

JASPER AGBAY, PETITIONER, VS. THE HONORABLE DEPUTY OMBUDSMAN FOR THE MILITARY, SPO4 NEMESIO NATIVIDAD, JR. AND SPO2 ELEAZAR M. SOLOMON, RESPONDENTS.

G.R. No. 134503. July 02, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This petition for certiorari seeks to nullify the Resolution of the Deputy Ombudsman for the Military dated 19 January 1998[1] which recommended the dismissal of the criminal complaint filed by petitioner against herein private respondents for violation of Article 125 of the Revised Penal Code for delay in the delivery of detained persons, and the Order of April 13 1998[2] which denied his motion for reconsideration.

The pertinent facts leading to the filing of the petition at bar are as follows:

On September 7, 1997, petitioner, together with a certain Sherwin Jugalbot, was arrested and detained at the Liloan Police Station, Metro Cebu for an alleged violation of R.A. 7610, the "Special Protection of Children Against Child abuse, Exploitation and Discrimination Act." [3] The following day, or on September 8, 1997, a Complaint for violation of R.A. 7610 was filed against petitioner and Jugalbot before the 7th Municipal Circuit Trial Court of Liloan, Metro Cebu by one Joan Gicaraya for and in behalf of her daughter Gayle [4] The complaint, insofar as pertinent, reads as follows:

"That on the 7th day of September 1997 at Sitio Bonbon, Brgy. Catarman, Liloan, Metro Cebu, Philippines and within the Preliminary Jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, feloniously and unlawfully, conspiring, confederating, helping with one another, while accused JASPER AGBAY manipulating to finger the vagina of GAYLE FATIMA AMIGABLE GICAYARA, his companion block the sight of the Private Complainant, Mrs. JOAN A. GICAYARA, while on board a tricycle going their destinations. Upon initial investigation of the Bgy, Captain of Bgy. Catarman, accused SHERWIN JUGALBOT was released and accused JASPER AGBAY is presently detain Liloan Police Station Jail. Medical Certificate issued from Don Vicente Sotto Memorial Medical Center, Cebu City is hereto attached."

On September 10, 1997, counsel for petitioner wrote the Chief of Police of Liloan demanding the immediate release of petitioner considering that the latter had "failed to deliver the detained Jasper Agbay to the proper judicial authority within thirty-six (36) hours from September 7, 1997." [5] Private respondents did not act on this letter and continued to detain petitioner. [6]

On September 12, 1997, the 7th Municipal Circuit Trial Court of Liloan, Metro Cebu issued an order, denominated as "Detention During the Pendency of the Case", committing petitioner to the jail warden of Cebu City. [7] Five (5) days later, or on September 17, 1997, petitioner was ordered released by the said court after he had posted bond. [8]

On September 26, 1997, petitioner filed a complaint for delay in the delivery of detained persons against herein private respondents SPO4 Nemesio Natividad, Jr., SPO2 Eleazar M. Salomon and other unidentified police

officers stationed at the Liloan Police Substation, before the Office of the Deputy Ombudsman for the Visayas.[9]

Regarding the complaint for violation of R.A. 7610, it is alleged by petitioner that on November 10, 1997, the 7th MCTC of Liloan, Metro Cebu issued a resolution containing the following dispositive portion:

"WHEREFORE, finding probable cause for the crime in Violation of Republic Act 7610, it is hereby recommended that an INFORMATION be filed against the two aforementioned accused.

Forward the record of this case to the Provincial Fiscal's Office for appropriate action."[10]

By virtue of Memorandum Circular No. 14, Series of 1995, dated 10 October 1995 of the Office of the Ombudsman,[11] the case for delay in delivery filed by petitioner against herein private respondents before the Deputy Ombudsman for the Visayas was transferred to the Deputy Ombudsman for the Military for its proper disposition. Thus, it was this office which acted on the complaint, now denominated as OMB-VIS-CRIM-97-0786, and which issued the questioned Resolution dated January 19, 1998 recommending its dismissal against herein private respondents. Petitioner moved for reconsideration of this Resolution but this motion was denied in an Order dated April 13, 1998.

Hence, this petition for certiorari.

The grounds relied upon in the present petition[12] are as follows:

I.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RELYING ON MEMORANDUM CIRCULAR NO. 14, SERIES OF 1995, DATED 10 OCTOBER 1995, OF THE OFFICE OF THE OMBUDSMAN IN HOLDING THAT IT HAS COMPETENCE TO ACT ON THE ABOVE-ENTITLED CASE BEFORE IT, THE SAID CIRCULAR BEING UNCONSTITUTIONAL AND ILLEGAL, HENCE, NULL AND VOID.

II.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN NOT HOLDING THAT IT IS BEYOND ITS COMPETENCE TO DETERMINE WHETHER OR NOT THE MUNICIPAL CIRCUIT TRIAL COURT OF LILOAN-COMPOSTELA HAS IN FACT NO JURISDICTION TO TRY THE CASE FILED AGAINST HEREIN PETITIONER.

III.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN NOT HOLDING THAT THE MCTC, WHILE HAVING AUTHORITY TO CONDUCT A PRELIMINARY INVESTIGATION, IS NOT THE "PROPER JUDICIAL AUTHORITY" CONTEMPLATED IN ARTICLE 125 OF THE REVISED PENAL CODE AND, HENCE, THE FILING OF THE COMPLAINT BEFORE IT FOR THE PURPOSE OF CONDUCTING A PRELIMINARY INVESTIGATION DID NOT INTERRUPT THE PERIOD PRESCRIBED BY ART. 125.

IV.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE ISSUE OF THE VALIDITY OF THE ORDER OF DETENTION IS IRRELEVANT TO THE ISSUE OF CRIMINAL LIABILITY OF PRIVATE RESPONDENTS FOR DELAY IN THE DELIVERY OF DETAINED PERSONS.

V.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE DUTY OF PRIVATE RESPONDENTS TO FILE THE NECESSARY COMPLAINT IN COURT WAS FULFILLED WHEN THEY FILED A FORMAL COMPLAINT ON 8 SEPTEMBER 1997 WITH THE 7TH MCTC OF

LILOAN-COMPOSTELA.

On the first issue, petitioner argues that due to the civilian character of the Philippine National Police, the Office of the Deputy Ombudsman for the Military, by virtue of the description of the Office, has no competence or jurisdiction to act on his complaint against private respondents who are members of the PNP. Petitioner also questions the constitutionality of Memorandum Circular No. 14 insofar as it purports to vest the Office of the Deputy Ombudsman for Military Affairs with jurisdiction to investigate all cases against personnel of the Philippine National Police.

There is no dispute as to the civilian character of our police force. The 1987 Constitution, in Section 6, Article XVI, has mandated the establishment of "one police force, which shall be national in scope and civilian in character (underscoring supplied)." Likewise, R.A. 6975[13] is categorical in describing the civilian character of the police force.[14] The only question now is whether Memorandum Circular No. 14, in vesting the Office of the Deputy Ombudsman for the Military with jurisdiction to investigate complaints against members of the PNP, violates the latter's civilian character.

As opined by the Office of the Solicitor General in its Comment dated 7 December 1998[15], the issue as to whether the Deputy Ombudsman for the Military has the authority to investigate civilian personnel of the government was resolved in the affirmative in the case of *Acop v. Office of the Ombudsman*. [16] In that case, the petitioners, who were members of the Philippine National Police questioned the jurisdiction of the Deputy Ombudsman to investigate the alleged shootout of certain suspected members of the "Kuratong Baleleng" robbery gang; this Court held that:

"The deliberations on the Deputy for the military establishment do not yield conclusive evidence that such deputy is prohibited from performing other functions or duties affecting non-military personnel. On the contrary, a review of the relevant Constitutional provisions reveal otherwise.

As previously established, the Ombudsman 'may exercise such other powers or perform such functions or duties' as Congress may prescribe through legislation. Therefore, nothing can prevent Congress from giving the Ombudsman supervision and control over the Ombudsman's deputies, one being the deputy for the military establishment. In this light, Section 11 of R.A. No. 6770 provides:

SEC. 11. Structural Organization.- The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said Office.

While Section 31 thereof declares:

SEC. 31. Designation of Investigators and Prosecutors.- The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein shall be under his supervision and control.

Accordingly, the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy for Military Affairs. In these cases at bench, therefore, no irregularity attended the referral by the Acting Ombudsman of the Kuratong Baleleng case to respondent Casaclang who, in turn, created a panel of investigators." [17]

The cited case is determinative of the issue. However, petitioner, in his Reply to Comment dated February 1, 1999, argues that the ruling in the *Acop* case is not on all fours with the case at bar [18]. Petitioner states that the doctrine laid down in the said case is simply that "the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy for Military Affairs. This doctrine, petitioner argues, "applies only to isolated or individual cases involving non-military personnel referred by the Ombudsman to the Deputy for

Military Affairs" and does not apply when, as in this case, there is a wholesale or indiscriminate referral of such cases to the Deputy Ombudsman for Military Affairs in the form of an Office Memorandum Circular.

Petitioner's arguments do not convince as there is no basis for the distinction.

There is no basis in the above-cited decision to limit the referral of cases involving non-military personnel to the Deputy Ombudsman for Military Affairs to isolated or individual cases.

The Office of the Ombudsman, in issuing Memorandum Circular No. 15, is simply exercising the power vested in the Ombudsman "to utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases." This Court, absent any grave abuse of discretion, may not interfere with the exercise by the Ombudsman of his power of supervision and control over the said Office.

Petitioner further argues that Memorandum Circular No. 14 violates the clear intent and policy of the Constitution and of R.A. 6975 to maintain the civilian character of the police force and "would render nugatory and meaningless the distinction between cases involving civilian and military personnel and the creation of separate divisions of the Ombudsman." [19]

Said contentions are misplaced.

The Deputy Ombudsman for the Military, despite his designation as such, is by no means a member of the military establishment. The said Office was established "to extend the Office of the Ombudsman to the military establishment just as it champions the common people against bureaucratic indifference". The Office was intended to help the "ordinary foot soldiers" to obtain redress for their grievances against higher authorities and the drafters of the Constitution were aware that the creation of the Office, which is seemingly independent of the President, to perform functions which constitutionally should be performed by the President, might be in derogation of the powers of the President as Commander-In-Chief of the Armed Forces [20]

It must be borne in mind that the Office of the Ombudsman was envisioned by the framers of the 1987 Constitution as the "eyes and ears of the people" [21] and "a champion of the citizen. [22]" Sec. 12, Art. XI of the 1987 Constitution describes the Ombudsman and his deputies as "protectors of the people." Thus, first and foremost, the Ombudsman and his deputies, including the Deputy Ombudsman for the Military owe their allegiance to the people and ordinary citizens; it is clearly not a part of the military. We fail to see how the assumption of jurisdiction by the said office over the investigation of cases involving the PNP would detract from or violate the civilian character of the police force when precisely the Office of the Ombudsman is a civilian office.

The other issues raised by petitioner concerns the application of Art. 125 of the Revised Penal Code which provides as follows:

"Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel."

In the case at bar, petitioner was arrested and detained at the Liloan Police Station on 7 September 1997 for an

alleged violation of R.A. 7610, specifically section 5(b) thereof[23]. This crime carries a penalty of reclusion temporal in its medium period to reclusion perpetua, an afflictive penalty. Under these circumstances, a criminal complaint or information should be filed with the proper judicial authorities within thirty six (36) hours of his arrest.

As borne by the records before us the mother of private complainant, Joan Gicaraya, filed a complaint on 8 September 1997 against petitioner for violation of R.A. 7610 before the 7th Municipal Circuit Trial Court of Liloan, Metro Cebu.

Petitioner contends that the act of private complainant in filing the complaint before the MCTC was for purposes of preliminary investigation as the MCTC has no jurisdiction to try the offense. This act of private complainant petitioner argues, was unnecessary, a surplusage which did not interrupt the period prescribed by Art. 125[24] considering that under the Rules it is the Regional Trial Court which has jurisdiction to try the case against him. As such, upon the lapse of the thirty-six hours given to the arresting officers to effect his delivery to the proper Regional Trial Court, private respondents were already guilty of violating Art. 125. Thus, petitioner argues, when the Judge-Designate of the 7th MCTC issued a Commitment Order on September 12, 1997, he was acting contrary to law since by then there was no basis for the continued detention of petitioner.[25]

In addressing the issue, the Office of the Deputy Ombudsman for the Military in its 13 April 1998 Order, stated that the duty of filing the corresponding complaint in court was "fulfilled by respondent when the formal complaint was filed on September 8, 1997 with the 7th MCTC of Liloan-Compostela, barely 20 hours after the arrest of herein complainant of September 7, 1997." [26] The Solicitor General, for his part, argues that while a municipal court judge may conduct preliminary investigations as an exception to his normal judicial duties, he still retains the authority to issue an order of release or commitment. As such, upon the filing of the complaint with the MCTC, there was already compliance with the very purpose and intent of Art. 125[27]

The core issue is whether the filing of the complaint with the Municipal Trial Court constitutes delivery to a "proper judicial authority" as contemplated by Art. 125 of the Revised Penal Code.

Article 125 of the Revised Penal Code is intended to prevent any abuse resulting from confining a person without informing him of his offense and without permitting him to go on bail[28]. More specifically, it punishes public officials or employees who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the periods prescribed by law. The continued detention of the accused becomes illegal upon the expiration of the periods provided for by Art. 125 without such detainee having been delivered to the corresponding judicial authorities[29]

The words "judicial authority" as contemplated by Art. 125 mean "the courts of justices or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense, that is, `the Supreme Court and other such inferior courts as may be established by law.[30]"

Petitioner takes great pains in arguing that when a municipal trial court judge, as in the instant case, conducts a preliminary investigation, he is not acting as a judge but as a fiscal. In support, petitioner cites the cases of Sangguniang Bayan ng Batac, Ilocos Norte vs. Albano, 260 SCRA 561, and Castillo vs. Villaluz, 171 SCRA 39, where it was held that "when a preliminary investigation is conducted by a judge, he performs a non-judicial function as an exception to his usual duties." Thus, petitioner opines, the ruling in Sayo v. Chief of Police of Manila, 80 Phil. 862, that the city fiscal is not the proper judicial authority referred to in Art. 125 is applicable.

Petitioner's reliance on the cited cases is misplaced. The cited cases of Sangguniang Bayan and Castillo dealt with

the issue of whether or not the findings of the Municipal Court Judge in a preliminary investigation are subject to review by provincial and city fiscals. There was no pronouncement in these cases as to whether or not a municipal trial court, in the exercise of its power to conduct preliminary investigations, is a proper judicial authority as contemplated by Art. 125.

Neither can petitioner rely on the doctrine enunciated in *Sayo vs. Chief of Police*, supra, since the facts of this case are different. In *Sayo*, the complaint was filed with the city fiscal of Manila who could not issue an order of release or commitment while in the instant case, the complaint was filed with a judge who had the power to issue such an order. Furthermore, in the Resolution denying the Motion for Reconsideration of the *Sayo* case[31], this Court even made a pronouncement that the delivery of a detained person "is a legal one and consists in making a charge or filing a complaint against the prisoner with the proper justice of the peace or judge of Court of First Instance in provinces, and in filing by the city fiscal of an information with the corresponding city courts after an investigation if the evidence against said person warrants."

The power to order the release or confinement of an accused is determinative of the issue. In contrast with a city fiscal, it is undisputed that a municipal court judge, even in the performance of his function to conduct preliminary investigations, retains the power to issue an order of release or commitment[32]. Furthermore, upon the filing of the complaint with the Municipal Trial Court, the intent behind Art. 125 is satisfied considering that by such act, the detained person is informed of the crime imputed against him and, upon his application with the court, he may be released on bail[33]. Petitioner himself acknowledged this power of the MCTC to order his release when he applied for and was granted his release upon posting bail[34]. Thus, the very purpose underlying Article 125 has been duly served with the filing of the complaint with the MCTC. We agree with the position of the Ombudsman that such filing of the complaint with the MCTC interrupted the period prescribed in said Article.

Finally, we note that it was the mother of private complainant who filed the complaint against petitioner with the 7th MCTC of Liloan, Metro Cebu. If there was any error in this procedure, private respondents should not be held liable. In the same manner, petitioner's argument that the controversial orders issued by the MCTC are contrary to law does not give rise to criminal liability on the part of the respondents. Respondent police officers may have rendered themselves open to sanctions if they had released petitioners without the order of the court, knowing fully well that a complaint was already filed with it.

WHEREFORE, finding no grave abuse of discretion in the issuance of the assailed January 19, 1998 Resolution and the April 13, 1998 Order of the Office of the Deputy Ombudsman for the Military, the Court resolves to DISMISS the petition. No pronouncement as to costs.

SO ORDERED.

Vitug, (Acting Chairman), Panganiban, and Purisima, JJ., concur.
Romero, J., abroad, on official business leave.

[1] Rollo, pp. 42-43.

[2] Rollo, pp. 34-36.

[3] Rollo, p. 6.

[4] Annex "B" of Petition; Rollo, p. 37.

[5] Annex "C" of Petition; Rollo, p. 38

[6] Rollo, p. 7.

[7] Annex "D" of Petition: Rollo, p. 39.

[8] Annex "E" of Petition; Rollo, p. 40.

[9] Annex "F" of Petition; Rollo, p. 41.

[10] Rollo, p. 8.

[11] Which reads, in part, as follows:

"In pursuance of the Office's mandate to promote efficient service to the people and conformably with the powers vested in the Ombudsman under Section 15, par. 10 and Section 31 of RA 6770, the Deputy Ombudsman for the Military shall continue to investigate all cases against personnel of the PNP, BFP, and BJMP."

[12] Rollo, pp. 9-10.

[13] Entitled, "An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government and For Other Purposes," otherwise known as the Department of the Interior and Local Government Act of 1990.

[14] R.A. 6975, Section 2. Declaration of Policy.--It is hereby declared that the policy of the State to promote peace and order, ensure public safety and further strengthen local government capability aimed towards the effective delivery of the basic services to the citizenry through the establishment of a highly efficient and competent police force that is national in scope and civilian in character. xxx

The police force shall be organized, trained and equipped primarily for the performance of police functions. Its national scope and civilian character shall be paramount. xxx

[15] Rollo, pp. 79-81.

[16] 248 SCRA 566.

[17] Id. pp. 587-588

[18] Rollo, p. 92.

[19] Reply; Rollo, pp. 95-96.

[20] Record of the Constitutional Commission, vol. 2, p. 318-320 (hereinafter 2 Record).

[21] 2 Record, p. 267.

[22] 2 Record, p. 268.

[23] Sec. 5. Child Prostitution and Other Sexual Abuse.-

xxx

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

xxx

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse:xxx

[24] Rollo, p. 98.

[25] Rollo, p. 27.

[26] Rollo, p. 35.

[27] Comment, p. 83.

[28] *Laurel v. Misa*, 76 Phil 372.

[29] *Lino v. Fugoso*, 77 Phil. 933.

[30] *Sayo v. Chief of Police of Manila*, 80 Phil 859 citing Section 1, Article VIII of the Constitution.

[31] 80 Phil. 875.

[32] Rule 112, Sec. 6 (b), Rules of Court. When warrant of arrest may issue.- (a) By the Regional Trial Court.-Upon the filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused.

(b) By the Municipal Trial Court.- If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest.

[33] "Rule 112, Sec. 5, Rules of Court. Duty of investigating judge.- Within ten (10) days after the conclusion of the preliminary investigation, the investigating judge shall transmit to the provincial or city fiscal, for appropriate action, the resolution of the case, which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused; (d) the order of release of the accused and the cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

xxx""Rule 114, Section 4, Rules of Court. Bail, a matter of right.- All persons in custody shall: (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court; and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law or this Rule."

[34] Rollo, p. 40.

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