

ERIBERTO L. VENUS, PETITIONER, VS. HON. ANIANO DESIERTO, IN HIS OFFICIAL CAPACITY AS OMBUDSMAN; SANDIGANBAYAN*G.R. No. 130319. October 21, 1998*

Ponente: DAVIDE, JR., J.

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In this petition for prohibition under Rule 65 of the Rules of Court, with application for a temporary restraining order and writ of preliminary injunction, petitioner urges us to (1) annul and set aside (a) the Ombudsman's approval, granted on 26 April 1996, of the Memorandum of 22 February 1996[1] of Special Prosecution Officer III Orlando I. Ines finding reasonable ground to charge herein petitioner for violation of Section 3(e) of R.A. No. 3019, as amended; (b) the Information[2] thereafter filed before respondent Sandiganbayan, docketed therein as Criminal Case No. 23332; and (c) the disapproval of 1 August 1997 by the Ombudsman of the Order[3] of 15 July 1997 of Special Prosecution Officer III Victor A. Pascual recommending the dismissal of the case for lack of probable cause; (2) prohibit the Ombudsman from further prosecuting the case; and (3) prohibit the Sandiganbayan from acting on and trying Criminal Case No. 23332.

Acting on petitioner's urgent motion to resolve his application for a temporary restraining order, oral arguments were held on 27 October 1997. On that occasion, petitioner stressed the absence of a prima facie case for the offense for which he was charged, and argued that unless injunctive relief was granted, his suspension from office was almost inevitable in light of the mandatory language of the law. Assistant Solicitor General Pio Guerrero opposed the application, alleging that there was a paucity of material facts and that the propriety of determining the presence or absence of bad faith lay with the Ombudsman. Arguing for the Ombudsman, Special Prosecutor Carlos Montemayor characterized the application as premature as petitioner had not yet been arraigned and suspension from office could only be ordered after arraignment.

After the filing of the required memoranda[4] by the parties, except the Office of the Solicitor General which was excused from filing any further pleadings in this case, we issued a temporary restraining order on 12 January 1998, effective during the pendency of this case or until further orders, enjoining public respondents, their agents, representatives and persons acting upon their orders or in their place or stead from prosecuting Criminal Case No. 23332 and from conducting further proceedings thereon.

Thereafter, in compliance with the resolution of 2 February 1998, the parties informed us that they were submitting this case for decision on the basis of the pleadings already filed.

The antecedents are not complicated.

On and prior to 2 September 1988, petitioner was the Municipal Mayor of New Washington, Aklan, while private respondents Mars C. Regalado and Harry P. Abayon were members of the Sangguniang Bayan (SB) of said municipality.

At its sixteenth regular session on 2 September 1988, the SB of New Washington passed Resolution No. 19, S.

1988 authorizing petitioner to:

Negotiate And/or Inter (sic) Into A Contract With the Board of Liquidators, Office of The President of The Philippines In The Acquisition Of The Garcia-Diapo Enterprise, Lot No. 2, PSU-134402 Tax Declaration No. 154 Which Is At Present In the Position (sic) Of The Board of Liquidators Scheduled For Public Bidding On September 19, 1988.[5]

Pursuant to the resolution, petitioner proceeded to Manila on 6 September 1988 and submitted to one Wenceslao Buenaventura, a Director and the General Manager of the Board of Liquidators, a copy of Resolution No. 19 S. 1998, together with petitioner's letter-proposal wherein, on behalf of the Municipality of New Washington and pursuant to his authority under the Resolution, he offered to buy the lot on a government-to-government basis at a price mutually acceptable to the parties.

On 8 September 1988, petitioner's offer to purchase the lot for the Municipality of New Washington, as well as that of a certain Tomas Manalang, was deliberated upon by the Board of Liquidators. The Board rejected both offers by way of Resolution No. 420, Series of 1988, which reads:

RESOLVED, to reject the offer of the Sangguniang Bayan of New Washington, Province of Aklan, and Mr. Tomas Manalang to purchase the parcel of land covered by TCT No. 3278 located in New Washington, Aklan, and instead, the Ad Hoc Committee on Bids shall conduct a public bidding over said land on 19 September 1988.[6]

Petitioner returned to New Washington and informed the SB thereof of the denial. He likewise submitted to the Municipal Treasurer his voucher for P1,401.00 for the transportation expenses he incurred for the trip, which was covered by an itinerary of travel. He then sought the opinion of the Provincial Auditor, Atty. Antonio Tabang, as regards the municipality's participation in the bidding. The latter informed the municipality of the requirements in order that a municipal government validly participate in a public bidding, which he set forth in his affidavit as quoted in the Order of 15 July 1997 of Special Prosecution Officer III Pascual, thus:

[I]n order that a municipal government can participate in a public bidding it has to get a Sangguniang Bayan Resolution authorizing him [sic] to participate in a public bidding and to appropriate an amount needed for the bidding representing the Municipality, although I mentioned that this is a rare case where a Municipality will participate in a public bidding; that said resolution ha[s] to be reviewed and approved by the Sangguniang Panlalawigan in accordance with the existing law and regulation; that I further told Mayor Venus that for him to draw a cash advance needed for the purpose, the Resolution must be approved by the authority concerned and the cash advance must be pre-audited by my office before the municipal Treasurer release[s] the payment, and that this procedure/requirements [sic] will take time, not less than two (2) weeks at most [sic], and cannot meet the scheduled date of the bidding set [for] 19 September 1988.[7]

In view of the numerous requirements, the SB doubted whether New Washington could participate in the public bidding.

Nevertheless, on 19 September 1988, petitioner went to Manila at his personal expense and submitted a letter-request to the Board of Liquidators that the public bidding be postponed to another date. However, the Board did not accede. Petitioner then submitted his personal bid, which turned out to be the highest bid. The property was thus sold to him and a Deed of Absolute Sale executed on 3 October 1988. Thereafter, he introduced improvements thereon at his expense. During his incumbency as Mayor, he allowed a portion of the lot to be used, without charge, as a garage for the municipality's fire truck and for the municipality's mushroom culture laboratory.

Private respondents filed a sworn letter-complaint with the Office of the Provincial Prosecutor of Kalibo, Aklan,

charging petitioner with violation of paragraph (h) of Section 3 of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), as amended. The case was docketed as I.S. No. 92-2449. The case was forwarded to the Office of the Deputy Ombudsman for the Visayas in Cebu City, which docketed the complaint as Case No. OMB-2-92-2584.

Private respondents alleged in their letter-complaint, thus:

That on or about the period from September to October, 1988, in the Municipality of New Washington, Province of Aklan, Philippines, and City of Manila, Philippines, and within the jurisdiction of this Honorable Office, the above-named respondent being then the duly elected Mayor of New Washington, Aklan, did then and there wilfully, unlawfully and feloniously having been previously authorized to negotiate and/or enter into a contract with the Board of Liquidators, Office of the President of the Philippines, in the acquisition of the Garcia-Diapo Lot No. 2, PSU-134402, Tax Declaration No. 154 and covered with TCT No. T-16837 which was already then acquired by the Board of Liquidators and scheduled for public bidding on September 19, 1988 and further, having withdrawn money from the Municipality Treasury for said purpose as expenses thereof in the amount of P1,401.00, to the prejudice of the Municipality of New Washington and for his own personal benefit, entered into a Contract of Sale with the Board of Liquidators in his own name and purchased the aforementioned lot for and in his own behalf in contravention with [sic] the Anti-Graft and Corrupt Practices [Act] (Republic Act No. 3019, As Amended, Section 3, Par. H thereof).[8]

In their Joint Affidavit in support of the complaint, private respondents alleged that in contravention of the resolution and authority, in evident bad faith and for the sole purpose of self-interest, petitioner bought the lot in his name and for personal gain, and that they never suspected otherwise because from 1988 up to May 1990, the lot was utilized as a garage for fire trucks and for the municipal mushroom culture laboratory. It was only when petitioner lost in the 1992 elections and "ejected the Municipal Firetruck" that they came to know that petitioner bought the land in his name and not for the municipality.[9]

In his Counter-Affidavit, petitioner summarized the facts stated above prior to the filing of the letter-complaint. He averred that the filing of the complaint was pure harassment in retaliation for an election protest he filed earlier.

In a resolution[10] dated 20 October 1993, issued after due proceedings, the Office of the Deputy Ombudsman for the Visayas recommended the dismissal of the complaint on the ground that there existed no case for violation of paragraph (h) of Section 3 of R.A. No. 3019, as amended, thus:

After a meticulous examination of the pleadings of both parties, giving due consideration to documentary evidences [sic] respectively submitted in support of their contending [sic] allegations, the undersigned investigator determines to be of no sufficient basis the present charge [for] violation of Section 3, paragraph (h), of R.A. 3019, the pertinent provision of which reads as follows:

"h. Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

It would be of some worth citing the case of Trieste, Sr. vs. Sandiganbayan, 145 SCRA 508, to clarify the application of the above-pertinent provision wherein the Supreme Court said: "What is contemplated in Section 3(h) of the anti-graft law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice). xxxx. For the law aims to prevent dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Constitutional Record, Vol. II, page 603)." And as was cited in Macariola vs. Asuncion, 114 SCRA 77, regarding a ruling in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition [against] public officers [from] directly

or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "(I)t is not enough to be a public official to be subject to this crime; it is necessary that by reason of his office, he has to intervene in said contracts or transactions; and hence, the official who intervene [sic] in contracts or transactions which have no relation to his office cannot commit this crime" (People vs. Meneses, C.A. 40 O.G. 11th Supp. 134, cited by Justice Ramon C. Aquino; Revised Penal Code, p. 1174, Vol. II 1976).

Evidently, the above citations find appropriate application [so] as to dismiss the charge in the instant case. The representation made by the respondent former mayor Eriberto L. Venus before the Board of Liquidators pursuant to the authority given him by the Sangguniang Bayan of New Washington, Aklan, per Resolution No. 19, s. 1988, to negotiate and/or enter into a contract with the Board for the purchase by the municipality of New Washington of the subject lot, did not constitute actual intervention as contemplated in the aforecited provision of the anti-graft law. What the same respondent did was merely to make arrangement [sic] or bargain with the Board regarding the offer of the Sangguniang Bayan of New Washington. He was not a member of the Board of Liquidators, and his being the authorized representative of the municipality of New Washington to deal with the Board or his capacity as mayor of New Washington, Aklan, were not reasons for him to intervene in the transaction of the Board. The respondent was not in the position to intercede in whatever official capacity in the Board's deliberation/meeting to decide on whether to accept or reject the offer made. The decision was purely the exclusive prerogative of the Board, which in fact rejected the offer per its Resolution No. 420, s. 1988. And there was absolutely no evidence that the respondent had, in his capacity as then Mayor, used his influence, power, and authority in the rejection of the offer of the municipality of New Washington, Aklan, and in the award to him of the contract for the sale of [the] subject lot when he subsequently tendered his own personal bid. Hence, no legal prohibition exists against the respondent's acquisition of the property in question.

The complainants charge that the municipality of New Washington was prejudiced when the respondent, having been previously authorized to negotiate and/or enter into a contract with the Board of Liquidators for the acquisition of the subject lot and having withdrawn money from the Municipal Treasury for said purpose as expenses thereof in the amount of P1,401.00, entered into a Contract of Sale with the Board of Liquidators on his own behalf and for his personal benefit. It need be pointed out, however, that pursuant to the authority given him the respondent had in fact made negotiations by manifesting the offer of the municipality of New Washington through a letter to the Director & General Manager, Wenceslao M. Buenaventura, of the Board of Liquidators dated September 7, 1988 (Annex "C" of counter-affidavit). Unluckily, aforesaid offer was rejected by the Board, per its Resolution No. 420, s. 1988 (Annex "E"), which decided that the Ad Hoc Committee on Bids should instead conduct a public bidding over [the] subject lot on September 19, 1988. Accordingly, the members of the Sangguniang Bayan of New Washington were informed by the respondent of the rejection of their offer. And having done what he had been mandated and authorized to do, although unsuccessfully, the respondent reasonably claimed reimbursement for his actual expenses in connection thereof in the amount of P1,401.00 as justified by him in his Itinerary of Travel dated September 12, 1988 (Annex "C" of complaint or Annex "A" of respondent's reply to complainant's rejoinder), for which Disbursement Voucher No. 101-88-09-632 (Annex "B" of complaint) was duly prepared and approved.

Considering that the authority given the respondent was "to negotiate and/or enter into a contract with the Board of Liquidators", and that the negotiated transaction or offer pursuant thereof had been rejected by the Board and instead a public bidding was called, no contract for the sale of subject lot to the municipality of New Washington could possibly be pursued based thereon. There being no subsequent authority for the respondent to tender before the Ad Hoc Committee on Bids a bid offer of the municipality of New Washington, the respondent's authority to represent the municipality concerned for purposes of acquiring the subject lot had been effectively terminated upon the rejection of their offer of a negotiated purchase. That he transacted and bidded [sic] for said purchase on his own and not upon any authority or official representation is shown by his letter-request to Governor Corazon L. Cabagnot dated September 17, 1988 (Annex "C" of respondent's reply to complainants' rejoinder) for authority to travel to Manila and the 1st Indorsement dated September 17, 1988

of Governor Cabagnot (Annex "D") granting such authority.

WHEREFORE, premises considered, the undersigned respectfully recommends the DISMISSAL of the instant complaint.

Then Ombudsman Conrado M. Vasquez, however, disapproved the resolution, with a marginal note to "[c]onsider the possible liability of [petitioner] for a violation of Section 3(e), R.A. 3019 [since] [t]here is a pervading showing of bad faith on the part of [petitioner] in maneuvering to acquire for himself a piece of property which he himself knew to be badly needed by the municipality."

The case was re-raffled to Graft Investigation Officer I Carla N. Tanco of the Office of the Deputy Ombudsman for the Visayas. In her Resolution[11] dated 5 December 1994, she found "prima facie evidence to proceed against [petitioner]" for violation of Sec. 3(e), of R.A. No. 3019, as amended, and recommended the filing of the corresponding information. The Deputy Ombudsman for the Visayas recommended approval thereof. The resolution was thereafter referred for review to Special Prosecutor Officer III Orlando I. Ines of the Office of the Special Prosecutor.

In his Memorandum[12] of 22 February 1996, Ines found that "there is a reasonable ground to charge respondent Mayor Eriberto L. Venus of New Washington, Aklan, for violation of Sec. 3(e) of RA 3019, as amended," and forthwith prepared the corresponding Information for filing with the Sandiganbayan.

Ines justified his conclusion in this manner:

The undersigned Special Prosecution Officer totally agrees with the observations / recommendation made by GIO Carla N. Tanco as lengthily expounded in her Resolution. Based on the circumstances and evidence at hand, it is crystal clear that respondent acted in bad faith in acquiring the lot for himself instead of for his municipality. It is a fact that he was commissioned by the SB to negotiate with the Board of Liquidators for the acquisition of said lot through public bidding but sequences [sic] of events would now prove that he ha[d] a hidden motive to personally acquire the lot in his own name. Being commissioned by the SB, he now become an agent of the Municipality of New Washington. Thus, he should have acted as representative of his Municipality in [sic] which he leads as the Mayor. This job demands utmost good faith, fidelity, candor and fairness. The New Civil Code imposes upon the agent the absolute obligation to make a full disclosure or complete account to his principal of all his transactions and other material fact [sic] relative to the agency. So much so that the law does not countenance any stipulation exempting the agent from such obligation and considers such exemption as void (*Domingo vs. Domingo*, 42 SCRA 131). Respondent could not place good faith as his defense inasmuch [sic] there is good faith only when there is an honest intention to abstain from taking as [sic] unconscientious advantage from [sic] another. Respondent should have acted with "delicadeza" by not having personally purchased the lot for himself. The nature of the relationship between him as the Mayor and agent with the principal which is the municipality is fiduciary in nature which demands the agent from placing oneself in a position which ordinarily excites conflicts between self interest and integrity.

Deputy Special Prosecutor Robert E. Kallos recommended the approval of Ines' resolution. Special Prosecutor Leonardo P. Tamayo concurred with Ines' recommendation, while Ombudsman Aniano Desierto approved the resolution on 26 April 1996.

On 26 April 1996, Ombudsman Desierto likewise approved the Information[13] charging petitioner with having violated Section 3(e) of R.A. No. 3019, as amended, with the accusatory portion reading as follows:

That sometime during the period from September to October 1988, and for sometime prior or subsequent thereto, in the Municipality of New Washington, Philippines, and within the jurisdiction of this Honorable Court, accused ERIBERTO L. VENUS, a public officer, being then the Municipal Mayor of New Washington, Aklan, while in the performance of his official functions, taking advantage of his position, and committing the

offense in relation to his office, through evident bad faith, did then and there wilfully, unlawfully and criminally cause undue injury to the government, particularly to the Municipality of New Washington, Aklan and to public interest, as follows: that accused Mayor Venus after having been previously authorized by the Sangguniang Bayan of New Washington, Aklan to negotiate and/or enter into a contract in behalf of said Municipality with the Board of Liquidators of the Office of the President for the purchase/acquisition of the latter's Garcia-Diapo Lot No. 2, situated in front of the New Washington Town Hall, and which was scheduled for public bidding on September 19, 1988, and that said accused after having withdrawn money from the Municipality Treasury the amount of P1,401.00 as travelling expense in going to Manila to negotiate said transaction, did then and there maneuver said sales deal and enter into a Contract of Sale with the said Board of Liquidators in his own name instead, and purchased the aforementioned lot for and in his own behalf despite the fact that he knew that said lot is badly needed by the Municipality which is proposed to be the site of the Fire Fighting Station of the Municipality; to the damage and prejudice of the Municipality of New Washington, Aklan and public interest.

CONTRARY TO LAW.

The Information was filed with the Sandiganbayan on 2 May 1996 and docketed therein as Criminal Case No. 23332.

On 7 March 1997, petitioner personally surrendered to the Sandiganbayan (Third Division).[14] His arraignment[15] was set on 10 March 1997.

On 10 March 1997, the Sandiganbayan issued an order[16] noting that a copy of the resolution directing the filing of the information was sent by registered mail to petitioner only on 3 May 1996, or a day after the filing of the information, "thereby effectively depriving accused of his statutory right to file a motion for reconsideration." Respondent court then granted petitioner's motion for leave to file a motion for reconsideration, which was not objected to by the prosecution. Petitioner was thus allowed to file a motion for reconsideration "directly with the Office of the Special Prosecutor within ten (10) days" from 10 March 1997, and the prosecution was given thirty (30) days from receipt of the motion "to re-evaluate its findings and conclusions in this case." As a consequence, the Sandiganbayan held in abeyance petitioner's arraignment "pending consideration by the Ombudsman of said motion for reconsideration."

On 20 March 1997, petitioner filed his motion for reconsideration[17] with the Office of the Special Prosecutor. The motion was referred to Victor A. Pascual, Special Prosecution Officer III, the prosecuting officer of the case.

Only private respondents herein opposed[18] the motion.

In his Order[19] of 15 July 1997, Pascual recommended that the Resolution of 22 February 1996 of Ines "is, as it is hereby reconsidered and set aside and the instant case is hereby dismissed for lack of probable cause." Pascual further recommended that "the proper Manifestation be prepared and filed with the Honorable Sandiganbayan informing the latter of the result of the Motion for Reconsideration in this case for its consideration."

Deputy Special Prosecutor Robert E. Kallos disapproved the recommendation; but Special Prosecutor Leonardo P. Tamayo concurred therewith. On 1 August 1997, Ombudsman Aniano Desierto disapproved the recommendation with the following marginal note:

Allow the court to find
absence of bad faith.
Probable cause exists.[20]

To justify his recommendation, Pascual stated:

A thorough review of the record of the case together with the new documentary evidence submitted by the parties, undersigned find[s] no probable cause to warrant further prosecution of this case.

While it is an admitted fact, that accused/respondent Venus went to Manila on September 6, 1988 on [an] official trip to purposely convince the Board of Liquidators to enter into a negotiated contract of sale of the said property at a nominal amount, however, this part of [the] negotiation which did not materialize does not necessarily mean that accused is liable for [a] [v]iolation of Sec. 3(e) of R.A. 3019. Records disclosed [sic] that the accused did really perform all the necessary acts mandated in Resolution 19, S-1988.

It likewise appears that on September 7, 1988 or immediately upon arrival in Manila respondent Mayor Venus went directly to the Office of the Board of Liquidators in San Miguel [sic] Manila submitting thereto, the letter dated September 7, 1988 of the Municipality of New Washington, pertinent portion of which states: "xxx offering to buy for our municipality at a price mutually agreeable to us, on a government to government basis xxx."

On September 8, 1988, the Board of Liquidators in its Resolution No. 420 Series of 1988 rejected the said offer by stating:

"RESOLVED, to reject the offer of the Sangguniang Bayan of New Washington, Province of Aklan, and Mr. Tomas Manalang to purchase the parcel of land covered by TCT No. 3278 located in New Washington, Aklan, and instead, the AD [sic] Hoc Committee on Bids shall conduct a public bidding over the said land on 19 September 1988."

On September 9, 1988, respondent/accused returned back [sic] to New Washington with a negative result. However, he did not stop from [sic] there but instead, asked for the opinion/advice of the Provincial Auditor, Atty. Antonio Tabang, and in the latter's affidavit submitted to this office it is stated therein, specifically that,

"xxx in order that a municipal government can participate in a public bidding it has to get a Sangguniang Bayan Resolution authorizing him [sic] to participate in a public bidding and to appropriate an amount needed for the bidding representing the Municipality, although I mentioned that this is a rare case where a Municipality will participate in a public bidding; that said resolution have [sic] to be reviewed and approved by the Sangguniang Panlalawigan in accordance with the existing law and regulation; and I further told Mayor Venus that for him to draw a cash advance needed for the purpose, the Resolution must be approved by the authority concerned and the cash advance must be pre-audited by my office before the Municipal Treasurer released [sic] the payment, and that this procedure/requirements [sic] will take time, not less than two (2) weeks at most [sic], and cannot meet the scheduled date of the bidding set on 19 September 1988."

All the above facts were disclosed by the accused to the Sangguniang Bayan and therefore, it cannot be said that he had a hidden motive to personally acquire the lot for himself. This fact disputed the Comment/Opposition of complainants' interpretation of the Resolution No. 19 Series of 1988 by the Sangguniang Bayan of New Washington, Aklan.

Subsequently, on the 19th of September 1988 accused decided to participate in the public bidding only after finding the impossibility of the Municipality to participate because of budgetary constraints; lack of material time to appropriate funds; secure the approval of the Sangguniang Panlalawigan, and drawing of [a] cash advance from the Municipal Treasurer for [the] bid price upon prior approval of the auditor.

Hence, accused's subsequent act of participating in the public bidding on September 19, 1988, did not constitute evident bad faith as there was no intention to cause damage to the Municipality. He did not use the money of the Municipality for his personal interest nor did he use his office as a Mayor in order to participate in the said bidding. Earnest efforts were exerted to facilitate the buying of the said lot for the Municipality. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. This is absent in this case.[21]

On 22 August 1997, Victor A. Pascual filed a Manifestation,[22] to which was attached a copy of his Order of 15 July 1997, informing the Sandiganbayan of the disapproval of the Ombudsman of his recommendation to dismiss the case.

On 8 September 1997, the Sandiganbayan noted the Manifestation and set petitioner's arraignment on 20 October 1997.[23]

On 11 September 1997, petitioner filed this petition.

On 17 October 1997, petitioner filed an urgent motion to defer arraignment[24] with the Sandiganbayan. Acting thereon and in light of the conformity of Prosecution Officer Pascual, the Sandiganbayan, in its Order[25] of 20 October 1997, reset arraignment to 30 January 1998.

On 12 January 1998, we issued a temporary restraining order.

After due deliberation on the issues and arguments adduced in the pleadings, we grant the petition.

By allowing petitioner to file a motion for reconsideration and directing Special Prosecution Officer Victor Pascual to resolve the same, public respondent Sandiganbayan agreed that the Ombudsman reinvestigate the case or, at the very least, further re-assess or re-examine the facts. In the language of *Marcelo v. Court of Appeals*,[26] the Sandiganbayan here deferred to the authority of the prosecution arm to resolve, once and for all, the issue of whether or not sufficient ground existed to file the information. Respondent court must have been guided by the general statement in *Crespo v. Mogul*[27] that courts cannot interfere with the prosecutor's discretion as to and control over criminal prosecutions.

Conformably with the general rule that criminal prosecutions may not be restrained either through a preliminary or final injunction or a writ of prohibition, this Court ordinarily does not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[28] There are, however, settled exceptions to this rule, such as those enumerated in *Brocka v. Enrile*,[29] to wit:

- a. To afford protection to the constitutional rights of the accused (*Hernandez vs. Albano, et al.*, L-19272, January 25, 1967, 19 SCRA 95);
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. vs. Fernandez*, 43 Phil. 304; *Hernandez vs. Albano, supra*; *Fortun vs. Labang, et al.*, L-38383, May 27, 1981, 104 SCRA 607);
- c. When there is a prejudicial question which is sub judice (*De Leon vs. Mabanag*, 70 Phil. 202);
- d. When the acts of the officer are without or in excess of authority (*Planas vs. Gil*, 67 Phil. 62);
- e. Where the prosecution is under an invalid law, ordinance or regulation (*Young vs. Rafferty*, 33 Phil. 556; *Yu Cong Eng vs. Trinidad*, 47 Phil. 385, 389);
- f. When double jeopardy is clearly apparent (*Sangalang vs. People and Alvendia*, 109 Phil. 1140);
- g. Where the court has no jurisdiction over the offense (*Lopez vs. City Judge*, L-25795. October 29, 1966, 18 SCRA 616);
- h. Where it is a case of persecution rather than prosecution (*Rustia vs. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

- i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto vs. Castelo*, 18 L.J. (1953), cited in *Rañoa vs. Alvendia*, CA G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, et al. vs. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577);
- j. Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga vs. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA 438); and
- k. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez vs. Castelo*, L-6374, August 1, 1953) (cited in *Regalado*, Remedial Law Compendium, p. 188, 1988 Ed.)[30]

Ocampo[31] provided the basis for the general rule insofar as the Ombudsman is concerned, thus:

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 would 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.

In *Young v. Office of the Ombudsman*,[32] however, we held that this Court may interfere with the discretion of the Ombudsman in case of clear abuse of discretion.

The issue here is whether petitioner may validly invoke any of the foregoing exceptions. In the main, he submits that the facts here do not make out even a prima facie case for violation of Section 3(e) of R.A. No. 3019, as amended. We agree.

As shown by the procedural antecedents, the Office of the Ombudsman has not been at all certain in its position. Initially, no less than the Deputy Ombudsman for the Visayas, Hon. Arturo C. Mojica, found no ground to believe that petitioner had violated Sec. 3(h) of R.A. No. 3019, as amended. However, then Ombudsman Vasquez disagreed, in view of the possibility of a violation of Section 3(e) thereof, because of the "pervading showing of bad faith on the part of the [petitioner] in maneuvering to acquire for himself a piece of property which he himself knew to be badly needed by the Municipality." Subsequently, and conformably with this observation of Ombudsman Vasquez, the case was remanded to the Office of the Deputy Ombudsman for the Visayas and re-assigned to Graft Investigation Officer Tanco who thereafter found a prima facie case for violation of Sec. 3(e) of R.A. No. 3019, as amended. This time, the Deputy Ombudsman for the Visayas concurred with such finding. Upon review thereof, Special Prosecution Officer III Orlando Ines agreed with this finding and recommended the filing of the corresponding information. The Special Prosecutor and the Ombudsman, in turn, agreed with Ines and the information was forthwith filed.

Upon a subsequent re-assessment of the evidence as a consequence of petitioner's motion for reconsideration, another Special Prosecution Officer, Victor Pascual, found that petitioner had not violated Sec. 3(e) of R.A. No. 3019, as amended. He thus recommended dismissal of the case for want of probable cause and the filing of the corresponding manifestation to inform the Sandiganbayan of the result of the motion for reconsideration. In this instance, the Special Prosecutor himself concurred with the finding. However, the Ombudsman disapproved the recommendation as he found that probable cause existed, but opted to "allow the court to find absence of bad faith."

This marginal note of the Ombudsman simply meant that he believed that petitioner was in bad faith. However, good faith is always presumed[33] and the Chapter on Human Relations of the Civil Code directs every person,

inter alia, to observe good faith which, according to the Commission, springs from the fountain of good conscience.[34] Therefore, he who charges another with bad faith must prove it. In this sense, the Ombudsman should have first determined the facts indicative of bad faith. On the basis alone of the finding and conclusion of Special Prosecution Officer III Victor Pascual, with which the Special Prosecutor concurred, there was no showing of bad faith on the part of petitioner. It was, therefore, error for the Ombudsman to "pass the buck," so to speak, to the Sandiganbayan to find "absence of bad faith."

The question of good faith or want of it here revolves around the proper application or interpretation of Resolution No. 19, S. of 1988 of the Sangguniang Bayan of New Washington. The only relevant question that arises is whether the SB authorized petitioner to submit a bid on behalf of the municipality of New Washington at the public bidding on 19 September 1988. This, however, is not a question of fact. It is clear from said Resolution that petitioner was authorized to negotiate with the Board of Liquidators for the purchase of the property under a negotiated contract scheme or without public bidding. The municipality did not intend to participate in the public bidding scheduled on 19 September 1988, as indisputably evidenced by the lack of prior resolutions of the SB resolving to so participate, appropriating a specific sum for the purpose and authorizing petitioner to submit a bid for and in behalf of the municipality. As discussed in Pascual's order, the Provincial Auditor explicitly outlined the procedure as to how the municipality could have validly participated in the bidding.

As such, petitioner faithfully performed his duty under Resolution No. 19 by going to Manila and presenting the Resolution to the General Manager of the Board of Liquidators, together with his letter-proposal wherein, on behalf of his municipality, he offered to buy the property on "a government-to-government basis" at a price mutually acceptable to the parties. However, the offer was formally rejected by the Board on 8 September 1988, with the public bidding scheduled for 19 September 1988.

Petitioner forthwith informed the SB of New Washington of the Board of Liquidators' denial of his request and of the fact that the public bidding would proceed on 19 September 1988. Totally unprepared to participate in the scheduled bidding, the SB had then only one available option, i.e., to buy time by trying to secure a postponement of the bidding, which petitioner requested on behalf of the municipality. Unfortunately, the Board of Liquidators did not accede to the request.

In no way then may petitioner be deemed to have acted with bad faith in not submitting a bid for and in behalf of the municipality of New Washington since, it bears repeating, Resolution No. 19, S. 1988 did not authorize him to do so and the municipality was in no position to submit a bid and only wanted to enter into a negotiated contract of sale.

It must likewise be underscored that bad faith alone on the part of petitioner is not enough to make him liable for a violation of Section 3(e) of R.A. No. 3019, as amended. Said Section provides:

SEC. 3.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence ...

Where bad faith is involved, it is obvious that for one to be liable therefor, the bad faith must be "evident." It necessarily follows that since petitioner was not guilty of bad faith in the first place, the issue then of whether such was evident fails to emerge.

Indisputably, Special Prosecution Officer Victor Pascual was correct that there existed no reasonable ground to believe that petitioner violated Section 3(e) of R.A. No. 3019, as amended.

Any further prosecution then of petitioner was pure harassment. That private respondents merely intended to vex petitioner is evidenced by the un rebutted claim of petitioner that the complaint was filed in retaliation for an election protest he had filed earlier. Indeed, the unreasonably belated filing of the complaint, i.e., nearly four (4) years after the alleged commission of the offense, although still within the prescriptive period, necessarily placed private respondents' motives under suspicion, as they had by then become opponents of petitioner in the local political arena. Moreover, private respondents' attempt to justify the belated filing of their complaint, i.e., that they came to know of petitioner's purchase of the lot in his name only after petitioner lost in the 1992 elections and "ejected the Municipal Firetruck," simply goes against the ordinary course of things and thus leaves this Court incredulous.

Agencies tasked with the preliminary investigation and prosecution of crimes must always be wary of undertones of political harassment. They should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.[35]

Having thus arrived at the foregoing conclusion, the remaining collateral issue left to resolve is whether public respondent Sandiganbayan can be directed to dismiss Criminal Case No. 23332. We stated earlier that by allowing petitioner to file a motion to reconsider the adverse resolution of Special Prosecution Officer Ines, approved by the Special Prosecutor and the Ombudsman, and directing Special Prosecution Officer III Pascual to resolve the motion within thirty days from receipt thereof, the Sandiganbayan thus deferred to the authority of the Ombudsman to reinvestigate the case or further re-assess or re-examine the facts. In short, the Sandiganbayan was willing to accept and adopt the final resolution of the Office of the Special Prosecutor and the Ombudsman on the issue of whether or not the offense charged was in fact committed by petitioner. Of course, applying by analogy *Crespo v. Mogul*,^[36] *Marcelo v. Court of Appeals*,^[37] *Roberts v. Court of Appeals*^[38] and *Martinez v. Court of Appeals*,^[39] the Sandiganbayan was not bound by such quasi-judicial findings. In fact, under the principles governing criminal procedure, the Sandiganbayan, or any trial court for that matter, is mandated to independently evaluate or assess the merits of the case,^[40] and may either agree or disagree with the recommendation of the prosecutor. Hence, the logical thing for us to do would be to remand this case to the Sandiganbayan.

Nevertheless, where the innocence of an accused is manifest from the evidence, as here, we find neither reason nor logic to merely remand the case. In *Fernando v. Sandiganbayan*,^[41] we directly ordered the dropping of petitioners from the information of a case before the Sandiganbayan for want of probable cause, justifying such action in this wise:

We emphasize at this point that the Court has a policy of non-interference in the Ombudsman's exercise of his constitutionally mandated powers. The overwhelming number of petitions brought to us questioning the filing by the Ombudsman of charges against them are invariably denied due course. Occasionally, however, there are rare cases when, for various reasons there has been a misapprehension of facts, we step in with our review power. This is one such case.

It may also be stressed at this point that the approach of the Courts to the quashing of criminal charges necessarily differs from the way a prosecutor would handle exactly the same question. A court faced with a fifty-fifty proposition of guilt or innocence always decides in favor of innocence. A prosecutor, conscious that he represents the offended party, may decide to leave the problem to the discretion of the court.

In the habeas corpus case of *Juan Ponce Enrile v. Judge Salazar, et al.*, (186 SCRA 217 [1990]), the situation

was more clear-cut, thus prompting the undersigned ponente to state:

"All courts should remember that they form part of an independent judicial system; they do not belong to the prosecution service. A court should never play into the hands of the prosecution and blindly comply with its erroneous manifestations. Faced with an information charging a manifestly non-existent crime, the duty of a trial court is to throw it out. Or, at the very least and where possible, make it conform to the law." (at p. 244)

In like manner, in *Allado v. Diokno*,^[42] we enjoined, inter alia, respondent trial judge from proceeding any further against petitioners in Criminal Case No. 94-1757 for want of probable cause against them.

WHEREFORE, the instant petition is GRANTED. For want of reasonable ground to believe that petitioner violated Section 3(e) of R.A. No. 3019, as amended, or for absence of probable cause therefor, the Sandiganbayan is hereby ORDERED to forthwith DISMISS Criminal Case No. 23332, entitled *People of the Philippines versus Eriberto L. Venus*, and to SUBMIT to this Court a report of its compliance within ten (10) days from such dismissal.

The temporary restraining order issued on 12 January 1998 is hereby made permanent.

No pronouncement as to costs.

SO ORDERED.

Panganiban and Quisumbing JJ., concur.

Bellosillo, (abroad on official business)

Vitug, (see dissenting opinion)

[1] Annex "D" of Petition, Rollo, 28-31.

[2] Annex "E" of Petition, id., 32-33.

[3] Annex "G" of Petition, id., 50-53.

[4] Petitioner and the Special Prosecutor filed their memoranda on 18 November 1997 and 11 November 1997, respectively.

[5] Annex "B" of Petition, Rollo, 24-25.

[6] Annex "C" of Petition, Rollo, 26.

[7] Rollo, 52.

[8] Rollo, 17.

[9] Rollo, 18.

[10] Annex "A" of Petition, Rollo, 17 et seq.; Original Record (OR), 67-69.

[11] OR, 8.

[12] Annex "D" of Petition, supra note 1.

[13] Annex "E" of Petition, Rollo, 32-33.

[14] OR, 19.

[15] Id., 20.

[16] OR, 22.

[17] Id., 23-A - 23-N.

[18] Id., 29-31.

[19] Annex "G" of Petition, supra note 3.

[20] Rollo, 53.

[21] Rollo, 51-52.

[22] OR, 37.

[23] Id., 43.

[24] Id., 101.

[25] Id., 106.

[26] 235 SCRA 39, 49-50 [1994].

[27] 151 SCRA 462, 468 [1987].

[28] Ocampo v. Ombudsman, 225 SCRA 725 [1993]; Cruz v. People, 233 SCRA 439 [1994]; Labita v. Office of the Ombudsman (Resolution), 235 SCRA xi [1994]; Olivarez v. Sandiganbayan, 248 SCRA 700 [1995]; Paredes v. Sandiganbayan, 252 SCRA 641 [1996]; Alba v. Nitorreda, 254 SCRA 753 [1996]; Tan v. Office of the Ombudsman, G.R. Nos. 114332 and 114895, 10 September 1998.

[29] 192 SCRA 183, 188-189 [1990].

[30] See also Paredes v. Sandiganbayan, supra note 28 at 660-661.

[31] Supra note 28 at 730.

[32] 228 SCRA 718, 722 [1993]. See also Paredes v. Sandiganbayan, supra note 28 at 659.

[33] Santiago v. Cruz, 19 Phil. 145, 148 [1911].

[34] See 1 Edgardo L. Paras, Civil Code of the Philippines Annotated 77 (1984).

[35] See Salonga v. Cruz, 134 SCRA 438, 461-462 [1985], citing Hashim v. Boncan, 71 Phil. 216, 225 [1941]; Trocio v. Manta, 118 SCRA 241, 245 [1982].

[36] Supra note 27.

[37] Supra note 26.

[38] 254 SCRA 307 [1996].

[39] 237 SCRA 575 [1994].

[40] *Ledesma v. Court of Appeals*, 278 SCRA 656, 682 [1997].

[41] 212 SCRA 680, 687-688 [1992].

[42] 232 SCRA 192 [1994].

DISSENTING OPINION

VITUG, J.:

The Court is, once again, confronted with a situation where the Ombudsman and the Special Prosecutor are unable to agree on whether or not there exists a probable cause that can warrant the filing of an information.

I have serious misgivings on the Court's resolve to interfere in the exercise by the Ombudsman of his investigatory and prosecutory powers. In the face of all the quagmire, the Ombudsman stands pat on his decision to file an information with the Sandiganbayan and leave to the latter the final determination of petitioner's guilt or innocence. The Ombudsman is the proper adjudicator in aspects of this nature,[1] and the Court has almost always adopted, quite aptly, a policy of non-interference in the exercise of his constitutionality mandated powers in this regard. In one case, the Court has said:

"Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service." [2]

Albeit, there have been rare instances when the Court has intervened but only where there is a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman.[3] Indeed, this Court is not a trier of facts; the Ombudsman and the Sandiganbayan are.

Petitioner's argument harps on the propriety of and soundness in the appreciation by the Ombudsman of the facts of the case. The latter's marginal note[4] stems from his review of the investigation conducted and conclusions reached by the investigating prosecutor. The Ombudsman is not required to conduct anew another investigation. He may agree, fully or partly, or disagree completely with the investigating prosecutor. The Ombudsman in the process may even err in his judgment but such an error would certainly not perforce constitute grave abuse of discretion.

It cannot be gainsaid that the presence or absence of the elements of a crime, as well as matters of defense, would be independent on the evidence that can be adduced and thereafter passed upon in a full blown trial on the merits. This Court has once observed:

"It must be stressed here that a preliminary investigation is essentially inquisitorial, and is often the only means of discovering the persons who may be seasonably charged with a crime, to enable the prosecutor to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the persons against whom it is taken in jeopardy. It is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof." [5]

Most importantly, the office of an extraordinary remedy of prohibition is not to correct errors of judgment but to prevent or restrain usurpation by inferior tribunals and to compel them to observe the limitation of their jurisdiction.[6] If the inferior court or tribunal has jurisdiction over the person and subject matter of the controversy, the writ will not lie to stop it from exercising judicial power.[7] The majority in granting the petition for prohibition has effectively prejudged the case and thereby predicted that the evidence against petitioner will not stand before the Sandiganbayan. It is unduly precipitate for this Court to preempt the Sandiganbayan on this matter.

ACCORDINGLY, I am constrained to vote for the DENIAL of the Petition for Prohibition and for remanding the case to the Sandiganbayan and directing it to thereupon resolve the case with dispatch.

[1] Camanag vs. Guerrero, 268 SCRA 473, 495.

[2] Alba vs. Nitorreda, 254 SCRA 753, 765-766, citing: Ocampo, IV vs. Ombudsman, 225 SCRA 725; Fernando vs. Sandiganbayan, 212 SCRA 680..

[3] Young vs. Office of the Ombudsman, 228 SCRA 718, 722.

[4] "Allow the court to find absence of bad faith. Probable cause exists." Decision, 11.

[5] Olivarez vs. Sandiganbayan, 248 SCRA 700, 711.

[6] Herrera. Remedial Law, 1991 Edition, p. 137.

[7] Vergara vs. Ruque, 78 SCRA 312, 329-330.

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