DOMINIC SARCON CERRO, PETITIONER, VS. SEOK MI LEE AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.

Ponente: LLOREN, J.

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LLOREN, J.:

This is a petition for review of the Decision[1] dated April 24, 2006 of the Office of the Ombudsman (OMB) in Administrative Case No. OMB-M-A-05-439-L for Grave Misconduct, Abuse of Authority and Violation of Section 4 (c) of R.A. No. 6713 filed by Seok Mi Lee (respondent) against Boye P. Mama (Mama), U.R. Bahinting (Bahinting) and Dominic Sarcon Cerro (petitioner).

The facts as narrated by the OMB are as follows:

> Sometime on May 14, 2004, respondents served Search Warrant No. 1044 upon Seoul Motors Trading Corporation wherein complainant Seok Mi Lee (Lee, for brevity) is the General Manager and Chairman. Respondents seized thirty-seven (37) motor vehicles but returned the two (2). A Receipt of Items Seized was issued but it did not show the engine and chassis numbers of the vehicles.
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> In an Order dated August 23, 2005, Branch 11, Regional Trial Court, Davao City, quashed Search Warrant No. 1044 and directed for the return of complainant's vehicles. The vehicles were finally located inside the compound of Felix Sanchez Jr. at F.S. Steel Corporation in Communal, Buhangin District, Davao City. However, complainant only found twenty five (25) of the thirty-five (35) vehicles originally seized. Worse, all were in disarray and cannibalized.
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> Complainant also alleged that respondents' jurisdiction is in General Santos City. Thus, respondents exceeded their authority when they applied for the search warrant in Davao City and served it upon Seoul Motors Corporation which is also located in the same place.
>
> Respondent S. Cerro countered that his co-respondent, U R. Bahinting, merely requested for his assistance relative to the service of Search Warrant No. 1044. Cerro admitted that his only participation was to fill-in the Receipt of Items Seized. Since he was unable to locate the engine and chassis numbers of the vehicles, Bahinting informed him that said details will be taken during the preparation of the inventory and return of the warrant. Cerro denied having any knowledge about the rest of complainant's averments.
>
> For their part, respondents Bahinting and Mama averred that Lee was present when they served the Search Warrant No. 1044. The search and seizure was lawfully made in the presence of witnesses. However, Lee was not anymore around when the vehicles were towed. All of the vehicles have no spare parts and some have incomplete accessories. Respondents averred that the court had knowledge where the seized vehicles were taken and it was only when they made their first return that they were required to include the engine and chassis numbers. They also maintained that Search Warrant No. 1044 was valid. However, respondents denied having any knowledge or information about the allegation that only 25 cannibalized vehicles were recovered from Felix Sanchez Jr. On this matter, respondents passed the buck to Sanchez.[2]

On November 24, 2005, private respondent filed her Affidavit Complaint[3] before the OMB. Finding that Mama, Bahinting and petitioner had custody of the seized vehicles, the OMB held them accountable for the losses

thereto. It disposed of the case as follows:

WHEREFORE, PREMISES CONSIDERED, this Office finds substantial evidence to hold respondents BOYE PEDRO MAMA, U RAÑOLAS BAHINTING and DOMINIC SARCON CERRO liable for Grave Misconduct, Abuse of Authority and violation of Sec. 4(c) of R.A. 6713, and is hereby meted the penalty of DISMISSAL from government service with forfeiture of all retirement benefits and privileges pursuant to Section 25 of R.A. 6770, otherwise known as "The Ombudsman Act of 1989".[4]

Mama, Bahinting and petitioner filed their respective motions for reconsideration. In his Motion for Reconsideration,[5] petitioner claimed that the OMB erred in finding that he, along with Mama and Bahinting, had custody of the seized vehicles. He reiterated that he was just called upon by Bahinting to assist the latter and Mama in implementing the search warrant and that his participation was limited only to the listing of the number and types of vehicles seized.

In the Order[6] dated May 16, 2012, the OMB denied the motions for reconsideration.

Petitioner now comes before this Court raising the following issues:

I

> WHETHER OR NOT THE HONORABLE OFFICE OF THE OMBUDSMAN APPRECIATED THE FACTUAL BACKGROUND OF THE CASE WHICH DISTINCTLY SHOWED THAT PETITIONER IS MERELY A HANDYMAN-RECORDER AND EXERCISES NO DISCRETION WHATSOEVER IN THE OPERATION CONDUCTED BY HIS SUPERIORS.

II

> WHETHER OR NOT THE HONORABLE OFFICE OF THE OMBUDSMAN APPRECIATED THE FACTS THAT THE PETITIONER IS NOT LIABLE FOR THE ACTS COMMITTED BY HIS SUPERIORS AND THAT HE IS NOT RESPONSIBLE IN ANY WAY IN THE CONDUCT OF THE SEARCH AND SEIZURE OPERATION AND SUBSEQUENT DISPOSITION OF THE ITEMS SEIZED.[7]

The issues raised may be simplified into whether petitioner could be charged with the custody of the seized vehicles.

Petitioner emphasizes that he was merely requested by his superior to assist in the listing of the details of the seized vehicles after the search warrant was already served. Also, he points out that he was not even one of the officers entrusted with the search warrant. Likewise, he cites the Order[8] dated May 31, 2004 of the trial court issuing the search warrant in which it specifically directed Bahinting and the Regional Director of the NBI-Sarangani District Office to retain custody of the seized vehicles as well as the Order[9] dated August 23, 2005 directing Bahinting, Mama and the Regional Director of the NBI-Sarangani District Office to return the seized vehicles.

Notwithstanding the points raised by petitioner, he could still be charged with the custody of the seized vehicles. Contrary to his claim, he did not only list the details of the seized vehicles but he also signed the Receipt of Items Seized.[10] By signing thereon, he acknowledged having taken the seized vehicles into his custody. If it were true that he was only asked by his superior to prepare the receipt, he should not have signed thereon.

It is immaterial that petitioner was neither entrusted with the search warrant nor specifically ordered by the court to take custody of the seized vehicles. What is important is that by his participation in the implementation of the search warrant he could be charged with the custody of the seized vehicles. As a public officer chargeable with

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the custody of the seized vehicles, he is accountable for them. He cannot downplay his participation in the implementation of the search warrant and shirk his responsibility for to do so would undermine the people's faith in public service.

The OMB could not have said it any better, thus:

The Office of the Ombudsman stressed the relevant point here that petitioner, in the instant case was the one who prepared and signed the Receipt of vehicles taken from the premises of the private respondent, such that the defense that he has no responsibility to exercise the prudence required of him, not being the custodian of the aforementioned vehicles, does not persuade. Such kind of defense, if only to evade administrative liability is not favorable and in fact, condemnable which therefore should not be tolerated by this Court. The reason is simple. This defeat(s) the very purpose of "accountability" required of every government employee enshrined in our Constitution that public office is a public trust. On the contrary, the attitude and demeanor of the petitioner towards his duty erodes the respect and trust of the public not only on the integrity of the Office he belongs, the National Bureau of Investigation, but of the whole public office as well.[11]

Having ascertained petitioner's accountability for the seized vehicles, this Court will now look into his administrative liability.

While the OMB found petitioner and his co-respondents liable for Grave Misconduct, Abuse of Authority and violation of Sec. 4(c) of R.A. 6713, it tackled the charge of misconduct only in its decision. Notably, it also mentioned of grave misconduct only in its Memorandum.[12] Presumably, it found them liable only for Grave Misconduct.

Misconduct may be simple or grave, thus:

> Misconduct is 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 proved by substantial evidence. Otherwise, the misconduct is only simple.[13]

Undoubtedly, petitioner is guilty of Misconduct for his failure to safeguard the seized vehicles. However, there is no showing that any of the aggravating elements of corruption, willful intent to violate the law or to disregard established rules was present in his case. It is noted that his accountability arose only from his having prepared and signed the receipt of items seized. Besides, there is no showing that he conspired with his co-respondents so as to make their liability collective. Hence, his misconduct is only simple.

The penalty for simple misconduct is suspension for one month and one day to six months for the first offense. There being no aggravating or mitigating circumstances, the medium of the penalty shall be imposed.

WHEREFORE, the Decision dated April 24, 2006 of the Office of the Ombudsman in Administrative Case No. OMB-M-A-05-439-L is MODIFIED in that Dominic Sarcon Cerro is found liable for Simple Misconduct and imposed the penalty of three months suspension without pay.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Azcarraga-Jacob and Contreras, JJ., concur.

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[1] Rollo, pp. 25-39

[2] Rollo, pp. 41-42 (reference omitted)

[3] Id., pp. 59-62

[4] Rollo, p. 39

[5] Id., pp. 116-132

[6] Id., pp. 41-45

[7] Id., pp. 15-16

[8] Rollo, p. 102; also cited in the Order dated May 15, 2006, Id., pp. 103-104

[9] Id., pp. 46-54

[10]Id., p. 57

[11] Id., p. 217 (Emphasis supplied)

[12] Rollo, p. 219

[13] Samson v. Restrivera, G.R. No. 178454, Mach 28, 2011 (citation omitted)

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