

CONSTANCIO C. TORRALBA, PETITIONER, VS. THE SANDIGANBAYAN, THE OMBUDSMAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 101421. February 10, 1994

Ponente: VITUG, J.

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VITUG, J.:

These two petitions for certiorari, prohibition and mandamus question the denial by the Sandiganbayan of a motion filed by the petitioners seeking a reinvestigation of the charges against them for violation of the Anti-Graft and Corrupt Practices Act. The petitioners claim that they have been deprived of their right to a full preliminary investigation.

On 14 June 1990, Felix T. Rengel, a member of the Sangguniang Panlalawigan of the province of Bohol, filed a complaint[1] with the Office of the Ombudsman for the Visayas. Rengel asked the Ombudsman to investigate Constancio C. Torralba, Governor of Bohol; Atty. Alexander H. Lim, member of the Sangguniang Panlalawigan of Bohol; Manuel Navarro, sales manager of Autographics, Inc., in Cebu; and Christopher Lim, a sales agent, for conspiracy in overpricing two (2) units of Nissan “double-cab pick-ups” purchased by the provincial government.[2]

In his answer, Torralba denied Rengel’s accusation, asserting that the purchase was regular, necessary, reasonable and not extravagant, as so evidenced by the pre-audit and post-audit reports of the Commission on Audit (“COA”).[3] For his part, Alexander H. Lim filed a comment on the complaint, disclaiming any participation in the canvass, bidding, or other procedural aspects leading to the purchase of the two vehicles and averring that his only involvement was to sign the Requisition and Issue Voucher (RIV) for the payment of said vehicles conformably with the terms of the purchase.[4]

On 18 October 1990, the Office of the Ombudsman for the Visayas issued an Order[5] directing the herein petitioners and their co-respondents in the complaint to respond to certain interrogatories. Torralba and Lim complied, respectively, on 15 October 1990[6] and 22 October 1990.[7]

On 26 October 1990, Director Vicente Y. Varela, Jr., issued a Resolution[8] recommending the dismissal of the complaint for lack of prima facie evidence. Forthwith, the records of the case were forwarded to the Office of the Ombudsman in Manila for review and evaluation.

Four months later, or on 12 February 1991, complainant Rengel, through counsel, filed a manifestation before the Office of the Ombudsman in Manila, urging that the audit report of the Provincial Auditor of Bohol be considered in the re-evaluation of the case.[9] The report, which was submitted upon the request of the Office of the Ombudsman for Visayas, would show, according to him, an overprice of P85,756.00 in the purchase of the two vehicles. He explained that the audit report could not theretofore form part of the records of the case because it was submitted by the Regional Director of the Commission on Audit, Regional Office No. VII, to the Office of the Ombudsman for Visayas, only on 19 December 1990 when the records of the case had already been

transmitted to the Office of the Ombudsman in Manila for review.

On 20 May 1991, Agapito B. Rosales, Director of the Fact-Finding and Intelligence Bureau, Office of the Ombudsman, issued a Resolution,[10] with the following dispositive portion:

“WHEREFORE, in the light of the foregoing consideration, it is respectfully recommended that the Resolution dated October 26, 1990 subject of this review be, as it is hereby disapproved. In lieu thereof, that this Resolution be adopted and approved with the following recommendations:

“1. There being a prima facie case of violation of Sec. 3, par. (g) of R.A. 3019, as amended, against respondent Governor Constancio Torralba, let the corresponding Information be filed with the Sandiganbayan;

“2. For lack of prima facie case of violation of Sec. 3, par. (g) of R.A. 3019, as amended, against respondents Sangguniang Panlalawigan Member Alexander Lim, Manuel Navarro, a private individual and Christopher Lim, a private individual, there being no evidence of conspiracy among and between the respondents, the same is, as it is hereby, dismissed.

“3. The administrative action in this case should be initiated by the Commission on Audit.

“So Resolved.”

On the recommendation, however, of Jane Aurora C. Lantion, Special Prosecution Officer III, Ombudsman Conrado M. Vasquez authorized the modification of the above Resolution (of 20 May 1991) and ordered, instead, that all the respondents in the complaint be charged with violation of the Anti-Graft Law.[11] The result was the filing of an information, for violation of Section 3 (g)[12] of Republic Act No. 3019, with the Sandiganbayan against the herein petitioners, including Manuel Navarro and Christopher Lim, which was so docketed as Criminal Case No. 16914.

On 24 July 1991, Torralba filed motions to quash the warrant for his arrest and for reinvestigation.[13] The motions were later adopted by Lim. The motion to quash the warrant of arrest was premised on the allegation that no valid preliminary investigation was conducted prior to the issuance thereof. The motion for reinvestigation, on the other hand, was sought because, the petitioners averred, they were not furnished with copies of the Resolutions of OMB Director Varela, Director Rosales and SPO Lantion, recommending the filing of an information against them, thus denying to them, in contravention of the provisions of Section 7 of Administrative Order No. 07, their right to seek a reconsideration thereof. In an Order, dated 02 August 1991, the motions to quash and for reinvestigation were both denied by the Sandiganbayan for lack of merit, and it forthwith set the arraignment for 09 September 1991.[14]

Petitioner Torralba filed a motion for the reconsideration of said Order,[15] where he additionally alleged that he was not furnished likewise with a copy of the report of the Commission on Audit, on which Director Rosales and SPO Lantion relied heavily in reversing the previous recommendation of Director Varela. Petitioner Lim, again, adopted this motion for reconsideration.

On 26 August 1991, petitioner Torralba filed an urgent motion to suspend the arraignment[16] in view of his request for reinvestigation. On the same day, Torralba filed another pleading embodying additional argument in support of his motion for reconsideration[17] but mainly stressing that the audit report surfaced only when the case was already pending review by the Office of the Ombudsman.

On 04 September 1991, the Sandiganbayan issued a Resolution[18]denying, for lack of merit, petitioners’ motion for reconsideration and their urgent motion to suspend the arraignment.[19] The Sandiganbayan stated that the accused “were all aware of the nature, import and legal consequences of the COA Report in question, especially considering that their offices and that of the Provincial Auditor of Bohol (were) all in Tagbilaran City;” in any

case, it said, even without the COA report, the prima facie finding of the Office of the Ombudsman could still be sustained. The Sandiganbayan continued:

“2. Invoking Section 27 of R.A. No. 6770, accused Torralba contends that he was never afforded the opportunity to move for the reconsideration of the Resolutions of Director Rosales and SPO Lantion as approved by the Ombudsman, with which he was never furnished. Section 27 reads in part that ‘a motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice’. But the same Section 27, last sentence, also provides that ‘the above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.’ Pursuant thereto and Section 18 of the same Act, the Office of the Ombudsman promulgated its Rules of Procedure, Section 7, Rule II of which recites:

‘(a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within fifteen days from notice thereof with the Office of the Ombudsman, or the Deputy Ombudsman as the case may be.

‘(b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed.’

“A perusal of Section 7 (a) and (b) shows that, indeed, an accused may file a motion for reconsideration or reinvestigation of an approved order or resolution. Two situations are contemplated. First, the motion shall be filed with the Ombudsman but, second, if the information is already filed in court, the motion shall be entertained upon order of the court.

“In the instant case, when accused Torralba filed his Motion to Quash Warrant of Arrest and for Re-investigation dated July 23, 1991, and this Court entertained the same by denying the motion after due consideration thereof in its Order of August 26, 1991, the said accused thereby availed of, and was accorded, the opportunity to have the resolutions of Director Rosales and SPO Lantion reconsidered and his case reinvestigated. The instant Motion for Reconsideration of the Order of August 2, 1991, is the accused Torralba’s second opportunity.”

The following day, or on 5 September 1991, Torralba and Lim filed with this Court separate petitions for certiorari, prohibition and mandamus, with prayer for a writ of preliminary injunction. The Court issued a temporary restraining order enjoining the Sandiganbayan from proceeding with the arraignment of both petitioners.[20] The two petitions were also ordered consolidated.

The petitioners here aver that the entitlement of an accused to a full preliminary investigation is a substantive right, which cannot be denied to them. Hence, they submit, their motion for reinvestigation, in light of the pronouncement of this Court in *Doromal v. Sandiganbayan*,^[21] should have been granted by the Sandiganbayan.

We see merit in the petitions.

Under Section 18 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, the Office of the Ombudsman is authorized to promulgate its rules of procedure “for the effective exercise or performance of its powers, functions, and duties.” Pursuant to this section, Administrative Order No. 07, dated 10 April 1990, embodying the Rules of Procedure of the Office of the Ombudsman, has been promulgated. Section 4 of Rule V thereof provides that the rules would take effect “following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation,” and that the Rules would govern all cases then still pending or brought thereafter except, in the case of those already pending, “to the extent that their application would not be feasible or would cause injustice to any party.” The Rules, having been published in the 1st May 1990 issue of the Manila Bulletin, were in effect, and should have been observed, when Rengel filed his complaint before the Office of the Ombudsman for Visayas on 14 June 1990.

Section 6 and Section 7, Rule II, of the Ombudsman Rules of Procedure, provide:

“Sec. 6. Notice to parties. - The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.

Sec. 7. Motion for reconsideration.

(a) Only one motion for reconsideration or reinvestigation shall be allowed, the same to be filed within fifteen (15) days from notice thereof with the Office of the Ombudsman, or the Deputy Ombudsman as the case may be.

(b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed.”

The averment of the petitioners[22] that they have not been served with copies of the final Resolution of 20 May 1991, as well as of the approved modified memorandum of SPO Lantion and the special audit report,[23] has not been controverted. In fact, the petitioners have come to know of the resolution only through daily newspaper accounts which chronicled the filing of the charges against them.[24] The special audit report itself, upon which the resolution is based, has not been presented during the preliminary investigation proper at the level of the Office of the Ombudsman for Visayas. The Solicitor General, who has begged leave to be excused from filing a comment on the petitions, has himself opined that the petitioners should have at least been furnished with the audit report,[25] since the rules do grant to the petitioners the right to submit counter-affidavits and “controverting evidence.”[26]

The inevitable conclusion is that the petitioners were not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman’s final resolution but also deprived of their right to a full preliminary investigation preparatory to the filing of the information against them.

It is true that a preliminary investigation is not an occasion for a full and exhaustive display of the parties’ evidence, being merely an inquiry to determine whether or not there is sufficient ground to engender a founded belief that a crime has been committed and that the respondent is probably guilty thereof.[27] The right to such preliminary investigation, nevertheless, is still an indispensable element of our criminal justice system that may not be treated lightly, let alone ignored. In *Go v. Court of Appeals*,[28] the Court, speaking through Mr. Justice Florentino P. Feliciano, reiterated:

“x x x. While that right is statutory rather than constitutional in its fundament, since it has in fact been established by statute, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right.”

The incomplete preliminary investigation in this case, however, does not warrant the quashal of the information, nor should it obliterate the proceedings already had. Neither is the court’s jurisdiction nor validity of an information adversely affected by deficiencies in the preliminary investigation. Instead, the Sandiganbayan is to hold in abeyance any further proceedings therein and to remand the case to the Office of the Ombudsman for the completion of the preliminary investigation,[29] the outcome of which shall then be indorsed to Sandiganbayan for its appropriate action.

WHEREFORE, the two petitions for certiorari, prohibition and mandamus are hereby GRANTED. The Sandiganbayan shall remand the case to the Office of the Ombudsman which shall proceed with dispatch in the completion of the preliminary investigation of OMB-VIS-90-0631. The restraining order issued by this Court on 05 September 1991 shall remain in force and effect until such time as the preliminary investigation shall have

been terminated and appropriate pleadings, conformably with the findings of the Ombudsman, would have been submitted to the Sandiganbayan. Costs de oficio.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, and Puno, JJ., concur.
Kapunan, J., no part.
Nocon, J., on leave.

[1] Rollo of G.R. No. 101421, p. 19.

[2] The complaint was docketed as OMB-VIS-90-0631.

[3] Rollo of G.R. No. 101421, p. 22.

[4] Rollo in G.R. NO. 101422, p. 22.

[5] Signed by Eufrosina G. Valenzona, Asso. Graft Investigation Officer II and noted by OMB Director Vicente Y. Varela, Jr. (Rollo in G.R. No. 101421, p. 25).

[6] Rollo of G.R. No. 101421, p. 28.

[7] Rollo of G.R. No. 101422, p. 28

[8] Rollo of G.R. No. 101421, p. 84; G.R. No. 101422, p. 79.

[9] Rollo of G.R. No. 101421, p. 84.

[10] Ibid., p. 58.

[11] Ibid., pp. 59-62.

[12] This section reads:

“SEC. 3. Corrupt Practices of Public Officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.”

[13] Rollo of G.R. No. 101421, pp. 35-40.

[14] Ibid., p. 64.

[15] Ibid., pp. 65-68.

[16] Ibid., pp. 70-71.

[17] Ibid., pp. 72-75.

[18] Penned by Second Division Chairman, Associate Justice Romeo M. Escareal and concurred in by Associate Justices Jose S. Balajadia and Nathanael M. Grospe.

[19] Rollo of G.R. No. 101421, pp. 106-111.

[20] Rollo of G.R. No. 101421, pp. 113-114.

[21] 177 SCRA 354.

[22] Petition, p. 5; Petitioners' Memorandum, p. 3.

[23] Rollo, p. 123.

[24] While it may be correct to say that the earlier resolution of 26 October 1990, recommending the dismissal of the charges against the petitioners, was not required to be served since Sec. 4(g) of Rule II simply mandate the referral thereof to "the designated authorities for their appropriate action thereon," the service, however, of the final Resolution of 20 May 1991 cannot similarly be justified.

[25] Manifestation and Motion in Lieu of Comment, p. 9; Rollo of G.R. No. 101421, p. 130.

[26] Sec. 4, Rule II.

[27] Paderanga v. Drilon, 196 SCRA 86.

[28] 206 SCRA 138, 153. The Court cited the cases of Doromal v. Sandiganbayan, supra; San Diego v. Hernandez, 24 SCRA 110; People v. Monton, 23 SCRA 1024; People v. Oandasan, 25 SCRA 277; Lozada v. Hernandez, 92 Phil. 1051; U.S. v. Banzuela, 31 Phil. 564.

[29] Doromal v. Sandiganbayan, supra, citing Luciano v. Mariano, July 30, 1971, 40 SCRA 187; Ilagan v. Enrile, 139 SCRA 349; Sanciango, Jr. v. People, 149 SCRA 1.

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