

FELICIANO GALVANTE, PETITIONER, VS. HON. ORLANDO C. CASIMIRO, DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES, BIENVENIDO C. BLANCAFLOR, DIRECTOR, DENNIS L. ...

G.R. No. 162808. April 22, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed herein by Petition for Certiorari and Mandamus under Rule 65 of the Rules of Court are the October 30, 2003 Resolution[1] of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices - Office of the Ombudsman (Ombudsman) which dismissed for lack of probable cause the criminal complaint, docketed as OMB-P-C-02-0109-B, filed by Feliciano Galvante[2] (petitioner) against SPO4 Benjamin Conde, PO1 Ramil Avenido, PO1 Eddie Degran, PO1 Valentino Rufano, and PO1 Federico Balolot (private respondents) for arbitrary detention, illegal search and grave threats; and the January 20, 2004 Ombudsman Order[3] which denied his motion for reconsideration.

The facts are of record.

In the afternoon of May 14, 2001 at Sitio Cahi-an, Kapatungan, Trento, Agusan del Sur, private respondents confiscated from petitioner one colt pistol super .38 automatic with serial no. 67973, one short magazine, and nine super .38 live ammunitions.[4] The confiscated materials were covered by an expired Memorandum Receipt dated September 2, 1999.[5]

Consequently, the Assistant Provincial Prosecutor filed against petitioner an Information[6] for Illegal Possession of Firearms and Ammunitions in Relation to Commission on Elections (Comelec) Resolution No. 3258, docketed as Criminal Case No. 5047, before the Regional Trial Court (RTC), Prosperidad, Agusan del Sur.

Pending resolution of Criminal Case No. 5047, petitioner filed against private respondents an administrative case, docketed as Administrative Case No. IASOB-020007 for Grave Misconduct, before the Internal Affairs Service (IAS), Region XIII, Department of Interior and Local Government (DILG);[7] and a criminal case, docketed as OMB-P-C-02-0109-B for Arbitrary Detention, Illegal Search and Grave Threats, before the Ombudsman.[8]

In the June 21, 2001 Affidavit-Complaint he filed in both cases, petitioner narrated how, on May 14, 2001, private respondents aimed their long firearms at him, arbitrarily searched his vehicle and put him in detention, thus:

- That sometime on May 14, 2001 I left my house at around 1:00 o'clock in the afternoon after having lunch for Sitio Cahi-an, Brgy. Kapatungan, Trento, Agusan del Sur to meet retired police Percival Plaza and inquire about the retirement procedure for policemen;
- That upon arrival at the house of retired police Percival Plaza, together with Lorenzo Sanoria, Delfin Ramirez and Pedro Ramas who asked for a ride from the highway in going to Sitio Cahi-an, I immediately went down of the jeep but before I could call Mr. Plaza, four policemen in uniform blocked my way;

- That the four policemen were [private respondents] PO1 Romil Avenido PNP, PO1 Valentino Rufano, PNP both member of 142nd Company, Regional Mobile Group and PO1 Eddie Degran PNP and PO1 Federico Balolot PNP members of 1403 Prov'l Mobile Group, all of Bunawan Brook, Bunawan, Agusan del Sur; who all pointed their long firearms ready to fire [at] me, having heard the sound of the release of the safety lock;
- That raising my arms, I heard [private respondent] PO1 Avenido saying, "ANG IMONG PUSIL, IHATAG" which means "Give me your firearm," to which I answered, "WALA MAN KO'Y PUSIL" translated as "I have no firearm," showing my waistline when I raised my T-shirt;
- That my other companions on the jeep also went down and raised their arms and showed their waistline when the same policemen and a person in civilian attire holding an armalite also pointed their firearms to them to which Mr. Percival Plaza who came down from his house told them not to harass me as I am also a former police officer but they did not heed Mr. Plaza's statements;
- That while we were raising our arms [private respondent] SPO4 Benjamin Conde, Jr. went near my owner type jeep and conducted a search. To which I asked them if they have any search warrant;
- That after a while they saw my super .38 pistol under the floormat of my jeep and asked me of the MR of the firearm but due to fear that their long arms were still pointed to us, I searched my wallet and gave the asked [sic] document;
- That immediately the policemen left me and my companions without saying anything bringing with them the firearm;
- That at about 2:30 p.m., I left Mr. Percival's house and went to Trento Police Station where I saw a person in civilian attire with a revolver tucked on his waist, to which I asked the police officers including those who searched my jeep to apprehend him also;
- That nobody among the policemen at the station made a move to apprehend the armed civilian person so I went to the office of Police Chief Rocacorba who immediately called the armed civilian to his office and when already inside his office, the disarming was done;
- That after the disarming of the civilian I was put to jail with the said person by Police Chief Rocacorba and was released only at 4:00 o'clock in the afternoon of May 16, 2001 after posting a bailbond;
- That I caused the execution of this document for the purpose of filing cases of Illegal Search, Grave Misconduct and Abuse of Authority against SPO4 Benjamin Conde, Jr., of Trento Police Station; PO1 Ramil Avenido, PO1 Velantino Rufano, PO1 Federico Balolot and PO1 Eddie Degran.[9]

Petitioner also submitted the Joint Affidavit[10] of his witnesses, Lorenzo Sanoria and Percival Plaza.

Private respondent Conde filed a Counter-Affidavit dated March 20, 2002, where he interposed the following defenses:

First, he had nothing to do with the detention of petitioner as it was Chief of Police/Officer-in-Charge Police Inspector Dioscoro Mehos Rocacorba who ordered the detention. Petitioner himself admitted this fact in his own Complaint-Affidavit[11] and

Second, he denies searching petitioner's vehicle,[12] but admits that even though he was not armed with a warrant, he searched the person of petitioner as the latter, in plain view, was committing a violation of Comelec Resolutions No. 3258 and No. 3328 by carrying a firearm in his person.

Private respondents Avenido, Degran, Rufano and Balolot filed their Joint-Affidavit dated March 25, 2002, which contradicts the statements of private respondent Conde, viz:

- that we executed a joint counter-affidavit dated August 28, 2001 where we stated among other things, that "we saw Feleciano "Nani" Galvante armed with a handgun/pistol tucked on his waist;"
- that this statement is not accurate because the truth of the matter is that the said handgun was taken by SPO4 BENJAMIN CONDE, JR., who was acting as our team leader during the May 14, 2001 Elections, from the jeep of Mr. Galvante after searching the same; and
- that we noticed the aforementioned discrepancy in our affidavit dated August 28, 2001 after we have already affixed our signatures thereon.[13]

Consequently, petitioner filed an Affidavit of Desistance dated March 25, 2002 with both the IAS and Ombudsman, absolving private respondents Avenido, Degran, Rufano and Balolot, but maintaining that private respondent Conde alone be prosecuted in both administrative and criminal cases.[14]

On July 17, 2002, the IAS issued a Decision in Administrative Case No. IASOB-020007, finding all private respondents guilty of grave misconduct but penalized them with suspension only. The IAS noted however that private respondents were merely being "[enthusiastic] in the conduct of the arrest in line of duty." [15]

Meanwhile, in Criminal Case No. 5047, petitioner filed with the RTC a Motion for Preliminary Investigation and to Hold in Abeyance the Issuance of or Recall the Warrant of Arrest.[16] The RTC granted the same in an Order[17] dated August 17, 2001. Upon reinvestigation, Prosecutor II Eliseo Diaz, Jr. filed a "Reinvestigation with Motion to Dismiss" dated November 22, 2001, recommending the dismissal of Criminal Case No. 5047 on the ground that "the action of the policemen who conducted the warrantless search in spite of the absence of any circumstances justifying the same intruded into the privacy of the accused and the security of his property." [18] Officer-in-Charge Prosecutor II Victoriano Pag-ong approved said recommendation.[19]

The RTC granted the prosecution's motion to dismiss in an Order[20] dated January 16, 2003.

Apparently unaware of what transpired in Criminal Case No. 5047, Ombudsman Investigation & Prosecution Officer Dennis L. Garcia issued in OMB-P-C-02-0109-B, the October 30, 2003 Resolution, to wit:

After a careful evaluation, the undersigned prosecutor finds no probable cause for any of the offenses charged against above-named respondents.

The allegations of the complainant failed to establish the factual basis of the complaint, it appearing from the records that the incident stemmed from a valid warrantless arrest. The subsequent execution of an affidavit of desistance by the complainant rendered the complaint even more uncertain and subject to doubt, especially so since it merely exculpated some but not all of the respondents. These circumstances, coupled with the presumption of regularity in the performance of duty, negates any criminal liability on the part of the respondents.

WHEREFORE, premises considered, it is hereby recommended that the above-captioned case be dismissed for lack of probable cause.[21] (Emphasis supplied)

Upon the recommendation of Director Bienvenido C. Blancaflor, Deputy Ombudsman for the Military Orlando C. Casimiro (Deputy Ombudsman) approved the October 30, 2003 Resolution.[22]

In his Motion for Reconsideration,[23] petitioner called the attention of the Ombudsman to the earlier IAS Decision, the Reinvestigation with Motion to Dismiss of Prosecutor II Eliseo Diaz, Jr. and the RTC Order, all of which declared the warrantless search conducted by private respondents illegal,[24] which are contradicted by the

October 30, 2003 Ombudsman Resolution declaring the warrantless search legal.

The Ombudsman denied petitioner's motion for reconsideration on the ground that the latter offered "no new evidence or errors of law which would warrant the reversal or modification"[25] of its October 30, 2003 Resolution.

Petitioner filed the present petition, attributing to Deputy Ombudsman Casimiro, Director Blancaflor and Prosecutor Garcia (public respondents) the following acts of grave abuse of discretion:

I. Public respondents acted without or in excess of their jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction when, in their Resolution dated October 30, 2003, public respondents found that the incident upon which petitioner's criminal complaint was based stemmed from a valid warrantless arrest and dismissed petitioner's complaint despite the fact that:

A. Petitioner has clearly shown that the search conducted by the private respondents was made without a valid warrant, nor does it fall under any of the instances of valid warrantless searches.

B. Notwithstanding the absence of a valid warrant, petitioner was arrested and detained by the private respondents.

II. Public respondents acted without or in excess of their jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction when, in their Order dated January 20, 2004, public respondents denied the petitioner's motion for reconsideration in a capricious, whimsical, despotic and arbitrary manner. [26]

In its Memorandum,[27] the Office of the Solicitor General argued that public respondents acted within the bounds of their discretion in dismissing OMB-P-C-02-0109-B given that private respondents committed no crime in searching petitioner and confiscating his firearm as the former were merely performing their duty of enforcing the law against illegal possession of firearms and the Comelec ban against the carrying of firearms outside of one's residence.

Private respondent Conde filed a Comment[28] and a Memorandum for himself.[29] Private respondents Avenido, Degran, Rufano and Balolot filed their separate Letter-Comment dated June 25, 2004.[30]

The petition lacks merit.

The Constitution vests in the Ombudsman the power to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[31] The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman,[32] except when the same is shown to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[33]

Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when judgment rendered is not based on law and evidence but on caprice, whim and despotism.[34] This does not obtain in the present case.

It is noted that the criminal complaint which petitioner filed with the Ombudsman charges private respondents with warrantless search, arbitrary detention, and grave threats.

The complaint for warrantless search charges no criminal offense. The conduct of a warrantless search is not a criminal act for it is not penalized under the Revised Penal Code (RPC) or any other special law. What the RPC punishes are only two forms of searches:

Art. 129. Search warrants maliciously obtained and abuse in the service of those legally obtained. - In addition to the liability attaching to the offender for the commission of any other offense, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine not exceeding P1,000.00 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.

Art. 130. Searching domicile without witnesses. - The penalty of *arresto mayor* in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.

Petitioner did not allege any of the elements of the foregoing felonies in his Affidavit-Complaint; rather, he accused private respondents of conducting a search on his vehicle without being armed with a valid warrant. This situation, while lamentable, is not covered by Articles 129 and 130 of the RPC.

The remedy of petitioner against the warrantless search conducted on his vehicle is civil,[35] under Article 32, in relation to Article 2219[36] (6) and (10) of the Civil Code, which provides:

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

x x x x

(9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;

x x x x

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

and/or disciplinary and administrative, under Section 41 of Republic Act No. 6975.[37]

To avail of such remedies, petitioner may file against private respondents a complaint for damages with the regular courts[38] or an administrative case with the PNP/DILG,[39] as petitioner did in Administrative Case No. IASOB-020007, and not a criminal action with the Ombudsman.

Public respondents' dismissal of the criminal complaint for illegal search which petitioner filed with the Ombudsman against private respondents was therefore proper, although the reasons public respondents cited for dismissing the complaint are rather off the mark because they relied solely on the finding that the warrantless search conducted by private respondents was valid and that the Affidavit of Desistance which petitioner executed cast doubt on the veracity of his complaint.[40] Public respondents completely overlooked the fact that the criminal complaint was not cognizable by the Ombudsman as illegal search is not a criminal offense. Nevertheless, the result achieved is the same: the dismissal of a groundless criminal complaint for illegal search which is not an offense under the RPC. Thus, the Court need not resolve the issue of whether or not public respondents erred in their finding on the validity of the search for that issue is completely hypothetical under the circumstance.

The criminal complaint for arbitrary detention was likewise properly dismissed by public respondents. To sustain a criminal charge for arbitrary detention, it must be shown that (a) the offender is a public officer or employee, (b) the offender detained the complainant, and (c) the detention is without legal grounds.[41] The second element was not alleged by petitioner in his Affidavit-Complaint. As pointed out by private respondent Conde in his

Comment[42] and Memorandum,[43] petitioner himself identified in his Affidavit-Complaint that it was Police Chief Rocacorba who caused his detention. Nowhere in said affidavit did petitioner allege that private respondents effected his detention, or were in any other way involved in it.[44] There was, therefore, no factual or legal basis to sustain the criminal charge for arbitrary detention against private respondents.

Finally, on the criminal complaint for grave threats, the Solicitor General aptly pointed out that the same is based merely on petitioner's bare allegation that private respondents aimed their firearms at him.[45] Such bare allegation stands no chance against the well-entrenched rule applicable in this case, that public officers enjoy a presumption of regularity in the performance of their official function.[46] The IAS itself observed that private respondents may have been carried away by their "enthusiasm in the conduct of the arrest in line of duty." [47] Petitioner expressed the same view when, in his Affidavit of Desistance, he accepted that private respondents may have been merely following orders when they pointed their long firearms at him.

All said, public respondents did not act with grave abuse of discretion in dismissing the criminal complaint against private respondents.

WHEREFORE, the petition is DENIED.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Issued by Ombudsman Investigation and Prosecution Officer Dennis L. Garcia and approved by Deputy Ombudsman for the Military Orlando C. Casimiro; rollo, p. 25.

[2] A retired police officer accused in Criminal Case No. 5047 of illegal possession of firearms.

[3] Rollo, p. 27.

[4] Exhibit "R," id. at 186.

[5] Exhibit "I," id. at 185.

[6] Id. at 107.

[7] Id. at 30.

[8] Id. at 25.

[9] Records, pp. 2-3.

[10] Id. at 6.

[11] March 20, 2002 Counter-Affidavit, p. 1; records, unnumbered page.

[12] Id. at 2.

[13] Rollo, p. 28.

[14] Id. at 71.

[15] Id. at 30.

[16] Records, unnumbered page.

[17] Id., unnumbered page.

[18] Records, unnumbered page.

[19] Id.

[20] Rollo, p. 33.

[21] Id. at 26.

[22] Id.

[23] Id. at 34.

[24] Id. at 37-38.

[25] Rollo, p. 27.

[26] Id. at 13.

[27] Id. at 137.

[28] Rollo, p. 61.

[29] Id. at 176.

[30] Id. at 70.

[31] Section 13, Article XI (Accountability of Public Officers): The Office of the Ombudsman shall have the following powers, functions, and duties: (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

[32] *Salma v. Miro*, G.R. No. 168362, January 25, 2007, 512 SCRA 724, 737; *Brito v. Office of the Deputy Ombudsman for Luzon*, G.R. Nos. 167335, 167337 and 173152, July 10, 2007, 527 SCRA 215, 231.

[33] *Esquivel v. Ombudsman*, 437 Phil. 702, 715 (2002); *Salma v. Miro*, supra note 32, at 738.

[34] *Baviera v. Zoleta*, G.R. No. 169098, October 12, 2006, 504 SCRA 281, 303; *Soria v. Desierto*, G.R. Nos. 153524-25, January 31, 2005, 450 SCRA 339, 345.

[35] *Silahis International Hotel, Inc. v. Soluta*, G.R. No. 163087, February 20, 2006, 482 SCRA 660, 672.

[36] Art. 2219. Moral damages may be recovered in the following and analogous cases: x x x (6) Illegal search; x x x.

[37] Department of the Interior and Local Government Act of 1990.

[38] *Lui v. Matillano*, G.R. No. 141176, May 27, 2004, 429 SCRA 449, 475.

[39] *Cayago v. Lina*, G.R. No. 149539, January 19, 2005, 449 SCRA 29, 42.

[40] Rollo, p. 26.

[41] *Astorga v. People of the Philippines*, 459 Phil. 140, 151 (2003).

[42] Rollo, p. 62.

[43] Id. at 180-181.

[44] Affidavit-Complaint, p. 2; records, unnumbered page.

[45] Rollo, p. 146.

[46] Salma v. Miro, *supra* note 32, at 735, citing Rules of Court, Rule 131, Sec. 3(m); Ombudsman v. Court of Appeals, G.R. No. 147762, October 12, 2006, 504 SCRA 321.

[47] Rollo, p. 30.

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