

**SUSAN V. LLENES, PETITIONER, VS. HON. ISAIAS P. DICDICAN,
PRESIDING JUDGE, REGIONAL TRIAL COURT OF CEBU, BRANCH 11,
HON. AMADO B. BAJARIAS, SR., PRESIDING JUDGE, MUNICIPAL
TRIAL...**

G.R. No. 122274. July 31, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The key issue raised in this special civil action for certiorari under Rule 65 of the Rules of Court is whether the filing with the Office of the Ombudsman of a complaint against a government official for grave oral defamation interrupts the period of prescription of such offense.

We find this issue to be important enough to merit our attention. We thus resolved to give due course to the petition, consider the private respondent's comment on the petition[1] as the answer thereto, and decide it on the basis of the pleadings which have sufficiently discussed the issue.

The factual and procedural antecedents are not disputed.

On 13 October 1993, private respondent Vivian G. Ginete, then officer-in-charge of the Physical Education and School Sports (PESS) Division of the Regional Office of Region VII in Cebu City of the Department of Education, Culture and Sports (DECS), filed with the Office of the Deputy Ombudsman for the Visayas (hereinafter Ombudsman-Visayas) a complaint for grave oral defamation[2] allegedly committed on 23 September 1993 by petitioner Susan V. Llenes, an Education Supervisor II of the same Regional Office.

The petitioner was required to file a counter-affidavit pursuant to Administrative Order No. 7 of the Office of the Ombudsman, but she failed to do so.

In his resolution of 15 March 1994,[3] Antonio B. Yap, Graft Investigation Officer I of the said office, recommended that the case be indorsed to the Office of the City Prosecutor of Cebu City for the filing of the necessary information against the petitioner. This resolution was approved by the Deputy Ombudsman-Visayas.

On 28 March 1994, the City Prosecutor of Cebu City filed with the Municipal Trial Court (MTC) in Cebu City an information[4] for grave oral defamation against the petitioner. This was docketed as Criminal Case No. 35684-R and assigned to Branch 7 thereof.

On 30 May 1994, the petitioner filed a motion to quash[5] the information on the ground that the "criminal action or liability" has been extinguished. She contended that under Article 90 of the Revised Penal Code, the offense of grave oral defamation prescribes in months and that since the information was filed only on 28 March 1994, or 186 days or 6 months and 6 days after its alleged commission, the crime had then already prescribed. In support thereof, she cited the decision in "Zalderia[6] vs. Reyes, Jr., G.R. No. 102342, July 3, 1992, 211 SCRA 277," wherein this Court ruled that the filing of an information at the fiscal's office will not stop the running of the

prescriptive period for crimes.

In her opposition,[7] the private respondent cited Section 1, Rule 110 of the Rules of Court which provides, inter alia, that for offenses not subject to the rule on summary procedure in special cases and which fall within the jurisdiction of Municipal Trial Courts and Municipal Circuit Trial Courts, the filing of the complaint directly with the said court or with the fiscal's office interrupts the period of prescription of the offense charged. The filing of the complaint by the private respondent with the Office of the Deputy Ombudsman-Visayas was equivalent to the filing of a complaint with the fiscal's (now prosecutor's) office under said Section 1 pursuant to its powers under Section 15(1) of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989. The private respondent further claimed that Zaldivia is inapplicable because it involves an offense covered by the rule on summary procedure and it explicitly stated that Section 1 of Rule 110 excludes cases covered by the Rule on Summary Procedure.

The Municipal Trial Court, per public respondent Judge Bajarias, denied the motion to quash in the order of 18 July 1994.[8] It fully agreed with the stand of the private respondent.

Her motion to reconsider[9] the above order having been denied on 29 November 1994,[10] the petitioner filed with the Regional Trial Court (RTC) of Cebu a special civil action for certiorari,[11] which was docketed therein as Civil Case No. CEB-16988. The case was assigned to Branch 11.

In its decision of 3 July 1995,[12] the RTC, per public respondent Judge Isaias P. Dicdican, affirmed the challenged orders of Judge Bajarias of 18 July 1994 and 29 November 1994. It ruled that the order denying the motion to quash is interlocutory and that the petitioner's remedy, per *Acharon vs. Purisima*,^[13] reiterated in *People vs. Bans*,^[14] was to go to trial without prejudice on her part to reiterate the special defense she had invoked in her motion to quash and, if after trial on the merits an adverse decision is rendered, to appeal therefrom in the manner authorized by law. Besides, the petitioner has not satisfactorily and convincingly shown that Judge Bajarias has acted with grave abuse of discretion in issuing the orders considering that the ground invoked by her does not appear to be indubitable. And even assuming that the MTC erred in venturing an opinion that the filing of the complaint with the Office of the Ombudsman is equivalent to the filing of a complaint with the fiscal's office, such error is merely one of judgment. For, there is no decided case on the matter, and the substantive laws have not clearly stated as to what bodies or agencies of government should complaints or informations be filed in order that the period of prescription of crimes or offenses should be considered interrupted. Article 91 of the Revised Penal Code simply states that the prescriptive period shall be interrupted by the "filing of the complaint or information" and has not specified further where such complaint or information should be filed.

Since the Regional Trial Court denied her motion to reconsider^[15] the decision in the order of 23 August 1995,^[16] the petitioner filed this special civil action wherein she reiterates the arguments she adduced before the two courts below. The private respondent likewise did nothing more in her responsive pleading than reiterate what she had raised before the said courts.

The basic substantive laws on prescription of offenses are Articles 90 and 91 of the Revised Penal Code for offenses punished thereunder, and Act No. 3326, as amended, for those penalized by special laws. Under Article 90 of the Revised Penal Code, the crime of grave oral defamation, which is the subject of the information in Criminal Case No. 35684-R of the MTC of Cebu, prescribes in 6 months. Since Article 13 of the Civil Code provides that when the law speaks of months it shall be understood to be of 30 days, then grave oral defamation prescribes in 180 days.^[17] Article 91 of the Revised Penal Code provides:

ART. 91. Computation of prescription of offenses. -- The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such

proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

In the instant case, the alleged defamatory words were directly uttered in the presence of the offended party on 23 September 1993. Hence, the prescriptive period for the offense started to run on that date.

The matter of interruption of the prescriptive period due to the filing of the complaint or information had been the subject of conflicting decisions of this Court. In *People vs. Tayco*,^[18] *People vs. Del Rosario*,^[19] and *People vs. Coquia*,^[20] this Court held that it is the filing of the complaint or information with the proper court, viz., the court having jurisdiction over the crime, which interrupts the running of the period of prescription. On the other hand, in the first case of *People vs. Olarte*,^[21] a case for libel, this Court held that the filing of the complaint with the justice of the peace court even for preliminary investigation purposes only interrupts the running of the statute of limitations.

However, the decision of 28 February 1967 of this Court in the second case of *People vs. Olarte*^[22] resolved once and for all what should be the doctrine, viz., that the filing of the complaint with the municipal trial court even for purposes of preliminary investigation only suspends the running of the prescriptive period. Thus:

Analysis of the precedents on the issue of prescription discloses that there are two lines of decisions following differing criteria in determining whether prescription of crimes has been interrupted. One line of precedents holds that the filing of the complaint with the justice of the peace (now municipal judge) does interrupt the course of the prescriptive term: *People vs. Olarte*, L-13027, June 30, 1960 and cases cited therein; *People vs. Uba*, L-13106, October 16, 1959; *People vs. Aquino*, 68 Phil. 588, 590. Another series of decisions declares that to produce interruption the complaint or information must have been filed in the proper court that has jurisdiction to try the case on its merits: *People vs. Del Rosario*, L-15140, December 29, 1960; *People vs. Coquia*, L-15456, June 29, 1963.

In view of this diversity of precedents, and in order to provide guidance for Bench and Bar, this Court has reexamined the question and, after mature consideration, has arrived at the conclusion that the true doctrine is, and should be, the one established by the decisions holding that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits. Several reasons buttress this conclusion: First, the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.

And it is no argument that Article 91 also expresses that the interrupted prescription "shall commence to run again when such proceedings terminate without the accused being convicted or acquitted," thereby indicating that the court in which the complaint or information is filed must have power to acquit or convict the accused. Precisely, the trial on the merits usually terminates in conviction or acquittal, not otherwise. But it is in the court conducting a preliminary investigation where the proceedings may terminate without conviction or acquittal, if the court should discharge the accused because no *prima facie* case has been shown.

Considering the foregoing reasons, the Court hereby overrules the doctrine of the cases of *People vs. Del Rosario*, L-15140, December 29, 1960; and *People vs. Coquia*, L-15456, promulgated June 29, 1963.

Then, in its decision of 30 May 1983 in *Francisco vs. Court of Appeals*,^[23] this Court not only reiterated *Olarte* of 1967 but also broadened its scope by holding that the filing of the complaint in the fiscal's office for preliminary investigation also suspends the running of the prescriptive period. Thus:

Article 91 of the Revised Penal Code provides that

Interpreting the foregoing provision, this Court in *People vs. Tayco* held that the complaint or information referred to in Article 91 is that which is filed in the proper court and not the denuncia or accusation lodged by the offended party in the Fiscal's Office. This is so, according to the court, because under this rule it is so provided that the period shall commence to run again when the proceedings initiated by the filing of the complaint or information terminate without the accused being convicted or acquitted, adding that the proceedings in the Office of the Fiscal cannot end there in the acquittal or conviction of the accused.

The basis of the doctrine in the *Tayco* case, however, was disregarded by this Court in the *Olarte* case, cited by the Solicitor General. It should be recalled that before the *Olarte* case, there was diversity of precedents on the issue of prescription. One view declares that the filing of the complaint with the justice of the peace (or municipal judge) does interrupt the course of prescriptive term. This view is found in *People v. Olarte*, L-13027, June 30, 1960 and cases cited therein; *People v. Uba*, L-13106, October 16, 1959; *People v. Aquino*, 68 Phil. 588, 590. The other pronouncement is that to produce interruption, the complainant or information must have been filed in the proper court that has jurisdiction to try the case on its merits, found in the cases of *People v. del Rosario*, L-15140, December 29, 1960; *People v. Coquia*, L-15456, June 29, 1963.

The *Olarte* case set at rest the conflict views, and enunciated the doctrine aforecited by the Solicitor General. The reasons for the doctrine which We find applicable to the case at bar read:

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As is a well-known fact, like the proceedings in the court conducting a preliminary investigation, a proceeding in the Fiscal's Office may terminate without conviction or acquittal.

As Justice Claudio Teehankee has observed:

To the writer's mind, these reasons logically call with equal force, for the express overruling also of the doctrine in *People vs. Tayco*, 73 Phil. 509, (1941) that the filing of a complaint or denuncia by the offended party with the City Fiscal's Office which is required by law to conduct the preliminary investigation does not interrupt the period of prescription. In chartered cities, criminal prosecution is generally initiated by the filing of the complaint or denuncia with the city fiscal for preliminary investigation. In the case of provincial fiscals, besides being empowered like municipal judges to conduct preliminary investigations, they may even reverse actions of municipal judges with respect to charges triable by Courts of First Instance x x x.

Clearly, therefore, the filing of the denuncia or complaint for intriguing against honor by the offended party, later changed by the Fiscal to grave oral defamation, even if it were in the Fiscal's Office, 39 days after the alleged defamatory remarks were committed (or discovered) by the accused interrupts the period of prescription. (*Italics supplied*)

This Court reiterated *Francisco* in its resolution of 1 October 1993 in *Calderon-Bargas vs. Regional Trial Court of Pasig, Metro Manila*.^[24]

The procedural law articulating *Francisco* is the last paragraph of Section 1, Rule 110 (Prosecution of Offenses) of the Rules of Court. We quote the entire Section for a better understanding of the last paragraph:

SEC. 1. How instituted. -- For offenses not subject to the rule on summary procedure in special cases, the institution of criminal actions shall be as follows:

(a) For offenses falling under the jurisdiction of the Regional Trial Courts, by filing the complaint with the

appropriate officer for the purpose of conducting the requisite preliminary investigation therein;

(b) For offenses falling under the jurisdiction of the Municipal Trial Courts and Municipal Circuit Trial Courts, by filing the complaint or information directly with the said courts, or a complaint with the fiscal's office. However, in Metropolitan Manila and other chartered cities, the complaint may be filed only with the office of the fiscal.

In all cases, such institution shall interrupt the period of prescription of the offense charged. (*Italics supplied*)

The rule, however, is entirely different under Act No. 3326, as amended, whose Section 2 explicitly provides that the period of prescription shall be interrupted by the institution of judicial proceedings, i.e., the filing of the complaint or information with the court. The said section reads:

SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy. (*Italics supplied*)

And so, in *Zaldivia vs. Reyes*,^[25] this Court held that the proceedings referred to in said Section 2 are "judicial proceedings," which means the filing of the complaint or information with the proper court.

Zaldivia, however, provides no safe refuge to the petitioner, and her invocation thereof is misplaced. In the first place, it involved a violation of an ordinance, which is covered by the Rule on Summary Procedure. By its express mandate, Section 1, Rule 110 of the Rules of Court does not apply to cases covered by the Rule on Summary Procedure. Second, since the ordinance in question partakes of a special penal statute Act No. 3326 is then applicable; hence, it is the filing in the proper court of the complaint or information which suspends the running of the period of prescription. In *Zaldivia*, this Court categorically interpreted Section 9 of the Rule on Summary Procedure to mean that "the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that," which is in consonance with Section 2 of Act No. 3326.

What is then left to be determined is whether the filing of the private respondent's complaint for grave oral defamation with the Office of the Ombudsman-Visayas is equivalent to filing the complaint in the prosecutor's office such that it interrupted the prescriptive period for grave oral defamation.

Sections 12 and 13(1), Article XI of the Constitution provide:

SEC. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Corollarily, Sections 13, 15(1), and 16 of R.A. No. 6770, otherwise known as The Ombudsman Act of 1989, which Congress enacted pursuant to paragraph 8^[26] of the aforementioned Section 13, Article XI of the Constitution, provide as follows:

SEC. 13. Mandate. -- The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any

subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

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SEC. 15. Powers, Functions and Duties. -- The Office of the Ombudsman shall have the following powers, functions and duties:

1. Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage from any investigatory agency of the Government, the investigation of such cases.

SEC. 16. Applicability. -- The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and nonfeasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure in office.

Needless to state, these broad constitutional and statutory provisions vest upon the Ombudsman and his Deputies the power to initiate or conduct preliminary investigations in criminal cases filed against public officers or employees, including government-owned or controlled corporations. Thus, in *Deloso vs. Domingo*,^[27] this Court held:

As protector of the people, the office of the Ombudsman has the power, function and duty "to act promptly on complaints filed in any form or manner against public officials" (Sec. 12) and to "investigate x x x any act or omission of any public official x x x when such act or omission appears to be illegal, unjust, improper or inefficient." (Sec. 13[1]) The Ombudsman is also empowered to "direct the officer concerned," in this case the Special Prosecutor, "to take appropriate action against a public official x x x and to recommend his prosecution" (Sec. 13[3]).

The clause "any [illegal] act or omission of any public official" is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from, the performance of official duty. Since the law does not distinguish, neither should we.

It must, however, be stressed that the authority of the Ombudsman to investigate any illegal act or omission of any public officer is not an exclusive authority; rather, it is a "shared or concurrent authority in respect of the offense charged."^[28]

A public officer, as distinguished from a government "employee," is a person whose duties involve the exercise of discretion in the performance of the functions of government.^[29] The petitioner, being an Education Supervisor II of the Regional Office of Region VII of the DECS, is a public officer. The Ombudsman-Visayas then has authority to conduct preliminary investigation of the private respondent's complaint against the petitioner for grave oral defamation. Undoubtedly, the rationale of the first *Olarte* case, reiterated as the controlling doctrine in the second *Olarte* case, which was broadened in *Francisco* and reiterated in *Calderon-Bargas*, must apply to complaints filed with the Office of the Ombudsman against public officers and employees for purposes of preliminary investigation. Accordingly, the filing of the private respondent's complaint for grave oral defamation against the petitioner with the Ombudsman-Visayas tolled the running of the period of prescription of the said offense. Since the complaint was filed on 13 October 1993, or barely twenty days from the commission of the crime charged, the filing then of the information on 28 March 1994 was very well within the six-month

prescriptive period.

WHEREFORE, the instant petition is DISMISSED for want of merit.

No pronouncement as to costs.

SO ORDERED.

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

[1] Erroneously captioned as "Reply to Petition."

[2] Annex "A" of Petition; Rollo, 26. The complaint is dated 30 September 1993.

[3] Annex "C", Id.; Id., 30.

[4] Annex "D", Id.; Id., 33.

[5] Annex "E" of Petition: Rollo, 35.

[6] Should be Zaldivia.

[7] Annex "F" of Petition; Rollo, 38.

[8] Annex "G" of Petition; Rollo, 44.

[9] Annex "H", Id.; Id., 46.

[10] Annex "I", Id.; Id., 50.

[11] Annex "J", Id.; Id., 51.

[12] Annex "K", Id.; Id., 63.

[13] 13 SCRA 309 [1965].

[14] 239 SCRA 48 [1994].

[15] Annex "L" of Petition; Rollo, 67.

[16] Annex "M", Id.; Id., 74.

[17] See *People vs. Paz del Rosario*, 97 Phil. 67 [1955].

[18] 73 Phil. 509 [1941].

[19] 110 Phil. 476 [1960].

[20] 8 SCRA 349 [1963].

[21] 108 Phil. 756 [1960], citing *U.S. vs. Lazada*, 9 Phil. 509 [1908]; *People vs. Joson*, 46 Phil. 380 [1924]; *People vs. Parao*, 52 Phil. 712 [1929].

[22] 19 SCRA 494, 499-501 [1967].

[23] 122 SCRA 538 [1983].

[24] 227 SCRA 56, 63 [1993].

[25] 211 SCRA 277, 283-84 [1992].

[26] It provides:

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

[27] 191 SCRA 545, 550 [1990].

[28] *Aguinaldo vs. Domagas*, G.R. No. 98452, 26 September 1991; *Sanchez vs. Demetriou*, 227 SCRA 627, 637 [1993].

[29] Section 2, Introductory Provisions, Administrative Code of 1987 (E.O. No. 292).

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