

HENRY V. TABACULDE, PETITIONER, VS. SPO2 NOEL P. SENO, PO3 JESUS MANULAT, PO2 JAIME N. AQUINO AND CI11 MICHAEL FEROLINO, RESPONDENTS.

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GONZALES-SISON, M., J.:[*]

Assailed in this Petition for Review filed by Henry V. Tabaculde under Rule 43 of the Rules of Court are the February 28, 2008 Decision[1] and the October 7, 2013 Order[2] of the Office of the Ombudsman in OMB-P-A-07-0062-A.

The facts are as follows:

Petitioner, along with P/SSupt. Florencio B. Buentipo, Jr., P/Insp. Myrna P. Areola and PO2 Achilles Anthony T. Diola, Jose Ruperto Remollo III and Bernardo D. Borromeo, was charged by respondents SPO2 Noel P. Seno, PO3 Jesus Manulat, PO2 Jaime N. Aquino and CI11 Michael Ferolino for violation of Republic Act (R.A.) No. 6539[3], R.A. 3019[4], and Article 171[5] of the Revised Penal Code (RPC). Respondents, all members of the the 7[th] Regional Criminal Investigation and Detection Unit (7RCIDU) and Regional Traffic Management Office 7 (RTMO7), charged petitioner based on their investigation finding petitioner to have participated in the unlawful transfer and registration of a carnapped Mitsubishi Pajero owned by Angelito Veluz in favor of Marcelo Cabahug to Marcelino Tagalog and eventually, to spouses Cedric and Carmencita Ebo, thus:

“At about 7:00 p.m., 13 October 2006, the joint operatives of RTMO7 and this unit seized, upon probable cause, a motor vehicle traveling along Escario Street, Cebu City, driven by Rouel Calderon. Said motor vehicle, possessed by Spouses Cedric and Carmencita Ebo, is in the list of 7RCIDU and RTMO7 Watchlist of carnapped vehicles. In its report dated October 13, 2006, the PNP Crime Laboratory Office concluded that its engine, chassis and secret serial number were tampered with.

“Records show that said motor vehicle originally registered and owned by Angelito Veluz of Dasmarinas City was stolen on 22 March 2004 while parked at #32 Hawaii Street, Camella Homes, Bacoor, Cavite. The incident was reported to the Bacoor Police Station and to the PNP Traffic Management Group on 01 April 2004. On 06 April 2004, the motor vehicle was fraudulently registered, as a newly acquired vehicle with tampered engine, chassis and secret serial numbers, under the name of Marcelo Cabahug by Bernardo Borromeo, Head of Office of the Land Transportation, Talisay City Extension Office, who assigned a plate number and released the same to be attached on it. On 03 May 2004, it was further deceitfully registered under the name of Marcelino Tagalog by Jose Ruperto Remollo, the Head of Office of the Cebu City Land Transportation District Office. On the following day, 04 May 2004, it was purchased by spouses Cedric and Carmencita Ebo of Laura Street, Kabajar, Guadalupe, Cebu City, who treated with utmost reliance upon the Macro Etching Certificate issued by Police Chief Inspector Myrna Areola (retired) of the PNP Crime Laboratory Office 7, as examined by PO2 Achilles Diola, that the clearance certificate issued by Police Senior Superintendent Florencio Buentipo, Jr. or RTMO7, as processed by PO3 Henry Tabaculde, that it was not in the list of wanted/stolen vehicles. On the same date, it was henceforth registered by said Jose Ruperto Remollo under the name of Spouses Ebo.

“Obviously, aforementioned government officials and employees by their acts connived with or permitted the

commission of said unlawful acts which Marcelo Cabahug, in conspiracy with Marcelino Tagalog, directly committed, in violation of Section 12, in relation to Section 13 and 14 of R.A. 6539.[6]

“Moreover, aforementioned government officials and employees failed to uphold public interest and did not discharge their duties with utmost dedication to duty, in violation of the norms and conduct which every public official shall observe in the discharge and execution of their official duties, as defined and penalized under applicable provisions of R.A. 6713 [Code of Conduct and Ethical Standards for Public Officials and Employees].[7]

“On 23 October 2006, the Prudential Guarantee and Assurance, Inc., an insurance firm based in Quezon City, undertook the custody and preservation, under claim of ownership, of the motor vehicle under equitable conditions.”[8]

Ruling of the Ombudsman

On February 28, 2008, the Ombudsman rendered judgment, the dispositive portion of which reads:

WHEREFORE, premises considered, finding substantial evidence to hold respondents P/SSUPT. FLORENCIO B. BUENTIPO, JR., PO3 HENRY TABACULDE, P/INSP. MYRNA P. AREOLA, and PO2 ACHILLES ANTHONY T. DIOLA GUILTY of GRAVE MISCONDUCT, it is respectfully recommended that they be meted the penalty of DISMISSAL from the government service, with forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification to re-enter government service, pursuant to the “Uniform Rules of Administrative Cases in the Civil Service” (MC 19, Series of 1999.)

FURTHER, finding no substantial evidence to administratively discipline respondents BERNARDO D. BORROMEO, Head of LTO Talisay City and JOSE R. REMOLLO III, Head of LTO Cebu City, it is respectfully recommended that the administrative case for GRAVE MISCONDUCT, DISHONESTY and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE against them be DISMISSED.

FINALLY, let a copy of this Decision be furnished the Chief, Philippine National Police (PNP) for proper IMPLEMENTATION.

SO ORDERED.[9]

The Ombudsman found out that the vehicle's engine number was tampered with, originally from “MAA8816” to “MAA8818”; the chassis number, from “PARV45RX23B001639” to “PARV45RX23B001689”; and the serial number, from “001639” to “001689”. The Ombudsman thus held petitioner liable for grave misconduct when he issued a PNP motor vehicle clearance certifying that the vehicle is not stolen.

Petitioner filed three successive motions for reconsideration dated November 22, 2010, July 24, 2012 and August 29, 2013, the last motion being accompanied by a motion to dismiss for violating his Constitutional right to a speedy disposition of his case.

By October 7, 2013, the Ombudsman promulgated its Order denying all separate motions for lack of merit. The fallo of the order states:

WHEREFORE, the separate Motions for Reconsideration filed by P/SSUPT. Florencio B. Buentipo, Jr., PO3 Henry J. Tabaculde, (Ret.) P/INSP. Myrna P. Areola and PO2 Achilles Anthony T. Diola of the Decision of 28 February 2008 are DENIED for lack of merit.

Accordingly, the Decision of 28 February 2008 finding respondents P/SSUPT. FLORENCIO B. BUENTIPO, JR., PO3 HENRY J. TABACULDE, (Ret.) P/INSP. MYRNA P. AREOLA and PO2 ACHILLES ANTHONY T. DIOLA GUILTY of GRAVE MISCONDUCT is AFFIRMED. No further pleadings shall be entertained.

The Philippine National Police, through the Directorate for Personnel and Records Management, is directed to

implement the Decision dated 28 February 2008 and to submit its compliance thereof, within ten (10) days from receipt of this Order.

In the event that any of the respondents who are meted the penalty of dismissal is already separated from the service, the implementing agency shall impose on the concerned respondents a FINE in an amount equivalent to six (6) months of their last salary, directly payable to this Office, and shall also be made to suffer the inherent accessory penalties of dismissal – FORFEITURE of whatever benefits still due him from the government, except accrued leave credits if he has earned any; and DISQUALIFICATION from employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.[10]

According to the Ombudsman, there is substantial evidence that petitioner is guilty of grave misconduct for issuing a falsified official document. The Ombudsman ruled that it was through the concerted effort or conspiracy of petitioner, Buentipo, Areola and Diola, Remollo and Borromeo in issuing or using spurious and falsified documents that paved the way for the transfer of the stolen vehicle from Cabahug, to Tagalog and finally, to the spouses Ebo.

Hence, this petition. Petitioner raises the following issues:

- WHETHER THE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN FINDING THAT PETITIONER COMMITTED GRAVE MISCONDUCT FOR MERELY RELYING ON THE MACRO ETCHING CERTIFICATE AND FOR NOT REQUIRING THE PRESENTATION OF OTHER DOCUMENTS;
- WHETHER THE OFFICE OF THE OMBUDSMAN GRAVELY ERRED IN FINDING THAT PETITIONER IS A PARTICIPANT IN THE CONCERTED ACTION WHICH PAVED THE WAY FOR THE TRANSFERS OF the OWNERSHIP OF THE SUBJECT VEHICLE;
- WHETHER THERE IS SUBSTANTIAL EVIDENCE TO WARRANT THE IMPOSITION OF THE GRAVEST PENALTY OF DISMISSAL OF PETITIONER FROM THE GOVERNMENT SERVICE; AND
- WHETHER THERE WAS INORDINATE DELAY IN THE DISPOSITION OF THE CASE AGAINST PETITIONER.[11]

Our Ruling

Petitioner contends that when he issued the motor vehicle clearance certificate and declared therein that the Mitsubishi Pajero is not in the list of wanted/stolen vehicles, he merely relied in good faith in the macro-etching certificate and assumed it to have been issued in the regular performance of official duty by the concerned officers of the PNP Crime Laboratory. Petitioner also questions the finding of conspiracy between all the respondents in the complaint, including Borromeo and Remollo, who were cleared by Graft Investigation and Prosecution Officer Katherine M. Legarda-Pajaron in the February 28, 2008 Decision.

The petition lacks MERIT.

At the outset, we stress that the case against herein petitioner is administrative not criminal in nature. Administrative proceedings are governed by the “substantial evidence rule,” meaning a finding of guilt in an administrative case may and would issue if supported by substantial evidence that the petitioner in this case has committed the acts stated in the complaint. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.[12] The standard of substantial evidence is satisfied when there is

reasonable ground to believe, based on the evidence submitted, that the respondent, petitioner herein, is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion.[13]

After carefully reviewing all the evidence obtaining in this case, we find no substantial reason to overturn the findings and conclusions of the Ombudsman finding petitioner guilty of grave misconduct.

While the October 7, 2013 Order held that Borromeo and Remollo conspired with the other respondents in facilitating the transfer of the stolen Mitsubishi Pajero to the spouses Ebo by using spurious and falsified official documents, the same order did not hold them liable for grave misconduct with the other respondents.

Conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy.[14] While reliance in good faith by a head of office on a subordinate upon whom the primary responsibility rests negates an imputation of conspiracy by gross inexcusable negligence[15], it bears stressing that the separate acts or omissions of all the respondents in the complaint contributed in the end result of defrauding the owner of the stolen vehicle. Without anyone of these acts or omissions, the end result would not have been achieved. Suffice it to say that since each of the respondents below contributed to attain the end goal, it can be concluded that their acts, taken collectively, satisfactorily prove the existence of conspiracy among them.

As aptly found out by the Ombudsman, the failure of Cabahug to explain how the Mitsubishi Pajero came into his possession, whether it was acquired brand new or second-hand, the discrepancy in the dates of the supporting documents for registration, and to present the original deed of sale and certificate of registration should have alarmed and prompted herein petitioner, Buentipo, Areola, Diola, Remollo and Borromeo to conclude that Cabahug's purported ownership of the vehicle being sought to be transferred and registered is a sham. More significantly, the Mitsubishi Pajero is in plain fact the carnapped vehicle of Veluz as reported in the Bacoor Police Station and the PNP Traffic Management Group on April 1, 2004.

Notably, the Motor Vehicle Clearance Certificate issued by petitioner merely stated that "the motor vehicle described below is not in the list of wanted/stolen vehicles as of 4 May 2004"[16]. Verily, Veluz's vehicle could not have been in the list of carnapped vehicles because its engine, chassis and serial numbers at the time had already been tampered with so as to reflect that of Tagalog's vehicle, which had no record of having been stolen. Hence, when the respondents in the complaint issued and signed the clearances and certificates, the application for transfer and registration by Cabahug and subsequently, Tagalog showed that it either lacked the required supporting documents or their authenticity or genuineness were dubious. It would seem, therefore, that the reliance of petitioner, Buentipo, Areola and Diola on the documents submitted by Cabahug and Tagalog, and the subsequent reliance of Remollo and Borromeo on the certificates and clearances issued by their co-respondents in the complaint are entirely misplaced. The duties and responsibilities that the occupancy of a public office carry and the degree of relationship of interdependence of the different offices involved here determine the existence of conspiracy where, as in this case, gross inexcusable negligence was the mode of commission of the offence.

It must be stressed that misconduct in office has a definite and well understood legal meaning. The Court defines misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[17] To constitute an administrative offense, misconduct should relate to or be

connected with the performance of the official functions and duties of a public officer[18] amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.[19]

Petitioner's acts met the criteria in *Ganzon v. Arlos*[20]. To begin with, he was not acting in a private capacity when he issued the motor vehicle clearance certificate in favor of Tagalog, it being clear that its issuance is surely a matter that concerned his performance of duty. Moreover, the act of issuing said certificate is intimately connected to the office of the petitioner. An act is intimately connected to the office of the offender if it is committed as the consequence of the performance of the office by him, or if it cannot exist without the office even if public office is not an element of the crime in the abstract. Indeed, an act that is the consequence of the discharge of the employee's official functions or the performance of his duties, or that is relevant to his office or to the discharge of his official functions is justly considered as service-related.[21]

Clearly, there is substantial evidence to hold petitioner administratively liable for violating Section 13, in relation to Section 12, of R.A. 6539, which punishes any government official or employee who is guilty of gross negligence of duty or connives with or permits the tampering with the original or registered serial number of motor vehicle engines, engine blocks and chassis with dismissal from the service with prejudice to his reinstatement and with disqualification from voting or being voted for in any election and from appointment to any public office. This is not to say, though, that petitioner is already criminally liable because the quantum of evidence in criminal proceedings requires a higher degree, i.e., proof beyond reasonable doubt.

Having determined that petitioner violated a rule of law and that he is guilty of gross negligence in the performance of duty, we now determine whether the misconduct is grave. We hold that petitioner committed grave misconduct.

As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. An act need not be tantamount to a crime for it to be considered as grave misconduct as in fact, crimes involving moral turpitude are treated as a separate ground for dismissal under the Administrative Code.[22]

In this case, petitioner wrongfully used his office by issuing a motor vehicle clearance certificate that the Mitsubishi Pajero is not a stolen vehicle as of May 4, 2004 when in fact, it was already reported as a carnapped vehicle as early as April 1, 2004. By giving the clearance, ownership of the Mitsubishi Pajero was unlawfully and surreptitiously transferred from Veluz, the true owner, to Cabahug, to Tagalog and eventually, to the spouses Ebo. In other words, the acts or omissions of herein petitioner and his co-respondents in the complaint opened an opportunity for Cabahug and Tagalog to transfer and register the carnapped vehicle in their name that resulted in a loss to Veluz. Their acts, taken together, clearly indicate a common understanding and concurrence of sentiments respecting the commission of the offense. Moreover, their concerted acts show that there was a clear intention to violate R.A. 6539. Indeed, petitioner and his companions acted in a capricious, whimsical and arbitrary manner with conscious and deliberate intent to do an injustice to others. They should have exercised all the necessary prudence to ensure that the proper procedure was complied with in the transfer and registration of the Mitsubishi Pajero.

WHEREFORE, premises considered, the instant petition is **DISMISSED**. Accordingly, the February 28, 2008 Decision and the October 7, 2013 Order of the Ombudsman, finding Henry V. Tabaculde guilty of Grave Misconduct is hereby **AFFIRMED**.

SO ORDERED.

Ybañez, E.A.,** and Sorongon, E.D., JJ., concur.

[*] Vice J. Carandang per Office Order No. 485-14-RSF dated November 24, 2014.

[**] Vice J. Gonzales-Sison per Office Order No. 485-14-RSF dated November 24, 2014.

[1] Rollo, pp. 23-31.

[2] Id. at 32-40.

[3] Anti-Carnapping Act of 1972.

[4] Anti-Graft and Corrupt Practices Act.

[5] Article 171 of the RPC punishes falsification by public officer, employee or notary who, taking advantage of his official position, shall falsify a document by any of the means provided in the said article.

[6] Section 12. Defacing or tampering with serial numbers of motor vehicle engines, engine blocks and chassis. It shall be unlawful for any person to deface or otherwise tamper with the original or registered serial number of motor vehicle engines, engine blocks and chassis.

Section 13. Penal Provisions. X x x x

Any government official or employee who directly commits the unlawful acts defined in this Act or is guilty of gross negligence of duty or connives with or permits the commission of any of the said unlawful act shall, in addition to the penalty prescribed in the preceding paragraph, be dismissed from the service with prejudice to his reinstatement and with disqualification from voting or being voted for in any election and from appointment to any public office. [Emphasis ours.]

[7] Section 4. Norms of Conduct of Public Officials and Employees. - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties: (a) Commitment to public interest. - Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues. (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 [Emphasis ours.]

[8] Rollo, pp. 24-25.

[9] Id. at 29-30.

[10] Id. at 38-39.

[11] Id. at 7.

[12] See Gupilan-Aguilar v. Office of the Ombudsman, G.R. No. 197307, February 26, 2014.

[13] See Miro v. Mendoza Vda. de Erederos, G.R. Nos. 172532, 172544-45, November 20, 2013.

[14] Herrera v. Sandiganbayan, G.R. Nos. 119660-61, February 13, 2009.

[15] See *Jaca v. People*, G.R. No. 166967, January 28, 2013.

[16] *Rollo*, p. 49.

[17] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011.

[18] *Ganzon v. Arlos*, G.R. No. 174321, October 22, 2013.

[19] *Villanueva v. Court of Appeals*, G.R. No. 167726, July 20, 2006.

[20] See note 18 citing *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007.

[21] *Id.* citing *Alarilla v. Sandiganbayan*, G.R. No. 136806, August 22, 2000.

[22] *Office of the Court Administrator v. Lopez*, *supra* note 17.

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