

**CEFERINO S. PAREDES, JR. AND MANSUETO J. HONRADA,
PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN, SECOND
DIVISION; HONORABLE ANIANO DESIERTO, IN HIS OFFICIAL
CAPACITY AS SPECIAL P...**

G.R. No. 108251. January 31, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari, prohibition and injunction, seeking to set aside the resolution dated December 9, 1992 of the Office of the Ombudsman, denying petitioner's motion for the reinvestigation of three cases of falsification of public documents which had been filed against petitioners and to restrain the Second Division of the Sandiganbayan from hearing the cases.

The cases originated in a complaint filed on January 23, 1990 by Teofilo Gelacio, then vice mayor of San Francisco, Agusan del Sur. Charged with petitioner Paredes, Jr., who was then the provincial governor, were petitioner Mansueto J. Honrada, clerk of court of the Municipal Circuit Trial Court of San Francisco, Agusan del Sur, and Atty. Generoso Sansaet, counsel of petitioner Paredes, Jr. in Criminal Case No. 1393 of the MCTC.

In his complaint Gelacio alleged that MCTC clerk of court Honrada, in conspiracy with petitioner Paredes, Jr. and the latter's counsel Atty. Sansaet, certified as true a copy of a Notice of Arraignment dated July 1, 1985 and of the Transcript of Stenographic Notes on July 9, 1985, showing that an arraignment had been held in Criminal Case No. 1393 and issued a certification dated March 24, 1986 to that effect when in truth no arraignment had been held in that case. In support of his allegation, Gelacio submitted a Certification issued by Judge Ciriaco C. Ariño of the MCTC to the effect that Criminal Case No. 1393 had "never reached the arraignment stage" before it was dismissed on motion of the prosecution.[1]

A preliminary investigation of the complaint was conducted by Public Prosecutor Albert Axalan who had been deputized to assist the Deputy Ombudsman for Mindanao. Petitioners and Atty. Sansaet, as respondents in the case, filed their respective counter-affidavits. Paredes, Jr. denied the charges. He alleged that their filing was politically motivated and that the complainant, Teofilo Gelacio, was being used by his political enemies to harass him. For his part, Honrada maintained that an arraignment had indeed been held in Criminal Case No. 1393 as certified by him. His claim was corroborated by Atty. Generoso Sansaet, who stated in an affidavit that he was present during the arraignment, being the counsel of Paredes, Jr. Sansaet called Judge Ariño's Certification, denying that there was an arraignment, the product "of a faltering mind." [2]

Prosecutor Axalan submitted his resolution to the Deputy Ombudsman for Mindanao, but before it could be acted upon, Atty. Sansaet, one of the respondents, retracted his earlier statement to the effect that Paredes, Jr. had been arraigned before the case against him was dismissed. In an Affidavit of Explanations and Rectifications dated July 29, 1991, Sansaet claimed that there was really no arraignment held in Criminal Case No. 1393 and that Honrada made false certifications which were used to support the dismissal (on the ground of double jeopardy) of Criminal

Case No. 13800 which was then pending against Paredes, Jr. in the Sandiganbayan.[3]

As a result of this development, Paredes, Jr. and Honrada, were required to comment. Paredes, Jr. claimed that the Sansaet's aboutface was the result of their political estrangement.[4] For his part Honrada insisted that an arraignment in Criminal Case No. 1393 had indeed been held and that in making the certifications in question he stated the truth.

On the basis of the evidence of the parties, Gay Maggie Balajadia-Violan, Graft Investigation Officer of the Office of the Deputy Ombudsman, recommended on February 24, 1992 that petitioners and Atty. Sansaet be charged with Falsification of Public Documents. Her recommendation was indorsed by Deputy Ombudsman Cesar Nitorreda to Ombudsman Conrado Vasquez, Who, upon the recommendation of Erdulfo Querubin of the Office of the Special Prosecutor, approved the filing of three informations for falsification of public documents against Paredes, Jr., Honrada and Sansaet with the Sandiganbayan.[5] The cases were docketed as Criminal Case Nos. 17791, 17792 and 17793.

On July 9, 1992, petitioners moved to quash the informations. Their motion was denied by the Sandiganbayan in its resolution of August 25, 1992, as was the motion for reconsideration they subsequently filed.

Petitioners next moved for a reinvestigation of the cases. They complained (1) that the resolution, recommending the filing of the cases, was not prepared by Public Prosecutor Axalan, who had conducted the preliminary investigation, but by GIO II Gay Maggie Balajadia-Violan, who allegedly had no hand in the investigation; (2) that Violan relied solely on the retraction of Atty. Generoso Sansaet and the Certification of Judge Ciriaco C. Ariño and disregarded evidence in favor of petitioners; and (3) that Prosecutor Erdulfo Q. Querubin, who reviewed Violan's recommendation, could not be expected to act fairly because he was the prosecutor in Criminal Case No. 13800 in connection with which the allegedly falsified records were used and in fact appealed the dismissal of the case to this Court.[6]

Although these grounds were the same ones invoked by petitioners in their motion to quash, which the Sandiganbayan had denied, the Sandiganbayan nonetheless directed the prosecution to conduct a reinvestigation of the cases. Accordingly, the Office of the Ombudsman required complainant, the herein respondent Teofilo Gelacio, to comment on petitioners' Motion for Reinvestigation.

In a resolution dated December 9, 1992, Special Prosecution Officer Carlos D. Montemayor recommended denial of petitioners' motion. He noted that the matters raised in the motion were the same ones contained in petitioners' motion to quash which had already been denied and that in fact "a cursory examination of the resolution of GIO II Gay Maggie Balajadia-Violan shows that the existence of a prima facie case has been duly established and the same was reviewed by SPO III Erdulfo Querubin and also the approval of Honorable Conrado M. Vasquez." He held that as no newly-discovered evidence or denial of due process had been shown, there was no basis for petitioners' request for a reinvestigation.

Montemayor's recommendation was approved by Special Prosecutor Aniano Desierto and Ombudsman Conrado Vasquez. Accordingly the Sandiganbayan set the cases for trial.

The present petition for certiorari, prohibition and injunction was then filed to enjoin the trial of the criminal cases. Petitioners pray that:

- (1) Upon the filing of this petition and before its final resolution, to issue a temporary restraining order immediately ordering the Sandiganbayan, Second Division, to cease and desist from proceeding with the scheduled hearing of this case;
- (2) After due hearing, to adjudge that respondents Honorable Special Prosecutor Aniano A. Desierto and

Honorable Ombudsman Conrado M. Vasquez have committed grave abuse of discretion, amounting to lack of jurisdiction, in issuing and approving the questioned resolution dated December 9, 1992 and ordering said resolution denying petitioners' motion for reinvestigation be annulled and set aside;

(3) To adjudge that the Sandiganbayan, Second Division, is without jurisdiction to try Criminal Case Nos. 17791, 17792, and 17793 all of which are apparently intended as political harassments against the herein petitioners, particularly as against Ceferino S. Paredes, Jr., and prohibiting the said court from proceeding (with) the hearing of the said cases on January 15, 1993, and likewise ordering the said court to dismiss the said cases, with costs against respondents and Teofilo Gelacio; and

(4) To issue a writ of injunction, thereby making the restraining order permanent, and prohibiting the respondents and complainant Teofilo Gelacio from committing any act or acts tending to harass and to inflict further damage and injury to petitioners, such as but not limited to the continuation and further prosecution of said Criminal Cases Nos. 17791, 17792, and 17793.

Petitioners contend (1) that their constitutional right to due process was violated at various stages of the preliminary investigation; (2) that the prosecutors closed their eyes to the fact that in filing the cases private respondent Teofilo Gelacio engaged in forum-shopping; and (3) that the cases were filed for political harassment and there is in fact no prima facie evidence to hold them answerable for falsification of public documents.[7]

I.

Anent the first ground, petitioners contend that the filing of charges against them was not recommended by the prosecutor who conducted the preliminary investigation, but by another one who, it is alleged, had no part at all in the investigation.

Petitioners' contention has no basis in fact. It appears that the preliminary investigation of the complaint filed by Teofilo Gelacio was initially conducted by Public Prosecutor Albert Axalan who had been deputized to assist the Deputy Ombudsman for Mindanao in the investigation of graft cases. Axalan prepared a resolution. The records do not show what his recommendation was. What is clear, however, is that no action had been taken on his recommendation in view of the fact that Atty. Generoso Sansaet, one of the respondents in the cases, retracted an earlier statement he had given to the effect that petitioner Ceferino S. Paredes, Jr. had been arraigned in Criminal Case No. 1393 before the case was dismissed. Atty. Sansaet now claimed that no arraignment had been held after all. This new development required the reopening of the investigation (in fact Paredes, Jr. and Honrada were required to comment on the retraction), the reevaluation of the evidence, and the preparation of a new resolution. Gay Maggie Balajadia-Violan, Graft Investigation Officer II of the Office of the Deputy Ombudsman for Mindanao, was designated to conduct the investigation and prepare a report, which she did.

Violan's recommendation was indorsed by Deputy Ombudsman Cesar Nitorreda to Ombudsman Conrado Vasquez, who then referred the matter to Special Prosecution Officer Ill Erdulfo Querubin for review. Querubin concurred in the recommendation of Violan but suggested that, instead of one, three separate informations for falsification of public documents be filed against respondents (Paredes, Jr., Honrada and Sansaet), considering that three documents were involved.

On June 26, 1992, Ombudsman Conrado Vasquez approved the recommendations of Violan and Querubin. Accordingly three cases were filed against petitioners with the Sandiganbayan, where they were docketed as Criminal Case Nos. 17791, 17792 and 17793.

There is thus no basis for petitioners' claim that the resolution was prepared by one who did not take any part in the investigation. What happened here is similar to the trial of a case by one judge who, without being able to

finish the hearing, ceases from office for one reason or another and by necessity the decision is rendered by another judge who has taken over the conduct of the case. Such an arrangement has never been thought to raise any question of due process. For what is important is that the judge who decides does so on the basis of the evidence in record. It does not matter that he did not conduct the hearing of that case from the beginning.

Petitioners nonetheless charge that GIO II Violan and Prosecutor Querubin did not have such cold neutrality of an impartial judge to be trusted to conduct a fair investigation. According to petitioners, Violan gave credence to the Certification issued by Judge Ciriaco C. Ariño when the fact is that Judge Ariño subsequently executed an affidavit, dated November 5, 1990, in which he explained that "he issued the said certificate without expectation that the same would be used as evidence in any case" and that the "use of said certificate . . . is against [his] conscience." Worse, it is contended, Violan considered the Affidavit of Explanations and Rectifications executed by Atty. Sansaet, which she should have disregarded because it was made in violation of the confidentiality of attorney-client communication under Rule 130, § 24 (b) of the Rules of Court. As for Prosecutor Querubin, they claim that he is the same prosecutor who had handled the prosecution of Criminal Case No. 13800 against petitioner Paredes, Jr. in the Sandiganbayan and after its dismissal, sought review in this Court and, therefore, he was biased against petitioners.

That Violan gave credence to the Certification of Judge Ariño in concluding that no arraignment had been held in Criminal Case No. 1393 is not proof that Violan was biased against petitioners. Although Judge Ariño subsequently gave an Affidavit, he never in that Affidavit repudiated what he had earlier stated. In his Affidavit he merely stated:

1. That I am the incumbent Municipal Circuit Trial Court Judge in the First Municipal Circuit Trial Court of San Francisco-Rosario-Bunawan, Agusan del Sur;
2. That I am the same Ciriaco C. Ariño who issued a certificate in Criminal Case No. 1393 entitled Pp. vs. Ceferino S. Paredes, Jr. which certificate was used as evidence in administrative complaint against Mansueto J. Honrada, in the Administrative Complaint No. A.M. P-90-396 and Criminal Complaint against Mansueto J. Honrada, incumbent Governor Ceferino S. Paredes, Jr. and Atty. Generoso S. Sansaet before the Ombudsman under Criminal Case No. OBM-MIN-90-0053 (sic) entitled Teofilo Gelacio vs. Mansueto J. Honrada, et. al.;
3. That honestly, the said certificate was issued without my expectation that the same be used as evidence in any case and I be a witness;
4. That the use of said certificate as evidence in the above-mentioned cases is against my conscience, more so upon discovery that the cases aforesaid are known to me to be politically motivated and involves [sic] big time politicians in Agusan del Sur about whom I am not at liberty to name names for security reason;
5. That in view of all the foregoing, I am not interested to testify in any investigation to be conducted in connection thereof, either in the administrative or criminal proceedings.

Thus, Judge Ariño never denied his earlier Certification that Criminal Case No. 1393 "never reached the arraignment stage," because having learned that Paredes, Jr. had petitioned the Ministry of Justice for a review of the fiscal's resolution, Judge Ariño suspended action until March 17, 1986 and in fact the fiscal later moved for the dismissal of the case.

The fact that Judge Ariño did not anticipate that his certificate might be used in evidence, much less in the criminal cases now pending in the Sandiganbayan, is not a reason to disregard it. The fact is that Judge Ariño did not retract his previous Certification that there was no arraignment held in Criminal Case No. 1393. If that is the truth, then the fact that he now says he did not anticipate that his certificate would be used in evidence in any case would not diminish a whit the value of the certificate.

Nor was consideration of the retraction of Atty. Sansaet proof that GIO II Violan was biased against petitioners. Petitioners contend that Sansaet's confession was privileged and that Violan herself acknowledged that the affidavit of retraction might be inadmissible in court.

In the first place, there is nothing in the resolution of Violan which shows that she based her conclusion (that petitioners were probably guilty of falsification of public documents) on Atty. Sansaet's retraction. In her resolution, all that she stated is that "the confession of Atty. Sansaet has important bearing in this case." Otherwise she did not cite the confession as proof of the falsification of public documents. To the contrary, Violan thought that the retraction was made in violation of attorney-client privilege and therefore, would be inadmissible in evidence. Violan could not, therefore, have relied on the affidavit of retraction.

Moreover, the admissibility of this piece of evidence is a question for the Sandiganbayan to determine in the event it is used by the prosecution. It is untenable to ascribe bias and partiality to the investigator because she considered this retraction in her resolution of the case. Even if she relied on it mere "divergence of opinions between a judge and a party's counsel as to applicable laws and jurisprudence is not sufficient ground for disqualifying the judge from hearing the case on the ground of bias and partiality." [8]

As for Prosecutor Querubin, simply because he was the one who handled the prosecution of Criminal Case No. 13800, in connection with which the documents allegedly falsified were used by petitioners, is not a reason for supposing he could not act fairly. As any other counsel in a case, it was his duty to act with "full devotion to [his client's] genuine interests, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability." [9] It cannot be casually assumed that because of his engagement in that case he had lost his objectivity to such an extent that he forsook his duty to see to it that justice was done and not to act out of vindictiveness.

Indeed, Querubin is a public prosecutor, not a private attorney. In the familiar terminology, he is the representative not of an ordinary party to a controversy but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. [10] It may therefore be assumed that he was merely performing an official duty and that nothing personal was involved in his recommendation to prosecute the cases.

Above all, it should be stressed that the decision to charge petitioners in the Sandiganbayan was the decision not only of one person but of all those who in one way or another were called upon to act in the cases, namely: Graft Investigation Officer Gay Maggie Balajadia-Violan, Deputy Ombudsman Cesar Nitorreda, Ombudsman Conrado Vasquez, and Special Prosecutor Aniano Desierto. Indeed, Querubin's only contribution to the process was to suggest the filing of three separate informations of falsification of public documents against petitioners.

II.

The second ground for the petition is that the Office of the Ombudsman closed its eyes to the fact that in filing these cases, complainant Teofilo Gelacio is guilty of forum-shopping and that his purpose for the filing of the cases is simply political harassment. To buttress their contention, petitioners call attention to the factual background of the cases. [11]

According to petitioners, way back in 1984 private respondent Teofilo Gelacio charged petitioner Paredes, Jr. with perjury on the ground that in 1975 Paredes, Jr. made false statements in an affidavit which he used in support of his application for a free patent. As already noted, the case which was filed with the Municipal Trial Court of San Francisco, Agusan del Sur, and docketed there as Criminal Case No. 1393, was dismissed on March 24, 1986

upon motion of the prosecution.

On October 28, 1986, Teofilo Gelacio filed another complaint against petitioner Paredes, Jr., then the acting governor of the province. The complaint was for violation of § 3 (a) of Republic Act 3019, otherwise known as Anti-Graft and Corrupt Practices Act. Allegedly, in 1976 petitioner Paredes, Jr., then the Provincial Attorney of Agusan del Sur, unduly "persuaded, induced and influenced" the Public Land Inspector to approve his (Paredes, Jr.'s) application for a free patent. According to petitioners, this case involved the same application for a free patent of petitioner Paredes, Jr., which was the subject of Criminal Case No. 1393.

The information was filed by Special Prosecutor Erdulfo Querubin in the Sandiganbayan where it was docketed as Criminal Case No. 13800. Petitioner Paredes, Jr. moved to quash the information, but the court denied his motion. He then filed a motion for reconsideration. It was in connection with this motion that the procurement of allegedly falsified documents, now the subject of prosecution, was made by petitioner Paredes, Jr. The documents were used to support his motion for reconsideration.

On August 1, 1991, the Sandiganbayan reconsidered its previous resolution and dismissed Criminal Case No. 13800, although on the ground of prescription. The Office of the Ombudsman sought a review of the action of the Sandiganbayan, but its petition was dismissed by this Court on July 3, 1992 in G.R. No. 101724. The motion for reconsideration filed by the prosecution was likewise denied.

As an offshoot of the execution of these documents, two cases were filed by Teofilo Gelacio: (1) an administrative complaint (A.P. Case No. P-90-3 96) for falsification of public documents which was filed with this Court against Mansueto Honrada, the clerk of the MCTC who made certifications and (2) a complaint for falsification of public documents, initially filed as OMB-MIN-90-0053 with the Office of the Ombudsman and eventually as Criminal Case Nos. 17791, 17792, and 17793 in the Sandiganbayan, against the petitioners and Atty. Generoso Sansaet.

The first case was dismissed for insufficiency of the evidence. But with respect to the second complaint, Graft Investigation Officer Violan found probable cause to proceed against petitioners and against Atty. Sansaet and so recommended the filing of a case against them. Her recommendation was approved by the Ombudsman on June 26, 1992, although upon the recommendation of Special Prosecutor Querubin three separate informations were filed with the Sandiganbayan. Earlier on July 29, 1991, Atty. Sansaet, one of the respondents, executed an Affidavit of Explanations and Rectifications in which he stated that, contrary to his previous affidavit, there was no arraignment held in Criminal Case No. 1393.

A. Petitioners contend that these cases should be dismissed, being merely the latest in a series of cases which "arose out of the same alleged incident - i.e. that of allegedly having induced the land inspector to approve his (Paredes, Jr.'s) land application,"^[12] for having been filed in violation of the rules on forum-shopping. Petitioners cite the following statement in *Crisostomo v. Securities and Exchange Commission*:^[13]

There is forum-shopping whenever as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts while an administrative proceeding is pending as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. . . A violation of this rule shall constitute contempt of court and shall be a cause for summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or the party concerned.

The mere filing of several cases based on the same incident does not necessarily constitute forum-shopping. The test is whether the several actions filed involve the same transactions, essential facts, and circumstances.^[14] Here, although several cases were filed by the same complainant against the same defendant and the subject

matter of the actions of two of the cases was the same incident (i.e., the application for free patent of petitioner Ceferino Paredes, Jr.), the fact is that the several cases involve essentially different facts, circumstances and causes of action.

Thus, Criminal Case No. 1393, which was filed in the MCTC of San Francisco, Agusan del Sur, was for perjury, based on false statements allegedly made in 1975 by petitioner Paredes, Jr. in connection with his free patent application. Criminal Case No. 13800, which was filed in the Sandiganbayan, although based on the filing of the same application for free patent, was for violation of the Anti-graft and Corrupt Practices Act, on the allegation that petitioner, as Provincial Attorney, had unduly influenced the Public Land Inspector to secure the approval of his free patent application. On the other hand, as already stated, the present cases (Criminal Case Nos. 17791, 17792 and 17793) are for falsification of court records pertaining to Criminal Case No. 1393. A.P. Case No. P-90-396 is an administrative case against petitioner Honrada based on the same incident and facts that are subject of the preceding criminal cases. The rest are incidents of these cases, being the petition for review and motions for reconsideration in Criminal Case No. 13800 and A.P. Case No. P-90-396.

Thus the present cases involve substantially different transactions, facts and circumstances from those involved in the other, though related, cases. Although they arose from the same incident, i.e., petitioner's public land application, they involve different issues. It is well settled that a single act may offend against two or more distinct and related provisions of law^[15] or that the same act may give rise to criminal as well as administrative liability.^[16] As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense.

Petitioners call attention to the fact that the administrative complaint against petitioner Honrada was dismissed. They invoke our ruling in *Maceda v. Vasquez*^[17] that only this Court has the power to oversee court personnel's compliance with laws and take the appropriate administrative action against them for their failure to do so and that no other branch of the government may exercise this power without running afoul of the principle of separation of powers.

But one thing is administrative liability. Quite another thing is the criminal liability for the same act. Our determination of the administrative liability for falsification of public documents is in no way conclusive of his lack of criminal liability. As we have held in *Tan v. Comelec*,^[18] the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts which were the subject of the administrative complaint.

Petitioner's assertion that private respondent Alterado has resorted to forum-shopping is unacceptable. The investigation then being conducted by the Ombudsman on the criminal case for falsification and violation of the Anti-Graft and Corrupt Practices Act, on the one hand, and the inquiry into the administrative charges by the COMELEC, on the other hand, are entirely independent proceedings. Neither would the results in one conclude the other. Thus an absolution from a criminal charge is not a bar to an administrative prosecution (*Office of the Court administrator v. Enriquez*, 218 SCRA 1) or vice versa.^[19]

B. As final argument, petitioners allege that the complaint in Criminal Case Nos. 17791, 17792 and 17793 was filed by political enemies of petitioner Paredes, Jr. merely to harass him and that there is in fact no probable cause to support the prosecution of these cases. Petitioners cite the following which allegedly indicate that the charges below have merely been trumped up:

(1) The affidavit of Agusan del Sur District Citizen's Attorney Lou Nueva, stating that then Congressman Democrito O. Plaza instructed Atty. Leonardo Cadiz to secure a certification from Judge Ciriaco C. Ariño that no arraignment had been held in Criminal Case No. 1393, threatening that if the judge refused to give the

certification, he (Congressman Plaza) would do "everything against Judge Ciriaco C. Ariño," including "reviving certain cases against Judge Ariño";[20] and (2) The affidavit, dated November 5, 1990, of Judge Ariño in which he stated that he did not expect that the certificate which he had previously issued would be used in evidence and that the use of the certificate in the cases below was "against his conscience," because the cases were politically motivated and he was not going to testify in any investigation concerning such certificate.[21] At the same time petitioners seek to minimize the retraction of Atty. Sansaet by ascribing political motivation for its execution. Petitioner Ceferino Paredes, Jr. claims that Sansaet's obsession has been to win in an election and that his loss to petitioner Paredes, Jr. in the May 11, 1992 congressional elections was Sansaet's sixth defeat. As for private respondent Teofilo Gelacio, petitioners say he is a political leader of Democrito Plaza. They claim that in 1991 Atty. Sansaet changed political affiliation and allied himself with Democrito Plaza and Teofilo Gelacio.

Petitioners argue that the certifications made by the clerk of court with respect to an arraignment allegedly held on July 9, 1985 in Criminal Case No. 1393 is conclusive and cannot be altered by Atty. Sansaet's claim to the contrary. They cite what is now Rule 132, § 23 of the Revised Rules on Evidence, which provides that "public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

We find the foregoing averments to be unpersuasive. First of all, that the filing of the charges is politically motivated cannot justify the prohibition of a criminal prosecution if there is otherwise evidence to support them. Here a preliminary investigation of the complaint against petitioners was held during which petitioners were heard. Their evidence, as well as that of private respondent Gelacio, was considered in great detail in the resolution of GIO II Violan. Violan's resolution was reviewed by Special Prosecutor Erdulfo Querubin who made his own detailed resolution concurring in the finding of Violán. We cannot say that, in approving the resolutions of two investigators, the respondent Ombudsman and Special Prosecutor committed an abuse of their discretion.

Indeed, this Court is loath to interfere with the discretion of the Ombudsman unless such discretion is clearly shown to have been abused. As explained in *Young v. Office of the Ombudsman*:[22]

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

There are instances, constituting exceptions to the general rule, when this Court will intervene in the prosecution of cases. Some of these instances were enumerated in *Brocka v. Enrile*,[23] as follows:

- a. Where injunction is justified by the necessity to afford protection to the constitutional rights of the accused; (*Hernandez vs. Albano, et al.*, L-19272, January 25, 1967, 19 SCRA 95)
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (*Dimayuga, et al. vs. Fernandez*, 43 Phil. 304; *Hernandez vs. Albano, supra*; *Fortun vs. Labang, et al.* L-38383, May 27 1981, 104 SCRA 607)
- c. When there is a prejudicial question which is sub judice;. (*De Leon vs. Mabanag*, 70 Phil. 202)
- d. When the acts of the officer are without or in excess of authority; (*Planas vs. Gil*, 67 Phil 62)
- e. Where the prosecution is under an invalid law, ordinance or regulation; (*Young vs. Rafferty*, 33 Phil 556; *Yu Co Eng vs. Trinidad*, 47 Phil. 385, 389)

- f. When double jeopardy is clearly apparent; (*Sangalang vs. People and Avendia*, 109 Phil. 1140)
- g. Where the court has no jurisdiction over the offense; (*Lopez vs. City Judge*, L-25795, October 29, 1966, 18 SCRA 616).
- h. Where it is a case of persecution rather than prosecution; (*Rustia vs. Ocampo*, CA-G.R. No. 4760, March 25, 1960)
- i. Where the charges are manifestly false and motivated by the lust for vengeance; (*Recto vs. Castelo*, 18 L.J. (1953), cited in *Ranoa vs. Alvendia*, CA G.R. No. 30720-R, October 8, 1962; cf *Guingona, et al. vs. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577).
- j. When there is clearly no prima facie case against the accused and motion to quash on that ground has been denied; (*Salonga vs. Pano, et al.*, L-59524, February 18, 1985, 134 SCRA 438); and
- k. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners. (*Rodriguez vs. Castelo*, L-6374, August 1, 1953) (cited in *Regalado, REMEDIAL LAW COMPENDIUM*, p. 188 1988 Ed).

But none of these instances is present here.

What petitioners raise are questions which go to the weight to be given to the affidavits by Atty. Nueva and Judge Ariño. These are matters for the trial court's appreciation. A preliminary investigation is not a trial. The function of the government prosecutor during the preliminary investigation is merely to determine the existence of probable cause.[24] As we explained in *Pilapil vs. Sandiganbayan*,[25] this function involves only the following:

Probable cause is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. (Words and Phrases, *Probable Cause v.* 34, p. 12) The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Secondly, to warrant a finding of political harassment so as to justify the grant of the extraordinary writs of certiorari and prohibition, it must be shown that the complainant possesses the power and the influence to control the prosecution of cases. Here, the prosecution is handled by the Office of the Ombudsman. Although it is intimated that Petitioner Ceferino S. Paredes, Jr. is the subject of persecution by his political enemies in Agusan del Sur, it has not been alleged, much less shown, that his enemies have influence and power over the national prosecution service.

To show political harassment petitioners must prove that public prosecutor, and not just the private complainant, is acting in bad faith in prosecuting the case[26] or has lent himself to a scheme that could have no other purpose than to place the accused in contempt and disrepute.[27] For it is only if he does so may the prosecutor, in conducting the preliminary investigation, be said to have deserted the performance of his office to determine objectively and impartially the existence of probable cause and thus justify judicial intervention in what is essentially his province.

WHEREFORE, the petition for certiorari and prohibition is DISMISSED.

SO ORDERED.

Narvasa, C.J. (Chairman), Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.

[1] Rollo, p. 63.

[2] Rollo, p. 75.

[3] Affidavit of Explanations and Rectifications of Atty. Generoso Sansaet, Rollo, p. 68.

[4] Rollo, p. 77.

[5] Rollo, pp. 78 and 80.

[6] Rollo, pp. 38-43.

[7] Petition, p. 14.

[8] Gandionco v. Peñaranda, 155 SCRA 725, 731(1987).

[9] See Suarez v. Court of Appeals, 220 SCRA 274,279(1993), citing Canon 17, Code of Professional Responsibility.

[10] Suarez v. Platon, 69 Phil. 556, 564-565 (1940).

[11] See Petition, pp. 4-14.

[12] Reply, p. 12; Rollo, p. 204.

[13] 179 SCRA 146 (1989).

[14] GSIS v. Sandiganbayan, 191 SCRA 655,660(1990); Palm Avenue Realty & Dev. Corp. v. PCGG, 153 SCRA 579, 591 (1987).

[15] Ada v. Virola, 172 SCRA 336, 340 (1989); citing People v. Bacolod, 89 Phil. 621(1951); United States v. Capurro, 7 Phil. 24(1906); People v. City Court of Manila, 154 SCRA 175 (1987).

[16] 6 Cosca v. Palaypayon, 237 SCRA 249 (1994).

[17] 221 SCRA 464 (1993).**[18] 237 SCRA 353 (1994).**

[19] Id., at 359 (italics supplied).

[20] Rollo, pp. 18-19.

[21] Rollo, p. 18.

[22] 228 SCRA 718, 722-723 (1993), citing Ocampo v. Ombudsman, 225 SCRA 725 (1993).

[23] 192 SCRA 183, 188 (1990).

[24] Cruz v. People, 233 SCRA 439,459(1994).

[25] 221 SCRA 349, 360(1993).

[26] *Dimayuga v. Fernandez*, 43 Phil. 304,306-307(1922).

[27] See *Fortun v. Labang*, 104 SCRA 607 (1981).

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