# VICTORIANO B. TIROL, JR., PETITIONER, VS. HON. SANDIGANBAYAN JUSTICES CIPRIANO A. DEL ROSARIO, NARCISO S. NARIO, AND ANACLETO D. BADOY (SB 3RD DIVISION), HON. SPECIAL PROSECUTOR...

*G.R. No. 135913. November 04, 1999*

Ponente: PARDO, J.

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**PARDO, J.:**

The case is a petition for certiorari with preliminary injunction or temporary restraining order, under Rule 65 of the 1997 Rules of Civil Procedure, assailing the following orders of the Sandiganbayan, to wit:

- Order dated September 22, 1998 denying petitioner's motion to suspend trial in SB Criminal Case No. 23785;[1] and

- Order dated October 13, 1998 denying petitioner's motion for reconsideration of the said denial.[2]

The antecedent facts are as follows:

In May 1993, based on a complaint filed by members of two groups, the Federated PTA Organization and the Teachers and Employees Union, the Commission on Audit (COA) conducted a general audit of the transactions of the Lalawigan National High School, Lalawigan, Borongan, Eastern Samar between January 1, 1990 and April 30, 1993. On October 19, 1993, the COA audit team reported that the acquisition of equipment costing P80,000.00 was made through negotiated contract, and not by public bidding in violation of COA Circular 85-55A, and resulted in overpricing amounting to P35,100.00. On December 1, 1994, COA Regional Director Santos M. Alquizalas recommended to Deputy Ombudsman (Visayas) Arturo C. Mojica the filing of criminal and administrative charges against the responsible personnel, namely: petitioner Victoriano B. Tirol, Jr., Conchita C. Devora and Maria A. Alvero.

The three accused participated in the transaction as follows: Conchita C. Devora, a Secondary School Principal I, approved the transaction, countersigned the check and requisitioned the items; Maria A. Alvero, as Bookkeeper, signed box no. 4 of the voucher; petitioner Tirol, as Director III, signed the checks and approved the Requisition and Issue Voucher (RIV).

After conducting preliminary investigation, on March 20, 1997, Graft Investigation Officer III Virginia Palanca-Santiago, with the approval of Deputy Ombudsman Mojica and Ombudsman Aniano A. Desierto, found the existence of probable cause for the indictment of petitioner Tirol, now Regional Director, DECS V, Legaspi City, and his two co-accused for violation of Section 3 (g) of Republic Act No. 3019, as amended. On the same date, March 20, 1997, the Ombudsman filed with the Sandiganbayan an information for violation of Section 3 (g) of R. A. No. 3019 against the three accused.

Upon motion of petitioner Tirol for permission to travel abroad on official business, on September 17, 1997, the

Sandiganbayan conditionally arraigned Tirol, without prejudice to the filing of a motion for reconsideration with the Ombudsman. Petitioner Tirol, assisted by counsel, pleaded not guilty.

On January 2, 1998, petitioner Tirol filed with the Sandiganbayan a motion for leave to seek reconsideration/reinvestigation by the Ombudsman. On January 5, 1998, the Sandiganbayan ordered all the accused to file with the Ombudsman, through the Office of the Special Prosecutor, their motion for reconsideration of the finding of probable cause, within ten (10) days therefrom. The court directed the prosecutor to re-evaluate his findings and conclusions within thirty (30) days from receipt of the motion.

On March 5, 1998, the Office of the Special Prosecutor recommended the denial of the motion for reconsideration. On May 22, 1998, the Ombudsman approved the recommendation.

On July 17, 1998, petitioner Tirol filed with the Supreme Court a petition for review on certiorari,[3] pursuant to Section 27 of Republic Act No. 6770 (The Ombudsman Act of 1989). Petitioner averred that the Ombudsman gravely abused his discretion in concluding that the approval of the requisition and issue voucher (RIV) and signature in the check made petitioner liable for the overpricing.

Upon arraignment on August 24, 1998, accused Devora and Alvero pleaded not guilty to the information.

On September 2, 1998, petitioner Tirol filed with the Sandiganbayan a motion to reset trial and manifestation. He sought to reset the scheduled hearing on September 17 and 18, 1998, pending resolution of the petition for review on certiorari (G. R. No. 133954) filed with the Supreme Court.

On September 4, 1998, the Sandiganbayan in open court denied the motion to reset trial. On September 22, 1998, the Sandiganbayan reduced the ruling in writing by an order nunc pro tunc. The court ordered the pretrial conference to proceed as scheduled. The Sandiganbayan ruled that an appeal by certiorari to the Supreme Court under Section 27 of the Ombudsman Act, refers only to administrative cases decided by the Ombudsman, and not to judicial cases filed with the court.

On September 14, 1998, petitioner moved for reconsideration, which the court denied in an order dated October 13, 1998.

Hence, this petition.[4]

Petitioner contends that the Sandiganbayan committed a grave abuse of discretion amounting to lack or excess of jurisdiction in denying his motion to defer/suspend the trial in SB Criminal Case No. 23785, pending the disposition of the earlier petition for review filed with this Court. Petitioner avers that continuing with the trial in Criminal Case No. 23785, without awaiting the decision in the aforesaid petition would render the petition moot and academic. Petitioner cites Section 27, R. A. No. 6770, which provides that:

> " x x x. In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition within ten (10) days from receipt of the written notice of the order, directive or decision of denial of the motion for reconsideration in accordance with Rule 45 of the Revised Rules of Court."

Petitioner avers that all orders, directives and decisions of the Ombudsman in both administrative and criminal cases are appealable to the Supreme Court. Petitioner submits that to restrict the applicability of review or appeal to administrative cases, and afford no relief of appeal by certiorari in criminal cases, is absurd and illogical considering that criminal cases are more afflictive to the concerned individual.

At the same time, petitioner contends that limiting the applicability of Section 27 to administrative cases would restrict the power of judicial review by the Supreme Court of all acts by government agencies which are tainted


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with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Solicitor General, in his comment, maintains that Section 27, R.A. No. 6770, providing an appeal by certiorari to the Supreme Court, applies only to administrative cases. The Solicitor General invokes the ruling in Fabian v. Desierto,[5] which states that Section 27 of Republic Act No. 6770 is involved only when an appeal by certiorari, under Rule 45, is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for certiorari under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action.

The Solicitor General also contends that, contrary to petitioner's averment, a petition for certiorari under Rule 65 is available to petitioner whenever he believes that the Ombudsman committed grave abuse of discretion in his determination of the existence of probable cause.

However, in this case, since all the accused have been properly arraigned, pleaded not guilty, and the case has passed the pre-trial stage and is ready for trial, the remedy available now to the accused is to proceed to trial, await judgment and appeal the decision in the event that it is unfavorable to them.

We resolve to dismiss the petition.

Section 27 of R.A. No. 6770 provides that orders, directives and decisions of the Ombudsman in administrative cases are appealable to the Supreme Court via Rule 45 of the Rules of Court. However, in Fabian v. Desierto,[6] we declared that Section 27 is unconstitutional since it expanded the Supreme Court's jurisdiction, without its advice and consent, in violation of Article VI, Section 30 of the Constitution. Hence, all appeals from decision of the Ombudsman in administrative disciplinary cases may be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

True, the law is silent on remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law.[7] Hence, there must be a law expressly granting such privilege The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in Fabian, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack of excess of jurisdiction. An aggrieved party may file a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.

At any rate, it should be stressed that there is pending before this Court a petition for review under Rule 45 questioning the finding of probable cause by the Ombudsman. What is at issue in this petition for certiorari is the propriety of the Sandiganbayan's denial of the motion to suspend trial pending resolution of the certiorari case.

We find that the Sandiganbayan did not commit grave abuse of discretion in denying the motion to suspend trial in SB Criminal Case No. 23785. We have held that as a rule, criminal prosecution may not be restrained or stayed by injunction, preliminary or final.[8] While we recognized exceptions to this rule in Brocka v. Enrile,[9] we find that this case does not fall within the exceptions to warrant restraining the criminal prosecution.

Consequently, the Sandiganbayan did not gravely abuse its discretion amounting to lack or excess of jurisdiction

in denying petitioner's motion to suspend trial.

WHEREFORE, the court hereby DISMISSES the petition.

No. costs.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), and Kapunan, JJ., concur.
Puno, and Ynares-Santiago, JJ., on official business abroad.

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[1] Original Record, p. 196-C.

[2] Id., at p. 199.

[3] Docketed as G. R. No. 133954.

[4] Petition filed on November 3, 1998, Rollo, pp. 3-24.

**[5] 295 SCRA 470 (1998).**

[6] Ibid.

[7] Calucag v. Commission on Election, 274 SCRA 405 (1997)

[8] Deloso v. Desierto, G.R. 129939, September 9, 1999.

[9] 192 SCRA 183 (1990). Among the exceptions are:

a)

To afford adequate 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 act 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)


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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)

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


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