JOSE B. DEL ROSARIO, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE OFFICE OF THE SPECIAL PROSECUTOR,[] RESPONDENTS.

G.R. NO. 143419. June 22, 2006

Ponente: CORONA, J.

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CORONA, J.:

In this petition for review on certiorari,[1] petitioner Jose B. del Rosario, Jr. assails the pre-trial order[2] dated May 2, 2000 of the Sandiganbayan in Criminal Case No. 22715.

The facts are undisputed.

On July 19, 1991, five employees of the National Irrigation Administration (NIA), headed by Atty. Musa I. Malayang, filed a letter-complaint dated July 12, 1991 with the Office of the Ombudsman charging petitioner (who was then the Administrator of NIA), among others, of violating Republic Act No. (RA) 6713 or the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other laws, rules and regulations of the Commission on Audit and Civil Service Commission.[3] The administrative aspect of the case against petitioner was docketed as OMB-ADM-0-91-0341 while the criminal aspect was docketed as OMB-0-91-1540.[4]

After investigation, the Office of the Ombudsman, in a resolution dated June 15, 1992, dismissed OMB-0-91-1540.[5] On review, it was again dismissed in a resolution dated September 30, 1992.[6] Complainants' motions for reconsideration were denied in an order dated December 10, 1993.[7] The complainants, however, filed a supplemental motion for reconsideration dated August 2, 1994 which was granted in a resolution dated March 7, 1995.[8] Thus, two informations were filed against petitioner: Criminal Case No. 22715 for estafa through falsification of public document and Criminal Case No. 22716 for violation of RA 3019, Section 3 (e).[9]

On May 23, 1995, petitioner filed a motion with the Ombudsman praying that the two informations be formally withdrawn since the issuance of the March 7, 1995 resolution was null and void.[10] He argued that these informations were filed in violation of Section 27 of RA 6770 or the Ombudsman Act of 1989,[11] as well as Rule II, Section 7 of the Ombudsman's Administrative Order No. 07[12] and settled jurisprudence. This motion was denied on September 12, 1995.[13] The information for Criminal Case No. 22716 was subsequently withdrawn on the motion of the prosecution which cited insufficiency of evidence.[14] Meanwhile, petitioner filed a motion to quash[15] the information in Criminal Case No. 22715 which the Sandiganbayan denied.[16]

Hence, petitioner filed with this Court a petition for certiorari under Rule 65, docketed as G.R. No. 131746, seeking to annul the resolutions of the Sandiganbayan dated June 6, 1997 and December 13, 1997[17] which denied petitioner's motion to quash the information in Criminal Case No. 22715. However, because of petitioner's non-compliance with the Court's resolution[18] requiring him to file a reply to the comment of respondents therein, his petition was dismissed in a resolution dated April 12, 1999.[19] On July 14, 1999, petitioner's motion for reconsideration was denied with finality by this Court.[20]

Consequently, the Sandiganbayan (Fifth Division)[21] proceeded to set the pre-trial conference in Criminal Case No. 22715.[22] Respondents People of the Philippines and Office of the Special Prosecutor filed their request for admission on January 26, 2000 while petitioner filed his reply to the request for admission on March 6, 2000.[23] Petitioner also filed his own request for admission on March 2, 2000 but the respondents filed their objection to petitioner's request for admission on March 10, 2000.[24] Thereafter, the pre-trial was conducted and a pre-trial order issued on May 2, 2000. During the pre-trial, respondent Office of the Special Prosecutor objected to the marking of the documents used by petitioner in G.R. No. 131746, citing lack of relevance.[25]

Petitioner now assails this pre-trial order on the ground that the Sandiganbayan refused to allow him to mark certain documents for his defense and to raise the fundamental issue of whether the information in Criminal Case No. 22715 was null and void.

Thus, petitioner raises this lone issue: did the resolution of this Court dated April 12, 1999 in G.R. No. 131746 dismissing his petition constitute res judicata as to the issue raised in that petition, thereby effectively barring him from marking the documents mentioned in and attached to said petition as his exhibits in Criminal Case No. 22715 and also from raising the issue of the nullity and invalidity of the information in said criminal case?[26]

The petition is bereft of merit.

First of all, this petition should be dismissed outright for adopting the wrong mode of appeal. Petitioner is assailing the pre-trial order of the Sandiganbayan. A petition for review on certiorari under Rule 45 is inappropriate to assail an interlocutory order. A pre-trial order is an interlocutory order since it is one "which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits."[27] The proper subject of a petition for review on certiorari under Rule 45 is a final judgment or order which finally disposes of a case, leaving nothing more to be done by the Court in respect thereto.[28]

Assuming, however, that petitioner were allowed to take an appeal under Rule 45 from said order, still the petition would fail. Petitioner cannot be allowed to litigate anew the issues he raised in G.R. No. 131746 which we already denied with finality for his failure to file a reply to respondents' comment despite ample notice.

Petitioner insists that G.R. No. 131746 was dismissed only for his failure to file a reply to comment, hence, there was no judgment on the merits which was an essential requisite for the applicability of res judicata.[29]

We disagree.

Although contained in a minute resolution, our dismissal of the petition in G.R. No. 131746 was definitely a disposition of the merits of the case and constituted a bar to a relitigation of the issues raised there under the doctrine of res judicata. When we dismissed the petition, we effectively affirmed the ruling being questioned. Thus, our ruling has already become final. In Bernarte v. Court of Appeals,[30] we declared:

> The petition in G.R. No. 100663 was dismissed for noncompliance with Circular No. 1-88. Contrary to petitioners' contention, however, such a dismissal through a minute resolution was one on the merits of the petition. Thus, where a first petition for certiorari was dismissed for noncompliance with paragraph 4 of Circular No. 1-88 and another petition, complying with said circular and basically reiterating the same issues raised in the first petition was filed a year later, the Court dismissed the second petition and severely censured counsel for petitioner for refiling the same petition. In a Resolution, the Court stated as follows:"...(I)t is equally axiomatic that minute resolutions of this Court, denying due course to petitions, or dismissing cases summarily - for failure to comply with the formal or substantial requirements laid down therefor by the law - are actually dispositions on the merits, constituting res judicata."

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Hence, even though the Court did not explicitly resolve G.R. No. 100663 on the merits, its dismissal on the ground of noncompliance with Circular No. I-88 had the effect of resolving the issues raised therein. While it may be argued that said circular is merely a remedial measure which should not unduly affect the substantive aspects of a case, its force and effect must be at all times be upheld for, after all, it was designed for the orderly administration of justice.[31]

It is also important to note that in our rules for filing of petitions under Rule 45, "review is not a matter of right but of sound judicial discretion, and will be granted only when there are special and important reasons therefor."[32]

Petitioner has only himself to blame for not being zealous in advancing his cause in G.R. No. 131746. He had a chance to present such issues before us but because of his negligence, he is now precluded from doing so in this present petition and in the proceedings in Criminal Case No. 22715. Petitioner is now bound by the adverse judgment that has already attained finality.

> It was to be so, otherwise, there would be no end to litigation. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest. Even an alleged erroneous application of a legal principle cannot bring a judgment that has already attained the status of finality to an absolute nullity under the well entrenched rule of finality of judgment. This rule is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of the court must become final at some definite date fixed by law.[33]

WHEREFORE, the petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[*] The Sandiganbayan (Fifth Division) was impleaded as a respondent in this petition. However, under Rule 45, Section 4 of the 1997 Rules of Court, the petition may be filed without impleading the lower courts or judges thereof as petitioners or respondents. Hence, the Court deleted them from the title.

[1] Under Rule 45 of the Rules of Court.

[2] Given in open court by Justice Minita V. Chico-Nazario, Chairman (now Supreme Court Justice), Associate Justices Ma. Cristina G. Cortez-Estrada and Nicodemo T. Ferrer of the Fifth Division of the Sandiganbayan; rollo, pp. 4-12.

[3] Id., pp. 354-355.

[4] Id., p. 5.

[5] Ombudsman Investigator II Raul E. Totanes recommended the dismissal of the charges and this recommendation was approved by Ombudsman Conrado M. Vasquez; id., pp. 48-63.

[6] Special Prosecution Officer III Gualberto J. de la Llana likewise recommended the dismissal of the charges and this recommendation was approved by Ombudsman Vasquez; id., pp. 64-73. As for the administrative case, the Ombudsman issued a resolution dated July 28, 1992 dismissing petitioner from the service, with accessory penalties; id., pp. 91-92.

[7] Id., p. 119.

[8] Graft Investigation Officer Terencio R. Yumang, Jr. recommended that petitioner be charged for violation of RA 3019, Sec. 3 (e) and estafa through falsification of public document. This recommendation was approved by Ombudsman Vasquez; id., p. 170.

[9] Id., pp. 180-183.

[10] Id., p. 23.

[11] Sec. 27. Effectivity and Finality of Decisions. - (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory. A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

> (1) New evidence has been discovered which materially affects the order, directive or decision;
>
> (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

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 for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

[12] From the Rules of Procedure of the Office of the Ombudsman dated April 10, 1990:

> Section 7. Motion for reconsideration. -
>
> (a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within fifteen (15) days from notice thereof with the Office of the Ombudsman, or the Deputy Ombudsman as the case may be.
>
> (b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed.

[13] Special Prosecution Officer I Emma G. Masangcay-Andrada recommended that petitioner's motion be denied and this recommendation was approved by Ombudsman Aniano A. Desierto; Rollo, pp. 204-207.

[14] By the Second Division of the Sandiganbayan; id., pp. 24, 191-194, 303.

[15] Petitioner also previously filed a motion to suspend proceedings in crim. case no. 22715; id. pp. 195-203.

[16] Penned by former Presiding Justice Francis E. Garchitorena and concurred in by Associate Justices Minita V. Chico-Nazario (now Supreme Court Justice) and Edilberto G. Sandoval of the First Division; id., pp. 25, 219-225.

[17] Id., pp. 219-237, 243.

[18] Dated October 12, 1998; id., p. 245.

[19] Id.

[20] Id., p. 246.

[21] Crim. Case No. 22715 was originally raffled to the First Division of the Sandiganbayan but subsequently, the Fifth Division took over; id., pp. 303-304.

[22] Id., p. 243.

[23] Id., pp. 363-364.

[24] Id.

[25] Id., p. 11.

[26] Id., p. 32.

[27] BLACK'S LAW DICTIONARY, 6th ed., p. 815 (1991).

[28] Denso (Phils.), Inc. v. Intermediate Appellate Court, G.R. No. L-75000, 27 February 1987, 148 SCRA 280, 286, citations omitted.

[29] Rollo, p. 372.

[30] G.R. No. 107741, 18 October 1996, 263 SCRA 323.

[31] Id., pp. 337-338, citations omitted, italics in the original.

[32] Sec. 6, Rule 45, Rules of Court.

[33] So v. Court of Appeals, G.R. No. 138869, 21 August 2001, 363 SCRA 473, 478, citations omitted.

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