REYNOLAN T. SALES, PETITIONER, VS. SANDIGANBAYAN (4TH DIVISION), OMBUDSMAN, PEOPLE OF THE PHILIPPINES AND THELMA BENEMERITO, RESPONDENTS.

G.R. No. 143802. November 16, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Court is tasked to resolve the issue of whether or not the proper procedure was followed and whether petitioner's constitutional rights were safeguarded during the preliminary investigation conducted before the filing of an Information for Murder against him and the issuance of a warrant for his arrest by respondent Sandiganbayan. Petitioner asserts that the Information was hastily filed and the warrant for his arrest was improper because of an incomplete preliminary investigation. Respondents say otherwise.

The pertinent factual antecedents are matters of record or are otherwise uncontroverted.

On August 2, 1999, petitioner, the incumbent town mayor of Pagudpud, Ilocos Norte, fatally shot the former mayor and his political rival, Atty. Rafael Benemerito, in an alleged shootout in Barangay Caparispisan of said municipality after a heated altercation between them. After the shooting incident, petitioner surrendered and placed himself under the custody of the municipal police then asked that he be brought to the Provincial PNP Headquarters in Laoag City.

The next day, August 3, 1999, Police Chief Inspector Crispin Agno and private respondent Thelma Benemerito, wife of the victim, filed a criminal complaint for Murder[1] against petitioner at the Municipal Circuit Trial Court of Bangui, Ilocos Norte, Branch 127, presided by Judge Melvin U. Calvan.

Judge Calvan then conducted a preliminary examination of the witnesses, in accordance with Section 6 (b), Rule 112 of the Rules on Criminal Procedure, found "the existence of probable cause," and thereafter issued an order dated August 3, 1999 for the issuance of a warrant for the arrest of petitioner with no bail recommended.[2] By virtue of the warrant of arrest, petitioner was transferred on August 4, 1999 from the Provincial PNP Headquarters to the Provincial Jail.

On August 5, 1999, Judge Calvan, after conducting a "preliminary investigation in accordance with Sec. 6 (b) of Rule 112 of the Rules on Criminal Procedure," issued a resolution forwarding the records of the case to the Office of the Provincial Prosecutor of Ilocos Norte for appropriate action.[3] In addition to the records transmitted by Judge Calvan, there was also submitted to the Provincial Prosecutor of Ilocos Norte an NBI "Parallel Investigation" Report dated August 13, 1999, "pursuant to the request for Investigative Assistance made by Dra. Thelma Lasmarias Benemerito, wife of the victim,"[4] with several annexed affidavits, sworn statements and documents.

Subsequently, on August 19, 1999, petitioner received a subpoena dated August 18, 1999 from the Provincial Prosecutor of Ilocos Norte directing him to file his counter-affidavit and the affidavits of his witnesses as well as

other supporting documents within ten (10) days from receipt thereof.[5] This petitioner did the following day, August 20, 1999.

While the foregoing proceedings were ongoing, petitioner filed a petition for habeas corpus with the Court of Appeals docketed as CA-G.R. SP No 54416, alleging that: 1.] the order and warrant of arrest for which petitioner was detained is null and void for being issued by respondent judge who was disqualified by law from acting on the case by reason of his affinity to private respondent Thelma Benemerito; and 2.] the preliminary examination by respondent judge was so illegally and irregularly conducted as to oust the said judge of jurisdiction over the case.

In a Decision dated November 18, 1999,[6] the appellate court granted the petition for habeas corpus and ordered the release of petitioner from detention subject to the outcome of the proper preliminary investigation. In granting the petition, the Court of Appeals reasoned, inter alia, that:

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> It is uncontroverted that respondent Judge is a relative within the third civil degree of affinity of private respondent Thelma Benemerito. Respondent judge is married to Susana Benemerito-Calvan, whose father is a brother of the victim.
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> Section 1, Rule 137 of the Rules of Court disqualifies a judge from sitting in a case in which he is related to either party within the sixth degree of consanguinity or affinity. This disqualification is mandatory, unlike an inhibition which is discretionary. It extends to all proceedings, not just to the trial as erroneously contended by respondent judge. Even Canon 3.12 of the Code of Judicial Conduct mandates that a judge shall take no part in a proceeding where the judge's impartiality might be reasonably questioned, as when he is "related by consanguinity or affinity to a party litigant within the sixth degree." Due process likewise requires hearing before an impartial and disinterested tribunal so that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent.[7]
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> The preliminary examination conducted by respondent Judge does not accord with the prevailing rules. He did it under the old rules, where the preliminary investigation by the municipal judge has two stages: (1) the preliminary examination stage during which the investigating judge determines whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial; and (2) the preliminary investigation proper where the complaint or information is read to the accused after his arrest and he is informed of the substance of the evidence adduced against him, after which he is allowed to present evidence in his favor if he so desires. Presidential Decree 911 (further amending Sec. 1, R.A. 5180, as amended by P.D. 77) upon which the present rule is based, removed the preliminary examination stage and integrated it into the preliminary investigation proper. Now the proceedings consists of only one stage.[8]
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> Respondent Judge did not conduct the requisite investigation prior to issuance of the arrest warrant. The Rules require an examination in writing under oath in the form of searching questions and answers.[9] The statements of witnesses were not sworn before him but before the Provincial Prosecutor. The purported transcript of stenographic notes do not bear the signature of the stenographer.
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> Moreover, he did not complete the preliminary investigation. He claimed to have examined only the witnesses of the complainant. He issued a Resolution and forwarded the records to the Provincial Prosecutor without giving the accused (petitioner) an opportunity to submit counter-affidavits and supporting documents.[10]

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> While it is true that the usual remedy to an irregular preliminary investigation is to ask for a new preliminary investigation, such normal remedy would not be adequate to free petitioner from the warrant of arrest which stemmed from that irregular investigation. The Provincial Prosecution has no power to recall the warrant of arrest.

Meanwhile, after receipt of the records of the case from Judge Calvan as well as petitioner-accused's counter-affidavits, the Ilocos Norte Provincial Prosecutor, instead of conducting a preliminary investigation of his own, merely forwarded the said records to the Ombudsman for the latter to conduct the same.

It appears that petitioner was only apprised of the foregoing inaction on the case by the Provincial Prosecutor when he received on September 10, 1999 a Memorandum dated September 2, 1999,[11] filed by private respondent's counsel, requesting that the case, I.S. No. 99-548, "be remanded to Office of the Ombudsman for preliminary investigation and, thereafter, for the prosecution of the appropriate indictments before the Sandiganbayan."[12]

On January 27, 2000, petitioner received a notice from the Ombudsman directing him to file his counter-affidavits. Considering that petitioner had already submitted his counter-affidavits to the Ilocos Norte Provincial Prosecutor as far back as August 20, 1999, he found the directive superfluous and did not act on it.

On May 25, 2000, Graft Investigation Officer II Cynthia V. Vivar issued a Resolution[13] recommending the filing of an Information for Murder against petitioner and four others[14] before the Sandiganbayan. The recommendation was approved by the Ombudsman on June 16, 2000.[15]

It appears that petitioner belatedly received a copy of the foregoing Resolution of the graft investigation officer only on June 21, 2000, and because he was thus effectively prevented from seeking a reconsideration thereof, he then filed a Motion To Defer Issuance Of Warrant Of Arrest pending determination of probable cause dated June 22, 2000.[16] The motion was denied by Sandiganbayan's Fourth Division in the challenged Resolution of July 13, 2000.[17]

Owing to the urgency of the matter, petitioner opted to directly resort to this recourse eschewing the filing of a motion for reconsideration on the grounds that -

> (A) THE SANDIGANBAYAN DENIED MAYOR SALES HIS RIGHT TO DUE PROCESS WHEN IT RULED HIM TO HAVE NO STANDING TO OBJECT TO THE ISSUANCE OF A WARRANT FOR HIS ARREST SINCE HE HAS NOT SUBMITTED TO ITS CUSTODY.
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> (B) THE SANDIGANBAYAN DENIED MAYOR SALES HIS RIGHT TO DUE PROCESS WHEN IT ISSUED A WARRANT FOR HIS ARREST ON THE BASIS OF AN INCOMPLETE PRELIMINARY INVESTIGATION.
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> (C) THE OMBUDSMAN DENIED MAYOR SALES HIS RIGHT TO DUE PROCESS WHEN IT HURRIEDLY FILED AN INFORMATION FOR MURDER AGAINST HIM WITHOUT SCRUTINIZING, OR EVEN ONLY READING, ALL THE EVIDENCE BEFORE HIM AND WITHOUT CALLING FOR PRODUCTION OF THE CRITICAL PHYSICAL EVIDENCE.
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> (D) NOT ONLY DID THE SANDIGANBAYAN GRAVELY ABUSE ITS DISCRETION WHEN IT RELIED ON AN INCOMPLETE PRELIMINARY INVESTIGATION CONDUCTED BY THE OMBUDSMAN BUT IT FURTHER AGGRAVATED THIS GRAVE ABUSE WHEN IT OMITTED ALTOGETHER TO CONDUCT ITS OWN INDEPENDENT REVIEW OF THE EVIDENCE OF PROBABLE CAUSE.

The primordial question to be resolved in this controversy is whether or not the Ombudsman followed the proper

procedure in conducting a preliminary investigation and, corollarily, whether or not petitioner was afforded an opportunity to be heard and to submit controverting evidence.

As this Court pointed out in Duterte v. Sandiganbayan,[18] "[t]he purpose of a preliminary investigation or a previous inquiry of some kind, before an accused person is placed on trial, is to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial.[19] It is also intended to protect the state from having to conduct useless and expensive trials.[20] While the right is statutory rather than constitutional in its fundament, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process."[21]

Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has been called a judicial inquiry. It is a judicial proceeding. An act becomes a judicial proceeding when there is an opportunity to be heard and for the production of and weighing of evidence, and a decision is rendered thereon.[22]

The authority of a prosecutor or investigating officer duly empowered to preside or to conduct a preliminary investigation is no less than a municipal judge or even a regional trial court judge. While the investigating officer, strictly speaking, is not a "judge" by the nature of his functions, he is and must be considered to be a quasi-judicial officer because a preliminary investigation is considered a judicial proceeding.[23] A preliminary investigation should therefore be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage.[24]

Indeed, since a preliminary investigation is designed to screen cases for trial, only evidence may be considered. While even raw information may justify the initiation of an investigation, the stage of preliminary investigation can be held only after sufficient evidence has been gathered and evaluated warranting the eventual prosecution of the case in court.[25] In other words -

> . . . it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantee of freedom and fair play which are the birthrights of all who live in our country. It is therefore imperative upon the fiscal or the judge, as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reason.[26]

Measured vis-à-vis the foregoing legal yardsticks, we hold that the proper procedure in the conduct of the preliminary investigation was not followed, for the following reasons:

First, the records show that the supposed preliminary investigation was conducted in installments by at least three (3) different investigating officers, none of whom completed the preliminary investigation. There was not one

continuous proceeding but rather a case of passing the buck, so to speak, the last one being the Ombudsman hurriedly throwing the buck to the Sandiganbayan. This practice of "passing the buck" by the Ombudsman to the Sandiganbayan was met with disapproval in Venus v. Desierto[27] where this Court speaking through then Associate Justice, now Chief Justice Hilario G. Davide, Jr., trenchantly said that:

> Upon a subsequent re-assessment of the evidence as a consequence of petitioner's motion for reconsideration, another Special Prosecution Officer xxx found that petitioner had not violated Sec. 3 (e) of R.A. No. 3019, as amended, he thus, recommended dismissal of the case for want of probable cause and the filing of the corresponding manifestation to inform the Sandiganbayan of the result of the motion for reconsideration. In this instance the Special Prosecutor himself concurred with the finding. However, the Ombudsman disapproved the recommendation as he found that probable cause existed but opted to "allow the court to find absence of bad faith."
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> This marginal note of the Ombudsman simply meant that he believed that petitioner was in bad faith. However, good faith is always presumed and the Chapter on Human Relations of the Civil Code directs every person, inter alia, to observe good faith which, according to the Commission, springs from the foundation of good conscience. Therefore, he who charges another with bad faith must prove it. In this sense, the Ombudsman should have first determined the facts indicative of bad faith. On the basis alone of the finding and conclusion of Special Prosecution Officer III Victor Pascual, with which the Special Prosecutor concurred, there was no showing of bad faith on the part of petitioner. It was, therefore, error for the Ombudsman to "pass the buck", so to speak, to the Sandiganbayan to find "absence of bad faith."
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> x x x x x x x x x.[28]

Second, the charge against herein petitioner is Murder, a non-bailable offense. The gravity of the offense alone, not to mention the fact that the principal accused is an incumbent mayor whose imprisonment during the pendency of the case would deprive his constituents of their duly-elected municipal executive, should have merited a deeper and more thorough preliminary investigation. The Ombudsman, however, did nothing of the sort and instead swallowed hook, line and sinker the resolution and recommendation of Graft Investigation Officer II Cynthia V. Vivar, among them the finding that, "aside from the averment of respondent that the victim fired at him and he was only forced to fire back, no other evidence was adduced to indicate that such was what happened."[29]

There are, however, four affidavits on record[30] which state in categorical terms that it was the victim who first fired at petitioner with his Armalite rifle and that petitioner merely returned fire. An Armalite rifle and empty shells were recovered from the scene of the incident by the PNP and impounded by it. According to the Physical Science Report No. C-147A-99,[31] some of the shells correspond to the Armalite rifle, thereby indicating that the firearm was fired. The Ombudsman, however, neither called for the production of the firearm and the empty shells, nor did he ask for the production of the ballistic and laboratory examinations of the bloodstains on the Armalite rifle despite the statement by the Provincial Fiscal of Ilocos Norte that these pieces of evidence were all available.[32]

There are, furthermore, other dubious circumstances which should have prompted the Ombudsman to take a second, deeper look instead of adopting in toto the recommendation of GIO II Vivar. Among these is the matter of the two (2) different autopsies on the cadaver of the victim, one indicating that the victim sustained two (2) wounds only and the other showing that the victim had three (3) wounds. The significance of this fact was not appreciated by the Ombudsman who likewise glossed over the adamant refusal of the private respondent to subject the cadaver of the victim to a paraffin test, despite the claims of the accused's witnesses that the victim fired the Armalite rifle.

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Given the foregoing circumstances, the Ombudsman for all practical purposes did an even worse job than Judge Calvan for, by adopting in its entirety the findings of the investigating officer despite its obvious flaws, he actually did nothing at all and, in effect, threw everything to the Sandiganbayan for evaluation. This practice, as earlier stated, was not condoned in Venus v. Desierto, supra. Nor will it be in this case. Prosecutors are endowed with ample powers in order that they may properly fulfill their assigned role in the administration of justice. It should be realized, however, that when a man is haled to court on a criminal charge, it brings in its wake problems not only for the accused but for his family as well. Therefore, it behooves a prosecutor to weigh the evidence carefully and to deliberate thereon to determine the existence of a prima facie case before filing the information in court. Anything less would be a dereliction of duty.[33]

Third, a person under preliminary investigation by the Ombudsman is entitled to file a motion for reconsideration of the adverse resolution. This right is provided for in the very Rules of Procedure of the Ombudsman,[34] which states:

> SEC. 7. Motion for Reconsideration.
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> a)
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> 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.
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> b)
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> 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. (Emphasis supplied).

The filing of a motion for reconsideration is an integral part of the preliminary investigation proper. There is no dispute that the Information was filed without first affording petitioner-accused his right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary investigation conducted in this case incomplete. The inevitable conclusion is that the petitioner was not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman's final resolution but also deprived of his right to a full preliminary investigation preparatory to the filing of the information against him.[35]

As stated earlier, it appears that petitioner belatedly received a copy of the May 25, 2000 Resolution of Graft Investigation Officer II Cynthia V. Vivar only on June 21, 2000. Because he was thus effectively precluded from seeking a reconsideration thereof, he then filed a Motion To Defer Issuance Of Warrant Of Arrest pending determination of probable cause.[36] The Sandiganbayan denied the motion in its challenged Resolution of July 13, 2000,[37] and forthwith ordered the issuance of the warrant of arrest against petitioner. Suffice it to state in this regard that such a deprivation of the right to a full preliminary investigation preparatory to the filing of the information warrants the remand of the case to the Ombudsman for the completion thereof.[38]

Fourth, it was patent error for the Sandiganbayan to have relied purely on the Ombudsman's certification of probable cause given the prevailing facts of this case much more so in the face of the latter's flawed report and one-sided factual findings. In the order of procedure for criminal cases, the task of determining probable cause for purposes of issuing a warrant of arrest is a responsibility which is exclusively reserved by the Constitution to judges.[39] People v. Inting[40] clearly delineated the features of this constitutional mandate, viz: 1.] The determination of probable cause is a function of the judge; it is not for the provincial fiscal or prosecutor to ascertain. Only the judge and the judge alone makes this determination; 2.] The preliminary inquiry made by a

prosecutor does not bind the judge. It merely assists him in making the determination of probable cause. It is the report, the affidavits, the transcripts of stenographic notes, if any, and all other supporting documents behind the prosecutor's certification which are material in assisting the judge in his determination of probable cause; and 3.] Judges and prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or be released. Even if the two inquiries be made in one and the same proceeding, there should be no confusion about their objectives. The determination of probable cause for purposes of issuing the warrant of arrest is made by the judge. The preliminary investigation proper - whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial - is the function of the prosecutor.

Stated differently, while the task of conducting a preliminary investigation is assigned either to an inferior court magistrate or to a prosecutor,[41] only a judge may issue a warrant of arrest. When the preliminary investigation is conducted by an investigating prosecutor, in this case the Ombudsman,[42] the determination of probable cause by the investigating prosecutor cannot serve as the sole basis for the issuance by the court of a warrant of arrest. This is because the court with whom the information is filed is tasked to make its own independent determination of probable cause for the issuance of the warrant of arrest. Indeed -

> . . . the Judge cannot ignore the clear words of the 1987 Constitution which requires . . . probable cause to be personally determined by the judge . . . not by any other officer or person.
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> The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be brief or as detailed as the circumstances of each case may require. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances so require.
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> We reiterate that in making the required personal determination, a Judge is not precluded from relying on the evidence earlier gathered by responsible officers. The extent of the reliance depends on the circumstances of each case and is subject to the Judge's sound discretion. However, the Judge abuses that discretion when having no evidence before him, he issues a warrant of arrest.
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> Indubitably, the respondent Judge committed a grave error when he relied solely on the Prosecutor's certification and issued the questioned Order dated July 5, 1990 without having before him any other basis for his personal determination of the existence of probable cause.[43]

All told, the Court cannot accept the Sandiganbayan's assertions of having found probable cause on its own, considering the Ombudsman's defective report and findings, which merely relied on the testimonies of the witnesses for the prosecution and disregarded the evidence for the defense.[44] In Roberts v. CA,[45] the trial judge was chastised by the Court for issuing a warrant of arrest without even reviewing the records of the preliminary investigation which were then still with the Department of Justice. In the case at bar, it cannot be said that the Sandiganbayan reviewed all the records forwarded to it by the Ombudsman considering the fact that the preliminary investigation which was incomplete escaped its notice.

What the Sandiganbayan should have done, faced with such a slew of conflicting evidence from the contending

parties, was to take careful note of the contradictions in the testimonies of the complainant's witnesses as well as the improbabilities in the prosecution evidence.[46] Certainly -

> . . . probable cause may not be established simply by showing that a trial judge subjectively believes that he has good grounds for his action. Good faith is not enough. If subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be "secure in their persons, houses, papers and effects" only in the fallible discretion of the judge.[47] On the contrary, the probable cause test is an objective one, for in order that there be probable cause the facts and circumstances must be such as would warrant a belief by a reasonably discreet and prudent man that the accused is guilty of the crime which has just been committed.[48] This, as we said is the standard. xxx
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> The sovereign power has the inherent right to protect itself and its people from the vicious acts which endanger the proper administration of justice; hence the State has every right to prosecute and punish violators of the law. This is essential for its self-preservation, nay its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute is not a carte blanche for government agents to defy and disregard the rights of its citizens under the Constitution. Confinement, regardless of duration, is too a high a price to pay for reckless and impulsive prosecution. x x x
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> The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political power. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities. Certainly, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former. Thus, relief may be availed of to stop the purported enforcement of criminal law where it is necessary to provide for an orderly administration of justice, to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights.[49]

In this case, the undue haste in filing of the information against petitioner cannot be ignored. From the gathering of evidence until the termination of the preliminary investigation, it appears that the state prosecutors were overly-eager to file the case and to secure a warrant of arrest of petitioner without bail and his consequent detention. There can be no gainsaying the fact that the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of the prosecutors. There is however, a standard in the determination of the existence of probable cause. The determination has not measured up to that standard this case.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

1.] SETTING ASIDE the Resolutions of the Sandiganbayan dated July 13, 2000 and the Resolution of Graft Investigation Officer II Cynthia V. Vivar dated May 25, 2000 in Criminal Case No. 26115;

2.] Ordering the Sandiganbayan to QUASH the warrant of arrest it issued against petitioner;

3.] REMANDING the case to the Ombudsman for completion of the preliminary investigation.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Rollo, p. 97.

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[2] Ibid., p. 98.

[3] Id., pp. 99-100.

[4] Id., pp. 102-107.

[5] Id., p. 101.

[6] Rollo, pp. 109-121.

[7] Gutierrez v. Santos, 2 SCRA 249, 254 [1961].

[8] Sangguniang Bayan v. Albano, 260 SCRA 566 [1996].

[9] Roberts, Jr. v. CA, 254 SCRA 307 [1996]; Section 6 (b), Rule 112, Rules of Court.

[10] Section 3 (b), Rule 112, Rules of Court.

[11] Rollo, pp. 122-124.

[12] Id., p. 124.

[13] Id., pp. 43-49.

[14] Id., pp. 50-51.

[15] Id., pp. 49, 51.

[16] Id., pp. 52-58.

[17] Id., pp. 38-42.

[18] 289 SCRA 721, 737-738 [1998].

[19] Rodis v. Sandiganbayan, 166 SCRA 618 [1988]; People v. Poculan, 167 SCRA 155 [1988].

[20] Tandioc v. Resultan, 175 SCRA 37 [1989].

[21] Doromal v. Sandiganbayan, 177 SCRA 354 [1980]; Go v. CA, 206 SCRA 138 [1992].

[22] Cojuangco v. PCGG, 190 SCRA 226 [1990].

[23] Cruz v. People, 237 SCRA 439 [1994].

[24] Webb v. De Leon, 247 SCRA 652 [1995].

[25] Olivas v. Office of the Ombudsman, 239 SCRA 283 [1994].

[26] Herrera O.M. Remedial Law, Vol. IV, 2001 ed., p. 231, citing La Chemise Lacoste S.A. v. Fernandez, 129 SCRA 391 [1984] and Ortiz v. Palaypon, 234 SCRA 391 [1994].

[27] 298 SCRA 196, 214-216 [1998].

[28] Salonga v. Cruz, 134 SCRA 438, 461-462 [1985], citing Hashim v. Boncan, 71 Phil. 216, 225 [1941]; Trocio v. Manta, 118 SCRA 241, 245 [1982].

[29] Resolution dated 25 May 2000, p. 5; Rollo, p. 48.

[30] Rollo, pp. 131-144; Affidavits of Merly G. Bacud, Elmer Avedaño, Gilbert G. Ortega and Eduardo Lorenzo,

attached as Annexes I, J, K, and L of Reply to Opposition (Annex F, Petition).

[31] Id., p. 168.

[32] Id., pp. 160-161.

[33] Bernardo v. Mendoza, 90 SCRA 214 [1979]; Vda. de Jacob v. Puno, 131 SCRA 148-149 [1984].

[34] Administrative Order No. 7.

[35] Torralba v. Sandiganbayan, 230 SCRA 33 [1994].

[36] Rollo, pp. 52-58.

[37] Ibid., pp. 38-42.

[38] Vasquez v. Hobilla-Alinio, 271 SCRA 67 [1997]; Torralba v. Sandiganbayan, supra.

[39] Article III, Section 2, Constitution.

[40] 187 SCRA 788, 792-793 [1990].

[41] Section 2, Rule 112, 2000 Revised Rules on Criminal Procedure.

[42] See Section 11 (4), R.A. No. 6770 otherwise known as the Ombudsman Act of 1989.

[43] Lim, Sr. v. Felix, 194 SCRA 292, 305-307 [1991].

[44] See People v. Villarez, G.R. No. 133795, 27 July 2000, 336 SCRA 515, 536.

[45] 254 SCRA 307 [1996].

[46] Allado v. Diokno, 232 SCRA 192 [1994].

[47] Beck v. Ohio, 379 U.S. 89, 85 S Ct. 223, 13 L Ed. 2d 142 [1964].

[48] Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L Ed. 2d 889 [1968].

[49] Allado v. Diokno, supra, pp. 206-207, 209-210.

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