

PEDRO G. SISTOZA, PETITIONER, VS. ANIANO DESIERTO IN HIS CAPACITY AS OMBUDSMAN, AND ELISEO CO, RESPONDENTS.*G.R. No. 144784. September 03, 2002*

Ponente: BELLOSILLO, J.

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There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates. It is worth noting that while no charges of violation of Sec. 3, par. (e), of RA 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, were filed against the responsible officials of the Department of Justice and officers of other government agencies who similarly approved the procurement subject of the instant petition and authorized the disbursement of funds to pay for it, all the blame unfortunately fell upon petitioner Pedro G. Sistoza as then Director of the Bureau of Corrections who merely acted pursuant to representations made by three (3) office divisions thereof, in the same manner that the other officials who were not charged but who nonetheless authorized the transaction in their respective capacities, relied upon the assurance of regularity made by their individual subordinates.

In truth, it is sheer speculation to perceive and ascribe corrupt intent and conspiracy of wrongdoing for violation of Sec. 3, par. (e), of the Anti-Graft and Corrupt Practices Act, as amended, solely from a mere signature on a purchase order, although coupled with repeated endorsements of its approval to the proper authority, without more, where supporting documents along with transactions reflected therein passed the unanimous approval of equally accountable public officers and appeared regular and customary on their face.

Stated otherwise, in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, no definite nor certain defects or when the public officer's trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error. As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part

of a conspiracy.

Furthermore, even if the conspiracy were one of silence and inaction arising from gross inexcusable negligence, it is nonetheless essential to prove that the breach of duty borders on malice and is characterized by flagrant, palpable and willful indifference to consequences insofar as other persons may be affected. Anything less is insufferably deficient to establish probable cause. Thus, when at the outset the evidence offered at preliminary investigation proves nothing more than the signature of a public officer and his statements verifying the regularity of prior procedure on the basis of documents apparently reliable, the prosecution is duty-bound to dismiss the affidavit-complaint as a matter of law and spare the system meant to restore and propagate integrity in public service from the embarrassment of a careless accusation of crime as well as the unnecessary expense of a useless and expensive criminal trial.

This petition for certiorari and prohibition stemmed from a routine purchase of tomato paste to be used as ingredient in the austere diet of the inmates of the New Bilibid Prison. On 10 August 1999 the Pre-Qualification, Bid and Awards Committee (PBAC) of the Bureau of Corrections offered for public bidding the supply of tomato paste in addition to other food items for consumption in the month of September. Among the bidders were RBJJ, PMS Trading Enterprises, Filcrafts Industries, Inc., and Elias General Merchandising. The specification for tomato paste appearing in the bid announcement and the bid tender form where it appeared as item 55 was 48/170 tins-grams to one (1) case.[1]

The offers of the respective bidders were embodied in their individual bid tender forms securely placed inside sealed envelopes. Elias General Merchandising offered a bid of P1,350.00 for 100/170 tins-grams to one (1) case while RBJJ and PMS Trading Enterprises tendered their respective bids for the same quantity at the higher prices of P1,380.10 and P1,380.05 per case.[2] On the other hand, Filcrafts Industries, Inc., proffered P539.00 for the quantity of 48/198 tins-grams to one (1) case. It appears that the bid tender form executed by Elias General Merchandising and submitted to PBAC already indicated a change in the quantity specification from 48/170 tins-grams to 100/170 tins-grams which PBAC approved as shown by the initials of the chairman and members thereof.[3] In the same breadth, PBAC rejected the bid of Filcrafts Industries, Inc., for offering a non-registered brand of tomato paste in the Philippines and its failure to specify in the bid tender form the country of origin of the tomato paste it would supply.[4]

Based on the abstract of bidding, Elias General Merchandising won the bidding with its offer of P1,350.00 for 100/170 tins-grams to one (1) case.[5] On 13 August 1999 the Supply Division of the Bureau of Corrections thus prepared the purchase order (PO No. C-99-0140) for the one (1)-month supply of tomato paste in favor of Elias General Merchandising.[6] It reflected the supplier's winning offer of P1,350.00 for 100/170 tins-grams to one (1) case and no longer the initial specification of 48/170 tins-grams.[7] The Management Division of the Bureau of Corrections passed upon the purchase order and confirmed the regularity of the procedures previously undertaken, while the Accounting Division authorized the funding of the purchase order.[8] Petitioner Sistoza received the purchase order and its supporting documents, cursorily read them and thereafter affixed his signature on the purchase order.[9] On 2 September 1999 PBAC issued a resolution noting that Elias General Merchandising "in all angles x x x greatly complied with the specifications provided" thereby confirming its winning bid for the month-long supply of tomato paste.

Petitioner Sistoza endorsed the winning bid of Elias General Merchandising to the Department of Justice which initially disapproved the same.[10] The Justice Department observed that the award to the supplier with only the second lowest bid was not adequately justified in the 2 September 1999 resolution of the PBAC. The purchase order was thus returned to the Supply Division which then informed Elias General Merchandising of the development. The winning bidder replied to the Supply Division and expressed its willingness to "meet the price

of the lowest bidder for item No. 55, tomato paste which is more or less P1,120.00/box for 100 cans/170 grams." The Supply Division proposed in return the price of P964.12/box of 100 cans/170 grams supposedly matching the lowest bid of Filcrafts Industries Inc.[11] Elias General Merchandising rejected the counter-offer and pegged its price offer at P1,120.00 for 100 cans/170 grams.

On 29 October 1999 petitioner endorsed to the Department of Justice the purchase order in favor of Elias General Merchandising and conveyed the supplier's discounted offer of P1,120.00 for 100 cans/170 grams. He also alluded to the fact that the tomato paste had been delivered to the New Bilibid Prison and already consumed by its inmates. For the second time, the Justice Department disapproved the endorsement notwithstanding the reduced price since Elias General Merchandising allegedly remained to be only the second lowest bidder.[12]

On 29 November 1999 Sistoza endorsed for the third time the purchase order of tomato paste in favor Elias General Merchandising to the Department of Justice. He said -

The Pre-Qualification, Bid and Awards Committee in its resolution dated 2 September 1999 states that Item No. 55 (tomato paste) was awarded to Elias General Merchandise in spite of being the 2nd lowest bidder due to the fact that the offer of Filcrafts Industries, Inc. does not conform [to] the specification provided for in the purchase orders. The lowest bidder makes a counter-offer while Elias General Merchandise complied with all the requirements and specifications set forth [in the] said item. Copy of the said resolution is attached for your reference. The dealer on its part, since it is questioned for being awarded to the second lowest bidder, offered to reduce [its] price from P1,350.00/box (100 tins per box of 170 grams per tin to P1,120.00/box) x x x x

He again appealed for the approval of the purchase order emphasizing that the tomato paste had been used for the subsistence of the inmates of the New Bilibid Prison for the month of September.

On 8 December 1999 Undersecretary of Justice Ramon J. Liwag finally approved the purchase order for the tomato paste in favor of Elias General Merchandising at the reduced price of P1,120.00 per case for two hundred fifteen (215) cases or a total of P240,800.00. Consequently, Disbursement Voucher No. 99100393 was prepared by the Bureau of Corrections for the obligation of P240,800.00 and Land Bank Check No. 082195-QQ dated 17 December 1999 was paid to Elias General Merchandising.

On 22 September 1999 while efforts to secure the approval of the purchase order were being undertaken, respondent Eliseo Co, a perennial bidder for supply of food items of the New Bilibid Prison, filed an affidavit-complaint with the Office of the Ombudsman alleging criminal and administrative charges for violation of Sec. 3, par. (e), RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against petitioner Pedro G. Sistoza as Director of the Bureau of Corrections and officers and members of its Supply Division and PBAC.[13] He claimed that Sistoza and his staff conspired with each other to cause undue injury to the government and the inmates of the New Bilibid Prison by giving undue advantage to Elias General Merchandise although its bid was higher in price and lower in quantity than that offered by Filcrafts Industries, Inc.

On 7 July 2000 the Office of the Ombudsman dismissed the administrative proceedings, docketed as OMB-ADM-0-99-1130, against petitioner Sistoza and some of his co-respondents therein on the ground that their actions in awarding the supply of tomato paste to Elias General Merchandising, although its bid was not the lowest, were merely recommendatory and that they were effectively scrutinized and validated when the award was eventually approved by the Department of Justice.

On 29 November 1999, after counter-affidavits and supporting documents had been filed in the criminal proceedings, docketed as OMB-Case No. 0-99-1985, the Evaluation and Preliminary Investigation Bureau (EPIB), Office of the Ombudsman, issued a resolution recommending the prosecution of petitioner Sistoza and his co-respondents therein with the exception of the Chief of the Supply Division for violation of Sec. 3, par. (e), RA

3019. The EPIB asserted that a failure of bidding should have been decreed since Elias General Merchandising did not comply with the original specification of 48/170 tins-grams when it submitted a bid of 100/170 tins-grams in the same manner that Filcrafts Industries, Inc., did not abide by several provisions of the bid announcement and that the offer of Elias General Merchandising should have been rejected since it tendered a price higher than the bid of Filcrafts Industries, Inc. The EPIB concluded that these anomalies were fairly obvious from supporting documents showing why and how the supply of tomato paste was awarded to Elias General Merchandising and that Sistoza with no greater effort than to look casually at these documents would have discovered the irregularity of the award.

On 29 March 2000 the Office of the Special Prosecutor (OSP), Office of the Ombudsman, rendered a memorandum concurring with the findings of the EPIB in its Resolution of 29 November 1999. It stressed the deviation of the offer of the supposed winning bidder from the specification of 48/170 tins-grams and the seemingly irregular preparation of the purchase order ahead of the 2 September 1999 PBAC Resolution formally awarding the supply of tomato paste to Elias General Merchandising. The OSP also claimed that petitioner Sistoza failed to disclose in any of his endorsements of the bidding to the Department of Justice that the discounted offer of Elias General Merchandising at P1,120.00 for 100 cans/170 grams was still higher than the price quoted by Filcrafts Industries, Inc., a fact which petitioner could have easily found out and conveyed from the counter-proposal made by the Supply Division to Elias General Merchandising at P964.12/box of 100 cans/170 grams purportedly to match the lowest bid of Filcrafts Industries, Inc.

On 8 May 2000 the Office of the Chief Legal Counsel, Office of the Ombudsman, recommended approval of the 29 March 2000 OSP Memorandum. On 7 June 2000 the Ombudsman authorized the filing of the appropriate Information against Sistoza and his alleged co-conspirators. On 14 June 2000 the Information was filed with the Sandiganbayan, docketed as Crim. Case No. 26072, accusing Sistoza of the following acts -

That on or about August 10, 1999 or immediately prior or subsequent thereto, in Muntinlupa City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, accused x x x together with accused Director PEDRO SISTOZA and Supply Division Chief x x x conspiring and confederating with one another, while in the performance of their official duties, did then and there willfully, unlawfully and criminally, with manifest partiality and evident bad faith made it possible for Elias General Merchandising to qualify and be the winning bidder in the supply of tomato paste for the subsistence of prisoners for the month of September 1999 x x x accused PEDRO SISTOZA, knowing fully well that Elias General Merchandise was only the second lowest bidder and that the subsequent offer by the said supplier of the reduced price of P1,120.00 for 100/170 grams per case was still higher than the offer of Filcrafts Industries, Inc. at P964.12 for 100/170 grams per case as computed by accused [Supply Division Chief], still recommended the approval of Purchase Order No. 0-99-140 to the Department of Justice and subsequently resulted in the approval thereof, hence Disbursement Voucher No. 9910093 in the amount of P240,800.00 was approved by accused PEDRO SISTOZA, and Land Bank Check No. 082195-QQ was issued to Elias General Merchandising, thereby giving said supplier unwarranted benefit, advantage and preference of the Government in the amount of P46,381.95 x x x

On 22 June 2000 Sistoza filed with the Sandiganbayan a motion for reinvestigation and suspension of proceedings therein. The court a quo granted reinvestigation and referred the matter to the Ombudsman but denied the prayer for suspension of the proceedings. Accordingly, on 11 July 2000 Sistoza filed an amplified motion for reconsideration with the Office of the Special Prosecutor but this was also denied on 8 August 2000. On 25 August 2000 the Ombudsman affirmed the denial. Hence, this petition.

On 18 October 2000 this Court issued a temporary restraining order enjoining the Sandiganbayan from conducting further proceedings in Crim. Case No. 26072 against petitioner Sistoza in order not to render the instant petition academic and futile.

Petitioner Sistoza argues that he had no active participation in the award of the supply of tomato paste to Elias General Merchandising and that his involvement was limited to signing the purchase order for this food item. He claims that upon receipt of the purchase order, he cursorily perused the document and readily affixed his signature on it since the purchase order had already passed the scrutiny of three (3) office divisions of the Bureau of Corrections, namely, the Supply Division, Management Division and Accounting Division. He concludes that as a matter of law his signature on the purchase order, without more, does not prove any violation of Sec. 3, par. (e), RA 3019.

It is settled that the preliminary investigation proper, i.e., the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.[14] For criminal cases falling within the jurisdiction of the Sandiganbayan, it is the Office of the Special Prosecutor, as an organic component of the Office of the Ombudsman, which exercises investigatory and prosecutory powers. Concomitantly, as a general rule, this Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. The strict application of this rule, insofar as the Ombudsman is concerned, is not a trivial matter. In the instant case, we see this principle at work when the Sandiganbayan deferred to the authority of the prosecution to exercise investigatory powers when it granted petitioner Sistoza's motion for reinvestigation.

As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion[15] which would authorize the aggrieved person to file a petition for certiorari and prohibition under Rule 65, 1997 Rules of Civil Procedure. There is grave abuse of discretion where power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by law.[16] When the Ombudsman does not take essential facts into consideration in the determination of probable cause, it has been ruled that he gravely abuses his discretion.[17]

Section 3, par. (e), RA No. 3019 defines "corrupt practices of public officers." It provides-

In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful x x x (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are: (a) The accused is a public officer or a private person charged in conspiracy with the former; (b) The public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions; (c) That he or she causes undue injury to any party, whether the government or a private party; (d) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and, (e) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect. Evidently, mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.[18]

We note that the Information against petitioner Sistoza, while specifying manifest partiality and evident bad faith, does not allege gross inexcusable negligence as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is

based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the Information, it was evidently the intention of the Ombudsman to take petitioner to task for gross inexcusable negligence in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), RA 3019, is committed either by *dolo* or *culpa* and although the Information may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.[19]

In the instant case, there is no direct evidence that petitioner Sistoza acted in conspiracy with the officers and members of the PBAC and the other implicated public officials. He did not himself participate in the bidding procedures nor was he involved in the award of the supply of tomato paste to Elias General Merchandising. Plainly, the accusation against him rests upon his signature on the purchase order and his repeated endorsements thereof notwithstanding his knowledge that the winning bidder did not offer the least price. The Ombudsman concluded that these acts constituted manifest partiality, evident bad faith, or even gross inexcusable negligence resulting in undue injury to the government.

We disagree with the conclusions of the Office of the Ombudsman. We have meticulously analyzed the arguments raised by the parties in the various pleadings and motions, together with their documentary evidence, which all formed the basis for the issuance of the questioned resolutions, and we are convinced that no probable cause exists to warrant the filing of charges against petitioner Sistoza for violation of Sec. 3, par. (e), RA 3019.

To begin with, before manifest partiality, evident bad faith or gross inexcusable negligence may even be considered, the Office of the Ombudsman should determine with certainty the facts indicative of the modalities of committing a transgression of the statute.

Simply alleging each or all of these methods is not enough to establish probable cause, for it is well settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioner as with any other person is presumed. The facts themselves must demonstrate evident bad faith which connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[20]

On the other hand, gross inexcusable negligence does not signify mere omission of duties nor plainly the exercise of less than the standard degree of prudence. Rather, it refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[21] It entails the omission of care that even inattentive and thoughtless men never fail to take on their own property, and in cases involving public officials it takes place only when breach of duty is flagrant and devious.[22]

Clearly, the issue of petitioner Sistoza's criminal liability does not depend solely upon the allegedly scandalous irregularity of the bidding procedure for which prosecution may perhaps be proper. For even if it were true and proved beyond reasonable doubt that the bidding had been rigged, an issue that we do not confront and decide in the instant case, this pronouncement alone does not automatically result in finding the act of petitioner similarly culpable. It is presumed that he acted in good faith in relying upon the documents he signed and thereafter endorsed. To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), RA 3019, the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of petitioner in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his

subordinates despite his knowledge that the winning bidder did not offer the lowest price. Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.

As defined above, the acts charged against petitioner do not amount to manifest partiality, evident bad faith nor gross inexcusable negligence which should otherwise merit a prosecution for violation of Sec. 3, par. (e), RA 3019. It is not disputed that petitioner relied upon supporting documents apparently dependable as well as certifications of regularity made by responsible public officers of three (3) office divisions of the Bureau of Corrections before affixing his signature on the purchase order. In *Alejandro v. People*,^[23] evident bad faith was ruled out because the accused gave his approval to the questioned disbursement after relying on the certification of the bookkeeper on the availability of funds for the expenditure and since the act of relying upon a subordinate's certification of regularity cannot be considered gross inexcusable negligence. In *Magsuci v. Sandiganbayan*^[24] this Court similarly rejected the theory of criminal liability where the head of office in discharging his official duties relied upon an act of his subordinate.

The fact that petitioner had knowledge of the status of Elias General Merchandising as being only the second lowest bidder does not ipso facto characterize petitioner's act of reliance as recklessly imprudent without which the crime could not have been accomplished.^[25] Albeit misplaced, reliance in good faith by a head of office on a subordinate upon whom the primary responsibility rests negates an imputation of conspiracy by gross inexcusable negligence to commit graft and corruption.^[26] As things stand, petitioner is presumed to have acted honestly and sincerely when he depended upon responsible assurances that everything was aboveboard since it is not always the case that second best bidders in terms of price are automatically disqualified from the award considering that the PBAC reserves the authority to select the best bid not only in terms of the price offered but other factors as well.^[27] In fact, while we do not decide the truth of this assertion, it is worth noting that the PBAC Chairman and members would allege that Filcrafts Industries, Inc., offered an unacceptable and unusable product as its bid,^[28] a representation upon which petitioner could have relied upon in assessing the propriety of the process handled by his co-workers in the Bureau of Corrections.

Verily, even if petitioner erred in his assessment of the extrinsic and intrinsic validity of the documents presented to him for endorsement, his act is all the same imbued with good faith because the otherwise faulty reliance upon his subordinates, who were primarily in charge of the task, falls within parameters of tolerable judgment and permissible margins of error. Stated differently, granting that there were flaws in the bidding procedures, an issue which we leave to the Sandiganbayan to decide as against the other accused therein, there was no cause for petitioner Sistoza to complain nor dispute the choice nor even investigate further since neither the defects in the process nor the unfairness or injustice in the actions of his subalterns are definite, certain, patent and palpable from a perusal of the supporting documents. Benjamin N. Cardozo would have explained that "[w]hen x x x we speak of the law as settled, though, no matter how great the apparent settlement, the possibility of error in the prediction is always present." Given that the acts herein charged failed to demonstrate a well-grounded belief that petitioner had prima facie foreknowledge of irregularity in the selection of the winning bid other than the alleged fact that such bid was not the lowest, we cannot conclude that he was involved in any conspiracy to rig the bidding in favor of Elias General Merchandising.

The instant case brings to the fore the importance of clearly differentiating between acts simply negligent and deeds grossly and inexcusably negligent punishable under Sec. 3, par. (e), of the Anti-Graft and Corrupt Practices Act.^[29] While we do not excuse petitioner's manner of reviewing the award of the supply of tomato paste in favor of Elias General Merchandising, whereby he cursorily perused the purchase order and readily affixed his signature upon it, since he could have checked the supporting documents more lengthily, it is our considered

opinion that his actions were not of such nature and degree as to be considered brazen, flagrant and palpable to merit a criminal prosecution for violation of Sec. 3, par. (e), of RA 3019. To paraphrase *Magsuci v. Sandiganbayan*,^[30] petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official documents and assessments of his subordinates, but for conspiracy of silence and inaction to exist it is essential that there must be patent and conscious criminal design, not merely inadvertence, under circumstances that would have pricked curiosity and prompted inquiries into the transaction because of obvious and definite defects in its execution and substance. To stress, there were no such patent and established flaws in the award made to Elias General Merchandising that would have made his silence tantamount to tacit approval of the irregularity.

It is also too sweeping to conclude the existence of conspiracy from the endorsements made by petitioner Sistoza to the Department of Justice of the result of the bidding. Fairly evident is the fact that this action involved the very functions he had to discharge in the performance of his official duties. Furthermore, contrary to the allegation that petitioner misrepresented key facts to the Department of Justice, it is clear that his references to the price offered by Elias General Merchandising and the rejection of the bid of Filcrafts Industries, Inc., were supported by documents noted in and attached to his endorsements. Hence, there was no way by which the approving authority, i.e., the Department of Justice, could have been misled by him. Clearly, to prosecute him for violation of Sec. 3, par. (e), RA 3019, on the basis of his endorsements would be the same as pegging his criminal liability on a mere signature appearing on the document. In *Sabiniano v. Court of Appeals*^[31] we held that a signature on a voucher, check or warrant, even if required by law to be affixed thereon, is not enough to sustain a finding of conspiracy among public officials and employees charged with defraudation. We further ruled -

x x x x Proof, not mere conjectures or assumptions, should be proffered to indicate that the accused had taken part in, to use this Court's words in *Arias v. Sandiganbayan*, the "planning, preparation and perpetration of the alleged conspiracy to defraud the government" for, otherwise, any "careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds" really responsible for that irregularity x x x x [32]

Since petitioner had no reason to doubt the validity of the bidding process and given the urgency of the situation since the tomato paste had by then been delivered and consumed by the inmates of the New Bilibid Prison, we certainly cannot infer malice, evident bad faith or gross inexcusable negligence from his signing of the purchase order and endorsing the same to the Department of Justice. Considering that his duties as Director of the Bureau of Corrections entailed a lot of responsibility not only on the management side but also in the rehabilitation and execution of convicted prisoners, public relations and other court-imposed duties, it is unreasonable to require him to accomplish direct and personal examination of every single detail in the purchase of a month-long supply of tomato paste and to carry out an in-depth investigation of the motives of every public officer involved in the transaction before affixing his signature on the pro-forma documents as endorsing authority.

To illustrate the detailed work that this proposition would have entailed, the tomato paste was only item 55 in a partial list of sixty-four (64) other food items for the month of September alone. In the instant case, petitioner has no duty to go beyond the verification of the PBAC and to personally authenticate the procedures previously undertaken. To compel him to perform such task, i.e., review personally the bidding procedure for each of these items in all cases and instances as the Ombudsman seems to suggest, would have meant consuming all his time attending only to the meals of prisoners. Necessarily, since workload is expectedly heavy, duties have to be delegated among the different offices for utmost efficiency in the prison system, an organizational scheme upon which petitioner was entitled to trust and rely upon for the discharge of his own duties. Indeed the Ombudsman gravely abused its discretion when he found probable cause against petitioner Sistoza despite the presence of essential facts negating evident bad faith, manifest partiality and gross inexcusable negligence, which were all

disregarded.

Having thus concluded, the only remaining issue is whether this Court can direct the Sandiganbayan to dismiss Crim. Case No. 26072 as against petitioner Sistoza. This will not be the first time that we order the dismissal of a criminal case being heard by a trial court for want of probable cause, and there is no reason not to prescribe the same justified outcome in the instant petition. In *Cabahug v. People*[33] where this Court ordered the dismissal of a criminal case pending before the Sandiganbayan for absence of probable cause, we declared -

While it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the courts' time and saves the precious resources of the government x x x x [T]he very purpose of a preliminary investigation is to shield the innocent from precipitate, spiteful and burdensome prosecution x x x [and] spare the innocent the trouble, expense and torment of a public trial [as well as] unnecessary expense on the part of the State for useless and expensive trials. Thus, when at the outset the evidence cannot sustain a prima facie case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.

In the interest of a fair and just prosecution we cannot degree otherwise.

WHEREFORE, the instant Petition for Certiorari and Prohibition is GRANTED. The 29 November 1999 Resolution and 29 March 2000 Memorandum and allied issuances of the Office of the Ombudsman resolving to charge petitioner PEDRO G. SISTOZA with violation of Sec. 3, par. (e), of RA 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, as he was thereafter indicted, are REVERSED and SET ASIDE. For want of well-founded and reasonable ground to believe that petitioner PEDRO G. SISTOZA violated Sec. 3, par. (e), of RA 3019 as amended, or for absence of probable cause therefor, the Sandiganbayan is ORDERED to DISMISS forthwith Crim. Case No. 26072, entitled "People of the Philippines v. Pedro Sistoza y Guimmayen, et al.," only as against accused PEDRO G. SISTOZA, herein petitioner. The 18 October 2000 temporary restraining order of this Court enjoining the Sandiganbayan from conducting further proceedings in Crim. Case No. 26072 against petitioner PEDRO G. SISTOZA is made PERMANENT. This Decision is without prejudice to the continuation of the proceedings in Crim. Case No. 26072, promptly and without delay, insofar as the other accused therein are concerned. No pronouncement as to costs.

SO ORDERED.

Mendoza, Quisumbing, and Austria-Martinez, JJ., concur.

[1] Record, pp. 143, 160.

[2] *Id.*, p. 160.

[3] *Ibid.*

[4] *Id.*, p. 143.

[5] *Id.*, p. 160.

[6] *Ibid.*

[7] Ibid.

[8] Rollo, p. 6.

[9] Id., p. 7.

[10] 1st Indorsement dated 6 October 1999 issued by Undersecretary of Justice Ramon J. Liwag.

[11] Record, p. 162.

[12] 2nd Indorsement dated 29 November 1999 issued by Undersecretary of Justice Ramon J. Liwag.

[13] Impleaded in the complaint were Chief of the Supply Division Isabelita C. Martinez, PBAC Chairman Zorayda A. Ocampo and PBAC members Corazon Bravo, Bienvenida Tupas, Kabungsuan Makilala, Angelina Palnetinos and Ramon Loyola.

[14] Cabahug v. People, G.R. No. 132816, 5 February 2002.

[15] Ibid.

[16] Baylon v. Office of the Ombudsman and the Sandiganbayan, G.R. No. 142738, 14 December 2001.

[17] Ibid.

[18] In Gallego v. Sandiganbayan, G.R. No. 57841, 30 July 1982, 115 SCRA 793, we held that the phrases “manifest partiality,” “evident bad faith” and “gross inexcusable negligence” describe the different modes by which the offense penalized in Section 3(e) of RA 3019 may be committed; in Llorente v. Sandiganbayan, G.R. No. 122166, 11 March 1998, 287 SCRA 382, “undue injury” was defined as actual damage capable of proof and actually proven with a reasonable degree of certainty and does not include speculative damages which are too remote to be included in an accurate estimate of the loss or injury.

[19] Applying by analogy our ruling in Cabello v. Sandiganbayan, G.R. No. 93885, 14 May 1991, 197 SCRA 94, where an accused charged with willful malversation was validly convicted of the same felony of malversation through negligence when the evidence merely sustained the latter mode of perpetrating the offense, it was said that a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense; Kimpo v. Sandiganbayan, G.R. No. 95604, 29 April 1994, 232 SCRA 53.

[20] Llorente v. Sandiganbayan, see Note 18.

[21] Victoria v. Mongaya, A.M. No. P-00-1436, 19 February 2001, 352 SCRA 12.

[22] Ibid.

[23] G.R. No. 81031, 20 February 1989, 170 SCRA 400.

[24] G.R. No. 101545, 3 January 1995, 240 SCRA 13.

[25] See People v. Rodis, 105 Phil. 1294 (1959).

[26] See Note 24.

[27] A.C. Esguerra and Sons v. Aytona, No. L-18751, 28 April 1962, 4 SCRA 1245; C&C Commercial Corporation v. Menor, No. L-28360, 27 January 1983, 120 SCRA 112; Filipinas Engineering and Machine Shop v. Ferrer, No. L-31455, 28 February 1985, 135 SCRA 25.

[28] Record, p. 143.

[29] See Note 21 for an illustration of the distinction between simple negligence and gross inexcusable negligence.

[30] See Note 24.

[31] 319 Phil. 92 (1995).

[32] *Id.*, p. 98.

[33] See Note 14.

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