

RODOLFO E. AGUINALDO, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 124471. November 28, 1996

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to annul the order, dated September 18, 1995, of the Sandiganbayan, denying petitioner's motion to quash the informations filed against him in two criminal cases (Nos. 20948 and 20949), as well as the resolution, dated April 12, 1996, ordering his suspension for ninety (90) days as Provincial Governor of Cagayan.

The background of this case is as follows. Petitioner is the Provincial Governor of Cagayan. At the time material to this decision he was serving his first term as Governor of that province.

In 1990, the Commission on Audit (COA) found that claims of petitioner for intelligence operations in 1988 and 1989 in the amounts of P400,000 and P350,000, respectively, had been charged to the 20% Development Fund and that some of the claims were covered by disbursement vouchers with only reimbursement receipts to support them, most of which were signed by only one person, while other claims had no supporting papers at all. For this reason the audit team submitted a report (SAO Report No. 90-25), recommending the following measures to be taken:

Require the submission of the required documents covering claims for intelligence activities, before making payment. Require claimant to complete the documentation on payments made with incomplete papers otherwise, refund of the same should be made. Stop provincial officials from using the 20% Development Fund for purposes other than for development projects under MLG Circular No. 83-4.

On February 3, 1992, the COA Director, Feliciano B. Clemencio, filed with the Office of the Ombudsman a complaint, alleging "anomalies consisting of irregular/illegal disbursements of government funds." Named respondents in the complaint were petitioner and the members of the Provincial Board of Cagayan, the Assistant Provincial Treasurer and the Accountant.

In a resolution dated May 31, 1994 the Ombudsman found that, in all, petitioner had distributed the amount of P750,000 to the military, police and civilian informers to fight insurgency.

[Petitioner] cannot, however submit receipts or documents evidencing disbursements for intelligence activities which are required under paragraph B-4 of COA Circular No. 77-17D dated April 15, 1977. Under these circumstances, being an accountable public officer and who could not account for the insurgency funds when audited, there is prima-facie evidence that he has put such missing funds to personal use and therefore liable for malversation of public funds under Article 217 of the Revised Penal Code. Likewise there is also prima-facie evidence to charge respondent Governor Aguinaldo with violation of Section 3, paragraph (3) of R.A. 3019.

Two cases of Malversation of Public Funds under Art. 217 of the Revised Penal Code were accordingly filed

against petitioner on August 16, 1994.

In Crim. Case No. 20948, the information states:

That in or about the year 1988 in the Municipality of Tuguegarao, Province of Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Rodolfo E. Aguinaldo, then holding the position of Provincial Governor of Cagayan Province, hence a public officer who, by reason of the duties of his office, is accountable for public funds or property, taking advantage of his official position, did then and there wilfully, unlawfully and feloniously take or misappropriate for his personal use public funds in his custody in the total amount of Four Hundred Thousand Pesos (P400,000.00), Philippine Currency, which amount he had earlier withdrawn from the provincial treasury of Cagayan to be used in the province's intelligence activities, to the damage and prejudice of the provincial government of Cagayan.

In Crim. Case No. 20949, the information alleges:

That in or about the year 1989 in the Municipality of Tuguegarao, Province of Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Rodolfo E. Aguinaldo, then holding the position of Provincial Governor of Cagayan province, hence a public officer who, by reason of the duties of his office, is accountable for public funds or property, taking advantage of his official position, did then and there wilfully, unlawfully and feloniously take or misappropriate for his personal use public funds in his custody in the total amount of Three Hundred Fifty Thousand Pesos (P350,000.00), Philippine Currency, to the damage and prejudice of the provincial government of Cagayan.

Upon motion of petitioner, the Sandiganbayan ordered the Office of the Ombudsman to reinvestigate the cases. Petitioner was allowed to submit the affidavits executed by twelve military officers who acknowledged receipt from petitioner of unspecified amounts which they claimed had been used for counter-insurgency operations. In addition petitioner presented his counter-affidavit.

In a letter dated January 19, 1995, Prosecutor Espinosa requested information from the Special and Technical Audit Division of the COA whether there had been compliance with the recommendations in the latter's SAO Report No. 90-25 which, as already stated, required the submission of documents covering claims for intelligence activities and the complete documentation of payments made, and the provincial officials to stop using the 20% Development Fund for purposes other than for development projects. He also inquired whether on the basis of the affidavits executed by the twelve military officers, the disbursements could be considered fully liquidated. In reply, COA Special and Technical Audit Division, through Provincial Auditor Teresita Rios, stated:

[E]xcept for the list of recipients and the machine copies of the duly subscribed affidavits of some of the recipients, records do not show that this office received the documents required from the Governor. However, the list of recipients and the duly subscribed affidavits including the representations made in the letter of the Provincial Treasurer and the Provincial Auditor, may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption. It could also be surmised that even the former Provincial Auditor may be convinced as to the existence of the recipients of counter-insurgency/intelligence funds as no notice of disallowance or suspension was issued on the reimbursements.[1]

Apparently not satisfied with the explanation, Prosecutor Espinosa recommended to the Ombudsman that the malversation cases against petitioner be pressed. His recommendation was approved and so, on April 26, 1995, he asked the Sandiganbayan for the suspension pendente lite of petitioner.

Petitioner opposed the motion and moved to quash the informations against him, contending that-

First. THE PRELIMINARY INVESTIGATION CONDUCTED HEREIN WAS TAINTED BY SERIOUS IRREGULARITIES THAT EFFECTIVELY DENIED THE ACCUSED OF HIS RIGHT TO DUE PROCESS

AND THEREBY RENDERED THE PROCEEDINGS TAKEN THEREIN NULL AND VOID; and

Second. EVEN IF THE IRREGULARITIES THAT INFECT THE PRELIMINARY INVESTIGATION ARE OVERLOOKED, NO PROBABLE CAUSE FOR THE CRIME OF MALVERSATION IS MADE OUT BY THE EVIDENCE ON RECORD AND, CONSEQUENTLY, THE INFORMATIONS FILED HEREIN ARE INVALID.

In a supplemental motion to quash the informations filed on May 29, 1995, petitioner submitted to the court indorsements by officials. In a first indorsement to the Chairman of the COA, Regional Director Rafael Marquez stated that he agreed with Provincial Auditor Teresita Rios that the documents submitted by petitioner "may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption." In turn, in a second indorsement addressed to petitioner, COA Chairman Celso D. Gangan stated that the documents submitted by petitioner "are substantial evidence to support disbursements of the intelligence and confidential funds in question" as required by COA Circular No. 92-385, dated October 1, 1992.

The Sandiganbayan therefore gave the prosecution fifteen (15) days within which "to firm up its position" on the COA statements, "it appearing that the position taken by the various officers of the Commission on Audit seemed to be tentative in the sense that there is no categorical claim that these sworn statements indeed confirm the disbursement of the aggregate of P750,000." However, on July 5, 1995, the prosecution reported that it had made inquiries from the legal office of the COA but the COA did not reply. For his part, petitioner asked the COA Chairman for a definitive statement of his liability, but his request was referred to Regional Director Marquez who merely reiterated his previous statement that the "affidavits [submitted by petitioner] could be considered as sufficient/adequate documents to liquidate the accountability of Governor Aguinaldo."

Deeming the COA statements to be lacking in definiteness, the Sandiganbayan, on September 18, 1995, denied petitioner's motion to quash the informations and set his arraignment, during which petitioner pleaded "not guilty." The Sandiganbayan said:

Notwithstanding the repeated efforts of the Court as well as of the prosecution to categorically identify the position of the COA on the matter, what consistently appears in the various communications is that the COA is of the view that the affidavits in lieu of the actual liquidation of expenses might serve as adequate liquidation. This position has been the same view which the prosecution has earlier seen and has rejected.

Undoubtedly, the COA could have been more responsive to the request both of the Court and of the accused itself in stating its position on the matter more categorically. However, the fact is that it did not do so, and even if it had done so, the same does not appear to have altered the fact that the prosecution at this time is of the view that the adequate cause exists to proceed with the prosecution of the accused Governor Rodolfo E. Aguinaldo. It is for this reason that the Instant Urgent Motion to Defer Arraignment wherein the various endorsements of COA officials are appended is denied as is the Motion to Quash and other pleadings in connection herewith.

The Sandiganbayan withheld action on the prosecution's motion to suspend petitioner pending the pretrial.

Still in an effort to convince the Sandiganbayan that there was no case against him, petitioner submitted on January 29, 1996 a Certificate of Settlement and Balances dated January 24, 1996, issued by Provincial Auditor Teresita Rios, allowing petitioner's claim in audit and relying for this purpose on the credit advice of Regional Director Marquez that the documents submitted by petitioner were "sufficient enough to liquidate these expenses/disbursements." When asked by the prosecutor whether Marquez's credit advice was final, COA Chairman Celso D. Gangan stated that it was "normally not subject to the review of [COA], the matter being within [Director Marquez's] audit competence."^[2]

The Sandiganbayan was unconvinced. On March 4, 1996, it terminated the pretrial and, on April 12, 1996, ordered the suspension of petitioner as Provincial Governor for ninety (90) days. Its resolution reads:

It is well to note that prosecution of cases is left in the hands of the prosecutor. While the COA can and may assist in collating evidence to substantiate a charge of malversation, it does not preclude the Ombudsman from conducting its own investigation, and filing the appropriate charge if, by its own determination, the evidence warrants the same.

The COA is merely the source of the facts in these cases. Any determination made by the COA outside of the narration of facts duly supported by evidence will not by itself determine whether or not adequate cause exists to prosecute a case. To demonstrate this point, the Supreme Court has ruled that a public officer may be held guilty of malversation based on a 'preliminary' audit report (De Guzman v. People, 119 SCRA 337, 348 (1982) and that[t]he absence of a post-audit is not ... a fatal omission... nor is it a preliminary requirement to the filing of an information for malversation as long as the prima facie guilt of the suspect has already been established.. (Corpuz v. People, 194 SCRA 73, 79 (1990))

Nor is COA's final determination required for a malversation case to prosper, much less will it decide one way or the other the propriety of the suspension of an accused in a malversation case filed, as sought herein.

Hence this petition for certiorari. Petitioner alleges that:

1. The Sandiganbayan gravely abused its discretion by completely disregarding the COA findings and post-audit clearances, including the COA Chairman's confirmation, which the respondent court itself, together with the prosecution, sought and solicited during the course of the proceedings;
2. In the higher interest of justice, the consideration of the post-audit findings of the COA can still be the subject of the motion to dismiss even after arraignment of the petitioner;
3. And then, the presumptive validity of informations has been conclusively overcome by the subsequent post audit of accountability of the accused petitioner by the COA which had since issued a certificate of settlement and balances by which the accused's subject claims have been allowed in audit; and such audit was confirmed by the COA Chairman.

On the other hand, the prosecution argues that the affidavits of military officers are inadequate for the purpose of liquidating disbursements in view of COA Circular No. 92-385 which provides that "any disbursement from the confidential and/or intelligence fund shall be accounted for solely on the certification of the head of the agency or by the officer-in-charge of the intelligence, confidential or national security mission" and MLG Circular No. 83-4, dated February 7, 1983, which provides that the 20% Development Fund should be utilized exclusively for development projects and excludes expenditures for counter-insurgency operations.

After due consideration of the petition, the Court finds it to be without merit.

Petitioner alleges irregularity in the conduct of preliminary investigation and lack of probable cause. In our opinion, the allegation as to irregularity in the preliminary investigation was properly rejected by the respondent court. As already noted, after the cases had been filed, the Sandiganbayan, upon petitioner's request, ordered the Office of the Ombudsman to conduct a reinvestigation. Petitioner was allowed to submit affidavits and other documents in support of his defense and an opportunity to argue his case. The prosecutor remained fundamentally unconvinced, however, by the additional evidence presented by petitioner.

Indeed, petitioner failed to submit certain documents required by COA rules to support claims for disbursements. These are COA Circular No. 92-385 which provides that:

Any disbursement from the confidential and/or intelligence fund shall be accounted for solely on the

certification of the head of the agency or by the officer-in-charge of the intelligence, confidential or national security mission.

and COA Circular No. 88-293 which provides:

For national defense and related agencies engaged in highly confidential operations or missions the details of which cannot be divulged without posing a threat to national security, a certification by the head of agency bearing on the nature of such highly confidential operations may instead be submitted using Form # 2 (see attached sample). However, the agency concerned shall maintain a complete file of all supporting documents for such transactions to ensure the undertaking of a more extensive audit and examination by this Commission at anytime it deems desirable or when the operations are completed and declassified. Such file shall include, among others, the following data: name of asset or informer; nature and purpose or type of information; date and amount given; signature if payee and such other relevant information.

Petitioner filed a counter-affidavit in which he stated:

I hereby certify, in my capacity as Governor of Cagayan, that the funds involved therein were duly appropriated by the Sangguniang Panlalawigan of Cagayan and approved by the Department of Interior and Local Government specifically for intelligence and counter-insurgency purposes; that all the subject disbursements were made by me to bona fide officers/personnel of the Armed Forces, para-military units and civilian components then involved in anti-insurgency operations in Cagayan for intelligence and counter-insurgency activities and operations; that said funds were to the best of my knowledge actually spent for the purposes for which they were appropriated; that the expenses paid for were necessary, lawful and incurred under the supervision of the officers/men who received them; and, that the amounts spent were reasonable.

This counter-affidavit falls short of the requirements of COA Circular No. 88-293 which, while allowing the use of "mere certification" to support liquidation vouchers (Par. VII(G)), nonetheless requires the prescribed form to state that "the details and supporting documents are in our custody and kept in our confidential file and may be audited if the circumstances so demand."

Petitioner alleges in his counter-affidavit that he had receipts from the recipients of the funds but, he said, the receipts "may have been destroyed or lost beyond reconstitution" sometime in 1990 when he was suspended and subsequently removed from office. On the other hand the affidavits of military officers do not disclose the name of informer, the nature and purpose of information, the date and amount given to the informer, the signature of the payee and other relevant information as required also by the same COA Circular No. 88-293. Save for the personal circumstances of the affiants, the affidavits, which were uniformly worded, simply state:

3. That [in] the course of the operations of the counter-insurgency program, I received certain amount in many occasions from the Provincial Government of Cagayan through Governor Rodolfo Aguinaldo in pursuance of the same counter-insurgency program;
4. That I issued the corresponding receipt for all the amounts I received from Governor Aguinaldo;
5. That I am willing to testify as to the truth and veracity of my statement if called upon by the proper authorities.

Thus, the amounts allegedly received by the affiants are unspecified; the date the amounts received by the affiants are not given; the affiants do not state how the amounts were spent by them but only that they were spent "in pursuance" and "in support" of the counter-insurgency operations. Moreover, while the affiants attested that they signed receipts for the amounts they received from petitioner, not a single receipt was presented by petitioner. It is noteworthy that while petitioner claims that he had also required receipts from civilian informants, runners,

couriers and families of victims of counter-insurgency operations,[3] no receipt nor any form of acknowledgment by the said recipients was presented by petitioner.

While it is true that petitioner was later given a clearance by the Provincial Auditor, the clearance is notable for its equivocation. Thus, the Provincial Auditor, after noting petitioner's failure to submit the needed documents, opined that nevertheless the affidavits presented "may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption." Because the prosecutor pressed for petitioner's prosecution, petitioner presented the certification of the Regional Director but, like the certification of the Provincial Auditor, the certification also lacked firmness. It stated: "The list of recipients, and the duly subscribed affidavits including the representations made in the letter of the Provincial Treasurer and the Provincial Auditor may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption. It could also be surmised that even the former Provincial Auditor maybe convinced as to the insurgency/intelligence funds as no notice of disallowance or suspension was issued on the reimbursements." [4]

The indecisive nature of the Regional Director's certification did not escape the notice of the Sandiganbayan. It required the prosecution to secure a more definite and categorical ruling from the COA. The effort failed to produce anything more reassuring. Instead of concurring in the opinion of the Regional Director, the Chairman of the COA tossed the matter to the latter on the ground that "final authority to conduct post audit of confidential and intelligence expenses had been delegated to Regional Directors like Director Rafael Marquez and the latter's decision is normally not subject to review of [the central office]."

Given the indecisive, uncertain and, at best, tentative opinion of COA officials, we think the Sandiganbayan correctly decided to proceed with the trial of petitioner, leaving the ultimate resolution of the questions (whether the affidavits submitted by petitioner constitute sufficient evidence of disbursement of public funds for the purpose claimed by petitioner and whether charging certain expenditures to the so-called 20% Development Fund is authorized under the law) to be made after trial. For its part, the Office of the Ombudsman, having found the COA's original finding of failure to comply with accounting rules unaffected by later equivocal and hedging clearance of COA's officials, found no reason to reconsider its decision to prosecute.

In *Ramos v. Aquino*, [5] we ruled that the fact that petitioners' accounts and vouchers had been passed in audit is not a ground for enjoining the provincial fiscal from conducting a preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation of public funds through falsification of public documents.

The Auditor General, as noted is vested with the power to examine, audit and settle all accounts pertaining to the revenues and receipts from whatever source, and to audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government as well as the provinces or municipalities thereof. That is one thing. The ascertainment of whether a crime [is] committed and by whom is definitely another. [6]

COA's approval of petitioner's disbursements only relates to the administrative aspect of the matter [7] of his accountability but it does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which petitioner is answerable. [8] Therefore, as correctly stated by the Sandiganbayan in its order of April 12, 1996, while the COA may assist in gathering evidence to substantiate a charge of malversation, any determination made by it will not be conclusive as to whether adequate cause exists to prosecute a case. This is so because the Ombudsman is given the power to investigate on its own an illegal act or omission of a public official. [9]

Indeed, while the COA may regard petitioner to have substantially complied with its accounting rules, this fact is not sufficient to dismiss the criminal cases. Beyond compliance with COA rules and regulations, the question is whether there was a misappropriation of public funds by petitioner. This is a question of fact to be established by evidence. All that petitioner's failure to submit the documents required in the COA circulars in questions means is that there is a presumption of malversation sufficient to justify the filing of a case in court. As Art. 217 of the Revised Penal Code provides:

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.

Petitioner may still prove his innocence. Until he does this, however, the presumption that public funds were put to personal use stands.

What we said in *Paredes v. Sandiganbayan*[10] is apropos to this case:

[T]his 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*:

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.

It is insisted, however, that because COA has the constitutional authority to examine, audit and settle accounts pertaining to the expenditures of the funds in question, its finding is conclusive and mandatory and not reviewable except on certiorari and only by this Court. Petitioner cites P.D. No. 1445 (Government Auditing Code) which provides:

Sec. 52. OPENING AND REVISION OF SETTLED ACCOUNTS.- (1) At any time before the expiration of three years after the settlement of any account by an auditor, the Commission may motu proprio review and revise the account or settlement and certify a new balance. For that purpose, it may require any account, vouchers, or other papers connected with the matter to be forwarded to it.

(2) When any settled account appears to be tainted with fraud, collusion, or error of calculation, or when new and material evidence is discovered, the Commission may, within three years after the original settlement, open the account, and after a reasonable time for reply or appearance of the party concerned, may certify thereon a new balance. An auditor may exercise the same power with respect to settled account pertaining to the agencies under his audit jurisdiction.

(3) Accounts once finally settled shall in no case be opened or reviewed except as herein provided.

Petitioner asserts that because of this provision any account already settled by the COA may only be reopened within three years by the COA itself and not by the Sandiganbayan.

This same argument was made in *Ramos v. Aquino*. In rejecting the contention, this Court, through Justice, later Chief Justice, Fernando, stated:

There is likewise an invocation by appellants of alleged statutory support for their untenable view. It is likewise in vain. All that appellants have to go on is the concluding paragraph of Section 657 of the Revised

Administrative Code: "Accounts once finally settled shall in no case be opened or reviewed except as herein provided." The paragraph immediately preceeding should have disabused the minds of appellants of any cause for optimism. All that it provides is that in case any settled account "appears to be infected with fraud, collusion or error of calculation or when new and material evidence is discovered, the Auditor General may, within three years after original settlement, open such account, and after a reasonable time for his reply or appearance, may certify thereon a new balance." The official given the opportunity for a reply or appearance is the provincial auditor, for under the first paragraph of this particular section, the Auditor General at any time before the expiration of three years after the making of any settlement by a provincial auditor, may, of his own motion, review and revise the same and certify a new balance. Nowhere does it appear that such a statutory grant of authority of the Auditor General to open revised settled accounts carries with it the power to determine who may be prosecuted in the event that in the preparation thereof a crime has been committed. The conclusive effect of the finality of his decision on the executive branch of the government thus relates solely to the administrative aspect of the matter.[11]

Finally, it is contended that while preventive suspension is mandatory in cases involving fraud upon government or public funds or property,[12] it is not automatic because a pre-suspension hearing on the validity of the information must first be conducted. Petitioner quotes from *People v. Albano*[13] that "[the] pre-suspension hearing is conducted to determine basically the validity of the information, from which the court can have a basis to either suspend the accused, and proceed with the trial on the merits of the case, or withhold the suspension of the latter and dismiss the case, or correct any part of the proceeding which impairs its validity."

This was done in the present case. To the prosecution's "Motion to Suspend Accused Pendente Lite," petitioner filed a "Consolidated Motion to Quash/Dismiss and Opposition to the Motion to Suspend Accused Pendente Lite." Thereafter, petitioner presented several certifications from the COA purportedly clearing petitioner of any accountability. On the basis of pleadings and documents thus submitted by the parties, the Sandiganbayan denied petitioner's motion to quash and granted the prosecution's motion to suspend petitioner pendente lite. Hence, as we recently held:

[U]pon a proper determination of the validity of the information, it becomes mandatory for the court to immediately issue the suspension order. The rule on the matter is specific and categorical. It leaves no room for interpretation. It is not within the court's discretion to hold in abeyance the suspension of the accused officer on the pretext that the order denying the motion to quash is pending review before the appellate courts. Its discretion lies only during the pre-suspension hearing where it is required to ascertain whether or not (1) the accused had been afforded due preliminary investigation prior to the filing of the information against him, (2) the acts for which he was charged constitute a violation of the provisions of Republic Act No. 3019 or of the provisions of Title 7, Book II of the Revised Penal Code, or (3) the informations against him can be quashed, under any of the grounds provided in Section 2, Rule 117 of the Rules of Court.[14]

All told, we find no basis for holding that the Sandiganbayan committed grave abuse of its discretion in denying the motion to quash and ordering the preventive suspension of petitioner.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Regalado (Chairman), Romero, and Torres, Jr., JJ., concur.

Puno, J., please see dissent.

[1] Letter dated March 21, 1995 of Teresita Rios, Provincial Auditor, to Rodolfo T. Espinosa, Special Prosecution Officer II; Rollo, p. 55.

[2] Letter dated March 4, 1996 of COA Chairman Celso D. Gangan to Special Prosecution Officer III Victorio U. Tabangul; Rollo, p. 65.

[3] Counter-Affidavit, Records, vol. 1, p. 97.

[4] Rollo, p. 58.

[5] 39 SCRA 641 (1971).

[6] Id., at 645-646.

[7] *Compania Generalia de Tabacos v. French and Unson*, 39 Phil. 34, 56 (1918).

[8] *Ramos v. Aquino*, supra.

[9] CONST., Art. XI, §13, par. 1.

[10] G.R. No. 108251, January 31, 1996, citing *Young v. Office of the Ombudsman*, 228 SCRA 718 (1993).

[11] *Ramos v. Aquino*, 39 SCRA at 649-650. (Emphasis added).

[12] R.A. No. 3019, §13.

[13] 163 SCRA 511 (1988).

[14] *Socrates v. Sandiganbayan*, G.R. Nos. 116259-6 and 118896-97, Feb. 20, 1996. See also *Bolastig v. Sandiganbayan*, 235 SCRA 103 (1994).

DISSENTING OPINION

PUNO, J.:

I respectfully dissent from the majority opinion. A top view of the facts shows the weakness of the prosecution evidence against the petitioner. Firstly, in a letter dated March 21, 1995, the COA Special and Technical Audit Division thru Provincial Auditor Teresita Rios declared:

[E]xcept for the list of recipients and the machine copies of the duly subscribed affidavits of some of the recipients, records do not show that this office received the documents required from the Governor. However, the list of recipients and the duly subscribed affidavits including the representations made in the letter of the Provincial Treasurer and the Provincial Auditor, may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption. It could also be surmised that even the former Provincial Auditor may be convinced as to the existence of the recipients of counter-insurgency/intelligence funds as no notice of disallowance or suspension was issued on the reimbursement.

Second, COA Regional Director Rafael Marquez concurred with the opinion of provincial auditor Rios. Third, no less than COA Chairman Celso D. Gangan held that petitioner submitted documents which "x x x are substantial evidence to support disbursements of the intelligence and confidential funds in question" as required by COA Circular No. 92-385.

It does not appear from the records that the prosecution has other evidence aside from the evidence furnished by the COA which initiated the malversation cases against petitioner. If COA itself persists in its spaghetti stance against petitioner, I do not see how the Ombudsman can succeed in convicting petitioner, however heroic its

efforts may be. A criminal suit that he has no hope of succeeding cannot be a basis for suspending a duly elected public official. Suspension even if preventive in nature, stigmatizes a public official before his constituents. It should not be imposed where the prosecution witnesses themselves doubt the strength of their evidence.

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