

MARINA B. SCHROEDER, PETITIONER, VS. ATTYS. MARIO A. SALDEVAR AND ERWIN C. MACALINO, RESPONDENTS.

G.R. NO. 163656. April 27, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated October 30, 2003 and the Resolution[2] dated May 6, 2004 of the Court of Appeals in CA-G.R. SP No. 63418, entitled "Attys. Mario A. Saldevar and Erwin C. Macalino v. Hon. Lydia Querubin-Layosa, in her capacity as Presiding Judge, Branch 217, Regional Trial Court, Quezon City, The Ombudsman, The Department of Justice, National Bureau of Investigation, and Marina B. Schroeder," that partly set aside the Order[3] dated October 30, 2000 of the Office of the Ombudsman (Ombudsman) in OMB-0-00-1090 [I.S. No. 98-394].

The pertinent facts are as follows.

Petitioner Marina B. Schroeder owns a liquor store in Robinson's Galleria, Pasig City. Respondents Mario A. Saldevar and Erwin C. Macalino are the Legal Division Chief and Attorney II, respectively, of the Bureau of Internal Revenue, Revenue District Office No. 7 in Quezon City.

Sometime in 1998, respondents were arrested by agents of the National Bureau of Investigation (NBI) in an entrapment operation conducted upon petitioner's complaint.

After inquest, the Department of Justice (DOJ) filed in the Regional Trial Court of Quezon City, Branch 217, an information for direct bribery against respondents. The case was remanded to the DOJ for preliminary investigation.

The DOJ issued a Resolution[4] finding probable cause to indict respondents for direct bribery. Aggrieved, respondents filed in the DOJ a petition for review of the said Resolution. The DOJ, however, endorsed the petition to the Ombudsman.

The Ombudsman treated the petition for review as a motion for reconsideration of the aforesaid DOJ Resolution. It denied the petition for review for lack of merit, thus:

WHEREFORE, premises considered and finding no merit to the petition for review of public respondents Mario A. Saldevar and Erwin C. Macalino, treated herein as a motion for reconsideration of the Resolution of the Department of Justice, Manila, dated 07 June 1999, in I.S. No. 98-394 [Crim. Case No. Q-98-76453], finding probable cause to continue with the prosecution in court of said respondents for Direct Bribery, the same [Petition for Review a.k.a. Motion for Reconsideration] is hereby DENIED, with finality.

SO ORDERED.[5]

Respondents filed in the Court of Appeals a petition for certiorari and mandamus. The appellate court found no probable cause against respondent Saldevar, but upheld the finding of probable cause against respondent

Macalino. The dispositive portion of its assailed Decision reads:

WHEREFORE, the instant petition is GRANTED insofar as petitioner Mario A. Saldevar is concerned. Accordingly, the order of the Ombudsman dated October 30, 2000 finding probable cause to prosecute said petitioner for direct bribery is ANNULLED and SET ASIDE. The subject order is AFFIRMED in all other aspects.

SO ORDERED.[6]

Petitioner filed a motion for reconsideration of the aforequoted Decision, but it was denied for lack of merit. Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO PROBABLE CAUSE AGAINST RESPONDENT SALDEVAR; and

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT SUBSTITUTED ITS OWN FINDINGS FOR THE FINDINGS OF PROBABLE CAUSE BY THE PROSECUTORIAL ARMS OF THE GOVERNMENT.[7]

Petitioner contends that the determination of probable cause is an executive function lodged with the prosecutorial arm of the government, not with the judiciary. Petitioner argues the evidence on record clearly establish probable cause to indict Saldevar with Macalino. Petitioner stresses Saldevar need not actually demand and receive the marked money in order for him to be indicted for direct bribery. Petitioner adds that since respondents never ascribed any ill motive to the NBI agents who conducted the entrapment operation, the presumption of regularity in the performance of their duties applies.

Respondents, however, insist that the DOJ erred in endorsing the petition for review to the Ombudsman. They aver that the Ombudsman cannot deny the petition for review filed in the DOJ. Respondents maintain that the Court of Appeals can determine probable cause because the DOJ erred in not resolving the petition for review. They also point out that the Ombudsman glossed over the issue of illegal arrest. Respondents posit that the operation conducted by the NBI was an instigation, not an entrapment.

We find the petition meritorious.

In our criminal justice system, the public prosecutor exercises wide latitude of discretion in determining whether a criminal case should be filed in court. Courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and no manifest error or grave abuse of discretion can be imputed to the public prosecutor.[8] As a rule, courts cannot interfere with the Ombudsman's discretion in the conduct of preliminary investigations. In the determination of probable cause, the Ombudsman's discretion prevails over judicial discretion.[9]

In this case, there being no clear showing of manifest error or grave abuse of discretion committed by the Ombudsman in finding probable cause against Saldevar for direct bribery, the Court of Appeals erred in supplanting the Ombudsman's discretion with its own.

Probable cause is simply the existence of such facts and circumstances as would excite a belief that a crime has been committed and that the person charged is probably guilty of the said crime.[10] In this case, sufficient evidence on record clearly shows the existence of probable cause against Saldevar. Contrary to the appellate court's theory, Saldevar need not actually demand and receive the bribe money in order for him to be indicted for

direct bribery. Mere belief, after weighing the relevant facts and circumstances, that Saldevar probably committed direct bribery suffices for the establishment of probable cause. Whether he is indeed guilty of direct bribery is a different matter, which can properly be determined at a full blown trial on the merits of the case.

Furthermore, note that the Ombudsman's findings are essentially factual in nature. Hence, when respondents assailed the said findings before the Court of Appeals on the contention that the Ombudsman committed grave abuse of discretion, respondents clearly raised questions of fact. Respondents' arguments zeroed in on the Ombudsman's appreciation of facts. It bears stress that a petition for certiorari admits only of questions of grave abuse of discretion amounting to lack or excess of jurisdiction. Therefore, the Court of Appeals should have, in the first place, dismissed respondents' petition for certiorari on the ground that it raised questions of fact.

Lastly, we are not prepared to indulge respondents' insistence that the DOJ cannot endorse to the Ombudsman the petition for review of the abovementioned DOJ Resolution. The Ombudsman's power to investigate and to prosecute is plenary and unqualified.[11] It pertains to any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, or improper.[12] In this case, respondents are public officers charged with the commission of a crime. The DOJ Resolution, subject of the petition for review, found probable cause against respondents for the crime of direct bribery. The Ombudsman thus acted within its authority in taking over the said petition for review.

WHEREFORE, the petition is GRANTED. The assailed Decision dated October 30, 2003 and Resolution dated May 6, 2004 of the Court of Appeals in CA-G.R. SP No. 63418 are SET ASIDE. The October 30, 2000 Order[13] of the Ombudsman in OMB-0-00-1090 [I.S. No. 98-394], finding no merit and denying the petition for review of herein respondents and finding probable cause to indict respondents Mario A. Saldevar and Erwin C. Macalino for direct bribery, is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 38-50.

[2] Id. at 52.

[3] CA rollo, pp. 23-36.

[4] Id. at 102-111.

[5] Id. at 35.

[6] Rollo, p. 50.

[7] Id. at 353.

[8] People v. Court of Appeals, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 493.

[9] Serapio v. Sandiganbayan, G.R. No. 148468, January 28, 2003, 396 SCRA 443, 466.

[10] Sarigumba v. Sandiganbayan, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 550.

[11] Office of the Ombudsman v. Enoc, G.R. Nos. 145957-68, January 25, 2002, 374 SCRA 691, 694.

[12] Id.

[13] CA rollo, pp. 23-26.

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