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As we said in *Fernando vs. Sandiganbayan*,[10] "faced with an information charging a manifestly non-existent crime, the duty of a trial court is to throw it out." Unfortunately, the Sandiganbayan did not learn the lesson taught in that case.

WHEREFORE, the Court hereby *SETS ASIDE* the resolution of the Sandiganbayan, dated September 8, 1997, in Criminal Case No. 23813, and *DIRECTS* the Sandiganbayan to dismiss the said case, with costs *de oficio*.

No costs in this instance.

SO ORDERED.

Davide, Jr., C. J., (Chairman), Melo, Kapunan, and *Ynares-Santiago, JJ.,* concur.

EN BANC

[A.M. No. P-99-1290. May 19, 1999]

FRANCISCO and SALVACION NICOL, *complainants, vs.* **JOSE BLANCA, Sheriff IV, RTC, Legazpi City,** *respondent.*

SYNOPSIS

Two (2) criminal informations for direct bribery were filed by the Office of the Ombudsman for Luzon against respondent Jose Blanca, Sheriff IV, Regional Trial Court, Legazpi City. The criminal informations accused respondent of taking advantage of his office as sheriff by demanding and receiving a total amount of three thousand pesos from complainants Francisco and Salvacion Nicol for and in consideration of discontinuing

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[10] 212 SCRA 680.

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the auction sale of the latter's motor vehicle. The Office of the Court Administrator (OCA) treated the criminal informations as an administrative matter against respondent. The OCA referred the case to Executive Judge Rafael P. Santelices for investigation report and recommendation. Judge Santelices, after conducting the investigation recommended that respondent be suspended for six (6) months without pay.

The Supreme Court disregarded the recommendation of the Investigating Judge and ordered the dismissal of respondent from the service for gross neglect of duty and serious misconduct. The Court found respondent's failure to give the complainants the excess of the bid price inexcusable. Considering the gravity of his offenses and his record showing a previous administrative conviction, the Court was not satisfied with the recommended penalty of suspension. According to the Court, respondent not only failed to comply with the strict and rigorous standards required of all public officers and employees but worse his act eroded the faith of the complainants in the judiciary. Hence, he must be punished with the maximum severity because all involved in the dispensation of justice must live up to the strictest standard of honesty and integrity in the public service.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SHERIFFS; RESPONDENT SHERIFF'S FAILURE TO GIVE THE COMPLAINANTS THE EXCESS OF THE BID PRICE INEXCUSABLE; PENALTY OF DISMISSAL FROM SERVICE WARRANTED CONSIDERING THE GRAVITY OF RESPONDENT'S OFFENSES AND HIS RECORD SHOWING PREVIOUS ADMINISTRATIVE CONVICTION. — We find as inexcusable respondent's failure to give the complainants the excess of the bid price. Respondent submitted a receipt issued by RFC showing that he turned over to RFC the proceeds of the auction sale in the amount of ₱108,750.75 (Exhibit 8). Respondent's action violates Section 14 of the Chattel Mortgage Law (Act No. 1508, as amended) which provides, in part, that "[t]he proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order,

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and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand." Accordingly, we find respondent guilty of grave misconduct and of gross negligence in the performance of his duties. Considering the gravity of his offenses and his record showing a previous administrative conviction, we are not satisfied with the recommended penalty of suspension. Respondent not only failed to comply with the strict and rigorous standards required of all public officers and employees but worse, his act eroded the faith of the complainants in the judiciary. Thus, he must be punished with maximum severity because all involved in the dispensation of justice must live up to the strictest standard of honesty and integrity in the public service.

DECISION

PER CURIAM:

On 9 September 1996, complainant Salvacion M. Nicol furnished the Office of the Court Administrator with copies of two (2) criminal informations for Direct Bribery[1] filed by the Office of the Deputy Ombudsman for Luzon against respondent Jose Blanca, Sheriff IV, Regional Trial Court, Legazpi City. The criminal informations accused respondent of taking advantage of his office as Sheriff by demanding and receiving a total amount of three thousand pesos (₱3,000.00) from complainants Francisco and Salvacion Nicol for and in consideration of discontinuing the auction sale of the latter's motor vehicle (a mini-bus).[2] She also called attention to Adm. Matter No. P-89-281 decided on 29 March 1990, where this Court found respondent guilty of abuse of authority and conduct unbecoming of a public officer.[3] The OCA treated the criminal informations as an

[1] Criminal Case Nos. 18858 and 18859 both entitled "*PEOLE OF THE PHILIPPINES, Plaintiff, v. JOSE BLANCA, Sheriff IV, Regional Trial Court, Legazpi City, Accused.*"

[2] *Rollo*, pp. 2-5.

[3] Entitled "*SERVILLANO MAMARIL, complainant, v. JUAN CONTACTO, JR. and JOSE BLANCO, Deputy Sheriffs of Albay, Legazpi City, Province of Albay, respondents.*", 183 SCRA 780 [1990].

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administrative matter against respondent and required him to comment thereon.

In his Comment[4] dated 17 January 1997, respondent averred that the amount of ₱3,000.00 is a loan he obtained from Salvacion Nicol prior to the time he acted upon the petition for extra-judicial foreclosure of the mini-bus. He added that complainants' charge is intended to harass him since he did not accede to their request to extend the date of the auction sale until such time that they have sufficient amount to pay their obligation to Radiowealth Finance Company, their creditor-mortgagee.

On 20 May 1997, the OCA received another letter[5] dated 19 April 1997 from Salvacion Nicol narrating more details of their complaint.

On recommendation of the OCA, the Court, on 21 July 1997, referred the complaint to Executive Judge Rafael P. Santelices for investigation, report and recommendation.

The evidence for the complainants show that Salvacion Nicol and her husband were operators of a mini-bus. On 13 March 1993, they obtained a loan of ₱204,000.00 from Radiowealth Finance Company (RFC) in Legazpi City.[6] In January 1994, the loan was restructured to ₱147,200.00 due to their failure to pay several monthly installments. As collateral to secure the restructured loan, they mortgaged their mini-bus.[7] Subsequently, and with the approval of the manager of RFC, she pledged the mini-bus for two (2) months to a certain Engineer Rito for ₱50,000.00 to buy spare parts. They again defaulted on their payments to RFC and their chattel was threatened to be foreclosed. In the third week of February 1995, Salvacion went to the RFC office to request the non-foreclosure of their mortgage. There, she met respondent Jose Blanca who was

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[4] *Rollo*, p. 20.

[5] *Rollo*, pp. 24-25.

[6] *Rollo*, pp. 42-43.

[7] *Rollo*, pp. 44-46.

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introduced by RFC's manager as its sheriff. On 27 February 1995, respondent visited her office and told her that he would desist from the foreclosure if she would give him ₱5,000.00. She did not have ₱5,000.00 and instead offered respondent a check for ₱1,000.00 (Exhibit A). Respondent accepted the check and suspended the foreclosure. On 7 March 1995, respondent once again went to her office and told her that he would issue the notice of auction sale if she would not pay him. Again, she gave him a check worth ₱2,000.00 (Exhibit B), and respondent did not proceed with the auction sale. After a month, however, she received a notice of auction sale (Exhibit C) signed by respondent and scheduled on 21 April 1995, at the Office of the Bureau of Lands and Management Sector, Rizal Street, Legazpi City. She proceeded to the situs of the sale on the scheduled date, but nobody was there and no sale took place. She inquired from the Clerk of Court regarding the auction sale, and was advised to ask respondent. Respondent informed her that Jose Bragais won in the bidding. She checked with RFC and got the information that it was RFC that won in the bidding. She went to the office of RFC to arrange for the redemption of the mini-bus and met respondent there. This time, respondent told her that it was Elbert Vibal who won in the bidding and not RFC. She then filed a letter-complaint with the Ombudsman (Exhibit H).[8]

Respondent denied complainant's allegations. He alleged that the two (2) checks he received from Salvacion Nicol on 27 February 1995 and 7 March 1995, were loans. He contended that on these dates, the petition for extra-judicial foreclosure has not yet been filed. He declared she is in the business of lending money with interest. He maintained that he conducted an auction sale. The RFC filed the petition for extra-judicial foreclosure (Exhibit 1) on 10 April 1995. He found the mini-bus in the possession of Engineer Rito. On 12 April 1995, he sent RFC and the complainants a notice of auction sale (Exhibit 3) scheduled on 21 April 1995, at 10 o'clock in the

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[8] TSN, Salvacion Nicol, December 5, 1997, pp. 3-29; January 9, 1998, pp. 3-11.

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morning, at the Office of the Land Management Sector. The auction sale was conducted on the scheduled date, time and place with him, Jorge Santurcas representing RFC, Jose Villanueva, Jun Colicta and Elbert Vibal in attendance. As proof of the conduct of the auction sale, he presented the minutes of auction sale dated 21 April 1995 (Exhibit 4), the written bids of the participants (Exhibit 5 and 6), the certificate of sale issued to Vibal as the winner in the bidding (Exhibit 7), a receipt representing the proceeds of the auction sale (Exhibit 8) and a receipt for the amount paid by Vibal (Exhibit 9). He opined that the charge was filed against him when he failed to accommodate Bragais who was recommended by Salvacion Nicol to participate in the bidding.[9]

On rebuttal, Salvacion Nicol alleged that she could not have given respondent any loan since she was financially distressed at that time. For failing to meet her various financial obligations, she was charged with estafa and violation of B.P. 22 (Exhibits I, J, K, L, M, and N). She maintained that the auction sale never took place on the scheduled date and place. She also claimed that respondent never gave her the excess of the bid price.[10]

On 18 March 1998, Judge Santelices submitted his Report and Recommendation. He recommended that respondent be suspended for six (6) months without pay, *viz*:

xxx x x x xxx

"The malfeasance, wrongdoing or misconduct being charged herein is the alleged act of respondent (sic) asking some amounts from the complainants in consideration of not proceeding with the foreclosure/ auction sale of the motor vehicle mortgaged by the complainants to the RFC.

"There is no doubting the fact that respondent received from the complainants the checks for ₱1,000.00 and ₱2,000.00 which were all encashed by the respondent.

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[9] TSN, Jose Blanca, February 4, 1998, pp. 4-49.

[10] TSN, Salvacion Nicol, February 19, 1998, pp. 15-32.

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"Except for the testimony of the respondent, there was no corroborating evidence presented to establish the fact that complainant Salvacion Nicol was indeed once upon a time engaged in the lending business. Salvacion Nicol, however, when she took the witness stand on rebuttal, never refuted this alleged lending business of her. (sic) But it was also not shown that these amounts were already paid by the respondent if they were in fact loans.

"It might be argued that respondent could not have asked that amount in consideration of not proceeding with the foreclosure because on February 27 and March 7, 1995, no petition for extra-judicial foreclosure was yet filed.

"It must be noted however that on that same month of February 1995, before the first check was issued to respondent on February 27, complainant Salvacion Nicol went to RFC to request the latter not to first foreclose the chattel as she has a buyer for it. Respondent was then around and was introduced to the complainant by the manager of RFC as the Sheriff of RFC. There is then reasonable ground to believe that even if no petition for extra-judicial foreclosure was yet filed, respondent already knew about the impending foreclosure of the vehicle.

"Already knowing the threatened foreclosure of the chattel mortgaged by the complainants to RFC, the act of respondent (sic) approaching the complainants to ask for loans, even if it is admitted only for the sake of argument, does not speak well of the actuation of the respondent. As a sheriff, he must know that sooner or later, he will have to deal with the complainants in the event foreclosure takes place. Or that having obtained loans from the complainants, he should have inhibited himself from acting or taking cognizance of the foreclosure proceedings. This actuation of the respondent was not above-board, not expected of a public servant."[11]

After a review of the evidence adduced by the parties, we reject respondent's assertion that the checks he received from Salvacion Nicol represented loans. His testimony that Salvacion was engaged in lending money is foggy to say the least. We quote his testimony:

xxx xxx xxx

[11] Report and Recommendation, pp. 9-11; *Rollo*, pp. 69-71.

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"Q. How did you know that she was engaged in lending money?

"A. Through the pin boys, and for the last two years from the drivers of buses.

"Q. Did you ask that question if Mrs. Nicol is engaged in lending money?

"A. I can see only.

"Q. What did you see?

"A. That she is lending money.

"Q. Where do you see her that (sic) she is lending money?

"A. Sometimes she brought goods.

"Q. When was that (sic) when you saw Mrs. Nicol peddling goods?

"A. I cannot remember.

"Q. Sometime in 1995, do you remember Mrs. Nicol peddling goods in this place?

"A. I cannot remember.

"Q In 1995, do you know that Mrs. Nicol was already engaged in lending money to other persons?

"A. Before 1995."[12]

xxx xxx xxx

As observed by the investigating judge, the charge that Salvacion was engaged in money lending with interest was not corroborated. Indeed, respondent even failed to testify on the terms and conditions of the alleged loans. Salvacion's rebuttal testimony totally demolished respondent's loan defense, *viz*:

xxx xxx xxx

"ATTY. ABITRIA:

"Q. Respondent testified that two checks issued by you to him was (sic) a mere loan, what can you say to this?

"A In the name of God, that is not a loan.

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[12] *Supra*, note 9, pp. 42-43.

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"Q. Why do you say that the two checks given by you to Blanca was (sic) not a loan to Blanca?

"A. I am the one who is indebt (sic) to the RFC.

"Q. Why do you say that you are indebted to the RFC?

"WITNESS:

(Answering)

"A. According to the evidence, I am the one who is in need of money.

"ATTY. MATA:

"We request your Honor that the witness be instructed to answer only those questions being asked. The answer is no longer responsive.

"ATTY. ABITRIA:

(Continuing)

"Q. Do you have other evidence to prove that you [are] incapacitated in extending loans?

"A. There are cases filed against me by persons whom I was indebted, wherein (sic) I took some tires for the maintenance of my vehicle that was foreclosed.

"Q. Do you have any evidence to show?

"A. Yes, sir. I have.

"ATTY. ABITRIA:

"Which for purposes of identification (sic), we request that Crim. Case No. 18105 entitled '*People versus Salvacion Nicol*' be marked in evidence as our Exhibit 'I';

"Crim. Case No. 18102 entitled '*People versus Salvacion Nicol* for Estafa be marked in evidence as our Exhibit 'J';

"Crim. Case No. 18103 entitled '*People versus Salvacion Nicol*' be marked in evidence as our Exhibit 'K';

"Crim. Case No. 18104 entitled '*People versus Salvacion Nicol*' for Violation of B.P. 22 be marked in evidence as our Exhibit 'L';

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"Crim. Case No. 18085 entitled '*People versus Salvacion Nicol*' for Violation of B.P. 22 be marked in evidence as our Exhibit 'M'; and

"Crim. Case No. 18086 entitled '*People versus Salvacion Nicol*' for Violation of B.P. 22 be marked in evidence as our Exhibit 'N'.

"COURT:

"Mark them.

xxx x x x x x x

"Q. And you are working (sic) at the Be Lovely Bowling Lanes?

"A. Yes, sir.

"Q. And you are acquainted (sic) with the employees of the Be Lovely, particularly the pin boys?

"A. Yes, because as employees thereat, they are working (sic) as pin boys.

"Q. And these pin boys, because they belong to the lower class of social life, sometimes they come (sic) to you for financial aid?

"A. . . .

"ATTY. ABITRIA:

"Incompetent your Honor. There is no testimony as regards to (sic) that matter.

"COURT:

"Never mind about (sic) that.

"COURT:

(To the witness)

"Q. Was there anytime when these pin boys come (sic) to you for financial help?

"WITNESS:

(Answering)

"A. No, your Honor, because our procedure whenever they needed money, our cashier has (sic) an intended cash money for their advance or '*Bale*'.

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"COURT:

"Continue.

"ATTY. MATA:

(Continuing)

"Q. But if the maximum amount was already advanced by them and then the cashier refused to give them, they come (sic) to you?

"A. They never go (sic) to me and ask (sic) for financial help.

"Q. During the time when you are (sic) with Mrs. Aquino and was engaged in the selling of these T-shirts of RTW...

"ATTY. ABITRIA:

"Objection your Honor. Not touched during the direct examination, your Honor.

"COURT:

"Witness may answer.

"WITNESS:

(Answering)

"A. No, sir.

"ATTY. MATA:

"That is all, your Honor."[13]

x x x x x x x x x

A careful examination of the aforestated exhibits reveals that Salvacion Nicol was bankrupt and could not lend money to anyone. Exhibits M and N[14] are criminal informations for violation of B.P. 22 allegedly committed by Salvacion against one Edwin Malit and involving a total amount of ₱31,650.00. Exhibits L and I[15] are criminal informations for violation of B.P. 22, while

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[13] *Supra*, note 10, pp. 15-18, 28-30.

[14] *Rollo*, pp. 124-127.

[15] *Rollo*, pp. 128-129 and 134-135.

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Exhibits J and K[16] are criminal informations for estafa, all committed by Salvacion against one Lilita Lim and involving a total amount of ₱10,600.00. These criminal informations were filed on 27 February 1995 and 2 March 1995. They show that Salvacion's indebtedness to Lim and Malit were still unpaid at the time she allegedly extended the loans to respondent on 27 February and 7 March 1995. It is, therefore, reasonable to believe Salvacion's avowal that she could not have given loans amounting to ₱3,000.00 to respondent since she could not even afford to pay her debts.

We are also unconvinced by respondent's contention that he could not have asked money from Salvacion Nicol in consideration of not proceeding with the foreclosure since the petition for extra-judicial foreclosure was not yet filed on 27 February and 7 March 1995. We agree with the investigating judge that respondent already knew about the coming foreclosure of the mini-bus when he demanded money from her. Respondent was present when Salvacion asked RFC not to proceed with the foreclosure of the chattel as she has a buyer for it. In all likelihood, respondent used the information to exact money from the complainants.

Finally, we find as inexcusable respondent's failure to give the complainants the excess of the bid price. Respondent submitted a receipt issued by RFC showing that he turned over to RFC the proceeds of the auction sale in the amount of ₱108,750.75 (Exhibit 8). Respondent's action violates Section 14 of the Chattel Mortgage Law (Act No. 1508, as amended) which provides, in part, that "[t]he proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand."

Accordingly, we find respondent guilty of grave misconduct and of gross negligence in the performance of his duties.

[16] *Rollo*, pp. 130-133.

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Considering the gravity of his offenses and his record showing a previous administrative conviction, we are not satisfied with the recommended penalty of suspension. Respondent not only failed to comply with the strict and rigorous standards required of all public officers and employees but worse, his act eroded the faith of the complainants in the judiciary. Thus, he must be punished with maximum severity because all involved in the dispensation of justice must live up to the strictest standard of honesty and integrity in the public service.[17]

IN VIEW WHEREOF, respondent Jose Blanca, Sheriff IV, RTC, Legazpi City, is DISMISSED from the service for gross neglect of duty and grave misconduct, with forfeiture of retirement benefits and accrued leave credits and disqualification for re-employment in government service including government owned and controlled corporations. This administrative penalty is imposed upon respondent without prejudice to the criminal cases filed against him. He is further REQUIRED to return the ₱3,000.00 exacted from the complainants.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Gonzaga-Reyes, and *Ynares-Santiago, JJ.,* concur.

Purisima, and *Buena, JJ.*, on leave.

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[17] *Severina Gacho v. Dioscoro A. Fuentes, Jr.*, A.M. No. P-98-1265, June 29, 1998; *Solidbank Corporation v. Branch Clerk of Court Roberto B. Capoon, Jr., RTC, Branch 62, Makati City and Clerk of Court Virginia Tabirao of the same RTC, Branch 62, Makati City,* A.M. No. P-98-1266, April 15, 1998; *Angeles v. Gernale*, Jr., 274 SCRA 10 [1997]; *Sy v. Yerro*, 253 SCRA 340 [1996]; *Lacuata v. Bautista*, 235 SCRA 290 [1995].