

FEDERICO B. DIAMANTE III, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, & THE HON. SANDIGANBAYAN (SECOND DIVISION), RESPONDENTS.

G.R. No. 148602. August 12, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Federico B. Diamante III, of the Order of the Sandiganbayan[1] (Second Division) in Criminal Case No. 25980 denying his motion for a reinvestigation of the case, and the Resolution denying his motion for reconsideration of said order and the revival of his motion for reinvestigation.

The Antecedents

On April 25, 2000, the petitioner was charged with violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in the Information filed with the Sandiganbayan, the accusatory portion thereof reads:

That on or about the 1[st] day of July, 1998, and for sometime 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 Municipal Mayor of Palo, Leyte, 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 terminate from public service Ma. Corina Antonnette M. Ilagan, Budgeting Aide of the Municipal Budget Office, Palo, Leyte, without legal basis, and continually refuses to reinstate said Ms. Ilagan to her former position despite the decisions of the Civil Service Commission dated October 8, 1998 and April 14, 1999 contained under Resolution No. 982681 and 990811, thus accused, in the performance of his official functions had caused damage and injury to Ma. Corina Antonnette M. Ilagan and detriment to public service.

CONTRARY TO LAW.[2]

The petitioner posted a surety bond for his provisional liberty in the Regional Trial Court of Tacloban City, Branch 7, on May 2, 2000. He also issued Memorandum No. 0038 reinstating the private complainant, Ma. Corina Antonnette M. Ilagan, to her former position, thus:

You are hereby Ordered for Reinstatement to your former position in this Municipality with all your backwages from date of termination to date of assumption including all benefits therein and privileges due to all employees, this Municipality as per Resolution No. 000443 of the Civil Service Commission dated February 14, 2000.[3]

On May 22, 2000, the petitioner filed with the Sandiganbayan a Motion for Reinvestigation, on the ground that since the private complainant was reinstated and all her monetary claims were paid, it could no longer be alleged

that she suffered undue injury. Hence, undue injury being absent, and considered one of the essential elements of the crime, he can no longer be charged, prosecuted and convicted of violating Section 3(e) of Republic Act No. 3019. Besides, the petitioner asserts that he acted in good faith when he terminated the employment of the private complainant.

The petitioner set his motion for hearing ten days after the filing thereof on June 2, 2000 at 8:30 a.m. When the case was called for hearing, neither the petitioner nor his counsel appeared. The court denied the motion on the ground that it had not yet acquired jurisdiction over the person of the petitioner, as the surety bond he posted had not yet been transmitted to the court. The petitioner filed, on August 8, 2000, a “Motion to Revive Motion for Reinvestigation” which was set for hearing on August 11, 2000. The petitioner and his counsel again failed to appear when the case was called for hearing.

On November 14, 2000, the Sandiganbayan issued a Resolution stating that it considered the motion for reinvestigation meritorious, but nevertheless denied the same on the ground that the motion sought to be revived was filed out of time and was set for hearing beyond the ten-day period therefor. The petitioner filed a motion for a reconsideration thereon, which was denied by the Sandiganbayan in a Resolution dated June 26, 2001, on the ground that the allegations contained in the motion for reinvestigation are matters of defense which must be properly ventilated in a full-blown trial.

In the petition at bar, the petitioner avers that the Sandiganbayan acted on his motion in a manner not in accord with the law, because despite its declaration that such motion was meritorious, the court, nevertheless, denied the same. Moreover, he acted in good faith and caused no undue injury to the private complainant, considering that he had already reinstated her to her former position, without loss of seniority rights and with full backwages. Hence, there was no longer a need for a full-blown trial.

In its comment on the petition, the Office of the Special Prosecutor (OSP) concedes that the bare fact that the petitioner set his motion for reinvestigation one day beyond the period as provided for in Section 5, Rule 15 of the Rules of Court, did not affect the substantive rights of the People. It asserts, however, that a reinvestigation is inappropriate, considering that the issues alleged by the petitioner in his motion for reinvestigation and the evidence to be presented should be laid before the court and resolved after trial. It posits that “undue injury” under Section 3(e) of Rep. Act No. 3019 should be construed to be any wrongful act committed by the public officer, and not actual damage within the context and as defined under the New Civil Code. The concept of “injury” as enunciated by this Court in its ruling in *Pecho vs. Sandiganbayan*,^[4] is applicable, and not the ruling of this Court in *Llorente vs. Sandiganbayan*.^[5] It avers that the act of reinstating the private complainant to her former position and the payment of her monetary claims after the filing of the Information cannot obliterate the effects of the crime which was already committed by the petitioner. The OSP further posits that the law seeks to repress overt acts of public officials and private persons alike which constitute graft or corrupt practices, or which may lead thereto in the exercise of powers vested in them by law. It asserts that the petitioner’s contention, that he acted in good faith in terminating the employment of the private complainant, is belied by the records. Thus:

Records show that petitioner terminated Ilagan on July 1, 1998. Ilagan appealed her termination to the Civil Service Commission (CSC) on July 7, 1998. On October 8, 1998, the CSC issued Resolution No. 98261 ordering the reinstatement of Ilagan to her former position with payment of back salaries from the period of her illegal separation until actual reinstatement. Ilagan served notice to petitioner of the CSC Resolution on November 5, 1998. On November 19, 1998, petitioner wrote a letter to Ilagan informing her that he has filed a Petition with the CSC. In Resolution No. 990811 dated April 14, 1999, the CSC resolved to deny petitioner’s motion for reconsideration and affirm the reinstatement of Ilagan. On April 29, 1999, Ilagan informed petitioner of her desire to return to work. On the other hand, petitioner informed Ilagan of his intention to appeal the CSC Resolution. Ilagan wrote a letter to the Court of Appeals asking whether petitioner has filed a

certiorari case. The Court of Appeals informed Ilagan in a letter dated July 29, 1999 that petitioner's petition docketed as CA-G.R. SP No. UDK-2946 entitled "Diamante III versus CSC" was dismissed on June 29, 1999. Petitioner's motion for reconsideration was likewise denied on August 11, 1999. In a letter dated August 23, 1999, Ilagan again informed petitioner of her desire to assume her position but petitioner responded that she still cannot assume her position as he is filing a Petition to Recall her appointment before the CSC. Despite the CSC Resolution ordering the reinstatement of Ilagan and the Court of Appeals' dismissal of petitioner's petition, petitioner with evident bad faith refused to reinstate Ilagan. Consequently, Ilagan was forced to file a criminal case for violation of Section 3(e) of Republic Act No. 3019 against petitioner before the Office of the Deputy Ombudsman for the Visayas. In a complete turnaround, petitioner in the guise of being magnanimous and "In the spirit of Christmas and Reconciliation" reinstated Ilagan on May 2, 2000.

Clearly, petitioner knew from the very start that he has no reason to terminate Ilagan's permanent appointment. His wrongful act of terminating Ilagan was due to vindictiveness as she was an appointee of then Mayor Sevilla. He cannot be allowed to invoke lack of undue injury to Ilagan as a ground for the dismissal of the case against him. His act of terminating Ilagan was unlawful as it deprived her of her means of livelihood and caused her moral anxieties and damages considering that up to now she has not yet received the back salaries and benefits due her since July 1, 1998.

Lastly, petitioner cannot be permitted to escape liability by simply reinstating Ilagan after all the hardships he has caused her. As already stated, petitioner's only reason for terminating Ilagan was that she was a midnight appointee. Neither did he even afford Ilagan of her basic right to due process when he unceremoniously terminated her on July 1, 1998. Justice must be done to all those similarly situated. No one is above the law. Petitioner must be made to account for the wrongful act he has committed to Ilagan. Verily, probable cause exists to warrant petitioner's indictment.[6]

The petition is denied due course.

First. The assailed resolutions of the Sandiganbayan are interlocutory in nature; hence, the proper remedy of the petitioner is to file a petition for certiorari under Rule 65 of the Rules of Court. A petition for review on certiorari under Rule 45 of the Rules of Court is proper only if the assailed order or resolution is a final one.[7]

Second. Even if we consider the petition as one for certiorari under Rule 65 of the Rules of Court, we find and so hold that the Sandiganbayan did not commit a grave abuse of its discretion in denying the petitioner's motion for reinvestigation and motion to revive the same. We note that the petitioner and his counsel failed to appear during the hearings set for said motion. The matter of granting or denying a motion for reinvestigation is addressed to the sound discretion of the Sandiganbayan, unless the petitioner is able to establish that a denial of his motion for reinvestigation would thereby deprive him of his substantial rights. Furthermore, the petitioner failed to establish his claim that the Sandiganbayan committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in denying his motion for reinvestigation.

It is clear from the Comment of the OSP that even if a reinvestigation were granted and the petitioner allowed to present documentary evidence to prove that he had already reinstated the private complainant to her former position without loss of seniority rights and paid all her monetary claims, the OSP would not move for the withdrawal of the Information but would still opt to proceed to trial for the Sandiganbayan to determine whether the private complainant sustained undue injury, as provided for in Section 3(e) of Rep. Act No. 3019.

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. However, it does not necessarily follow that the Sandiganbayan will have to conduct a full-blown trial since, from the pleadings of the parties, the evidence of the prosecution and the petitioner will principally be documentary in nature. It is, thus, well-nigh possible that even at the pre-trial stage of the proceedings, the issues will be narrowed down and well-defined, so that the Sandiganbayan will be able to resolve the case without need to resort to a full-blown trial.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice and Chairman of the Second Division, Edilberto G. Sandoval, with Associate Justices Godofredo L. Legaspi and Raoul V. Victorino, concurring.

[2] Rollo, p. 22.

[3] Id. at 26.

[4] 238 SCRA 116 (1994).

[5] 287 SCRA 382 (1998).

[6] Rollo, pp. 112-114.

[7] In *De la Cruz vs. Paras*, 69 SCRA 556 (1976), we held that:

“In the absence of a statutory definition, a final judgment, order or decree has been held to be * * * one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside.” The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word “interlocutory” refers to “something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.”

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