

FERNANDO C. PARMA, JR., Petitioner, vs. THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON and MAYOR LOURDES SEÑAR, Respondents.

G.R. No. 171500. April 30, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

In this Petition for Certiorari[1] under Rule 65, petitioner Fernando C. Parma, Jr. assails and seeks to nullify the Resolution[2] dated August 17, 2005 of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in OMB-L-C-05-0296-C finding probable cause to charge him with falsification of official document under paragraph 1 of Article 171, Revised Penal Code. Also assailed is the Ombudsman's Joint Order[3] of November 30, 2005, denying petitioner's motion for reconsideration.

At times material to this case, Parma was a councilor of the municipality of Magarao, Camarines Sur, while private respondent Lourdes A. Señar was the incumbent municipal mayor. They then belonged to different political parties.

From June 14 to June 19, 2004, Parma, together with Magarao Vice Mayor Nelson B. Julia, followed up, on official time, the release by the Philippine Charity Sweepstakes Office (PCSO), with station in Quezon City, of a Php 50,000 donation solicited by the Philippine Guardians Brotherhood, Inc. (PGBI), Magarao Chapter. The solicited amount was intended to defray the cost of PGBI's August 5, 2004 medical mission.

From June 21 to June 26, 2004, Julia and Parma again made another official trip for the same purpose. The PCSO eventually released the needed amount enabling PGBI to conduct its medical mission, as scheduled.

Before each trip, Parma and Julia drew the usual cash advances based on the requisite Travel Order and Itinerary of Travel. Upon their return, the advances were liquidated. The liquidation process required, among other things, the submission of the statement of actual itinerary and the certificate of appearance or attendance.

The subject matter of this petition relates to the authenticity of the certificate of appearance[4] allegedly submitted by Parma in the liquidation of his travel cash advances.

Señar alleged that both Parma and Julia submitted, as attachments to their liquidation reports, spurious certificates of attendance, as evidenced by a November 10, 2004 letter[5] from the PCSO which disowned said certificates of attendance.

On November 18, 2004, Señar, on the basis of what she alleged to be spurious certificates submitted by Parma and Julia, filed with the Ombudsman the first Complaint-Affidavit,[6] charging the latter two with falsification of official documents, docketed as OMB-L-C-04-1054-K, and, administratively, for dishonesty, docketed as OMB-L-A-04-0750-K. On January 3, 2005, in OMB-L-A-04-0750-K, the Ombudsman issued an Order,[7] preventively suspending Parma and Julia for two months.

In their defense,[8] Parma and Julia alleged that the spurious certificates of attendance were the handiwork of

Señar, acting through Mrs. Ruena Tino, an employee of the municipal assessor's office. Parma and Julia also alleged that Señar detailed Tino at the Office of the Sangguniang Bayan of Magarao as evidenced by the Affidavit[9] of Irene M. Durante (Durante), another municipal employee. Durante stated that Tino made her photocopy old certificates of attendance with the names and dates covered, with instructions to later fill-out the blank photocopied but signed certificates.

On February 4, 2005, Señar filed a second Complaint-Affidavit[10] against Parma and Julia for alleged violation of Sections 4 (a) and 3 (e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, as amended), docketed as OMB-L-C-05-0165-B, while the accompanying administrative case for dishonesty was docketed as OMB-L-A-05-0120-B. The complaint-affidavit alleged that Parma and Julia used public funds for a private purpose, noting that PGBI, on whose behalf the duo made the trip to follow up the donation in question, is a private organization.

On March 3, 2005, Señar filed a third complaint-affidavit,[11] this time solely against Parma, charging him with falsification of official document, docketed as OMB-L-C-05-0244-C. The administrative aspect of the complaint for dishonesty was docketed as OMB-L-A-05-0175-C. Stated as basis of this complaint is a spurious certificate of attendance[12] allegedly submitted by Parma in his liquidation report for a February 2 to 7, 2004 trip to the office of Senator Ramon Magsaysay, Jr., which, however, later denied issuing the certificate of attendance thus submitted by Parma.[13]

On March 15, 2005, Señar filed a fourth complaint-affidavit[14] against Parma for the same crime and offense charged in the first and second affidavit-complaints, albeit the basis for the fourth complaint is, as couched, different. This time around, the inculpatory act has reference to the alleged submission by Parma of spurious certificates of attendance,[15] one dated June 24, 2004 for his June 14 to 19, 2004 trip to Manila, while the other spurious certificate of attendance[16] was dated June 18, 2004. The criminal charge was docketed as OMB-L-C-05-0296-C, while the administrative case for dishonesty was docketed as OMB-L-A-05-0211-C.

The foregoing four criminal complaints with the corresponding administrative cases were not consolidated and none of the parties moved for their consolidation.

On March 31, 2005 in OMB-L-C-05-0296-C, the Ombudsman ordered Parma to file his counter-affidavit. Despite his receipt of the order, Parma did not file his counter-affidavit. This failing or refusal apparently forced the hand of the Ombudsman to issue, on August 17, 2005, the assailed Resolution in OMB-L-C-05-0296-C, finding probable cause to charge Parma for the crime of falsification of official document, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, it is respectfully recommended that respondent FERNANDO C. PARMA, JR. be INDICTED for the crime of Falsification of Official Document defined and penalized under Article 171, paragraph 1, of the Revised Penal Code.

SO RESOLVED.

On August 22, 2005, the Ombudsman rendered a Decision in OMB-L-A-05-0211-C, finding Parma guilty of dishonesty and recommending a penalty of one year suspension from office.

On October 2, 2005, Parma, with respect to both the Ombudsman's August 17, 2005 resolution and August 22, 2005 decision, filed a Motion for Reconsideration and/or Reinvestigation and to Admit Counter-Affidavit, Affidavit of Witnesses and Other Evidences.[17] Parma explained that he was indisposed for several months, suffering from a renal ailment which prevented him from filing his counter-affidavit. He added that the documentary evidence he intends to present together with his counter-affidavit[18] and the affidavit[19] of his

witness, Durante, will likely exculpate him from any liability. To this motion, Señar interposed an opposition in which she informed the Ombudsman about the pendency of criminal complaints for perjury filed by Tino against Durante, docketed as I.S. Nos. 2005-093 and 2005-097.

As earnestly prayed in the motion, the Ombudsman admitted Parma's counter-affidavit and other documentary evidence presented.

On November 30, 2005, the Ombudsman issued the assailed Joint Order,[20] denying Parma's motion for reconsideration aforementioned. The fallo of the Ombudsman's joint order reads:

WHEREFORE, PREMISES CONSIDERED, it is most respectfully recommended that the instant Motion for Reconsideration and/or Reinvestigation dated 27 September 2005 filed by respondent Fernando C. Parma, Jr. be DENIED.

The recommendations in the contested Resolution and Decision are hereby affirmed.

SO ORDERED.

Consequent to the foregoing denial order, an Information against Parma for falsification of official document was filed with the Regional Trial Court (RTC), Branch 21, in Naga City, docketed as Criminal Case No. 2006-0022.

The filing of the above information notwithstanding, Parma filed the instant Petition for Certiorari under Rule 65, ascribing grave abuse of discretion in the issuance of the resolution and joint order in the criminal complaint in OMB-L-C-05-0296-C.

For proper perspective, this petition is cast against the following relevant incidents that transpired before and after its filing:

(1) By Joint-Resolution[21] dated August 25, 2005, the Ombudsman dismissed the second complaint docketed as OMB-L-C-05-0165-B and OMB-L-A-05-0120-B for violation of the Anti-Graft Law and dishonesty, respectively, on the finding that Parma's and Julia's official trips redounded to the benefit of the residents of Magarao, Camarines Sur. Señar's motion for reconsideration was rejected by the Ombudsman through an Order (Motion for Reconsideration)[22] dated October 21, 2005.

(2) By Joint-Resolution of November 16, 2005,[23] the Ombudsman also dismissed the third complaint for falsification of official document and dishonesty, docketed as OMB-L-C-05-0244-C and OMB-L-A-05-0175-C, respectively. The Ombudsman found no probable cause to charge Parma with falsification and ruled, vis-à-vis OMB-L-A-05-0175-C, that a re-elected official is not amenable for an administrative offense committed during a previous term.[24]

(3) The perjury cases filed against Durante, under I.S. Nos. 2005-093 and 2005-097, were dismissed by the City Prosecutor of Naga. The Secretary of Justice would later effectively affirm the dismissal per a Resolution[25] dated January 23, 2006.

Parenthetically, available records do not show how the first complaint, docketed as OMB-L-C-04-1054-K and OMB-L-A-04-0750-K, was resolved.

(4) On April 18, 2006, the RTC issued in Criminal Case No. 2006-0022 an Order,[26] denying Parma's motion to suspend proceedings[27] after which it proceeded to arraign Parma. Following a preliminary conference, a pre-trial conference was held on September 12, 2006.[28]

On May 9, 2007, this Court denied, through a Resolution,[29] Parma's Urgent Motion for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order[30] for lack of merit.

In this recourse, Parma raises the following issues for our consideration:

- WHETHER OR NOT THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ABUSED ITS DISCRETION WHEN IT CAPRICIOUSLY AND WHIMSICALLY ISSUED THE ASSAILED RESOLUTION AND JOINT ORDER (ANNEXES A AND B, RESPECTIVELY, PETITION);
- WHETHER OR NOT THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ABUSED ITS DISCRETION IN NOT CONSIDERING ITS OWN FINDINGS IN OMB-L-C-05-0165-B; WHICH CASE IS DIRECTLY RELATED TO THE CASE AT BAR;
- WHETHER OR NOT THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER ITS FINDING IN OMB-L-C-05-0244-C, WHICH FINDING SHOWS THE PROPENSITY OF THE PRIVATE RESPONDENT TO USE FALSIFIED AND FABRICATED CERTIFICATE OF APPEARANCE AGAINST THE PETITIONER.[31]

The core issue for our resolution is whether or not grave abuse of discretion attended the issuance of the assailed August 17, 2005 Resolution and the November 30, 2005 Joint Order. In essence, Parma claims that the Ombudsman gravely abused its discretion when, contrary to its earlier rulings in the companion criminal investigation cases arising from Parma's official travels, it proceeded to order the filing of an information for falsification.

We are not persuaded.

OMB-L-C-05-0165-B, for violation of the Anti-Graft and Corrupt Practices Act and dismissed by the Ombudsman on August 26, 2005 or nine days after the issuance of the assailed resolution, has no direct bearing on the instant case as the two cases have distinct causes of action. While both cases stemmed from the same factual milieu, i.e., from the trips taken in June 2004, the causes of action or the inculpatory acts complained of are different. In OMB-L-C-05-0165-B, it is the alleged use of public funds for a private purpose, while the instant case is for alleged falsification of a certificate of appearance. In net effect, the dismissal of OMB-L-C-05-0165-B does not have the effect of *res judicata* on OMB-L-C-05-0296-C. As a rule of preclusion, *res judicata* "refers to the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same demand or cause of action." [32]

Similarly, the criminal complaint, OMB-L-C-05-0244-C, for falsification of official document, dismissed by the Ombudsman on November 16, 2005, likewise does not have direct bearing on the instant case, for OMB-L-C-05-0244-C pivots on an alleged spurious certificate of attendance for a February 2 to February 7, 2004 trip to the office of then Sen. Magsaysay, Jr., whereas this case, OMB-L-C-05-0296-C, revolves around the falsification of a certificate of attendance for a June 14 through June 19, 2004 trip. In a very real sense, both cases also have dissimilar causes of action. What is more, unlike in OMB-L-C-05-0244-C, Parma in OMB-L-C-05-0296-C presented only a photocopy of what purportedly is the authentic certificate of appearance for the official trip in question.

Go v. Looyuko[33] explains the concept of grave abuse of discretion in the following wise:

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the act was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined 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 or personal

hostility.[34] An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari.

The imputation of grave abuse of discretion on the part of the Ombudsman, which necessarily implies a capricious and whimsical exercise of its discretion, cannot be sustained in the instant case, because Parma veritably latches his case on the lame argument that had the Ombudsman duly considered its findings in OMB-L-C-05-0165-B and OMB-L-C-05-0244-C, it would have found no reason to give due course to OMB-L-C-05-0296-C and eventually to direct the filing of the information for falsification in question. But as earlier explained, OMB-L-C-05-0165-B and OMB-L-C-05-0244-C are rooted on causes of action different from OMB-L-C-05-0296-C and, hence, would require a dissimilar evidentiary proof to sustain a finding of probable cause or rebut any such finding. It cannot be overemphasized that Parma was given the opportunity to ventilate his position, with the Ombudsman even admitting his belatedly submitted counter-affidavit, affidavit of witnesses and other documentary evidence.

In the ultimate analysis, Parma has only himself to blame for the non-submission before the Ombudsman of his June 23, 2004 certificate of appearance.[35] Parma is now asking our indulgence to consider it. However, the submission before us of the original document begs the question on the authenticity thereof and whether it was truly issued on the date it purports to attest. If indeed Parma liquidated his trip advances for June 2004, why was the original of the corresponding certificate of appearance not filed with the liquidation report? It has not been shown by Parma that he indeed liquidated his advances by filing not only the bus tickets for the trip but also his certificate of appearance. In his counter-affidavit, he only denied submitting the spurious certificates of attendance, but did not state submitting the original certificate of attendance. Thus, how could Parma clear and liquidate his trip advances without complying with the required submission of his certificate of appearance?

The Court cannot presently review, as Parma urges, the sufficiency of the evidence against him and at the same time consider and re-evaluate the affidavit of Durante and other documentary evidence attached to Parma's counter-affidavit to determine the author of the falsified documents. Such a review and reevaluation cannot be secured in a petition for certiorari which is not available to correct mistakes, if any there be, in the Ombudsman's findings and conclusions or to cure erroneous conclusions of fact and law. The unyielding rule has been that this Court cannot weigh evidence to determine probable cause, a properly executive function--exercised by the Ombudsman in the instant case--as we are confined to the issue of whether the executive determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. In *Longos Rural Waterworks and Sanitation Association, Inc. v. Hon. Desierto*, the Court has occasion to rule that it cannot pass upon the sufficiency or insufficiency of evidence to determine the lack or existence of probable cause.[36]

WHEREFORE, the petition is DISMISSED and, accordingly, the assailed Resolution dated August 17, 2005 and the Joint Order of November 30, 2005 of the Office of the Deputy Ombudsman for Luzon are AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, carpio Morales, Tinga, and Brion, JJ., concur.

[1] Rollo, pp. 3-23, dated February 28, 2006.

[2] Id. at 24-31. Per Graft Investigation & Prosecution Officer Robert C. Renido, as recommended by Director Emilio A. Gonzalez III, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

- [3] Id. at 32-39. Per Graft Investigation & Prosecution Officer Teresita P. Butardo-Tacata, as recommended by Director Wilbert L. Candelaria, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.
- [4] Id. at 56.
- [5] Id. at 46. Written by Romualdo V. Quiñones, PCSO Manager for Special Projects Department.
- [6] Id. at 83-86, dated November 16, 2004.
- [7] Id. at 113-115. Per Ombudsman Director Joaquin F. Salazar as approved by Deputy Ombudsman for Luzon Victor C. Fernandez.
- [8] Id. at 116-119. Counter-Affidavit of Vice-Mayor Nelson B. Julia, dated January 21, 2005; id. at 120-122, Counter-Affidavit of Fernando C. Parma, Jr., dated January 21, 2005.
- [9] Id. at 123-125, dated January 21, 2005.
- [10] Id. at 104-108.
- [11] Id. at 138-140, dated March 2, 2005.
- [12] Id. at 146.
- [13] Id. at 148, letter dated February 24, 2005.
- [14] Id. at 47-50, dated March 12, 2005.
- [15] Id. at 56.
- [16] Id. at 59.
- [17] Id. at 40-43, dated September 28, 2005.
- [18] Id. at 64-66, dated September 27, 2005.
- [19] Id. at 78-80, dated September 27, 2005.
- [20] Supra note 3.
- [21] Rollo, pp. 128-132. Per Graft Investigation & Prosecution Officer Ma. Theresa B. Tansiongco, as recommended by Ombudsman Director Joaquin F. Salazar, as approved by Deputy Ombudsman for Luzon Victor C. Fernandez.
- [22] Id. at 134-137. Per Graft Investigation & Prosecution Officer Margie G. Fernandez-Calpatura, as recommended by Ombudsman Director Joaquin F. Salazar, as approved by Deputy Ombudsman for Luzon Victor C. Fernandez..
- [23] Id. at 149-155.
- [24] *Aguinaldo v. Santos*, G.R. No. 94115, August 21, 1992, 212 SCRA 768.
- [25] Rollo, pp. 81-82. Per Chief State Prosecutor Jovencito R. Zuño.
- [26] Id. at 164-167. Per Judge Pablo C. Formaran III.
- [27] Id. at 160-161, dated February 16, 2006.
- [28] Id. at 230-267, TSN of Pre-Trial; id. at 198-199, Pre-Trial Order.

[29] Id. at 331.

[30] Id. at 323-329, dated April 10, 2007.

[31] Id. at 273-274.

[32] Black's Law Dictionary 1305 (6th ed.); cited in Gutierrez v. Court of Appeals, G.R. No. 82475, January 29, 1991, 193 SCRA 437.

[33] G.R. Nos. 147923, 147962 & 154035, October 26, 2007.

[34] Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, G.R. No. 72424, February 13, 1989, 170 SCRA 246; Litton Mills v. Galleon Traders, No. L-40867, July 26, 1988, 163 SCRA 489; Butuan Bay Export Co. v. Court of Appeals, No. L-45473, April 28, 1980, 97 SCRA 297.

[35] Rollo, p. 77.

[36] G.R. No. 135496, July 30, 2002, 385 SCRA 392, 397-398. See also Roberts v. Court of Appeals, G.R. No. 113930, March 5, 1996, 254 SCRA 307. This Court refrained from passing over the propriety of finding probable cause against petitioners as such function is proper to the public prosecutor. Moreover, on the question whether the public prosecutor has discharged this executive function correctly, we held that the trial court may not be compelled to pass upon such query as there is no provision of law authorizing an aggrieved party to petition for such determination.

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