

DR. ALBERTO NIDOY, SOTERO EMOCLING, MARCELINO MAMARIL, VICTORIANO SORIANO, PROCESO ESTOQUE, EDUARDO HERUELA AND ALLAN SABANGAN, IN THEIR CAPACITY AS VICE MAYOR AND MEMBERS OF TH...

G.R. No. 146017. February 18, 2004

Ponente: YNARES-SATIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-146017/>

YNARES-SATIAGO, J.:

On April 23, 1999, petitioners, the Vice Mayor and Members of the Sangguniang Bayan of the Municipality of Rosario, La Union, filed a criminal complaint for malversation, technical malversation, falsification of public document and violation of Republic Act No. 3019[1] against the respondents, Josephine Flores and Violeta U. Garcia, Mayor and Treasurer, respectively, of the same Municipality in the Office of the Ombudsman, docketed as OMB-1-99-0841.

Petitioners alleged that on November 18, 1998, the Municipality received from the Department of Budget and Management its share in the Tobacco Excise Tax Fund, under Republic Act No. 7171, in the amount of P1,351,000.00; that instead of depositing the same in the Municipality's Account with the Land Bank of the Philippines, Agoo Branch, respondents deposited the money in the Municipality's General Fund Account in the same bank; that the funds on deposit in the General Fund was almost totally spent such that as of December 21, 1998, the remaining balance was only P60,965.08;[2] that on August 3, 1998, respondents caused the transfer of the amount of P50,000.00 from the Tobacco Excise Tax Account to the General Fund;[3] that the unauthorized disbursement of the Tobacco Excise Tax Fund was violative of Memorandum Circular No. 61-A,[4] which provides that such fund may only be used for specific projects and after the proper appropriations ordinance or resolution from the Sangguniang Bayan.

Petitioners further averred that respondent treasurer falsified the Certification dated March 10, 1999 wherein she stated that the amount of P1,351,000.00, representing the municipal share in the excise taxes from Virginia Tobacco, was available because there was no such amount found in the account of the General Fund where the said amount had been deposited.[5]

In their Joint Counter-Affidavit, respondents denied the charges and clarified that what petitioners referred to as the Tobacco Excise Tax, or RA 7171, Account, was actually the Municipality's account for both Trust Fund and its congressional share from RA 7171 excise taxes; that on the other hand, the amount of P1,351,000.00 was the municipality's local government share from RA 7171 excise taxes which was treated as a special account under the General Fund;[6] that the Municipal Treasurer correctly certified that the amount of P1,351,000.00 remained intact under Current Account No. 1392-1033-48, or the RA 7171 Special Account[7]; and the transfer of P50,000.00 from the Trust Fund to the General Fund did not constitute technical malversation.

On September 14, 1999, the Office of the Deputy Ombudsman for Luzon dismissed the complaint against the respondents on the ground of insufficiency of evidence.[8] Petitioners filed a Motion for Reconsideration[9] of the

said Resolution, which was denied on February 23, 2000.[10]

On June 28, 2000, petitioners filed a special civil action for certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 59422. The petition was dismissed for having been filed out of time.[11] The Court of Appeals held that petitioners should have filed a petition for review under Rule 43 of the Rules on Civil Procedure within fifteen days from notice of the assailed resolution.

Petitioner filed a Motion for Reconsideration,[12] however, the same was denied.

Hence, the instant petition for certiorari under Rule 65 of the Rules of Civil Procedure, raising the following issues:

A. IN A PETITION TO QUESTION THE RESOLUTION OF THE OMBUDSMAN IN A CRIMINAL COMPLAINT FILED BEFORE HIM, WHAT RULE IS APPLICABLE IN ELEVATING THE SAME TO THE COURT OF APPEALS OR TO THE HONORABLE SUPREME COURT: RULE 43 OR RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE?

B. WHICH COURT SHALL A PETITION QUESTIONING THE RESOLUTION OF THE OMBUDSMAN IN A CRIMINAL COMPLAINT BE FILED: COURT OF APPEALS OR TO THE HONORABLE SUPREME COURT.[13]

The instant petition for certiorari should be dismissed. The proper action to file is an appeal by petition for review under Rule 45 of the Rules of Civil Procedure. Petitioners received a copy of the Resolution of the Court of Appeals on November 10, 2000; hence they had until November 25, 2000 within which to file a petition for review. The petition for certiorari filed by petitioners on December 6, 2000 cannot be a substitute for the lost remedy of appeal.[14]

WHEREFORE, in view of the foregoing, the instant petition for certiorari is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio and Azcuna, JJ., concur.

[1] Otherwise known as Anti-Graft and Corrupt Practices Act.

[2] Annex “D-1,” Rollo, p. 52.

[3] Annex “J,” Rollo, p. 66.

[4] Amending Memorandum Circular No. 61, otherwise known as the Circular Prescribing the Guideline for the Implementation of RA 7171, Annex “C,” Rollo, pp. 48-50.

[5] Annex “G,” Rollo, p. 63.

[6] Annex “N-2,” Rollo, p. 75.

[7] Annex “N-4,” Rollo, p. 77.

[8] Rollo, p. 81.

[9] Annex “P,” Rollo, pp. 83-87.

[10] Annex “Q,” Rollo, p. 99.

[11] Id., p. 102; penned by Associate Justice Marina L. Buzon, concurred in by Associate Justices Ramon A.

Barcelona and Edgardo P. Cruz.

[12] *Id.*, pp. 106-109.

[13] Rollo, p. 3.

[14] *Ong, et al. v. Court of Appeals*, G.R. No. 142056, 19 April 2001, 356 SCRA 768, citing *Bernardo v. Court of Appeals*, G.R. No. 106153, 14 July 1997, 275 SCRA 413.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.