

DORIS TERESA HO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES (REPRESENTED BY THE OFFICE OF THE SPECIAL PROSECUTOR OF THE OMBUDSMAN) AND THE SANDIGANBAYAN (SECOND DIVISION), RESPON...*G.R. No. 106632. October 09, 1997*

Ponente: PANGANIBAN, J.

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May a judge issue a warrant of arrest solely on the basis of the report and recommendation of the investigating prosecutor, without personally determining probable cause by independently examining sufficient evidence submitted by the parties during the preliminary investigation?

The Case

This is the main question raised in these two consolidated petitions for certiorari under Rule 65 of the Rules of Court challenging the Sandiganbayan's August 25, 1992 Resolution[1] which answered the said query in the affirmative.

The Facts

Both petitions have the same factual backdrop. On August 8, 1991, the Anti-Graft League of the Philippines, represented by its chief prosecutor and investigator, Atty. Reynaldo L. Bagatsing, filed with the Office of the Ombudsman a complaint[2] against Doris Teresa Ho, Rolando S. Narciso (petitioners in G.R. Nos. 106632 and 106678, respectively), Anthony Marden, Arsenio Benjamin Santos and Leonardo Odoño. The complaint was for alleged violation of Section 3 (g) of Republic Act 3019[3] prohibiting a public officer from entering into any contract or transaction on behalf of the government if it is manifestly and grossly disadvantageous to the latter, whether or not the public officer profited or will profit thereby. After due notice, all respondents therein filed their respective counter-affidavits with supporting documents. On January 8, 1992, Graft Investigation Officer Titus P. Labrador (hereafter, "GIO Labrador") submitted his resolution[4] with the following recommendations:

"WHEREFORE, all premises considered, it is respectfully recommended that an information for violation of Section 3 (g) of R.A. 3019 as amended be filed against respondent Rolando S. Narciso before the Sandiganbayan.

It is likewise recommending that the case against the other respondents be DISMISSED for insufficiency of evidence."

However, after a review of the above resolution, Special Prosecution Officer Leonardo P. Tamayo (hereafter, "SPO Tamayo") recommended that both Rolando Narciso and Doris Teresa Ho be charged with violation of Section 3 (e) of R.A. 3019. The resolution of GIO Labrador, as modified by the memorandum[5] of SPO Tamayo, was approved by Ombudsman Conrado M. Vasquez on May 5, 1992. Thus, herein petitioners were charged accordingly before the Sandiganbayan in an information[6] filed on May 18, 1992. Attached to the information

were the resolution of GIO Labrador and the memorandum of SPO Tamayo. The said information reads:

“The undersigned Special Prosecution Officer III, Office of the Special Prosecutor, hereby accuses ROLANDO NARCISO and DORIS TERESA HO, President of National Marine Corporation, of violation of Section 3(e) of RA 3019, as amended, committed as follows:

That on or about April 4, 1989, and for sometime prior and/or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ROLANDO NARCISO, a public officer, being then the Vice-President of the National Steel Corporation (NSC), a government-owned or controlled corporation organized and operating under the Philippine laws, and DORIS TERESA HO, a private individual and then the President of National Marine Corporation (NMC), a private corporation organized and operating under our Corporation law, conspiring and confederating with one another, did then and there wilfully, unlawfully and criminally, with evident bad faith and through manifest partiality, cause undue injury to the National Steel Corporation (NSC), by entering without legal justification into a negotiated contract of affreightment disadvantageous to the NSC for the haulage of its products at the rate of P129.50/MT, from Iligan City to Manila, despite their full knowledge that the rate they have agreed upon was much higher than those offered by the Loadstar Shipping Company, Inc. (LSCI) and Premier Shipping Lines, Inc. (PSLI), in the amounts of P109.56 and P123.00 per Metric Ton, respectively, in the public bidding held on June 30, 1988, thereby giving unwarranted benefits to the National Marine Corporation, in the total sum of One Million One Hundred Sixteen Thousand Fifty Two Pesos and Seventy Five Centavos (P1,116,052.75), Philippine Currency, to the pecuniary damage and prejudice of the NSC in the aforestated sum. The said offense was committed by Rolando S. Narciso in the performance of his official functions as Vice-President of the National Steel Corporation.

CONTRARY TO LAW.”

Acting on the foregoing information, the Sandiganbayan issued the now questioned warrant of arrest against Petitioners Ho and Narciso. Petitioner Ho initially questioned the issuance thereof in an “Urgent Motion to Recall Warrant of Arrest/Motion for Reconsideration” which was adopted by Petitioner Narciso. They alleged that the Sandiganbayan, in determining probable cause for the issuance of the warrant for their arrest, merely relied on the information and the resolution attached thereto, filed by the Ombudsman without other supporting evidence, in violation of the requirements of Section 2, Article III of the Constitution, and settled jurisprudence. Respondent Sandiganbayan denied said motion in the challenged Resolution. It ratiocinated in this wise:

“Considering, therefore, that this Court did not rely solely on the certification appearing in the information in this case in the determination of whether probable cause exists to justify the issuance of the warrant of arrest but also on the basis predominantly shown by the facts and evidence appearing in the resolution/memorandum of responsible investigators/ prosecutors, then the recall of the warrant of arrest, or the reconsideration sought for, cannot be granted. More so, when the information, as filed, clearly shows that it is sufficient in form and substance based on the facts and evidence adduced by both parties during the preliminary investigation. To require this Court to have the entire record of the preliminary investigation to be produced before it, including the evidence submitted by the complainant and the accused-respondents, would appear to be an exercise in futility.”

Thus, these petitions.

The Issue

Petitioner Ho raises this sole issue:

“May a judge determine probable cause and issue [a] warrant of arrest solely on the basis of the resolution of

the prosecutor (in the instant case, the Office of the Special Prosecutor of the Ombudsman) who conducted the preliminary investigation, without having before him any of the evidence (such as complainant's affidavit, respondent's counter-affidavit, exhibits, etc.) which may have been submitted at the preliminary investigation?"[7]

In his separate petition, Rolando S. Narciso adopts the foregoing and raises no other distinct issue.

Petitioners Ho and Narciso similarly contend that a judge, in personally determining the existence of probable cause, must have before him sufficient evidence submitted by the parties, other than the information filed by the investigating prosecutor, to support his conclusion and justify the issuance of an arrest warrant. Such evidence should not be "merely described in a prosecutor's resolution." Citing *People vs. Inting*,[8] petitioners insist that the judge "must have before him 'the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents which are material in assisting the judge to make his determination.'"

The Court's Ruling

The petitions are meritorious.

The pertinent provision of the Constitution reads:

"Section 2 [, Article III]. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized." (Underscoring supplied.)

In explaining the object and import of the aforequoted constitutional mandate, particularly the power and the authority of judges to issue warrants of arrest, the Court elucidated in *Soliven vs. Makasiar*[9]:

"What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause."[10] [underscoring supplied]

We should stress that the 1987 Constitution requires the judge to determine probable cause "personally." The word "personally" does not appear in the corresponding provisions of our previous Constitutions. This emphasis shows the present Constitution's intent to place a greater degree of responsibility upon trial judges than that imposed under the previous Charters.

While affirming *Soliven*, *People vs. Inting*[11] elaborated on what "determination of probable cause" entails, differentiating the judge's object or goal from that of the prosecutor's.

"First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor for the Election Supervisor to ascertain. Only the Judge and the Judge alone makes this determination.

"Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him.

By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.

"And third, Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper -- whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial -- is the function of the Prosecutor." [12]

And clarifying the statement in *People vs. Delgado* [13] -- that the "trial court may rely on the resolution of the COMELEC to file the information, by the same token that it may rely on the certification made by the prosecutor who conducted the preliminary investigation, in the issuance of the warrant of arrest" -- this Court underscored in *Lim Sr. vs. Felix* [14] that "[r]eliance on the COMELEC resolution or the Prosecutor's certification presupposes that the records of either the COMELEC or the Prosecutor have been submitted to the Judge and he relies on the certification or resolution because the records of the investigation sustain the recommendation." We added, "The warrant issues not on the strength of the certification standing alone but because of the records which sustain it." Summing up, the Court said:

"We reiterate the ruling in *Soliven vs. Makasiar* that the Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.

"The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. He should call for [the] complainant and [the] witnesses themselves to answer the court's probing questions when the circumstances of the case so require." [15] [underscoring supplied]

The above rulings in *Soliven*, *Inting* and *Lim Sr.* were iterated in *Allado vs. Diokno* [16] where we explained again what probable cause means. Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. [17] Hence, the judge, before issuing a warrant of arrest, "must satisfy himself that based on the evidence submitted there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof." [18] At this stage of the criminal proceeding, the judge is not yet tasked to review in detail the evidence submitted during the preliminary investigation. It is sufficient that he personally evaluates such evidence in determining probable cause. [19] In *Webb vs. De Leon*, [20] we stressed that the judge merely determines the probability, not the certainty, of guilt of the accused and, in doing so, he need not conduct a *de novo* hearing. He simply personally reviews the prosecutor's initial determination finding probable cause to see if it is supported by substantial evidence.

In the recent case of *Roberts Jr. vs. Court of Appeals*, [21] this Court's application of the dictum laid down in *Soliven* -- affirmed and fortified in *Inting*, *Lim Sr.*, *Allado* and *Webb* -- should lay to rest the issue raised in the instant petitions. In *Roberts Jr.*, this Court, through Mr. Justice Hilario G. Davide, Jr., set aside the order of the

respondent judge directing inter alia the issuance of warrants of arrest against the accused, reasoning that said judge did not personally determine the existence of probable cause, since he had “only the information, amended information, and Joint Resolution as bases thereof. He did not have the records or evidence supporting the prosecutor’s finding of probable cause.”

In like manner, herein Respondent Sandiganbayan had only the information filed by the Office of the Ombudsman, the thirteen-page resolution of the investigating officer and the three-page memorandum of the prosecution officer, when it issued the warrant of arrest against the petitioners. The latter two documents/reports even had dissimilar recommendations -- the first indicting only Petitioner Narciso, the second including Petitioner Ho. This alone should have prompted the public respondent to verify, in the records and other documents submitted by the parties during the preliminary investigation, whether there was sufficient evidence to sustain the Ombudsman’s action charging both petitioners with violation of Sec. 3(e) of Anti-Graft law. But in its initial justification of the issuance of the warrant, the Sandiganbayan simply said:

“JUSTICE ESCAREAL:

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But in this particular case we believe there is a prima facie case based on our examination of the resolution because we believe, we think the Ombudsman will not approve a resolution just like that, without evidence to back it up.”[22]

In attempting to further justify its challenged action, the public respondent explained in its assailed Resolution:

“In the instant case, there are attached to the information, two (2) Memorandum/Resolution (sic) emanating from the Offices of the Ombudsman and the Special Prosecutor (Pp. 4-6, 7-19, respectively, Record) which clearly and indubitably established, firstly, the conduct of a due and proper preliminary investigation, secondly, the approval by proper officials clothed with statutory authority; and thirdly, the determination and ascertainment of probable cause based on the documentary evidence submitted by the complainant (Anti-Graft League of the Philippines), foremost among which is the Contract of Affreightment entered into between National Steel Corporation (NSC), and National Marine Corporation (NMC) and the COA-NSC audit report, together with the counter-affidavits of accused Rolando Narciso and NMC officials, among whom is accused-movant. Outlined in detail in the aforesaid Resolution of Titus P. Labrador, Graft Investigation Officer II, which was reviewed by Attys. Romeo I. Tan and Arturo Mojica, Director, Community Coordination Bureau and Assistant Ombudsman, PACPO, [respectively,] are the facts leading to the questioned transaction between NSC and NMC, together with an evaluation of the propriety and legality of the bidding process involved therein and which revealed that there were supposed non-compliance with proper bidding procedures. GIO Labrador’s findings and recommendations, extensively set out in his thirteen-page resolution, is complemented by the three-page Memorandum of Special Prosecution Officer II Leonardo P. Tamayo, both of which meticulously delved into the merits and demerits of the evidence presented by the complainant and accused-respondents and which resulted in their respective recommendation which led the Honorable Conrado M. Vasquez to approve the recommendations of Deputy Special Prosecutor Jose de G. Ferrer and Special Prosecutor Aniano A. Desierto for the filing of the information in the case at bar.

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“Considering, therefore, that this Court did not rely solely on the certification appearing in the information in this case in the determination of whether probable cause exists to justify the issuance of the warrant of arrest but also on the basis predominantly shown by the facts and evidence appearing in the resolution/memorandum of responsible investigators/ prosecutors, then the recall of the warrant of arrest, or the reconsideration sought for, cannot be granted. More so, when the information, as filed, clearly shows that it is sufficient in form and

substance based on the facts and evidence adduced by both parties during the preliminary investigation. To require this Court to have the entire record of the preliminary investigation to be produced before it, including the evidence submitted by the complainant and the accused-respondents, would appear to be an exercise in futility.”[23]

In light of the aforecited decisions of this Court, such justification cannot be upheld. Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e. whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice.[24] Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor’s report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor’s bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.[25]

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge.[26] We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor’s recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.

True, in *Webb vs. De Leon*, we found that “the painstaking recital and analysis of the parties’ evidence made in the DOJ Panel Report satisfied both judges that there [was] probable cause to issue warrants of arrest against petitioners.” This statement may have been wrongly construed by the public respondent to mean that the narration or description of portions of the evidence in the prosecutor’s report may serve as sufficient basis to make its own independent judgment. What it should bear in mind, however, is that, aside from the 26-page report of the DOJ panel, the sworn statements of three witnesses and counter-affidavits of the petitioners in *Webb* were also submitted to the trial court, and the latter is presumed to have reviewed these documents as well, prior to its issuance of the warrants of arrest.

In the instant case, the public respondent relied fully and completely upon the resolution of the graft investigation officer and the memorandum of the reviewing prosecutor, attached to the information filed before it, and its conjecture that the Ombudsman would not have approved their recommendation without supporting evidence. It had no other documents from either the complainant (the Anti-Graft League of the Philippines) or the People from which to sustain its own conclusion that probable cause exists. Clearly and ineluctably, Respondent Court's findings of "the conduct of a due and proper preliminary investigation" and "the approval by proper officials clothed with statutory authority" are not equivalent to the independent and personal responsibility required by the Constitution and settled jurisprudence. At least some of the documentary evidence mentioned (Contract of Affreightment between National Steel Corporation and National Marine Corporation, the COA-NSC audit report, and counter-affidavits of Rolando Narciso and NMC officials), upon which the investigating officials of the Ombudsman reportedly ascertained the existence of probable cause, should have been physically present before the public respondent for its examination, to enable it to determine on its own whether there is substantial evidence to support the finding of probable cause. But it stubbornly stood pat on its position that it had essentially complied with its responsibility. Indisputably, however, the procedure it undertook contravenes the Constitution and settled jurisprudence. Respondent Court palpably committed grave abuse of discretion in ipso facto issuing the challenged warrant of arrest on the sole basis of the prosecutor's findings and recommendation, and without determining on its own the issue of probable cause based on evidence other than such bare findings and recommendation.

WHEREFORE, the petitions are GRANTED and the assailed Resolution is SET ASIDE. The warrant issued by the Sandiganbayan (Second Division) on May 20, 1992 in Case No. 17674 for the arrest of Petitioners Doris Teresa Ho and Rolando Narciso is hereby declared NULL AND VOID.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, and Torres, Jr., JJ., concur.

[1] Rollo for G.R. 106632, pp. 128-135; penned by J. Romeo M. Escareal, with JJ. Augusto M. Amores and Sabino R. De Leon Jr., concurring.

[2] Ibid., pp. 136-140.

[3] Otherwise known as the Anti-Graft and Corrupt Practices Act .

[4] Rollo for G.R. 106632, pp. 51-63.

[5] Ibid., pp. 64-66.

[6] Ibid., pp. 48-50; docketed as Crim. Case No. 17674.

[7] Petition in G.R. No. 106632, pp. 1 & 17.

[8] 187 SCRA 788, July 25, 1990.

[9] 167 SCRA 394, November 14, 1988, per curiam.

[10] At p. 398.

[11] Supra, per Gutierrez, Jr., J.

[12] Ibid., pp. 792-793.

[13] 189 SCRA 715, 722, September 18, 1990, per Gancayco, J.

[14] 194 SCRA 292, February 19, 1991, per Gutierrez, Jr., J.

[15] *Ibid.*, p. 306.

[16] 232 SCRA 192, May 5, 1994, per Bellosillo, J.

[17] *Ibid.*, pp. 199-200, citing Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, vol. I, 1987 ed., pp. 86-87.

[18] *Ibid.*, p. 201.

[19] *Delos Santos-Reyes vs. Montesa, Jr.*, 247 SCRA 88, 94, August 7, 1995, per curiam.

[20] 247 SCRA 652, August 23, 1995, per Puno, J.

[21] 254 SCRA 307, March 5, 1996.

[22] TSN, August 4, 1992, p. 17 (during the scheduled arraignment of the petitioners before the Sandiganbayan which was deferred due to the question now raised in these petitions).

[23] Assailed Resolution, pp. 6-8; rollo for G.R. No. 106632, pp. 133-135.

[24] See also Section 6(b), Rule 112 of the Rules of Court.

[25] Lawyers for the accused can likewise assist the judicial process by including all their grounds and objections in their motions to quash warrant, pointing out all the alleged errors to the trial court at the earliest opportunity, rather than reserving their arguments on appeal before this Court.

[26] See Dissenting Opinion of Mr. Justice Reynato S. Puno in *Roberts, Jr. that Soliven* and its related cases “did not establish the absolute rule that unless the judge has the complete records of the preliminary investigation before him, he cannot lawfully determine probable cause and issue a warrant of arrest.”

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