FE M. CABRERA, PETITIONER, VS. HON. SIMEON V. MARCELO, IN HIS CAPACITY AS OMBUDSMAN, THE HON. SANDIGANBAYAN (THIRD DIVISION) AND FRANCO P. CASANOVA, RESPONDENTS.

G.R. NO. 157835. July 27, 2006

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CHICO-NAZARIO, J.:`

Before Us is a Petition for Review on Certiorari under Rule 65 of the 1997 Rules of Civil Procedure which seeks for the nullification of the Resolution[1] dated 3 June 2002 and Order[2] dated 5 February 2003, both issued by the Office of the Ombudsman.

The antecedents are the following:

Pursuant to Commission on Audit (COA) Special Order No. 99-04 dated 21 October 1999, the COA Regional Office No. IV conducted in December 1999 a special audit on the funds of the Municipality of Taal, Batangas, covering the period from January 1998 to September 1999.

The audit team headed by Auditor Ely G. Valdez found, among other things, that:

> Checks issued as payments to suppliers/creditors were deposited into the account of the Municipal Mayor at Philippine Savings Bank, Lemery Branch under Account # 1818010393 in violation of R.A. 6713.
>
> Section 7, Par. a of R.A. 6713 otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" states that: Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.
>
> Review of cleared checks issued as payments to suppliers/creditors of the municipality (Annex Ak) revealed that the payees had indorsed the checks to the Municipal Mayor who eventually deposited the same to her personal account with Philippine Savings Bank under account no. 1818010393, which is contrary to the aforesaid regulation.
>
> Details are shown below:
>
> Disb. Voucher # Payee Check# Date
> Amount
>
> 1 101-98-09-1025
> Budget Wise Marketing 64131 9/23/98 19,308.64
>
> 2
> Narciso Gumapac 68614 11/26/98 13,363.64
>
> 3
> Taal Volcano Restaurant 68616 11/26/98 11,672.73
>
> 4

Taal Volcano Restaurant 68615 11/26/98 11, 672.73

5 101-98-12-1302 Aguila Hardware 68622 12/1/98 19,386.45

6 101-98-12-1303 Aguila Hardware 68623 12/1/98 19,221.10

7 101-98-12-1350 Aguila Hardware 68651 12/14/98 19,221.10

8
Aguila Hardware 68654 12/14/98 19,454.55

9 101-98-12-1393 Hipolito Hardware 68676 12/21/98 19,109.23

10
Jeery Encarnacion 68677 12/21/98 19,545.55

Total P171,955.72

Management Comments:

And the suppliers/creditors wanted to have their checks converted into cash. Wanting to help, the mayor gave in to their request. She encashed their checks without charge. She did not earn even a single centavo from any of said transaction, on the contrary she was always at the losing end of the deal.

Despite of her good intention, at the start of CY 1999 and up to the present the Honorable Mayor stops and no longer accommodate the request of the suppliers and creditors, because the people might perceived (sic) that she would be benefiting from said transaction.

Team Rejoinder:

Considering that the payees are known businessmen/women of the locality and have been a supplier of the municipality for quite some time and that the depository bank is just located to a nearby municipality, it is unlikely that they do not maintain their own bank account.

Team Recommendation:

Instruct the Municipal Treasurer to ensure that checks payments should be released only to payee and that the checks should be properly stamped "For Payees Account Only" to avoid being encashed by other person or deposited to account other than the payee's.

Also, municipal officials should be prohibited from being used as conduit or facilitator/fixer by supplier/contractor for the early or expeditious release of their financial claims against the municipality for financial consideration.[3]

On the strength of said audit report, an amended complaint-affidavit dated 8 March 2002 was filed by respondent Franco P. Casanova accusing petitioner Fe M. Cabrera, former Mayor, and her husband, incumbent Mayor Librado M. Cabrera, both of the Municipality of Taal, Batangas, with violations of Article 217 in relation to Articles 171 and 48 of the Revised Penal Code, [4] and of Republic Act No. 3019, as amended. The case was docketed as OMB-L-C-02-0166-B.

Petitioner and Librado M. Cabrera alleged, inter alia, that the subject checks were issued as payment to the different suppliers that transacted business with the municipal government. Petitioner asserted that her signatures at the back of the subject checks were mere accommodations to the requests of the suppliers in order that the checks can be encashed, and that she did not forge the signature of any of the suppliers.

Complainant Casanova filed his Reply-Affidavit.

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On 3 June 2002, Graft Investigation Officer II Adoracion A. Agbada, finding probable cause, issued a resolution recommending the filing of 10 informations against petitioner for violation of Section 3(h) of Republic Act No. 3019, as amended. The recommendation was approved by Jesus F. Guerrero, Deputy Ombudsman for Luzon, and by then Ombudsman Aniano A. Desierto on 5 July 2002.

On 18 July 2002, 10 informations for violation of Section 3(h) of Republic Act No. 3019, as amended, were filed before the Sandiganbayan against petitioner and docketed as Criminal Cases Nos. 27538 to 27547. The cases were raffled to the court's Third Division. The accusatory portion of the Information in Criminal Case No. 27538 reads:

> That on or about December 01, 1998, or sometime prior or subsequent thereto, in the Municipality of Taal, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, accused FE M. CABRERA, a public officer, being then the Municipal Mayor of Taal, Batangas, and as such had administrative control of the funds of the municipality and whose approval is required in the disbursements of municipal funds, committing the crime herein charged in relation to her official functions and taking advantage of her public position, did then and there, willfully, unlawfully and feloniously deposit to her personal account at Philippine Savings Bank, Lemery Branch under Account No. 1818010393 a Land Bank Check No. 68623 issued by the Municipal Government of Taal, Batangas to Aguila Hardware in the amount of NINETEEN THOUSAND THREE HUNDRED EIGHTY SIX PESOS and 45/100 (P19,386.45) thereby having financial or pecuniary interest in the business, contract or transaction in connection which she intervened or took part in her official capacity as the Mayor of Taal, Batangas.[5]

The nine other Informations are similarly worded except for the date, number, amount, and payee of the checks. The pertinent data in the other informations are as follows:

Crim. Case No. Date Check No. Amount Payee

27539 Dec. 01, 1998 68622 P19,221.10 Aguila Hardware

27540 Dec. 14, 1998 68651 P19,221.10 Aguila Hardware

27541 Dec. 14, 1998 68654 P19,454.55 Aguila Hardware

27542 Dec. 21, 1998 68676 P19,109.23 Hipolito Hardware

27543 Dec. 21, 1998 68677 P19,545.55 Jeery Encarnacion

27544 Sept. 23, 1998 64131 P19,308.64 Budget Wise Marketing

27545 Nov. 26, 1998 68614 P13,363.64 Narciso Gumapac

27546 Dec. 01, 1998 68616 P11,672.73 Taal Volcano Restaurant

27547 Dec. 01, 1998 68615 P11,672.73 Taal Volcano Restaurant

Petitioner filed a Motion for Reinvestigation dated 30 August 2002. In an Order dated 30 September 2002, the Sandiganbayan granted the motion and directed the Office of the Special Prosecutor (OSP) to conduct a reinvestigation of the cases.

In an Order dated 27 November 2002, Ombudsman Prosecutor II Cicero D. Jurado, Jr. recommended that the cases against petitioner be dismissed. Said recommendation was approved by Deputy Special Prosecutor Robert E. Kallos and by Special Prosecutor Leonardo P. Tamayo.

On 5 February 2003, Ombudsman Simeon V. Marcelo disapproved the recommendation of Ombudsman Prosecutor Jurado and directed the OSP to proceed with the prosecution of the cases.

The 5 February 2003 order issued by Ombudsman Simeon V. Marcelo denied petitioner's Motion for Reinvestigation and directed the Office of the Special Prosecutor to proceed with the prosecution of the cases before the Sandiganbayan. It disapproved the order of Ombudsman Prosecutor II Cicero D. Jurado dated 27 November 2002 recommending the dismissal of the cases against petitioner.

Petitioner raises the following grounds to support her petition:

> WITH ALL DUE RESPECT, PUBLIC RESPONDENT OMBUDSMAN ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN APPROVING THE RESOLUTION DATED 03 JUNE 2002.
>
> WITH ALL DUE RESPECT, PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION (sic) DISAPPROVING THE ORDER DATED 27 NOVEMBER 2002 OF THE OSP WHICH HAD RECOMMENDED THE DISMISSAL OF CRIMINAL CASES NOS. 27538 TO 27547.

Petitioner contends that the Ombudsman acted without or in excess of his jurisdiction or with grave abuse of discretion in approving the resolution dated 3 June 2002 issued by Graft Investigation Officer II Adoracion A. Agbada recommending the filing of 10 informations against her for violation of Section 3(h) of Republic Act No. 3019, as amended. She explains that she merely acceded to the request of the payees of the subject checks to advance to them their cash value to spare them the hassle of encashing the same with the drawee bank. She claims the payees, in turn, endorsed the checks to her which she then deposited to her account with the Philippine Savings Bank. She contends that her signature at the back of the subject checks does not constitute evidence of an alleged financial or pecuniary interest contemplated in Section 3(h) of Republic Act No. 3019. She adds that the transactions covered by said checks actually took place and that her participation was limited to co-signing the checks which were issued in payment therefor.

From the foregoing, it appears that petitioner would like to show that the elements of the offense charged are not present -- that she has no financial or pecuniary interest in the contracts or transactions for which the checks were issued, and that she did not intervene or take part in her official capacity as Mayor regarding said contracts or transactions.

The essential elements of a violation of Section 3(h) of Republic Act No. 3019, as amended, are as follows: (1) The accused is a public officer; (2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and (3) he either: (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by law.[6]

The 10 informations charge petitioner for having a financial or pecuniary interest in the contracts or transactions entered into by the Municipality of Taal, Batangas, where she, being then the Mayor of said municipality who has administrative control of the funds of the municipality and whose approval is required in the disbursements of municipal funds, intervened and took part in her official capacity by issuing the checks involved and who thereafter deposited the same in her personal bank account.

The arguments advanced by petitioner clearly involve the elements of the offense charged. In support thereof, petitioner presented during the reinvestigation five affidavits to prove that the affiants merely requested petitioner to give them the cash equivalent of the checks involved and that they were indeed given the value thereof. At this juncture, petitioner cannot be exonerated without going through trial considering that the checks she signed as Municipal Mayor as payment to suppliers, ended up in her personal bank account. The mere presentation of said affidavits will not suffice without further elucidation on the matter.

Settled is the rule that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.[7] In the case at bar, the grounds relied upon by petitioner should be fully explained and threshed out not in a preliminary investigation but during trial as the same are matters of defense involving factual issues.

The Ombudsman, in his Order dated 5 February 2003, aptly explained why the cases against petitioner should not be dismissed. It reads:

> In support of her Motion for Reinvestigation, accused Cabrera submitted the Affidavits of Antonio Aguila, proprietor of Aguila Hardware; Paulina Aala, General Manager of Taal Volcano Restaurant; Narciso Gumapac and Jeery Encarnacion, two of the payees in the checks issued by the Municipality, all of whom claim that they requested accused Cabrera to give them the equivalent cash in exchange of the checks issued by the Municipality in their favor as they allegedly needed the money to support their working capital requirements and thereby continue to do business with the Municipality. According to the said affiants, accused Cabrera agreed to accommodate their requests; hence, after the checks were endorsed in favor of accused Cabrera, the latter gave them the corresponding value of the checks in cash. In the same breath, however, they all claim that accused Cabrera's "act of depositing the subject checks in her account was in payment of money that she had advanced."
>
> Exactly how the indorsement of the checks in favor of Cabrera and their deposit in the latter's account possibly facilitate the encashment of such checks, was not at all explained. If the checks have already been issued and were already in the name of the suppliers, then all that the latter needed to do was go to the drawee bank, which is just in the next municipality, and present the checks for encashment. It is likewise worthy to note that the payees of said checks are supposed to be known businessmen in their locality and have supposedly been doing business with the Municipality for quite sometime. Hence, it is quite unlikely that they do not maintain their own bank account. (COA Report, p. 30)
>
> It is likewise well to note that of the six payees indicated in the subject checks, only four (4) executed Affidavits in defense of accused Cabrera. Of the four (4) affiants, one (1) is not even the authorized signatory of the entity indicated in the check. As can be gleaned from the Certification (Annex "C" of the Complaint-Affidavit dated February 15, 2002; Annex "A" of the Amended Complaint-Affidavit dated March 8, 2002) issued by the Municipal Accountant, Ms. Emma A. Ramirez, the authorized signatory of Taal Volcano Restaurant is Aquilina Aala, not Paulina Aala. In fact, the payee indicated in the checks pertaining to Taal Volcano Restaurant is "Taal Volcano Restaurant or Aquilina Aala." (cf. Annexes "B-1" and "B-3" of the Complaint-Affidavit dated February 15, 2002; Annexes "C-2" and "C-4" of the Amended Complaint-Affidavit dated March 8, 2002) Paulina Aala, whose Affidavit was submitted by accused Cabrera in support of her Motion for Reinvestigation, has absolutely no participation in the indorsement of the said checks in favor of accused Cabrera.
>
> Moreover, it is worthy to note that the sample signature of Aquilina Aala appearing in the Certification prepared by the Municipal Accountant (Annex "C" of the Complaint-Affidavit dated February 15, 2002; Annex "A" of the Amended Complaint-Affidavit dated March 8, 2002) appears to be different from those appearing at the back of the subject checks which were indorsed to and deposited in the account of accused Cabrera (cf. dorsal side of Annexes "B-1" and "B-3" of the Complaint-Affidavit dated February 15, 2002; dorsal side of Annexes "C-2" and "C-4" of the Amended Complaint-Affidavit dated March 8, 2002).
>
> Similarly, the signature of Narciso Gumapac in his Affidavit submitted by accused Cabrera in support of her Motion for Reinvestigation (cf. Annex "4" of the Motion for Reinvestigation) does not even come anywhere close to the signature appearing in the dorsal portion of Check No. 68614 issued in his name (cf. Annex "B-4" of the Complaint-Affidavit dated February 15, 2002; Annex "C-1" of the Amended Complaint-Affidavit dated March 8, 2002).

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> It is likewise worthy to note that "Herminio Hipolito Hardware & Construction Supply or Herminio Hipolito" and "Budget Wise Marketing," in whose favor some of the subject checks were issued (cf. Annexes "B-2" and "B-4 of the Complaint-Affidavit dated February 15, 2002; Annexes "C-1" and "C-3" of the Amended Complaint-Affidavit dated March 8, 2002) do not appear in the list of suppliers of the Municipality (cf. Annex "C" of the Complaint-Affidavit dated February 15, 2002; Annex "A" of the Amended Complaint-Affidavit dated March 8, 2002)
>
> Furthermore, a perusal of the check issued in favor of "Budget Wise Marketing" shows that the same was, in fact, indorsed by accused Cabrera herself and her husband (see dorsal side of Annex "B-4" of the Complaint-Affidavit dated February 15, 2002 and Annex "C-1" of the Amended Complaint-Affidavit dated March 8, 2002). This clearly supports the allegation of complainant that accused and her husband were the beneficiaries of the transaction covered by the subject check. Notably, accused Cabrera utterly failed to explain this particular circumstance or rebut complainant's allegation in this regard.[8]

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. It is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty.[9]

In case at bar, the Ombudsman found petitioner probably guilty of violation of Section 3(h) of Republic Act No. 3019, as amended, when she deposited in her personal bank account the checks that she issued in her official function as Municipal Mayor used as payment to suppliers. In making this conclusion, we find the Ombudsman did not commit any grave abuse of discretion owing to the evidence already on record. The determination of whether or not she is guilty of the crimes charged is another matter that is left to the Sandiganbayan after trial on the merits.

Settled is the rule that a prosecutor does not decide whether there is evidence beyond reasonable doubt of the guilt of the accused. 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. In determining probable cause, an inquiry on whether the evidence is sufficient to warrant conviction is not required. A trial is intended precisely for the reception of prosecution evidence in support of the charge. 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.[10]

Moreover, we have consistently refrained from interfering with the constitutionally-mandated investigatory and prosecutorial powers of the Ombudsman absent any compelling reason.[11] In the case of Quiambao v. Desierto,[12] citing The Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Ombudsman Aniano Desierto,[13] we held:

> The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as R.A. 6770 has endowed it with wide latitude of investigatory and prosecutory powers virtually free from legislative, executive, or judicial intervention. This Court consistently refrains from interfering with the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."

In Maturan v. People,[14] we ruled:

> A policy of non-interference by the courts in the exercise of the Ombudsman's constitutionally mandated

> powers 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 were 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.

Petitioner likewise faults the Ombudsman for disapproving the order dated 27 November 2002 of Ombudsman Prosecutor II Cicero D. Jurado, Jr. that recommended the dismissal of the cases arguing that the latter's finding of lack of probable cause was not arrived at haphazardly or without basis. Citing the case of Roxas v. Vasquez,[15] petitioner tries to persuade the court to interfere with the Ombudsman's finding of probable cause against her due to the flip-flopping of the findings and resolutions of the OSP and the Ombudsman.

We are not persuaded.

First, petitioner's reliance on the Roxas case is misplaced. Said case is not in all fours with the case on hand. In Roxas, We remanded the case to the Office of the Ombudsman for further proceedings for the determination of probable cause because the charges were manifestly false and the petitioners' right to procedural due process was violated because they neither had knowledge of, nor participation in, the proceedings where the finding of probable cause was made. This is not true in the case before us.

Second, the fact that the OSP's recommendation is not approved or adopted by the Ombudsman does not mean that the latter acted without or in excess of his jurisdiction or committed grave abuse of discretion. If the Ombudsman may dismiss a complaint outright for lack of merit, it necessarily follows that it is also within his discretion to determine whether the evidence before him is sufficient to establish probable cause.[16] In case of conflict between the conclusion of the Ombudsman and the Prosecutor, the former's decision shall prevail since the OSP is under the supervision and control of the Ombudsman.[17]

We find the act of the Ombudsman in disapproving the OSP's recommendation to be substantiated by the evidence on record. The disapproval was made after his assessment that there was sufficient evidence to indict petitioner. Such act was an exercise of the Ombudsman's constitutionally-mandated investigatory and prosecutorial powers with which the courts should not interfere.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.
SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Rollo, pp. 34-37.

[2] Id. at 38-40.

[3] Id. at 42-44.

[4] Malversation of Public Funds thru Falsification of Public Documents.

[5] Rollo, pp. 76-78.

[6] Domingo v. Sandiganbayan, G.R. No. 149175, 25 October 2005, 474 SCRA 203, 215.

[7] Rodrigo, Jr. v. Sandiganbayan, 362 Phil. 646, 659 (1999); Osorio v. Desierto, G.R. No. 156652, 13 October

2005, 472 SCRA 559, 575; Beroña v. Sandiganbayan, G.R. No. 142456, 27 July 2004, 435 SCRA 303, 309.

[8] Rollo, pp. 38-41.

[9] Osorio v. Desierto, supra note 6 at 573.

[10] Diamante III v. Sandiganbayan, G.R. No. 147911, 14 October 2005, 473 SCRA 95, 104.

[11]Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City, G.R. No. 134509, 12 April 2005, 455 SCRA 377, 393.

[12] G.R. No. 149069, 20 September 2004, 438 SCRA 495, 510.

[13]418 Phil. 715, 721 (2001).

[14] G.R. Nos. 150353-54, 27 July 2004, 435 SCRA 323, 331.

[15] 411 Phil. 276 (2001).

[16] Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City, supra note 10 at 391-392.

[17] Diamante III v. Sandiganbayan, supra note 9.

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