

FEDERICO B. DIAMANTE III, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 147911. October 14, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for review on certiorari[1] to set aside the 20 April 2001 Minute Resolution[2] of the Sandiganbayan in Criminal Case No. 25979. The assailed resolution denied petitioner's Motion for Reconsideration of the decision issued by the Office of the Ombudsman to pursue the prosecution against petitioner for violation of Section 3(e) of Republic Act No. 3019.

The Antecedents

This petition stems from the complaint filed by Barangay Chairman Raul Ilagan ("Ilagan") of Barangay San Miguel, Palo, Leyte with the Office of the Ombudsman-Visayas on 21 September 1999. Ilagan accused petitioner Mayor Federico B. Diamante III ("Diamante") and some municipal officials of violating Section 3(e) of Republic Act No. 3019 ("RA 3019"),[3] Section 4(b), (c), and (d) of Republic Act No. 6713[4] as well as Section 512 of Republic Act No. 7160[5] for withholding his honoraria.

On 5 November 1999, Diamante filed his counter-affidavit[6] denying the allegations in the complaint. Diamante averred that he had already released the honoraria as certified by the Municipal Accountant. Diamante justified the withholding of the honoraria by pointing out Ilagan's failure to submit all Monthly Accomplishment Reports and other administrative requirements.

On 25 April 2000, the Office of the Ombudsman filed with the Sandiganbayan an Information charging Diamante with violation of Section 3(e) of RA 3019. The Information reads:

That on or about the 16th of August 1999 and for sometime prior or subsequent thereto, at the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being the Mayor of said municipality, in such capacity and committing the offense in relation to office, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously withhold the honoraria of the barangay officials of Barangay San Miguel, Palo, Leyte, for the months of July and August, 1999, amounting to THIRTY THREE THOUSAND SIX HUNDRED THIRTY FIVE [PESOS] (P33,635.00), without any legal basis, and despite demands, thereby depriving said barangay officials of said honoraria for said period, thus accused in the performance of his official functions has caused undue injury to said barangay officials in the amount aforesated.

CONTRARY TO LAW.[7]

On 22 May 2000, Diamante filed a Motion for Reinvestigation. The prosecution did not oppose the motion for reinvestigation.

After the reinvestigation, Ombudsman Prosecutor III Reynaldo S. Aguas ("Aguas") submitted his Compliance and Memorandum to the Sandiganbayan on 14 December 2000. In his Memorandum, Aguas recommended the dismissal of the charge of violation of Section 3(e) of RA 3019 against Diamante.[8] However, Deputy Special Prosecutor Robert E. Kallos ("Kallos") disapproved the recommendation in a marginal note stating that "whether there was evident bad faith in the withholding of the honoraria or not should be left to the Hon[orable] Court to decide." [9] Special Prosecutor Leonardo P. Tamayo ("Tamayo") concurred with the recommendation of Kallos.[10] Ombudsman Aniano A. Desierto agreed with Special Prosecutor Tamayo and Deputy Special Prosecutor Kallos to pursue the prosecution of the case.[11]

On 2 January 2001, Diamante filed a Motion for Reconsideration of the decision of the Ombudsman. The Sandiganbayan denied the motion for reconsideration in its Minute Resolution of 20 April 2001.

Hence, this petition.

The Issue

The issue in this case is whether there is probable cause against Diamante for violation of Section 3(e) of RA 3019.

The Ruling of the Court

We dismiss the petition.

At the outset, we declare that Diamante availed of a wrong remedy in assailing the resolution of the Sandiganbayan. Though this petition is captioned "Petition for Certiorari," its body conforms to a petition for review on certiorari under Rule 45. Since resolutions of the Ombudsman on preliminary investigations in criminal cases are not appealable to this Court by petition for review on certiorari under Rule 45, the instant petition merits outright dismissal.[12]

Under Rule 45 of the Rules of Court, only judgments or final orders or resolutions of lower courts, whenever authorized by law, are appealable by petition for review to this Court. Since the assailed resolution is neither a judgment nor a final order of the Sandiganbayan, the proper course of action for Diamante should have been a special civil action for certiorari before this Court under Rule 65. Anyway, Diamante's case should have taken its regular course, and if the Sandiganbayan issued an unfavorable verdict, he could have appealed in the manner authorized by law.[13]

Assuming we rule on the merits of the case, we still have to dismiss the present petition because of the settled principle of non-interference in the exercise of the Ombudsman's constitutionally mandated powers.[14] As we stated in *Perez v. Office of the Ombudsman*[15] -

We have consistently refrained from interfering with the investigatory and prosecutorial powers of the Ombudsman absent any compelling reason. This policy is based on constitutional, statutory and practical considerations. We are mindful that the Constitution and RA 6770 endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or judicial intervention, in order to insulate it from outside pressure and improper influence.

In *Ocampo, IV v. Ombudsman*, [16] we held that -

xxx The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the

same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

Further, Diamante's arguments deserve scant consideration. Citing *Llorente, Jr. v. Sandiganbayan*,^[17] Diamante contends that Ilagan did not suffer undue injury, which is an element of the offense of violation of Section 3(e) of RA 3019, because he was already paid his honoraria on 8 October 1999. Diamante justifies the withholding of the honoraria with Ilagan's alleged failure to submit his Monthly Accomplishment Reports and other administrative requirements. Diamante also insists that Ilagan did not put up the Data Board in Barangay San Miguel, Palo, Leyte as required by the Department of Interior and Local Government.

We adopt our ruling in *Diamante III v. People*,^[18] which involved the same petitioner and almost the same issue. In *Diamante III*, we ruled as follows:

We agree with the Sandiganbayan that the grounds relied upon by the petitioner in support of his motion for reinvestigation are matters of defense involving factual and profound legal issues which involve, inter alia, the application of the rulings of this Court in *Llorente* and *Pecho* and should be resolved by it, namely: a) whether the private complainant suffered undue injury because of the petitioner's obstinate refusal to reinstate her before he was charged with violation of Section 3(e) of Rep. Act No. 3019; b) whether the petitioner acted in good faith in terminating the employment of the private complainant; and, c) whether the post facto reinstatement of the private complainant and the payment of her monetary benefits extinguished the petitioner's criminal liability for the crime charged. xxx^[19] (Emphasis supplied)

We reiterate the principle that a prosecutor does not decide whether there is evidence beyond reasonable doubt of the guilt of the accused.^[20] A prosecutor merely determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the accused is probably guilty of the crime, and should stand trial.^[21] In determining probable cause, an inquiry on whether the evidence is sufficient to warrant conviction is not required.^[22] A trial is intended precisely for the reception of prosecution evidence in support of the charge.^[23] It is the court's task to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.^[24]

In this case, for Diamante's withholding of Ilagan's honoraria, the Ombudsman found him probably guilty of violating Section 3(e) of RA 3019. It is up to the Sandiganbayan to determine whether Diamante is guilty beyond reasonable doubt of the offense charged.

As a final note, we hold that the Ombudsman's act of writing his recommendation to pursue the prosecution of the case in a one-line note is not arbitrary or capricious, absent a showing of grave abuse of discretion. As we held in *Olivarez v. Sandiganbayan*:^[25]

The mere fact that the order to file the information against petitioner was contained in a marginal note is not sufficient to impute arbitrariness or caprice on the part of respondent special prosecutors, absent a clear showing that they gravely abused their discretion in disapproving the recommendation of the investigating prosecutors to dismiss or withdraw the case against petitioner. Neither are these marginal notes tainted with or indicative of vindictiveness or arbitrariness as imputed by petitioner. Public respondents disapproved the recommendation of the investigating prosecutors because they sincerely believed that there is sufficient evidence to indict the accused.^[26]

Moreover, in case of conflict between the conclusion of the Ombudsman and the Prosecutor, the former's decision shall prevail since the Office of the Prosecutor is under the supervision and control of the Ombudsman.^[27] It is discretionary upon the Ombudsman if he would rely mainly on the factual findings of the investigating prosecutor contained in the latter's report and recommendation.^[28] The Ombudsman can very well make his own findings of

fact.[29] There is no basis to exercise judicial review, absent a showing of grave abuse of discretion amounting to lack or excess of jurisdiction.[30]

WHEREFORE, we DISMISS the instant petition. We AFFIRM the 20 April 2001 Minute Resolution of the Sandiganbayan in Criminal Case No. 25979. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

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

[2] Approved by Presiding Justice Francis E. Garchitorena, Associate Justices Catalino R. Castañeda, Jr. and Gregory S. Ong.

[3] Otherwise known as the "Anti-Graft and Corrupt Practices Act." Section 3(e) of this law provides:

SEC. 3. Corrupt practices of public officers. - 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:

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(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.

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[4] Otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees." Paragraphs (b), (c), and (d) of Section 4 of this law provide:

SEC. 4. Norms of Conduct of Public Officials and Employees. - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

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(b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the under privileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) Political neutrality. - Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

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[5] Otherwise known as the "Local Government Code of 1991." Section 512 of this law provides:

SEC. 512. Withholding of Benefits Accorded to Barangay Officials. - Willful and malicious withholding of any of the benefits accorded to barangay officials under Section 393 hereof shall be punished with suspension or dismissal from office of the official or employee responsible therefor.

[6] Records, pp. 8-13.

[7] Rollo, p. 30.

[8] Ibid., p. 53.

[9] Ibid., p. 54.

[10] Ibid.

[11] Ibid.

[12] See *Maturan v. People*, G.R. Nos. 150353-54, 27 July 2004, 435 SCRA 323. See also *Jimenez v. Tolentino, Jr.*, G.R. No. 153578, 28 January 2005, 449 SCRA 487.

[13] See *Maturan v. People*, supra note 12, citing *Raro v. Sandiganbayan*, 390 Phil. 917 (2000).

[14] See *Jimenez v. Tolentino, Jr.*, supra note 12.

[15] G.R. No. 131445, 27 May 2004, 429 SCRA 357, citing *Presidential Commission on Good Government v. Desierto*, G.R. No. 140232, 19 January 2001, 349 SCRA 767 and *Pres. Ad Hoc Fact-Finding Com. on Behest Loans v. Ombudsman Desierto*, 415 Phil. 145 (2001). This case was cited in *Jimenez v. Tolentino, Jr.*, supra note 12.

[16] G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725. This case was cited in *Jimenez v. Tolentino, Jr.*, supra note 12.

[17] 350 Phil. 820 (1998).

[18] G.R. No. 148602, 12 August 2004, 436 SCRA 310.

[19] Ibid.

[20] *Rizon v. Desierto*, G.R. No. 152789, 21 October 2004, 441 SCRA 115.

[21] Ibid.

[22] *Raro v. Sandiganbayan*, supra note 13.

[23] *Rizon v. Desierto*, supra note 20. See also *Raro v. Sandiganbayan*, supra note 13.

[24] Ibid.

[25] 319 Phil. 45 (1995).

[26] Ibid. See *Gallardo v. People*, G.R. No. 142030, 21 April 2005, 456 SCRA 494.

[27] *Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City*, G.R. No. 134509, 12 April 2005, 455 SCRA 377, citing *Kuizon v. Desierto*, G.R. Nos. 140619-24, 9 March 2001, 354 SCRA 158.

[28] Maturan v. People, supra note 12.

[29] Ibid., citing Cruz, Jr. v. People, G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[30] Maturan v. People, supra note 12.

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