

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT
(REPRESENTED BY DANILO R.V. DANIEL), PETITIONER, VS. THE
HONORABLE OMBUDSMAN ANIANO A. DESIERTO, ALICIA LL. REYES,
DON M. FERRY, PLACI...**

G.R. No. 135119. October 21, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This petition for certiorari and mandamus under Rule 65 of the 1997 Rules of Civil Procedure, as amended, seeks to nullify the Order[1] dated June 19, 1998, dismissing the complaint in OMB Case No. 0-97-1740, issued by then Ombudsman Aniano A. Desierto (Ombudsman), public respondent.

The facts that gave rise to the instant case are:

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Committee on Behest Loans[2] (Committee) headed by the Chairman of the Presidential Commission on Good Government (PCGG). Under this Administrative Order, the Committee was tasked to:

(1)

Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;

(2)

Identify the borrowers who were granted “friendly waivers” as well as the government officials who granted these waivers, determine the validity of these waivers;

(3)

Determine the courses of action that the government should take to recover these loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from date hereof.

Behest loans are part of the ill-gotten wealth which former President Ferdinand Marcos and his cronies accumulated and which the government, through the PCGG, seeks to recover.[3]

Pursuant to its mandate, the Committee investigated the loan transactions between the Selectra Electronics Corporation (SELEC) and the Development Bank of the Philippines (DBP).

On September 8, 1997, the Committee found that on September 20, 1976, SELEC filed with the DBP an application for a foreign currency loan in the amounts of US\$320,110.95 and US\$104,062.50 under the International Bank for Reconstruction and Development credit line and a straight peso loan of P797,600.00, or an aggregate amount of P3,151,396.64.

SELEC negotiated with the DBP through respondents Mr. and Mrs. Pedro Garcia, Sr., members of its board of directors, and Santiago Dumlao, Jr., its president. They have been impleaded herein as private respondents. The DBP Board of Directors, represented by Alicia Ll. Reyes, Don M. Ferry and Placido Mapa, public respondents, approved the loan application through Resolution No. 1203 dated April 20, 1977.

Subsequently, SELEC applied for and obtained additional foreign currency loan in the sum of US\$1,483,688.00.

The Committee concluded that the foregoing loans are behest loans since SELEC has no sufficient capital and collateral. Also, the project for which financing is being sought is non-feasible. Accordingly, on September 15, 1997, the Committee filed with the Office of the Ombudsman a criminal complaint for violation of Section 3(a) and (g) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act)[4] against spouses Garcia, Santiago Dumlao, Jr., Alicia Ll. Reyes, Don M. Ferry, and Placido Mapa, docketed as OMB Case No. 0-97-1740.

The Ombudsman dismissed OMB Case No. 0-97-1740 by reason of prescription. Section 11 of Republic Act No. 3019 provides that all offenses punishable under this Act shall prescribe in ten years.[5] The Ombudsman held that “the transactions made the bases of the complaint occurred between 1976 to 1980, while the complaint was filed only on September 15, 1997, or after the lapse of more than ten (10) years.” Since the entire series of transactions were made through duly recorded public instruments, then following *People vs. Dinsay*,[6] and *People vs. Sandiganbayan*,[7] the period of prescription should commence to run from the time of the commission of the offense.

Hence, the instant petition anchored on the following grounds:

“I

PUBLIC RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AND/OR ACTED IN EXCESS OF JURISDICTION IN HOLDING THAT THERE WAS NO CAUSE TO PROCEED AGAINST ANY OF THE RESPONDENTS.

II

PUBLIC RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AND/OR ACTED IN EXCESS OF JURISDICTION IN HOLDING THAT THE OFFENSE HAD ALREADY PRESCRIBED.”

The threshold issue before us is whether the Ombudsman committed grave abuse of discretion in ruling that the offense leveled against the said respondents has prescribed.

Petitioner PCGG argues that the applicable rule on prescription in this case is Article 91[8] of the Revised Penal Code which, pursuant to Article 10[9] of the same Code, is suppletory to special laws, such as Republic Act No. 3019. Under Article 91, the period of prescription shall commence to run from the day the crime is discovered by the offended party. Petitioner draws our attention to the wording of Section 11 of Republic Act No. 3019 that “All offenses punishable under this Act shall prescribe in fifteen years,” without stating when the prescriptive period shall commence to run. Considering the provision of Article 91 of the Revised Penal Code and Section 11 of Republic Act No. 3019, the prescriptive period should commence to run only from the date of discovery of the offense, not from the time of its commission. Since behest loans necessarily implies concealment, only a careful and diligent search and scrutiny of such questionable transactions could lead to their discovery. The Committee discovered the existence of the behest loans on September 8, 1997. Petitioner filed with the Office of the Ombudsman the complaint for violation of Republic Act 3019 against the said respondents on September 15, 1997, hence, well within the reglementary period provided by the same law.

For his part, the Ombudsman contends that Article 91 of the Revised Penal Code does not apply to the instant case. Prescription under special laws is governed by Section 2[10] of Act No. 3326, entitled “An Act to Establish Periods of Prescription for Violations Penalized By Special Laws and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run.” Under this law, prescription shall begin to run from the day of the commission of the violation of the law, not from its commission.

The case before us is not of first impression. On all fours is Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Hon. Aniano A. Desierto, et al.,[11] also involving a complaint filed with the Office of the Ombudsman for an alleged behest loan obtained by the Philippine Seeds, Inc. during the Marcos administration. We ruled therein that since the law alleged to have been violated is Section 3 of Republic Act No. 3019, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, cited earlier. Under Section 2 of this Act, there are two (2) rules for determining when the period of prescription shall commence: First, on the day of the commission of the violation, if such commission is known. Second, if the commission of the violation is not known at the time, then, from discovery thereof and institution of judicial proceedings for investigation and punishment.[12]

In this case, it was obviously impossible for the State, the aggrieved party, to have known when the questioned transactions took place. Clearly, the prescriptive period for the offense charged should be computed from the discovery of the commission thereof and not from the day of such commission.[13]

It bears emphasis at this point that the Ombudsman summarily dismissed the complaint solely on the ground of prescription, without even requiring private respondents to submit their counter-affidavits.

Inasmuch as the computation of the running of the prescriptive period for the filing of the subject criminal action should commence from the discovery of the offense, not from the day of its commission, the filing with the Office of the Ombudsman by petitioner of the complaint in OMB Case No. 0-97-1740 has not yet prescribed. We, therefore, hold that the Ombudsman acted with grave abuse of discretion in dismissing outright OMB Case No. 0-97-1740.

WHEREFORE, the petition is GRANTED. The assailed Order of the Ombudsman dated June 19, 1998 in OMB Case No. 0-97-1740 is SET ASIDE.

The Ombudsman is hereby directed to conduct the preliminary investigation of OMB Case No. 0-97-1740 with dispatch.

SO ORDERED.

Corona, Carpio-Morales, and Garcia, JJ., concur.

Panganiban, (Chairman), J., no part, close personal and family relations with a party.

[1] Rollo, pp. 27-31.

[2] Presidential Memorandum Order No. 61, promulgated on November 9, 1992, identified the following criteria in determining a behest loan:

- It is uncollateralized;
- The borrower corporation is undercapitalized;
- Direct or indirect endorsement by high government officials like presence of marginal notes;

- Stockholders, officers or agents of the borrower are identified as cronies;
- Deviation of use of loan proceeds from the purpose intended;
- Use of corporate layering;
- Non-feasibility of the project of which financing is sought; and
- Extra-ordinary speed in which the loan release was made.

See Rollo, pp. 34-35.

[3] Presidential Ad Hoc Fact-Finding vs. Hon Desierto, et al., G.R. No. 130140, October 25, 1999, 317 SCRA 272.

[4] Section 3(a) and (g) of Republic Act No. 3019 provides:

“SEC. 3. Corrupt practices of public officers. – In addition to 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:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x”

[5]Batas Pambansa Blg. 195 which took effect on March 16, 1982 increased the prescriptive period to fifteen years.

[6] CA, 40 O.G. 12[th] Supp. 50.

[7] G.R. No. 101724, July 3, 1992, 211 SCRA 241.

[8] ART. 91. Computation of prescription of offenses. – The period of prescription shall commence to run from the day of which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

[9] ART. 10. Offenses not subject to the provisions of this Code. – Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should provide the contrary.

[10] SEC. 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.

[11] Supra.

[12] People vs. Duque, G.R. No. 100285, August 13, 1992, 212 SCRA 607.

[13] Id.

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