

ALICIA V. CABATINGAN, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, RESPONDENT.

G.R. No. L-55333. January 22, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to set aside the resolutions of the Sandiganbayan dated July 24 and October 10, 1980, which denied petitioner's application for probation. Petitioner claims that the respondent committed a grave abuse of discretion when it denied her an adequate opportunity to controvert the inaccurate post-sentence investigation in connection with her application for probation. Additionally, petitioner prays that she be granted provisional liberty under her original bail bond pending the determination of her case.

Asked to comment, the Solicitor General agrees that the Sandiganbayan did indeed commit a grave abuse of discretion when it denied petitioner's application for probation without giving her an adequate hearing. The Solicitor General has mentioned a number of specific instances to show how the Sandiganbayan committed grave abuse of discretion which we hereby adopt by reference, namely:

"5. In denying the application for probation (subject-matter of the petition), the Sandiganbayan relied mainly, if not totally, on the Post-Sentence Investigation Report as well as the Supplemental Report submitted by the Probation Officer, both of which recommended disapproval of the application for probation on the ground that (a) during the period of her probation there is 'undue risk' that she will again commit another crime and that (b) probation will depreciate the seriousness of the offense committed;

6. In support of the first ground, i.e., that there is 'undue risk' that she may again commit another crime during her probation, if the same is granted, the Sandiganbayan cited the Probation Officer's Report that Mrs. Cabatingan and her husband jointly operate an illegal jai-alai betting station known as 'masiao' and that she is facing another charge for malversation of P12,350.40 before the Tanodbayan; and in support of the second ground, i.e., that probation will depreciate the seriousness of the offense committed, the Sandiganbayan also based its conclusion on the report of the Probation Officer that Mrs. Cabatingan had been telling her co-employees at the Mandaue City government that she was already on probation when in fact her application had not yet been acted upon by the court;

7. The documentary evidence submitted by the petitioner disputes the charge of operating an illegal jai-alai, among which are the following:

(a) The certification and statement of Jesus P. Go, President of the Association of Barangay Councils of

Mandaue City dated September 1, 1980, attesting that his office is located right across the street where the house of Mrs. Cabatingan's mother (where the alleged illegal 'jai-alai' betting station took place) and denying of any knowledge of said illegal gambling (Annex 'A' of Supplemental Motion for Reconsideration, Annex 'F', Petition);

(b) The affidavit of petitioner herself (Annex 'K' of Annex 'K', Second Supplemental Motion for Reconsideration, Petition), thereby raising grave doubts on the objectivity, comprehensiveness and even validity of the probation officer's report as a basis for the Sandiganbayan to make a conclusion;

8. With respect to the contention that she is facing another charge of malversation in the amount of P12,350.40, as reported by the probation officer, the petitioner has explained the same by saying that said report of the probation officer was inaccurate, if not misleading, considering that:

(a) While the probation officer in her report made it appear that the amount malversed was P18,642.30 and not P6,000.00 (which was the amount she had pleaded guilty to), the fact of the matter, as borne out by the official transcript of stenographic notes on April 17, 1980, at the time of her re-arraignment, was that the amount of P6,000 was the result of the Tanodbayan's reassessment of the evidence against her, as a consequence of which the Information carrying the original amount of P18,642.40 was amended on April 17, 1980 and the amount of P6,000.00 was written over it by the Tanodbayan prosecutor (See Annexes 'C' and 'C-1', Petition); thus, it is clear that the amount of P6,000 was not a product of Mrs. Cabatingan's 'manipulation' but the result of the Tanodbayan's reassessment of the evidence against her;

(b) The petitioner also clarified that the pending charge of malversation in the amount of P12,350.40 was already included and taken into account by the Tanodbayan when the latter's prosecutor manifested not after a reassessment of the evidence against Mrs. Cabatingan, he found that only the amount of P6,000.00 was malversed; hence, Mrs. Cabatingan, in effect, could not again be charged with the same offense of malversation to which she had already pleaded guilty;

(c) To further prove that the additional amount of P12,350.44 (actually the amount is P12,580.44, per affidavit of the Mandaue City Auditor, Annex 'H' of the petition) was part of the original amount of P22,791.05 paid and restituted by Mrs. Cabatingan, she has attached the aforesaid affidavit of the City Auditor, as the same was the basis of the Indorsement by the Honorable Vicente G. Ericta of the Tanod-bayan dated March 31, 1980, to the Mandaue City Fiscal for preliminary investigation (Annex 'M', Petition);

(d) It is significant that the aforesaid Indorsement is dated March 31, 1980 and that the affidavit of City Auditor of Mandaue appended thereto is dated February 11, 1980 and refers to the same period; moreover, the said information was amended by the Tanodbayan on April 17, 1980 and the plea of guilty to the amended information was made on the same day so that, for all intents and purposes, the so-called additional shortage of P12,580.44 was already included in the reassessment of the Tanodbayan of the evidence.

On the basis of the evidence on record as well as the issues raised in the petition, it is not clear that the Sandiganbayan acted correctly in denying the application of Mrs. Cabatingan for probation. There is ample evidence showing that the petitioner is entitled to the benefits of probation. She does not appear to be a hardened criminal who is beyond correction or redemption. She has shown repentance for the one offense she had committed in more ways than one. First, she immediately restituted upon demand the amount she malversed. Second, she had expressed a desire to reform herself if given the opportunity to do so. And, third, she promised to comply with any condition that may be imposed on her if granted probation.

Upon the other hand, respondent court merely relied on a report of the probation officer which in itself, is mostly hearsay and is controverted by prominent citizens of Mandaue City including the parish priest, the president of the Association of Barangay Councils, the 'President of the Catholic Women's League, the former city auditor and the former city treasurer of Mandaue, among others.

Indeed, petitioner does not appear to have been afforded fully her right to due process as she was not given a chance by the respondent court to be heard before it issued its Resolution of July 31, 1980 denying the application for probation and before it denied the Second Supplemental Motion for Reconsideration. While it is true that a hearing in chambers was conducted of the petitioner's Motion for Reconsideration on September 5, 1980, that hearing did not involve reception of the evidence upon which decision was eventually predicated. In fact, since there was strong rebuttal documentary evidence presented by the petitioner in that hearing, the respondent court had to order the probation officer to submit a supplemental report, a copy of which was never furnished petitioner nor was the latter given any chance at all to inspect the same, much less cross-examine the witnesses against her.

Similarly, the record is not persuasive that there is 'undue risk' that the applicant will commit another crime during probation.

The term 'undue risk' is to be interpreted in the light of the requirements prescribed by the law for courts to observe in determining whether an offender should or should not be placed on probation. These requirements are:

'In determining whether an offender may be placed on probation, the court shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender and available institutional and community resources.' (Sec. 8, P. D. 968, 1st paragraph.) (Italics supplied.)

In this regard we agree with petitioner's claim that respondent court appears to have wholly relied on the probation report and did not make its own determination as to whether or not probation would serve the ends of justice and the best interest of the public and the applicant. It was not enough for the respondent court to deny petitioner's application solely on the report that she was involved in 'masiao' and that she was facing another preliminary investigation for the 'additional shortage' of the funds of which she had already pleaded guilty. Likewise, the fact that there is a pending preliminary investigation against her for the additional shortage does not also constitute a sufficient basis for a conclusion that she was already guilty thereof.

The finding by the respondent court that 'probation will depreciate the seriousness of the offense committed' can not be predicated simply on an assertion that concerned citizens of Mandaue City are not in favor of Mrs. Cabatingan's being granted probation especially when disputed by the testimonials of the responsible citizens of that city. Besides, in evaluating a finding on this point, the purpose of the Probation Law should not be overlooked."

The Solicitor General has made the following recommendation:

"IN THE LIGHT OF THE FOREGOING, it is recommended that Order issue remanding the records of the case to the Sandiganbayan for the latter to conduct further hearings on the application for probation, with the end in view of affording applicant full opportunity to dispute the report of the probation officer and prove her entitlement to probation, and that in the meantime the applicant be allowed immediate provisional liberty under her original bail."

WHEREFORE, this case is hereby remanded to the Sandiganbayan which is ordered to conduct further hearings on the application for probation, with the end in view of affording applicant full opportunity to dispute the report of the probation officer and prove her entitlement to probation. In the meantime the petitioner shall be immediately released provisionally under her original bail.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

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