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WHEREFORE, the Court finds respondent Sheriff IV Jovito Pamarang *GUILTY* of dereliction of duty and imposes on him a *FINE* of Two Thousand Pesos (₱2,000.00) with warning that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Bellosillo, Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[A.M. No. RTJ-00-1534. February 15, 2000]

SPOUSES GERONIMO and HELARIA GROSPE, *complainants, vs.* **JUDGE LAURO G. SANDOVAL and OIC CLERK OF COURT ALEXANDER GEORGE P. PACHECO, Regional Trial Court, Branch 37, Baloc, Sto. Domingo, Nueva Ecija,** *respondents.*

SYNOPSIS

Complainant Spouses were the accused in an estafa case pending before respondent judge against whom a bench warrant was issued against them for failure to appear on the hearing on December 2, 1997. The warrant was cancelled by the Executive Judge upon motion of complainants who manifested that they were present on February 3, 1998. However, minutes of the session on that date showed only the signature of complainant's counsel. Thus, complainants were ordered to explain in writing why they should not be cited for contempt for their misrepresention to the Executive Judge. Complainants filed their explanation maintaining their presence on the subject hearing date and denied having lied to the Executive Judge. Complainants were found guilty of indirect contempt and were ordered committed in jail for 15 days or in the alternative to the payment of ₱15,000.00 fine. Complainants did not appeal but moved for the reduction of the fine which respondent judge granted. They did not allege any grave abuse of discretion

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on the part of respondent judge in the motion. Complainants who were detained were released the following day as payment of the fine was made in the late afternoon of the previous day. Thus, this administrative charge against respondent judge whom they sought to be dismissed and against respondent Pacheco. The Office of the Court Administrator, to whom this case was referred to, found respondent judge guilty of grave abuse of authority and recommended the exoneration of respondent Pacheco whom complainant themselves failed to seek imposition of any penalty.

Evident from the records is the fact that complainants failed to appear on the subject date of hearing, hence, the warrant for their arrest was justified. Thus, the complaint against respondent judge was without basis.

It is the ministerial duty of the Clerk of Court to order the commitment of complainants. The failure of complainants to immediately pay the reduced fine cannot be blamed on respondent clerk of court.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; GRAVE ABUSE OF AUTHORITY AND GRAVE MISCONDUCT; COMPLAINT DISMISSED WHERE ASSAILED COMMITMENT ORDER WAS JUSTIFIED.—** It appears that complainants have accepted respondent judge's finding of indirect contempt by paying the fine imposed on them. They could have appealed the judgment, dated July 28, 1998, but they did not. They instead moved for a reduction of the ₱15,000.00 fine imposed on each of them and then paid the reduced amount. Indeed, respondent judge found that, contrary to complainants' claim, they were not present in court on February 3, 1998. This fact is important because, as already stated, Executive Judge Santos lifted the warrant of arrest issued against complainants on the premise that their subsequent appearance at the new date of hearing on February 3, 1998 rendered moot and academic the warrant of arrest issued against them for their failure to attend the December 2, 1997 hearing. Respondent judge found that, contrary to what complainants had told the Executive Judge, they really did not show up in court on February 3, 1998. As evident from the foregoing, complainants were given notice and heard in their defense as required by Rule 71, Sections 4 and 6 of the 1997 Rules of Civil Procedure. However, beyond insisting that they were

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present in court on February 3, 1998, they did nothing to prove their allegation. On the other hand, the minutes of the session of February 3, 1998 show that only complainants' counsel was present on that day. For the foregoing reasons, we find the complaint against respondent judge to be without basis.

2. **CONSTITUTIONAL LAW; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; OIC CLERK OF COURT; COMPLAINT DISMISSED WHERE ACTION COMPLAINED OF WAS MINISTERIAL DUTY OF RESPONDENT.**— As to respondent Pacheco, it is conceded that it was his ministerial duty to order the commitment of complainants. While the order of respondent judge, dated July 28, 1998, states that "Upon the payment of the said fine as reduced, the authorities concerned is hereby directed to release from its custody the persons of the said accused," we cannot fault respondent Pacheco for waiting until the next day, July 29, 1998, for respondent judge to issue the order of release. It is noteworthy that, in their complaint, complainants themselves do not seek the imposition of any penalty on respondent Pacheco.

DECISION

MENDOZA, *J.*:

This is a complaint[1] against respondents Judge Lauro G. Sandoval and OIC Clerk of Court Alexander George P. Pacheco of the Regional Trial Court, Branch 37, Baloc, Sto. Domingo, Nueva Ecija, charging them with grave abuse of authority and grave misconduct. The charge arose from the judgment of respondent judge finding complainants guilty of indirect contempt and ordering their imprisonment for 15 days. In the alternative, they were ordered to pay a fine of ₱15,000.00 each.

Complainants Geronimo and Helaria[2] Grospe are spouses. They are accused of estafa in Criminal Case No. SD-187-(95) before respondent judge's court. In the hearing of the case on December 2, 1997, they failed to appear in court and were ordered arrested.

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[1] *Rollo*, pp. 1-10.

[2] Also spelled "Hilaria" in certain portions of the records.

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The hearing was reset on February 3, 1998[3] when, according to the minutes, complainants again failed to appear.

However, in an order,[4] dated March 31, 1998, Executive Judge Cholita B. Santos cancelled the warrant of arrest issued against complainants, noting that although the latter failed to appear in court on December 2, 1997, they subsequently appeared at the hearing on February 3, 1998 while their cash bonds were effective.

On June 2, 1998, respondent judge ordered complainants to explain in writing, within five days from said date, why they should not be cited for contempt for misrepresenting to Executive Judge Santos that they were in court for the hearing set on February 3, 1998, when they were, in fact, absent.

On June 6, 1998, complainants filed their explanation.[5] They maintained that they were present at the hearing on February 3, 1998, but the hearing had to be postponed due to the absence of the public prosecutor. They denied that they lied to Executive Judge Santos.

At the hearing of Criminal Case No. SD-187-(95) on July 28, 1998, as complainants' counsel was absent, respondent judge appointed a counsel *de oficio* for them. Respondent judge then proceeded to promulgate his judgment[6] finding complainants guilty of indirect contempt and ordering their imprisonment for 15 days. In the alternative, they were ordered to pay a fine of ₱15,000.00 each. On the same day, respondent Pacheco ordered their commitment. On motion of complainants, the fine was reduced to P10,000.00 for each of them. Complainants were able to pay P20,000.00 late in the afternoon of July 28, 1998, but it was only on the following day that respondent judge ordered their release.

Complainants, for their part, claim that their counsel filed a motion to postpone the hearing on December 2, 1997 and that the court reset the hearing on February 3, 1998; that on the latter date,

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[3] Complaint, Annex B; *id.*, p. 13.

[4] *Id.*, Annex D; *id.*, p. 15.

[5] *Id.*, Annex E; *id.*, pp. 16-17.

[6] *Id.*, Annex F; *id.*, pp. 19-20.

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they went to the court, but the hearing again had to be postponed to March 31, 1998 due to the public prosecutor's absence; that upon learning that a warrant for their arrest had been issued on February 3, 1998, one of them, complainant Geronimo Grospe, returned to the court and filed a motion[7] to lift the order for their arrest; that during the scheduled hearing on March 31, 1998, both respondent judge and the pairing judge were on leave, prompting them (complainants) to see Executive Judge Cholita B. Santos about their motion to lift the order of arrest issued against them.

Complainants maintain that their arrest caused them "irreparable damage, public ridicule, and humiliation." They pray that respondent judge be dismissed from government service with forfeiture of benefits. Although complainants included respondent Pacheco in their complaint, they did not seek the imposition of any sanction against him.

In his comment[8] on the complaint, respondent judge points out that instead of seeking reconsideration of the judgment holding them in contempt, complainants merely asked for a reduction of their fine from ₱15,000.00 to ₱10,000.00 each,[9] which he said he immediately granted on the same day the judgment was made.[10] He likewise points out that, in their motion for reduction of the fine, complainants did not allege any grave abuse of discretion on his part.

Respondent Pacheco, on the other hand, claims that he merely performed a ministerial duty in ordering complainants' commitment to jail because it was already past 5:00 in the afternoon when they paid the fine to him, and that he told them that he could only issue them a provisional receipt.[11]

The Office of the Court Administrator, to which this case was referred, finds respondent judge to have committed grave abuse of

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[7] *Id.*, Annex C; *id.*, p. 14.

[8] *Rollo*, pp. 61-62.

[9] Comment of respondent judge, Annex A; *id.*, p. 63.

[10] *Id.*, Annex B; *id.*, p. 64.

[11] Comment of respondent OIC Clerk of Court; *id.*, p. 66.

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authority and recommends that he be fined ₱10,000.00. As to respondent Pacheco, the OCA recommends that he be exonerated.

The parties submitted this case for decision on the basis of the records.

It appears that complainants have accepted respondent judge's finding of indirect contempt by paying the fine imposed on them. They could have appealed the judgment, dated July 28, 1998, but they did not. They instead moved for a reduction of the ₱15,000.00 fine imposed on each of them and then paid the reduced amount.

Indeed, respondent judge found that, contrary to complainants' claim, they were not present in court on February 3, 1998. This fact is important because, as already stated, Executive Judge Santos lifted the warrant of arrest issued against complainants on the premise that their subsequent appearance at the new date of hearing on February 3, 1998 rendered moot and academic the warrant of arrest issued against them for their failure to attend the December 2, 1997 hearing. Respondent judge found that, contrary to what complainants had told the Executive Judge, they really did not show up in court on February 3, 1998. As respondent judge explained in his judgment of July 28, 1998:[12]

> In its order dictated in open Court on June 2, 1998, this Court gave the two accused, Geronimo Grospe and Hilaria Grospe five (5) days from said date within which to explain in writing why they should not be cited for contempt for their failure to appear on the February 3, 1998 scheduled hearing and for foisting a lie to enable them to secure the lifting of the warrant for their arrest by Executive Judge Cholita B. Santos.
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> x x x x x x x x x
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> In their explanation, dated June 6, 1998, both accused claimed they were present at the hearing on February 3, 1998 but "at Sto. Domingo town, they were notified that there is a bench warrant against them, so that immediately, a motion to lift the bench warrant was prepared by the accused Geronimo Grospe (who signed in his behalf and in behalf of his co-accused wife) and filed it on the same date, in the afternoon of the same day at 2:20 in the afternoon at the Office of the Clerk of Court . . . ."

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[12] Complaint, Annex F, pp. 1-2; *id,* pp. 18-19.

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As above-mentioned, the order issued by this Court on February 3, 1998 did not bear an indication that either accused, much less the two of them, were present on that hearing date. Even the minutes of the session for that date showed only the signature of their defense counsel and of the private complainant which, as such, confirmed the correctness of the order then issued.

If the two accused were really then in Court, their counsel could have very well manifested to this Court their presence and sight then moved for the lifting of the bench warrant issued against them way back on December 2, 1997.

It will be noted that accused Geronimo Grospe's motion to lift order of arrest carried with it an implicit assertion that even his wife, co-accused Hilaria Grospe, was present on February 3, 1998. In their explanation, they categorically declared that they were actually present on the February 3, 1998 hearing.

If it were so, why would accused Geronimo Grospe have it that he filed the motion to lift order of arrest and not only for his own behalf but also that of his wife? Why was not the motion instead filed by both of them?

It is unfortunate that both accused have maintained and stood pat on the falsehood they resorted to obtain the lifting by the Executive Judge of the order of arrest issued by this Court for, in the process, [they] imputed an act of injustice [on] this Court through failure to act on accused Geronimo Grospe's motion "despite their appearance" on February 3, 1998.

As evident from the foregoing, complainants were given notice and heard in their defense as required by Rule 71, §§4 and 6 of the 1997 Rules of Civil Procedure. However, beyond insisting that they were present in court on February 3, 1998, they did nothing to prove their allegation. On the other hand, the minutes of the session of February 3, 1998 show that only complainants' counsel was present on that day.

For the foregoing reasons, we find the complaint against respondent judge to be without basis.

As to respondent Pacheco, it is conceded that it was his ministerial duty to order the commitment of complainants. While

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the order of respondent judge, dated July 28, 1998,[13] states that "Upon the payment of the said fine as reduced, the authorities concerned is hereby directed to release from its custody the persons of the said accused," we cannot fault respondent Pacheco for waiting until the next day, July 29, 1998, for respondent judge to issue the order of release. It is noteworthy that, in their complaint, complainants themselves do not seek the imposition of any penalty on respondent Pacheco.

WHEREFORE, the complaint against respondent Judge Lauro G. Sandoval and OIC Clerk of Court Alexander George P. Pacheco, both of the Regional Trial Court, Branch 37, Baloc, Sto. Domingo, Nueva Ecija, is *DISMISSED* for lack of merit.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 103506. February 15, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GREGORIO TOLIBAS @ "GORIO", FERNANDO CORTES @ "KANAN", MICHAEL TOLIBAS @ "KAING," RODEL QUIJON,** *accused.*

RODEL QUIJON, *accused-appellant.*

SYNOPSIS

In an information filed before the Regional Trial Court of Cebu City, Fernando Cortez and Michael Tolibas were charged with the crime of murder. The information charged the appellants for feloniously boxing and mauling the victim first and then stabbed him with a bolo in the stomach, which injuries were the direct and

[13] *Supra* note 10.