

PEDRO E. BUDIONGAN, JR., MUNICIPAL MAYOR; JOSIL E. TRABAJO, MUNICIPAL VICE MAYOR AND PRESIDING OFFICER OF THE SANGGUNIAN BAYAN; FULGENCIO V. PAÑA, MUNICIPAL TREASURER; TACIANA ...

G.R. NO. 170288. September 22, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This Petition for Certiorari under Rule 65 of the Rules of Court assails the Memorandum[1] dated April 28, 2004 of the Office of the Special Prosecutor, Office of the Ombudsman, recommending that petitioners be charged with violation of Section 3(e) of Republic Act (R.A.) No. 3019 and petitioner Pedro E. Budiongan with violation of Section 3(h) of R.A. No. 3019. Also assailed is the Resolution[2] dated October 19, 2005 denying petitioners' motion for reconsideration.

The antecedent facts are as follows:

By virtue of Municipal Ordinance No. 2, series of 2001, the Municipality of Carmen, Bohol appropriated the amount of P450,000.00 for the purchase of a road roller for the municipality. However, on November 16, 2001, the Municipal Development Council through Resolution No. 3 recommended that the amount of P450,000.00 be realigned and used for the asphalt laying of a portion of the Tan Modesto Bernaldez Street.[3] The proposed realignment was included in the December 21, 2001 agenda of the Sangguniang Bayan of Carmen but discussion thereon was deferred.

On February 6, 2002, petitioner Municipal Treasurer, Fulgencio V. Paña, issued a Certificate of Availability of Funds for the project. Thereafter, the Office of the Municipal Engineer prepared a Program of Works and Cost Estimates duly noted/approved by Municipal Budget Officer Taciana B. Espejo and Mayor Budiongan.

Bidding was conducted on March 5, 2002. The next day, March 6, 2002, Mayor Budiongan issued the Notice of Award and Notice to Commence Work in favor of Herbert Malmis General Merchandise and Contractor, Inc. who emerged as the lowest complying bidder. On March 22, 2002, the Sangguniang Bayan passed Resolution No. 60,[4] series of 2002, authorizing Mayor Budiongan to sign and enter into contract with Malmis relative to the above project in the amount of P339,808.00. With such authority, Malmis commenced with the project.

Thereafter, it was discovered that there was yet no ordinance approving the realignment of the funds. Thus, on May 17, 2002, the Sangguniang Bayan passed Ordinance No. 8,[5] series of 2002, approving the realignment of the fund. On June 14, 2002, Malmis was paid the contract price.

On July 3, 2002, private respondents Arlene P. Palgan and Valeriano U. Nadala filed a complaint[6] against the petitioners before the Office of the Deputy Ombudsman for Visayas alleging illegality in the conduct of the bidding, award and notice to commence work since there was no fund appropriated for the purpose.

On July 31, 2003, the Office of the Deputy Ombudsman for Visayas found probable cause and recommended the filing of an information for violation of Article 220[7] of the Revised Penal Code against the petitioners. However, the complaint against Hermosila Logrono, Desiderio Gudia, Jr. and Herbert Malmis was dismissed for lack of merit.[8]

Upon review, the Case Assessment, Review and Reinvestigation Bureau of the Office of the Special Prosecutor, issued the assailed Memorandum dated April 28, 2004, modifying the charge from violation of Article 220 of the Revised Penal Code to (1) violation of Section 3(e) of R.A. No. 3019 against petitioners for allegedly giving unwarranted benefit to Malmis and (2) violation of Section 3(h) of R.A. No. 3019 against petitioner Budiongan for allegedly "directly or indirectly having financial or pecuniary interest in a contract or transaction in connection with which he intervenes or takes part in his official capacity."

Thus, two separate Informations were filed before the Sandiganbayan (1) for violation of Section 3(e) of R.A. No. 3019 against the petitioners docketed as Criminal Case No. 28075 and (2) for violation of Section 3(h) of R.A. No. 3019 against petitioner Budiongan docketed as Criminal Case No. 28076.

Thereafter, petitioners filed a Motion to Quash[9] the information charging them with violation of Sec. 3(e) of R.A. No. 3019. In a Resolution[10] dated June 10, 2005, the Sandiganbayan granted the motion to quash and remanded Criminal Case No. 28075 to the Office of the Ombudsman for amendment of the Information. It held that although Malmis benefited from the contract, the same is not unwarranted considering that the project was implemented, executed and completed.

On June 27, 2005, an Amended Information[11] was filed charging petitioners with violation of Sec. 3(e) of R.A. No. 3019, alleging that petitioners, by prematurely awarding to Malmis the project despite the absence of funds specifically appropriated for such purpose, and thereafter paying the contract price from the Municipal Treasury which was originally appropriated for the purchase of a road roller, caused damage and undue injury to the government.

Finding that the Amended Information contains all the material averments necessary to make out a case for the first mode of violating Section 3(e) of R.A. No. 3019, i.e., causing any undue injury to any party, including the government, the Sandiganbayan admitted the Amended Information in its Resolution dated August 18, 2005.[12]

On even date, petitioners filed with the Sandiganbayan a Motion for Leave of Court to File Motion for Reinvestigation[13] arguing that the above Informations were filed without affording them the opportunity to file counter-affidavits to answer/rebut the modified charges. On September 20, 2005, the Sandiganbayan issued a Resolution[14] denying the motion insofar as Criminal Case No. 28076 is concerned. It held that it is too late in the day to remand the case for reinvestigation considering that Budiongan had already been arraigned and the case had long been set for pre-trial proceedings, with both parties having filed their respective briefs. As regards Criminal Case No. 28075, the Sandiganbayan noted that although the conduct of the preliminary investigation was regular, petitioners however were not given the opportunity to seek reconsideration of the modified charges. Thus, it granted leave to the petitioners to file with the Office of the Special Prosecutor a motion for reconsideration (not a motion for reinvestigation) of the said office's Memorandum dated April 28, 2004.

Petitioners filed a Motion for Reconsideration with the Office of the Special Prosecutor which was denied for lack of merit in the Resolution dated October 19, 2005.

Hence, this petition raising the following issues:

- WHETHER PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN REJECTING THE FINDINGS AND

AMENDING/MODIFYING THE RESOLUTION OF THE GRAFT INVESTIGATING OFFICER, OMBUDSMAN VISAYAS, AND IN FILING THE INFORMATION FOR VIOLATION OF SEC. 3(e) OF RA 3019 WITHOUT AFFORDING PETITIONERS THE OPPORTUNITY TO PRESENT THEIR COUNTER EVIDENCE IN A RE- INVESTIGATION;

- WHETHER THE REFUSAL OR FAILURE TO CONDUCT A RE-INVESTIGATION HAS VIOLATED PETITIONERS' RIGHT TO DUE PROCESS;

- WHETHER PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING RESOLUTIONS DATED APRIL 28, 2004 AND OCTOBER 19, 2005 FINDING PROBABLE CAUSE FOR VIOLATION OF SEC. 3(e) OF RA 3019 AGAINST HEREIN PETITIONERS; and

- WHETHER PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN FILING THE INFORMATION FOR VIOLATION OF SEC.3(e) OF RA 3019 AGAINST PETITIONERS IN THE SANDIGANBAYAN DOCKETED AS CRIMINAL CASE NO. 28075.

Petitioners maintain that the modification of the charge from violation of Article 220 of the Revised Penal Code to violation of Sections 3(e) and 3(h) of R.A. No. 3019 denied their rights to due process since they were not given the opportunity to answer and present evidence on the new charge in a preliminary investigation. Furthermore, the petitioners argue that public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the challenged resolutions finding probable cause for violation of R.A. No. 3019.

The petition lacks merit.

The right to a preliminary investigation is not a constitutional right, but is merely a right conferred by statute. The absence of a preliminary investigation does not impair the validity of the Information or otherwise render the same defective. It does not affect the jurisdiction of the court over the case or constitute a ground for quashing the Information.[15] If absence of a preliminary investigation does not render the Information invalid nor affect the jurisdiction of the court over the case, then the denial of a motion for reinvestigation cannot likewise invalidate the Information or oust the court of its jurisdiction over the case.

Petitioners were not deprived of due process because they were afforded the opportunity to refute the charges by filing their counter-affidavits. The modification of the offense charged did not come as a surprise to the petitioners because it was based on the same set of facts and the same alleged illegal acts. Moreover, petitioners failed to aver newly discovered evidence nor impute commission of grave errors or serious irregularities prejudicial to their interest to warrant a reconsideration or reinvestigation of the case as required under Section 8, Rule III of the Rules of Procedure of the Office of the Ombudsman.[16] Thus, the modification of the offense charged, even without affording the petitioners a new preliminary investigation, did not amount to a violation of their rights.

Furthermore, the right to preliminary investigation is deemed waived when the accused fails to invoke it before or at the time of entering a plea at arraignment.[17] Petitioner Budiongan was arraigned in Criminal Case No. 28076 on March 28, 2005. He was also arraigned together with the rest of the petitioners under the Amended Information in Criminal Case No. 28075 on December 2, 2005.

The purpose of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the person accused of the crime is probably guilty thereof and should be held for trial.[18] A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. Probable cause need not be based on

clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt." [19]

The Office of the Special Prosecutor is an integral component of the Ombudsman and is under the latter's supervision and control. Thus, whatever course of action that the Ombudsman may take, whether to approve or to disapprove the recommendation of the investigating prosecutor, is but an exercise of his discretionary powers based upon constitutional mandate. Generally, courts should not interfere in such exercise. 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, save in cases where there is clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman.[20] Absent any showing of arbitrariness on the part of the prosecutor or any other officer authorized to conduct preliminary investigation, as in the instant case, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.[21]

In fine, certiorari will not lie to invalidate the Office of the Special Prosecutor's resolution denying petitioners' motion for reconsideration since there is nothing to substantiate petitioners' claim that it gravely abused its discretion in ruling that there was no need to conduct a reinvestigation of the case.[22]

WHEREFORE, in view of the foregoing, the instant petition is DISMISSED. The assailed Memorandum of the Office of the Special Prosecutor, Office of the Ombudsman, dated April 28, 2004 finding probable cause that petitioners violated Sections 3(e) and 3(h) of Republic Act No. 3019 and the Resolution dated October 19, 2005 denying petitioners' Motion for Reconsideration, are hereby AFFIRMED.

SO ORDERED.

Panganiban, C. J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 30-47.

[2] Id. at 48-55.

[3] Id. at 60-61.

[4] Id. at 70-71.

[5] Id. at 72-73.

[6] Id. at 76-78.

[7] ART. 220. Illegal use of public funds or property. - Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prision correccional in its minimum period or a fine ranging from one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 percent of the sum misapplied.

[8] Rollo, pp. 79-90.

[9] Id. at 226-251.

- [10] Id. at 123-134.
- [11] Id. at 135-138.
- [12] Id. at 139-159.
- [13] Id. at 95-101.
- [14] Id. at 57-59.
- [15] Serapio v. Sandiganbayan, 444 Phil. 499, 530-531 (2003).
- [16] Administrative Order No. 7 (1990).
- [17] People v. Buluran, 382 Phil 364, 373 (2000).
- [18] RULES OF COURT, Rule 112, Sec. 1.
- [19] Webb v. De Leon, 317 Phil. 758, 789 (1995).
- [20] Gallardo v. People, G.R. No. 142030, April 21, 2005, 456 SCRA 494, 504.
- [21] Serapio v. Sandiganbayan, supra note 15 at 531-532.
- [22] Id. at 532.

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