VENANCIO R. NAVA, PETITIONER, VS. COMMISSION ON AUDIT, REGION XI, REPRESENTED BY ITS DIRECTOR, DAVAO, CITY, RESPONDENT.

G.R. No. 136470. October 16, 2001

Ponente: BUENA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-136470/

BUENA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court, seeks to review the Ombudsman's disapproval of the Resolution dated May 21, 1998, of the Office of the Special Prosecutor, which recommended that petitioner Nava be dropped from the Information filed against him in Criminal Case No. 23459 before the Sandiganbayan.

The antecedents are simple.

The Commission on Audit (COA), Regional Office No. XI, Davao City, conducted an audit investigation on the procurement of the Department of Education and Culture (DECS) Division Office of Davao City, particularly of construction materials for its 1991 School Building Program. The audit report revealed, among others, that the DECS Division Office purchased construction materials and supplies from Giomiche Incorporated, a Manila based supplier. In order to determine the reasonableness of the prices, the resident auditor compared the prices of the construction materials purchased from Giomiche with those sold by reputable suppliers and establishment in Davao City. A comparison showed that the items sold to the DECS Division Office exceeded the prevailing market prices in the city, ranging from 6.09% to 695.45%, resulting to a government loss of P512,967.69. The audit likewise revealed that the procurement was not made through a public bidding.

On November 8, 1993, the COA Regional Office, through Director Amado C. Baul, transmitted the audit report to the Deputy Ombudsman, Office of the Ombudsman-Mindanao, Sta. Ana, Davao City, for appropriate action.[1]

Finding prima facie evidence to proceed with the preliminary investigation, the Office of the Ombudsman directed the petitioner and concerned officers[2] of the DECS who had a hand in the transaction to file their answer and other controverting evidence.

Petitioner Nava denied the charges explaining that his alleged participation in the purchase of overpriced school construction materials was limited to the signing of the "Invitation to Bid" and approving the purchase order. He claims that the "Invitation to Bid" cannot by itself cause any irregularity, it being the initial action in the purchasing process of procurement and that it has no relevance or bearing on whether or not the amounts finally paid constitute overpayment or overpricing. He also maintains that he signed the purchase orders upon recommendation of DECS Division Superintendent Luceria M. de Leon and that his act of affixing his signature on the purchase orders was merely ministerial.

On July 25, 1996, the Ombudsman, through Graft Investigation Officer I, Jovito A. Coresis, Jr. issued a Resolution, the decretal portion of which reads:

> "WHEREFORE, finding sufficient evidence to hold that the offense of violation of Section 3 (g) and (e) of RA 3019 and falsification have been committed and that the hereunder list of persons are probably guilty thereof, let the following criminal Information be filed with the following courts, namely:
>
> "x x x x x x x x x
>
> "B) Violation of Section 3 (g) of RA 3019 relative to the overpricing of construction materials with the Sandiganbayan against:
>
> "1. DECS Regional Director VENANCIO NAVA (with salary _____),
>
> "2. DECS Assistant Director SUSANA CABAHUG,
>
> "3. DECS Regional Administrative Officer AQUILINA B. GRANADA,
>
> "4. DECS Finance Officer, CARLOS BAUTISTA,
>
> "5. DECS Division Superintendent LUCERIA M. DE LEON,
>
> "6. DECS Division Administrative Officer EDILBERTO MADRIA,
>
> "7. DECS Supply Officer FELIPE PANCHO, and
>
> "8. GEOMICHE, Incorporated President JESUSA DELA CRUZ.'
>
> "x x x x x x x x x
>
> "SO RESOLVED."[3]

In warranting the prosecution of the petitioner and his co-respondents, the Ombudsman ratiocinated in this wise:

> "Apropos the alleged overpricing of construction materials, this Office finds that the DECS Division of Davao City purchased the following construction materials from Geomiche, Incorporated thru its President Jesusa dela Cruz which per comparison between the price actually paid and the price per canvass by the COA showed overpricing ranging from 6.09% to 695.45%, thus:
>
> "x x x x x x x x x
>
> "Verily, the contract for the purchase of the above-enumerated construction materials at overpriced costs ranging from 6.09% to 695.45% was grossly and manifestly disadvantageous to the government for it left the government short-changed by a hefty sum of P512,967.69 – the total amount of the overprice.
>
> "Moreover, the said purchases were made without a public bidding in violation of Executive Order No. 298, Series of 1940. Furthermore, two (2) sets of purchase orders were prepared: one set was issued by the DECS Division Office and another set by the DECS Regional Office. Finally, the payments made to Geomiche were split, thus: payment under Voucher No. 91-05-02-SB for P1,500,000.00 was supported by a set of purchase orders issued by the DECS Division Office BUT ONLY for the amount of P70,505,21; another payment to Geomiche under Voucher No. (illegible) in the amount of P557,093.25 was supported by a set of purchase orders issued by the DECS Regional Office BUT ONLY for P71,429.75 in violation of COA rules and regulations prohibiting splitting of payment.
>
> "In fine, the failure to conduct a public bidding, the preparation of two sets of purchase orders, the splitting of payments to Geomiche-seemingly separate and distinct acts though-yet lead to the inescapable conclusion that they were segments of a grand conspiratorial design on the part of the DECS Officials and Jesusa dela Cruz of Geomiche to enter into a contract of purchase of construction materials grossly and manifestly disadvantageous to the government. Since in conspiracy, the liability of one is the liability of all who have participated in such conspiracy, the following persons should be held liable for violation of Section 3 (g) of R.A. 3019, namely:

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

"x x x x x x x x x"[4]

Thereafter, an Information was filed before the Sandiganbayan against herein petitioner which was docketed as Criminal Case No. 23459.[5]

On May 6, 1997, petitioner moved for a reinvestigation before the Sandiganbayan[6] contending that the acts imputable to him, i.e., approving the disbursement voucher, purchase order and invitation to bid and in signing the checks for payment, are not indicative of any conspiracy to prejudice the government. He argues that his actions are the very functions he had to discharge in the performance of his official duties as Regional Director of the DECS and had to rely in good faith on the representation of his subordinates.

On June 6, 1997, the Sandiganbayan ordered the reinvestigation of the case.

On May 21, 1998, Special Prosecution Officer Diosdado V. Calonge, issued a Resolution recommending that petitioner, together with Susana Cabahug and Felipe Pancho, be dropped from the complaint and the Information filed against them before the Sandiganbayan be withdrawn. Special Prosecutor Calonge maintains that the respondents "cannot be held liable for entering into a contract grossly and manifestly disadvantageous to the government because their individual participation in the questioned transaction are purely ministerial acts, without indication that they are attended by bad faith nor gross inexcusable negligence."[7] However, Ombudsman Aniano A. Desierto, disapproved the above recommendation and ordered the prosecution to proceed under the existing Information in Criminal Case No. 23459.

Aggrieved, petitioner filed this present petition raising the following issues, to wit:

"I. WHETHER OR NOT THE HONORABLE OMBUDSMAN GRAVELY ERRED IN CONCLUDING THAT PETITIONER IS LIABLE FOR VIOLATION OF SECTION 3(G) OF RA 3019 IN APPROVING THE AFORESAID DISBURSEMENT VOUCHER, PURCHASE ORDER, INVITATION TO BID AND IN SIGNING THE CHECKS IN PAYMENT BASED ON THE AFORESAID UNDISPUTED FACTS OF THE CASE;

"II. WHETHER OR NOT THE HONORABLE OMBUDSMAN GRAVELY ERRED IN NOT ABSOLVING THE PETITIONER BY NOT APPLYING IN HIS FAVOR PERTINENT DECISIONS OF THE HONORABLE COURT IN THE CASES OF ARIAS VS. SANDIGANBAYAN AND MAGSUCI VS. SANDIGANBAYAN."

The petition should be dismissed.

The remedy availed of by petitioner is erroneous. Instead of a petition for certiorari under Rule 65 of the Rules of Court, petitioner filed with this Court the present petition for review on certiorari under Rule 45 of the Rules of Court pursuant to the provisions of Section 27 of Republic Act No. 6770.[8]

Rule 45 of the Rules of Court provides that only judgments or final orders or resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law, may be the subject of an appeal by certiorari to this Court. It does not include resolutions of the Ombudsman on preliminary investigations in criminal cases. Petitioner's reliance on Section 27 of R.A. No. 6770 is misplaced. Section 27 is involved only whenever 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.[9] In other words, the right to appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like the case at bar. Such right is granted only from orders or decisions of the Ombudsman in administrative cases.[10]

An aggrieved party is not left without any recourse. Where the findings of the Ombudsman as to the existence of

probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for certiorari under Rule 65 of the Rules of Court.[11]

Thus, by availing of a wrong or inappropriate remedy, the petition merits an outright dismissal.

But even if we consider the present petition as one filed under Rule 65 of the Rules of Court, we find no merit in petitioner's stance that the Ombudsman committed grave abuse of discretion. In disapproving the recommendation of Prosecutor Calonge, Ombudsman Desierto was merely exercising his powers based upon constitutional mandate and the courts should not interfere in such exercise.[12] His determination of the existence of a reasonable ground to believe that the crime has been committed and that petitioner is probably guilty thereof, is not tantamount to grave abuse of discretion.[13]

This Court has almost always adopted, quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers.[14] This rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they were compelled to review the exercise of discretion on the part of the fiscals, or prosecuting attorneys, each time they decide to file an information in court or dismiss a complaint by a private complainant.[15]

Petitioner's argument that he could not be indicted for violation of Section 3(g) of RA 3019, because he acted in good faith when he approved the disbursement voucher, purchase order, invitation to bid and signed the checks after the same had been processed by his subordinates, are evidentiary in nature and are matters of defense, the truth of which can be best passed upon after a full-blown trial on the merits. It is not for the public prosecutor to decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held for trial. It is not the occasion for 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.[16]

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The Sandiganbayan is hereby directed to proceed with dispatch the arraignment and trial of the case.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Kapunan, and Panganiban, JJ., on official leave.

---

[1] Annex "A", p. 27 of Petition.

[2] Susana Cabahug, Luceria M. de Leon, Aquilina B. Granada, Carlos Bautista, Edilberto Madria, Felipe Pancho and Giomiche Incorporated represented by its President Jesusa dela Cruz.

[3] Annex "B" of Petition, pp. 30-47, Rollo.

[4] See Resolution, pp. 10-13.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

[5] See Information

"THE UNDERSIGNED Graft Investigation Officer I of the Office of the Ombudsman for Mindanao, hereby accused (sic) VENANCIO R. NAVA, x x x; of the crime of Violation of Sec. 3 (g) of R.A. 3019, committed as follows:

'That on or during the period comprising the calendar year 1991, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the accused VENANCIO NAVA, x x x, all public officers being then the Regional Director with salary grade of 27, x x x, of the Department of Education, Culture and Sports, Region XI, while in the performance of their duties, committing the offense in relation to their office, taking advantage of their official positions, conspiring, confederating with each other, and with Geomiche Incorporated President JESUSA DELA CRUZ, to wit: 1. DECS Regional Director VENANCIO NAVA approved the disbursement voucher, purchase order and invitation to bid and signed the checks for payment; x x x which acts though seemingly separate and distinct yet parts of a grand conspiratiorial design to defraud the government, did then and there, wilfully, unlawfully, criminally, purchase in behalf of the DECS Division Office of Davao City, from Geomiche Incorporated represented by Jesusa dela Cruz construction materials at overpriced costs ranging from 6.09% to 695.45% thus enter into a contract grossly and manifestly disadvantageous to the government for it left the DECS short-changed by a hefty sum of P512,967.69 - the total amount of the overprice.'"

[6] Annex "C" of Petition, pp. 48-56, Rollo.

[7] Annex "D" of Petition, pp. 57-65, Ibid.

[8] The Ombudsman Act.

[9] Fabian vs. Desierto, 295 SCRA 470 [1998].

[10] Tirol, Jr. vs. Del Rosario, 317 SCRA 779 [1999].

[11] Ibid.

[12] Ocampo, IV vs. Ombudsman, 225 SCRA 725, 730 [1993].

[13] Venus vs. Desierto, 298 SCRA 196 [1998].

[14] Alba vs. Nitorreda, 254 SCRA 753, 765-766 [1996].

[15] Young vs. Office of the Ombudsman, 228 SCRA 718, 722-723 [1993].

[16] Olivarez vs. Sandiganbayan, 248 SCRA 700, 711 [1995]; Deloso vs. Desierto, 314 SCRA 126 [1999].

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.