ODIN SECURITY AGENCY, INC., REPRESENTED BY ITS PRESIDENT/GENERAL MANAGER, COL. ARTURO C. FERRER (RET.), PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION), SPECIAL PROSECUTION OFFI...

G.R. No. 135912. September 17, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Assailed in this instant petition for certiorari is the Resolution of the Sandiganbayan, Second Division, dated December 15, 1997 dismissing the Information in Criminal Case No. 23325 (for violation of Sec. 3 (e) of R. A. 3019[1]) against private respondents and the Resolution dated August 25, 1998 denying petitioner's motion for reconsideration.

The facts are:

On April 26, 1991, the Presidential Management Staff (PMS) of the Office of the President conducted a public bidding for security services required for its various offices. Fifteen (15) security agencies participated in the bidding, including petitioner Odin Security Agency (Odin). Odin and Masada Security Agency (Masada) submitted the lowest bid proposals. They were evaluated by the Bids and Awards Committee (BAC) of the PMS, composed of private respondents Manuel B. Gaite, as Chairman, Dalisay Nazareno, Guillerma Reyes and Demetrio Ignacio, as members. In determining the most advantageous bid, the BAC was guided by the following criteria:

a. Bid price- 25%

b. Financial status- 20%

c. Years of Service- 10%

d. Communication and transactions- 10%

e. Area of operations- 10%

f. Mobilization- 10%

g. Other government clientele- 10%

h. Availability of training centers- 5%

After evaluation, the BAC concluded that Nationwide Security and Allied Services, Inc. (Nationwide) ranked first, while Odin and Masada tied at second place.

The BAC referred the three (3) agencies (Nationwide, Odin and Masada) to the Presidential Security Group (PSG) for clearance. Forthwith, the PSG recommended Nationwide as the most suitable agency to provide

security services.

Before the Notice of Award could be sent to Nationwide, Odin, represented by its president and general manager, Col. Arturo Ferrer (ret.), filed with the PMS a protest alleging that Nationwide made a misrepresentation in its financial statement, reflecting therein an authorized paid up capital of P 2,400,000.00 although its authorization with the Securities and Exchange Commission (SEC) at that time was only P 1,000,000.00. Hence, Nationwide should be disqualified in the bidding.

Despite Odin's protest, the BAC recommended the award of the security service contract to Nationwide, stating that there was no substantial misrepresentation on its part; and there is nothing illegal in declaring an increased paid-up capital pending its approval by the SEC. Accordingly, private respondent Aniceto Sobrepena, then head of the PMS, approved the BAC's recommendation, resulting in the award of the contract to Nationwide effective January 1, 1992.

On February 19, 1992, Odin filed another protest, alleging for the first time that Nationwide also falsified other entries in its financial statement (with counterfeit BIR stamps) submitted to the PMS.

Respondent Sobrepena referred the matter to the PMS Legal Office. After a thorough investigation, the PMS found that Nationwide committed substantial misrepresentation. Consequently, its services were terminated effective June 7, 1992.

To replace Nationwide, the PMS awarded the security service contract to Ardee Security Agency, Inc. (Ardee). Again petitioner lodged a protest but was dismissed by respondent Sobrepena on the ground that PMS has no obligation to award the contract to the next ranking bidder.

On June 26, 1992, Odin, through Col. Ferrer, filed with the Office of the Ombudsman a complaint-affidavit for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against the private respondents, namely:

1. Aniceto M. Sobrepeña, head of PMS;
2. Manuel B. Gaite, Chairman, PMS Bids and Awards Committee;
3. Dalisay Nazareno, member, PMS Bids and Awards Committee;
4. Guillerma Reyes, member, PMS, Bids and Awards Committee;
5. Demetrio L. Ignacio, Jr., member, PMS Bids and Awards Committee and others.

After conducting the preliminary investigation, the Ombudsman filed with the Sandiganbayan an information for violation of Sec. 3 (e) of R. A. 3019, docketed as Criminal Case No. 23325, against private respondents.

Meanwhile, acting on private respondents' motion, the Sandiganbayan, in its order dated May 15, 1996, directed the prosecution to reinvestigate the case. On February 7, 1997, the Ombudsman issued a resolution recommending the dismissal of the Information in Criminal Case No. 23325 for lack of probable cause. This resolution was eventually submitted to the Sandiganbayan.

Forthwith, the Sandiganbayan, in its order dated February 24, 1997, required private respondents to comment on the Ombudsman's resolution.

On December 15, 1997, the Sandiganbayan promulgated the assailed Resolution dismissing Criminal Case No. 23325 for lack of probable cause.

Petitioner filed a motion for reconsideration, but was denied.

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Hence, the present petition alleging that in dismissing Criminal Case No. 23325, the Sandiganbayan acted with grave abuse of discretion.

In its comment, the People, represented by the Office of the Ombudsman, pursuant to P.D. No. 1606, as amended by R.A. No. 7975, asserts that respondent Sandiganbayan's reliance on the Ombudman's finding of lack of probable cause is in order.

The crucial issue for our resolution is whether there was probable cause to indict respondent PMS officials for violation of Section 3 (e) of Republic Act 3019, which reads:

> "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:
>
> x x x
>
> (e) 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 or government corporations charged with the grant of licenses or permits or other concessions.
>
> x x x. "

Probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged is guilty of the crime for which he was prosecuted.[2] Corollarily, the determination of the existence or absence of probable cause lies within the sound discretion of the Office of the Ombudsman.[3]

Time and again, this Court has held that once a case has been filed with the court, it is that court, no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval.[4] Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion.[5] In doing so the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.[6]

Here, respondent Sandiganbayan, in dismissing Criminal Case No. 23325 relied on the Ombudsman's findings that:

- While Nationwide was not the lowest bidder, however, the bid price was not the sole factor considered by private respondents in determining the most advantageous bid. The bid price constitutes only 25% of the total factors. After evaluation, Nationwide, came out with the highest ranking;

- Private respondents did not give unwarranted benefit or advantage to Nationwide because its alleged misrepresentation on its paid-up capital stock was actually investigated and deliberated upon. Private respondents' finding is that such misrepresentation is not material, hence, could not disqualify Nationwide.

- In view of the additional alleged misrepresentations committed by Nationwide (after petitioner's first protest), the PMS terminated its services.

In addition to the above findings, respondent Sandiganbayan found that there is no iota of proof showing that

private respondents conspired with Nationwide in the commission of the alleged misrepresentation to facilitate the award of the bid to the latter to the prejudice of other bidders, thus:

> "We are constrained to dismiss the instant case. In addition to the reasons advanced by the Office of the Ombudsman as afore-cited, WE took note that if in fact, there were misrepresentations made by NSAS in its financial statements, there is no iota of proof showing that herein accused-movants conspired with NSAS in the commission of the said misrepresentations to facilitate the award of the bid to the latter to the prejudice of the other bidders. What herein accused-movants simply did was to evaluate the competency of NSAS relying on the documents submitted to them, and if ever there were irregularities in these documents, it is not fair to attribute the same to herein accused-movants just because they approved the bid in favor of NSAS. The grant of the bid to NSAS by accused-movants should be separated from the misrepresentations made by the latter on their financial statements. There is no proof of felonious linkage so as to warrant the instant indictment."[7]

In thus concluding, it can readily be discerned that respondent Sandiganbayan properly exercised its judicial prerogative since it did not merely rely on the Ombudsman's recommendation but likewise reviewed the evidence submitted to it.

The established rule is that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[8]

Hence, petitioner's arguments that private respondents conspired with Nationwide and granted it undue favor, disregarding the fact that petitioner is the lowest bidder, are misplaced. They are all matters of defense.

In the case at bar, the Ombudsman was convinced there was no probable cause. His findings, being in order, were adopted by respondent Sandiganbayan which concluded that "there is no iota of proof" showing that private respondents conspired with Nationwide to enable the latter to get the award.

The findings of the Ombudsman and those of respondent Sandiganbayan are essentially factual in nature. Accordingly, in assailing the findings of respondent court and contending that it committed grave abuse of discretion, petitioner is actually raising questions of fact.

This Court is not a trier of facts. At this point it bears stressing that in the extraordinary writ of certiorari, neither questions of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion.[9]

We thus rule that in dismissing Criminal Case No. 23325 for lack of probable cause, no taint of grave abuse of discretion can be attributed to respondent Sandiganbayan.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] The Anti-Graft and Corrupt Practices Act.

[2] Cruz, Jr. vs. People, 233 SCRA 439 (1994).

[3] Velasco vs. Casaclang, 294 SCRA 394 (1998).

[4] Galvez vs. Court of Appeals, 237 SCRA 685 (1994); Ocampo, IV vs. Ombudsman, 225 SCRA 725 (1993).

[5] Roberts, et al vs. Court of Appeals, 254 SCRA 307, 334 (1996).

[6] Martinez vs. Court of Appeals 237 SCRA 575, 585-586 (1994).

[7] Assailed Sandiganbayan Resolution, Rollo, pp. 60-61.

[8] Cruz vs. People, 233 SCRA 439 (1994), citing Pangandaman vs. Cesar, et al., 159 SCRa 599 (1988).

[9] Cruz, Jr. vs. People, supra, citing Commission on Audit vs. Tanodbayan, et al., 199 SCRA 622 (1991).

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