HILARIO P. SORIANO, PETITIONER, VS. ZENAIDA A. CABAIS, RESPONDENT.

G.R. NO. 157175. June 21, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolution[1] of the Court of Appeals dated January 31, 2003 in CA-G.R. SP No. 74378.

Hilario P. Soriano, petitioner, is the President of the Rural Bank of San Miguel, Inc. (RBSM). On the other hand, Zenaida A. Cabais, respondent, is the comptroller designated by the Bangko Sentral ng Pilipinas (BSP) to oversee the bank's operations.

Eventually, the RBSM was closed and placed under receivership by the BSP. Thereupon, petitioner filed with the Court of Appeals a petition for review. In the course of the proceedings, respondent executed two affidavits stating that:

> - About a week before RBSM declared a "bank holiday" on January 4, 2000, RBSM on December 27, 1999 and December 29, 1999, paid Forcecollect Professional Solution, Inc. and Surecollect Professional Solution, Inc., entities owned/controlled by Mr. Soriano and other RBSM officers (Annexes "14" and "15") P5.300 million and P5.750 million (Annexes "16" and "17"), respectively, without any supporting documents, as payment of 25% collection fee;[2] x x x (Affidavit dated February 17, 2000)
>
> - RBSM paid Manager Check Nos. 0000040071 and 0000040079 in cash on December 27 and 29, 1999, respectively, as evidenced by the attached Debit Advances of even dates (Annexes "1-B" and "2-B" respectively).[3] x x x (Affidavit dated March 22, 2000)

On April 6, 2000, petitioner filed with the Office of the City Prosecutor of Manila a complaint for perjury defined and penalized by Articles 183 and 184 of the Revised Penal Code against respondent. Petitioner alleged that respondent committed perjury by narrating false statements in her affidavits.

On May 29, 2000, respondent filed with the Office of the City Prosecutor of Manila her counter-affidavit denying the charge and stating that the checks were validated by the RBSM as shown by the signature appearing thereon.

On March 4, 2002, then Manila City Prosecutor Ramon Garcia (now Associate Justice of the Court of Appeals), after finding that respondent is a public officer and that the acts imputed against her are related to the performance of her duties, forwarded the complaint for perjury to the Office of the Ombudsman. Attached thereto was the Resolution of Assistant City Prosecutor Anabel D. Magabilin recommending the dismissal of the complaint.

On July 12, 2002, Graft Investigation Officer Lolita M. Bravo issued "Review and Recommendation," the dispositive portion of which reads:

> WHEREFORE, premises considered, the Resolution of Assistant Prosecutor Magabilin recommending the DISMISSAL of the instant Complaint is hereby AFFIRMED.

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Overall Deputy Ombudsman Margarito P. Gervacio, Jr. approved the "Review and Recommendation."

Petitioner seasonably filed a motion for reconsideration, but it was denied by the Office of the Ombudsman in its Order of November 4, 2002.

On December 26, 2002, petitioner filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 74378.

In its Resolution dated January 31, 2003, the Court of Appeals dismissed the petition, holding that:

> This is an appeal, by way of petition for review under Rule 43 of the 1997 Rules of Civil Procedure, of the Ombudsman's resolution dismissing petitioner's criminal complaint for perjury against respondent. However, a petition for review before this Court of the Ombudsman's decision will lie only if the proceedings had in that office pertains to purely administrative disciplinary cases (Fabian vs. Desierto, 295 SCRA 470).

Hence, the instant petition for review on certiorari.

Petitioner contends that the Court of Appeals erred in invoking our ruling in Fabian v. Desierto.[4]

The petition lacks merit.

In Fabian,[5] we ruled that appeals from the decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. This ruling has been repeatedly reiterated in subsequent cases[6] and continues to be the controlling doctrine.

Here, petitioner's complaint is criminal in nature. In Estrada v. Desierto,[7] we held that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for certiorari with this Court, not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of certiorari under Rule 65 to be filed with this Court and not with the Court of Appeals. This rule was subsequently restated in Acuña v. Deputy Ombudsman for Luzon[8] where we held that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for certiorari under Rule 65.

Clearly, petitioner availed of the wrong remedy.

Even assuming that petitioner filed a petition for certiorari with this Court, we would have dismissed it just the same since there is nothing in the records to even suggest that the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaint for perjury against respondent.

In its Review and Recommendation dated July 12, 2002, the Office of the Ombudsman held:

> As concluded by Assistant City Prosecutor Magabilin in her Resolution, there is indeed no probable cause to indict Respondent of the crimes charged.
>
> Manager's Check Nos. 0000040071 and 0000040079 in the amounts of P5.300 million and P5.750 million were issued in favor of Forcecollect and Surecollect, (p. 54) and were paid in cash on December 27 and 29, 1999, respectively, by RBSM, as evidenced by Debit Advices (p. 58).
>
> The fact of issuance and payment by RBSM of said checks to Forcecollect and Surecollect is furthermore bolstered by the Certifications issued by RBSM Accountant, Narciso Adriano (p. 39), RBSM Branch Accountant for Plaridel, Carmina Capule (p. 40), and PDIC's Assisting Deputy Receiver, Mauricia Manzanares

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(p. 41).

It can be gleaned from the foregoing that the averments of respondent in her subject Affidavits are true.

Nevertheless, granting for the sake of argument that the statements of respondent in her Affidavits are false, still, there exists no reasonable ground to indict her under Articles 183 and 184 of the Revised Penal Code. It bears stressing that one element of perjury is a willful and deliberate assertion of falsehood. Such element is absent in the instant case. Respondent's contention that said Manager's Checks were issued and paid by RBSM to Forcecollect and Surecollect, are duly supported by RBSM records which she has perused and examined in her capacity as duly designated BSP Comptroller for RBSM. Thus, respondent believes in good faith that what she mentioned in her Affidavits are true. It must be noted that good faith is a defense in perjury (People of the Philippines v. Abaya, 74 Phil. 59). For the same reasons, respondent cannot likewise be prosecuted under Article 184 of the Revised Penal Code.

The above ratiocination does not appear to be arbitrary or whimsical. It bears emphasis that we have consistently refrained from interfering with the investigatory and prosecutorial powers of the Ombudsman absent any compelling reason.[9] In Nava v. National Bureau of Investigation,[10] we held that it is beyond the ambit of this Court to review the exercise of discretion of the Office of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman, who beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

Thus, the Court of Appeals, in issuing its assailed Resolution dated January 31, 2003 dismissing petitioner's petition for review, did not commit a reversible error.

WHEREFORE, we DENY the petition. The challenged Resolution of the Court of Appeals in CA-G.R. SP No. 74378 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Edgardo P. Cruz, and concurred in by Associate Justice Salvador J. Valdez, Jr. (deceased) and Associate Justice Mario L. Guariña III, Annex "A," Petition, Rollo, pp. 21-22.

[2] Id., pp. 107-109.

[3] Id., pp. 34-35.

[4] G.R. No. 129742, September 16, 1998, 295 SCRA 470.

[5] Id.

[6] See Enemecio v. Office of the Ombudsman (Visayas), G.R. No. 146731, January 13, 2004, 419 SCRA 82; Gonzales v. Rosas, G.R. No. 145363, February 23, 2004, 423 SCRA 488; Perez v. Office of the Ombudsman, G.R. No. 131445, May 27, 2004, 429 SCRA 357; Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City, G.R. No. 134509, April 12, 2005, 455 SCRA 377; Lanting v. Ombudsman, G.R. No. 141426, May 6, 2005, 458 SCRA 93; Golangco v. Fung, G.R. No. 147640, October 16, 2006, 504 SCRA 321.

[7] Estrada v. Desierto, G.R. No. 156160, December 9, 2004, 445 SCRA 655.

[8] G.R. No. 144692, January 31, 2005, 450 SCRA 232.

[9] Perez v. Office of the Ombudsman, G.R. No. 131445, May 27, 2004, 429 SCRA 357, 363, citing Presidential

Commission on Good Government v. Desierto, 349 SCRA 767 (2001).

[10] G.R. No. 134509, April 12, 2005, 455 SCRA 377.

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