

THE DEPARTMENT OF JUSTICE, THROUGH SECRETARY HERNANDO PEREZ, THE NATIONAL BUREAU OF INVESTIGATION THROUGH DIRECTOR REYNALDO WYCOCO, STATE PROSECUTORS LEO B. DACERA III, MISAEEL M...

G.R. NO. 149311. February 11, 2005

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari and prohibition filed by the Department of Justice (DOJ), and the National Bureau of Investigation (NBI) under it, seeking to challenge the Order dated June 22, 2001 and the Writ of Preliminary Injunction dated June 25, 2001 issued by the late Judge Hermogenes R. Liwag of Branch 55 of the Regional Trial Court of Manila in Civil Case No. 01-100934.

The facts are as follows:

Alleging that she was a former undercover agent of the Presidential Anti-Organized Crime Task Force (PAOCTF) and the Philippine National Police (PNP) Narcotics Group, Mary Ong filed a complaint-affidavit on January 8, 2001 before the Ombudsman against PNP General Panfilo M. Lacson, PNP Colonel Michael Ray B. Aquino, other high-ranking officials of the PNP, and several private individuals. Her complaint-affidavit gave rise to separate cases involving different offenses imputed to respondents Lacson and Aquino. The cases were docketed as OMB Case Nos. 4-01-00-76, 4-01-00-77, 4-01-00-80, 4-01-00-81, 4-01-00-82, and 4-01-00-84. The Ombudsman found the complaint-affidavit of Mary Ong sufficient in form and substance and thus required the respondents therein to file their counter-affidavits on the charges. On February 28, 2001, said respondents submitted their counter-affidavits and prayed that the charges against them be dismissed.

Subsequently, on March 9, 2001, Mary Ong and other witnesses executed sworn statements before the NBI, alleging the same facts and circumstances revealed by Mary Ong in her complaint-affidavit before the Ombudsman.[1] NBI Director Reynaldo Wycoco, in a letter dated May 4, 2001 addressed to then Secretary of Justice Hernando Perez, recommended the investigation of Lacson, Aquino, other PNP officials, and private individuals for the following alleged crimes:

- a.) kidnapping for ransom of Zeng Jia Xuan, Hong Zhen Quiao, Zeng Kang Pang, James Wong and Wong Kam Chong;
- b.) murder of Wong Kam Chong; and
- c.) kidnapping for ransom and murder of Chong Hiu Ming.[2]

In the said letter, Director Wycoco likewise manifested that this recommendation was made after taking the sworn statements of Mary Ong and other witnesses such as Chong Kam Fai, Zeng Kang Pang, and Quenna Yuet Yuet. The sworn statements of these witnesses were attached to the letter.[3]

On May 7, 2001, a panel of prosecutors from the DOJ sent a subpoena to Lacson, Aquino and the other persons named in the witnesses' sworn statements. Lacson and Aquino received the subpoena on May 8, 2001. The subpoena directed them to submit their counter-affidavits and controverting evidence at the scheduled preliminary investigation on the complaint filed by the NBI on May 18, 2001 at the DOJ Multi-Purpose Hall. However, Lacson and Aquino, through their counsel, manifested in a letter dated May 18, 2001, that the DOJ panel of prosecutors should dismiss the complaint filed therewith by Mary Ong since there are complaints pending before the Ombudsman alleging a similar set of facts against the same respondents. Furthermore, they claimed that according to the Court's ruling in *Uy v. Sandiganbayan*,^[4] the Ombudsman has primary jurisdiction over criminal cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, he may take over, at any stage, from any investigatory agency of Government, the investigation of such cases involving public officials, including police and military officials such as private respondents.^[5]

The DOJ construed the aforesaid letter as a motion to dismiss and, on May 28, 2001, denied the dismissal of the cases before it through an Order that stated the following as basis of the denial:

It appearing that the subject letter is essentially a motion to dismiss which is not allowed under the Revised Rules of Criminal Procedure[;]

It appearing further that respondent's rank and/or civil service classification has no bearing in the determination of jurisdiction as the crimes charged herein do not involve violation of the Anti-Graft and Corrupt Practices Act, Unlawfully Acquired Property [or] Bribery, nor are they related to respondents' discharge of their official duties;

It appearing finally that paragraph 2 of the Joint Circular of the Office of the Ombudsman and the Department of Justice No. 95-001 dated October 5, 1995, provides that offenses committed not in relation to office and cognizable by the regular courts shall be investigated and prosecuted by the Office of the Provincial/City Prosecutor which shall rule thereon with finality;^[6]

On the very same day that the DOJ issued the aforesaid Order, the Solicitor General received a copy of a petition for prohibition filed by Lacson and Aquino before the Regional Trial Court (RTC) of Manila. In the said petition for prohibition, Lacson and Aquino maintained that the DOJ has no jurisdiction to conduct a preliminary investigation on the complaints submitted by Mary Ong and the other witnesses. They argued that by conducting a preliminary investigation, the DOJ was violating the Ombudsman's mandate of having the primary and exclusive jurisdiction to investigate criminal cases cognizable by the Sandiganbayan. Again, they relied on *Uy v. Sandiganbayan* to bolster their claim.

On June 22, 2001, Judge Liwag issued the Order herein assailed prohibiting the Department of Justice from conducting the preliminary investigation against Lacson and Aquino. A Writ of Preliminary Injunction was likewise issued by the trial court. The dispositive portion of the Order reads as follows:

WHEREFORE, premises considered, the Petition for Prohibition is hereby GRANTED, and accordingly a Writ of Preliminary Injunction is hereby ISSUED, enjoining the respondents and their subordinates, agents[,] and other persons acting in their behalf, individually and collectively, from conducting a preliminary investigation in IS No. 2001-402, insofar as petitioners here are concerned, and directing the petitioners to file their counter-affidavits in said case until such time that the Office of the Ombudsman shall have disclaimed jurisdiction over the offenses subject matter of the investigations before it, or until such Office shall have categorized the said offenses as being committed by the petitioners not in relation to their respective offices.

Let the corresponding Writ of Preliminary Injunction, therefore, issue without bond, as there is no showing whatsoever in the pleadings of the parties that the respondents will suffer any injury by reason of the issuance of the writ prayed for, in accordance with Section 4(b), Rule 58 of the Rules of Civil Procedure.

SO ORDERED. [7]

Hence, this petition was filed before this Court by the DOJ, through then Secretary Hernando Perez, the NBI, through Director Reynaldo Wycoco, and the panel of prosecutors designated by the DOJ to conduct the preliminary investigation of I.S. No. 2001-402. In their petition, they raise the following issues:

I

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE CRYSTAL CLEAR AUTHORITY OF PETITIONERS DOJ AND THE PANEL OF STATE PROSECUTORS TO CONDUCT PRELIMINARY INVESTIGATION PURSUANT TO ADMINISTRATIVE ORDER NO. 08, SERIES OF 1990 OF THE OFFICE OF THE OMBUDSMAN AND SECTION 4 OF RULE 112 OF THE RULES OF COURT.

II

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE OFFICE OF THE OMBUDSMAN HAS TAKEN OVER THE NBI COMPLAINT FILED WITH THE DOJ; AND IN IGNORING THE FACT THAT PRIVATE RESPONDENTS FAILED TO AVAIL OF AN ADEQUATE ADMINISTRATIVE REMEDY BEFORE THE FILING OF A PETITION FOR PROHIBITION.

III

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN CONSIDERING THE NBI COMPLAINT FILED WITH THE DOJ AND THE COMPLAINT-AFFIDAVIT FILED BY MARY ONG BEFORE THE OFFICE OF THE OMBUDSMAN AS INVOLVING ABSOLUTELY THE SAME OFFENSES, RESPONDENTS AND ALLEGED VICTIMS.

IV

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING RELIEF TO RESPONDENT MICHAEL RAY B. AQUINO DESPITE THE GLARING FACT THAT HE IS CHARGED WITH SEPARATE AND DISTINCT OFFENSES BEFORE THE OFFICE OF THE OMBUDSMAN AND THE DOJ.

V

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN PREJUDGING THE MAIN CASE FOR PROHIBITION BY GRANTING THE SAME DESPITE THE FACT THAT HEARINGS IN THE CASE WERE ONLY HELD FOR THE PURPOSE OF DETERMINING THE MERIT OF THE PRAYER FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.[8]

A perusal of the issues raised reveals that the present petition puts forth one central question to be resolved: whether or not the DOJ has jurisdiction to conduct a preliminary investigation despite the pendency before the Ombudsman of a complaint involving the same accused, facts, and circumstances. The addition of other names in the second proceedings does not alter the nature thereof as being principally directed against the respondents herein in connection with substantially the same set of facts alleged.

First, however, a threshold question has to be resolved.

Petitioners came to this Court without filing a motion before the trial court to reconsider the assailed Order. They maintain that it was imperative for them to do so for the sake of the speedy administration of justice and that this is all the more compelling, in this case, considering that this involves the high-ranking officers of the PNP and the

crimes being charged have already attracted nationwide attention.

Indeed, this Court finds that time is of the essence in this case. At stake here may not only be the safety of witnesses who risked life and limb to give their statements to the authorities, but also the rights of the respondents, who may need to clear their names and reputations of the accusations against them. Procedural laws are adopted not as ends in themselves but as means conducive to the realization of justice. The rules of procedure are not to be applied when such application would clearly defeat the very rationale for their conception and existence.[9]

Now, to the merits.

The authority of the DOJ to conduct a preliminary investigation is based on the provisions of the 1987 Administrative Code under Chapter I, Title III, Book IV, governing the DOJ, which states:

Section 1. Declaration of policy. – It is the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; . . .

Section 3. Powers and Functions. – To accomplish its mandate, the Department shall have the following powers and functions:

. . .

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system;

. . .

Furthermore, Section 1 of the Presidential Decree 1275, effective April 11, 1978, provides:

Section 1. Creation of the National Prosecution Service; Supervision and Control of the Secretary of Justice. – There is hereby created and established a National Prosecution Service under the supervision and control of the Secretary of Justice, to be composed of the Prosecution Staff in the Office of the Secretary of Justice and such number of Regional State Prosecution Offices, and Provincial and City Fiscal's Offices as are hereinafter provided, which shall be primarily responsible for the investigation and prosecution of all cases involving violations of penal laws.

Respondents Lacson and Aquino claim that the Ombudsman has primary jurisdiction over the cases filed against them, to the exclusion of any other investigatory agency of Government pursuant to law and existing jurisprudence. They rely on the doctrine in *Uy v. Sandiganbayan* aforementioned, and contend that the Ombudsman, in the exercise of the said primary jurisdiction, may take over, at any stage, from any investigatory agency of Government, the investigation of cases involving public officials, including police and military officials. They likewise claim that it should be deemed that the Ombudsman has already taken over the investigation of these cases, considering that there are already pending complaints filed therewith involving the same accused, facts and circumstances.

Section 15, Republic Act No. 6640, known as the Ombudsman Act of 1989, provides:

Sec. 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or

inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases; ...[10]

The question is whether or not the Ombudsman has in effect taken over the investigation of the case or cases in question to the exclusion of other investigatory agencies, including the DOJ. In granting the petition for prohibition, RTC Judge Liwag gave the following rationale:

Since the Ombudsman has taken hold of the situation of the parties in the exercise of its primary jurisdiction over the matter, it is the feeling of this Court that the respondents cannot insist on conducting a preliminary investigation on the same matter under the pretext of a shared and concurrent authority. In the final analysis, the resolution on the matter by the Ombudsman is final. In the preliminary investigation conducted by the Ombudsman itself, the other investigative agencies of the Government have no power and right to add an input into the Ombudsman's investigation. Only in matters where the other investigative agencies are expressly allowed by the Ombudsman to make preliminary investigation may such agencies conduct the investigation, subject to the final decision of the Ombudsman. That is the situation. It is not otherwise. To allow the respondents to meddle with the investigation of similar cases being investigated by the Ombudsman would put them to a higher plane than the source of their powers with respect to such cases. This is, of course, anathema to orderly judicial procedures. This is contrary to ordinary common sense. It would certainly be presumptuous, if not ridiculous, for the Department of Justice to be making recommendation as to its preliminary investigation to the Ombudsman in matters being handled by such Office itself. Such recommendation would be pre-emptive of the actions of the said Office. Such a situation must thus be disallowed.

The public respondents capitalized on the fact that the Ombudsman may take over, at any stage, from any investigative agency of the Government, the investigation of cases involving public officials, including police and military officials such as the petitioners. It is the feeling of this Court that the respondents cannot find comfort in that provision of the law. That situation presupposes the conduct by other Government agencies of preliminary investigations involving public officials in cases not theretofore being taken cognizance of by the Ombudsman. If the Ombudsman, as in the case, has already taken hold of the situation of the parties, it cannot take over, at any stage of the proceedings, the investigation being conducted by another agency. It has the case before it. Rudimentary common sense and becoming respect for power and authority would thus require the respondents to desist from interfering with the case already handled by the Ombudsman. Indeed, as conceded by the respondents, they are deputized prosecutors by the Ombudsman. If that is so, and that is the truth, the exercise by the principal of the powers negates absolutely the exercise by the agents of a particular power and authority. The hierarchy of powers must be remembered. The principle of agency must be recalled.[11]

Section 13, Article XI of the Constitution specifically vests in the Office of the Ombudsman the plenary power to investigate any malfeasance, misfeasance or non-feasance of public officers or employees.[12] To discharge its duty effectively, the Constitution endowed the Office of the Ombudsman with special features which puts it a notch above other grievance-handling, investigate bodies. First and foremost, it extended independence to the Ombudsman and insulated it from the intrusions of partisan politics. Thus, the Constitution provided for stringent qualification requirements for the selection of the Ombudsman and his deputies, i.e., they should be natural-born citizens, of recognized probity and independence and must not have been candidates for any elective office in the immediately preceding election.[13] The Ombudsman and his deputies were given the rank and salary equal to that of the Chairman and Members, respectively, of the Constitutional Commissions, with a prohibition for any decrease in their salary during their term of office.[14] They were given a fixed term of seven years, without reappointment.[15] Upon their cessation from office, they are prohibited from running for any elective office in the immediately succeeding election.[16] Finally, unlike other investigative bodies, the Constitution granted the Office of the Ombudsman fiscal autonomy.[17] Clearly, all these measures are intended to enhance the

independence of the Office of the Ombudsman.

The Office of the Ombudsman was likewise envisioned by the Constitution to serve as the principal and primary complaints and action center for the aggrieved layman baffled by the bureaucratic maze of procedures. For this purpose, it was granted more than the usual powers given to prosecutors. It was vested with the power to investigate complaints against a public office or officer on its own initiative, even without a formal complaint lodged before it.[18] It can inquire into acts of government agencies and public servants based on reports in the media and those which come to his attention through sources other than a complaint. The method of filing a complaint with the Ombudsman is direct, informal, speedy and inexpensive. All that may be required from a complainant is sufficient information detailing the illegal or improper acts complained of. The ordinary citizen, who has become increasingly dependent on public agencies, is put to minimal expense and difficulty in getting his complaint acted on by the Office of the Ombudsman. Vis-à-vis other prosecutors, the exercise by the Ombudsman of its power to investigate public officials is given preference over other bodies.

As aforementioned, Congress itself acknowledged the significant role played by the Office of Ombudsman when it enacted Republic Act No. 6770. Section 15 (1) of said law gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan and authorizes him to take over, at any stage, from any investigatory agency, the investigation of such cases. This power to take over a case at any time is not given to other investigative bodies. All this means that the power of the Ombudsman to investigate cases cognizable by the Sandiganbayan is not co-equal with other investigative bodies, such as the DOJ. The Ombudsman can delegate the power but the delegate cannot claim equal power.

Clearly, therefore, while the DOJ has general jurisdiction to conduct preliminary investigation of cases involving violations of the Revised Penal Code, this general jurisdiction cannot diminish the plenary power and primary jurisdiction of the Ombudsman to investigate complaints specifically directed against public officers and employees. The Office of the Ombudsman is a constitutional creation. In contrast, the DOJ is an extension of the executive department, bereft of the constitutional independence granted to the Ombudsman.

Petitioners cannot seek sanctuary in the doctrine of concurrent jurisdiction. While the doctrine of concurrent jurisdiction means equal jurisdiction to deal with the same subject matter,[19] the settled rule is that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.[20] Thus, assuming there is concurrent jurisdiction between the Ombudsman and the DOJ in the conduct of preliminary investigation, this concurrence is not to be taken as an unrestrained freedom to file the same case before both bodies or be viewed as a contest between these bodies as to which will first complete the investigation. In the present case, it is the Ombudsman before whom the complaint was initially filed. Hence, it has the authority to proceed with the preliminary investigation to the exclusion of the DOJ.

None of the cases previously decided by this Court involved a factual situation similar to that of the present case. In *Cojuangco, Jr. v. Presidential Commission on Good Government (PCGG)*,[21] the Court upheld the special authority of the PCGG to conduct the preliminary investigation of ill-gotten wealth cases pursuant to Executive Order No. 1, issued by then President Aquino, creating the PCGG. While the Court emphasized in *Cojuangco* that the power of the Ombudsman to conduct a preliminary investigation over said cases is not exclusive but a shared authority, the complaints for the alleged misuse of coconut levy funds were filed directly with the PCGG. No complaint was filed with the Office of the Ombudsman. Moreover, a close scrutiny of said case will disclose that the Court recognized the primary, albeit shared, jurisdiction of the Ombudsman to investigate all ill-gotten wealth cases.[22] In fact, it ordered the PCGG to desist from proceeding with the preliminary investigation as it doubted the impartiality of the PCGG to conduct the investigation after it had previously caused the issuance of sequestration orders against petitioner's assets.

In *Sanchez v. Demetriou*,^[23] the Presidential Anti-Crime Commission filed a complaint with the DOJ against petitioner Mayor Sanchez for the rape-slay of Sarmenta and the killing of Gomez. After the DOJ panel prosecutors conducted the preliminary investigation, a warrant of arrest was issued and the corresponding Informations were filed in court by the DOJ prosecutors. Petitioner claimed that it is only the Ombudsman who has the power to conduct investigation of cases involving public officers like him. The Court reiterated its previous ruling that the authority to investigate and prosecute illegal acts of public officers is not an exclusive authority of the Ombudsman but a shared authority. However, it will be noted that the complaint for preliminary investigation in that case was filed solely with the DOJ.

In *Aguinaldo v. Domagas*,^[24] a letter-complaint charging petitioners with sedition was filed with the Office of the Provincial Prosecutor in Cagayan. After investigation by the DOJ panel of prosecutors, the corresponding Information was filed in court. The pertinent issue raised by petitioners was whether the prosecutors can file the said Information without previous authority from the Ombudsman. The Court ruled in the affirmative and reiterated its ruling regarding the shared authority of the DOJ to investigate the case. Again, it should be noted that the complaint in that case was addressed solely to the provincial prosecutor.

The same factual scenario obtains in the cases of *Natividad v. Felix*^[25] and *Honasan v. Panel of Investigating Prosecutors of the DOJ*^[26] where the letter-complaint against petitioners public officers were brought alone to the DOJ prosecutors for investigation.

In sum, in none of the aforecited cases was the complaint filed ahead with the Office of the Ombudsman for preliminary investigation. Hence, there was no simultaneous exercise of power between two coordinate bodies and no risk of conflicting findings or orders. In stark contrast with the present case, Mary Ong filed a complaint against respondents initially with the Office of the Ombudsman for preliminary investigation which was immediately acted on by said Office. For reasons not readily apparent on the records, she thereafter refiled substantially the same complaint with the NBI and the DOJ.

Not only this.

The subsequent assumption of jurisdiction by the DOJ in the conduct of preliminary investigation over the cases filed against the respondents would not promote an orderly administration of justice. Although a preliminary investigation is not a trial, it is not a casual affair either. A preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.^[27] When one is hailed before an investigative body on specific charges, the very act of filing said complaint for preliminary investigation immediately exposes the respondent and his family to anxiety, humiliation and expense. To allow the same complaint to be filed successively before two or more investigative bodies would promote multiplicity of proceedings. It would also cause undue difficulties to the respondent who would have to appear and defend his position before every agency or body where the same complaint was filed. This would leave hapless litigants at a loss as to where to appear and plead their cause or defense.

There is yet another undesirable consequence. There is the distinct possibility that the two bodies exercising jurisdiction at the same time would come up with conflicting resolutions regarding the guilt of the respondents.

Finally, the second investigation would entail an unnecessary expenditure of public funds, and the use of valuable and limited resources of Government, in a duplication of proceedings already started with the Ombudsman.

From all the foregoing, it is clear that petitioners have not shown any grave abuse of discretion tantamount to lack or excess of jurisdiction committed by the respondent Judge.

WHEREFORE, the petition is DISMISSED.

No costs.

SO ORDERED.

Davide Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Tinga, Chico-Nazario and Garcia, JJ., concur.

[1] Annex D-1 of the Petition; Rollo, pp. 83-91.

[2] Annex D of the Petition; Rollo, pp. 80-82.

[3] Annexes D-2 to D-4 of the Petition; Rollo, pp. 92-107.

[4] 354 SCRA 651 (2001).

[5] Annex G of the Petition; Rollo, pp. 133-144.

[6] Annex H of the Petition; Rollo, pp. 145-147.

[7] Rollo, pp. 54-55 (Emphasis in the original).

[8] Petition, pp. 12-13; Rollo, pp. 13-14.

[9] *Government Service Insurance System v. Court of Appeals*, 266 SCRA 187 (1997).

[10] Emphasis supplied.

[11] RTC Order, pp. 7-8; Rollo, pp. 53-54 (Emphasis in the original).

[12] *Uy v. Sandiganbayan*, supra, note 4.

[13] Section 8, Article XI, Constitution.

[14] Section 10, id.

[15] Section 11, id.

[16] Id.

[17] Section 4, id.

[18] Section 13 (1), id.

[19] *Black's Law Dictionary*, 4th edition, p. 363.

[20] *Carlos v. Angeles*, 346 SCRA 572 (2000); *Lecaroz v. Sandiganbayan*, 128 SCRA 324 (1984).

[21] 190 SCRA 226 (1990).

[22] Id., at 242.

[23] 227 SCRA 627 (1993).

[24] G.R. No. 98452, En Banc Resolution dated September 26, 1991.

[25] 229 SCRA 680 (1994).

[26] G.R. No. 159747, April 13, 2004.

[27] Section 1, Rule 112, Rules on Criminal Procedure.

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