

**ANGELITA DE GUZMAN, PETITIONER, VS. EMILIO A. GONZALEZ III,
THEN OFFICER-IN-CHARGE, OFFICE OF THE DEPUTY OMBUDSMAN
FOR LUZON, ADORACION A. AGBADA, GRAFT INVESTIGATOR, AND
COMMIS...**

G.R. No. 158104. March 26, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The filing of the Information against petitioner Angelita de Guzman notwithstanding the lack of certification on her cashbook examination could not in any manner be said to be premature much less whimsical or arbitrary. Public respondents cannot be said to have gravely abused their discretion amounting to lack or excess of jurisdiction.

This petition for certiorari[1] with plea for temporary restraining order and writ of preliminary injunction seeks to annul the Order[2] dated December 23, 2002 of the Office of the Deputy Ombudsman for Luzon in Criminal Case No. 2908-S(02) (OMB-1-01-0905-J), disapproving the recommendation of Trial Prosecutor Bonifacio J. Bayag, Jr. (Prosecutor Bayag, Jr.) to dismiss the case for lack of sufficient evidence to establish probable cause for the charge of Malversation of Public Funds. Also subject of the present petition is the Order[3] dated February 26, 2003 which denied the Motion for Reconsideration of the earlier resolution.

Factual Antecedents

Petitioner Angelita de Guzman, in her official capacity as the Municipal Treasurer of Claveria, Cagayan, was audited of her cash and accounts covering the period from January 26, 1999 to May 25, 2000. Per affidavit of State Auditor II Erlinda F. Langcay, the audit examination revealed a shortage in the aggregate amount of P368,049.42. In a letter dated October 30, 2000, the audit team demanded petitioner to produce the missing funds and submit her written explanation about the occurrence of the shortage within 72 hours. The letter was received on November 13, 2000 but no compliance was made. Consequently, petitioner was indicted for malversation of public funds before the Regional Trial Court of Sanchez, Mira, Cagayan based on the Resolution[4] of the Ombudsman on November 27, 2001.

Alleging that she was not able to participate during the preliminary investigation as she was then out of the country, petitioner moved[5] for and was granted a reinvestigation by the court on May 29, 2002.[6] As ordered, petitioner submitted her counter-affidavit, those of her witnesses and other controverting evidence.

Report and Recommendation of Prosecutor Bayag, Jr.

After the reinvestigation, Prosecutor Bayag, Jr. submitted his Report[7] dated November 15, 2002 recommending the dismissal of the case for insufficiency of evidence to establish a probable cause. Pertinent portions of the Report read:

The defense's pieces of evidence negate the existence of a shortage. The audit conducted was not yet completed or terminated for the reason that the requisite certification on the accused's cash book was not yet accomplished, thereby leaving the cash book open. The deposits made in November 2000 and January 2001 which correspond to the amount of the alleged missing funds were duly recorded and reflected on the cash book as adjusting entries.

x x x x

[Based on] analytical and judicious evaluation of the evidence adduced by and arguments raised by both parties, we find the prima facie presumption of misappropriation of public funds having been fully controverted and contradicted by the accused's evidence which warrant her exoneration and dismissal of the instant case.[8]

Report and Recommendation of Graft Investigation Officer II Agbada

Upon review of the Report of Prosecutor Bayag, Jr., Graft Investigation Officer II Adoracion A. Agbada (Agbada) recommended on December 23, 2002 the disapproval of the Report and, instead, to proceed with the prosecution of the case. Agbada anchored her findings of probable cause on the following circumstances:

Firstly, the non-accomplishment by the auditors of the Commission on Audit (COA) of the certification on the petitioner's cash book leaving the same open, would not negate the existence of shortage of the amount of P368,049.42. The certification is a mere formal requirement of the audit. It does not refer to a substantive aspect of the audit. Thus, even granting that the certification has not been accomplished by the COA auditors, it is immaterial as far as the finding of shortage is concerned.

Secondly, the petitioner was given sufficient time by the COA to comment or respond to its findings. She received on November 13, 2000 a demand letter from COA but failed to comply with the said directive. Instead, on December 4, 2000 and January 12, 2001, she transmitted to the COA a total of 10 deposit slips showing that the total amount of P368,049.42 was credited to the account of the Municipality of Claveria. This was a clear case of restitution of funds. As held in several cases, restitution of funds is a mere mitigating circumstance. It does not obliterate the criminal liability of the accused for malversation of public funds.

Thirdly, there is prima facie presumption of misappropriation of funds by the petitioner because she failed to have duly forthcoming the amount of P368,049.42 with which she is chargeable. This presumption was not overturned by the evidence of the petitioner. It must be noted that the deposit of the amount was made by the petitioner only on November 20 and 27, 2000 and January 8 and 12, 2001. Said deposit was made after the petitioner had received on November 13, 2000 the demand letter issued by the audit team. In effect, the restitution was not made immediately. Thus, the presumption that the petitioner used the money for her personal use and benefit was not duly controverted.

Ruling of the Office of the Deputy Ombudsman for Luzon

Emilio A. Gonzalez III (Gonzalez), the Officer-in Charge of the Office of the Deputy Ombudsman for Luzon approved on January 6, 2003 the recommendation of Agbada.

Petitioner filed a Motion for Reconsideration but Agbada recommended its denial on February 26, 2003. Gonzalez approved Agbada's recommendation on

February 27, 2003.

Issues

On May 23, 2003, petitioner filed the instant petition for certiorari raising the following errors:

- PUBLIC RESPONDENTS GONZALEZ AND AGBADA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN THEY RECOMMENDED THE CONTINUATION OF THE PROSECUTION OF THE CASE AGAINST PETITIONER DESPITE FINDINGS OF THE REINVESTIGATING PROSECUTOR THAT THERE WAS NO SUFFICIENT EVIDENCE TO ESTABLISH PROBABLE CAUSE AS THE AUDIT IS NOT YET COMPLETE AND/OR TERMINATED.
- PUBLIC RESPONDENT LANGCAY GRAVELY ABUSED HER DISCRETION IN FILING THE CRIMINAL COMPLAINT A QUO DESPITE THE NON-COMPLETION OF THE CASH AUDIT.[9]

Petitioner argues that there was no sufficient evidence to establish probable cause since the audit examination was not completely terminated in view of the non-accomplishment of the certification of cashbook examination. She asserts that the accomplishment of the certificate is mandatory and not a mere formal requirement. She claims that since the audit examination sans the accompanying certificate was deemed not complete, the Office of the Ombudsman gravely abused its discretion in filing the criminal information for malversation of public funds against her.

Our Ruling

The petition lacks merit.

Parenthetically, we find the matters raised by petitioner in her argumentation to be mainly questions of fact which are not proper in a petition of this nature. Petitioner is basically questioning the assessment and evaluation made by the Office of the Ombudsman of the pieces of evidence submitted at the reinvestigation. The Office of the Ombudsman found that the evidence on hand is sufficient to justify a probable cause to indict petitioner. Relying on the Report of Prosecutor Bayag, Jr., petitioner contended otherwise. At this juncture, it is worth emphasizing that where what is being questioned is the sufficiency of evidence, it is a question of fact.[10] A petition for certiorari under Rule 65 does not include review of the correctness of a board or tribunal's evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion.[11]

Moreover, the allegations of petitioner are also defenses that must be presented as evidence in the hearing of the criminal case. They are essentially evidentiary matters that negate misappropriation which require an examination of the parties' evidence. As such, they are inappropriate for consideration in a petition for certiorari before us inasmuch as they do not affect the jurisdiction of the public respondents. In petitions for certiorari, evidentiary matters or matters of fact raised in the court below are not proper grounds nor may such be ruled upon in the proceedings.[12]

Granting that we dispense with the technicalities and regard the submissions of petitioner as matters tendering an issue of law, we still find no reason to reverse the finding of probable cause by the Office of the Ombudsman.

The Constitution and Republic Act (RA) No. 6770 (the Ombudsman Act of 1989) confer on the Office of the Ombudsman the power to 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 or improper. Sections 12 and 13, Article XI of the Constitution provide:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation and shall, in appropriate cases,

notify the complainants of the action taken and results thereof.

Sec. 13. The Office of the Ombudsman shall have the following powers, function and duties:

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

Section 15 of the Ombudsman Act of 1989 states:

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 the government, the investigation of such cases.

Petitioner ascribes grave abuse of discretion amounting to lack or excess of jurisdiction on public respondents Gonzalez and Agbada when they reversed a prior finding of lack of probable cause by Prosecutor Bayag, Jr. She maintains that when the Information was filed in court, the audit examination was not yet complete as the State Auditors have not executed the corresponding certification on the cash book examination. Otherwise stated, the information was filed prematurely.

We cannot subscribe to petitioner's proposition.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.[13] In disapproving the recommendation of Prosecutor Bayag, Jr. and adopting instead that of Agbada, respondent Gonzalez as Deputy Ombudsman for Luzon was merely exercising his power and discharging his duty as mandated by the Constitution and by laws. It is discretionary upon him whether or not he would rely mainly on the findings of fact of Prosecutor Bayag, Jr. in making a review of the latter's report and recommendation. He can very well make his own findings of fact.[14] Thus, given this vast power and authority, he can conduct a preliminary investigation with or without the report from COA. The findings in the COA report or the finality or lack of finality of such report is irrelevant to the investigation of the Office of the Ombudsman in its determination of probable cause, as we declared in *Dimayuga v. Office of the Ombudsman*. [15] Thus, the filing of the Information against petitioner notwithstanding the lack of certification on her cashbook examination could not in any manner be said to be premature much less whimsical or arbitrary. Public respondents cannot be said to have gravely abused their discretion amounting to lack or excess of jurisdiction.

To recapitulate, the discretion to determine whether a case should be filed or not lies with the Ombudsman. Unless grave abuse of discretion amounting to lack or excess of jurisdiction is shown, judicial review is uncalled for as a policy of non-interference by the courts in the exercise of the Ombudsman's constitutionally mandated powers.

WHEREFORE the instant petition for certiorari is DISMISSED for lack of merit. The Order dated December 23, 2002 of the Office of the Deputy Ombudsman for Luzon finding probable cause against petitioner Angelita de Guzman for Malversation of Public Funds and the Order dated February 26, 2003 denying petitioner's Motion for Reconsideration are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 3-25.

[2] Id. at 189-190.

[3] Id. at 191-192.

[4] Id. at 153-155.

[5] Id. at 158-159.

[6] Id. at 191-192.

[7] Id. at 184-188.

[8] Id. at 187.

[9] Id. at 13.

[10] Paterno v. Paterno, G.R. No. 63680, March 23, 1990, 183 SCRA 630, 636.

[11] Ang Biat Huan Sons Industries, Inc. v. Court of Appeals, G.R. No. 154837, March 22, 2007, 518 SCRA 697, 702.

[13] Webb v. Hon. De Leon, 317 Phil. 758, 789 (1995).

[14] Cruz, Jr. v People, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 451.

[15] G.R No. 129099, July 20, 2006, 495 SCRA 461, 467.

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