

LONGOS RURAL WATERWORKS AND SANITATION ASSOCIATION, INC. (LRWSAI) REPRESENTED BY MIGUEL ORTEGA AND ANDRES D. MANUEL, SR., PETITIONERS, VS. HON. ANIANO A. DISIERTO, IN HIS CAPACI...

G.R. No. 135496. July 30, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a “petition for review on certiorari” which we will treat as a petition for certiorari under Rule 65 of the Rules of Court. It seeks to annul the Resolution of the Ombudsman (OMB) dated May 29, 1998 ordering the dismissal of the criminal complaint filed against the private respondents and the Resolution dated August 14, 1998 denying the Motion for Reconsideration thereof.

Facts:

Acting on the recommendation of Ombudsman-Luzon, an Information was filed with the Regional Trial Court of Malolos, Bulacan (Branch 22) charging herein private respondents Barangay Captain Virgilio Ortega and other barangay officials, namely: Amando Borlongan, Jr., Armando Silot, Servando Santos, Evelyn Aquino and Virgilio Aquino, with Violation of Section 3 (e) of R.A. 3019 otherwise known as Anti-Graft and Corrupt Practices Act[1] as follows:

“That on or about September 14, 1995 or sometime prior or subsequent thereto, in the Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, public officers, committing the crime herein charged in relation to their official functions and through manifest partiality, evident bad faith did then and there willfully, unlawfully take-over the operation and management of the Longos Rural Waterworks and Sanitation Association, Inc. (LRWSA) from the de facto Board of Directors of LRWSA, thereby causing undue injury to the said de facto Board of Directors and to the public as well and at the same time giving themselves unwarranted benefits to the damage and prejudice of the de facto Board of Directors.”

Private respondents moved for a reinvestigation of the case claiming that they are going to present additional documentary evidence and other witnesses which are in the nature of newly discovered evidence. The RTC granted the motion, thus, the case was referred back to OMB-Luzon for reinvestigation. Further hearing of the case was held in abeyance. In an Order dated November 24, 1997, OMB-Luzon reversed its prior recommendation calling for the indictment of private respondents and ordered the dismissal of the case. Upon Motion for Reconsideration filed by herein petitioners Miguel Ortega and Andres Manuel, Sr., OMB-Luzon denied the same and the Order of dismissal is affirmed. Consequently, petitioners filed an appeal-request with the Office of the Ombudsman, Central Office which denied the same, ratiocinating thus:

“It is submitted that with the indorsement (to the Office of the Provincial prosecutor of Bulacan, for appropriate action) by this Office of its resolution (as far back as January of this year) recommending the

withdrawal of the information against the accused, this Office is therefore constrained not to act on the request of herein complainants for, as earlier stated, there is no indication on whether: (a) the court has (already) acted on the (OMB-Luzon) recommendation to withdraw the information or if (b) complainants sought leave of court before filing instant motion for reconsideration – cum-letter-appeal, in view of the ruling in *Crespo v. Mogul*.

“The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information. In turn, as above stated, the filing of the said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action.”[2]

The Motion for Reconsideration thereof was likewise denied by the Ombudsman.

Ascribing grave abuse of discretion amounting to excess of jurisdiction to public respondent Ombudsman, petitioners filed the present petition arguing:

- that leave of court is not necessary before they could file a Motion for Reconsideration from the November 24, 1997 Order of the OMB-Luzon inasmuch as the said Order was not yet final; and
- that respondents “were not duly clothed with authority at the time they forcibly took the operation of the LWRSA from the petitioners.”

In support of their first argument, petitioners insist that there is nothing in *Crespo v. Mogul*[3] which required that the court should first act on the recommendation of the Ombudsman to dismiss the case or that prior leave of court should be made before petitioner can move for a reconsideration of the decision of the OMB-Luzon.

Meanwhile, respondents filed a Motion to Dismiss the case pursuant to the aforesaid OMB Resolution. But the RTC was informed of the present petition, thus, it issued an Order holding in abeyance the resolution of the Motion to Dismiss pending the outcome of herein petition.

As we stated in the *Crespo* case: The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the Information in the proper court. In turn, the filing of said Information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation, the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court, whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.[4]

In the present case, it is the RTC not the OMB which ordered the reinvestigation upon motion for reinvestigation filed by respondents. The RTC referred the case back to OMB-Luzon.[5] The RTC was, therefore, deemed to have deferred to the authority of the prosecution arm of the Government to consider the so-called new relevant and material evidence and determine whether the Information it had filed should stand.[6]

Thus, there should be a final resolution of the OMB on the matter. In other words, there is no need to seek permission from the court to file a motion for reconsideration for this remedy is allowed by the Rules of OMB.[7]

However, the denial of the Motion for Reconsideration was not based on this technicality alone but the OMB

proceeded to delve on the merits, thus:

“The basis for the indictment of respondents-accused was the alleged forcible takeover of LRWSA [sic] operations and its premises, which occurrence was entered in to the police blotter of Balagtas, Bulacan. However, as discussed in the November 24, 1997 of GIO II Gongon, “when respondents took over the water system in the barangay, they were duly clothed with authority.. by the LRWSA. Complainants under the facts as ascertained no longer have the authority to continue operating the water system as their de facto position had already been superseded with the election of the regular members of the Board of Directors of LRWSA. x x x There is the absence in this case of any act where respondents caused injury to complainants...(o)n the other hand, complaints have not established their rightful authority to operate the water system which apparently they had lost.”

“Anent the charge that respondent barangay officers forcibly destroyed the lock of the door of the pumping station, suffice it to say that with the sworn statement of Genario Ambrocio stating that it was he alone who unlocked the said door (accompanied by other LRWSA members and without interference from the barangay officials), said allegation has been substantially controverted.”[8]

The above findings are now being questioned by petitioners arguing that there is enough evidence to warrant indictment of respondents.

We are not persuaded. The assailed findings is a factual finding which deserves due respect.[9] In *Perez v. Hagonoy Rural Bank, Inc.*[10] we had the occasion to rule that we cannot pass upon the sufficiency or insufficiency of the evidence against the respondents:

“As a general rule, the determination of probable cause is not lodged with this Court. Our duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions[10] to this rule, none of which are obtaining in the case now before us.”

The exceptions to the rule are as follows:

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

i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J. [1953], cited in *Rañoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, et al. v. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577); and

j. Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.” [12]

We do not find in this case any of the exceptions enumerated above. Thus, we find no cogent reason to warrant a deviation from the general rule.

Since the Information has already been filed, the final arbiter on whether or not to proceed with the case is the RTC as earlier discussed.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Ynares-Santiago, JJ., concur.

[*] In the Motion for Extension of Time to File Petition for Review and Order and Pleadings filed in the Office of the Ombudsman and OMB-Luzon, the case is entitled, "Miguel Ortega and Andres D. Manuel, Sr. v. Virgilio Ortega, Amando D. Borlongan, Jr., Armando R. Silot, Servando G. Santos, Evelyn O. Aquino and Virgilio C. Aquino", Rollo, pp. 3, 205, 225, 229 and 234.

[1] Section 3 (e) R.A. 3019 – 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. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

[2] Rollo, p. 59.

[3] 151 SCRA 462.

[4] Ibid.

[5] RTC Order, Annex "TT" of Petition, Rollo, p. 224.

[6] *People v. Montesa, Jr.*, 248 SCRA 641, 650-651.

[7] Sec. 27, R.A. 6770

“A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice x x x.”

[8] *Supra*, note 2.

[9] *Morong Water District v. Office of the Deputy Ombudsman*, 328 SCRA 363.

[10] 327 SCRA 588, 604.

[11] *Salonga v. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA 438, cited in *Roberts v. CA*, 254 SCRA 307; *Perez v. Hagonoy Rural Bank, Inc.*, *supra*.

[12] Ibid.

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