

**AMOR D. DELOSO, IRENEO B. ONIA, AND NELSON A. QUEJADA,
PETITIONERS, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS
OMBUDSMAN, HON. LEONARDO P. TAMAYO, IN HIS CAPACITY AS
SPECIA...**

G.R. No. 129939. September 09, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is a petition for certiorari and injunction with prayer for a writ of preliminary injunction or a temporary restraining order to enjoin public respondents from prosecuting petitioners in Criminal Cases Nos. 23292 and 23295, filed with the Sandiganbayan.

Petitioners, Amor D. Deloso, Ireneo B. Onia, and Nelson A. Quejada, were then Governor, Provincial Treasurer, and Provincial Chief Accountant, respectively, of the province of Zambales.

In 1989, a Commission on Audit (COA) team, composed of auditors and examiners, audited the financial transactions and operations of Zambales province, for the calendar years 1988 and 1989. On October 5, 1989, the COA audit team submitted Special Audit Office (SAO) Report No. 89-86, finding that:

“1. Equipment, specifically road graders and water trucks, not needed in the prosecution of nine projects was (sic) included in the program of work, as pay items. The province of Zambales unnecessarily paid rentals, cost of fuel and wages of operators for the unutilized equipment, totaling P194,647.00.

“2. There were double payments of burial expenses to Funeraria Iba, amounting to P4,700.00. The payment was in connection with the province’s monetary grant for burial and funeral expenses to the family of deceased persons, considered to be resident indigents of the province.

In connection with the findings of the COA audit team, on February 25, 1991, Congresswoman Pacita T. Gonzales[1] wrote then Ombudsman Conrado M. Vasquez, and requested the investigation of petitioners Amor D. Deloso, Ireneo B. Onia, and Nelson A. Quejada, in their official capacities, and all other persons involved in the anomaly.

In time, petitioners filed their respective counter-affidavits with the Office of the Ombudsman. On November 7, 1995, the Ombudsman, through the Special Prosecutor, filed with the Sandiganbayan four (4) separate informations for malversation of public funds thru falsification of public documents and for violation of Section 3 (e), R. A. No. 3019 (Anti-Graft and Corrupt Practices Act) against petitioners, along with other public officials.[2]

Two of these were docketed as Criminal Cases Nos. 23292 and 23295.[3]

In Criminal Case No. 23292, the prosecution alleged:

“That for the period of January 1988 up to December 1989, and for sometime prior or subsequent thereto, in the Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court,

above-named accused public officers, namely: AMOR D. DELOSO, then Governor of Zambales; Provincial Treasurer IRENEO B. ONIA, Provincial Auditor RANULFO P. VERIAN, and Chief Accountant NELSON QUEJADA, all of the Provincial Government of Zambales, all public officials, all while in the performance of their respective official functions, taking advantage of their official positions and committing the offense in relation to their respective official functions, in conspiracy and in connivance with each other, did then and there, wilfully (sic), unlawfully and feloniously prepare, issue and release Disbursement Voucher No. 302 in the amount of P4,700.00 in favor of Funeraria Iba as payment of the funeral and burial expenses of deceased Zambales indigents namely Lourdes Pailas, Juan Dologan and Gonzalo de Guzman knowing fully well that said same funeral and burial expenses have already been fully settled under Disbursement Voucher No. 217 in the same amount of P4,700.00; and that after the issuance of said DV No. 302, above-named provincial public officials encashed the same which cash equivalent and proceeds thereof all the accused wilfully (sic), unlawfully and feloniously appropriated for their personal use and benefit, thereby defrauding the government in the said amount of P4,700.00.

“CONTRARY TO LAW.”[4]

In Criminal Case No. 23295, the prosecution alleged:

“That for the period 1988 up 1989, and for sometime prior or subsequent thereto, in the Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, above-named accused public officers, namely: AMOR D. DELOSO, then Governor of Zambales; Provincial Engineer TEOFILO MINAS, JR., Provincial Treasurer IRENEO B. ONIA, Provincial Auditor RANULFO P. VERIAN, Asst. Prov’l Engr. CECILIO PANALIGAN, JR., and Chief Accountant NELSON QUEJADA, all of the Provincial Government of Zambales, all public officials, all while in the performance of their respective official functions, taking advantage of their official positions and committing the offense in relation to their respective official functions, acting with gross inexcusable negligence, conspiring and conniving with each other, did then and there wilfully (sic), unlawfully and criminally cause undue injury to the government, particularly the Provincial Government of Zambales by then and there allowing/permitting the inclusion in the Program of Work of several equipment not needed in the prosecution of several projects of the Provincial Engineering Office (PEO) as pay items, as follows: three (3) water trucks and two road graders; that the rentals, cost of fuel used and the wages of operators of said equipment were not utilized totalled (sic) to P194,647.00 but which were all paid by the Provincial Government of Zambales, thus increasing the projects in said same amount; to the damage and injury of the government and to the public interest in the said amount of P194,647.00.

“CONTRARY TO LAW.”[5]

On March 23, 1996, petitioners filed with the Sandiganbayan, an Urgent Motion to Defer Arraignment and for Leave to File a Motion for Reinvestigation with the Ombudsman. On April 26, 1996, Sandiganbayan deferred the arraignment, without ruling on the motion for reinvestigation.

On May 9, 1996, petitioners filed with the Ombudsman a motion for reinvestigation. On June 18, 1996, Special Prosecution Officer Raymundo A. Olaguer recommended the withdrawal of the two informations in Criminal Cases Nos. 23292 and 23295. On June 28, 1996, Deputy Special Prosecutor (DSP) Robert E. Kallos, concurred in by Special Prosecutor (SP) Leonardo P. Tamayo and Ombudsman Aniano A. Desierto, disapproved Olaguer’s recommendation. On October 14, 1996, petitioners moved for reconsideration.

On February 24, 1997, prosecutor Olaguer again recommended the withdrawal of the two informations and dismissal of Criminal Cases Nos. 23292 and 23295. DSP Kallos, SP Tamayo and Ombudsman Desierto approved the dismissal of the cases against co-accused Ranulfo Verian, Teofilo Minas, Jr., and Cecilio C. Panaligan, Jr., on the ground of good faith in relying upon the reports and recommendations of their subordinates. However, in the same marginal note, they denied the dismissal of the cases against petitioners.[6]

On May 30, 1997, petitioners filed with the Ombudsman their third motion for reconsideration of the disapproval, but it was denied in an order dated June 6, 1997.[7]

Hence, this petition.

Petitioners are aware of the rule that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. However, they contend that the Office of the Ombudsman acted without or in excess of jurisdiction or with grave abuse of discretion, amounting to lack or excess of jurisdiction, in denying petitioners' motion to withdraw the two informations, or to dismiss Criminal Cases Nos. 23292 and 23295. In *Brocka v. Enrile*,^[8] we ruled that there are exceptions^[9] to the rule that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. Petitioners submit that the acts of the Ombudsman were without or in excess of authority, thereby falling within the exceptions.

Petitioners assert that there is no sufficient ground to engender a well-founded belief that the crime charged has been committed by petitioners, or that they are probably guilty thereof. As regards Criminal Case No. 23292 for malversation of public funds thru falsification of public documents, petitioners stress that the double payment made to Funeraria Iba, amounting to P4,700.00, was an honest mistake, as initially found by Prosecutor Olaguer. The mistake can be attributed to the unorganized records in the Office of Provincial Government concerning these payments. Petitioners aver that good faith and lack of criminal intent are valid defenses in cases of malversation. They further emphasize that not a single centavo was put to personal use, but was paid to Funeraria Iba. In fact, that amount was promptly returned to the provincial government after it was brought to the attention of petitioner Deloso.

Regarding Criminal Case No. 23295 for violation of Section 3 (e), R. A. 3019, petitioners maintain their innocence. They stress that, contrary to the COA findings, the expenses for rentals of equipment, cost of fuels and wages of operators were necessary, if not indispensable, to the nine (9) projects. The Provincial Engineer's Office (PEO) of Zambales province, which supervised the projects' implementation, certified this fact. Petitioners simply relied, in good faith, on the reports and recommendations submitted by their subordinates, namely, the engineers and technical men of PEO. Their respective positions do not oblige or compulsorily bind them to scrutinize all the technical and engineering details of the construction projects. Petitioners contend that their reliance upon PEO's certification shows good faith and absolves them of criminal liability.

Petitioners further claim that the dismissal of the charges against co-accused Verian, Minas, Jr., and Panaligan, Jr., on the basis of good faith, warrants the dismissal of the cases against them. Under the premise that petitioners and above co-accused conspired and connived together in committing the crime, the Ombudsman filed the two informations against them. Thus, when the Ombudsman dismissed the cases against co-accused on the ground of good faith, then, the cases against petitioners must also be dismissed.

Petitioners hammer on the Ombudsman's lack of explanation in denying the dismissal of the cases against them. They contend that it showed grave abuse of discretion on the Ombudsman's part.

The Ombudsman, in his comment, avers that defenses of good faith and lack of criminal intent, being evidentiary in nature, are best shown and proved during the trial of the case, and not in the determination of probable cause during preliminary investigation. Also, the findings and recommendations of investigating fiscals or prosecutors, such as that of Olaguer's, are subject to the approval of the Ombudsman. Being recommendatory in nature, there was no grave abuse of discretion when the Ombudsman disapproved the recommendation. Furthermore, on November 7, 1995, Prosecutor Ines has made prior determination of probable cause to support the filing of four (4) informations against petitioners. Hence, there was no need to reiterate the reason for denying the dismissal of the cases against petitioners.

Public respondents also assert that the dismissal of the charges against co-accused Verian, Minas, Jr., and Panaligan, Jr., on the basis of good faith, does not automatically result in the dismissal of the charges against petitioners. The defense of good faith is personal in nature, thus, each accused must prove its existence involving his own case. Hence, the finding of good faith in favor of co-accused Verian, Minas, Jr., and Panaligan, Jr., does not necessarily result in a similar finding with respect to petitioners.

Viewed in the light of the foregoing, we deny the petition.

As to Criminal Case No. 23292, prosecutor Olaguer reported that the double payment can be attributed to the fact that the records on deceased persons given assistance filed with the Office of the Provincial Government were not properly kept or maintained. The Provincial Treasurer's Office also did not maintain proper indices or ledgers to monitor the payments made. However, such double payment may have been committed with *dolo* (deceit) or *culpa* (negligence). While the facts do not show that *dolo* attended the additional disbursement made, we cannot discount the possibility that *culpa* may be present. Further reception of evidence is necessary to determine the matter.

To sustain a charge of malversation, there must either be criminal intent or criminal negligence on the part of petitioners. There may be negligence attending the disbursement of public funds in favor of the family of deceased indigents, such negligence is equally punishable in Article 217 of the Revised Penal Code.

As regards Criminal Case No. 23295, the charge was that there was gross negligence when petitioners allowed the inclusion of equipment not needed in the project, in the program of work. As reported by the COA team, the equipment was not utilized, and the province incurred unnecessary expenses, amounting to P194,647.00. Petitioners claimed good faith in relying on the reports and recommendations of the PEO office and that the equipment was, in fact, used. This is a factual issue that must be left to the trial court.

We agree with public respondents that the existence of good faith or lack of it, as elements of the crimes of malversation and violation of Section 3 (e), R. A. No. 3019, is evidentiary in nature. As a matter of defense, it can be best passed upon after a full-blown trial on the merits. The issue of whether petitioners acted in good faith is best determined during the trial proper.[10] Public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. They merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof, and should be held for trial.[11] A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that prosecutors believe that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charges.[12]

We do not agree with petitioners that the denial of the Ombudsman to dismiss the charges against them is tainted with grave abuse of discretion, warranting the issuance of an injunction.

The lack of explanation by public respondents in denying the dismissal of the charges against petitioners does not necessarily connote arbitrariness or caprice on the part of respondents. Public respondents disapproved the investigating prosecutor's recommendation because they believed that there was sufficient evidence to indict petitioners. On the bases of the findings of fact of the investigating prosecutors, public respondents believe that petitioners are probably guilty of the offenses charged. The Ombudsman did not commit grave abuse of discretion simply because he opines contrarily to his subordinate prosecutor that, under the facts obtaining in the case, there is probable cause that petitioners are guilty of the offense charged.

IN VIEW OF THE FOREGOING, we DENY the petition. We order the Sandiganbayan to proceed with the

arraignment and trial of the cases with all deliberate dispatch.

No costs.

SO ORDERED.

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

[1] Congresswoman, 2nd district of Zambales.

[2] Also initially charged were Provincial Auditor Ranulfo P. Verian, Provincial Engineer Teofilo Minas, Jr., and Assistant Provincial Engineer Cecilio Panaligan, Jr.

[3] Criminal Case No. 23293 for violation of Sec. 3(e), R. A. 3019 involving other projects, was subsequently withdrawn, upon motion by the Ombudsman, per resolution dated October 19, 1998. Criminal Case No. 23294 was for falsification of public documents, penalized under Article 171(4) of the Revised Penal Code.

[4] Rollo, pp. 186-187.

[5] Rollo, pp. 189-190.

[6] Accused Minas and Panaligan were absolved of liability since the documents showed that they were not signatories to the program of work, or even aware of the final completion of the project. For a time that these projects were ongoing, Governor Deloso banned them from performing their official functions. Their only participation in the projects was during the suspension of Governor Deloso, as ordered by the Sandiganbayan, wherein they approved partial payments for the ongoing projects. Accused Verian was absolved since he was not the provincial auditor at the time of the transaction subject of the case. Rollo, pp. 297-303.

[7] Rollo, p. 310.

[8] 192 SCRA 183 (1990).

[9] Among these are:

- a) To afford adequate protection to the constitutional rights of the accused;
- b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c) When there is a prejudicial question which is sub judice;
- d) When the acts of the officer are without or in excess of authority;
- e) Where the prosecution is under an invalid law, ordinance or regulation;
- f) When double jeopardy is clearly apparent;
- g) Where the court has no jurisdiction over the offense;
- h) Where it is a case of persecution rather than prosecution;
- i) Where the charges are manifestly false and motivated by the lust for vengeance;
- j) When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

[10] Olivares v. Sandiganbayan, 248 SCRA 700, 711 (1995).

[11] People v. Cerbo, G. R. 126005, January 21, 1999.

[12] Pilapil v. Sandiganbayan, 221 SCRA 349, 360 (1993).

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