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SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., De la Fuente, and *Alampay, JJ.*, concur.

EN BANC

[A.M. No. 2864-P. May 16, 1985]

OFFICE OF THE COURT ADMINISTRATOR, *petitioner, vs.* **AMANDO S. SORIANO and MILA R. TIJAM,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; PUBLIC OFFICERS; MALVERSATION OF PUBLIC FUNDS; RESTITUTION NOT AN EXEMPTION FROM LIABILITY; CASE AT BAR.**— The fact that the shortage was fully restituted does not exempt the respondents from responsibility. Amando Soriano was the Officer-in-Charge and Accountable Officer of the defunct Court of First Instance, Iriga City, Branch XXXIV and as such, he was responsible for all the collections made by the court. Any loss or shortage resulting from non-remittance, unlawful deposit or misapplication thereof, whether he has a hand or not, shall be for his account. It is not an excuse the his designated collection clerk was the one who failed that remit the questioned amount on time because it is incumbent upon him to exercise the strictest supervision on the person he designated, otherwise, he would suffer the consequences of the acts of his designated employee through negligence. In short, by failing to exercise strict supervision on respondent Mila Tijam, he could be liable for malversation through negligence. On the other hand, respondent Mila Tijam, the collection clerk, is likewise liable for failure to account the monies that come to her hand. The circumstance that

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respondent Tijam was over-zealous in the restitution of the shortage is indicative of her having a direct hand on the same.

2. ID.; ID.; ID.; INDEMNIFICATION OF AMOUNT MALVERSED AFFFECTS ONLY THE CIVIL LIABILITY BUT DOES NOT EXTINGUISH CRIMINAL LIABILITY.— In the case at bar there was an existing shortage of ₱56,850.71 as of October 31, 1982 and the amount was fully restored only in February 1983 or three (3) months thereafter. The interregnum creates a presumption of misappropriation and the offer of Mrs. Tijam to Mr. Guevarra (of this Court) that the amount will be restored is merely a mitigating circumstance which cannot exempt them from liability." In *People vs. Miranda*, 2 SCRA 261, this Court, speaking through Justice J.B.L. Reyes, said that "it is too well-settled for any serious argument that whether in malversation of public funds or *estafa*, payment, indeminification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability or relieve him from the penalty prescribed by law for the offense committed, because both crimes are public offenses against the People that must be prosecuted and penalized by the Government on its own motion, though complete reparation should have been made of the damage suffered by the offended parties. Assuming therefore, that the accused Miranda had indeed fully reimbursed or returned the amounts he is supposed to have malversed, still, his criminal liability is not extinguished thereby and he must still account and be prosecuted for any malversation he has committed." It is clear that both respondents Amando Soriano and Mila Tijam are still administratively and criminally liable for which they may still be prosecuted for malversation.

D E C I S I O N

RELOVA, *J.*:

Respondent Amando Soriano, deputy clerk of court of the defunct Court of First Instance of Iriga City, now with Branch XXXIV of the Regional Trial Court of Iriga City, is an accountable officer charged with the collection of court fees.

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Respondent Mila Tijam, a clerk in said court, was designated by Soriano to act as collection clerk.

Upon audit by Mr. Leon J. Arrojo, an Auditor from the Commission on Audit, Region V, Legaspi City, for the period from January 11, 1976 to December 6, 1982, there was found a shortage of ₱56,850.71 from the collections made by these respondents.

Both respondents did not contest the finding of the auditor; in fact, respondent Tijam even assured that the amount would be restored by her within thirty (30) days or as soon as her real property is sold.

Respondent Soriano averred that the shortage is the sole responsibility of Tijam who has been designated as the collection clerk since December 1, 1971. However, it was the finding of the investigating RTC Executive Judge Gil P. Fernandez, Sr. to whom the case was referred for investigation, report and recommendation that "as shown in the remittances submitted to this Court, it was Mr. Amando Soriano who made the restitution:

A. ₱48,558.06 under Remittance Advice 83-2 (Exh. 4-Tijam) dated February 1, 1983 with PNB receipt No. 823737-U (Exh. 4-C-Tijam)

B. ₱7,817.00 under Official Receipt No. 8216752-E dated February 1, 1983 (Exh. 5-Tijam)

C. ₱56.40 under Official Receipt No. 1675348 dated February 25, 1983 (Exh. 6-Tijam)

D. ₱257.20 under Remittance Advice 83-2 (Exh. 7-Tijam) dated February 1, 1983, with PNB receipt No. 823739-U (Exh. 7-C-Tijam)

E. ₱162.00 under Remittance Advice 83-1 dated February 1, 1983 (Exh. 13-Tijam) with PNB Receipt No. 823738-U (Exh. 13-B-Tijam)." (p. 192, *Rollo*)

Judge Fernandez recommended that both respondents be absolved from any liability because of the restitution made.

We do not agree.

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The fact that the shortage was fully restituted does not exempt respondents from responsibility. Amando Soriano was the Officer-in-Charge and Accountable Officer of the defunct Court of First Instance, Iriga City, Branch XXXIV and as such, he was responsible for all the collections made by the court. Any loss or shortage resulting from non-remittance, unlawful deposit or misapplication thereof, whether he has a hand or not, shall be for his account. It is not an excuse that his designated collection clerk was the one who failed to remit the questioned amount on time because it is incumbent upon him to exercise the strictest supervision on the person he designated, otherwise, he would suffer the consequences of the acts of his designated employee through negligence. In short, by failing to exercise strict supervision on respondent Mila Tijam, he could be liable for malversation through negligence.

On the other hand, respondent Mila Tijam, the collection clerk, is likewise liable for failure to account the monies that come to her hand. The circumstance that respondent Tijam was over-zealous in the restitution of the shortage is indicative of her having a direct hand on the same.

As aptly observed by Acting Court Administrator Arturo B. Buena, the case of herein respondents is different from the Feliciano case in that in the case at bar there was an existing shortage of ₱56,850.71 as of October 31, 1982 and the amount was "fully restored only in February 1983 or three (3) months thereafter. The interregnum creates a presumption of misappropriation and the offer of Mrs. Tijam to Mr. Guevarra (of this Court) that the amount will be restored is merely a mitigating circumstance which cannot exempt them from liability (p. 214, *Rollo*)." In *People vs. Miranda*, 2 SCRA 261, this Court speaking through Justice J.B.L. Reyes, said that "it is too well-settled for any serious argument that whether in malversation of public funds or estafa, payment, indemnification, or reimbursement of, or compromise as to, the amounts or funds malversed or misappropriated, after the commission of the crime, affects only the civil liability of the offender but does not extinguish his criminal liability or relieve him from the penalty prescribed by law for the offense committed, because both crimes are

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public offenses against the People that must be prosecuted and penalized by the Government on its own motion, though complete reparation should have been made of the damage suffered by the offended parties (*U.S. vs. Mendezona*, 2 Phil. 353; *U.S. v. Ongtengco*, 4 Phil. 144; *U.S. v. Rodriguez*, 9 Phil. 153; *People v. Leachen*, 56 Phil. 737; *Javier v. People*, 70 Phil. 550; *Camus v. C.A. & People*, L-4560, Sept. 30, 1952; 48 O.G. No. 9, 3898; *Bacsarpa, et al. v. C.A.*, L-8147, May 18, 1956; *People v. Gervacio*, L-7705, Dec. 24,1957; *People v. Benitez*, L-15923, June 30, 1960). Assuming therefore, that the accused Miranda had indeed fully reimbursed or returned the amounts he is supposed to have malversed, still, his criminal liability is not extinguished thereby and he must still account and be prosecuted for any malversation he has committed." It is clear that both respondents Amando Soriano and Mila Tijam are still administratively and criminally liable for which they may still be prosecuted for malversation.

WHEREFORE, respondents Amando Soriano and Mila Tijam are hereby ordered separated from the service, with forfeiture of all retirement privileges and with prejudice to reappointment to any position in the government, whether national or local, including all government-owned and/or controlled corporations.

Let this case be referred to the Tanodbayan for appropriate action.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Abad Santos, Melencio-Herrera, Escolin, Gutierrez, Jr., De la Fuente, Cuevas, and *Alampay, JJ.*, concur.

Plana, J., I concur in the separation from the service of M. Tijam. I reserve my vote as to Amando Soriano.

Concepcion Jr., J., on leave.