JOSE M. GALARIO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN (MINDANAO) AND RUTH P. PIANO, RESPONDENTS.

G.R. NO. 166797. July 10, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Court seeking the nullification of the (1) Resolution[1] of the Office of the Ombudsman for Mindanao (OMB-Mindanao) dated 26 November 2004 finding probable cause to indict Jose M. Galario, Jr. (petitioner) for violation of Section 3(f) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act); and (2) Order[2] of the same Office dated 7 January 2005 denying petitioner's Motion for Reconsideration. In effect, petitioner, on injunction against the OMB-Mindanao, prays to prevent said Office from prosecuting him asserting that there is an abject absence of probable cause to hold him for trial.

This case originated from an affidavit-complaint filed by Ruth P. Piano (private respondent) against petitioner resulting in the institution of administrative and criminal investigations by the OMB-Mindanao, docketed as OMB-M-A-04-128-G and OMB-M-C-04-0282-G, respectively.

The following facts are undisputed:

Petitioner was elected on his first term as City Mayor of Valencia City, Bukidnon, during the May 2001 local elections. Upon assumption of office, petitioner effected a reorganization and personnel audit of the local bureaucracy. He then issued two memoranda, both with subject heading "TRANSFER OF ASSIGNMENT" and dated 02 July 2001, addressed to private respondent. In the first memorandum, petitioner directed:

> Effective upon receipt, you are relieved from your present position as the City Budget Officer and to perform functions as the City Liaison Officer to do the following task[s] to wit:
>
> - To coordinate with the City Mayor and Department of Budget and Management and with other Agencies/Functionaries for the facilitation and immediate release of our Internal Revenue Allotment (IRA) and other financial assistance for the different City projects.
>
> - To undergo and submit a study on How to Improve the City's Economic Enterprise/Revenue for the welfare of our people.
>
> - To submit, keep the Local Chief Executive abreast of every transaction[s] relative hereto.
>
> - To turn-over all the documents & properties of the City Budget Office to Mr. Bartolome C. Barte as Budget Officer in an Acting capacity.[3]

Thus, petitioner created the position of City Liaison Officer to which he "transferred" private respondent with the task of studying and recommending how to improve the economic enterprises and the local revenue collection efforts of the city.

The second memorandum was of the same tenor as the first and was a substantial restoration thereof.

Private respondent opposed the two memoranda and filed a complaint for Constructive Dismissal, Reinstatement to Former Position and Payment of Representation and Travel Allowance (RATA) with the Civil Service Commission—Regional Office X (CSC-Regional Office). The CSC-Regional Office agreed with private respondent and by virtue of an Order dated 7 January 2002, mandated the reinstatement of private respondent to her former position as City Budget Officer, thus:

> WHEREFORE, premises considered, instant appeal is hereby granted. Accordingly, Mayor Galario is ordered to reinstate Ms. Piano to her previous position as City Budget Officer and to cause the payment of her RATA from the time she was deprived of it until her reinstatement. x x x.[4]

Petitioner then filed a Motion for Reconsideration of the foregoing Order which was denied by the CSC-Regional Office in another Order dated 18 February 2002. Petitioner, hence, appealed the Orders of the CSC-Regional Office dated 7 January 2002 and 18 February 2002 to the CSC-Main Office, which subsequently dismissed said appeal in Resolution No. 030096 dated 21 January 2003. In Resolution No. 030544 dated 5 May 2003, the CSC denied petitioner's Motion for Reconsideration and affirmed CSC Resolution No. 03-0096 dated 21 January 2003[5]:

> WHEREFORE, the appeal of Valencia City Mayor Jose M. Galario, Jr. is hereby DISMISSED. Civil Service Commission Regional Office No. X Orders dated January 7, 2002 and February 18, 2002 declaring the Office of the Mayor Orders both dated July 2, 2001 null and void, stand. Accordingly, Ruth P. Piano is reinstated to her former position as City Budget Officer.[6]

Private respondent subsequently moved for the execution of CSC Resolution No. 030544 dated 5 May 2003 affirming CSC Resolution No. 030096 dated 21 January 2003.

Even before the CSC could act on private respondent's motion for execution, petitioner issued Memorandum Order No. 07-55 dated 25 July 2003, ordering private respondent to be reinstated to her former position of City Budget Officer with the grant of benefits[7] appurtenant to the said position, supposedly in compliance with CSC Resolution No. 03-0096 dated 21 January 2003. Much later, however, petitioner, in another letter dated 28 July 2003,[8] instructed private respondent not to involve herself in the signing of documents relating to the city's financial transactions, citing her pending case[9] with the Office of the Ombudsman. The task was given to Mr. Bartolome Barte, who was authorized to sign "For the City Budget Officer" in the financial transactions of the city.

In Memorandum Order No. 07-65 dated 30 July 2003, petitioner directed private respondent to transfer office from the City Hall Main Building to the Sangguniang Kabataan Building.

Meanwhile, petitioner formally asked the opinion of the CSC-Regional Office on whether or not he could legally prohibit private respondent from signing documents relating to the financial transactions of the city. In a letter dated 6 October 2003 addressed to petitioner, the CSC-Regional Office opined that considering that the Office of the Ombudsman had dismissed the administrative case against private respondent, there was no more legal impediment to her reinstatement as City Budget Officer as well as in the performance of her duties as such.[10]

Thereafter, private respondent filed with the CSC a second Motion for Execution of its Resolution No. 030096 dated 21 January 2003, resulting in the issuance by the CSC of Resolution No. 040552 dated 17 May 2004 ordering petitioner to immediately reinstate private respondent as City Budget Officer. Petitioner, on the other hand, issued official letters on 24 June 2004 and 02 July 2004 announcing the vacancy of the Office of the City Budget Officer of Valencia City, prompting private respondent to file with the CSC a third Motion for Execution

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of CSC Resolution No. 030096 dated 21 January 2003 which ordered her immediate reinstatement as City Budget Officer.

The CSC, in Resolution No. 04-1003 dated 7 September 2004, directed petitioner to allow private respondent to perform all the duties of a City Budget Officer. The dispositive portion of said Resolution reads:

> WHEREFORE, the Commission hereby directs Mayor Jose M. Galario, Jr. to allow Piano to perform all the duties relevant to the position of City Budget Officer and to allow her to hold office at the City Budget Office. Failure of Mayor Galario, Jr. to comply with the same would compel the Commission to cite him in contempt and file the appropriate charges with the Office of the Ombudsman.
>
> The Civil Service Commission Regional Office No. X is directed to monitor the strict implementation and enforcement of this Resolution and to submit a report to the Commission within ten (10) days from receipt.[11]

Still not satisfied with the latest Resolution of the CSC and petitioner's purported non-compliance with the CSC Order to reinstate her as City Budget Officer, private respondent went before the OMB-Mindanao to charge petitioner administratively (OMB-M-A-04-128-G) and criminally (OMB-M-C-04-282-G) based on the following allegations:

> Oppression, grave misconduct, conduct prejudicial to the best interests of the government service, and violation of anti-graft and corrupt practices acts, causing undue injury to [herein private respondent], and refusing to act upon lawful order of the Civil Service Commission, to fully implement the Resolution of the Civil Service Commission, and violation of ethical standards required of government officials and employees, under RA6713.

After a preliminary investigation and the submission of petitioner's counter-affidavits and other evidence, the OMB-Mindanao issued a Resolution dated 26 November 2004 in OMB-M-C-04-0282-G, finding as follows -

> WHEREFORE, premises considered, this Office finds probable cause to indict [herein petitioner] CITY MAYOR JOSE M. GALARIO, JR., GUILTY of violation of Section 3(f) of R.A. 3019, as amended.
>
> Accordingly, let the corresponding information be filed in the Sandiganbayan.[12]

Petitioner thereafter filed a Motion for Reconsideration praying for the setting aside of the aforestated OMB-Mindanao Resolution dated 26 November 2004. The OMB-Mindanao thereafter ruled, in its 7 January 2005 Order, that:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.
>
> The Resolution dated 26 November 2004 is hereby AFFIRMED.

Here now comes petitioner before this Court via a Petition for Certiorari under Rule 65 of the revised Rules of Court, raising the following arguments:

> - THE OFFICE OF THE OMBUDSMAN-MINDANAO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RESOLVED THAT PROBABLE CAUSE EXISTS TO HOLD PETITIONER LIABLE FOR VIOLATION OF SECTION 3(F) OF R.A. 3019, WHEN IN TRUTH AND IN FACT, THE ELEMENTS OF THE SUBJECT CRIME DO NOT EXIST IN THIS CASE AND THAT THERE IS NO FACTUAL BASIS TO PROVE THE EXISTENCE OF THE ELEMENT OF "FAVORING HIS OWN INTEREST OR GRANTING UNDUE ADVANTAGE IN FAVOR OF ANOTHER PARTY".
>
> - THAT THE OFFICE OF THE OMBUDSMAN FOR MINDANAO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INSISTED THAT

> PETITIONER FAILED TO HEED THE CSC REINSTATEMENT ORDER OF 17 MARCH 2004[13] WHEN IN TRUTH AND IN FACT, THERE IS BOTH A LEGAL AND A PHYSICAL IMPOSSIBILITY TO COMPLY WITH THE SAME CONSIDERING THAT PRIVATE RESPONDENT WAS ALREADY REINSTATED TO HER POSITION AS EARLY AS 25 JULY 2003.
>
> - THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AND FAILED TO ACCORD DUE PROCESS TO PETITIONER WHEN IT SUBSEQUENTLY FOUND HEREIN PETITIONER LIABLE UNDER SECTION 3(F) OF R.A. 3019 WHEN THERE IS NO FACTUAL ALLEGATION OF ANY OF THE ELEMENTS OF THE SAID OFFENSE IN THE COMPLAINT OF PRIVATE RESPONDENT AND MORE IMPORTANTLY, PETITIONER WAS NOT GIVEN ANY OPPORTUNITY TO RESPOND TO AND REFUTE SUCH CHARGE CONSIDERING THAT ONLY FACTS RELATING TO SECTION 3(E) WERE RAISED IN THE COMPLAINT-AFFIDAVIT.

As petitioner empathically stated in this Petition for Certiorari:

> [P]etitioner comes to the succor of the Honorable Supreme Court in order to restrain the respondents from prosecuting the case against petitioner before the Sandiganbayan and find that the Ombudsman acted without or in excess of its authority amounting to grave abuse of discretion when it ordered the filing of informations [sic] against petitioner for violation of R.A. 3019, despite the palpable absence of probable cause.[14]

Petitioner posits that the OMB-Mindanao committed grave abuse of discretion amounting to lack or excess of jurisdiction when it found probable cause for the filing of an information against him for the violation of Section 3(f) of Republic Act No. 3019[15] since an important element of the offense was not established, particularly, that he was "favoring his own interest or granting undue advantage in favor of another party."

Petitioner further alleges that he was deprived of due process because he was not given the opportunity to respond to and refute the charge against him considering that the offense referred to in the affidavit-complaint was for violation of Section 3(e),[16] and not Section 3(f), of Republic Act No. 3019.

Moreover, petitioner further claims that while private respondent accused him of refusing to act within reasonable time on the Resolutions of the CSC directing private respondent's "full reinstatement" as City Budget Officer, proof to support the allegation remains wanting. Petitioner reiterates that there was reinstatement of private respondent as early as 25 July 2003 and therefore, there already existed a legal and physical impossibility to execute CSC Resolution No. 041003 dated 17 September 2004. Hence, he argues that there is sufficient justification why he no longer ordered the reinstatement of private respondent.

On the other hand, the OMB-Mindanao, as represented by the Office of the Solicitor General (OSG), asserts that the allegations in the complaint-affidavit filed with the OMB-Mindanao make a case for violation of Section 3(f) of Republic Act No. 3019. In its Comment, the OSG reasoned:

> [W]hile it is true that private respondent's complaint-affidavit does not contain any specific allegation to the effect that petitioner refused to implement CSC Resolution No. 030096 dated 21 January 2003 to favor his own interest or give due advantage to Mr. Bartolome Barte, a combined evaluation and analysis of the allegations in the complaint-affidavit would readily reveal otherwise. x x x.[17]

The OSG argues that private respondent's complaint-affidavit narrates the acts of the petitioner of removing private respondent from her position as City Budget Officer in order to have total control of the City's finances. Moreover, it maintains that the complaint-affidavit clearly alleged that petitioner banned private respondent from signing any document involving the City's financial transactions to give undue advantage to Mr. Bartolome Barte who was thereafter authorized by petitioner to perform said tasks.

The OSG states that the allegations in the complaint-affidavit and the evidence on record, including petitioner's

neglect or refusal to fully implement the CSC's order to reinstate private respondent as City Budget Officer, were unjustified and such refusal qualifies as corrupt practice under Section 3(f) of Republic Act No. 3019. The complaint-affidavit filed by private-respondent reveals that petitioner's refusal to heed the CSC's order of reinstatement was clearly intended to discriminate against private respondent based on petitioner's subsequent acts including, but not limited to, the following:

> Petitioner's offer to private respondent to retire from the service with payment of all her retirement benefits knowing fully well that private respondent was not yet available for retirement.
>
> Petitioner's act of declaring the position of City Budget Officer vacant after receiving CSC's Resolution No. 040552 dated 7 May 2004 for the execution of CSC Resolution No. 030096 dated 21 January 2003 which ordered petitioner's reinstatement.

The OSG also avers that the petitioner's purported reinstatement of the private respondent, but still barring her from signing the financial documents of the city without valid reasons, showed a sinister motive on the part of petitioner. The OSG called attention to the fact that private respondent was even ordered by the petitioner to transfer to an office without any support staff, table, secretary, and office facilities. Finally, the OSG contends that the transfer by petitioner of private respondent from City Budget Officer to City Liaison Officer, a non-existent position, was equal to constructive dismissal.

The threshold issue involved, therefore, in the present petition is whether or not the OMB-Mindanao acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing (1) its Resolution dated 26 November 2004 finding probable cause against petitioner for violation of Section 3(f) of Republic Act No. 3019; and (2) an Order dated 7 January 2005 denying petitioner's Motion for Reconsideration of its earlier Resolution.

In the determination of probable cause conducted by the investigating authority, a task which falls herein on the OMB-Mindanao since the criminal complaint was filed against a public official in relation to the performance of his official duties,[18] probable cause does not require certainty of guilt for a crime. It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. It has been clearly explained in several decisions by this Court, as in Raro v. Sandiganbayan,[19] that:

> Probable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.
>
> Probable cause is a reasonable ground for presuming that a matter is or may be well-founded on such state of facts in the prosecutor's mind as would lead a person of ordinary caution and prudence to believe — or entertain an honest or strong suspicion — that it is so. x x x.[20]

In the instant petition, we do not perceive any grave abuse of discretion on the part of the OMB-Mindanao when it issued its Resolution dated 26 November 2004 and Order dated 7 January 2005 finding probable cause for the filing of an information against herein petitioner for violation of Section 3(f) of Republic Act No. 3019.

Firstly, a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

> The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient

> evidence to procure a conviction. (Italics supplied.)[21]

Secondly, the allegations and evidence presented by petitioner failed to prove that the OMB-Mindanao acted in such a capricious and whimsical exercise of judgment in determining the existence of probable cause against him. As defined by this Court —

> By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[22]

The OMB-Mindanao based the finding of probable cause on the various affidavits and memoranda and other evidence submitted to it by the parties during preliminary investigation. Petitioner and private respondent were both accorded the opportunity to present their sides and refute each other's contentions. It bears to emphasize that the Resolution[23] dated 26 November 2004 of the OMB-Mindanao specifically referred to the following evidence which it took into consideration in its investigation:

> Memorandum dated 2 July 2001
> Memorandum dated 2 August 2001
> Complaint for Constructive Dismissal, Reinstatement to Former Position and Payment of Representation and Travel Allowance
> Petitioner's Counter-Affidavit
> Private Respondent's Affidavit-Complaint
> Petitioner's Answer to the Affidavit-Complaint
> Private Respondent's Reply

That the OMB-Mindanao looked into the aforementioned documents submitted by BOTH parties before issuing its assailed Resolution strongly negates against any averments that it issued the same capriciously, whimsically, arbitrarily or in a despotic manner.

And thirdly, a finding of probable cause is a finding of fact which is generally not reviewable by this Court. Only where there is a clear case of grave abuse of this discretion will this Court interfere in the Ombudsman's findings of probable cause. As a general rule, the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause.

> As the Court is not a trier of facts, it reposes immense respect to the factual determination and appreciation made by the Ombudsman. x x x.[24]
>
> Absent any grave abuse of discretion tainting it, the courts will not interfere with the Ombudsman's supervision and control over the preliminary investigation conducted by him. x x x.
>
> x x x. It is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it.[25]

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. If it were otherwise, this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.

> [T]he Court does not interfere with the Ombudsman's discretion in the finding of probable cause resulting in its investigations. The Ombudsman's findings are essentially factual in nature, and the Supreme Court is NOT a trier of facts.[26]

Unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere in the findings of probable cause determined by the Ombudsman. The exercise of the Ombudsman of its constitutionally mandated investigatory and prosecutory powers shall, as a general rule, be left alone by this Court.

Now we move to the legal issue raised by petitioner as to whether he may be charged with violation of Section 3(f) of Republic Act No. 3019 when he was charged in the affidavit-complaint for another offense, Section 3(e) of the same Act.

Petitioner contends that the OMB-Mindanao had no basis whatsoever when it ruled that the herein petitioner may be held liable under Section 3(f) of Republic Act No. 3019 when he refused to reinstate private respondent to favor his own interest or to give undue advantage in favor of Bartolome Barte. Petitioner alleges that the OMB-Mindanao arrived at such a sweeping conclusion when not even the private respondent had made the said allegations in her affidavit-complaint or any pleading. Petitioner argues that "absent such allegations in the affidavit-complaint, there is simply no basis for the public respondent to declare that the herein petitioner may be held liable for violation of Section 3(f) of Republic Act No. 3019, as these allegations are essential to have a finding of probable cause of violation of Section 3(f)."[27]

Pertinent provisions of Republic Act No. 3019, namely, Sections 3(e) and 3(f), are reproduced below:

> SEC. 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
>
> (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 licences or permits or other concessions.
>
> (f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party. (Italics ours.)

Private respondent's affidavit-complaint alleged the violation by petitioner of Section 3(e) of Republic Act No. 3019, but the Ombudsman, after preliminary investigation, ordered the filing of an information against petitioner for violation of Section 3(f) of Republic Act No. 3019 instead.

This Court spelled out in Sistoza v. Desierto[28] the following elements of the offense falling under Section 3(e) of Republic Act No. 3019:

> (a) The accused is a public officer or a private person charged in conspiracy with the former;
>
> (b) The public officer commits the prohibited acts during the performance of his or her official duties or in

relation to his or her public functions;

(c) That he or she causes undue injury to any party, whether the government or a private party;

(d) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

(e) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect. Evidently, mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.

The OMB-Mindanao determined the absence of one element, thus, barring it from indicting petitioner for violation of Section 3(e) of Republic Act No. 3019. In its Resolution dated 26 November 2004, the OMB-Mindanao found:

The complainant alleged that her representation and transportation allowance (RATA) was cut-off effective 01 August 2001, in favor of Bartolome C. Barte, acting as Officer-in-Charge and functioning as Budget Officer. However, the explanation of the respondent that complainant had been receiving the benefits corresponding to her position per Memorandum Order No. 0755 dated 25 July 2003 was not denied by the latter.

As a result, one of the elements constituting the offense under Section 3(e) of R.A. 3019, that the public officer caused any undue injury to any party, including the government, is missing. Accordingly, proof of the extent or quantum of damage is not essential, it being sufficient that the injury suffered or benefit received can be perceived to be substantial enough and not merely negligible. It is recognized that there was no proof of damage caused to the complainant since in fact she is now receiving her RATA.[29]

Notably, private respondent and petitioner agree that petitioner was already receiving her RATA as private respondent did not controvert the fact of payment of her RATA.

While the OMB-Mindanao did not find probable cause to indict petitioner for violation of Section 3(e) of Republic Act No. 3019, it did find that there was probable cause to file an information against petitioner for violation of Section 3(f) of the same statute.

A violation of Section 3(f) of Republic Act No. 3019 is committed when the following elements[30] exist:

a) The offender is a public officer;

b) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;

c) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and

d) Such failure to so act is "for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.

The OMB-Mindanao, in its Resolution dated 26 November 2004, justified its finding of probable cause to file an information against petitioner before the Sandiganbayan for violation of Section 3(f) of Republic Act No. 3019, as follows:

The real issue before us is one in which [herein private respondent] accuses [herein petitioner] Mayor Galario, Jr. of refusing to act within a reasonable time on the Order/Resolution of the Civil Service Commission directing the latter to fully reinstate the former to her position as Budget Officer.

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> Records would show that on 7 January 2002, the Civil Service Commission [Regional Office] issued an order directing [petitioner] to reinstate [private respondent] Piano to her previous position as Budget Officer and to cause the payment of her RATA. The Motion for Reconsideration filed by respondent Mayor was denied by the CSC, Region X, Cagayan de Oro City, on 18 February 2002. In a Resolution No. 030096 dated 21 January 2003, of the Civil Service Commission, Quezon City, the Appeal filed by [petitioner] was dismissed.
>
> Despite the Resolution of the Civil Service Commission, [petitioner] did not implement the same. Dilly-dallying its implementation, [petitioner] filed a Motion for Reconsideration questioning CSC Resolution No. 030096 dated 21 January 2003. Then, [petitioner] resorted to intimidating [private respondent] by threatening to file a case against the [private respondent], and in the alternative, offered and lured her to resign, with payment of all retirement benefits.
>
> Consequently, the Civil Service Commission, on 5 May 2003, denied [petitioner's] Motion for Reconsideration. Accordingly, Resolution No. 03-0096 dated 21 January 2003, of the Civil Service Commission, Quezon City thereby stands.
>
> While [petitioner] reinstated [private respondent] as City Budget Officer on 21 May 2003, nevertheless, on 26 May 2003, [petitioner] relieved herein [private respondent] as City Budget Officer and instead designated the latter as City Cooperative Officer. Now, by virtue of the Motion for Execution filed by herein [private respondent] before the CSC, Region X, Cagayan de Oro City on 7 July 2003, the CSC issued again another Order directing [petitioner] to reinstate herein [private respondent]. On 25 July 2003, [petitioner] pretentiously reinstated [private respondent] as City Budget Officer but on 28 July 2003, he banned the [private respondent] from signing financial transactions of the local government unit. Instead, [petitioner] designated Bartolome Barte to sign all documents pertaining to the financial transactions of Valencia City while [private respondent] to act as Liaison Officer.
>
> Consequently, [private respondent] filed a Motion to Implement CSC Resolution No. 030096 dated 21 January 2003, of the Civil Service Commission, Quezon City.
>
> x x x x
>
> Accordingly, it is apparent that CSC Resolution No. 040552, dated 17 May 2004, directed [petitioner] to immediately implement the said Resolution. But [petitioner] arbitrarily, arrogantly, and illegally defied the said Resolution to fully reinstate herein [private respondent] as Budget Officer of Valencia City, until now. [Petitioner] even recommended [private respondent] to the position of City Cooperative Officer just only to oust the latter in the City Hall. But [private respondent] did not accept. Not only that, by issuing letters dated June 29, 2004 and July 2, 2004, [petitioner] made it appear that the position of Budget Officer is vacant, thus, [private respondent] must apply thereto. Patently, [petitioner] has no intention of complying the said aforesaid Resolution. Undoubtedly, [petitioner] is making it hard for herein [private respondent] to reassume her position as Budget Officer.
>
> By the foregoing acts, it is apparent that [petitioner's] Manifestation of Compliance with the Order/Resolution of the Civil Service Commission is tantamount to non-compliance.
>
> Accordingly, [petitioner] may be held liable under Section (f), R.A. 3019, by x x x refusing, after due demand or request, without sufficient justification, to act within a reasonable time on reinstating herein [private respondent] as Budget Officer, for the purpose of favoring his own interest or giving undue advantage in favor of Bartolome Barte.
>
> Wherefore, premises considered, this Office finds probable cause to indict [petitioner] guilty of violation of Section 3(f) of R.A. 3019, as amended.[31]

There is no reason for us to disturb the findings of the OMB-Mindanao as aforequoted. We reiterate that this Court has adopted a policy of non-interference in the conduct of preliminary investigations, and leaves to the

investigating prosecutor (the Ombudsman, in this case) sufficient latitude of discretion, not only in determining what will constitute sufficient evidence that will establish "probable cause" for the filing of information against a supposed offender, but as well as the proper offense to be charged against said offender depending again on the evidence submitted by the parties during the preliminary investigation.

Squarely in point is Avila v. Sandiganbayan and Ombudsman which stated thus:

> We find no merit in petitioner's contention that he was deprived of due process because the accusation in the information was for violation of Section 3(e), R. A. 3019, but the crime charged in the letter complaint subject of the preliminary investigation was for direct assault.
>
> In Enrile vs. Salazar, we ruled that there is "nothing inherently irregular or contrary to law in filing against a respondent an indictment for an offense different from what was charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation."[32]

However, this power of the Ombudsman to determine probable cause and thus charge the proper information is subject to the requirements of due process, as embodied in the Constitution.

> While the Ombudsman has the full discretion to determine whether or not a criminal case should be filed, this Court is not precluded from reviewing the Ombudsman's action when there is an abuse of discretion, in which case Rule 65 of the Rules of Court may exceptionally be invoked pursuant to Section I, Article VIII of the 1987 Constitution.[33]

Finally, it bears emphasizing once again the extent of the powers of the Ombudsman in the fulfillment of its constitutional mandate as protector of the people. Article XI, Section 13 of the 1987 Philippine Constitution, enumerates the powers, functions, and duties of the Office of the Ombudsman, among which is to:

> (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.

The Ombudsman Act of 1989 (Republic Act No. 6770) likewise provides:

> Sec 15. Powers, Functions and Duties. The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases. (Emphases supplied.)

It is clear from the foregoing constitutional and statutory provisions that the Ombudsman is given a plenary and unqualified authority with respect to its investigatory and prosecutory[34] power, subject only to the constitutional limitations, and its coverage cannot be limited to the allegations in any complaint-affidavit that may have been filed against a public officer. In fact, the Ombudsman may investigate and prosecute on its own, without need for a complaint-affidavit, for as long as the case falls within its jurisdiction. Hence, regardless of the allegations and accusations against the public officer in the affidavit-complaint, it still rests upon the Ombudsman to determine the proper crime or offense which can be charged against the public officer depending on the findings of the Ombudsman in the preliminary investigation.

WHEREFORE, premises considered, the instant Petition for Certiorari under Rule 65 of the Revised Rules of Court is hereby DISMISSED for lack of merit. The Resolution of the Office of the Ombudsman-Mindanao dated 26 November 2004 in OMB-M-C-04-0282-G finding probable cause against petitioner Jose M. Galario, Jr. for

violation of Section 3(f) of Republic Act No. 3019 and the Order of the same Office dated 7 January 2005 denying petitioner's Motion for Reconsideration are hereby AFFIRMED. Let the appropriate information be filed against the petitioner before the Sandiganbayan. Costs against petitioner.

SO ORDERED.
Ynares-Santiago, (Chairperson), and Austria-Martinez, JJ., concur.
Nachura, J., no part. Filed pleadings as Sol Gen.

[1] Rollo, pp. 39-48.

[2] Id. at 70-73.

[3] Id. at 84.

[4] Id. at 98.

[5] The Motion for Reconsideration filed by petitioner with the CSC was supported by a Manifesto of Support for his decision in transferring private respondent to another position, signed by some 211 alleged employees of the City Government of Valencia; as well as several affidavits signed by people who had negative experiences with private respondent as Budget Officer.

[6] Rollo, p. 118.

[7] This includes the payment of the RATA of private respondent. The parties agree that the RATA due private respondent has been given.

[8] Rollo, p. 128.

[9] Petitioner filed an administrative case against private respondent with the Ombudsman under Case No. OMB-M-A-03-12-C for Dishonesty, Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Violation of Section 4 (C) of R.A. 6713; and a criminal case under Case No. 9098-98 (OMB-MIN-98-0104). The two cases were based on allegations that private respondent was found to have falsified her income tax return for 1996 to include a dead daughter as one of her qualified dependents to avail herself of exemptions under the law. Both were dismissed.

[10] Id. at 159.

[11] Rollo, p. 144.

[12] Id. at 48.

[13] The issues enumerated are as stated in petitioner's Petition for Certiorari. Petitioner must be referring to CSC Resolution No. 04-0552 dated 17 May 2004 which was cited in the Resolution of the OMB-Mindanao dated 26 November 2004. There exists no Order dated 17 March 2004.

[14] Rollo, p. 4.

[15] SEC. 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

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person

interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party. (Italics ours.)

[16] 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:

(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 licences or permits or other concessions.

[17] Rollo, p. 175.

[18]Article XI, Section 13 of the 1987 Constitution:

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.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

[19] 390 Phil. 912 (2000).

[20] Fuentes, Jr. v. Office of the Ombudsman, G.R. No. 164865, 11 November 2005, 474 SCRA 779, 792.

[21]Pilapil v. Sandiganbayan, G.R. No. 101978, 7 April 1993, 221 SCRA 349.

[22] Cabrera v. Lapid, G.R. No. 129098, 6 December 2006.

[23]Rollo, pp. 39-48.

[24] Reyes v. Atienza, G.R. No. 152243, 23 September 2005, 470 SCRA 670, 678.

[25]Mamburao, Inc. v. Office of the Ombudsman, 398 Phil. 762, 817-819.

[26] Atty. Serapio v. Sandiganbayan (Third Division), 444 Phil. 499, 528-529 (2003).

[27] Rollo, p. 19.

[28] Sistoza v. Desierto, 437 Phil. 117, 130 (2002); Venus v. Desierto, 358 Phil. 675, 694 (1998).

[29]Rollo, pp. 44-45.

[30] Coronado v. Sandiganbayan, G.R. No. 94955, 18 August 1993, 225 SCRA 406, 410.

[31]Rollo, pp. 45-48.

[32] Avila, Sr. v. Sandiganbayan, 366 Phil. 698, 702-703 (1999), citing Enrile v. Salazar, G.R. Nos. 92163-64, 5 June 1990, 186 SCRA 217, 230.

[33] Garcia-Rueda v. Pascasio, 344 Phil. 323, 329 (1997).

[34] Office of the Ombudsman v. Valera, G.R. No. 164250, 30 September 2005, 471 SCRA 715, 743.

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