsy explanation that he wanted to help Galvez in hiding her properties because she is 'his wife's friend' may well apply to his attempt to help respondent in this administrative case because they were neighbors in Caloocan City for *30* years.

"According to complainant, respondent helped and actively assisted Antonietta Galvez *vis-a-vis* the writ of preliminary attachment probably because he wanted his aunt Salvacion Enriquez, who was also a creditor of Galvez, to be paid ahead of her other creditors, including complainant.

"According to respondent, the complainant filed this administrative case against him probably because there was bad blood between his aunt Salvacion Enriquez and complainant.

"Both parties' speculations are neither here nor there, so to speak. The fact remains quite clear that soon before the implementation of the writ of preliminary attachment in Civil Case No. C-18354, respondent was seen not only by complainant but also by *2* other witnesses helping Antonietta Galvez put to naught the writ mentioned.

"Concededly, no evidence was adduced to show that respondent *physically* or *manually* assisted Antonietta Galvez in removing and transferring the properties. It was unnecessary to do so. After all, respondent, unlike Galvez' laborers and helpers, is a court sheriff whose mere mention to most defendants in civil cases sends chill and discomfort to them. Respondent's mere presence, therefore, is enough to give 'aid and comfort' to a beleaguered defendant, as in Civil Case No. C-18354.

"Add to this the clear, direct and positive testimony of complainant that she saw respondent at the place of Antonietta Galvez during the removal of the properties not only on June 29 but also on June 30, 1998, and the inevitable conclusion is that respondent was not there for a mere social call but for something as sinister as the administrative accusation against him establishes.

"The Complaint against respondent is for Serious or Grave Misconduct. In the law of public officers, and as ground for disciplinary action, this offense refers to such misconduct which shows the element of corruption,

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clear intent to violate the law or flagrant disregard of established rules (*Landrito vs. CSC,* 223 SCRA 564). Prescinding from the foregoing recitals, there is no room to doubt respondent's culpability. Withal, respondent has failed to heed the following injunction of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees:

"x x x x x x x x x

'(b) *Professionalism.* — Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as *dispensers or peddlers of undue patronage.*

'x x x x x x x x x' (Sec. 4; Italics supplied)'

"No evidence was presented to show that respondent received any material recompense for what he did in favor of Antonietta Galvez and against herein complainant. In fact, complainant testified that although the writ of preliminary attachment in Civil Case No. C-18354 was not implemented in Galvez' *personal properties,* it was nonetheless executed as far as Galvez' *2* parcels of land were concerned. It is for this reason that I am not disposed to recommend a very harsh comeuppance upon respondent.

"x x x x x x x x x

"PREMISES CONSIDERED, I respectfully recommend that for the offense charged which has been duly proven, respondent be meted the penalty of suspension from the service without pay for ONE MONTH, with a warning that repetition of the same or similar offense in the future shall mean a severe sanction."[1]

In the Court's resolution of 22 September 1999, the report of the Investigating Judge was sent to the Office of the Court Administrator for evaluation and recommendation. OCA expressed its deference to the findings of the Investigating Judge but added:

"Anent the charge that respondent tipped off defendant Galvez, the undersigned finds no evidence to support the same.

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[1] *Rollo*, pp. 41-44.

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"In sum, the evidence at hand convinces us that indeed respondent sheriff was present during the removal of the personal properties at the place of defendant Galvez, which act we believe, should not be countenanced as it has the tendency of undermining the integrity of the court to which respondent is a member. Being an officer of the Court, respondent sheriff should have refrained from actuations though innocent and in good faith may result in suspicion of impropriety and may consequently taint the good image of the judiciary. But we are not saying that respondents' presence at the scene while the properties are being removed was done in good faith since the evidence points otherwise. Respondents' act of not admitting to the court that he was present at the scene made us conclude that he was doing an improper act.

"However, with due regard to the evidence at hand and the fact that this is respondent's first offense, the undersigned believes that the penalty of suspension without pay for one month as recommended by the investigating judge is too harsh. Be that as it may, let this case be a warning to respondent and to all employees of the court to avoid activities that will adversely affect the dignity and image of the judiciary.

"WHEREFORE, the undersigned respectfully recommends that a FINE in the amount of Ten Thousand Pesos (₱10,000.00) be imposed against Sheriff Danilo P. Norberte with a WARNING that a repetition of the same or similar act in the future shall be dealt with more severely."

The Court, after its own evaluation of the records, and taking into account the report and recommendations submitted by both the Investigating Judge and the OCA, is convinced that respondent Sheriff indeed deserves to be administratively sanctioned.

The nature and responsibilities of officers and men of the judiciary, repeated every so often, are neither mere rhetorical words nor idealistic sentiments but working standards and attainable goals that should be matched with actual deeds.[2] Their conduct and behavior, from the presiding judge to the sheriffs and the lowliest personnel, should be characterized with the greatest of circumspection.[3] Everyone is expected to serve with the highest

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[2] *Marasigan vs. Buena*, 284 SCRA 1.

[3] *Gacho vs. Fuentes, Jr.*, 291 SCRA 474.

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degree of responsibility, integrity, loyalty and efficiency[4] and to conduct themselves with propriety and decorum at all times.[5]

Granting that respondent did not actually tip off Galvez on the issuance of a writ of preliminary attachment, his presence, however, when Galvez started to remove the property from her place of residence and business by no means could have been purely incidental. His *alibi* is unacceptable. Respondent has been positively identified not only by complainant but likewise by her witnesses who would have no reason to falsely implicate him. Respondent must have been aware that the questioned act of Galvez is not for anything else but to circumvent a valid court order. The Court agrees with the Office of the Court Administrator that respondent Sheriff's action – his very presence during the removal of the property of Galvez – was in itself censurable. It does not, however, share the view of the OCA that the penalty of suspension, respondent's infraction being a first offense, is too harsh.

WHEREFORE, respondent Danilo P. Norberte is hereby *SUSPENDED* from the service, without pay, for one (1) month with a warning that a repetition of the same or similar conduct in the future will be dealt with severely.

SO ORDERED.

Melo (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

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[4] *Ibid.*

[5] *Pecson vs. Sicat, Jr.*, 298 SCRA 122.