

BIENVENIDO S. EVANGELISTA, PETITIONER, VS. SANDIGANBAYAN AND LAURA G. DE OCAMPO, RESPONDENTS.*G.R. No. 112313. June 16, 1995*

Ponente: BELLOSILLO, J.

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Private respondent Laura G. de Ocampo filed a complaint on 2 August 1991 with the Office of the Ombudsman charging petitioner Bienvenido S. Evangelista, Mayor of Obando, Bulacan, with violation of Sec. 3, par. (e), of R.A. 3019 (Anti-Graft and Corrupt Practices Act). She alleged inter alia that Mayor Evangelista acted maliciously in denying her application for Locational Clearance and Mayor's Permit in connection with her proposed site for a marine filling station in Bo. Paliwas, Obando, while showing manifest partiality in intervening in behalf of Adolfo Gonzales in his application for dealership with Petron and the Energy Regulatory Board.

In a resolution dated 4 May 1992 Ombudsman Investigator Francisco Samala recommended the filing of an Information against petitioner. The resolution was referred to the Office of the Special Prosecutor for review. On 28 October 1992 Special Prosecution Officer (SPO) Wendell Barreras-Sulit issued a memorandum concurring in the resolution and drafted the Information.

On 12 November 1992 Special Prosecutor (SP) Aniano A. Desierto directed SPO Reynaldo A. Alhambra to review the entire case. In a memorandum dated 24 November 1992 SPO Alhambra recommended that the complaint against petitioner be dismissed. Deputy Special Prosecutor (DSP) Jose De G. Ferrer recommended disapproval of the memorandum because he agreed with SPO Sulit that "respondent Mayor is indictable under Sec. 3(e) of R.A. 3019 for the whimsical refusal to issue locational clearance to complainant whose property is actually within the commercial area per the Declaration, Certification of the Provincial Assessor and the Locational Clearance issued by HLURB." [1] On the other hand, SP Desierto concurred in the recommendation of SPO Alhambra since "[h]is conclusion (was) based on the evidence and not on mere inferences." [2] Ombudsman Conrado M. Vasquez likewise approved the recommendation of SP Desierto and SPO Alhambra. Private respondent then sought reconsideration of the dismissal of her complaint.

In an order dated 5 July 1993 SPO Reynaldo L. Mendoza denied the motion for reconsideration. This time however DSP Ferrer, SP Desierto and Ombudsman Vasquez changed their respective original actions. DSP Ferrer recommended approval of the order while SP Desierto did not concur with the order since "[i]t having been established that under (the) Zoning Ordinance of 1989 and the HLURB finding that the lot on which the filling station was to be installed was commercial in nature, there appears to be no cogent reason for (petitioner's) refusal to grant complainant's request. Therefore, a prima (facie) case exists for Violation of R.A. 3019, Sec. 3(e). Approval of the Information prepared by SPO Sulit (is) recommended." [3] For his part Ombudsman Vasquez also disapproved the order because "a closer look convinced (him) to concur with OMBI Samala, SPO Sulit and SP Desierto." [4] Thus, on 7 September 1993 the corresponding Information was filed before public respondent Sandiganbayan.

Petitioner moved for reconsideration assailing the validity of the Information. He alleged that the Information was irregular due to the existence of two (2) conflicting resolutions: SPO Sulit recommended filing of the Information, while SPO Alhambra recommended dismissal of the case. The motion was denied by SPO Manuel A. Corpuz in the resolution dated 21 September 1993 thus -

The conflicting views having been reviewed, the Office of the Special Prosecutor recommended the filing of the Information.

The question as to whether a prima facie case exists to warrant the filing of an Information in a case submitted for its determination is a matter purely within the province or authority of the Office of the Special Prosecutor. What is significant to note is the fact that a preliminary investigation was conducted where (the) parties were accorded the opportunity to submit their respective evidence.

Thus, when an Information is filed in Court based on a finding of a prima facie case determined in a preliminary investigation, the said Information is regular and valid because the respondent-movant was given his day in Court.[5]

DSP Ferrer with the concurrence of SP Desierto recommended approval of the resolution with the notation of the latter that "the final authority to determine if prima facie case exists rests on the Ombudsman pursuant to R.A. 6770, and the Ombudsman, in this case, has approved the recommendation to file the Information in the Sandiganbayan." [6] Ombudsman Vasquez approved the resolution.

Petitioner then moved to quash the Information filed with the Sandiganbayan alleging that the Ombudsman had already dismissed the complaint against him and the Information was also disapproved by the Ombudsman. On 8 November 1993 the motion was denied. It is the propriety of this denial that is now raised before us. Specifically, the issue is whether the Sandiganbayan acted with grave abuse of discretion in issuing the order of 8 November 1993.

Petitioner maintains that the Information is unlawful as it was based on the resolution of SPO Sulit which was reversed by SPO Alhambra and the dismissal of the complaint approved by the Ombudsman. The motion for reconsideration filed by private respondent was denied by SPO Mendoza and the denial was approved by Ombudsman Vasquez. Petitioner concludes that the last order dismissing the complaint became final and executory since no appeal was taken therefrom.

We cannot sustain the position of petitioner. The present dilemma was triggered by the seeming discrepancy between two (2) certified photocopies of the order of SPO Mendoza: Annex "D" of the petition and Annex "1" of the comment of the Office of the Solicitor General. In Annex "D," SP Desierto appears to have concurred in the dismissal of the complaint. However, a typewritten note beside the space allotted for his signature contradicts his purported "concurrence:"

It having been established that under (the) Zoning Ordinance of 1989 and the HLURB finding that the lot on which the filling station was to be installed was commercial in nature, there appears to be no cogent reason for respondent's refusal to grant complainant's request. Therefore, a prima (facie) case exists for Violation of R.A. 3019, Sec 3(e). Approval of the Information prepared by SPO Sulit is recommended.[7]

In contrast, between the words "I CONCUR" appearing over the name of SP Desierto in Annex "1" the handwritten words "DO NOT" were inserted. The same notation appears beside the space allotted for his concurrence, except that it is handwritten.

Petitioner submits that the insertion may have been authored by somebody who, from the beginning, had

manipulated the records of the case. For, petitioner further argues, it would be illogical for SP Desierto not to have concurred with the order of SPO Mendoza considering his previous concurrence with the recommendation of SPO Alhambra. Besides, the notation in Annex "D" is typewritten, whereas in Annex "1" it is handwritten. The notation should have been attributed instead to DSP Ferrer since it was he who recommended the disapproval of the memorandum of SPO Alhambra and made a handwritten notation thereon on the space opposite his signature.

We find these arguments specious and flawed. It is not illogical for SP Desierto to reconsider his previous stand. Precisely, the motion for reconsideration afforded the prosecutors an opportunity to take a second look at the matter and rectify mistakes, if any. A further evaluation of the evidence must have persuaded SP Desierto to recommend approval of the Information. The fact that the notation on Annex "D" is typewritten while on Annex "1" it is handwritten is of no moment because the contents thereof, except for the typographical omission of the words "the" and "facie," are the same. SP Desierto's non-concurrence with the order of SPO Mendoza therefore is in consonance with his notation. DSP Ferrer could not have written the notation for the obvious reason that he recommended approval of the dismissal of the complaint. Moreover, although not as significant, the handwritten notation is different from his handwritten notation on the memorandum of SPO Alhambra.

In Annex "D," Ombudsman Vasquez appears to have concurred with the order of SPO Mendoza by the typewritten words "Original signed" above his name and under the word "Approved." To distinguish, a handwritten prefix "Dis" was attached to the word "Approved" in Annex "1;" his signature was affixed thereto; and a handwritten note was placed under his name which reads: "A closer look convinced me to concur with OMBI Samala, SPO Sulit and SP Desierto."

Petitioner theorizes that the notation of Ombudsman Vasquez is not attributable to him because he is a very intelligent person who cannot be misled by the fact that SP Desierto had recommended the dismissal of the complaint. Also, the notation encroaches on the certification that it is a "true xerox copy" which shows that the notation was written after the certification was stamped.

The statements are pure speculation. Ombudsman Vasquez' basis for disapproving the order of SPO Mendoza was succinctly stated therein. He was convinced, after a closer look, that a prima facie case existed against petitioner. It is quite difficult to ascertain whether his notation thereon was written over the certification because the stamp is not clear.

In the subsequent resolution of SPO Corpuz which upheld the validity of the Information, SP Desierto recommended approval thereof. A comparison between the handwritten notation beside his name with the handwritten notation on Annex "1" and on the memorandum of SPO Alhambra shows that they are strikingly similar. There is therefore every reason to believe that both notations were written by SP Desierto.

Ombudsman Vasquez approved the resolution. If petitioner indeed believed that, on the basis of the order of SPO Mendoza, SP Desierto recommended dismissal of the complaint while Ombudsman Vasquez approved the recommendation, the resolution of SPO Corpuz, the authenticity and receipt of which he does not dispute, should have enlightened him.

As earlier stated, Annexes "D" and "1" are both certified photocopies of the original. However, while Annex "1" appears to be a photocopy of the original, Annex "D" seems to be a photocopy not of a duplicate original but of a reproduction of the original. The present controversy could have been avoided had petitioner received a copy of the order of SPO Mendoza which is exactly the same as that in the possession of the Office of the Solicitor General; or even with the present evidence in petitioner's possession had he correctly appreciated the plain import of the resolution of SPO Corpuz, the recommendation of SP Desierto and the final approval by Ombudsman Vasquez.

In fine, we find no grave abuse of discretion committed by the Sandiganbayan in denying petitioner's motion to quash the Information.

WHEREFORE, the petition is DISMISSED. The order of respondent Sandiganbayan dated 8 November 1993 denying petitioner's motion to quash the Information is AFFIRMED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Quiason, J., on official leave.

[1] Rollo, p. 26.

[2] Ibid.

[3] Rollo, p. 29.

[4] Id., p. 67.

[5] Id., p. 70.

[6] Id., p. 71.

[7] See Note 3.

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