CONRADO B. NICART, JR., PETITIONER, VS. HON. SANDIGANBAYAN, THIRD DIVISION, THE PEOPLE OF THE PHILIPPINES AND LUZ B. TY, RESPONDENTS.

G.R. NO. 147272. July 14, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for certiorari under Rule 65 of the Rules of Court, with prayer for injunctive relief, Conrado B. Nicart, Jr. seeks to annul and set aside the Order dated July 23, 1999[1] of the Sandiganbayan, Third Division, and its Resolutions dated January 30, 2001[2] and February 15, 2001,[3] all issued in its Criminal Case No. 24674.

The antecedent facts and proceedings:

This case started when Nilcar Mosende, et al., on the basis of the findings of the Commission on Audit (COA), filed with the Office of the Ombudsman for the Visayas (OMB-Visayas, hereinafter) a complaint against herein respondent Luz B. Ty (Ty, hereinafter), then municipal treasurer of San Policarpo, Eastern Samar for, among other offenses, misappropriation of over P4.1 Million of public funds. Answering, Ty denied the allegations in the complaint, docketed as OMB-VIS-CRIM-96-1188, and pointed a finger of blame on petitioner Conrado Nicart, Jr., then Mayor of said municipality.

In a bid then to evade liability that might arise from the Mosende complaint, Ty, in an AFFIDAVIT-COMPLAINT[4] dated November 6, 1966, charged petitioner with violation of Section 3 (a) and (e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. In her complaint, docketed as OMB-VIS-CRIM-96-1210, Ty stated that she was influenced and induced by the petitioner to violate certain office rules and regulations. Going into specifics, she alleged issuing, upon petitioner's instructions, several PNB checks in favor of third parties, which checks, however, ended being encashed by petitioner's wife, Thelma. She also alleged being induced by the petitioner, his wife and an aide to withdraw huge amounts from the municipal coffers to be charged to the account of petitioner. And according to Ty, petitioner drew funds from her (Ty's) cash advances and used the same for purposes other than what they were appropriated for, adding, in close, that petitioner purchased, in January 1994, a Nissan car using a PNB check issued in her (Ty's) name.

For his part, petitioner tagged Ty's accusatory but false allegations as a case of buck-passing, and then proceeded to file a counter-charge against Ty for malversation and violation of R.A. No. 3019.

Meanwhile, the Special Audit Division, COA-Regional Office-VIII, acting on the request of the OMB-Visayas to look into the veracity of the allegations in Ty's affidavit-complaint and the legality of the transactions mentioned therein, submitted on May 12, 1998 an audit report.[5] In it, the audit team concluded that cash advances in the total amount of P1,180,000.00 remain unaccounted and unliquidated and that both Ty and petitioner are responsible therefor.

Following the usual preliminary investigation, Graft Investigating Officer Thaddeus Boiser submitted a

Resolution dated March 31, 1998 on the consolidated OMB-VIS-CRIM Nos. 96-1188, 96-1210 and 97-0664, recommending the prosecution of petitioner and Ty for Malversation of Public Funds (Art. 217 of the Revised Penal Code). The Deputy Ombudsman for Visayas endorsed the recommendation which then Ombudsman Aniano Desierto approved on June 9, 1998.

An information was accordingly filed with the Sandiganbayan against both petitioner and Ty, docketed as Criminal Case No. 24674. The accusatory portion of the information[6] reads as follows:

> That in or about the month of October 1996 and for sometime prior thereto, at the Municipality of San Policarpo, Province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, above named accused, public officers, being the Municipal Mayor and Municipal Treasurer of the [said] Municipality ... and as such, have in their possession and custody of public funds in the total amount of FOUR MILLION ONE HUNDRED SIX THOUSAND FOUR HUNDRED EIGHTY NINE AND 15/100 PESOS (P4,106,489.15), Philippine Currency, for which they are accountable by reason of the duties of their office, taking advantage of their official positions, conniving and confederating together ... with intent to defraud and of gain, did then and there willfully, unlawfully and feloniously appropriate, take, misappropriate, embezzle and convert to their own personal use and benefit said public funds in the amount of FOUR MILLION ONE HUNDRED SIX THOUSAND FOUR HUNDRED EIGHTY NINE AND 15/100 PESOS (P4,106,489.15) Philippine Currency, and despite demands made upon them to account for said public funds, they have failed to do so, to the damage and prejudice of the government, particularly the Municipality of San Policarpo, Eastern, Samar.

The following events then transpired:

1. After posting the necessary bail bond, petitioner moved for a reinvestigation and the Sandiganbayan allowed him to file the necessary motion.

2. Petitioner moved for and obtained a reinvestigation, but the Office of the Special Prosecutor denied the motion in an Order of March 9, 1999.[7]

3. On June 30, 1999, petitioner interposed an Urgent Motion to Defer Proceedings with Motion for Leave to File Petition for Review with the [OMB], which motion, however, the Sandiganbayan denied in its first assailed Order of July 23, 1999[8] on the ground that the motion partakes of "[a prohibited] second Motion for Reconsideration [and that] the matters raised therein appear to be evidenciary in character which should be ventilated during the trial."

4. On August 24, 1999, petitioner filed an Urgent Omnibus Motion, followed by his Reply to Comment [of the Special Prosecutor] on the Urgent Omnibus Motion.

Pursuant to its assailed Resolution of January 30, 2001,[9] the Sandiganbayan denied the petitioner's Urgent Omnibus Motion and set a date for his arraignment.

5. A little over two weeks later , the Sandiganbayan, acting on the motion filed by the prosecution pursuant to Sec. 13 of R.A. 3019, issued another Resolution dated February 15, 2001,[10] suspending petitioner (at that time holding the Vice Mayoralty position) from office for ninety days from notice.

Hence, this petition.

In a Resolution of April 2, 2001,[11] the Court denied petitioner's motion for issuance of temporary restraining order to enjoin the respondent Sandiganbayan from proceeding with his suspension from office pendente lite and from holding or taking any further action in Criminal Case No. 24674. This was followed by another Resolution dated June 20, 2001,[12] denying a reconsideration of the first, prompting the Sandiganbayan, per petitioner's own

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manifestation, to proceed with his arraignment scheduled on April 17, 2001.[13]

Given the separate resolutions adverted to dated April 2 and June 20, 2001, the propriety of the preventive suspension of petitioner effected through the assailed Resolution of February 15, 2001 has become a moot issue, it appearing that he has already served his suspension. An issue becomes moot and academic when it ceases to present a justifiable controversy so that a determination thereof would be of no practical use and value.[14] In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.[15]

This is not say, however, that the assailed suspension resolution of the Sandiganbayan, insofar as it imposed a 90-day preventive suspension instead of the maximum 60 days prescribed by Section 63 of the Local Government Code of 1991 (R.A. No. 7160),[16] is flawed. Far from it. As may be noted, the anti-graft court ordered the petitioner's suspension on the basis of Section 13 of R.A. No. 3019,[17] malversation of public funds being an offense involving fraud against government funds and is clearly included among the crimes contemplated under said section. Be that as it may and given the presumptive validity of the information in question, petitioner's urging for the Court to strike down the suspension order cannot be granted. As the Court articulated in Segovia v. Sandiganbayan,[18] citing what then Chief Justice Andres R. Narvasa referred to therein as the "mass of jurisprudence":

> The Anti-Graft and Corrupt Practices Act implicitly recognizes that the power of preventive suspension lies in the court in which the criminal charge is filed; ...
>
> The provision of suspension pendent lite applies to all persons indicted upon a valid information under the Act, whether they be appointive or elective officials .... It applies to a .. Municipal Mayor, a Governor, a Congressman ....
>
> It is mandatory for the court to place under preventive suspension a public officer accused before it. xxx
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> xxx xxx xxx
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> However, the preventive suspension may not be of indefinite period . . . . The Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days in consonance with [PD] No. 807, ... now Section 52 of the Administrative Code of 1987. (Citations omitted; word in bracket added.)

Like the petitioner's challenge against the preventive suspension resolution of the Sandiganbayan, his assault against that court's July 23, 1999[19] order must likewise be given a short shrift.

As may be recalled, the order adverted to denied, as earlier recited, petitioner's Urgent Motion to Defer Proceedings with Motion for Leave to Allow Accused to File Petition for Review with the Office of the Ombudsman. Petitioner sought deferment to provide him time while he makes a bid to secure a review of the Office of the Special Prosecutor's denial of his (petitioner's) motion for reinvestigation. Petitioner would now have this Court strike down the said July 23, 1999 order. The Court will not do so, what with petitioner lacking even the good sense of venturing a reason for his plea.

At any rate, in no sense may the challenged order be stigmatized as capricious, oppressive or wanting in logic as to call for its invalidation by the extraordinary writ of certiorari. As it were, the respondent court predicated its denial of the motion to defer on, inter alia, the fact that the said motion "partakes of a second Motion for Reconsideration" suggesting - and correctly so - that the filing thereof is contrary to the Office of the Ombudsman's one-motion rule expressed under the following provision:

> SEC. 8. Motion for reconsideration or reinvestigation; Grounds.-Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the

> decision ....
>
> xxx xxx xxx
>
> Only one motion for reconsideration or reinvestigation shall be allowed, and the hearing officer shall resolve the same within . . . .[20]

This brings us to the third and last issue. It relates to petitioner's Urgent Omnibus Motion dated August 25, 1990, which the Sandiganbayan denied in its assailed Resolution of January 30, 2001.[21] Parenthetically, the petitioner did not bother to attach in his petition a copy of the urgent omnibus motion, thus leaving the Court in the dark as to the issues and supporting arguments raised therein. On its face, however, the Resolution of January 30, 2001 only passed upon and resolved, in the affirmative, the issue on the existence of a probable cause for malversation against the petitioner and accordingly denied his plea to quash information.

The determination of a probable cause during a preliminary investigation pertains to the public prosecutor who inquires into facts concerning the commission of a crime with the end in view of determining whether an information may be prepared and filed against the accused.[22] This prefatory inquiry is for the purpose of ascertaining whether or not there is well-founded ground to believe that a crime has been committed by the accused who is probably guilty thereof,[23] and ergo should be held for trial.[24] Such investigation should be distinguished from an inquiry to determine probable cause for the issuance of a warrant of arrest. The first kind, also called preliminary investigation proper, is executive in nature and is part of the prosecutor's job. The second kind is judicial in nature and is lodged with the judge.[25]

But while the institution of a criminal suit, be it thru complaint or information, rests upon the sound discretion of the prosecutor, the trial court, once its jurisdiction over the case attaches, is not without competence, nay the duty, to evaluate, in appropriate cases, the prosecution's determination of a probable cause, particularly when confronted with a motion to quash on the ground that the prosecution had filed the information or denied a motion for reinvestigation with grave abuse of discretion. While perhaps not on all fours, what the Court, through now Chief Justice Artemio V. Panganiban, said in Ledesma v. Court of Appeals[26] is very much apropos:

> In Martinez vs. Court of Appeals, this Court overruled the grant of the motion to dismiss filed by the prosecuting fiscal ... because, such grant was based upon consideration other than the judge's assessment of the matter. Relying solely on the conclusion of the prosecution to the effect that there was no sufficient evidence against the accused to sustain the allegation in the information, the trial judge did not perform his function of making an independent evaluation or assessment of the merits of the case.
>
> Despite the pronouncement in Marcelo that a final resolution of the appeal to the Department of Justice is necessary, both decisions followed the rule in Crespo vs. Mogul: Once a complaint or information is filed in court, any disposition of the case ... rests on the sound discretion of the court. Trial judges are thus required to make their own assessment of whether the secretary of justice committed grave abuse of discretion in granting or denying the appeal, separately and independently of the prosecution's or the secretary's evaluation that such evidence is insufficient or that no probable cause to hold the accused for trial exists. They should embody such assessment in their written order disposing of the motion. (citations omitted)

In the case at bench, petitioner cannot plausibly impute grave abuse of discretion on respondent Sandiganbayan for denying, pursuant to its January 30, 2001 resolution, his motion to quash information on the issue of existence of probable cause. As it were, the anti-graft court complied with its judicial obligation of evaluating the evidence on account of which the special prosecutor filed the information against the petitioner for malversation. And its assessment on the existence of a probable cause appears correct and is, to be sure, incorporated in its assailed resolution of January 30, 2001, thus:

> From the foregoing, accused Nicart's own evidence substantiates the charge of malversation filed against him, although only to the extent of P475,000.00. Nicart's claim that if his wife's signature appears in the checks ..., it is because the checks were given to her by the store owner for encashment. This has to be proven by evidence.
>
> Accused Nicart also claims that his signature in some of the checks involved in this case has been forged. xxx. However, the NBI Questioned Document Report No. 1112-1197 ... states that "the questioned and the standard sample signatures of CONRADO B. NICART, JR. were written by one and the same person." The audit/investigation also revealed that "cash advances totaling P1,180,000.00 remain unaccounted and unliquidated" for which he and his co-accused Ty were found to be responsible .... The contention of the accused that the Special Prosecutor "has nothing at all to support his decision" ..., therefore, is not correct.

It may be, as petitioner claims, that the amount appearing as having been misappropriated in the Information exceeds what the COA audit report yields and that both documents slightly differ as to when the acts or transactions complained of occurred.

This variance as to amount and date of occurrence does not, to our mind, vitiate the validity of the Information in question. For, the filing of an information follows and is dependent on a finding of a probable cause in a preliminary investigation. But then an investigation, advisedly called preliminary, is not the stage for the full and exhaustive display of the parties' evidence; it is, to stress, only an occasion for the presentation of such evidence as may engender a prima facie showing that an offense has been committed and that the accused probably committed it.[27] The question of whether or not the COA audit report is the only determinative documentary evidence to prove the offense charged is not a proper subject of inquiry in this certiorari proceedings.

In all, the petitioner has failed to demonstrate that grave abuse of discretion tainted the issuance of the assailed order and resolutions. We are thus denying the instant recourse to clear the path for the Sandiganbayan to write finis, one way or the other, to its Criminal Case No. 24674.

WHEREFORE, the petition is DISMISSED.

Costs against the petitioner.

SO ORDERED.

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

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[1] By Associate Justice Cipriano A. Del Rosario (ret.), concurred in by Associate Justice Teresita Leonardo de Castro and Associate Justice Ricardo M. Ilarde (ret.); Appendix "A," Petition; Rollo, p. 41.

[2]Appendix "B," Petition; Rollo, pp. 42, et seq.

[3] Appendix "C," Petition; Rollo, pp. 45-48.

4 Appendix "E," Petition; Rollo, pp. 61 et seq.

[5] Appendix "F," Petition; Rollo, pp. 78 et seq.

[6] Annex "I," Petition; Rollo, pp. 129-131.

[7] Annex "J," Petition; Rollo, pp. 132-133.

[8] See Note No. 1, supra.

[9] See Note No. 2, supra.

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[10] Annex "C," Petition; Rollo, pp. 45 et seq.

[11] Rollo, p. 157.

[12] Id., p. 187.

[13] Page 14, Petitioner's Urgent Motion for Reconsideration in G.R. No. 147272; Rollo, pp. 166 et seq.

[14] PAL v. Pascua, G.R. No. 143258, August 15, 2003, 409 SCRA 195.

[15] Olanolan v. COMELEC, G.R. No. 165491, March 31, 2005.

[16] Sec. 63. Preventive Suspension. - Preventive suspension may be imposed ... (2) By the governor, if the respondent is an elective official of a ... municipality; xxx Provided, That any single preventive suspension of local elective officials shall not extend beyond sixty (60) days; xxx.

[17]Sec. 13. Suspension and loss of benefit.-Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code, or for any offense involving fraud upon government or public funds ... is pending in court shall be suspended from office. xxx.

[18] G.R. No. 124067, March 27, 1998, 288 SCRA 328.

[19] See Note No. 1, supra.

[20]Rules of Procedure of the Office of the Ombudsman.

[21] See Note No. 2, supra.

[22]Arula v. Espino, No. L. 28949, June 23, 1969, 28 SCRA 540.

[23]Mayuga v. Maravilla, No. L-18826, December 17, 1966, 18 SCRA 1115.

[24] Webb v. De Leon, G.R. No. 121234, August 23, 1995, 247 SCRA 652.

[25] Ledesma v. Court of Appeals, G.R. No. 113216, Sept. 5, 1997; 278 SCRA 656, citing Mayuga v. Maravilla, supra, and other cases.

[26] Ibid.

[27] Mayuga v. Maravilla, supra; Trocio v. Manta, G.R. No. L-34834, Nov. 15, 1982, 118 SCRA 241.

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