PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS REPRESENTED BY MAGTANGGOL C. GUNIGUNDO, PCGG CHAIRMAN & ORLANDO L. SALVADOR, AS CONSULTANT, TECHNICAL WORKING GROUP OF...

G.R. No. 130817. August 22, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case before the Court is a special civil action for certiorari to annul and set aside the resolution of the Ombudsman[1] dismissing the complaint against respondents and to order the Ombudsman to file the necessary information for violation of the Anti-Graft and Corrupt Practices Act against them.[2]

The Facts

Atty. Orlando Salvador was PCGG Consultant on detail with the Presidential Ad Hoc Committee on Behest Loans.[3] Likewise, he was the coordinator of the Technical Working Group (TWG) composed of officers and employees of different Government Financing Institutions (GFI).[4]

Among the accounts referred to the TWG of the Behest Loans Committee was the loan of Calinog-Lambunao Sugar Mills, Inc.[5] with the Philippine National Bank (PNB).

In 1968, Calinog applied to the PNB for a stand-by irrevocable confirmed letter of credit amounting to $22,109,412.00 to cover importation of sugar machinery and equipment on "turn-key" basis, construction, plantation and money loans in connection with its proposed 4,000 TCD Sugar Central. On March 20, 1968, the PNB approved the loan.[6] On May 8, 1968, the approved loan was increased to $22,132,377.00.[7]

On March 24, 1997, Atty. Orlando Salvador filed with the Ombudsman[8] a complaint against Calinog-Lambunao Sugar Mills, Inc. (Calinog), alleging:

> "5. Pursuant to Administrative Order No. 13 dated October 18, 1992, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans and further defined its scope under Memorandum Order No. 61 dated November 9, 1992, (copies attached), the Committee unanimously resolved that the presence of two or more of the eight (8) criteria mentioned under Memorandum No. 61 will classify the account as Behest Loan.
>
> "In the instant case, the Committee endorsed the account to be behest loan.
>
> "1. It is undercollateralized;
> "2. The borrower corporation is undercapitalized;
> "3. Non-feasibility of the project for which financing is being sought.
>
> "6. It appears from the foregoing facts and circumstances on record that the provisions of Section 3 (e) and (g) of RA 3019 among other laws, were violated:

> "Sec. 3. Corrupt Practice of Public Officers. - In addition to the acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

"7. x x x

"8. As of April 30, 1986, (the) firm has an outstanding and unpaid balance of P348.291 million representing bid price of foreclosed assets (Evidence 8)"[9]

On May 29, 1997, the Ombudsman dismissed the complaint on the ground of prescription. The resolution reads:

> "The loan transactions subject of this complaint occurred in the years 1968, 1978, 1979 and 1982, respectively. A cursory look at the said loan transactions would readily disclose the fact that the fifteen (15) year prescriptive period for offenses punishable under R.A. 3019, as amended has already passed from the time the alleged offenses were committed. If there is nothing that was concealed or needed to be discovered, because the entire series of transactions was by public instruments, duly recorded, the crime of estafa committed in connection with said transactions was known to the offended party when it was committed and the period of prescription commenced to run from the date of its commission (People vs. Dinsay, C.A. 40 O.G., 12 Supp. 50).
>
> "Applying now the foregoing decision of the Court in the case at bar, the prescriptive period of fifteen (15) years shall commence to run from the date of commission. Hence, the subject offenses have already prescribed following the pronouncement of the Court in the foregoing case.
>
> "WHEREFORE, in view of the foregoing, it is respectfully recommended that the instant charges against herein respondents be dismissed on the ground of prescription.
>
> "SO RESOLVED.
>
> "Manila, Philippines, May 29, 1997."[10]

Hence, this petition.[11]

On October 28, 1999, the Ombudsman manifested to the Court his willingness to have the case remanded to his Office for preliminary investigation. Thus -

> "In view of the fact that the case involves an alleged behest loan which Public Respondent dismissed on the sole ground of prescription, Public Respondent manifests its willingness to have the case remanded to the Office of the Ombudsman for preliminary investigation.
>
> Prayer
>
> "Wherefore, it is respectively prayed of this Honorable Court that this Manifestation be NOTED.[12]

The Court's Ruling

The subject loans were given in 1968, 1978, 1979 and 1982. On March 24, 1997, petitioner filed a complaint with the Ombudsman for violation of R. A. No. 3019.[13]

Respondents contend that the action is barred by prescription inasmuch as petitioner filed the complaint twenty nine (29) years after the crime was committed, well beyond the 15-year prescriptive period provided by law.

In resolving the issue of prescription of the offense charged, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the

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prescriptive period was interrupted.[14]

Looking closely at the provisions of R. A. No. 3019 (Anti-Graft and Corrupt Practices Act), the law provides for its own prescriptive period.

> "Section 11. Prescription of offenses. - All offenses punishable under this Act shall prescribe in fifteen years." (Underscoring supplied)

However, since R.A. No. 3019, as amended, is a special law, the applicable rule in the computation of the prescriptive period is provided in Act No. 3326, Section 2[15] as amended, which provides:

> "Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> "The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

This implies that if the commission of the crime were known, the prescriptive period shall commence to run on the day the crime was committed. However, if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.[16]

In cases involving violations of R. A. No.3019 committed prior to the February 1986 Edsa Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made.[17] Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.

As to when the period of prescription was interrupted, the second paragraph of Section 2, Act No. 3326, as amended, provides that prescription is interrupted "when proceedings are instituted against the guilty person."

In this case, the prescriptive period was interrupted upon the filing of the complaint with the Ombudsman on March 24, 1997, five (5) years from the time of discovery in 1992.

Thusly, the filing of the complaint was well within the prescriptive period.

WHEREFORE, the Court hereby GRANTS the petition and SETS ASIDE the Resolution of the Ombudsman in Case No. OMB-0-97-0724, dated May 29, 1997.

The Court further DIRECTS the Ombudsman to conduct preliminary investigation in Case No. OMB-0-97-0724 with deliberate dispatch.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] Dated May 29, 1997, in OMB 0-97-0724, Rollo, pp. 18-23.

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[2] Petition, Rollo, pp. 2-13.

[3] A committee created under Administrative Order No. 13, issued by President Fidel V. Ramos on October 8, 1992.

[4] Resolution, Office of the Ombudsman, dated May 29, 1997.

[5] A corporation registered with the Securities and Exchange Commission on March 8, 1967.

[6] By virtue of PNB Resolution No. 710.

[7] Under PNB Resolution No. 505; Resolution, Office of the Ombudsman, dated May 29, 1997, Rollo, pp. 18-23.

[8] Docketed as OMB-0-97-0724.

[9] Sworn Statement, dated March 20, 1997, Rollo, pp. 24-28.

[10] Rollo, pp. 18-23.

[11] Filed on October 14, 1997, Rollo, pp. 2-14. On September 20, 1999, we gave due course to the petition, Rollo, p. 173.

[12] Rollo, pp. 184-185.

[13] Sworn Complaint, Rollo, pp. 24-28.

[14] Domingo vs. Sandiganbayan, 322 SCRA 655 [2000].

[15] An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run.

[16] Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Desierto, 317 SCRA 272 [1999], citing People vs. Duque, 212 SCRA 607 [1992]; PCGG vs. Desierto, G.R. No. 140358, December 8, 2000; Domingo vs. Sandiganbayan, supra, Note 14.

[17] PCGG vs. Desierto, G.R. No. 140232, January 19, 2001; Domingo vs. Sandiganbayan, supra, Note 14; Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Desierto, supra, Note 16.

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