

**REMEGIO P. YU, MICHAEL S. COSUE AND JULIETA M. FERNANDEZ,
PETITIONERS, VS. SANDIGANBAYAN, JUSTICES FRANCIS E.
GARCHITORENA, MINITA V. CHICO-NAZARIO AND EDILBERTO G.
SANDOVAL (SB...**

G.R. No. 128466. May 31, 2001

Ponente: PARDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-128466/>

PARDO, J.:

What is before the Court is a petition[1] for certiorari with prohibition and an application for preliminary injunction and temporary restraining order.

Petitioners alleged that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that there was probable cause to indict them for violation of the Anti Graft and Corrupt Practices Act particularly Section 3 (e) thereof. And that the Sandiganbayan also committed grave abuse of discretion in sustaining such finding and persisting to try the case in SB Case No. 23454.[2]

On March 23, 1994, the Deputy Ombudsman for Luzon received a Joint Affidavit and Criminal Complaint from the members of the Sangguniang Bayan, Rosales, Pangasinan namely, Eddie Patawaran, Leon Lucido, Susan P. Casareno and Cris Coloma charging Municipal Mayor Remegio P. Yu, Municipal Vice-Mayor Michael S Cosue and Municipal Treasurer Julieta M. Fernandez and Rodolfo Macabunga, the proprietor of Rosales Lumber and Hardware with violation of R. A. No. 3019, Section 3 (e).[3]

Acting on the complaint, the Deputy Ombudsman for Luzon required the respondents to file their corresponding counter affidavits.

On May 23, 1994, complainants submitted an amended criminal complaint[4] dropping Rodolfo Macabunga from the charge attaching the affidavit[5] of Macabunga to the effect that he did not make any delivery of gravel and sand to the Rosales Public Market; that the delivery receipt was not signed by an employee of the Municipal Government of Rosales, Pangasinan, that he was not aware how the Municipal Government came into possession of a delivery receipt and the voucher amounting to P20,000.00 for the gravel and sand.

In time, respondents filed their counter affidavits and supporting evidences.[6]

Petitioners Yu, Cosue and Fernandez claimed that there was indeed delivery of the subject materials by Rosales Lumber and Hardware which submitted the lowest bid price quotation through its representative Mr. Virgillo "Gil" Aguilar. It was also Mr. Aguilar who received the purchase order dated September 29, 1993, in behalf of Rosales Lumber and Hardware. The delivery was attested to by the affidavits of sixteen (16) market vendors of Rosales Public Market, plus the joint-affidavit of Municipal Engineers Camillo S. Olegario and Danilo E. Nacion, attesting to the complete delivery of the materials.[7]

On March 18, 1996, OMB investigator Perfecto Lawrence D. Chua Cheng V after evaluation of the evidence for

both parties recommended the dismissal of the case.[8] However, the Ombudsman disapproved the recommendation for dismissal.[9] And relying on the Memorandum of an OMB special assistant which gave credence to the affidavit of Rodolfo Macabunga, owner of the Rosales Lumber and Hardware, that he had not entered into any contract with the municipality of Rosales for the delivery of the subject materials, the Ombudsman proceeded to charge petitioners with violation of R. A. No. 3019, Section 3 (e).[10]

Hence, on September 11, 1996, the Ombudsman filed with the Sandiganbayan an Information[11] for violation of Republic Act No. 3019, Section 3 (e) against petitioners and one Rodolfo Macabunga, for acting in conspiracy and making it appear that 100 cu. m. of mixed gravel and sand valued at P20,000.00, for use in the gravelling of the Rosales Public Market was delivered by Rosales Lumber and Hardware on October 1, 1993, when in fact no delivery was ever made.

Upon previous leave of court, on November 11, 1996, petitioner Yu and Fernandez filed a Motion for Reconsideration[12] of the indictment based on the following grounds:

"1. There was indeed delivery of the subject materials;

"2. The check in payment thereof was received and endorsed/encashed by Rodolfo Macabunga (proprietor of Rosales Lumber and Hardware); and that

"3. There was no damage or prejudice caused to the municipality of Rosales."

Previously, on November 4, 1996, accused Cosue filed a separate Motion for Reconsideration[13] based on the same grounds that Yu and Fernandez raised. In a memorandum[14] the Ombudsman denied the motion for reconsideration. In the same manner, the Sandiganbayan denied the motion for reconsideration petitioners filed.[15]

Hence, this petition.[16]

Petitioners raise the following issues:

- Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that there was probable cause against petitioners;
- Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in sustaining the finding of probable cause of the Ombudsman.[17]

According to petitioners, there was an abundance of evidence showing that there was delivery of the gravel and sand for the public market of Rosales, such as the affidavits of sixteen market vendors some of whom physically helped in the spreading of the mixed gravel and sand; the affidavits of two of the Municipal Engineers, Camilo Olegario and Danilo Nacion, attesting to actually seeing the delivery and several business operators in the public market who personally helped either as hired labor or volunteers in the laying of the gravel and sand.[18]

Also worthy of note is the recommendation for the dismissal of the case by OMB Investigator Perfecto Lawrence D. Chua Cheng V, concurred into by OMB Director Ernesto M. Marcos and recommended for approval by Ombudsman for Luzon Jesus F. Guerrero, to wit:

"The issues to be resolved in this case hinges on whether or not deliveries of the aggregates were actually made for the regravelling of the Rosales Public Market, and whether or not payment of P20,000.00 was received by Rodolfo Macabunga.

"The Answer to both questions it is respectfully submitted must be in the affirmative. While Mr. Macabunga denied that his hardware made a delivery of the ordered aggregates, the same cannot prevail over the positive

testimonies of the respondents as well as their witnesses confirming the delivery of the mixed gravel and sand at the public market in the months of September and October 1993. This finding is all the more bolstered by the evidence of receipt of the Land Bank of the Philippines Check No. 6099256 in the amount of P19,400.00 by Virgillo "Gil" Aguilar whose signature appears on the claimants box of disbursement voucher No. 101-93-50-1479 as determined by the National Bureau of Investigation per Bureau's questioned document report no. 574-794-A dated August 8, 1994. Noteworthy mentioning at this point is the failure on the part of the complainants as well as their witness Rodolfo Macabunga to refute the respondent's claim that Virgillo "Gil" Aguilar is the latter's authorized representative respecting the subject transaction. Evidence on record belie Mr. Rodolfo Macabunga's claim of non-receipt of the above-mentioned check no. 6099256 which was either deposited or encashed at the Traders Royal Bank, carmen, Pangasinan Branch by its endorser whose signature appearing on the dorsal portion thereof was determined by the NBI to be that of Mr. Rodolfo Macabunga.

"Finally refutation of the complainants claim that the three truck loads of aggregates were not delivered by the Rosales Hardware but by the DPWH, respondent Vice-Mayor Cosue submitted the joint-affidavit dated July 27, 1994 of the three named DPWH truck drivers denying making any delivery of the gravel and sand at the public market. Despite being furnished copies of the evidence the complainant failed to controvert the same leading more credence to respondent's position.

"WHEREFORE, IN VIEW OF THE FOREGOING, finding that no evidence exist to indict the respondent for violating Sec. 3 (e) of Republic Act 3019, let this case be DISMISSED for lack of merit and/or evidence."[19]

Petitioners further alleged that there is a complete absence of evidence to prove the non-delivery of the subject materials. The statement of accused Macabunga that he did not make deliveries of the subject materials is inadmissible under the rule of "res inter alios acta, alteri nocere non debet" Petitioners alleged that under Rule 130, Section 28 of the Revised Rules of Court, which provides that "the rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided" that the relationship between Macabunga and the petitioners does not make out an exception under Rule 130, Section 30 (admission by co-conspirator) for the simple reason that they were not co-conspirators.

Respondent Ombudsman stressed that the issues raised are matters of defense that could be submitted before the Sandiganbayan at the trial. The affidavits of the sixteen market vendors and the municipal engineers Villanueva, Olegario and Nacion are questionable since the affidavits were similarly worded. To further emphasize the point, the Ombudsman alleged that Municipal Engineers Olegario and Nacion, who both claimed to be at the site when the gravel and sand were delivered were unable to present any delivery receipts to prove the quantity of the gravel and sand that Rosales Lumber and Hardware actually delivered.[20]

We find the petition without merit.

The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. The Court has consistently refrained from interfering with the Ombudsman in the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who, "beholden to no one, acts as the champion of the people and the preserver of the integrity of public service."[21]

The rule is based not only upon constitutional considerations but upon practical ones as well. If it were otherwise, the courts would be gravely hampered by innumerable petitions questioning the dismissal of investigatory proceedings before the Ombudsman, in much the same way that the courts would be swamped if they would be compelled to review the exercise of discretion on the part of our prosecutors each time they decide to file an information in court or throw out a complaint.[22]

The main function of the government prosecutor during preliminary investigation is merely to determine the

existence of probable cause, and to file the corresponding information if he finds it to be so. "And, probable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." [23]

To repeat, it is well settled that in the absence of a clear abuse of discretion, courts will not interfere with the discretion of the Ombudsman, who, depending on his finding and considered evaluation of the case, either dismisses a complaint or proceeds with it. [24]

In the same manner, we can not say that the Sandiganbayan committed grave abuse of discretion in finding the existence of probable cause and continuing with the trial of SB Case No. 23454.

WHEREFORE, the petition is DISMISSED for lack of merit.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Kapunan, J., on leave.

[1] Petition, Rollo, pp. 11-30.

[2] Order dated March 14, 1997, Volume 1, SB Rollo, pp. 294-296.

[3] Petition, Annex "C", Rollo, p. 39.

[4] Comment, Annex "2", Rollo, pp. 141-142.

[5] Comment, Annex "3", Rollo, p. 143.

[6] Petition, Annexes "D"-"K", pp. 40-66.

[7] Petition, Rollo, pp. 11-30, at pp. 15-16.

[8] Petition, Annex "M", Rollo, pp. 71-75.

[9] Ibid., at p. 75.

[10] Petition, Annex "L", Rollo, pp. 67-70.

[11] Petition, Annex "O", Rollo, p. 77-78.

[12] Petition, Annex "P", Rollo, pp. 79-88.

[13] Petition, Annex "Q", Rollo, pp. 89-98.

[14] Petition, Annex "A", Rollo, pp. 32-36.

[15] Order dated March 14, 1997, Petition, Annex "B", Rollo, pp. 37-38.

[16] Petition, Rollo, pp. 11-30. On August 9, 2000, we gave due course to the petition (Rollo, pp. 215-216).

[17] Ibid., Rollo, p. 20.

[18] Petition, Rollo, p. 21.

[19] Petition, Annex "M", Rollo, pp. 67-70.

[20] Comment, Rollo, pp. 126-127.

[21] *Espinosa v. Ombudsman*, G.R. No. 135775, October 19, 2000, citing *Alba v. Nitorreda*, 325 Phil. 229 [1996]; *Young v. Office of the Ombudsman*, 228 SCRA 718 [1993].

[22] *Cruz, Jr. v. People*, 233 SCRA 439, 452 [1994].

[23] *Ibid.*, p. 459.

[24] *Dungog vs. Court of Appeals*, 159 SCRA 145 [1988].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.