CARLOS C. FUENTES, PETITIONER, VS. HON. SANDIGANBAYAN, SECOND DIVISION, HON. SIMEON V. MARCELO, OMBUDSMAN, EUSEBIO M. AVILA, JR., SPECIAL PROSECUTION OFFICER, OFFICE OF THE OMBU...

G.R. NO. 164664. July 20, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure for the nullification of the Resolution[1] of the Sandiganbayan (Second Division) in Criminal Case No. 27518 granting the motion of the Special Prosecutor for leave to withdraw the Information for want of probable cause to file the same, as well as the Resolution denying the motion for reconsideration filed by petitioner Carlos Fuentes.

Petitioner was the sales representative of the Davao Toyozu, Inc., a corporation with offices in Davao City, which was engaged in the importation and sale of Japanese surplus vehicles and spare parts. The Municipality of Baganga, Davao Oriental, called for a public bidding for the sale and supply of six (6) Japanese surplus mini dump trucks. The Abstract of Bids, where Davao Toyozu, Inc. appears to be the lowest bidder, was signed by the members of the Bid Committee, including Municipal Treasurer Francisco Jimenez, Jr. and then Municipal Mayor Remegio G. Nazareno.[2] On the same day, February 27, 2001, Municipal Treasurer Francisco Jimenez Jr., with the approval of the Mayor, issued Purchase Order No. 046 for P1,710,000.00 for the purchase of six mini dump trucks.[3] In May 2001, Davao Toyozu, Inc., through petitioner, delivered the six trucks which were duly accepted by the Municipality after inspection.[4] The price of four of the six units was then fully paid.

In the meantime, Gerry[5] J. Morales was elected Mayor of the Municipality and assumed office in July 2001. Municipal Budget Officer Bill Rojas, Accountant Emeritos M. Jovilla, and Municipal Treasurer Francisco Jimenez, Jr. approved a Request for Obligation of Allotment[6] for P274,377.27, the price of one of the two still unpaid mini dump trucks. Jovilla certified that unobligated allotments were available, Rojas certified to the existence of the appropriation for the expenditure, while Jimenez certified to the availability of funds. However, Morales refused to approve the request.[7] Morales also refused to approve the disbursement voucher for the expenditure which Jovilla had approved.[8]

The Municipality, through petitioner, had also entered into a contract with East Lambajon Trading for the rental of one bulldozer and the leveling of Sitio Dalingding, Barangay Kinablangan, Baganga, for P57,991.77. This transaction was approved by Engr. Fedelito Rabuya, the Baganga General Foreman, and Mayor Remegio Nazareno.[9] The undertaking was completed and duly accepted, as evidenced by the Certificate of Completion and Acceptance[10] signed by Rabuya, Barangay Captain Bonifacio Ignacio and Mayor Remegio Nazareno. Rabuya, Jovilla, Rojas and Jimenez approved the Request for Obligation of Allotment for the specified amount,[11] and the Disbursement Voucher.[12] Mayor Remegio Nazareno approved the Disbursement Voucher. However, Mayor Morales refused to authorize the release of the amount.

The Municipality had also entered into a contract with East Lambajon Trading/Carlos Fuentes for a two-day quarrying (bulldozing works) at Sitio Mahug, Barangay Ban-ao, Baganga for P20,358.78. The project was completed per specification and duly accepted by the Municipality, as evidenced by the Certificate of Completion and Acceptance signed by Rabuya, Ignacio and Nazareno. Jovilla, Rojas and Rabuya approved the Request for Obligation of Allotment and Disbursement Voucher for the amount, but Jimenez refused to do so.[13] Thus, Morales and Jimenez refused to allow the disbursement of the amount and its remittance to the East Lambajon Trading.

On August 8, 2001, petitioner withdrew some of the vouchers and other documents relative to the bulldozing work from the Office of the Municipal Treasurer. On August 16, 2001, he made demands[14] for Morales to allow the payment of the municipality's account, which Morales rejected. On September 10, 2001, petitioner withdrew the rest of the vouchers and other documents from the Office of the Municipal Treasurer relative to the supply of the six dump trucks.

Petitioner thereafter executed an Affidavit-Complaint[15] against Morales and Jimenez and all other responsible officers of the Municipality charging them administratively of having violated Section 3(e) of Republic Act (R.A.) No. 3019, and filed the same in the Office of the Ombudsman. In a letter dated September 12, 2001, the Office of the Ombudsman suggested to Morales that petitioner's claims be paid. The Ombudsman sent a follow-up letter dated October 16, 2001. Morales replied, alleging that he needed time to review the transactions relating to petitioner's claims.

Morales submitted his counter-affidavit in which he alleged that he assumed office as Municipal Mayor of the Municipality of Baganga last June 30, 2001. As Local Chief Executive, it was his duty to exercise prudence and care to scrutinize all documents covering all obligations incurred by the previous administration and determine if they are all in order. The main reason for the delay in processing the payment is the fact that complainant got all the vouchers and other relevant documents from the Office of the Municipal Treasurer last August 8 and September 10, 2001, as shown in the logbook of the said office; thus, the Office of the Municipal Treasurer could not process them for payment. He averred that, "as long as all documents are legal and in accordance with law and existing rules and regulations," the Municipality will honor its just and lawful obligations.[16]

In his Counter-Affidavit, Jimenez alleged that the payment for the two remaining dump trucks was expected sometime in September 2001, during which payment could not be effected because the complainant withdrew his claim from the General Services Section of the Municipal Treasurer. The complainant likewise withdrew his claim for the payment of the bulldozing services on August 8, 2001. He added that the internal allotment share of the municipality for July 2001 was received only in August 2001, and that the claims would have been paid in the latter part of that month had they not been withdrawn. He also alleged that the new Municipal Mayor could not be blamed for the non-payment of the three because it was only in July 2001 when the new municipal assumed office, and the claims had to be reviewed by them. He also averred that there were also defects in the two claims for the bulldozing works. The Municipal Mayor should also be the signatories on both Requests for Obligation of Allotment, and the Disbursement Vouchers, as he is the administrator of the fund to which the project had been charged, not the Project Development Officer I of the Municipal Planning and Development Office. According to Jimenez corrective acts could have been executed to both claims if only the complainant had not withdrawn the same. He assured that as soon as the claims were resubmitted and duly corrected, the final payment would be forwarded to petitioner.

In reply, petitioner alleged that the defense of Morales and Jimenez was made as an afterthought. His lawyer already sent a demand letter as early as August 18, 2001, and respondent Mayor Morales merely replied that payment "will be subject to the availability of the funds of the municipality," and would be made after the

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municipal engineer has finished inspecting the bulldozing works. Petitioner further alleged that the new administration's duty to pay is already ministerial, in view of the completeness of the documentation and the project implementation on all claims.[17] Thus, the claim that the transaction is "subject to review" is a mere alibi.

Petitioner also pointed out that in other transactions which the Municipality had with other entities/individuals, the payments were immediately received by the "brother of the Mayor," some of which had even occurred after the conclusion of his (petitioner's) transactions with the Municipality.[18]

The respondents countered by submitting an affidavit of Bernardo Y. Arquiza, the General Manager of Davao Toyozu, Inc., notarized by their counsel, that he had not authorized petitioner to file the complaint against the respondents.[19] Petitioner responded by submitting documents, including a letter from Arquiza dated December 8, 2001, showing that he transacted for the Davao Toyozu, Inc.[20]

On May 27, 2002, the Ombudsman approved a Resolution[21] finding probable cause against the respondents for violation of Section 3(e) of R.A. No. 3019. The defenses offered by the respondents were rejected as mere "alibis," considering that the disbursement vouchers and other supporting documents for payment of the transactions between the Municipality and Davao Toyozu, Inc. had been processed as early as August 3, 2001 (for the dump truck) and July 4, 2001 (for the bulldozing works). It held that respondents simply refused to pay petitioner's claims upon demand and despite receiving letters from the Ombudsman. Respondent Mayor made no mention about Fuentes' withdrawal of the vouchers and other documents in his Letter dated September 20, 2001. It pointed out that the vouchers and documents should not have been turned over to Fuentes in the first place. The claim that no funds were available was belied by the allotments which were duly certified by the Budget Officer and Municipal Accountant.

Thus, the prosecuting Ombudsman filed an Information dated May 22, 2002 with the Sandiganbayan charging Morales and Jimenez with violation of Section 3(e) of R.A. No. 3019. The accusatory portion of the Information reads:

> That on 4 July 2001, or sometime prior or subsequent thereto in the Municipality of Baganga, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, Gerry J. Morales, a high-ranking public officer being the Municipal Mayor of the Municipality of Baganga, Davao Oriental, and Francisco S. Jimenez, Jr., Municipal Treasurer of the same municipality, both while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other acting with evident bad faith, did then and there willfully, unlawfully and criminally cause undue injury to complainant Carlos C. Fuentes, by refusing to pay his claims/transactions, lawfully and legally incurred by the municipality, despite having complied with all the pertinent documents required to support his claims in the total amount of P351,736.05, to the damage and prejudice of the complainant.
>
> CONTRARY TO LAW.[22]

Respondents filed a motion for reconsideration, which the Ombudsman denied. This prompted respondents to file a Motion for Reinvestigation dated July 29, 2002 before the Sandiganbayan. They also filed a Manifestation dated August 15, 2002, where it was admitted that there were available funds for payment of petitioner's claims, including the two remaining mini dump trucks amounting to P570,000.00. However, while the Municipality was willing and capable of paying its obligations, payment could not be effected because petitioner withdrew all the vouchers and other pertinent documents from the Office of the Municipal Treasurer. Respondents pointed out that petitioner failed to refute this statement, and that the Ombudsman had hastily resolved the case without even furnishing a copy to their counsel of record.[23]

On September 20, 2002, the Municipality made a full payment of the dump trucks, for which Davao Toyozu, Inc. issued Official Receipt No. 36714. The Municipal Treasurer had apparently extracted copies of the vouchers and documents relative to the claims of petitioner from the records of the Commission on Audit, thus enabling them to prepare the checks thereon.

On December 18, 2002, the Sandiganbayan granted the motion of the accused for a reinvestigation. For his part, Special Prosecutor Officer I Eusebio M. Avila, Jr. requested a special audit of the Local Government of Baganga for the period of February to July 2001 relative to Criminal Case No. 27518. A panel of State Auditors from the Commission on Audit (COA) was then formed to conduct the same.

In the meantime, in a Letter dated January 3, 2003 addressed to petitioner, Assistant Municipal Treasurer Alicia B. Manligoy informed petitioner that after consultation with the COA, the withdrawn documents had been reproduced and used as the basis to pay the Municipality's obligations, and that his checks were ready for release from the cashier, as follows:

Date Particulars Check No. Amount
(Net of VAT)

01-03-03 Dozing work of Sitio Mahug PNB-Mati #52921 P 18,841.15

01-03-03 Dozing work Rehab of Dalingding Road PNB-Mati #52920 P 53,320.91
=========

Total P 72,162.06

Petitioner was also requested to claim the checks from the cashier along with the appropriate official receipts.

Petitioner failed to claim the checks. Thus, in a Letter dated March 3, 2003, respondent Jimenez requested Provincial Attorney Alejandro A. Aquino to summon petitioner to receive the checks.[25] Atty. Aquino forwarded a Letter dated March 10, 2003 to petitioner, requesting him to claim the checks from Jimenez.[26] However, petitioner still failed to claim the checks.

The Municipal Treasurer replaced the checks on April 3, 2003, and they were then delivered to petitioner on April 8, 2003. Petitioner also received from the Municipal Treasurer the payment of the last unit of the dump truck, and received the balance of his commission from Davao Toyozu, Inc. on January 8, 2003. Thus, the Municipality had already settled its obligations to petitioner, who was acting for his principals.

On April 16, 2003, the State Auditors submitted their Report to the Office of the Special Prosecutor relative to the purchase of six mini dump trucks and the contract of the Municipality for bulldozing work. According to State Auditors, the bulldozing work contracts were not valid for lack of vital documents to support the transactions. The disbursement vouchers (DVs) and the checks covering the payments were not supported by contracts which should have been executed between the Municipality and petitioner as contractor. Moreover, no public bidding was conducted; thus, although the bulldozing works had actually been completed and paid for, it was not a valid government transaction due to non-compliance of government auditing rules and regulations.

Based on his review of the Report of the State Auditors and petitioner's Comment thereon, Special Prosecutor Avila submitted a Memorandum to the Ombudsman recommending that the Information against the accused be withdrawn for lack of sufficient evidence as shown by the following findings: (1) there was no evident bad faith in this case since the accused had valid reasons for refusing to pay petitioner's money claims of P351,736.05, which was confirmed in the audit's findings; (2) the acquisition of the six dump trucks "was not a valid transaction considering that the Disbursement Vouchers (DVs) covering payments thereof are not supported by complete

documentation. Evaluation of the available documents attached to DVs revealed some inherent technical defects and irregularities in the issuance of the Purchase Order (P.O.) and submission of bidding documents by Davao Toyozu, Inc."; and, (4) the bulldozing work contracts were likewise not valid as they were not supported by the proper documents and no public bidding was conducted. Thus, according to Avila the accused were justified in withholding payment of petitioner's claims, considering further that the documents had been withdrawn from the Office of the Treasurer, and that there was no element of undue injury since the Municipality's obligations were eventually paid.[27]

The Ombudsman approved the recommendation of the Special Prosecution Officer. Thus, a Motion for Leave to Withdraw the Information dated September 3, 2003 was filed before the Sandiganbayan. Appended thereto was a copy of Special Prosecutor Avila's Memorandum to the Ombudsman.

Petitioner opposed the motion.

On January 19, 2004, the Sandiganbayan issued a Resolution[28] granting the motion and dismissing the case without prejudice. It ratiocinated that based on the re-investigation conducted, two essential elements of the crime being charged to establish probable cause, i.e., evident bad faith on the part of the accused and undue injury on the part of complainant, are absent. The prosecution committed no grave abuse of discretion in seeking the withdrawal of the Information since it is the Prosecutor who has the active direction and control of the institution of a criminal action. The anti-graft court applied the principles laid down in Crespo v. Mogul, that once a complaint or information is filed in court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court.

Petitioner received a copy of the resolution on February 4, 2000 and moved to have it reconsidered on February 17, 2004. The Sandiganbayan denied the motion on June 9, 2004.[29] Petitioner received a copy of the June 9, 2004 Resolution on August 16, 2004, and thereafter filed the instant petition for certiorari with this Court against the Ombudsman, the Special Prosecutor, the Sandiganbayan, respondents Morales and Jimenez.

Petitioner alleges that:

- THE OFFICE OF THE OMBUDSMAN, ACTING THROUGH SPECIAL PROSECUTION OFFICER II EUSEBIO M. AVILA, SR. GRAVELY ABUSED ITS DISCRETION WHEN IT SOUGHT THE WITHDRAWAL OF THE INFORMATION AGAINST THE RESPONDENTS RESULTING TO (sic) THE DISMISSAL OF THE CASE.

- THE HONORABLE SANDIGANBAYAN, SECOND DIVISION SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT GRANTED THE WITHDRAWAL OF THE INFORMATION AGAINST THE RESPONDENTS AS SOUGHT BY THE OFFICE OF THE OMBUDSMAN RESULTING TO THE DISMISSAL OF THE CASE.[30]

Petitioner argues that the Prosecution is not bound by the findings and recommendations of the State Auditors; after all, the Ombudsman had found probable cause against respondents after the requisite preliminary investigation. He insists that the preliminary investigation conducted by the Ombudsman is distinct and separate from the special audit conducted by the State Auditors; hence, the outcome of the State Auditors' investigation is not determinative of the absence or existence of probable cause against respondents.

Petitioner reiterates that his withdrawal of the documents evidencing his claims was not the paramount reason for non-payment of his claims " it was the alleged non-availability of funds. However, the documents on record show that there were available funds. If there were any defects OR irregularities and deficiencies relative to the transactions involved as found by the State Auditors, the persons solely liable are the municipal officials alone for

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failing to act thereon.

Petitioner further points out that there was delay in the payment of his claims, and that such payment constitutes an admission of respondents" criminal liability. Moreover, the fact that his complaints were eventually paid does not extinguish their incipient criminal liability.

Petitioner asserts that the defects and deficiencies adverted to by the State Auditors should be ventilated during the trial and cannot be used as basis for the withdrawal of the Information. He claims that he sustained undue injury, that is, the unnecessary expenses he incurred related to the subsequent transactions and the collection of his claims, such as litigation expenses. He admits that while the consequential undue injury cannot be ascertained yet, this has yet to be proven during the trial of the case. In any event, proof of the extent or quantum of damage is not essential, it being sufficient that the injury suffered or benefit received can be perceived substantial enough and not merely negligible. He insists that he would not have sustained undue injury if the private respondents/accused had only acted accordingly and paid his just and valid claims on time.[31] He avers that the respondents and the Sandiganbayan cannot rely on the ruling of this Court in Llorente[32] because of the divergent factual setting therein.

The issues are the following: (1) whether a petition for certiorari under Rule 65 of the Rules of Court is the proper remedy of the petitioner to question the assailed Resolution of the Sandiganbayan; and (2) whether the Sandiganbayan committed grave abuse of discretion amounting to excess or lack of jurisdiction in granting the Special Prosecutor's motion to withdraw the Information against respondents Morales and Jimenez based principally on the Special Audit Report of the State Auditors.

On the first issue, the petition for certiorari filed by petitioner under Rule 65 of the Rules of Court is inappropriate. It bears stressing that the resolution of respondent Sandiganbayan granting the motion of the Special Prosecutor for leave to withdraw the Information and ordering the case dismissed without prejudice is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done with it by the court.[33] Thus, the proper remedy is to file a petition for review with this Court under Rule 45 on a question of law. The pertinent provision reads:

> SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Thus, because he had the remedy of appeal via petition for review under Rule 45 of the Rules of Court, petitioner is proscribed from filing a petition for certiorari under Rule 65. The availability of the remedy of appeal, which is likewise speedy and adequate, constitutes a bar to the filing of a certiorari action under Rule 65.

While the Court may consider a petition for certiorari as a petition for review under Rule 45 of the Rules of Court in exceptional cases, Section 2 provides that such petition must be filed within the prescribed period, thus:

> SEC. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

Indubitably, the petition, even if considered as petition for review, was time-barred. This is so because petitioner received the resolution of the Sandiganbayan denying his motion for reconsideration on June 21, 2004, hence, he

had only until July 5, 2004 within which to file his petition for review. The petition was filed only on August 16, 2004, after the reglementary period had already lapsed. Moreover, the petition for certiorari filed by the petitioner, which is an independent action and not a mode of appeal, did not toll the running of the reglementary period.[34]

Nevertheless, we have reviewed the records and find that even on its merits the instant petition is destined to fail.

The rule is that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Special Prosecutor, an integral part of the Office of the Ombudsman. The Ombudsman is empowered to determine, in the exercise of his discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law. Whether or not the Ombudsman has correctly discharged his function, i.e., whether or not he has made a correct assessment of the evidence of probable cause in a case, is a matter that the trial court may not be compelled to pass upon. Thus, in Crespo v. Mogul,[35] the Court ruled:

> It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecutions by private persons. x x x Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a prima facie case.[36]

As a rule, courts should not interfere with the Ombudsman's investigatory power, exercised through the Special Prosecutor, and the authority to determine the presence or absence of probable cause, except when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[37] In such case, the aggrieved party may file a petition for certiorari under Rule 65 of the Rules of Court.[38] Indeed, if the Ombudsman does not take essential facts into consideration in the determination of probable cause, there is abuse of discretion.[39] As we ruled in Mendoza-Arce v. Office of the Ombudsman (Visayas),[40] a writ of certiorari may issue in any of the following instances:

- When necessary to afford adequate protection to the constitutional rights of the accused;

- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

- When there is a prejudicial question which is sub judice;

- When the acts of the officer are without or in excess of authority;

- Where the prosecution is under an invalid law, ordinance or regulation;

- When double jeopardy is clearly apparent;

- Where the court has no jurisdiction over the offense;

- Where it is a case of persecution rather than prosecution;

- Where the charges are manifestly false and motivated by the lust or vengeance;

- When there is clearly no prima facie case against the accused and a motion to quash on that ground has been

denied.[41]

On the other hand, if the Special Prosecutor files a motion to dismiss the case or motion for leave to file a motion to withdraw the Information after a reinvestigation authorized by the court, the resolution of such motion rests on the sound discretion of the trial court. The anti-graft court is the best and sole judge on what to do with the case before it, and may grant or deny the motion. As we held in Crespo v. Mogul:[42]

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss
>
> the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[43]

In a case where a motion is filed by the Prosecution for leave to withdraw the Information on the ground that, after a reinvestigation previously authorized by the court, no probable cause exists as against the accused, the court may deny or grant the motion based on its own independent assessment of the result of the reinvestigation submitted by the Prosecution to the trial court. The court may deny or grant such motion, not out of subservience to the Special Prosecutor, but in the faithful exercise of judicial discretion and prerogative.[44]

In this case, the Sandiganbayan granted the Special Prosecutor's motion and dismissed the case based on its own assessment of the report of the State Auditors, and on the Special Prosecutor's finding that there is no probable cause for the prosecution of respondents for violation of Section 3(e) of R.A. 3019, particularly the absence of bad faith on the part of the respondents and undue injury on the part of the petitioner. In its Resolution, the Sandiganbayan made it clear that the dismissal of the case was without prejudice to the filing of the proper charges, if warranted by the evidence. In fine, respondents Morales and Jimenez not excluding petitioner, could still be indicted, if the evidence so warrants, for a crime or crimes other than those defined in Section 3(e) of R.A. 3019.

According to the State Auditors, respondents Morales and Jimenez should not entertain petitioner's claims not only because the latter's transactions with the Municipality were defective and irregular, but were in fact illegal. Respondents and the other municipal officials should have been firm in their decision to withhold the payment of petitioner's claims based on the following reasons. As the State Auditors stated in their Report:

> E. The validity of the claim of the Municipal Treasurer Francisco S. Jimenez, Jr. that Carlos Fuentes withdrew from the office of the former the claim documents for the two aforesaid (a and b) transactions which resulted in the delay of the processing of payment.
>
> Records show that the disbursement vouchers and available documents related thereto were withdrawn by Mr. Carlos Fuentes (Annexes L, M and N) from the Office of the Municipal Treasurer of Baganga, Davao Oriental, to wit:
>
> Payee Transaction Amount Withdrawn Date
>
> 1. East Lambajon Trading/ Carlos Fuentes Dozing work/repair/ rehabilitation of Daling-daling Road Section, Brgy. Kinablangan P57,000.00 8/08/01

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2. East Lamajon Trading Dozing work of Sitio Mahug Brgy. Road, Brgy. Bana-ao 20,358.78 8/08/01

3. Davao Toyozu, Inc. Partial Payment for purchase of six (6) units dump truck (equivalent to one (1) unit 274,377.27 274,377.27

The concerned local officials should have been firm in their decision of withholding the payments based on the following issues, viz:

- Withdrawals of vouchers with related available documents without returning of the same despite demand thereof; and

- Incomplete documentation and other irregularities/deficiencies observed which should have been pointed out to the complaining parties to effect their correction/completion or having initiated the same by themselves before payment was to be made.

F. The validity of the payment made by the Municipality of Baganga to Davao Toyozu, Inc. in the amount of P570,000.00.

As discussed in Items A and C.1, the validity of payment made by the Municipality of Baganga to Davao Toyozu, Inc. in the amount of P570,000.00 less withholding tax of P21,245.45 could not be considered valid as this was based on insufficient and defective documents.[45]

These findings confirmed the correctness of the respondent's intial refusal to pay petitioner's claims, initially because the latter had withdrawn the pertinent vouchers and documents. Without the documents, respondents could not ascertain whether petitioner's claims were in accord with law, rules and regulations. It bears stressing that respondents had been insisting all along that petitioner's claims would be paid, provided that said claims are determined lawful.

For the respondents to be criminally liable for violation of Section 3(e) of R.A. 3019, the injury sustained by petitioner must have been caused by positive or passive acts of manifest partiality, evident bad faith, or gross inexcusable negligence.[46] Since the State Auditors even recommended that respondents should not pay petitioner's claims due to irregularities in the transactions and the patent nullity of the same, it cannot be said that the "injury" claimed to have been sustained by petitioner was caused by any of respondents' overt acts.

On hindsight, had petitioner not withdrawn the vouchers and other documents relative to his claims from the Office of the Municipal Treasurer on August 8 and September 10, 2001, respondent Mayor would have uncovered what the State Auditors disclosed in its report:

- 1. For transactions covering purchase of six (6) units Mini Dump Truck

A. Purchase Order (Annex C) issued to Davao Toyozu, Inc. in the amount of P1,710,000.00 did not stipulate the following basic information, viz:

- Office to which the delivery shall be made

- Provision for penalty in case of late or non-delivery

- Period of delivery

- Other terms and conditions

The following shall clearly appear in every purchase/letter order or contract aside from other requirements prescribed under existing laws and regulations:

xxx;

> c. office to which the delivery should be made.
> xxx;
> e. provisions for penalty in case of late or non-delivery;
> xxx;
> g. period of delivery;
> xxx
>
> The date when the purchase/letter order was received by the supplier or contractor shall be indicated clearly.
>
> B. Strict compliance of the requirements in the conduct of competitive public bidding had not been observed, to wit:
>
> - Bidder's bond of P8,160.00 (Annex D) was insufficient which is not equivalent to 5% of the bid price of P20,000.00 as required under Sec. 3 of COA Cir. No. 92-386;
>
> - No performance bond, equivalent to 10% of the value of the contract or purchase order was submitted;
>
> - Minutes of the bidding document (Advertisement for Bids, Annex E) which quoted the lowest/awarded price of P285,000.00 per unit signed by one Mr. Leo Reyes, a representative of Carlos Fuentes in the bidding (Annex F) did not bear the name of Davao Toyozu, Inc. to indicate its official participation in the bidding process. Neither Mr. Reyes nor Mr. Fuentes were identified as a responsible official of Davao Toyozu, Inc. to represent in the conduct of public bidding contrary to the provisions of Sec. 43 of COA Cir. No. 92-386 which partly states that:
>
> Duties of Bidders. xxx
> Bids shall be signed by a responsible officer of the company or firm authorized for the purpose whose name and designation must be clearly indicated in the bid.

[4] Section 44 of COA Cir. No. 92-386 requires that all bids must be accompanied by statement declaring under oath all the business establishments or interest in the locality of the bidders. The statement shall include, among others, the business name, business address and the nature of the business. This requirement was not complied.

[5] The Abstract of Quotation of Bids (Annex G) did not indicate the date the bidding was conducted and [no] action on the Award of Contract by the Committee on Award was made.

[6] The date of receipt of Purchase Order (PO) by the dealer/supplier.

Insufficiency of such information in the preparation/issuance of the Purchase Order did not comply with the provisions of Sec. 74 of COA Circular No. 92-386 dated Oct. 20, 1992 which prescribes Rules and Regulations on Supply and Property Management in the Local Government which states that:

7. The other participating bidders did not qualify as bona fide bidders required under Sec. 42 of COA Cir. No. 92-382 as the existence of their business establishments could not be ascertained. They had not submitted any business permit/license to engage in [the] business of selling dump trucks.

C. The delivery of six (6) units Dump Truck was not inspected by the designated inspector or inspection committee as no inspection report thereof is attached to the voucher. Likewise, there was no Report of Acceptance by the designated General Services Officer or Municipal Treasurer.

D. There was no Inspection Report of the COA Technical Audit Specialist as to condition and specifications of the heavy equipment delivered.

E. Official Receipt (OR) No. 36714 of Davao Toyozu, Inc. dated Sept. 20, 2002 for full payment in the amount of P548,754.55 is not the original copy (only xerox copy is attached).[47]

Relative to the bulldozing works of the barangay road, the State Auditors further declared that the transactions were not supported by the following vital documents:

- Contract between the Municipality of Baganga and Mr. Carlos C. Fuentes;

- Pertinent documents on public bidding conducted as basis of awarding contract to Mr. Fuentes;

- DTI registration of East Lambajon Trading in the name of Mr. Carlos Fuentes as a duly-registered contractor qualified to undertake government infrastructure projects and business license/permit to engage in the same business;

- Proof of existence of business establishment of East Lambajon Trading;

- The infrastructure projects contracted were not covered by appropriate and duly-accomplished Project Program of Work which should include detailed specifications. Likewise, the same document should have been prepared by the Municipal Engineer's Office.

- Transactions were not covered by any requisition document/Purchase Request;

- Transactions under Check Nos. 12741928 for P18,841.15 and 12741929 for P53,320.91 were supported by photocopies of Request of Obligation and Allotment (ROA) and Certificate of Completion and Acceptance instead of original copies as these were taken by Mr. Fuentes as informed by the Municipal Accountant (Annex H).[48]

Petitioner's contention, that the reinvestigation made by the Special Prosecutor was independent of the audit made by the State Auditors during the period of February to July 2001 relative to Criminal Case No. 27518 before the Sandiganbayan, is not correct. The fact is that the special audit conducted by the State Auditors was to aid the Ombudsman, through the Special Prosecutor, in reinvestigating the case as ordered by the Sandiganbayan. The results of the special audit would confirm whether the initial finding of probable cause for violation of Section 3(e) of R.A. No. 3019 against respondents was made with basis. The ultimate objectives of the Special Prosecutor and the State Auditors were thus congruent and complementary.

It turned out that, based on the Report of the State Auditors, there was no probable cause for violation of Section 3(e) of R.A. No. 3019, hence, the need to withdraw the Information without prejudice to an investigation of the matter by the Special Prosecutor in order to determine whether respondents Morales and Jimenez, and other municipal officials, including petitioner, may be criminally liable for violation of another or other provisions of R.A. 3019.

What is worrisome is that the Assistant Municipal Treasurer gave due course and paid the balance of petitioner's claims even while the State Auditors were conducting their special audit.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The assailed Resolutions of the Sandiganbayan are AFFIRMED. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairman), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Efren N. de la Cruz, with Associate Justices Edilberto G. Sandoval and Francisco H. Villaruz, Jr., concurring; rollo, pp. 46-51.

[2] Rollo, p. 82.

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[3] Id. at 83.

[4] Id. at 84.

[5] Also spelled "Jerry."

[6] Rollo, p. 85.

[7] Id.

[8] Id. at 87.

[9] Id. at 88.

[10] Id. at 90.

[11] Id. at 91.

[12] Id. at 92.

[13] Id. at 96.

[14] Id. at 98.

[15] Id. at 79-81.

[16] Id. at 99.

[17] Id. at 103.

[18] Id. at 103-130.

[19] Id. at 131-132.

[20] Id. at 130.

[21] Per the recommendation of Special Prosecutor Officer I Eusebio M. Avila, Jr.

[22] Rollo, p. 155.

[23] Id. at 162-163.

[24] Id. at 165.

[25] Id. at 167.

[26] Id. at 166.

[27] Id. at 170-189.

[28] Id. at 42.

[29] Id. at 46-51.

[30] Id. at 23-24.

[31] Id. at 30-31.

[32] Llorente, Jr .v. Sandiganbayan, G.R. No. 122166, March 11, 1998, 287 SCRA 382.

[33] Metropolitan Manila Development Authority v. Jancom Environmental Corporation, 425 Phil. 961, 972

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(2002).

[34] Kuizon v. Desierto, G.R. Nos. 140619-24, March 9, 2001, 354 SCRA 158, 171.

[35] G.R. No. L-53373, June 30, 1987, 151 SCRA 462.

[36] Id. at 467-468.

[37] Cabahug v. People, 426 Phil. 490, 500 (2002).

[38] Garcia-Rueda v. Pascasio, G.R. No. 118141, September 5, 1997, 278 SCRA 769, 766, citing Yabut v. The Office of the Ombudsman, G.R. No. 111304, June 17, 1994, 233 SCRA 310.

[39] Sistoza v. Desierto, 437 Phil. 117, 129 (2002).

[40] 430 Phil. 101 (2002).

[41] Id. at 113.

[42] Supra note 34.

[43] Id. at 471.

[44] People v. Court of Appeals, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 484.

[45] Rollo, pp. 180-181.

[46] Cabrera v. Sandiganbayan, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 382.

[47] Rollo, pp. 176-179.

[48] Id. at 179.

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