

**CESAR T. VILLANUEVA, PEDRO S. SANTOS, AND ROY C. SORIANO,
PETITIONERS, VS. MAYOR FELIX V. OPLE AND VICE-MAYOR
JOSEFINA R. CONTRERAS, RESPONDENTS.**

G.R. No. 165125. November 18, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

This Court's review powers over resolutions and orders of the Office of the Ombudsman is restricted only to determining whether grave abuse of discretion, that is, capricious or whimsical exercise of judgment, has been committed. The Court is not authorized to correct every error or mistake allegedly committed by that constitutionally independent government agency. Thus, absent any showing of grave abuse of discretion, we have consistently sustained its determination of the existence or the nonexistence of probable cause.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the April 21, 2004 Resolution[2] and the August 27, 2004 Order[3] of the deputy ombudsman for Luzon in OMB-L-C-03-1550-L. The challenged Resolution disposed as follows:

"WHEREFORE, in view of the foregoing, it is respectfully recommended that the present case lodged against respondents Felix V. Ople and Josefina R. Contreras, Mayor and Vice Mayor, respectively of the Municipality of Hagonoy, Bulacan, be DISMISSED for lack of probable cause."[4]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Facts

On December 8, 2003, Petitioners Cesar T. Villanueva, Pedro S. Santos, and Roy C. Soriano filed a Joint Affidavit-Complaint[5] before the Office of the Ombudsman. They charged incumbent Mayor Felix V. Ople and Vice-Mayor Josefina R. Contreras of Hagonoy, Bulacan, of violation of Section 3(e)[6] of RA No. 3019 or the "Anti-Graft and Corrupt Practices Act,"[7] in relation to Sections 305-(a),[8] 318[9] and 351[10] of the Local Government Code (LGC).

Petitioners alleged that the annual budget for Fiscal Year (FY) 2003 of the Municipality of Hagonoy had been submitted by Mayor Ople -- through Vice-Mayor Contreras -- to the Sangguniang Bayan of Hagonoy, only on June 11, 2003, instead of on October 16 of the preceding year, as mandated by Section 318, paragraph 2 of Book II, Title V, Chapter III of the LGC. They added that Vice-Mayor Contreras had failed to refer the budget to the chief legal counsel of the municipality; and that, together with the other incumbent members of the Sangguniang Bayan, she had instead sought the approval of the alleged "Illegal Annual Budget for 2003." [11]

On the theory that no enabling resolution had been enacted authorizing expenditures of the municipality to be based on the annual budget for the preceding year, petitioners claimed that the disbursement of public funds

during the period January 1, 2003 to July 11, 2003[12] and/or August 27, 2003[13] had been illegal. They therefore prayed that respondents be held liable for the illegal disbursements done in the discharge of official functions, through evident bad faith and/or gross negligence that had caused undue injury to the Municipality of Hagonoy, Bulacan.[14]

Respondents filed their respective Counter-Affidavits, both dated February 27, 2004, and practically identical in form and substance.[15] They stated that the proposed budget had actually been submitted on June 26, 2003, and not June 11, 2003. It was submitted only on that date, because Commission on Audit (COA) Circular No. 2002-2003, otherwise known as the "New Government Accounting System," had mandated the revision of accounting procedures.[16] In compliance with that Circular, the municipality had to review and modify almost all of its financial transactions beginning January 1, 2002. In order to prepare a feasible budget, they allegedly had to know the locality's financial position for the prior year, data on which had to come from the accounting department.[17]

According to respondents, the Sangguniang Bayan of Hagonoy and the Sangguniang Panlalawigan of Bulacan eventually passed and approved the proposed budget, whose effectivity date was January 1, 2003.[18] They averred that the Local Government Code had not required the vice-mayor to submit the budget to the legal officer of the municipality for review.[19]

Finally, respondents claimed that the disbursements of public funds during the absence of an approved budget were legal under Section 323[20] of RA 7160 or the LGC.[21]

In their Reply and Supplemental Reply, petitioners reiterated their allegations in their Joint Affidavit-Complaint, in which they stressed that Section 323 of the LGC had required the mayor to submit the budget for the coming fiscal year not later than October 16 of the current FY.[22]

Ruling of the Deputy Ombudsman

The Office of the Deputy Ombudsman for Luzon (OMB-Luzon) found no probable cause against respondents.[23] It noted that the charge was premised on allegedly illegal disbursements that had caused undue injury to the government. Yet, petitioners failed to specify which disbursements had been made illegally. Besides, there was no proof that the expenditures unduly benefited certain individuals or were made pursuant to the regular operations of the municipality.[24]

The OMB-Luzon also held that Section 323 of the LGC had authorized the reenactment of the budget for the preceding year to allow the municipal government to function and carry out its mandate.[25] Hence, the disbursements made during the questioned period when the new budget had not yet been approved could not have been illegal.[26]

In denying petitioners' Motion for Reconsideration, the OMB-Luzon pointed out that the alleged undue injury should have been specified, quantified, and proven to the point of moral certainty.[27] It found no reason to set the case for clarificatory hearings or to issue subpoenas.[28]

Hence, this Petition.[29]

The Issues

Petitioners state the issues in this wise:

"(A)

Whether or not the admitted flagrant violation of Respondent Mayor Felix V. Ople of Section 318, LGC, aided and abetted by co-respondent Vice Mayor Josefina R. Contreras, has been and can be validated by Section 323 of the LGC.

"(B)

Whether or not there is any specific LGC [provision] which could be claimed as the legal remedy in validating Respondent Mayor Felix V. Ople's admitted flagrant violation of Section 318, LGC.

"(C)

Whether or not at the National Government level there are comparable constitutional mandatory provisions (a) that no money shall be paid out of the treasury except in pursuance of an appropriation made by law; (b) when the preceding year's budget is deemed reenacted; and (c) deadline of President's constitutional duty to submit proposed budget.

"(D)

Whether or not disbursements of municipal money out of the municipal treasury even in the absence of legally adopted annual budget cannot be characterized as 'undue injury' because:

"It is illogical, if not absurd, to assume that a municipal government no longer has the capacity to function and carry out its mandate only because its annual budget has not been approved."

"(E)

Whether or not when [petitioners], in seeking preliminary investigation in OMB-L-C-03-1550-L, are precluded at the same time from seeking OMB's broad fact-finding investigatory power, function and duty to find the truth of the exact amount of illegal disbursements of municipal funds during the fiscal year 2003 when there was no legally enacted 2003 annual budget pursuant to:

'(E.1)

Sections 12 and 13, Article XI of the 1987 Constitution;

'(E.2)

Section 13, 15, 23, 26 and 31 of the OMB Act of 1989; and

'(E.3)

Rule II, Sections 1, 2, 3, 4-(f) and Rule III, ADO-7, Rules of Procedure of the OMB, April 10, 1990.

"(F)

Whether or not clear and serious legal error is committed by the OMB in denying clarificatory hearing to ascertain material facts to find the true and exact amount of illegal disbursements of municipal money during the fiscal year 2003 when there was no legally enacted 2003 annual budget pursuant to OMB's broad investigative power, function and duty.

"(G)

Whether or not it is clear and serious legal error for OMB-Luzon in denying issuance of subpoena to the 2 municipal officials, listed by the [petitioners] in their 'Joint Complaint-Affidavit' as witnesses to be subpoenaed in the investigation, to certify or affirm the exact amount of disbursements during the fiscal year 2003 when there was no legally enacted annual budget, on the ground that issuance of the subpoena would make OMB-Luzon engage in 'fishing expedition.'"[30]

The Court's Ruling

The Petition is bereft of merit.

Preliminary Matter:

Wrong Remedy Instituted

The proper remedies in questioning decisions and resolutions of the Office of the Ombudsman (OMB) have already been settled in a catena of cases.

Fabian v. Desierto[31] held that appeals from the orders, directives, or decisions of the OMB in administrative disciplinary cases were cognizable by the Court of Appeals. Tirol v. Del Rosario[32] clarified that, in non-administrative cases in which the OMB had acted with grave abuse of discretion amounting to lack or excess of jurisdiction, a petition for certiorari under Rule 65 may be filed directly with this Court. Accordingly, Kuizon v. Desierto[33] held that this Court had jurisdiction over petitions for certiorari questioning the resolutions or orders of the ombudsman in criminal cases.

Thus, petitioners committed a procedural error in resorting to a Petition for Review under Rule 45 of the Rules of Court. To challenge the dismissal of their Complaint and to require the OMB to file an information, petitioners should have resorted to a petition for certiorari under Rule 65 of the Rules of Court. The only ground upon which this Court may entertain a review of the OMB's resolution is grave abuse of discretion,[34] not reversible errors.

Main Issue:

No Grave Abuse of Discretion

A special civil action for certiorari is the proper remedy when a government officer has acted with grave abuse of discretion amounting to lack or excess of jurisdiction; and there is no plain, speedy, and adequate remedy in the ordinary course of law.[35] But even assuming that the present Petition may be treated as one for certiorari, the case must nevertheless be dismissed.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction.[36] The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[37]

In the present case, petitioners do not even allege that the OMB gravely abused its discretion in issuing its questioned Resolution. A perusal of the issues they submitted reveals that the crux of the controversy revolves around the finding of the deputy ombudsman that there was no probable cause against respondents. They allege that he committed legal errors in arriving at his findings and conclusions and had in fact no basis for dismissing their Complaint. The OMB's judgment may or may not have been erroneous, but it has not been shown to be tainted with arbitrariness, despotism or capriciousness amounting to lack or excess of jurisdiction.

Sufficient Basis

In any event, the Court finds no grave abuse in the manner in which the deputy ombudsman exercised his discretion. Evidently, he had sufficient bases for his finding that there was no probable cause.

First, the mere failure of the local government to enact a budget did not make all its disbursements illegal. Section 323 of the LGC provides for the automatic reenactment of the budget of the preceding year, in case the Sanggunian fails to enact one within the first 90 days of the fiscal year. Hence, the contention in the present case that money was paid out of the local treasury without any valid appropriation must necessarily fail.

Second, Section 323 states that only the annual appropriations for salaries and wages, statutory and contractual obligations, and essential operating expenses are deemed reenacted. Petitioner failed to identify disbursements that had gone beyond this coverage.

Third, petitioners failed to substantiate their allegations that the government had suffered undue injury. They concluded that there had been undue injury simply on the basis of their unsubstantiated claims of illegal disbursements. Having failed to prove any unlawful expenditure, the claim of undue injury must necessarily fail.

Fourth, petitioners relied solely on Section 318 of the LGC, which allegedly exposed the mayor to criminal liability for delay in submitting a budget proposal. The pertinent provision reads:

"Sec. 318. Preparation of the Budget by the Local Chief Executive. — Upon receipt of the statements of income and expenditures from the treasurer, the budget proposals of the heads of departments and offices, and the estimates of income and budgetary ceilings from the local finance committee, the local chief executive shall prepare the executive budget for the ensuing fiscal year in accordance with the provisions of this Title.

"The local chief executive shall submit the said executive budget to the sanggunian concerned not later than the sixteenth (16th) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws."

Under the above LGC provision, criminal liability for delay in submitting the budget is qualified by various circumstances. For instance, the mayor must first receive the necessary financial documents from other city officials in order to be able to prepare the budget. In addition, criminal liability must conform to the provisions of the LGC and other applicable laws. Noteworthy is the fact that petitioners failed to present evidence that would fulfill these qualifications stated in the law.

We stress that the present case proceeds from an accusation that a crime was committed. A criminal case requires the filing of an information that will be the basis for the trial of the accused.[38] A preliminary investigation should then be conducted to determine whether a probable cause exists to warrant the filing of the information

against the accused.[39]

Probable Cause

Probable cause is defined as the existence of facts and circumstances that engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty of that crime and should be held for trial.[40] This term was explained in *Pilapil v. Sandiganbayan*,[41] as follows:

"Probable cause 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. (Words and Phrases, Probable Cause, v. 34, p. 12) The term does not mean 'actual and positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge."[42]

Function of the Government Prosecutor

The determination of probable cause during a preliminary investigation is a function of the government prosecutor, who in this case is the ombudsman.[43] As a rule, the Court does not interfere in the ombudsman's exercise of discretion in determining probable cause, unless there are compelling reasons.[44]

This policy is based on constitutional, statutory and practical considerations.[45] To insulate the OMB from outside pressure and improper influence, the Constitution and RA 6770[46] (the Ombudsman Act of 1989) grant it a wide latitude of investigatory and prosecutorial powers virtually free from executive, legislative or judicial intervention.[47] Such initiative and independence must be inherent in the ombudsman who, beholden to no one, acts as champion of the people and preserver of the integrity of public service.[48]

Otherwise, the courts would be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the OMB with regard to complaints filed before it.[49] This effect would be the same as the further clogging of already clogged dockets of courts, should they be compelled to review the exercise of discretion on the part of prosecuting attorneys each time an information is filed or a complaint dismissed.[50]

Nonetheless, the Court may exercise its certiorari power when the government prosecutor unreasonably refuses to file an information even if clearly warranted by the evidence. This certiorari power was recognized in *Socrates v. Sandiganbayan*,[51] which enumerated the remedies of the offended party or complainant, as follows: (1) to file an action for mandamus in case of grave abuse of discretion;[52] (2) to lodge a new complaint against the offenders before the ombudsman and request the conduct of a new examination as required by law; (3) to institute administrative charges against the erring prosecutor, a criminal complaint under Article 208 of the Revised Penal Code, or a civil action for damages under Article 27 of the Civil Code; (4) to secure the appointment of another prosecutor; or (5) to institute another criminal action if no double jeopardy is involved.[53]

No Prima Facie Evidence

Under the present factual milieu, petitioners clearly failed to establish the following elements of a violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act:

"1. The accused is a public officer or a private person charged in conspiracy with former;

"2. That he or she causes undue injury to any party, whether the government or a private party;

"3. That said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;

"4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

"5. That the public officer has acted with manifest partiality, evident bad faith, or gross inexcusable negligence." [54]

A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. The complainant must adduce sufficient proof of guilt as basis for a criminal charge in court. As discussed earlier, the present petitioners did not submit any proof in support of their accusations against respondents.

Hence, the Court is bound to respect the deputy ombudsman's professional judgment in finding the case dismissible, absent a showing of grave abuse of discretion.[55] Government resources and the time and effort of public officials would be needlessly wasted if the courts allow unmeritorious cases to be filed and given due course. It would be better to dismiss a case, like the present one in which the circumstances blatantly show that the act complained of does not constitute the offense charged.

Other Issue:

Prayer for Subpoenas

This Petition includes a prayer for subpoena ad testificandum and subpoena duces tecum. This prayer, including a request for a clarificatory hearing, was initially made before the OMB in petitioners' Reply to respondents' Opposition to the Motion for Reconsideration of the assailed Resolution.[56] Petitioners sought the testimonies of the municipal accountant and treasurer, who could purportedly identify the disbursements for FY 2003.[57] The deputy ombudsman found this request tantamount to a "fishing expedition," which was not appropriate in a preliminary investigation.[58]

Without having to go through a preliminary investigation, the OMB has the power to dismiss a complaint outright for being completely without merit.[59] It necessarily follows that conducting a preliminary investigation and determining if any of the modes of discovery should be used are within the ambit of its discretion. The Court cannot compel the testimonies of witnesses and the production of documents if, in the ombudsman's sound judgment, these pieces of evidence are not necessary to establish probable cause.[60]

WHEREFORE, the Petition is hereby DENIED, and the assailed Resolution and Order are AFFIRMED. Costs against petitioners.

SO ORDERED.

Corona, Carpio-Morales, and Garcia, JJ., concur.

Sandoval-Gutierrez, J., on official leave.

[1] Rollo, pp. 29-61.

[2] Id., pp. 66-73. Signed by Graft Investigation and Prosecution Officer I Robert C. Reñido and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[3] Id., p. 74-80. Signed by Graft Investigation and Prosecution Officer II Teresita P. Butardo-Tacata and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

[4] Id., p. 72.

[5] Id., pp. 81-85.

[6] "Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x

"(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

[7] Joint Affidavit-Complaint; rollo, p. 81.

"The Ombudsman has the exclusive power to conduct preliminary investigation, file and prosecute criminal cases cognizable by the Sandiganbayan, which includes violation of the Anti-Graft and Corrupt Practices Act." §15, RA 6770. See also *Uy v. Sandiganbayan*, 354 SCRA 651, 659, March 20, 2001.

[8] Book II, Title Five, Chapter I, Section 305-(a): "No money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law."

[9] Book II, Title Five, Chapter III, Section 318, 2[nd] par.: "The local chief executive shall submit the said executive budget to the sanggunian concerned not later than the sixteenth (16[th]) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws."

[10] Book II, Title Five, Chapter IV, Section 351: "General Liability for Unlawful Expenditures. -- Expenditures of funds or use of property in violation of this Title and other laws shall be a personal liability of the official or employee responsible therefor."

[11] Joint Affidavit-Complaint, p. 3; rollo, p. 83.

[12] The enactment date of Kapasiyahan Blg. 2003-035 and Kautusan Blg. 002, ordinances which approved the Annual Budget for the year 2003. Rollo, pp. 202-203.

[13] The enactment date of Kapasiyahan Blg. 2003-040. Under this ordinance, funding for the "Annual Investment Plan" would come from the 20% Economic Development Fund or Internal Revenue Allotment for 2003. Rollo, p. 204.

[14] Joint Affidavit-Complaint, p. 4; rollo, p. 84.

[15] Counter-Affidavits; rollo, pp. 217-220 & 221-224.

[16] Counter-Affidavit of Mayor Ople, p. 1 (rollo, p. 217); Counter-Affidavit of Vice-Mayor Contreras, p. 1 (rollo, p. 221).

[17] Ibid.

[18] Assailed Resolution, p. 5; rollo, p. 70.

[19] Id., pp. 4 & 69.

[20] "SEC. 323. Failure to enact the annual appropriations. – In case the Sanggunian concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, it shall continue to hold sessions, without additional remuneration for its members, until such ordinance is approved, and no other business may be taken up during such session. If the sanggunian still fails to enact such ordinance after ninety (90) days from the beginning of the fiscal year, the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect until the ordinance authorizing the proposed appropriations is passed by the sanggunian concerned. However, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith."

[21] Counter-Affidavit of Mayor Ople, p. 3 (rollo, p. 219); Counter-Affidavit of Vice-Mayor Contreras, p. 3 (rollo, p. 223).

[22] Assailed Resolution, p. 5; rollo, p. 70.

[23] The resolution of the investigating prosecutor is required to be submitted to the ombudsman or the deputy ombudsman for review and final action. §4, Rule 112, Rules of Court.

[24] Assailed Resolution, p. 6; rollo, p. 71.

[25] Ibid.

[26] Ibid.

[27] Assailed Order, p. 5; rollo, p. 78.

[28] Id., pp. 6 & 79.

[29] The case was deemed submitted for decision on May 5, 2005, upon this Court's receipt of respondents' Memorandum. The original copy of that Memorandum had no p. 41, which would have indicated its signatories. Petitioners' Memorandum, signed by Attys. Angel C. Cruz and Rafael T. Durian, was received by this Court on April 22, 2005.

[30] Petitioners' Memorandum, pp. 11-13; rollo, pp. 366-368. Original in uppercase.

[31] 356 Phil. 787, 808, September 16, 1998.

[32] 391 Phil. 897, 910, August 3, 2000.

[33] 354 SCRA 158, 172, March 9, 2001.

[34] PCGG v. Desierto, 397 SCRA 171, February 10, 2003.

[35] §1, Rule 65, Rules of Court.

[36] Soria v. Desierto, GR Nos. 153524-25, January 31, 2005; Peralta v. Desierto, supra; Perez v. Ombudsman, supra, p. 361; Duero v. Court of Appeals, 373 SCRA 11, 17, January 4, 2002.

[37] Ibid.

[38] An information is a written accusation filed with the trial court, charging a person with an offense. §4, Rule 110, Rules of Court.

The filing of an information is in conformity with the right of the accused to be informed of the nature and the

cause of the accusation. §14(2), Art. III, Philippine Constitution. See also *United States v. Karelsen*, 3 Phil. 223, 226, January 21, 1904.

[39] §1, Rule 112, Rules of Court.

[40] *Ibid.* The provision also defines the purpose of a preliminary investigation. *Mendoz-Arce v. Ombudsman*, 380 SCRA 325, 335, April 5, 2002.

[41] 221 SCRA 349, April 7, 1993.

[42] *Id.*, p. 360, per Nocon J. Also cited in *Paredes v. Sandiganbayan*, 252 SCRA 641, 661, January 31, 1996.

[43] *Paredes v. Sandiganbayan*, *supra*; *Cruz v. People*, 233 SCRA 439, 459, June 27, 1994.

[44] *Peralta v. Desierto*, GR No. 153152, October 19, 2005.

[45] *Perez v. Ombudsman*, 429 SCRA 357, 363, May 27, 2004; *Paredes v. Sandiganbayan*, *supra*, p. 659; *Young v. Ombudsman*, 228 SCRA 718, 722, December 27, 1993.

[46] Enacted November 17, 1989.

[47] *Perez v. Ombudsman*, *supra*.

[48] *Gallardo v. People*, GR No. 142030, April 21, 2005; *Alba v. Nitorreda*, 254 SCRA 753, 766, March 13, 1996.

[49] *Estrada v. Desierto*, 445 SCRA 655, 673, December 9, 2004; *Perez v. Ombudsman*, *supra*; *Paredes v. Sandiganbayan*, *supra* on p. 660.

[50] *Ibid.* There are certain instances when this Court may intervene in the prosecution of cases. *Brocka v. Enrile* (192 SCRA 183, 188, December 10, 1990 [citing *Regalado, Remedial Law Compendium* (1988), p. 188]), enumerated some of these exceptions as follows: (1) when necessary to afford adequate protection to the constitutional rights of the accused; (2) when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question that is sub judice; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the court has no jurisdiction over the offense; (8) where the case is one of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

[51] 253 SCRA 773, February 20, 1996.

[52] *Mandamus* generally lies to compel the performance of a ministerial, not a discretionary, duty. *Sy Ha v. Galang*, 117 Phil. 798, 805, April 27, 1963.

As an exception, the Court has allowed *mandamus* to compel the filing of an information upon a clear prima facie showing of guilt. See *DM Consunji, Inc. v. Esguerra*, 260 SCRA 74, 84, July 30, 1996 (citing *People v. Orais*, 65 Phil. 744, 757, June 30, 1938). See also *Licaros v. Sandiganbayan*, 421 Phil. 1075, 1094, November 22, 2001.

[53] *Socrates v. Sandiganbayan*, *supra*, p. 800. Also cited in *Estrada v. Desierto*; *supra*, p. 665.

[54] *Peralta v. Desierto*, GR No. 153152, October 19, 2005; *Garcia-Rueda v. Amor*, 365 SCRA 456, September 20, 2001.

[55] *Perez v. Ombudsman*; *supra*, p. 363.

[56] Respectful Reply, dated July 19, 2004, p. 20; rollo, p. 287.

[57] Ibid.

[58] Assailed Order, p. 6; rollo, p. 79.

[59] Kara-an v. Ombudsman, 432 SCRA 457, June 21, 2004; Mamburao, Inc. v. Ombudsman, 344 SCRA 805, 818, November 15, 2000; Knecht v. Desierto, 353 Phil. 494, 502, June 26, 1998.

[60] See Kara-an v. Ombudsman, *supra*; Mamburao, Inc. v. Ombudsman, *supra*.

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