

THIRD DIVISION

[A.M. No. MTJ-00-1309 (Formerly A.M. OCA I.P.I No. 98-503-MTJ), September 06, 2000]

**FREDESMINDA DAYAWON, COMPLAINANT, VS. JUDGE
MAXIMINO A. BADILLA, MTC, PILI, CAMARINES SUR,
RESPONDENT.**

D E C I S I O N

PURISIMA, J.:

In a verified letter-complaint, dated 09 January 1998, Ms. Fredesminda Dayawon charged Judge Maximino A. Badilla of the Municipal Trial Court of Pili, Camarines Sur, with "Gross Ignorance of the Law and Incompetence" relative to Criminal Case No. 5434, entitled "People of the Philippines vs. Delia Alamo," for estafa.

The records would disclose that complainant Fredesminda Dayawon delivered pieces of Schiaparelli fashion jewelry to accused Delia Alamo for sale on commission basis. It was understood that Alamo was to sell the jewelry and to remit the proceeds of the sale within one month or, if unsold during that period, to return the items to Dayawon. Due to the failure of Alamo to properly remit the proceeds of the sale or to return the unsold jewelry to Dayawon despite demand, the latter filed on 11 October 1995 a criminal complaint, docketed Criminal Case No. 5434, for estafa against Alamo.

Alamo filed a motion to dismiss the complaint, contending, among other things, that she had already paid the account on 17 November 1995 directly to the manager of Peak Marketing, said to be the main distributor of Schiaparelli products.

After trial, respondent judge rendered judgment, dated 06 November 1997, viz:

"WHEREFORE, premises considered, accused:

"1. Is acquitted of the crime charge of Estafa, as she did not wilfully, unlawfully and feloniously, misappropriate, misapply and convert to her own personal use and benefits the proceeds of the sales;

"2. Is liable, having shown bad faith and having admitted this particular fact that her non-remittance to Mrs. Dayawon was because of personal misunderstanding, and for reasons of her own, which she would not tell the court, inspite of the fact that she received demand letter on July 10, 1995 with registry return receipt, she deliberately paid to Peak Marketing on November 17, 1995, shows her bad faith and she should be civilly liable to pay P1,227.00 (Exh. '4') to Mrs. Fredesminda Dayawon."

Complainant averred in the administrative charge that respondent Judge exhibited gross ignorance of the law and/or inefficiency in acquitting accused Delia Alamo in

the criminal case and declaring her to only be liable civilly. Complainant argued that the decision was patently erroneous considering that Alamo admitted in open court that she had received the subject goods from complainant to be sold on commission basis with the obligation to remit the proceeds of the sale or to return the items, if unsold, but had failed to comply seasonably therewith despite demand. Complainant stressed that these admissions, together with the finding that the accused had acted in bad faith, were clearly sufficient to convict the accused of the crime of estafa. Complainant called attention to the fact that respondent judge had ordered the accused to file her comment on the motion for the reconsideration of the decision but which he later recalled, issuing thereupon a resolution denying instead the motion.

In his Comment, dated 29 May 1998, respondent Judge Maximino A. Badilla denied the charges hurled against him. He explained that the evidence submitted in the criminal case that had been adverted to was insufficient to convict the accused therein. He insisted that felonies punished by the Revised Penal Code, being in the nature of "*mala in se*" offenses, would require criminal intent in their commission. Respondent judge asseverated that there evidently was no criminal intent since the accused had made payments either to the complainant or directly to the company from where the latter had obtained the goods. Anent his denial of the motion for reconsideration filed by complainant, respondent judge said that he was not barred from recalling his order directing the accused to file a comment thereon particularly since he was "not persuaded to reverse itself as there (was) no shown error in the appreciation of facts."

The case was referred to the Office of the Court Administrator ("OCA") for evaluation, report and recommendation. On 31 January 2000, the OCA came out with its findings, pertinent portions of which read:

"II.

"Respondent advances the position that the crime of Estafa could not have been committed since the accused paid the alleged unliquidated amount. This argument is untenable. The records disclosed that the payment was made to PEAK Marketing and not to the complaining-witness from whom the goods were received on commission by the accused. A fortiori, said payment was belatedly made as the same was made only after the criminal case has already been filed in court. Moreover, accused has no contract with PEAK Marketing regarding such payment, thus payment could not be made to the latter.

"III.

"Respondent also averred that since what is being demanded is only the residual amount of the original obligation, there is no Estafa. Again this argument is untenable. Whether the sum of money or goods misappropriated or converted constitutes the whole obligation or only part thereof is of no moment. As long as the elements of estafa with abuse of confidence under subdivision 1, par. (b), Article 315 of the Revised Penal Code are present, estafa is committed. These elements are as follows: (1) that money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or