

**JUDY CAROL L. DANSAL, RAFAEL T. FLORES, HERMINIO C. ELIZON,
ARNULFO S. SOLORIA, PETITIONERS, VS. THE HON. GIL. P.
FERNANDEZ, SR., IN HIS CAPACITY AS THE PRESIDING JUDGE OF
THE R...**

G.R. No. 126814. March 02, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court to enjoin further proceedings in Criminal Case Nos. Q-96-66607-08, and to annul the Order, dated August 27, 1996, of Branch 217 of the Regional Trial Court in Quezon City, which denied petitioners' Motion to Quash the Informations.

Petitioner Judy Carol L. Dansal was the Department Manager of the Enforcement, Investigation, and Prosecution Department of the National Food Authority ("NFA"), with office address at E. Rodriguez Sr. Avenue, Quezon City. Petitioner Rafael T. Flores was the Assistant Manager of the said department of NFA. Petitioner Herminio C. Elizon was the chief of the Security Division of the same department of NFA, while Petitioner Arnulfo S. Soloria was a security officer of the said department of NFA. Respondent Benigno S. Montera, on the other hand, was employed with the Enforcement, Investigation, and Prosecution Department of NFA.[1]

On December 16, 1991, respondent Montera filed an "Affidavit of Complaint" with the Office of the Ombudsman, charging the herein petitioners and one Ronaldo Vallada, a casual security guard of NFA, with the offense of estafa through falsification of public document.

On January 14, 1992, petitioners were required by the Office of the Ombudsman to submit their respective counter-affidavits and other controverting evidence. Petitioners complied. On April 1, 1992, respondent Montera sent in a reply-affidavit.

On July 10, 1992, petitioner Dansal was directed to submit her verified answer to respondent Montera's additional charge of violation of Section 3(e) of Republic Act No. 3019.

On September 9, 1992, petitioner Dansal submitted her answer with a counter-charge.

On January 15, 1993, petitioner Dansal filed her rejoinder to respondent Montera's reply-affidavit, after which the cases were ripe for resolution.[2]

On May 30, 1994, or after one (1) year and four (4) months, the office of the Ombudsman came out with its Resolution, copy of which petitioners allegedly received on February 5, 1996.[3] Said Resolution ruled:

"Wherefore, in view of the foregoing, it is respectfully recommended that respondents Judy Carol Dansal, Rafael Flores, Herminio Elizon, Arnulfo Soloria, Ronaldo Vallada be prosecuted for one count of estafa through falsification of public document.

In addition thereto, a separate information for violation of Section 3(e) of R. A. No 3019 be filed against

respondent Judy Carol Dansal alone while the additional charge for violation of Section 3(e) of R. A. No 3019 against the other respondents be dismissed for lack of merit."[4]

On May 13, 1996, after the denial of petitioners' motion for reconsideration, the aforesaid cases were referred to the deputized prosecutor of Quezon City, together with two Informations, dated October 20, 1995 and January 15, 1996, respectively, accusing Judy Carol L. Dansal of estafa through falsification of public document, and violation of Section 3(e) of R. A. No. 3019;[5] and the other petitioners of estafa through falsification of public document.

On July 18, 1996, petitioners interposed a Motion to Quash, contending that the delay in terminating the preliminary investigation violated their constitutional rights to due process and to a speedy disposition of their cases.[6]

On August 27, 1996, the respondent court denied the said motion, ruling thus:

"After careful evaluation of the grounds raised by the accused in their Motion to Quash viz-^-viz the Opposition filed by the prosecution, finding no basis in fact and in law to warrant the quashal of the two informations against the accused, as there appears no unreasonable delay in the conduct of the preliminary investigation amounting to violation of the accused's constitutional right to due process and to a speedy disposition of the cases, the instant Motion is hereby DENIED. Reset the arraignment and pre-trial anew on November 25, 1996 at 8:30 o'clock in the morning."[7]

Undaunted, petitioners found their way to this Court via the present petition under Rule 65 with a prayer for Preliminary Injunction and/or Temporary Restraining Order, theorizing that:

RESPONDENT JUDGE COMMITTED A GRAVE ABUSE OF DISCRETION IN DENYING PETITIONERS' MOTION TO QUASH, FINDING NO BASIS IN FACT AND IN LAW TO WARRANT THE QUASHAL OF THE TWO (2) INFORMATIONS AGAINST THE PETITIONERS.

RESPONDENT JUDGE COMMITTED GRAVE ERRORS OF FACTS AND CONCLUSIONS OF LAW WHEN HE ERRONEOUSLY HELD THAT THERE APPEARS NO UNREASONABLE DELAY IN THE CONDUCT OF THE PRELIMINARY INVESTIGATION AMOUNTING TO VIOLATION OF THE PETITIONERS' CONSTITUTIONAL RIGHT TO DUE PROCESS AND TO A SPEEDY DISPOSITION OF THE CASES."[8]

On December 18, 1996, without giving due course to the Petition, the Court required the respondents to comment and denied the prayer for a writ of preliminary injunction and/or temporary restraining order.[9]

In his Manifestation and Motion in lieu of Comment, the Solicitor General recommended the granting of the petition.[10]

The accusation against the petitioners is based on the "Affidavit of Complaint" alleging that petitioners falsified the Daily Time Record (DTR) of one Ronaldo Vallada, by making it appear that the latter reported for work during the month of July 1991 when, in truth and in fact, he did not so report, and that the petitioners collected the amount of P2,244.04 paid on the basis of the falsified DTR.

In their answer, petitioners countered that the imputation against them is a mere harassment by complainant Benigno S. Montera, so as to silence, embarrass and destroy their (petitioners') credibility, and that the complainant lodged the complaint because prior to the filing thereof, petitioner Dansal initiated an investigation of the complainant for alleged irregularities involving the latter's daily time record, which investigation was set by petitioner Dansal after Ronaldo Vallada admitted having illegally punched in the Bundy Clock the DTRs of several employees and the complainant, who requested him to do so, and as a result, an administrative case was

instituted against the complainant before the Director for Legal Affairs, docketed as Administrative Case No. 1-05-92 for Dishonesty, Falsification of Public Documents, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.[11]

Placing reliance on the ruling in the case of *Tatad vs. Sandiganbayan*,[12] petitioners seek redress for what they theorized upon as a violation of their right to due process and speedy disposition of their cases by reason of the alleged unreasonable delay of the preliminary investigation against them.

The petition is barren of merit.

To begin with, the petition is flawed by the failure of petitioners to move for reconsideration of the assailed Order. Settled is the rule that, except in some recognized exceptions, the filing of a motion for reconsideration is a condition sine qua non to the filing of a petition for certiorari.[13] The rationale behind the rule is to give the respondent court an opportunity to correct its supposed mistake and to rectify its questioned Order.

Section 16, Article III of the 1987 Constitution, reads:

"Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies"

Initially embodied in Section 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three provisions mandating speedier dispensation of justice.[14] It guarantees the right of all persons to "a speedy disposition of their case"; includes within its contemplation the periods before, during and after trial, and affords broader protection than Section 14(2),[15] which guarantees just the right to a speedy trial. It is more embracing than the protection under Article VII, Section 15, which covers only the period after the submission of the case.[16] The present constitutional provision applies to civil, criminal and administrative cases.[17]

Section 16 was first given flesh and blood in the *Tatad* case, which also involved a petition seeking to reverse an order of the trial court denying a motion to quash the Information. Applying Section 16, Article IV of the 1973 Constitution, the Court opined in that case:

"x x x We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights." [18]

But the concept of "speedy disposition of cases," like "speedy trial," is a relative term and a flexible concept. It is consistent with reasonable delay.[19]

In the determination of whether or not the constitutional right invoked by petitioners has been violated, the factors to consider and balance are the duration of the delay, reason thereof, assertion of the right or failure to assert it and the prejudice caused by such delay.[20] The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence and either in a plaintiff's being non-suited or the defendant's being pronounced liable under an *ex parte* judgment.[21]

The Court believes, and so holds, that the aforesaid doctrine laid down in *Tatad vs. Sandiganbayan* is inapplicable in light of the attendant facts and circumstances in this case. Records disclose that the original complaint against petitioners was brought before the Office of the Ombudsman on December 16, 1991. The same

was deemed submitted for resolution on January 15, 1993. On May 30, 1994, the investigator issued a Resolution finding a probable cause, which finding was later approved by the Ombudsman. Petitioners were furnished a copy of the said Resolution on February 5 and 6, 1996. On June 30, 1996 were filed the Information dated October 20, 1995, docketed as Criminal Case No. Q-96-66607, and the other Information dated January 15, 1996, docketed as Criminal Case No. Q-96-66608.[22]

The preliminary investigation in subject cases against the petitioners took more than one year and four months to finish. But such a happenstance alone, or any like delay, for that matter, should not be cause for an unfettered abdication by the court of its duty to try cases and to finally make a determination of the controversy after the presentation of evidence. In *Francisco Guerrero vs. Court of Appeals*,[23] et al., the Court had this to say:

"While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice. In the instant case, three people died as a result of the crash of the airplane that the accused was flying. It appears to us that the delay in the disposition of the case prejudiced not just the accused but the people as well. Since the accused has completely failed to assert his right seasonably and inasmuch as the respondent judge was not in a position to dispose of the case on the merits due to the absence of factual basis, we hold it proper and equitable to give the parties fair opportunity to obtain (and the court to dispense) substantial justice in the premises."

The protection under the right to a speedy disposition of cases should not operate as to deprive the government of its inherent prerogative in prosecuting criminal cases or generally in seeing to it that all who approach the bar of justice be afforded a fair opportunity to present their side.

Contrary to the stance of the Solicitor General, the delay adverted to in the cases under consideration does not measure up to the unreasonableness of the delay of disposition in *Tatad vs. Sandiganbayan*, and other allied cases. It cannot be said that the petitioners found themselves in a situation oppressive to their rights simply by reason of the delay and without more.

In *Magsaysay et al. vs. Sandiganbayan et al.*,[24] this Court ruled that:

"x x x the right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when, without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant is weighed, and such factors as the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay. The concept of speedy disposition is a relative term and must necessarily be a flexible concept.

A mere mathematical reckoning of the time involved, therefore, would not be sufficient. In the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case"

From the facts and circumstances at bar, the Court cannot glean any grave abuse of discretion tainting the denial by the respondent court of petitioners' motion to quash.

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on Complaints brought before him.[25] But such duty should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness. Judicial notice should be taken of the fact that the nature

of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman.

As stressed upon by the Solicitor General, the Rules of Procedure of the Ombudsman[26] do not specifically prescribe a period within which a criminal complaint may be investigated and decided. But the same Rules adopt the Rules of Court on Preliminary Investigation, as modified by the Rules of Procedure of the Ombudsman. Under the Rules of Court,[27] the Investigating Officer has ten (10) days from submission of the case to come out with the resolution.

But it bears stressing that the period fixed by law is merely "directory", although it can not be disregarded or ignored completely, with absolute impunity.[28] The records of the case do not show any such complete disregard. In like manner, the circumstances averred in the petition do not suffice to overcome the presumption of regularity in the performance by the Ombudsman of his functions, especially those involving the review of numerous resolutions and recommendations of his investigating officers.

In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full blown trial where it is clear that he has been deprived of due process of law and/or other constitutionally guaranteed rights.[29] But here, the Court finds none.

WHEREFORE, the petition is DENIED, and the respondent Regional Trial Court is hereby ordered to attend with dispatch to the trial of Criminal Case No. Q-96-66607, entitled "People of the Philippines vs. Judy Carol L. Dansal, Rafael T. Flores, Herminio T. Elizon and Arnulfo S. Soloria", and Criminal Case No. Q-96-66608, entitled "People of the Philippines vs. Judy Carol L. Dansal". No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, pp. 4-5.

[2] Ibid., pp. 5, 6.

[3] As reflected in the NFA logbook, Rollo, p. 97.

[4] Resolution, Annex "L", Rollo, pp. 94-95.

[5] Rollo, *ibid.*

[6] Ibid., Sec. 16.

[7] Annex "A", Rollo, p. 18.

[8] Rollo, p. 8.

[9] Ibid. p. 137.

[10] Ibid. p. 183-205.

[11] Rollo, p. 188.

[12] 159 SCRA 70.

[13] *Co Tuan vs. NLRC*, 289 SCRA 415.

[14] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 1996, p. 489

[15] Art. III, Sec 14 (2). " In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Underscoring supplied)

[16] Bernas, id., citing Talabon vs. Iloilo Provincial Warden, 78 PHIL 599.

[17] Bernas, id.

[18] 159 SCRA 70, 82.

[19] Bernas, supra..

[20] Ibid., citing Barker vs. Wings, 407 US 524.

[21] Padua vs. Ericta, 161 SCRA 458.

[22] Rollo, p. 192-193.

[23] 257 SCRA 703, 716.

[24] G.R. No. 128136, October 1, 1999.

[25] Roque, et al. vs. Office of the Ombudsman, et al., supra.

[26] Administrative Order No. 7

[27] Rule 112, Sec 3 (f). "Thereafter, the investigation shall be deemed concluded and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

[28] Tatad vs. Sandiganbayan, supra.

[29] Ibid., p. 80, citing Salonga vs. Cruz Pa-o, et. al., 134 SCRA 438; Mead vs. Argel, 115 SCRA 256; Yap vs. Lutero, 105 Phil. 1307; People vs. Zulueta, 89 Phil. 752.

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