

ARTURO GALLARDO, PETER MELCHOR J. ARCHES, ALLAN B. AMPOLOQUIO, CIRILO N. BACQUIANO, JOSUE M. RODAJE, BENJAMIN R. MACASAET, JR., VICTORINA DELOS CIENTOS-MIRAL, RODOLFO M. CARTIN,...

G.R. NO. 142030. April 21, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is an appeal by certiorari under Rule 45 of the Rules of Court assailing the Resolution of the Sandiganbayan[1] (Second Division) in Criminal Case No. 25092 denying petitioners' Motion To Quash.

The records show that the above-numbered case originated from a sworn letter-complaint filed with the Office of the Ombudsman-Mindanao by Atty. Victor dela Serna, for and in behalf of the Public Health Workers (PHWs) of Bansalan, Davao del Sur, charging herein petitioners Mayor Arturo A. Gallardo, Vice-Mayor Peter Melchor J. Arches, Sangguniang Bayan members Allan B. Ampoloquio, Cirilo N. Bacquiano, Josue M. Rodaje, Benjamin R. Macasaet, Jr., Victorina delos Cientos-Miral, Rodolfo M. Cartin, Quirina T. Sarte, Norberto E. Gomez, Genefredo P. Espina, Noel Guinita and Budget Officer Ofelia Nacional, all public officers of the Municipality of Bansalan, Davao del Sur, with violation of Section 3(e) of Republic Act No. 3019 for their alleged refusal to appropriate in the municipal budget the amount representing payment of the mandatory statutory obligations of the Municipality of Bansalan accruing to the complaining PHWs in the nature of unpaid salary differential and magna carta benefits.[2]

On 08 January 1999, herein public respondent Ombudsman Aniano A. Desierto approved the Resolution dated 26 November 1998 of Graft Investigation Officer II Jovito A. Coresis, Jr., of the Office of the Ombudsman-Mindanao, finding probable cause to indict petitioners of the crime alleged.[3]

On 13 January 1999, the Information was filed with the Sandiganbayan which reads:

That sometime in or about January, 1998, or shortly prior or subsequent thereto, in Davao del Sur, Philippines and within the jurisdiction of this Honorable Court, the accused Mayor Arturo A. Gallardo with salary grade 27, Vice-mayor Peter Melchor J. Arches with salary grade 25, Sangguniang Bayan Members with salary grade 24 Allan B. Ampoloquio, Cirilo N. Bacquiano, Josue M. Rodaje, Benjamin R. Macasaet, Jr., Victorina delos Cientos-Miral, Rodolfo M. Cartin, Quirina T. Sarte, Norberto E. Gomez, Genefredo P. Espina, Noel Guinita and Budget Officer Ofelia Nacional all public officers of the Local Government Unit of Bansalan, Davao del Sur, committing the offense while in the performance of their official duties and taking advantage of their public position, conspiring, confederating and mutually aiding each other, did there and then, willfully, unlawfully, and criminally, cause undue injury to the Public Health Workers (PHWs) of the Municipality of Bansalan, to wit: by illegally and unjustifiably refusing to perform their duties to include an appropriation in the municipal budget for the payment of the mandatory statutory obligations of the Municipality of Bansalan due to the complaining PHWs in the nature of unpaid salary differential and magna carta benefits in the aggregate amount of P3,833,798.10 Philippine currency, thus causing undue damage and injury to the

complaining PHWs thru evident bad faith in the performance of their official duties.[4]

On 24 February 1999, petitioners filed a Motion for Reinvestigation.[5] The Sandiganbayan granted the motion in a resolution dated 27 April 1999 and ordered the prosecution to conduct a reinvestigation.[6] In a resolution dated 26 July 1999, Special Prosecutor II Jose O. Montero, Jr., recommended the dismissal of the case, which recommendation was approved by Prosecution Bureau Director Victorio U. Tabangil, Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo.[7] This recommendation, however, was disapproved by Ombudsman Aniano A. Desierto who stated in his own handwriting “[I]et the court determine if indeed the evidence cannot stand the judicial scrutiny.”[8]

On 15 November 1999, petitioners filed a motion to quash the information anchored on the following grounds: 1) the facts charged do not constitute an offense; 2) the accused are denied due process; and 3) the accused are not accorded the equal protection of laws.[9]

On 06 January 2000, the Sandiganbayan denied petitioners’ motion. It ruled that the averments in the Information sufficiently charged the offense, and that the mere fact that cases similar to this case were dismissed by the Ombudsman does not mean due process or equal protection of the law clause was denied the petitioners.

Hence, this petition.

Petitioners contend that the reinvestigation conducted by Ombudsman Special Prosecutor II Jose O. Montero, Jr., showed that insufficient funds were the reason for petitioners’ failure to appropriate the money to meet the magna carta benefits of PHWs and that petitioners acted in good faith when they failed to enact the required appropriation ordinance. The Sandiganbayan should have duly considered such findings and the evidence adduced supporting the same, irrespective of the opinion of Ombudsman Aniano A. Desierto. They conclude that the Sandiganbayan erred when it totally failed to consider the findings and recommendations of the Office of the Special Prosecutor.

Petitioners likewise argue that the one-sentence disapproval by Ombudsman Aniano A. Desierto of the recommendations of the Office of the Special Prosecutor was arbitrary, whimsical and capricious for he failed to explain how such action was arrived at, thereby depriving petitioners of their rights to be informed of the facts and the law on which the denial was based.

At the outset, it must be emphasized that petitioners’ choice of remedy is clearly erroneous.

It is basic that Rule 45 of the Rules of Court governs appeals from judgment or final orders.[10] A final order is one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.[11] The resolution of the Sandiganbayan sought to be reviewed or set aside is not in any sense judgment or a final order, but an interlocutory order.[12] An order is interlocutory if it does not dispose of a case completely, but leaves something more to be done on its merits.[13] The order of the Sandiganbayan denying the motion to quash filed by petitioners is interlocutory in nature because it leaves something more to be done by the Sandiganbayan, by way of resolving the case on the merits. The denial of petitioners’ motion to quash allows the same petitioners to enter a plea, go to trial without prejudice on their part to present the special defenses they invoked in their motion and if, after trial on the merits, an adverse decision is rendered, to appeal therefrom via appeal by certiorari.[14]

Even if we consider the petition as one for certiorari under Rule 65 of the Rules of Court, we find that the Sandiganbayan did not commit grave abuse of discretion in denying the petitioners’ motion to quash.

Petitioners fault the Sandiganbayan for not taking into account the findings and recommendations of the Office of the Special Prosecutor which found no probable cause to charge them. Allied to this assignment of error is

petitioners' allegation that the Ombudsman failed to accord them due process of law and equal protection of the law. They claimed they were denied due process because Ombudsman Aniano A. Desierto disapproved the recommendation of Special Prosecutor II Jose O. Montero, Jr., by simply writing a one-line note. The disapproval allegedly deprived them of their right to be informed of the facts and law on which the said disapproval was based. It is further asseverated that they were deprived the equal protection of law since the Ombudsman, in sixteen (16) previous cases which were similar to the case at bar, dismissed the same.

These arguments are specious. Petitioners' submission that they were deprived of due process hinges on the erroneous assumption that respondent Ombudsman failed to assess and consider the evidence presented by petitioners when he disapproved the recommendation by the investigating prosecutor to dismiss the case, and that his ruling was not supported by evidence on record.

The truth of the matter is that petitioners were not denied due process of law. The order of the Ombudsman for the filing of the necessary information is not a case of a total absence of factual and legal bases nor a failure to appreciate the evidence presented. It may appear that the Ombudsman's one-line note lacks any factual or evidentiary grounds as it did not set forth the same. The state of affairs, however, is that the Ombudsman's note stems from his review of the findings of fact reached by the investigating prosecutor.[15] The Ombudsman, contrary to the investigating prosecutor's conclusion, was of the conviction that petitioners are probably guilty of the offense charged, and for this, he is not required to conduct an investigation anew.[16] He is merely determining the propriety and correctness of the recommendation by the investigating prosecutor, i.e., whether probable cause actually exists or not, on the basis of the findings of fact of the latter. He may agree, fully or partly, or disagree completely with the investigating prosecutor. Whatever course of action that the Ombudsman may take, whether to approve or to disapprove the recommendation of the investigating prosecutor, is but an exercise of his discretionary powers based upon constitutional mandate.[17] Generally, courts should not interfere in such exercise. It is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it, save in cases where there is clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman which is absent in the case at hand.[18] Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.[19]

The fact that the Ombudsman merely wrote his recommendation for the filing of the information against petitioners in a one-line note is not a sufficient basis for this Court to attribute arbitrariness or caprice on the part of respondent. As held in *Olivarez v. Sandiganbayan*: [20]

The mere fact that the order to file the information against petitioner was contained in a marginal note is not sufficient to impute arbitrariness or caprice on the part of the respondent special prosecutors, absent a clear showing that they gravely abused their discretion in disapproving the recommendation of the investigating prosecutors to dismiss or withdraw the case against petitioner. Neither are these notes tainted with or indicative of vindictiveness or arbitrariness as imputed by petitioner. Public respondents disapproved the recommendation of the investigating prosecutors because they sincerely believed that there is sufficient evidence to indict the accused.

The contention that petitioners' right to equal protection of the law has been transgressed is equally untenable. The equal protection clause requires that the law operates uniformly on all persons under similar circumstances or that all persons are treated in the same manner, the conditions not being different, both in privileges conferred and the liabilities imposed.[21] It allows reasonable classification. If the classification is characterized by real and substantial differences, one class may be treated differently from another.[22] Simply because the respondent Ombudsman dismissed some cases allegedly similar to the case at bar is not sufficient to impute arbitrariness or

caprice on his part, absent a clear showing that he gravely abused his discretion in pursuing the instant case. The Ombudsman dismissed those cases because he believed there were no sufficient grounds for the accused therein to undergo trial. On the other hand, he recommended the filing of appropriate information against petitioners because there are ample grounds to hold them for trial. He was only exercising his power and discharging his duty based upon the constitutional mandate of his office. Stated otherwise, the circumstances obtaining in the numerous cases previously dismissed by the Ombudsman are entirely divergent from those here existing.

In the same vein, respondent Sandiganbayan could not be blamed for not considering the findings of the special prosecutor because the rule is that in case of conflict in the conclusions of the Ombudsman and the special prosecutor, it is the former's decision that shall prevail since the Office of the Special Prosecutor is under the supervision and control of the Ombudsman.[23] Moreover, 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 grant or deny it, in the faithful exercise of judicial discretion.[24] The court is the best and sole judge on what to do with the case before it.[25] In the instant case, respondent court is convinced that there is adequate evidence against the petitioners. Absence of proof that it gravely abused its discretion, the conclusion arrived at by the Sandiganbayan in its assailed resolution, will not be disturbed.

Besides, petitioners' argument that they could not be indicted for violation of Section 3(e) of Rep. Act No. 3019 as they acted in good faith when they failed to appropriate funds for the unpaid salary differential and magna carta benefits due the private complainants, is evidentiary in nature and is a matter of defense, which could be raised in a full-blown trial on the merits.[26] As aptly held in *Deloso v. Desierto*: [27]

Public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged. They merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof, and should be held for trial. A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that prosecutors believe that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charges.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice and Chairman of the Second Division, Edilberto G. Sandoval, with Associate Justices Godofredo L. Legazpi and Rodolfo G. Palattao, concurring.

[2] Sandiganbayan Records, pp. 27-28.

[3] *Ibid.*, pp. 16-27.

[4] *Id.*, pp. 1-2.

[5] *Ibid.*, pp. 42-56.

[6] *Ibid.*, p. 92.

[7] *Ibid.*, pp. 108-113.

[8] *Id.*

[9] Ibid., pp. 96-107.

[10] Diamante III v. People, G.R. No. 148602, 12 August 2004; Maturan v. People, G.R. No. 150353-54, 27 July 2004, 435 SCRA 323.

[11] Basa, et al. v. People, G.R. No. 152444, 16 February 2005.

[12] Go v. Court of Appeals, G.R. No. 128954, 08 October 1988, 297 SCRA 574; Lalican v. Vergara, G.R. No. 108619, 31 July 1997, 276 SCRA 518, 529.

[13] Basa, et al. v. People, G.R. No. 152444, 16 February 2005, citing Marcelo v. De Guzman, G.R. No. L-29077, 29 June 1982, 114 SCRA 657.

[14] Martinez v. People, G.R. No. 126413, 20 August 1999, 312 SCRA 806; Bulaong v. Court of Appeals, G.R. No. 78555, 30 January 1990, 181 SCRA 618; People v. Espinosa, G.R. Nos. 153714-20, 15 August 2003, 409 SCRA 256.

[15] Olivarez v. Sandiganbayan, G.R. No. 118533, 04 October 1995, 248 SCRA 700; Cruz, Jr. v. People, G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[16] Id.

[17] Id.

[18] Young v. Office of the Ombudsman, G.R. No. 110736, 27 December 1993, 228 SCRA 718; Venus v. Desierto, G.R. No. 130319, 21 October 1998, 298 SCRA 196.

[19] Alba v. Nitorreda, G.R. No. 120223, 13 March 1996, 254 SCRA 753, citing Ocampo, IV v. Ombudsman, G.R. No. 103446, 30 August 1993, 225 SCRA 725.

[20] G.R. No. 118533, 04 October 1995, 248 SCRA 700.

[21] Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, 19 October 2004, citing Nuñez v. Sandiganbayan, 197 Phil. 407.

[22] Id.

[23] Kuizon v. Desierto, G.R. No. 140619, 09 March 2001, 354 SCRA 158, 178.

[24] Odin Security Agency v. Sandiganbayan, G.R. No. 135912, 17 September 2001, 365 SCRA 351; Galvez v. Court of Appeals, G.R. No. 114046, 24 October 1994, 237 SCRA 685.

[25] Crespo v. Mogul, G.R. No. L-53373, 30 June 1987, 151 SCRA 462.

[26] Nava v. Commission on Audit, G.R. No. 136470, 16 October 2001, 367 SCRA 263, 271.

[27] G.R. No. 129939, 09 September 1999, 314 SCRA 125, 134.

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