

LADISLAO SALMA AND MARILOU SALMA, PETITIONERS, VS. THE HON. PRIMO C. MIRO, DEPUTY OMBUDSMAN (VISAYAS), BRGY. CAPT. ROLANDO MARTINEZ, AND BARANGAY TANODS NAMELY; CRISENTE ZERNA, ...

G.R. NO. 168362. January 25, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court seeking to reverse and set aside, for having been rendered with grave abuse of discretion, the Review on Joint Resolution[1] dated 15 October 2004 and the Order[2] dated 29 March 2005, issued by Graft Investigation and Prosecution Officer II, Allan Francisco S. Garciano, and approved by Deputy Ombudsman Primo C. Miro, dismissing the cases against Brgy. Capt. Rolando Martinez (Martinez), et al.

The factual and procedural antecedents of this instant petition are as follows:

On 15 July 2003, Gina Salma (Gina) went to the residence of Martinez to report the harassment committed by her brother-in-law Ladislao Salma (Ladislao). Ladislao, the brother of Gina's late husband, was claiming an exclusive right over a property located at Brgy. 3, Tanjay, Negros Occidental, wherein the house and the hollow blocks making business of Gina were situated.[3]

The aforesaid property was commonly owned by the Salmas although in the possession of Gina and her late husband. After her husband's demise, Ladislao was very adamant in regaining the possession of the entire property insisting that Gina had no more right to remain therein.

At the time Gina brought to the attention of Martinez the alleged harassment, Ladislao was fencing the perimeter of the subject property thereby blocking access to the river, which was indispensable in hollow blocks making, thereby causing tremendous loss to Gina's business. Aside from physically blocking the vital thoroughfare, Ladislao, in one instance, allegedly threatened the laborers and prevented them from entering the premises to perform their duties, thus, completely paralyzing Gina's business.

Upon hearing the complaint, Martinez advised Gina to go home and wait for the summons for he intended to call Ladislao to a conference in order to settle the brewing dispute amicably, if possible.[4]

In the early morning of the following day, Martinez was awakened by Gina's report that she was once again harassed by Ladislao that same morning by shouting at the gate of her house and demanding her to vacate the disputed property.

Gina related that at around 6 a.m. of that day, Ladislao went back in the same violent mood and in fierce and aggressive manner demanded her to leave her house. At that moment, Ladislao, who was in the fit of anger, was determined to use any means possible just to drive Gina off from the disputed property. At the outset, Ladislao

allegedly used verbal threats against Gina by yelling and intimidating her to leave. Not contented, Ladislao even employed effective material control over the subject property by tying with a wire the gate adjoining the fence he himself built a few days ago around the lot, forcing Gina to take another route just to get out from the premises.

While Ladislao was absorbed by his temper at the front of her house, Gina lost no time in reporting to Martinez what was happening. Accompanied by her sister, Josephine Cornelio, Gina went back to the Martinez's residence and narrated to him the entire incident.[5]

Sensing the urgency of the situation, Martinez agreed to go with Gina to her house, and so he convened his Barangay Tanods, namely: Crisente Zerna, Baltazar Concom, Montaña Torres, Eldin Miraflor, Noel Torres, Francisco Castro, Benito Barot, and Rafael Rodriguez, then proceeded to the location where the alleged harassment took place to verify the report and mediate between the disputing parties.[6]

Upon their arrival at the vicinity, the gate adjoining the fence surrounding the entire lot was already tied with a wire but Ladislao was nowhere to be found. Wanting to promptly settle the matter, Martinez requested Alejandro Salma, another brother of Ladislao, who was then present, to summon and inform Ladislao of their presence in the area. Shortly, Ladislao, who was still in an infuriated mood, appeared.

To ease the growing tension, Martinez politely greeted Ladislao, "mayong buntag Lad" (good morning Lad), and in a diplomatic manner asked, "di-a mi arong pag klaro aning report sa imong bayaw nga si Gina nga imo kunong gi-alaran ang alagi-an nila ug sa iyang mga kustomer diin naapektuhan iyang negosyo, ug imo pa kuno gihulga ang iyang trabahante, ug unya imo gyud syang gisulong karon lang, unsa man ni katinu-od?" (we are here to verify the truth on Gina's complaint that you allegedly fenced her house which blocked her and her customer's passage and, on one instance, mauled her laborer which affected her business, and then again harassed her at her residence this morning). Instead of justifying his actions, Ladislao explicitly admitted the allegations and even retorted, "ngano man diay sulongon nako si Gina? Wala moy labot kay walay makabo-ot sa akong gustong buhaton! Wala moy labot Noy, kay ako ning property," (What if I will harass Gina? What if I will fence my property? This is mine and I will certainly do whatever pleases me and its none of your business anymore). These arrogant utterances were allegedly made by Ladislao while pointing his finger at the the Barangay Captain and pushing him away.[7]

The contemptuous behavior displayed by Ladislao prompted Martinez to arrest him for direct assault committed against his authority as a Barangay Captain who was on the occasion of performing his official duties. He then requested Ladislao to go with them at the police station but the latter swiftly moved to elude arrest and quickly ran away from Martinez and the tanods. Overpowered by the strength and number of the tanods, Ladislao was finally cornered, after which, he was handcuffed and brought to the police station to answer the charges against him.[8]

In the process of effecting his arrest, Ladislao and his wife Marilou Salma, who tried to help him evade the barangay authorities, suffered slight physical injuries as evidenced by medical reports.[9] Spouses Ladislao and Marilou Salma later cried they were victims of "manhandling" and "police brutality" alleging that the force employed by Martinez and the Barangay Tanods was considerably excessive and uncalled for by the circumstances.[10]

Consequently, Ladislao was charged with the crimes of Direct Assault, Resistance to a Person in Authority or his Agents, and Coercion docketed as I.S. No. 03-152 entitled, "Chief of Police v. Ladislao Salma." [11]

On the other hand, spouses Ladislao and Marilou Salma filed six counter charges against Martinez and the Barangay Tanods namely Crisente Zerna, Baltazar Concom, Montaña Torres, Eldin Miraflor, Noel Torres, Francisco Castro, Benito Barot, and Rafael Rodriguez, before the City Prosecution Office of Tanjay City and

docketed as follows: I.S. No. 03-156, For: Slight Physical Injuries, “Marilou Salma v. Crisente Zerna,” I.S. No. 03-157, For: Grave Threats, “Ladislao Salma v. Crisente Zerna and Baltazar Concom,” I.S. No. 03-158, For: Slander by Deed, “Ladislao Salma v. Brgy. Capt. Rolando Martinez and Crisente Zerna et al.,” I.S. No. 03-159, For: Grave Coercion, “Ladislao Salma v. Brgy. Capt. Rolando Martinez and Crisente Zerna et al.,” I.S. No. 03-160, For: Arbitrary Detention, “Ladislao Salma v. Brgy. Capt. Rolando Martinez and Crisente Zerna et al.,” and I.S. No. 03-161, For: Unlawful Arrest, “Ladislao Salma v. Brgy. Capt. Rolando Martinez and Crisente Zerna, et al.”[12]

On 12 July 2004, the City Prosecutor of Tanjay City issued a Joint Resolution[13] dismissing the charges filed by the spouses Salma against the barangay officials, for want of sufficient evidence to establish a probable cause that the offenses charged were indeed committed. The dispositive portion of the Resolution reads:

“ACCORDINGLY, and for reasons already cited, I.S. Nos. 03-156, 03-157, 03-158, 03-159, 03-160, 03-161 and 03-162 are hereby ordered dismiss (sic).”[14]

However, the criminal complaint against Ladislao was ordered filed, it having been established that respondent Ladislao committed the acts as charged and is probably guilty thereof.[15] The dispositive portion of the Joint Resolution reads:

“ACCORDINGLY, let two separate informations for the offense defined in Article 148 and Article 286 of the Revised Penal Code against Ladislao Maglucot Salma be filed before the proper court.”[16]

Aggrieved, the spouses Salma elevated the matter to the Office of the Regional State Prosecutor of the Department of Justice, through an Appeal and/or Petition for Review[17] they filed on 5 August 2004, seeking the reversal of the Resolution dated 12 July 2004 issued by the City Prosecutor on the ground of grave abuse of discretion.

Since the respondents in the criminal complaints instituted by the spouses Salma are public officials, who allegedly committed the offenses charged while in performance of their official duties, the Regional State Prosecutor indorsed the resolution of I.S. Case Nos. 03-156, 03-157, 03-158, 03-159, 03-160, and 03-161 for the proper cognizance by the Office of the Ombudsman (Visayas).

On the other hand, since Ladislao was a private individual, the jurisdiction for the review of the Resolution approving the filing of Criminal Informations against him for the crimes of Direct Assault, Resistance to a Person in Authority or his Agents and Coercion was retained by the Regional State Prosecutor.

In a Resolution[18] dated 28 September 2004, the Regional State Prosecutor ordered the City Prosecutor of Tanjay to move for the withdrawal of the Criminal Informations filed against Ladislao on the ground that there is no probable cause to believe that respondent committed or is guilty of the offenses charged. The dispositive portion of the Resolution reads:

Wherefore, the City Prosecutor of Tanjay is directed to move for the withdrawal of the informations filed in court and to inform this Office of the action taken hereon within ten (10) days from receipt hereof.[19]

For its part, the Office of the Ombudsman (Visayas) resolved the appeal brought before its jurisdiction by approving the dismissal of the complaints filed by the spouses Salma against respondent barangay officials.[20] The decretal portion of the Resolution reads:

WHEREFORE, foregoing premises considered, the Joint Resolution dated July 12, 2004 issued by the City Prosecutor Elson P. Bustamante of the Tanjay City Prosecution Office, ordering the dismissal of criminal cases filed against herein respondents docketed as I.S. Case Nos. 03-156, 03-157, 03-158, 03-159, 03-160, and 03-161,

respectively, is hereby APPROVED.[21]

Similarly ill-fated was the spouses Salma's Motion for Reconsideration of the foregoing resolution which was denied by the Ombudsman in an Order dated 29 March 2005 for lack of merit.[22]

Unyielding, the spouses Salma filed this instant Petition for Certiorari[23] advancing the argument that Deputy Ombudsman for the Visayas, Primo C. Miro, committed a grave abuse of discretion amounting to lack or excess of jurisdiction in approving the dismissal of cases filed against respondent barangay officials.

For our resolution then is the following issue:

WHETHER OR NOT DEPUTY OMBUDSMAN FOR THE VISAYAS, PRIMO C. MIRO COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN APPROVING THE DISMISSAL OF CASES FILED AGAINST MARTINEZ AND THE BRGY. TANODS.

We rule in the negative.

In the eight-paged Petition[24] filed by petitioner spouses, which was reproduced in toto in their Memorandum,[25] they generally averred that grave abuse of discretion attended the approval of the dismissal of their complaints against the barangay officials, but miserably failed to substantiate the allegation. Petitioner spouses availed themselves of an extraordinary remedy allowed under the Rules by filing this Special Civil Action for Certiorari, under Rule 65 of the Revised Rules of Court but the allegations advanced by the petitioner spouses were empty of any material argument to prove their recantation that the Deputy Ombudsman gravely abused his discretion.

Even if the instant petition is essentially bare in substance, this Court will nonetheless comb the records and address the issue scantily laid by the spouses Salma and apply the pertinent legal and jurisprudential principles to resolve this case.

In order to avail of the Special Civil Action for Certiorari under Rule 65 of the Revised Rules of Court, petitioner in such cases must clearly show that public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess in jurisdiction.[26]

By grave abuse of discretion is meant such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[27]

In sum, for the extraordinary writ of certiorari to lie, there must be capricious, arbitrary or whimsical exercise of power.

Applying the above-laid parameters in the case at bar, we must look into the Resolution dated 15 October 2004 and the Order dated 29 March 2005 issued by the Ombudsman and determine whether there is a substantial evidence to support its conclusions in order to take it out from the ambit of grave abuse of discretion as defined above.

In the disputed Resolution, the Ombudsman found that there is no probable cause to engender a well-founded belief that the crimes charged against the barangay officials were indeed committed and that they were probably guilty thereof.

It particularly cited that the acts of Ladislao in pointing his finger at Martinez and pushing him away, thus, causing him to step backwards, could be taken as an assault against a person in authority. Accordingly, the arrest

without warrant of Ladislao by the barangay officials was proper.

Significantly, the rule on presumption of regularity in the performance of official function aptly applies in this case. Under the Rules of Evidence, it is presumed that official duty has been regularly performed, unless contradicted.[28] Consequently, if in the act of effecting lawful arrest upon Ladislao, the latter was ridiculed or even injured, the same was not intentional but merely an incidental consequence considering that he offered initial resistance against the arresting barangay compelling the latter to use reasonable force. The same is true with the other acts committed by the barangay officials by reason or on the occasion of effecting the lawful arrest. The said acts were but the necessary and incidental repercussions of the performance of the official duties by the respondents.

Finally, in the exercise of its discretion, the Ombudsman affirmed the findings of the Graft and Investigation Officer that, as correctly ruled by the City Prosecutor, there is no probable cause in filing the criminal charges against the barangay officials, and made a pronouncement that, while probable cause need not be an actual certainty, it is regretted that, based on reasonable belief, the same does not exist in the present cases.

Upon close scrutiny of the foregoing Resolution, we find nothing whimsical, arbitrary, or capricious in the above findings. The determination of the Deputy Ombudsman of the non-existence of a reasonable ground to believe that the crime has been committed, is supported by substantial evidence and therefore it cannot be gainsaid that the same is tantamount to grave abuse of discretion.

The Ombudsman is empowered to determine whether there exists a reasonable ground to believe that the crime has been committed and that the accused is probably guilty thereof and thereafter file the corresponding informations before the appropriate courts.[29] The authority granted to government prosecutors, like the Ombudsman or the Deputy Ombudsman in the instant case, to file criminal charges does not preclude them from refusing to file the information when they believe that there is no *prima facie* evidence to do so.

In *Salvador v. Desierto*,[30] we ruled:

On the issue of whether respondent Ombudsman committed grave abuse of discretion in dismissing the complaint against respondents, let it be stressed that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form [and] substance or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.

Thus, saved on well-recognized exceptions,[31] this Court has almost adopted quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers.[32]

In *Espinosa v. Office of the Ombudsman*,[33] we held:

The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as R.A. 6770 has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judiciary intervention. This Court consistently refrains from interfering with the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who, "beholden to no one, acts as the champion of the people and the preserver of the integrity of public service."

The non-interference rule that we rigorously observed 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. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed

before it, in much the same way that the courts will be extremely swamped if they were compelled to review the exercise of discretion on the part of fiscals and prosecuting attorneys, each time they decide to file an information in court or dismiss a complaint by a private complainant.[34]

We have carefully examined the records, and we find no compelling reason to deviate from the time-honored policy of non-interference. The Resolution of the Ombudsman was supported by substantial evidence giving us no cogent reason to depart from his findings. As significantly observed by the Ombudsman:

The acts of complainant Ladislao Salma in laying a hand on the respondent Barangay Captain could be taken as an assault against a person in authority. The apprehension of complainant Ladislao Salma was but the natural reaction of the respondent Barangay Tanods who personally witnessed the pushing incident, especially that the complainant fled when asked to go with them to the Tanjay Police Station for proper booking and disposition.[35]

On the other hand, the spouses Salma utterly failed to single out a particular act indicating abuse of discretion other than the fleeting allegation that respondent Ombudsman has committed such.

In sum, this Court has maintained a stature of non-interference from the discretion of the Ombudsman provided there is no grave abuse of discretion. Absent a clear showing of grave abuse of discretion as in the case at bar, we are constrained to uphold the findings of the Ombudsman.

WHEREFORE, premises considered, the instant Petition is DISMISSED. Costs against the petitioners.
SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Issued by Graft Investigation and Prosecution Officer II, Allan Francisco S. Garciano, with the “recommending approval” of the Director of the Evaluation and Investigation Office of the Office of the Ombudsman (Visayas) Edgardo G. Canton and the approval of Deputy Ombudsman for the Visayas, Primo C. Miro. Rollo, pp. 10-22.

[2] Id. at 27-32.

[3] Records, pp. 22-23.

[4] Id.

[5] Id.

[6] Id. at 20-21.

[7] Id.

[8] Id.

[9] Id. at 30-31.

[10] Id. at 24-25.

[11] Id.

[12] Id. at 13-19.

[13] Id. at 8-12.

[14] Id.

[15] Id.

[16] Id.

[17] Id. at 2-7.

[18] Id. at 68-70.

[19] Id.; The records do not indicate the action taken by the City Prosecutor of Tanjay after the Resolution dated 24 September 2004 was issued.

[20] Rollo, pp. 10-22.

[21] Id.

[22] Id. at 29-34.

[23] Id. at 4-9.

[24] Id.

[25] Id. at 128-134.

[26] *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

[27] Id.

[28] RULES OF COURT, Rule 131, Sec. 3. Disputable Presumptions. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(m) That official duty has been regularly performed.

[29] *Esquivel v. Ombudsman*, 437 Phil. 702, 711 (2002).

[30] *Salvador v. Desierto*, G.R. No. 135249, 16 January 2004, 420 SCRA 76, 82.

[31] (a) To afford protection to the constitutional rights of the accused; (b) When necessary for the orderly administration of justice; (c) When there is a prejudicial question that is sub judice; (d) When the acts of the officer is without or in excess of authority; (e) When the prosecution is under an invalid law; (f) When double jeopardy is clearly apparent; (g) Where the court has no jurisdiction over the offense; (h) Where it is a case of persecution rather than prosecution; (i) Where the charges are manifestly false and motivated by the lust for vengeance; (j) Where there is no prima facie case against the accused and the motion to quash on that ground has been denied; and (k) Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners, *Brocka v. Enrile*, G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183, 188-189.

[32] *Nava v. Commission on Audit*, 419 Phil. 544, 553 (2001).

[33] 397 Phil. 829, 831(2000).

[34] *Supra* note 32 at 271.

[35] Rollo, p. 19.

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