

LIAM S. PAGDANGANAN, PETITIONER, VS. HON. OMBUDSMAN CONCHITA CARPIO-MORALES AND RONALD A. ANCHETA, RESPONDENTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before the Court are two (2) consolidated cases filed by petitioner Liam S. Pagdanganan which substantially involve the same sets of fact.

The first petition docketed as CA-G.R. SP No. 131084, is a Petition under Rule 43 of the Rules of Court seeking to reverse and set-aside the March 27, 2013[1] Joint Resolution of the Office of the Ombudsman which dismissed petitioner Liam S. Pagdanganan's Complaint for Grave misconduct and Abuse of Authority against private respondent Ronald A. Ancheta in OMB-C-A-12-0310-G.

The second petition docketed as CA-G.R. SP No. 134518 is a special civil action for Certiorari and Prohibition under Rule 65 seeking to nullify the Order[2] of the public respondent Judge Jose G. Paneda, dated November 20, 2013, which denied Pagdanganan's Motion to Suspend the proceedings of Criminal Case No. 12-174163.

The facts of the case are as follows:

Private respondent Ronald A. Ancheta (Ancheta) was a former Second Assistant City Prosecutor of the Office of the City Prosecutor's Office of Quezon City. Before his resignation as Prosecutor, he handled the preliminary investigation of a case involving petitioner Liam S. Pagdanganan (Pagdanganan) and Nelson O. Bragado (Bragado). Pagdanganan is a lawyer and was the counsel of Bragado in a suit filed by the latter against the Land Bank of the Philippines before the Regional Trial Court of Quezon City. The two, however, had a serious misunderstanding and conflict over the handling of the case, which eventually led to the filing by Bragado of a complaint for estafa against Pagdanganan before the City Prosecutor's Office of Quezon City on March 16, 2011.[3] The complaint was assigned to private respondent Ancheta for preliminary investigation.

Ancheta claimed that immediately after receiving that records of the case, he prepared and signed a subpoena commanding the parties to appear before him on April 11, and 18, 2011 for preliminary investigation. Following standard operating procedure, he had the subpoena sent to the parties by the Records and Docket Division.[4] On the initial date of preliminary investigation, Bragado and his counsel appeared while Padanganan did not attend. Hence, the preliminary investigation was reset to April 18, 2011.[5] On the latter date, Pagdanganan again did not show-up. With the non-appearance of Pagdanganan for the second time, Bragado moved that the case be submitted for resolution.[6] Not wanting to be perceived favoring Pagdanganan, Ancheta granted the motion. Several months thereafter, on August 16, 2011, Ancheta issued a Resolution[7] recommending that Pagdanganan be charged in court for estafa. The said Resolution was approved by the City Prosecutor. Thus, an Information[8] for Estafa was lodged by the Office of the City Prosecutor before the Regional Trial Court of Quezon City against Pagdanganan, docketed as Criminal Case No. 12-174163.

In the meantime, on January 13, 2012, Padanganan received the Resolution recommending his prosecution for estafa. Immediately thereafter, he filed a Motion for Reconsideration before the Office of the City Prosecutor on the ground that his right to due process was violated. He claimed that he was never served a subpoena for him appear before the Office of the City Prosecutor and answer the criminal complaint filed against him by Bragado. His motion for reconsideration, however, was denied.[9] Aggrieved, Pagdanganan elevated the matter to the Department of Justice for review. He then he filed with the trial court a Motion to Defer Arraignment and to Suspend Further Proceedings in Criminal Case No. 12-174163 on the ground of his pending appeal before the DOJ. His motion was granted and his arraignment was set to June 19, 2012. However, on June 13, 2012, or a few days before his scheduled arraignment he again filed second Motion to Defer Arraignment. But the trial court, mindful that the Rules allowed only sixty (60) days suspension, denied the Motion. Padanganan was thus arraigned on June 19, 2012.[10]

On July 16, 2012, Pagdanganan filed for the third time a Motion to Suspend Proceedings[11] reiterating as a ground the pendency of his Petition for Review before the DOJ which had not yet been resolved. The motion was, however, denied by the trial court.[12] His subsequent Motion for Reconsideration was likewise denied by the trial court,[13] hence, he filed before this Court a Petition for Certiorari and Prohibition under Rules 65, which is now that subject of CA-G.R. SP No. 134518.

Meanwhile, on July 6, 2012, Pagdanganan filed an administrative case[14] before the Office of Ombudsman against Ancheta for a Grave Misconduct and Abuse of Authority and a criminal case[15] for Violation of Section 3(e) of Republic Act No. 3019 and Article 183 of the Revised Penal Code against Ancheta, Bragado, and Marcos Estrada. The administrative case is now the subject of CA-G.R. SP No. 131084.

In his complaint, Padanganan alleged that Ancheta committed gross misconduct and abuse of authority when the latter permitted himself to be used by Bragado and his counsel in filing a case against him without observing due process. Padanganan insisted that he was never served a subpoena and was not notified of the criminal case against him. But Ancheta, with the connivance of Bragado and his counsel, proceeded with the preliminary investigation of the case.

On March 27, 2013, the Ombudsman issued a Joint Resolution finding no substantial evidence to hold Ancheta administratively liable for Grave Misconduct and Abuse of Authority since Padanganan failed to overcome the presumption of regularity in the performance of official duties accorded to Ancheta and public officer. The Complaint of Padanganan was thus dismissed. His Motion for Reconsideration having been denied,[16] Padanganan is now before this Court assailing the Joint Resolution of the Ombudsman, citing as errors the following:

- I. THE FINDINGS OF THE HONORABLE OMBUDSMAN ARE CONTRARY TO THE EVIDENCE ON RECORD.
- II. THE HONORABLE OMBUDSMAN MANIFESTLY OVELOOKED RELEVANT AND UNDISPUTED FACTS THAT, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION.
- III. THE HONORABLE OMBUDSMAN HAS DECIDED QUESTIONS OF SUBSTANCE WITHOUT DELVING INTO THE RECORDS OF TEH CASE, THUS THE ASSAILED ORDER AND RESOLUTION WERE WITHOUT FACTUAL AND LEGAS BASIS.

Likewise, in CA-G.R. SP No. 134518, petitioner Padanganan assails the November 11, 2013 and January 8, 2014 Orders of the trial court in denying his Motion to Suspend Proceedings arguing that–

- I. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ORDER DATED 11 NOVEMBER 2013

AND THE ORDER DATED 8 JANUARY 2014.

II. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN HE DIRECTED THAT CRIMINAL CASE NO. Q-12-174163 PROCEED DESPITE THAT THERE IS DENIAL OF DUE PROCESS.

We rule to deny the petitions.

We shall first tackle the issue which petitioner has been insisting from the beginning and the very core of his argument in his desire to suspend the proceedings in Criminal Case No. 12-174163 – the alleged violation of his right to due process. Reiterating his argument in his Motion for Reconsideration, petitioner asserts that his right to due process was violated when the Office of the City Prosecutor proceeded with the preliminary investigation of the case filed by Bragado and subsequently issued a resolution thereof despite the fact he was never subpoenaed or notified of the charge against him.

We do not find merit of the claim of petitioner that his right to due process was violated.

First, the essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense. What the law proscribes is lack of opportunity to be heard.[17] Granting that petitioner did not receive any subpoena and was not able to participate in the preliminary investigation proper, he had had the opportunity to be heard and submit his evidence when he filed a Motion for Reconsideration and filed an appeal before the DOJ. In *Gonzales vs. Civil Service Commission*, [18] the High Court ruled that any seeming defect in the observance of due process is cured by the filing of a motion for reconsideration and that denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard thereon. And in *Autencio vs. Mañara*, [19] where the party has the opportunity to appeal the action or ruling complained of, the High Court ruled that defects in procedural due process are cured. Thus, whatever alleged defect in the observance of due process during the proceedings before the Office of the City Prosecutor, the same was cured when petitioner filed a Motion for Reconsideration and was able to file an appeal before the DOJ when his Motion was denied.

Second, it is a fact that petitioner had been arraigned unconditionally. Petitioner's arraignment constitutes a waiver of her right to preliminary investigation or reinvestigation.[20] Such waiver is tantamount to a finding of probable cause.[21] Hence, the determination of the existence or non-existence of probable cause becomes unnecessary. Following petitioner's arraignment, it was no longer the RTC's duty to make an independent finding of the evidence before it for the determination of probable cause.[22] Not only did petitioner waive or abandon his right to preliminary investigation. He also waived or abandoned his appeal before the DOJ. As held by the Supreme Court in *Gandarosa vs. Flores*: [23]

“But where the accused has already been arraigned without reservation, condition or restriction, in line with our ruling in *Adasa v. Abalos*, [24] the unconditional arraignment constitutes a waiver of his right to preliminary investigation or reinvestigation. Consequently, there is a waiver or abandonment of his petition for review before the Department of Justice. In like manner, therefore, the trial court has no more need to make an independent assessment of the evidence before it to determine probable cause. Trial ensues. Conversely, with the arraignment of the accused, the DOJ Secretary can no longer entertain the appeal or petition for review because the accused has already waived or abandoned the same.

Prescinding from the above, We do not see why the proceedings in Criminal Case No. 12-174163 should be suspended on account of petitioner's alleged denial of due process during the preliminary investigation of the case; further, considering that he had been arraigned on June 19, 2012.

We now resolve CA-G.R. No. 131084 pertaining to the alleged gross misconduct and abuse of authority committed by private respondent Ancheta.

Misconduct has been defined as referring to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is a misconduct such as affects the performance of his duties as an officer and not such only as effects his character as a private individual.”[25] For grave misconduct to exist, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were a persistent disregard of well-known legal rules.[26] With regard to grave abuse of authority, such has been defined as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury; it is an act of cruelty, severity, or excessive use of authority.[27]

Principally, petitioner anchors his complaint for gross misconduct and abuse of authority on the ground that he did not receive a subpoena thereby depriving him of opportunity to answer the charge of estafa against him. Petitioner stresses the point that no subpoena could have been validly issued by private respondent since the subpoena attached to the record of the preliminary investigation remained unsigned. Petitioner insinuates that there were irregularities in the conduct of preliminary investigation of his case, especially the non-sending of subpoena to him.

We are not persuaded by the arguments of petitioner.

The fact that an unsigned subpoena was attached to the record of the preliminary investigation does not at all prove that there was no subpoena sent to petitioner. As explained by private respondent Ancheta, the unsigned copy of subpoena merely served as covering of the records of the case. It was not meant to be signed since prosecutors only sign the subpoena sent out to the parties.

It is also a fact that private respondent Ancheta had issued subpoena and had the same sent by the Records and Docket Division of the Office of the City Prosecutor of Quezon City, the office tasked by the Office of City Prosecutor to send notices and processes to the parties concerned. This can be inferred from the Certification[28] issued by the Chief of the said office. The certification specifically states that a subpoena for NPS Docket No. XV-03-INV-11C-02222 was sent through ordinary mail and received by the Quezon City Hall Post Office on March 23, 2011. It should be noted that under Section 3(b) of Rule 112 of the Rules of Court, the investigating prosecutor is only tasked to issue subpoena to the respondent. It is not his responsibility to physically serve the subpoena personally to respondent. The responsibility to personally serve the subpoena lies with the regular process server.[29] Where personal service cannot be effected to the respondent, the service of subpoena may be done by registered mail.[30] Again, it is not the personal responsibility of the investigating prosecutor to send thru mail the subpoena. The responsibility lies with the office primarily tasked to send notices, in this case, the Records and Docket Division of the Office of the City Prosecutor of Quezon City. True, the subpoena in this case was sent to respondent only thru ordinary mail and not by registered mail as required by the Manual for Prosecutors. Under the Rules of Court, however, service thru ordinary mail is allowed and is considered complete upon the expiration of ten (10) days after mailing.[31]

To recapitulate, the duty of private respondent after the filing of the complaint is to prepare and issue subpoena to respondent and the responsibility to serve the same lies with the Records and Docket Division of the Office of the City Prosecutor of Quezon City. The evidence show that private respondent had issued a subpoena and the same was sent by the Records and Docket Division to petitioner. Under these circumstances, private respondent had regularly performed his duty and did not transgress established and definite rule of action or committed misdemeanor that wrongfully inflicted injury to petitioner. There is, therefore, no basis to find him guilty of grave misconduct and abuse of authority.

WHEREFORE, in views of the foregoing considerations, the Petitions are DISMISSED for lack of merit.

SO ORDERED.

Barza, and Reyes-Carpio, JJ., concur.

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- [1] Rollo, CA-G.R. SP No. 131084, pp. 25-41
- [2] Rollo, CA-G.R. SP No. 134618, pp. 26-27.
- [3] Investigation Data Form, Rollo, CA-G.R. SP No. 131084, p. 151
- [4] Certification issued by the Chief of the Records and Docket Division of the Office of the City Prosecutor, Rollo, CA-G.R. SP No. 131084, p. 152.
- [5] Copy of subpoena which served as minutes of the preliminary investigation, Rollo, CA-G.R. SP No. 131084, p. 153.
- [6] Ibid., dorsal portion, Rollo, CA-G.R. SP No. 131084, p. 154.
- [7] Rollo, CA-G.R. SP No. 131084, pp. 61-62.
- [8] Information filed before the trial court on January 10, 2012, Rollo, CA-G.R. SP No. 131084, pp. 63-64.
- [9] Resolution dated February 18, 2012, Rollo, CA-G.R. SP No. 131084, pp. 65-66.
- [10] Order dated November 11, 2012, Rollo, CA-G.R. SP No. 134518, pp. 26-27.
- [11] Rollo, CA-G.R. SP No. 134518, pp. 35-40.
- [12] Ibid.
- [13] Order dated January 8, 2014, Rollo, CA-G.R. SP No. 134518, p. 28.
- [14] Rollo, G.R. No. 131084, pp. 69-78.
- [15] Ibid.
- [16] Joint Order, Rollo, CA-G.R. No. 131084, pp.43-49.
- [17] Kuison vs. Desierto, G.R. No. 140619-24, March 9, 2001.
- [18] G.R. No. 156253, June 15, 2006
- [19] G.R. No. 152752, January 19, 2005.
- [20] Adasa vs. Abalos, G.R. No. 168617, February 19, 2007.
- [21] Ibid.
- [22] Gandarosa vs. Flores, G.R. No. 167910, July 17, 2007.
- [23] Ibid.
- [24] G.R. No. 168617, February 19, 200
- [25] Amosco vs. Judge Magno, Adm. Mat. No. 439-MJ, Res. September 30, 1976
- [26] Castillo vs. Escutin, G.R. No. 171056, March 13, 23009.
- [27] Rafael vs. Sualog, A.M. No. P-07-2330, June 12, 2008.

[28] Rollo,CA-G.R. No. 131084, p. 152.

[29] Section 16, Paragraph (a), Part III of the Manual for Prosecutors.

[30] Ibid., Paragraph (b).

[31] Section 10, Rule 13, Rules of Court.

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