

ROCKY F. CAPONONG, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, RESPONDENT.

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MACALINO, J:

This is a Petition for Review[1] under Rule 43 of the Rules of Court assailing the Decision[2] dated February 5, 2013 of respondent office of the Ombudsman (respondent), which found petitioner Rocky F. Caponong (petitioner) guilty of grave misconduct and ordered his dismissal from service with forfeiture of retirement benefits and perpetual disqualification from holding public office; and its Order[3] dated June 14, 2013, which denied petitioner's Motion for Reconsideration in OMB-C-A-12-0227-E. The dispositive portion of the assailed Decision reads:

“WHEREFORE, respondent ROCKY F. CAPONONG is found guilty of GRAVE MISCONDUCT and meted the penalty of DISMISSAL from the service with accessory penalty of forfeiture of retirement benefits and perpetual disqualification from holding public office.

SO ORDERED.”[4]

FACTS

Petitioner was an Assistant City Prosecutor in Makati City. On the other hand, private complainant Herminio L. Sablawan, Jr. (private complainant) filed a case for reckless imprudence which was raffled to petitioner.[5]

In his Sinumpaang Salaysay,[6] private complainant stated that on April 10, 2012, he filed a case against a driver of JAC Liner; that on May 17, 2012, at about 1:00 p.m., he went to the office of petitioner for the hearing of said case; that during the hearing, petitioner asked him about the job estimate of his vehicle; that petitioner got angry at him when he was unable to produce said estimate; that petitioner told him that for the speedy resolution of his case, he should give petitioner ten thousand pesos (PhP10,000.00); that he told petitioner that he did not have such amount of money but petitioner insisted; and that he informed petitioner that he only had five hundred pesos (PhP500.00), which petitioner accepted.

Private complainant likewise alleged that petitioner told him to prepare the “balance” for the resolution his case. Later, petitioner tried calling him through phone, asking him if he already produced the subject money. He replied that he did not have the money yet. Petitioner got angry at him.

Furthermore, private complainant claimed that on May 22, 2012, he went to the office of Erwin Tulfo (Tulfo) of TV5 and sought assistance. He spoke with a member of the staff of Tulfo, who, told him to send a text message to petitioner informing him that he already prepared the money being asked by petitioner. On May 23, 2012, along with the staff of TV5, he went to the office of petitioner. Subsequently, petitioner and private complainant went inside the former's office. There, private complainant gave petitioner one thousand pesos (PhP1,000.00). Allegedly, such meeting was caught on camera by the staff of TV5.

In his Karagdagang Sinumpaang Salayasay,[7] private complainant alleged that he received from the police marked money amounting to five thousand pesos (PhP5,000.00). The marked money was intended for the

entrapment operation against petitioner. Also, he declared that on May 24, 2012, at about 1:25 p.m., he handed to petitioner the marked money. Thereafter, he signaled the police who accompanied him that he already gave petitioner the marked money. Consequently, the police arrested petitioner.

In addition, Jerico Francis Javier (Javier), segment producer of the Aksyon Center of TV5 executed a Sinumpaang Salaysay[8] stating that private complainant sought assistance from their program because petitioner was asking money from him (private complainant). Upon coordination with the Regional Intelligence Unit of the Philippine National Police Intelligence Group (PNP), a surveillance was undertaken against petitioner. Specifically, a surveillance camera was attached to private complainant and through it, petitioner's act of asking money from private complainant was recorded as well as the latter's receipt of one thousand pesos (PhP1,000.00) from the former. Javier asserted that on May 24, 2012, his team went to the PNP for the entrapment of petitioner.

Moreover, PO1 Marvin M. Ancanan (PO1 Ancanan) and PO1 Marlon P. Darpiquez (PO1 Darpiquez) executed a Joint Affidavit of Arrest.[9] They alleged that on May 24, 2012, they were part of the team who entrapped petitioner. In particular, they stated that on May 24, 2012, at around 1:25 p.m., private complainant gave the marked money to petitioner. Afterwards, he made the pre-arranged signal to the team of PO1 Ancanan and PO1 Darpiquez, which immediately entered the office of petitioner at the Makati City Prosecutor's Office on the 16th floor of the Makati City Hall. Upon entry, the team saw petitioner in possession of the marked money.

Finally, private complainant, submitted, among others, a copy of the initial Laboratory Report[10] indicating that petitioner was found positive of "bright orange ultraviolet fluorescent powder on both palmar and both dorsal portion of his hands." Said powder was the same with that of the marked money prepared by the PNP.

For his part, petitioner averred in his Partial and Supplemental Counter-Affidavits[11] that on or about May 17, 2012, at around 1:30 p.m., private complainant appeared in his office for the preliminary investigation of his complaint for reckless imprudence resulting to damage to property and physical injuries against one Roberto R. Ibarreta (Ibarreta). During the investigation, he asked private complainant if he had a repair estimate of his damaged taxi. Private complainant replied that he had no repair estimate. Petitioner told him to submit it in order to support his complaint. Purportedly, private complainant told petitioner that he needed money for the medication of his child, who was inflicted of a kidney ailment; and his taxi operator was not helping him secure said estimate. Out of pity, he told private complainant that he could accompany him to repair shops once private complainant had budget for the estimate or the actual repair of his taxi.

Petitioner also averred that the sum of five thousand pesos (PhP5,000.00) to ten thousand pesos (PhP10,000.00) he told private complainant pertained to his estimate of the expenses that private complainant would incur for the repair of his taxi. Such expenses would be paid to the repair shop, not to him. Additionally, petitioner explained that once said repair estimate was submitted, he could immediately file the resolution of private complainant's case.

Petitioner denied that he received or accepted five hundred pesos (PhP500.00) from private complainant. He alleged that private complainant placed five hundred pesos (PhP500.00) on his table and hurriedly left. Further, he denied that he received one thousand pesos (PhP1,000.00) from private complainant on May 23, 2012. He maintained that said one thousand pesos (PhP1,000.00) was intended for the repair estimate of private complainant's taxi. Because private complainant allegedly told petitioner that he could not secure a repair estimate, private complainant placed one thousand pesos (PhP1,000.00) on petitioner's table and left.

Lastly, petitioner stated that on May 24, 2012, at around 1:30 p.m., he was in his office with private complainant, who told him that he had five thousand pesos (PhP5,000.00) for the repair estimate of his vehicle. Private complainant placed said amount on the table. Petitioner claimed that he did not receive, accept or even touch it.

Thereafter, several men entered his office and arrested him. Petitioner narrated that he was boarded to a van and while in transit, one of the persons arresting him made him clasp on several five hundred peso (PhP500.00) bills. He also averred that he was brought to Camp Crame and was placed in its ultraviolet fluorescent powder examination room. There, he was forcibly made to hold and count several five hundred peso (PhP500.00) bills.

On February 5, 2013, respondent rendered a Decision finding petitioner guilty of grave misconduct and meted the penalty of dismissal from service with accessory penalty of forfeiture of retirement benefits and perpetual disqualification from holding public office. On June 14, 2013, respondent denied petitioner's Motion for Reconsideration.

Ground

Hence, petitioner filed the Petition for Review at bench raising the sole ground as follows:

“The Honorable Ombudsman gravely erred in finding that there is substantial evidence that established [that] Petitioner has solicited and accepted money from Respondent to expedite the disposition of his complaint for Reckless Imprudence constituting Grave Misconduct.”[12]

Petitioner argues that the sum of five thousand pesos (PhP5,000.00) to ten thousand pesos (PhP10,000.00) he mentioned to private complainant was the amount that the latter needed for repair estimate of the latter's vehicle. This amount is not intended to be paid to petitioner. He maintains that he did not receive the money that private complainant left on his (petitioner's) table. He, however, contends that he did not return it because he thought that it would be part of the cost of the repair estimate of private complainant's vehicle.

In addition, petitioner states that the arresting officers did not catch him in possession of the marked money when they entered his office on May 24, 2012. He alleges that he was forcibly made to hold several five hundred peso (PhP500.00) bills while being transported to the office of the PNP. He further avers that the arresting officers had motive to frame him up. Allegedly, since the arresting officers did not catch him in possession of the marked money, they needed petitioner to hold the marked money and transfer fluorescent powder on his hands to validate their charge against him.

On the other hand, respondent alleges that the presumption of regularity in the performance of duty of the arresting officers prevails. Particularly, it questions petitioner's supposed proposal to accompany a complainant to a repair shop to secure a repair estimate and the involvement of money just to secure such estimate. It argues that petitioner's claim that he was forcibly made to touch marked money is untenable. It declares that it is perplexing how petitioner, a prosecutor, can be forced to do an act against his will.

Ruling of this Court

In an administrative proceeding, the quantum of proof required for a finding of guilt is only substantial evidence or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[13] Thus, for an administrative charge to prosper, it suffices that there is adequate evidence to support the acts constitutive of the offense complaint of.

In turn, misconduct is defined as “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.” It is grave when it involves additional elements of corruption, willfull intent to violate the law or to disregard established rules. Specifically, corruption, as an element of grave misconduct, involves the act of an official or a fiduciary person who unlawfully and wrongfully uses his office or position to procure some benefit for himself or for another, contrary to duty and to the rights of others.[14]

Here, in two previous and separate occasions, petitioner asked and accepted from private complainant the amount of five hundred pesos (PhP500.00) and one thousand pesos (PhP1,000.00) respectively. Petitioner's claim that said amount of money is for the procurement of the repair estimate for the vehicle of private complainant is unfounded. If petitioner knew that such money was for the subject repair estimate, then he should have returned it to private complainant.

Moreover, private complainant, a complete stranger to petitioner, sought assistance from a television action program (TV5) and the police for petitioner's unlawful solicitation. The PNP planned an entrapment operation against petitioner, which transpired on May 24, 2012 in his office at the Makati City Hall. It also prepared marked money to be given to petitioner by private complainant. During the entrapment, petitioner accepted the marked money from private complainant. After his arrest, petitioner was brought to the office of the PNP and his hands were found positive of ultraviolet fluorescent powder, the same substance present on the marked money.

Based on the foregoing, there is substantial evidence to support the charge of grave misconduct against petitioner. Indeed, the surrounding circumstances leading to the administrative charge against petitioner – particularly, his receipt of sum of money on two occasions before the entrapment; his possession of the marked money during the entrapment; and the result of the laboratory test for the ultraviolet fluorescent powder in his hands – are more than sufficient proof that he illegally solicited money from private complainant. Petitioner's acts constitute grave misconduct because they are indicative of corrupt conduct with an intention to violate the law or disregard well known legal rules.[15]

Additionally, between the allegations of petitioner and those of private complainant, the latter is to be given more weight. Not only did private complainant clearly narrated his case against petitioner, the presumption of regular performance of duties applies in favor of the arresting officers. These officers corroborated the testimony of private complainant. There is also no improper motive shown for them to falsely accuse petitioner. In the absence of such ill motive on the part of the arresting officers, the presumption of regularity in the performance of official duty by the arresting officers and the finding of credibility of private complainant and his witnesses must prevail over petitioner's self-serving claim of having been “framed-up.”[16]

Finally, we sustain the penalty imposed by respondent against petitioner. Pursuant to Section 46(A3) of Rule 10 of the Revised Rules on Administrative Cases in Civil Service in relation to Sections 51 and 52 thereof, the penalty of dismissal from service with accessory penalty of forfeiture of retirement benefits and perpetual disqualification from holding public office must be imposed against a person found guilty of grave misconduct.

WHEREFORE, premises considered, the Decision dated February 5, 2013 and the Order dated June 14, 2013 of the office of the Ombudsman in OMB-C-A-12-0227-E are AFFIRMED.

SO ORDERED.

Castillo, M., J. Chairperson and Galapate-Laguilles, Z. T., JJ., concur.

[1] Rollo, pp. 8-18.

[2] Rollo, pp. 21-29.

[3] Rollo, pp. 40-43.

[4] Rollo, p. 29.

[5] Rollo, p. 10.

[6] Rollo, pp. 68-70.

[7] Rollo, p. 71.

[8] Rollo, p. 72.

[9] Rollo, p. 75.

[10] Rollo, p. 91.

[11] Rollo, pp. 76-84.

[12] Rollo, p. 12.

[13] Office of the Ombudsman vs. Mapoy, G.R. No. 197299, February 13, 2013.

[14] Dela Cruz vs. Malunao, A.M. No. P-11-3019, March 20, 2012.

[15] Miro vs. Dosono, G.R. 170697, April 30, 2010.

[16] Barcelona vs. Lim, G.R. No. 189171, June 3, 2014.

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