

## **SUSANA B. CABAHUG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, SANDIGANBAYAN, 3RD DIVISION, AND OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS.**

*G.R. No. 132816. February 05, 2002*

Ponente: YNARES-SANTIAGO, J.

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### **YNARES-SANTIAGO, J.:**

This is a petition for Certiorari and/or Prohibition with Preliminary Injunction and/or Temporary Restraining Order assailing two (2) Orders of the Sandiganbayan in Criminal Case No. 23458, quoted as follows:

Considering that the “Motion for Re-determination of Existence of Probable Cause” is in effect a second Motion for Reinvestigation and that the facts alleged therein are evidentiary in character which could be threshed out during the trial of this case, said motion is hereby denied. The arraignment of accused in Cebu shall proceed as scheduled.

SO ORDERED.[1]

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When this case was called, Prosecutors Cicero Jurado and Jackielyn Ompaoco-Cortel appeared for the State while Atty. Filemon Flores appeared for accused Susana Cabahug. Again, the Court having already denied as of yesterday, the Motion for Reconsideration, the Court stands pat on its order and consequently denies the motion at hand for lack of merit.

Let this case be reset for the arraignment of the accused on March 20, 1998, at 2:00 o’clock in the afternoon.

Notify counsel accordingly.

SO ORDERED.[2]

The instant controversy stems from a negotiated contract[3] entered into by the Department of Education, Culture and Sports (DECS) represented by herein petitioner Susana Cabahug, by virtue of her position as Department of Education, Culture and Sports Director for Region XI , for the purchase of 46,000 units of Topaz Monobloc Armchairs from Rubber Worth Industries Corporation (RWIC). It was stipulated that the price of P495.00 per unit would cover costs for transportation, handling, insurance and delivery of the said chairs. The negotiated contract was approved by Ricardo T. Gloria, then Secretary of the Department of Education, Culture and Sports.

However, before the contract could be consummated, another Department of Education, Culture and Sports supplier, a certain Jesusa T. de la Cruz, assisted by her lawyer, wrote a letter[4] to Secretary Gloria stating her objections to the said contract and seeking its disapproval for the reason, inter alia, that the chairs were patently overpriced, to the prejudice of the government, and in violation of Republic Act No. 3019.

On January 2, 1996, counsel for Jesusa T. de la Cruz, Atty. Meliton R. Reyes, wrote another letter[5] to Secretary Gloria informing the latter that the negotiated contract for the purchase of the chairs was overpriced by

P5,000,000.00. This letter was subsequently referred to Antonio E.B. Nachura, Department of Education, Culture and Sports Undersecretary for Legal Affairs, who required petitioner Cabahug to comment on the said letter. Petitioner Cabahug filed her comment on January 5, 1996, explaining therein the grounds why the purchase should be given due course.

Thereafter, Department of Education, Culture and Sports Undersecretary Nachura issued a Memorandum[6] addressed to Secretary Gloria, which stated in part:

CONSIDERING all the foregoing, it is respectfully recommended that the Honorable Secretary give due course to the transaction aforesaid and, upon valid proof of delivery of the arm chairs with tablets subject of the contract, payment thereof be allowed.

Consequently, Atty. Reyes filed a complaint before the Office of the Ombudsman-Mindanao, against petitioner Cabahug, Secretary Gloria, Undersecretary Nachura, and several others. All three (3) respondents submitted their counter-affidavits. They claimed that the negotiated contract was executed only after proper consultation with the chairman of the Commission on Audit (COA) and the Department of Education, Culture and Sports resident auditor; that the bare allegations of de la Cruz and Atty. Reyes can not overcome the presumption of regularity in the performance of public duty; that there was no overpricing because the stipulated price was still lower than that offered by de la Cruz; and that the latter cannot deny that she made such an offer to petitioner Cabahug on June 20, 1995.

On August 28, 1996, Jovito A. Coresis, Jr., Graft Investigation Officer (GIO) of the Office of the Ombudsman-Mindanao issued a Resolution[7] as follows:

WHEREFORE, FINDING PROBABLE CAUSE that violation of Section 3 (e) has been committed and that respondent Cabahug is probably guilty thereof, the FILING of the enclosed Information with the Sandiganbayan by the Office of the Special Prosecutor is hereby recommended.

Finding insufficient evidence to hold respondents Gloria and Nachura liable for the charge, let the instant case against them be dismissed.

AS RESOLVED.

On September 13, 1996, the following Information against petitioner Cabahug was filed before the Sandiganbayan:

That sometime on or about 15 December 1995, in Davao City, and within the jurisdiction of the Honorable Court, the accused a public officer being then the Regional Director of the Department of Education, Culture and Sports (DECS), Region XI, Southern Mindanao, Torres St., Davao City, with salary grade 29, committing the offense in relation to her office and taking advantage of the same, did there and then, willfully, unlawfully and criminally, cause undue injury to the government particularly the DECS and give unwarranted benefits to Rubber Worth Industrial Corporation (RWIC), a private enterprise engaged in the sale of Plastic Monobloc Arm Chairs thru gross inexcusable negligence in the performance of her official duties, namely: as representative of the Department of Education, Culture and Sports, by entering into a contract with RWIC to purchase 46,000 units of Plastic Monobloc Arm Chairs at a unit cost of P495.00 and a total cost of Twenty One Million Nine Hundred Twenty One Thousand and Three Hundred Pesos (P21,921,300.00) less tax without public bidding and consummating the same without even verifying the information given to her that the same unit could be obtained from other stores at P300.00 each, thus depriving the government of the overpriced amount of Five Million (P5,000,000.00) more or less and of the opportunity thru public bidding to obtain the best deal at the lowest cost and at the same time giving unwarranted benefit to RWIC.

CONTRARY TO LAW. [8]

Unaware that an Information had already been filed before the Sandiganbayan, petitioner Cabahug filed a Motion before the Office of the Special Prosecutor seeking a reconsideration of the August 28, 1996 Resolution issued by GIO Coresis, Jr. She reasoned therein that the said Resolution was based on an erroneous appreciation of the facts and evidence adduced in the preliminary investigation; and that it did not take into consideration relevant and material evidence showing lack of malice or negligence on her part. She assails the finding of probable cause against her, while at the same time dismissing the complaint against co-respondents Gloria and Nachura who, as her superiors, found her action proper and even ordered the consummation of the assailed transaction.

Petitioner claims that Jesusa de la Cruz was a disgruntled Department of Education, Culture and Sports supplier who wanted to supply the chairs subject of the negotiated contract, that when she failed to get petitioner's cooperation, she filed the complaint out of spite and with a desire for vengeance. Thus, petitioner prayed for the dismissal of the complaint against her.

Petitioner later learned of the filing of the Information with the Sandiganbayan. On April 3, 1997, she filed a Motion for Reinvestigation, praying that the Motion for Reconsideration filed before the Office of the Special Prosecutor be admitted by the graft court as her Motion for Reinvestigation.[9] The Third Division of the Sandiganbayan issued an Order[10] on April 17, 1997, granting the Motion for Reconsideration.

Accordingly, the case was evaluated by the Office of the Special Prosecutor. On December 8, 1997, Cicero D. Jurado, Jr., Special Prosecution Officer (SPO) II assigned to review the case, issued an Order[11] recommending that the case against petitioner Cabahug be dismissed, there being no showing that she acted in bad faith or with gross negligence.

While the Special Prosecutor, Leonardo P. Tamayo, and his Deputy, Robert E. Kallos, concurred in the findings and recommendation to dismiss the case, Ombudsman Aniano Desierto did not agree. He rejected the Order of Special Prosecution Officer II Jurado, noting thereunder that:

Bad faith and/or gross inexcusable negligence is deducible from the acts of the accused.

Prosecution shall proceed.[12]

On February 19, 1998, petitioner Cabahug filed a Motion for Re-determination of Existence of Probable Cause,[13] citing the divergence of opinion between the Office of the Special Prosecutor and the Ombudsman. She argued that the former, as the office mandated under RA 6770, Section 11, Subsection 4 (a) to conduct preliminary investigation and to prosecute criminal cases within the jurisdiction of the Sandiganbayan, found no probable cause to prosecute her.

The Sandiganbayan denied petitioner's Motion for Re-determination of Existence of Probable Cause and treated the same as a second motion for reconsideration which is not allowed by the Rules of Court.

Petitioner Cabahug filed a Very Urgent Motion for Reconsideration of the Order denying her earlier motion for the re-determination of existence of probable cause. She argued therein that the said motion cannot be considered a second motion for reconsideration since it was addressed to the court, and not anymore to the Office of the Special Prosecutor or the Ombudsman. She cited the Sandiganbayan's ruling in the case of *People v. Rosario N. Lopez* (Criminal Case No. 20625) dismissing the case against Lopez after giving due course to the latter's "Motion to Determine Probable Cause and to Dismiss the Case for Lack Thereof."

At the hearing on February 25, 1998, the Sandiganbayan denied the petitioner's Motion for Re-determination of Existence of Probable Cause in open court. A written Order (Annex "A") to that effect was issued the following day. Petitioner Cabahug filed a Very Urgent Motion for Reconsideration[14] seeking a reversal of the court's denial of the Motion for Re-determination of Existence of Probable Cause. On February 27, 1998, the

Sandiganbayan issued the second assailed Order (Annex “A-1”) denying the petitioner’s Very Urgent Motion for Reconsideration.

Hence, the instant petition, which assails the said Orders of the Sandiganbayan for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner argues that such whimsical and arbitrary exercise of discretion effectively denied her due process of law.

We find merit in the petition.

We are not unaware of the established principle that the preliminary investigation proper, that is the determination of whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.[15] The Ombudsman Act of 1989 (R.A. No. 6770) confers on the Office of the Special Prosecutor, as an organic component of the Office of the Ombudsman, the power to conduct preliminary investigations and prosecute criminal cases within the jurisdiction of the Sandiganbayan.[16] It is the Office of the Special Prosecutor, under the supervision of the Office of the Ombudsman, that exercises the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.[17]

In fact, the Sandiganbayan in this case deferred to the authority of the prosecution when it granted petitioner Cabahug’s motion for reinvestigation, guided by the rule that courts should not interfere with the Ombudsman’s exercise of his investigatory powers.[18] The strict application of this rule, insofar as the Ombudsman is concerned, is not a trivial matter. We have time and again declared that:

The rule is based not only upon the respect for the investigatory and prosecutory powers granted by the Constitution to the Office of 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 fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[19]

As in every rule, however, there are settled exceptions, such as those enumerated in the landmark case of *Brocka v. Enrile*.<sup>[20]</sup> Thus, the courts may interfere with the investigatory powers of the Ombudsman –

a)

To afford 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)

Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied; and

k)

Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.

Thus, in the case of *Garcia-Rueda v. Pascasio*,<sup>[21]</sup> we held that:

While the Ombudsman has the full discretion to determine whether or not a criminal case should be filed, this Court is not precluded from reviewing the Ombudsman's action when there is an abuse of discretion, in which case Rule 65 of the Rules of Court may exceptionally be invoked pursuant to Section 1, Article VIII of the 1987 Constitution. Accordingly, where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, We have held that while there is no appeal, the aggrieved party may file a petition for certiorari under Rule 65.<sup>[22]</sup> (Underscoring ours)

The instant case is not without parallel in recent jurisprudence. In the case of *Venus v. Desierto*,<sup>[23]</sup> petitioner Mayor Eriberto Venus, after a flip-flopping of findings and resolutions of the Ombudsman, Deputy Ombudsman, and Special Prosecutor, was charged with violation of Section 3, of R.A. No. 3019 before the Sandiganbayan.

Upon a petition for certiorari with this Court, we sustained petitioner Venus's position that the facts of the case do not make out a prima facie case for violation of Section 3 (e) of R.A. No. 3019.

The case at bar likewise presents facts and issues that clearly show the divergent positions in the Office of the Ombudsman. Given the similar facts and circumstances surrounding the Venus case and the instant controversy, we reiterate herein our finding that the Ombudsman committed grave abuse of discretion.

Contrary to the Ombudsman's ruling that bad faith on the part of petitioner was deducible, good faith is always presumed.<sup>[24]</sup> Therefore, he who charges another with bad faith must prove it. In other words, the Office of the Ombudsman should determine with certainty the facts indicative of bad faith. However, the records show that the Office of the Ombudsman was clearly uncertain of its position on the matter of existence of bad faith on the part of petitioner Cabahug. SPO II Jurado, Jr., in his Order dated December 8, 1997<sup>[25]</sup> declared:

There is nothing in the records that show Cabahug acted in bad faith. Neither was there gross negligence.

Cabahug has shown extra care and showed it in fully considering the consequences insofar as to the government she has sworn to serve and, most of all, to the schoolchildren she has sworn to protect.

This conclusion of the reviewing officer was concurred in by two (2) of his superiors, Deputy Special Prosecutor

Kallos, and Special Prosecutor Tamayo.

It is apparent that the above conclusion was not arrived at haphazardly by the reviewing officer. The question of whether or not there was bad faith or gross negligence on the part of petitioner can only be resolved by examining the documents pertaining to the assailed negotiated contract, as well as the pleadings of the parties involved.

Way back in 1995, the amount of P65,222,000.00 had been appropriated in the General Appropriations Act for the purchase of elementary grade desks for Department of Education, Culture and Sports Region XI. An offer to supply desks/armchairs made of plastic and metal was made by Jofel Metal Industries, the sole manufacturer of said items. Consequently, petitioner Cabahug wrote to the Regional Director of the Commission on Audit (COA), asking for an opinion on whether or not the desks/armchairs could be purchased by negotiated contract.[26] The COA recommended that the purchase be made by competitive public bidding so that other manufacturers could participate.[27]

Accordingly, an Invitation to Bid dated September 25, 1995 was prepared and approved by petitioner Cabahug, and the same was published in the Philippine Daily Inquirer.[28] A second Invitation to Bid amending the previous schedule was issued on October 11, 1995.[29] A week later, another Bid Bulletin was issued informing the prospective bidders that the scheduled bidding was indefinitely postponed as a result of several Department of Education, Culture and Sports Memoranda addressed to all Department of Education, Culture and Sports Regional Directors relative to the purchase of grade school desks and chairs.

On November 24, 1995, Department of Education, Culture and Sports Undersecretary Nachura issued a Memorandum addressed to Department of Education, Culture and Sports Secretary Gloria concerning the procurement of school desks and chairs for calendar year 1995.[30] He cited therein Executive Order No. 301, Section 1, allowing and providing guidelines for negotiated contracts for furnishing of supplies and materials under specific situations, such as:

x x x x x x x x;

(c)

Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

(d)

Whenever the materials are sold by an exclusive distributor or manufacturer who does not have subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

x x x x x x x x;

(f)

In cases where it is apparent that the requisition of the needed supplies thru negotiated purchase is most advantageous to the government to be determined by the Department Head concerned x x x.

Undersecretary Nachura also stated therein that proper consultation had already been made with the chairman of the COA, thereby recommending to Secretary Gloria that the latter exercise his authority to enter into a negotiated contract, for the following reasons:

- 1) The 1995 budget for this purpose has been released and unless the same is obligated before the year ends it will be reverted to the general fund;
- 2) Negotiated contract is deemed more advantageous to the government in terms of savings from publication expenses, time constraints in the preparation of documents, evaluation of bids, and the pre-post qualification requirement for public bidding;
- 3) Competitive public bidding could result in an exercise in futility considering that the fair price has already been established and announced and therefore, a bid lower than the established price could not be expected; that there are quite a number of chairs and desks that passed the durability test and hence, the difficulty if not the impossibility of these items of varied quality, size and make to be the subject of a public bidding; and that bidders are expected to concentrate on their own prototype as approved by the PBAC which could result in a failure of bidding as there will only be one bidder (owner) for each item and negate the very essence of competition in public bidding.[31]

Undersecretary Nachura thereby recommended the following procedure:

- 1) Negotiated contract shall be executed by and between the Regional Director and the Contractor subject to the approval of the Secretary;
- 2) Duly accomplished Purchase Orders and Requisition and Issue Vouchers shall be forwarded to this Office for approval, together with a statement of allocation or distribution of the ordered chairs/desks per division/district;
- 3) If possible, efforts should be exerted to reduce the prices that were approved and announced in previous DECS Orders and Memorandum from USEC A. Clemente;
- 4) Payment of the duly delivered, inspected and accepted armchairs and grader's desks shall be effected by the Regional Office by way of duly supported disbursement vouchers, and checks corresponding to the approved vouchers, processed pursuant to accounting and auditing rules and regulations and consistent to the provisions of negotiated contract;
- 5) As much as possible, items that passed the durability tests shall be considered for purchase at the sound discretion of the Director taking into account the kind of desks/chairs that are more adaptable to the place and the capability of the contractor;
- 6) All issuances, directives and DECS Orders that are inconsistent with this memorandum shall be deemed repealed or modified accordingly;
- 7) This method of procurement shall not be considered a precedent for future transactions.[32]

The above recommendations were approved by Department of Education, Culture and Sports Secretary Gloria. On December 4, 1995, he issued a memorandum[33] to all Regional Directors, amending the earlier memorandum, as follows:

In order to effect this arrangement, the following procedure is further recommended:

- 1)  
  
Negotiated contract shall be executed by and between the Regional Director and the Contractor to the extent of the authority granted to the Regional Directors.

2)

Purchase Orders and Requisition and Issue Vouchers together with a statement of allocation or distribution of the ordered chairs/desk per division/district shall be duly accomplished as supporting documents to the negotiated contract. (Underscoring ours)

These documents indubitably show that petitioner did not enter into the questioned negotiated contract on her own, without regard to the proper procedure or in contravention of the established policies and guidelines. The authority to enter into a negotiated contract was expressly allowed, even recommended, by the Department of Education, Culture and Sports Secretary himself. Had there been no such direct instruction from her superiors, petitioner Cabahug surely would not have entered into the negotiated contract. It is evident from her official acts that she was careful and prudent, making the proper inquiries from the appropriate offices, and abiding by the directives issued by the Department of Education, Culture and Sports Secretary and Undersecretary.

In the Joint Counter-Affidavit[34] of Department of Education, Culture and Sports Secretary Gloria and Undersecretary Nachura, it is admitted that the latter recommended giving due course to the negotiated contract executed between petitioner Cabahug and RWIC, and expressly allowed payment upon valid proof of delivery of the armchairs. They denied that there was bias as alleged by the complainant since the “primordial consideration was the needs and convenience of the pupils in the region.”[35] They further averred that “the recommendation to give due course to the transaction was not made in a whimsical and capricious manner.”[36] They also manifested that all the parties were given ample opportunity to air and substantiate their charges, and yet, the complainant’s bare charges failed to convince that any anomaly had been committed or that the negotiated contract was grossly prejudicial to the government. Consequently, as a party to the said agreement, the Department of Education, Culture and Sports was duty-bound to comply with its obligation in good faith.

After the investigation conducted by the Department of Education, Culture and Sports in response to the letter-complaint, it upheld the official acts of petitioner. The Department of Education, Culture and Sports found that there was no truth to the allegation that the chairs were overpriced to the detriment of the government, and that the complainant’s motives were highly suspect. RWIC was an accredited supplier for armchairs and was the exclusive distributor for COFTA Mouldings Corporation, the manufacturer of “Topaz” plastic school armchairs with writing tablet. The price stipulated in the negotiated contract could not be assailed. This matter was adequately explained by the Department of Education, Culture and Sports officials, thus:

The seeming disparity in the prices of single item purchases is explained in Annex “5” hereof. The single items purchased were obviously old stocks sold by the manufacturer to various dealers before November 15, 1995, the date when exclusive distributorship was granted by Cofta in favor of RWIC. As such, the previous dealers could sell them for prices lower than the P450.00 unit price at which RWIC has offered to DECS. But after November 15, 1995, the only entity that can afford to supply the plastic armchair requirements of DECS is the exclusive distributor, RWIC. Stated otherwise, the store that sold 1 unit of the product to Ms. De la Cruz for P390.00 cannot supply 1,000 units for the simple reason that it could no longer have access to these armchairs. How then can it supply 40,000 units to satisfy the requirements of DECS? This notwithstanding, the unit price of P495.00 is still very much lower than the armchairs being sold by Ms. De la Cruz.[37]

The complainant’s motives were patently dubious. They were found to have lied in their assertion that Ms. De la Cruz could not have made an offer to supply the armchairs because she only supplies school desks. It is documented that her company, CKL, made a written offer to petitioner Cabahug dated June 20, 1995, at a higher price. It is apparent that the complaint was instigated by a “distraught and disgruntled businesswoman” seeking to harass the respondents.

In fine, Secretary Gloria and Undersecretary Nachura argued that their exoneration, under the circumstances, is

inevitable. The elements of the crime punished under section 3 (e) of R.A. 3019 are clearly not attendant in this case, for there was no partiality, bad faith, inexcusable neglect, and injury to the government resulting from the acts of the respondents.

It is worth noting that while Secretary Gloria and Undersecretary Nachura were absolved of responsibility, all the blame fell on petitioner Cabahug who was just acting pursuant to her superiors' memoranda. While it may be true that they merely relied on the representation of petitioner Cabahug, they had every opportunity to investigate, correct, and sanction the latter if she had violated the anti-graft law and Department of Education, Culture and Sports and COA rules of procedure. As it were, they ratified all of petitioner Cabahug's actions and adopted her defenses as their own. It is rather odd, if not unfair, that after having declared Secretary Gloria and Undersecretary Nachura innocent, the Ombudsman would bring the petitioner to court, given the circumstances. If these officials have command responsibility, and they are exonerated upon investigation, there is no reason to hold the subordinate who was just following the former's orders and directives probably guilty of the crime charged.

Under Section 3(e) of R.A. 3019, as amended, bad faith alone on the part of petitioner is not sufficient to make her liable. Such bad faith must be evident. Nowhere in the records of this case is such bad faith evident. We therefore agree with the findings of SPO II Jurado, Jr. that there is nothing in the records that show Cabahug acted in bad faith, or even with gross inexcusable negligence. In the absence of evident bad faith, she cannot be held liable for violation of Section 3(e) of R.A. 3019, as amended.

Clearly, any further prosecution of petitioner is pure and simple harassment.[38] It is imperative that she be spared from the trauma of having to go to trial on such a baseless complaint. The evidence is insufficient to sustain a prima facie case and it is evident that no probable cause exists to form a sufficient belief as to the petitioner's guilt.[39]

Judicial power of review includes the determination of whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[40] Under this definition, the Sandiganbayan should have, considering the divergent positions in the Office of the Ombudsman, granted the motion for redetermination of probable cause after reviewing the evidence thus far submitted, and dismissed the case against petitioner. Thus, respondent court committed grave abuse of discretion in allowing the case to proceed.

Having thus concluded, the only remaining issue is whether or not this Court can direct the Sandiganbayan to dismiss Criminal Case No. 23458.

Certainly, this will not be the first time that we order the dismissal of a case filed before the Sandiganbayan for want of probable cause. In the case of *Fernando v. Sandiganbayan*,[41] we justified our action as follows:

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, 244 [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.”  
(Underscoring ours)

While it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the courts’ time and saves the precious resources of the government.

We cannot overemphasize the admonition to agencies tasked with the preliminary investigation and prosecution of crimes that the very purpose of a preliminary investigation is to shield the innocent from precipitate, spiteful and burdensome prosecution. They are duty-bound to avoid, unless absolutely necessary, open and public accusation of crime not only to spare the innocent the trouble, expense and torment of a public trial, but also to prevent unnecessary expense on the part of the State for useless and expensive trials. Thus, when at the outset the evidence cannot sustain a prima facie case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.[42]

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 ORDERED to forthwith DISMISS Criminal Case No. 23458, entitled People of the Philippines versus Susana B. Cabahug.

No pronouncement as to costs.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Annex “A,” Order dated February 26, 1998, Rollo, p. 27.

[2] Annex “A-1,” Order dated February 27, 1998, Rollo, p. 28.

[3] Dated December 15, 1995, Records, pp. 86-90.

[4] Dated December 21, 1995, Records, pp. 92-94.

[5] Records, pp. 97-99.

[6] Dated January 22, 1996.

[7] In Case No. OMB-MIN-96-0200, Annex “B,” Rollo, pp. 29-38.

[8] Annex “C,” Rollo, pp. 40-41.

[9] Annex “E,” Rollo, pp. 60-62.

[10] Annex “F,” Rollo, p. 63.

- [11] Annex “G,” Rollo, pp. 64-67.
- [12] Rollo, p. 68.
- [13] Annex “H,” Rollo, pp. 69-73.
- [14] Annex “J,” Rollo, pp. 76-80.
- [15] *Ho v. People*, 280 SCRA 375-376 [1997]; *People v. Court of Appeals*, 301 SCRA 475, 484-485 [1999].
- [16] *Quinon v. Sandiganbayan*, 271 SCRA 575, 586 [1997].
- [17] *Lastimosa v. Vasquez*, 243 SCRA 497, 505 [1995].
- [18] *Knecht v. Desierto*, 291 SCRA 292, 302 [1998].
- [19] *Ocampo v. Ombudsman*, 225 SCRA 725, 729 [1993]; *Alba v. Nitorreda*, 254 SCRA 753, 765 [1996].

**[20] 192 SCRA 183, 188-189 [1990].**

- [21] 278 SCRA 769-776 [1997], citing *Yabut v. Office of the Ombudsman*, 233 SCRA 310 [1994] and *Young v. Office of the Ombudsman*, 228 SCRA 718 [1993].
- [22] *Tirol, Jr. v. Del Rosario*, 317 SCRA 779, 785 [1999].
- [23] 298 SCRA 196 [1998], penned by Chief Justice Hilario G. Davide, Jr.
- [24] *Ford Phils., Inc. v. Court of Appeals*, 267 SCRA 320 [1997].
- [25] Annex “G,” Rollo, pp. 64-68.
- [26] Annex “K,” Rollo, p. 81.
- [27] Annex “L,” Rollo, p. 82.
- [28] Annex “M,” Rollo, p. 83.
- [29] Annex “N,” Rollo, pp. 84-85.
- [30] Annex “O,” Rollo, pp. 86-88.
- [31] *Ibid.*
- [32] *Ibid.*
- [33] Rollo, p. 176.
- [34] Records, pp. 24-29.
- [35] *Ibid.*
- [36] *Ibid.*
- [37] Records, pp. 26-27.
- [38] *Venus v. Desierto*, *supra*, p. 219.
- [39] *Salonga v. Cruz*, 134 SCRA 438, 461-462 [1985].
- [40] Art. VIII, Sec. 1, 2[nd] paragraph, 1987 Constitution.

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

[42] Salonga v. Cruz, 134 SCRA 438, 461-462 [1985].

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