EXECUTIVE LABOR ARBITER RICARDO N. OLAIREZ, PETITIONER, VS. OMBUDSMAN ANIANO A. DESIERTO, THE SANDIGAN-BAYAN (FOURTH DIVISION) AND ELPIDIO GARCIA, RESPONDENTS.

G.R. No. 142889. September 21, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case is a petition for prohibition[1] with temporary restraining order or preliminary injunction to restrain the Sandiganbayan from conducting the arraignment and further proceedings in Criminal Case No. 25644 against petitioner.

On August 2, 2000, we issued a temporary restraining order enjoining respondents from further proceeding with Criminal Case No. 25644 against petitioner.

The Facts

On August 5, 1998, the Lingkod, an accredited Ombudsman Corruption Prevention Unit (OMB-CPU) referred the affidavit of Elpidio Garcia against petitioner Ricardo N. Olairez of the Regional Arbitration Branch No. 2, National Labor Relations Commission, Caritan Sur, Tuguegarao, Cagayan, to the office of the Ombudsman.

On September 10, 1998, Assistant Ombudsman Nicanor J. Cruz, Jr. referred the affidavit[2] to the office of the Deputy Ombudsman for Luzon (OMB-Luzon).

In his affidavit, Elpidio Garcia alleged that Executive Labor Arbiter Ricardo N. Olairez rendered a decision on April 15, 1998, in his favor on his claim against Edmundo Barrero for separation pay for illegal dismissal. After the decision became final and executory, Elpidio Garcia filed a motion to execute judgment. However, before acting on the motion, petitioner Executive Labor Arbiter Olairez scheduled a pre-execution conference on June 17, 1998. On that date, Labor Arbiter Olairez conferred with respondent Edmundo Barrero and his lawyer. When complainant Garcia was called to the chamber, Labor Arbiter Olairez told him that the decision could not be implemented because his (Olairez's) decision was wrong and that respondent was offering him P2,000.00 to settle his claim. Complainant Garcia did not accept the offer contending that the decision had become final and executory and that Labor Arbiter Olairez could no longer amend the decision.

In an order dated October 8, 1998, the OMB-Luzon required petitioner to file his counter-affidavit.

On November 14, 1998, petitioner Olairez filed an ex-parte motion for extension to file his counter-affidavit until December 9, 1998. Subsequently, he filed another motion requesting that he be allowed to file his counter-affidavit until December 29, 1998.

On December 10, 1998, petitioner Olairez filed his counter-affidavit alleging that a conciliation of labor disputes could still take place even after a decision had become final and executory.

In a resolution dated March 1, 1999, Graft Investigation Officer (GIO) Jane Ong-Yam of the office of the Deputy

Ombudsman for Luzon recommended that the case be dismissed for lack of merit. The recommendation was concurred in by Director Emilio A. Gonzales and was recommended for approval by Deputy Ombudsman for Luzon Jesus F. Guerrero.

On May 9, 1999, the Ombudsman referred the resolution to the office of the Chief Legal Counsel (OCLC) for review.

In a memorandum dated August 4, 1999, Graft Investigation Officer Peter A. Tansiongco of the OCLC recommended that the March 1, 1999, resolution be disapproved and submitted an Information dated August 4, 1999, attached therewith, to be filed against petitioner Ricardo N. Olairez for violation of Republic Act No. 3019, Section 3 (e), as amended, for the consideration of the Ombudsman. Chief Legal Counsel Andrew F. Ammuyutan recommended the approval of Graft Investigation Officer Tansiongco's memorandum.

On August 16, 1999, the Ombudsman approved the recommendation of the Chief Legal Counsel and signed the memorandum and Information both dated August 4, 1999, while he disapproved the March 1, 1999 resolution of Graft Investigation Officer Jane Ong-Yam.

On August 24, 1999, petitioner was notified of the memorandum dated August 4, 1999, as evidenced by Registry Receipt No. 686.

On August 25, 1999, the Ombudsman filed with the Sandiganbayan an Information[3] charging petitioner Ricardo N. Olairez with violation of R. A. No. 3019, Sec. 3 (e), which was raffled to the Fourth Division.

Petitioner thereafter filed with the Sandiganbayan a motion for reinvestigation and deferment of the arraignment.

In a resolution dated October 18, 1999, the Sandiganbayan required the prosecution to comment on the motion.

In its comment dated November 29, 1999, the prosecution interposed no objection to petitioner's motion for reinvestigation and asked for sixty (60) days within which to resolve the motion.

In a resolution dated December 13, 1999, the Sandiganbayan gave the prosecution sixty (60) days within which to conduct a reinvestigation/reconsideration of the case and to submit a report as to the action taken thereon by the Ombudsman.

In a memorandum dated February 17, 2000, Ombudsman Prosecutor Lolita S. Rodas recommended that the motion for reinvestigation/reconsideration be denied and the Information be maintained. The memorandum was approved by Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo. On March 3, 2000, the Ombudsman approved the memorandum of Ombudsman Prosecutor Rodas.

On April 24, 2000, the prosecution filed with the Sandiganbayan a manifestation and motion praying that the arraignment and pre-trial of the case be scheduled considering that the Ombudsman has denied petitioner's motion for reinvestigation/reconsideration.

In a resolution dated May 15, 2000, the Sandiganbayan scheduled the arraignment and pre-trial of this case on July 18, 2000, unless the Court issues a temporary restraining order.

Hence, this petition.[4]

The Issue

Whether the Ombudsman acted with grave abuse of discretion in filing with the Sandiganbayan the Information against petitioner for violation of R. A. No. 3019, Sec. 3 [e].

It was petitioner's contention that the Ombudsman fraudulently issued the Information dated August 4, 1999, even

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before his disapproval of the recommendation of the Deputy Ombudsman for Luzon. Petitioner claimed that he was deprived of his right to due process when the Ombudsman approved the Information and memorandum both dated August 4, 1999.

Petitioner also imputed malice to the Ombudsman in disapproving the recommendation of the OMB-Luzon dismissing the case against him.

The offense of which petitioner is charged is violation of Republic Act No. 3019, Section 3 (e), as amended. To establish probable cause against the offender for violation of R. A. No. 3019, Section 3 (e), the following requisites must concur:

> "(1)
>
> The accused is a public officer or a private person charged in conspiracy with the former;
>
> "(2)
>
> The said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;
>
> "(3)
>
> That he or she causes undue injury to any party, whether the government or a private party;
>
> "(4)
>
> Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
>
> "(5)
>
> That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[5]

In the instant case, petitioner, as Executive Labor Arbiter, issued an order awarding to the complainant the amount of P35,832.50, as separation pay in an illegal dismissal case filed by the latter against Edmundo Barrero. When the order became final and executory, complainant filed a motion to execute judgment. On June 17, 1998, petitioner during the pre-execution conference informed the complainant that the order could not be implemented because it was wrong and that respondent was offering P2,000.00, to the complainant.

In his counter affidavit, petitioner explained that his actions were in accordance with Section 6, Rule V of the NLRC New Rules of Procedure that provides:

> "Section 6. Conciliation of Disputes. - In all cases, and at any stage of the proceedings, the Labor Arbiter shall exert all efforts and take positive steps toward resolving the dispute through conciliation."

It will be noted that the conciliation efforts may be conducted "at any stage of the proceedings" even if the judgment has become final and executory.

In this case, there is no allegation in the Information that petitioner acted in bad faith, malice or gross inexcusable negligence in exerting efforts to settle the labor dispute.

Moreover, the information does not specify the specific amount of the damage or injury suffered by the complainant. Actually, complainant did not suffer any injury because he did not accept the offer, and he could execute the monetary award in his favor as a matter of right.

In the absence of allegation of bad faith, and more importantly, of "injury" there can be no prosecution for violation of R. A. No. 3019, Sec. 3 (e).[6]

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WHEREFORE, we GRANT the petition. We REVERSE the resolution of the Ombudsman and order the Sandiganbayan to dismiss the Information against petitioner in Criminal Case No. 25644.

No costs.

SO ORDERED.

Kapunan, and Ynares-Santiago, JJ., concur.
Davide, Jr., C.J., (Chairman), in the result.
Puno J., on official leave.

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[1] Under Rule 65, 1997 Rules of Civil Procedure.

[2] Docketed as OMB-1-98-1960.

[3] Docketed as Criminal Case No. 25644.

[4] Filed on May 5, 2000, Petition, Rollo, pp. 3-27. On January 24, 2001, we gave due course to the petition (pp. 247-248).

[5] Garcia v. Office of the Ombudsman, 325 SCRA 667, 669-670 [2000], citing Pecho v. Sandiganbayan, 238 SCRA 116, 128 [1994]; Llorente, Jr. v. Sandiganbayan, 350 Phil. 820, 837 [1998]; Ingco v. Sandiganbayan, 338 Phil. 1061, 1072 [1997].

[6] Venus v. Desierto, 358 Phil. 675, 699 [1999].

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