

**ANTONIO PROSPERO ESQUIVEL AND MARK ANTHONY ESQUIVEL,
PETITIONERS, VS. THE HON. OMBUDSMAN, THE SANDIGANBAYAN
(THIRD DIVISION), THE PEOPLE OF THE PHILIPPINES AND
HERMINIGILDO EDUA...***G.R. No. 137237. September 17, 2002*

Ponente: QUISUMBING, J.

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This special civil action for certiorari, prohibition, and mandamus[1] with prayer for preliminary injunction and/or temporary restraining order seeks to annul and set aside: (1) the Ombudsman resolution[2] dated June 15, 1998 finding prima facie case against herein petitioners, and (2) the order[3] denying petitioners' motion for reconsideration. Further, in their supplemental petition,[4] petitioners assail the Sandiganbayan for taking cognizance of cases without or beyond its jurisdiction. They impleaded that court and the People of the Philippines as additional parties in this case.

The factual antecedents of this case are as follows:

PO2 Herminigildo C. Eduardo and SPO1 Modesto P. Catacutan are both residents of Barangay Dampulan, Jaen, Nueva Ecija, but assigned with the Regional Intelligence and Investigation Division (RIID), Police Regional Office 3, Camp Olivas, San Fernando, Pampanga. In their respective complaint-affidavits,[5] filed before the Philippine National Police – Criminal Investigation and Detection Group (PNP-CIDG), Third Regional Office, Camp Olivas, San Fernando, Pampanga, Eduardo and Catacutan charged herein petitioners Antonio Prospero Esquivel,[6] municipal mayor of Jaen and his brother, Mark Anthony “Eboy” Esquivel, barangay captain of barangay Apo, Jaen, with alleged illegal arrest, arbitrary detention, maltreatment, attempted murder, and grave threats. Also included in the charges were SPO1 Reynaldo Espiritu, SPO2 Nestor Villa Almayda, and LTO Officer Aurelio Diaz. PO2 Eduardo and SPO1 Catacutan likewise accused P/S Insp. Bienvenido C. Padua and SPO3 Inocencio P. Bautista of the Jaen Municipal Police Force of dereliction of duty.

The initial investigation conducted by the PNP-CIDG showed that at about 12:30 p.m. of March 14, 1998, PO2 Eduardo was about to eat lunch at his parents' house at Sta. Monica Village, Dampulan, Jaen, Nueva Ecija, when petitioners arrived. SPO1 Espiritu, SPO2 Almayda, LTO Officer Diaz, and several unidentified persons accompanied them. Without further ado, petitioners disarmed PO2 Eduardo of his Cal. 45 service pistol, which was covered by a Memorandum Receipt and COMELEC Gun Ban Exemption. They then forced him to board petitioners' vehicle and brought him to the Jaen Municipal Hall.

PO2 Eduardo also stated that while they were on their way to the town hall, Mayor Esquivel mauled him with the use of a firearm and threatened to kill him. Mayor Esquivel pointed a gun at PO2 Eduardo and said, “Putang-ina mo, papatayin kita, aaksidentihin kita dito, bakit mo ako kinakalaban!” (You son of a bitch! I will kill you, I will create an accident for you. Why are you against me?) Upon reaching the municipal hall, Barangay Captain Mark Anthony “Eboy” Esquivel shoved PO2 Eduardo inside an adjacent hut. Mayor Esquivel then ordered SPO1

Espiritu to kill him, saying “Patayin mo na iyan at gawan ng senaryo at report.” (Kill him, then create a scenario and make a report.)

At this point, according to SPO1 Catacutan, he arrived to verify what happened to his teammate, PO2 Eduardo, but Mayor Esquivel likewise threatened him. Mayor Esquivel then ordered P/S Insp. Bienvenido Padua of the Jaen Police Station to file charges against PO2 Eduardo. Then, the mayor once again struck PO2 Eduardo in the nape with a handgun, while Mark Anthony “Eboy” Esquivel was holding the latter. PO2 Eduardo then fell and lost consciousness. When he regained his consciousness, he was told that he would be released. Prior to his release, however, he was forced to sign a statement in the police blotter that he was in good physical condition.

PO2 Eduardo told the PNP-CIDG investigators that he was most likely maltreated and threatened because of jueteng and tupada. He said the mayor believed he was among the law enforcers who raided a jueteng den in Jaen that same day. He surmised that the mayor disliked the fact that he arrested members of crime syndicates with connections to the mayor.[7]

In support of his sworn statement, PO2 Eduardo presented a medical certificate showing the injuries he suffered and other documentary evidence.[8]

After the initial investigation, the PNP-CIDG Third Regional Office forwarded the pertinent records to the Office of the Deputy Ombudsman for Luzon for appropriate action.[9]

The Office of the Deputy Ombudsman for Luzon conducted a preliminary investigation and required petitioners and their companions to file their respective counter-affidavits. In their joint counter-affidavit,[10] petitioners and their companions denied the charges against them. Instead, they alleged that PO2 Eduardo is a fugitive from justice with an outstanding warrant of arrest for malversation. They further alleged that the gun confiscated from PO2 Eduardo was the subject of an illegal possession of firearm complaint.

On June 15, 1998, the Deputy Ombudsman for Luzon issued the impugned resolution[11] recommending that both Mayor Esquivel and Barangay Captain Mark Anthony “Eboy” Esquivel be indicted for the crime of less serious physical injuries, and Mayor Esquivel alone for grave threats. The charges against the other respondents below were dismissed, either provisionally or with finality.

On August 14, 1998, Ombudsman Aniano A. Desierto approved the aforesaid resolution.

Thereafter, separate informations docketed as Criminal Case No. 24777[12] for less serious physical injuries against Mayor Esquivel and Mark Anthony “Eboy” Esquivel, and Criminal Case No. 24778[13] for grave threats against petitioner mayor, were filed with the Sandiganbayan.

On August 26, 1998, petitioners moved for reconsideration of the August 14, 1998 resolution of the Deputy Ombudsman for Luzon. As directed by the Sandiganbayan, they likewise filed a motion for reconsideration/reinvestigation[14] with the Office of the Special Prosecutor (OSP). That motion was, however, denied by the OSP in the assailed order[15] dated December 7, 1998. On December 11, 1998, the Ombudsman approved the OSP’s order of denial.

On February 8, 1999, petitioners were arraigned in both cases, and they pleaded not guilty to the charges.

With their failure to extend the suspension of proceedings previously granted by the Sandiganbayan by virtue of their motion for reconsideration, petitioners elevated the matter to this Court alleging grave abuse of discretion on the part of public respondents in rendering the resolution and the order.

On June 9, 1999, we denied for lack of merit petitioners’ motion[16] reiterating their plea for the issuance of a TRO directing public respondents to refrain from prosecuting Criminal Cases Nos. 24777 and 24778.[17]

Petitioners now submit the following issues for our resolution:

1. WHETHER OR NOT RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN DISREGARDING THE ADMISSION OF PRIVATE RESPONDENT THAT HE WAS IN GOOD PHYSICAL CONDITION WHEN HE WAS RELEASED FROM THE POLICE HEADQUARTERS OF JAEN, NUEVA ECIJA;
2. WHETHER OR NOT RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN FINDING PROBABLE CAUSE FOR GRAVE THREATS WHEN PETITIONERS WERE LEGALLY EFFECTING THE ARREST OF THE PRIVATE RESPONDENT BY VIRTUE OF THE WARRANT OF ARREST ISSUED BY THE REGIONAL TRIAL COURT OF GAPAN, NUEVA ECIJA UNDER CRIM. CASE NO. 4925 FOR MALVERSATION OF GOVERNMENT PROPERTY; and
3. WHETHER OR NOT RESPONDENT SANDIGANBAYAN HAS JURISDICTION OVER THE OFFENSES FILED AGAINST PETITIONERS.

Petitioners' formulation of the issues may be reduced to the following:

- (1) Did the Ombudsman commit grave abuse of discretion in directing the filing of the informations against petitioners?
- (2) Did the Sandiganbayan commit grave abuse of discretion in assuming jurisdiction over Criminal Cases Nos. 24777 and 24778?

Petitioners argue that the Ombudsman committed grave abuse of discretion when he failed to consider the exculpatory evidence in their favor, namely, the admission of PO2 Eduardo that he was in good physical condition when he left the police station in Jaen, Nueva Ecija.[18] With such admission, PO2 Eduardo is now estopped from claiming that he was injured since it is conclusive evidence against him and need not be proven in any other proceeding.[19]

Public respondents, represented by the Office of the Ombudsman through the OSP, counter that petitioners raise a factual issue which is not a proper subject of a certiorari action. They further postulate that this is the very same defense advanced by petitioners in the charges against them and being evidentiary in nature, its resolution can only be threshed out in a full-blown trial.[20]

We find the present petition without merit.

The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[21] Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise.[22] Said exercise of powers is based upon his constitutional mandate[23] and the courts will not interfere in its exercise. The 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, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.[24] Thus, in *Rodrigo, Jr. vs. Sandiganbayan*,[25] we held that:

This Court, moreover, has maintained a consistent policy of non-interference in the determination of the Ombudsman regarding the existence of probable cause, provided there is no grave abuse in the exercise of such

discretion.

In this case, petitioners utterly failed to establish that the Ombudsman acted with grave abuse of discretion in rendering the disputed resolution and order.

There was no abuse of discretion on the part of the Ombudsman, much less grave abuse in disregarding PO2 Eduardo's admission that he was in good physical condition when he was released from the police headquarters.[26] Such admission was never brought up during the preliminary investigation. The records show that no such averment was made in petitioners' counter-affidavit[27] nor was there any document purporting to be the exculpatory statement attached therein as an annex or exhibit. Petitioners only raised this issue in their motion for reconsideration.[28] In his opposition to said motion, PO2 Eduardo did admit signing a document to the effect that he was in good physical condition when he left the police station. However, the admission merely applied to the execution of said document and not to the truthfulness of its contents. Consequently, the admission that petitioners brand as incontrovertible is but a matter of evidence best addressed to the public respondents' appreciation. It is evidentiary in nature and its probative value can be best passed upon after a full-blown trial on the merits.

Given these circumstances, certiorari is not the proper remedy. As previously held, but now bears stressing:

. . . [t]his Court is not a trier of facts and it is not its function to examine and evaluate the probative value of all evidence presented to the concerned tribunal which formed the basis of its impugned decision, resolution or order.[29]

Petitioners would have this Court review the Sandiganbayan's exercise of jurisdiction over Criminal Cases Nos. 24777-78. Petitioners theorize that the latter has no jurisdiction over their persons as they hold positions excluded in Republic Act No. 7975.[30] As the positions of municipal mayors and barangay captains are not mentioned therein, they claim they are not covered by said law under the principle of *expressio unius est exclusio alterius*. [31]

Petitioners' claim lacks merit. In *Rodrigo, Jr. vs. Sandiganbayan*, [32] *Binay vs. Sandiganbayan*, [33] and *Layus vs. Sandiganbayan*, [34] we already held that municipal mayors fall under the original and exclusive jurisdiction of the Sandiganbayan. Nor can Barangay Captain Mark Anthony Esquivel claim that since he is not a municipal mayor, he is outside the Sandiganbayan's jurisdiction. R.A. 7975, as amended by R.A. No. 8249, [35] provides that it is only in cases where "none of the accused (underscoring supplied) are occupying positions corresponding to salary grade '27' or higher" [36] that "exclusive original jurisdiction shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended." [37] Note that under the 1991 Local Government Code, Mayor Esquivel has a salary grade of 27. [38] Since Barangay Captain Esquivel is the co-accused in Criminal Case No. 24777 of Mayor Esquivel, whose position falls under salary grade 27, the Sandiganbayan committed no grave abuse of discretion in assuming jurisdiction over said criminal case, as well as over Criminal Case No. 24778, involving both of them. Hence, the writ of certiorari cannot issue in petitioners' favor.

For the same reason, petitioners' prayer for a writ of prohibition must also be denied.

First, note that a writ of prohibition is directed to the court itself, commanding it to cease from the exercise of a jurisdiction to which it has no legal claim. [39] As earlier discussed, the Sandiganbayan's jurisdiction over Criminal Cases Nos. 24777-78 is clearly founded on law.

Second, being an extraordinary remedy, prohibition cannot be resorted to when the ordinary and usual remedies

provided by law are adequate and available.[40] Prohibition is granted only where no other remedy is available or sufficient to afford redress. That the petitioners have another and complete remedy at law, through an appeal or otherwise, is generally held sufficient reason for denying the issuance of the writ.[41] In this case, petitioners were not devoid of a remedy in the ordinary course of law. They could have filed a motion to quash the informations at the first instance but they did not. They have only themselves to blame for this procedural lapse as they have not shown any adequate excuse for their failure to do so. Petitioners did make a belated oral motion for time to file a motion to quash the informations, during their much delayed arraignment,[42] but its denial is not a proper subject for certiorari or prohibition as said denial is merely an interlocutory order. [43]

Third, a writ of prohibition will not be issued against an inferior court unless the attention of the court whose proceedings are sought to be stayed has been called to the alleged lack or excess of jurisdiction.[44] The foundation of this rule is the respect and consideration due to the lower court and the expediency of preventing unnecessary litigation;[45] it cannot be presumed that the lower court would not properly rule on a jurisdictional objection if it were properly presented to it.[46] The records show that petitioners only raised the issue of the alleged lack of jurisdiction by the Sandiganbayan before this Court.

Nor can petitioners claim entitlement to a writ of mandamus. Mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use and not a discretionary duty.[47] The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.[48] Hence, this Court cannot issue a writ of mandamus to control or review the exercise of discretion by the Ombudsman, for it is his discretion and judgment that is to be exercised and not that of the Court. When a decision has been reached in a matter involving discretion, a writ of mandamus may not be availed of to review or correct it, however erroneous it may be.[49] Moreover, as earlier discussed, petitioners had another remedy available in the ordinary course of law. Where such remedy is available in the ordinary course of law, mandamus will not lie.[50]

WHEREFORE, the instant petition is DISMISSED for lack of merit. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Rollo, pp. 24-27.

[3] Id. at 28-29.

[4] Rollo, pp. 110-113.

[5] Id. at 38, 41.

[6] Prospero Antonio Esquivel/Esquievel in other parts of the records.

[7] Rollo, pp. 39-40.

[8] Records, Crim. Cases Nos. 24777-78, pp. 22-33.

[9] Supra, note 7 at 31.

[10] Id. at 42-45.

[11] Id. at 24-27.

[12] Id. at 55-56.

[13] Id. at 57-58.

[14] Id. at 70-71.

[15] Id. at 28-29.

[16] Id. at 121-123.

[17] Id. at 124-A.

[18] Id. at 209.

[19] Id. at 211.

[20] Id. at 157.

[21] *Venus vs. Desierto*, 298 SCRA 196, 214 (1998).

[22] *PCGG vs. Ombudsman, et al.*, G.R. No. 137777, October 2, 2001, p. 7.

[23] CONST. Art. XI, Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

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(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

[24] *Olivares vs. Sandiganbayan*, 248 SCRA 700, 709-710 (1995), citing *Ocampo IV vs. The Hon. Ombudsman*, 225 SCRA 725, 730 (1993).

[25] 303 SCRA 309, 321 (1999).

[26] *Rollo*, pp. 61-62.

[27] Id. at 43-45.

[28] *Supra*, notes 9 and 10.

[29] *Trade Unions of the Philippines vs. Laguesma*, 236 SCRA 586, 591 (1994).

[30] Entitled "An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, amending for that purpose P.D. No. 1606, as amended."

[31] *Rollo*, p. 111.

[32] *Supra*, note 25.

[33] 316 SCRA 65 (1999).

[34] 320 SCRA 233 (1999).

[35] Entitled “An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, As Amended, Providing Funds therefor, and for Other Purposes.”

[36] Sec. 4, R.A. No. 8249.

[37] Ibid.

[38] Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensation.—

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(d) The municipal mayor shall receive a minimum monthly compensation corresponding to Salary Grade twenty-seven (27) as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

[39] See *State vs. Tracy*, 140 S.W. 888, 890.

[40] See *Ex parte Fahey*, 332 US 258, 91 L. Ed 2041, 67 S. Ct. 1458, *Pennsylvania Turnpike Com. vs. Welsh* (CAS Pa) 188 F. 2d 447, *Hurd vs. Letts*, 152 F. 2d 121, *Ex parte Locke*, 346 So. 2d 419, *Dean vs. Superior Court*, 324 P. 2d 764, 73 A.L.R. 2d 1, *Benton vs. Circuit Court for Second Judicial Circuit (Fla App D1)* 382 So. 2d 753, *Hughes vs. Kiley*, 367 N.E. 2d 700, *State ex rel. Taylor vs. District Court*, 310 P. 2d 779, 64 A.L.R. 2d 1324.

[41] *Paredes vs. CA*, 253 SCRA 126, 130 (1996).

[42] *Rollo*, p. 206.

[43] See *Raro vs. Sandiganbayan*, 335 SCRA 581, 600 (2000). See also *Quiñon vs. Sandiganbayan*, 271 SCRA 575, 592 (1997).

[44] See *Ex parte Board of Education of Blount County*, 84 So. 2d 653, *Carrick vs. First Criminal Court*, 20 A. 2d 509, *State ex rel. Townsend vs. Court of Appeals*, 428 P. 2d 473, *Olson vs. District Court, Second Judicial Dist.*, 147 P. 2d 471, *Matushefske vs. Herlihy*, 214 A. 2d 883, *King vs. Hening*, 125 S.E. 2d 827; *Wilby vs. Board of Supervisors*, 85 So. 2d 195.

[45] See *LeGrange vs. District Court of County of Grand (Colo)* 657 P. 2d 454, *Wilby vs. Board of Supervisors*, *supra*, *King vs. Hening*, *supra*.

[46] See *Haskett vs. Harris*, 567 S.W. 2d 841.

[47] *Angchangco, Jr. vs. Ombudsman*, 268 SCRA 301, 306 (1997).

[48] *Mateo vs. Court of Appeals*, 196 SCRA 280, 284 (1991). See also *Diokno vs. Rehabilitation Finance Corporation*, 91 Phil. 608 (1952).

[49] *Lamb vs. Phipps*, 22 Phil. 456, 486 (1921).

[50] *State vs. Tracey*, *supra*, note 39 at 890.

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