

EDGARDO H. CATINDIG, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND ATTY. DANIEL P. FANDIÑO, JR. RESPONDENTS.*G.R. No. 183141. September 18, 2009*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-183141/>**CHICO-NAZARIO, J.:**

This case is a Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to reverse and set aside the Decision[1] dated 14 September 2007 and Resolution[2] dated 14 May 2008 of the Court of Appeals in CA-G.R. SP No. 96293. In its assailed Decision, the Court of Appeals annulled and set aside the following Orders of the Regional Trial Court (RTC) of Calamba City, Branch 35, in Criminal Case No. 13850-05-C for violation of Section 3(e),[3] Republic Act No. 3019, as amended, to wit: (1) Order dated 24 May 2006[4] directing the issuance of a warrant of arrest against herein private respondent Atty. Daniel Fandiño, Jr. (Atty. Fandiño) and his co-accused[5] therein and their suspension pendente lite from their position as Chairman and members of the Board of Directors of the Calamba Water Districts (CWD), respectively, for a period of 60 days pursuant to Section 13[6] of Republic Act No. 3019, as amended;[7] and (2) Order dated 5 July 2006 denying the Motion for Reconsideration of private respondent and his co-accused therein. In its questioned Resolution, the Court of Appeals denied the Motion for Reconsideration of petitioner Edgardo H. Catindig (Catindig).

Herein petitioner Catindig is an incumbent member of the Sangguniang Pambayan of Calamba City, Laguna, while private respondent Atty. Fandiño is the duly elected Chairman of the Board of Directors of CWD.

The factual antecedents of this case are as follows:

Sometime in 2001, a team of auditors from the Commission on Audit (COA) conducted a rate audit of CWD, Calamba, Laguna, covering its operations and financial transactions for calendar year 2001. The audit was made to determine the reasonableness of the water rate increase granted by the Local Water Utilities Administration (LWUA) to the water districts to cover Power Cost Adjustment (PCA) and Foreign Exchange Cost Adjustment (FECA).

During the examination, the COA audit team found that the Board of Directors of CWD passed several resolutions granting benefits and allowances to officers, employees and members of its Board of Directors in the total amount of P15,455,490.14 supposedly without legal basis and beyond the allowable limit. The said amount was divided as follows: (1) P4,378,908.58 granted to the Board of Directors of CWD over and above per diems without legal basis; (2) P10,620,587.68 granted to CWD officers and employees without legal basis; and (3) P455,993.88 granted to CWD officers and employees in amounts over the authorized limits.

The aforesaid findings of the COA audit team were embodied in its Report No. 2002-06.[8] The COA audit team explained therein that the functions of the members of the Board of Directors of the Water Districts were limited to policy-making, as clearly stated in Section 18[9] of Presidential Decree No. 198, as amended. Moreover, even the LWUA, in its Resolution No. 313, Series of 1995, acknowledged that directors of Water Districts a not

organic personnel, and that their function is limited only to policy-making. Also, Section 13[10] of Presidential Decree No. 198, as amended, categorically provides that each member of the Board of Directors of the Water Districts is entitled only to receive per diem, and no director shall receive other compensation for services to the district. Thus, the COA audit team stated in its audit report that the compensation, benefits and allowances amounting to P4,378,908.58 received by the Board of Directors of CWD were in clear violation of Section 13 of Presidential Decree No. 198, as amended. From the said amount, only P366,300 was allowed, representing the per diem per board meeting. Furthermore, the allowances granted to the officers and employees of CWD amounting to P10,620,587.68 by a mere board resolution issued by the Board of Directors of CWD were without basis, as these are not authorized by law.

Accordingly, the audit team made the following recommendations: (1) that the CWD make a re-evaluation of the benefits and allowances granted to its Board of Directors, officers and employees to ensure that the same were authorized and within the limits allowed under existing laws and regulations; and (2) that the LWUA should adhere to the law, particularly Presidential Decree No. 198, as amended, in regulating the grant of benefits and allowances to the CWD Board of Directors, officials and employees to ensure that the same are within the authorized limits.

On the basis thereof, petitioner filed on 7 July 2004 a Complaint before the Office of the Ombudsman for Luzon (Ombudsman) against private respondent and the other members of the Board of Directors of CWD for a series of acts of gross violation of Section 3(i)[11] of Republic Act No. 3019, as amended, in conspiracy with one another, and in relation to their duties as public officers of CWD, with a prayer for immediate preventive suspension against all of them. The said Complaint was docketed as OMB-L-C-04-0709-H.

After going over the records, the Ombudsman was convinced that the findings of fact made by the COA audit team can sustain charges for violation of Section 3(e) of Republic Act No. 3019, as amended, against private respondent and the other members of the Board of Directors of CWD. The Ombudsman then issued a Resolution[12] dated 26 August 2005 recommending the filing of two Informations,[13] both for violation of Section 3(e) of Republic Act No. 3019, as amended, against private respondent and the other members of the Board of Directors of CWD.[14]

Thereafter, two Informations, both dated 26 August 2005, were filed against private respondent and the other members of the Board of Directors of CWD -- both for violation of Section 3(e) of Republic Act No. 3019, as amended -- before the RTC of Calamba City. The first Information, docketed as Criminal Case No. 13850-05-C,[15] was raffled to Branch 35 of the RTC of Calamba City; while the other Information, docketed as Criminal Case No. 13851-05-C[16] was raffled to Branch 36 thereof.

The Information docketed as Criminal Case No. 13850-05-C, the subject of this Petition, reads:

That on or about the period from 1993-2001, or sometime prior or subsequent thereto, in the Municipality of Calamba, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [ATTY. FANDIÑO], VIVENCIO P. LEUS, SYLVIA V. TANCANGCO, SEVERINO M. ARAMBULO, public officers, being members of the Board of Directors of [CWD], while in the performance of their official functions, committing the crime charged in relation to their office, and taking advantage of the same, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously allow and grant unto themselves the total amount of P4,378,908.00 as benefits consisting of director's fee, RATA, extra and miscellaneous expense, mid-year productivity incentive, anniversary incentive, 13[th] month pay, Christmas incentive, year-end incentive, uniform allowance, medical and hospitalization, traveling and per diem during official business and employer's contribution to [Board of Directors'] share in the welfare/provident fund when in truth and in fact they are not

allowed by law because they are not organic personnel of the water district whose functions are limited only to policy making and not in the detailed management of the district, thereby causing undue injury to the government in the aforesaid amount.[17] (Emphases supplied.)

On 12 December 2005, the private respondent and the other members of the Board of Directors of CWD filed in Criminal Case No. 13850-05-C an Omnibus Motion for Determination of the Existence of Probable Cause, Motion to Dismiss for Lack of Probable Cause and Motion to Hold in Abeyance the Issuance of Warrant of Arrest.[18] Then, on 19 December 2005, they filed a Supplemental Motion to their Omnibus Motion for Determination of the Existence of Probable Cause, Motion to Dismiss for Lack of Probable Cause and Motion to Hold in Abeyance the Issuance of Warrant of Arrest.[19]

On 24 May 2006, the RTC of Calamba City, Laguna, Branch 35, issued an Order finding probable cause for the issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD. The dispositive portion of the Order reads:

WHEREFORE, premises considered, let a warrant for the arrest of the [herein private respondent and the other members of the Board of Directors of CWD] be issued.

Likewise, pursuant to Section 13, R.A. [No.] 3019, [as amended], this Court hereby orders the suspension pendente lite of [the private respondent and the other members of the Board of Directors of CWD] from their position as members of the Board of Directors, Calamba Water Districts for a period of sixty (60) days, to take effect immediately upon receipt hereof.

Let a copy of this Order be furnished to the [CWD] for the implementation of the suspension order.

The said [CWD] shall inform this Court of any action taken thereon within ten (10) days from receipt thereof and its authorized official or duly authorized representative shall advise this Court of the date of the actual implementation of the suspension of the [private respondent and his co-accused therein] as well as the expiration of the sixtieth day hereof so that the same may be lifted at the proper time.

Send a copy of this order to the Office of the City Prosecutor and Atty. Brion, Jr.[20] (Emphases supplied.)

The private respondent and the other members of the Board of Directors of CWD moved for the reconsideration of the aforesaid Order, but the motion was denied in the court a quo's other Order dated 5 July 2006.

The private respondent was the only one who elevated the case to the Court of Appeals via a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure. He challenged the aforesaid two Orders of the court a quo for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, as the facts on record did not establish prima facie probable cause; thus, Criminal Case No. 13850-05-C should have been dismissed.

On 14 September 2007, the Court of Appeals rendered its Decision granting the Petition of the private respondent, thereby annulling and setting aside the two Orders dated 24 May 2006 and 5 July 2006 of the court a quo.

The Court of Appeals stated in its Decision that the employees and officers, including the Board of Directors of the CWD, had received the disputed allowances and benefits long before this Court declared as illegal such payment of additional compensation; thus, it could be reasonably concluded that private respondent and his co-accused in the case below received the same in good faith. The Court of Appeals also elucidated that in prosecuting cases involving violation of Section 3(e) of Republic Act No. 3019, as amended, the public officers must have acted with manifest partiality, evident bad faith or gross inexcusable negligence in performing their legal duties. In the absence of bad faith, private respondent and his co-accused in the case below cannot be held liable for violation of Section 3(e) of Republic Act No. 3019, as amended.

Aggrieved, petitioner moved for a reconsideration of the aforesaid Decision of the Court of Appeals, but the motion was denied by the appellate court in its Resolution dated 14 May 2008.

Hence, this Petition with the following assignment of errors:

A

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS JURISDICTION WHEN IT RULED THE PETITION THEREIN BASED ON FACTUAL ISSUE RATHER THAN ON THE ISSUE OF JURISDICTION OF THE TRIAL COURT, SINCE IT WAS FOR CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE, AS AMENDED.

B

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT DID NOT OUTRIGHTLY DISMISS THE PETITION IN QUESTION SINCE THE ISSUES RAISED THEREIN WERE SUBSTANTIALLY THE SAME IN CA-G.R. SP NO. 92474, WHICH IT ALREADY FINALLY DISMISSED OUTRIGHTLY ON [28 DECEMBER 2005] LONG BEFORE THE PETITION IN QUESTION IN CA-G.R. SP NO. 96293 WAS FILED WITH THIS HONORABLE COURT DATED [24 AUGUST 2006].

C

THE COURT OF APPEALS ERRED, IN GRAVE ABUSE OF ITS DISCRETION WHEN IT FAILED TO NOTICE CERTAIN RELEVANT FACTS IN ITS QUESTIONED DECISION AND RESOLUTION WHICH, IF PROPERLY CONSIDERED, WILL JUSTIFY A DIFFERENT CONCLUSION THEREOF.

D

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT DID NOT UPHOLD THE ASSAILED TWO ORDERS IN QUESTION OF THE TRIAL COURT.

Given the foregoing, the issues that must be resolved in this Petition are:

- Whether the Court of Appeals erred in pronouncing that the private respondent and the other members of the Board of Directors of the CWD acted in good faith in receiving the disputed benefits and allowances pursuant to LWUA Resolution No. 313, as amended, in a Petition for Certiorari, which is meant only to correct errors of jurisdiction and grave abuse of discretion.
- Whether the Court of Appeals erred in not outrightly dismissing CA-G.R. SP No. 96293 on the ground of res judicata.

The present Petition is not impressed with merit.

Petitioner argues that a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure, which was used by the private respondent in challenging the Orders dated 24 May 2006 and 5 July 2006 of the court a quo, is intended only to correct errors of jurisdiction and grave abuse of discretion or excess of jurisdiction committed by the trial court. It cannot be used to correct an error of judgment or simple abuse of discretion. Also, it cannot be legally used for any other purpose. Petitioner, thus, holds that the Court of Appeals erred when it ruled not only on the issue of grave abuse of discretion but also on the merits of the case, that is, by ruling that the private respondent and the other members of the Board of Directors of CWD acted in good faith in receiving the disputed benefits and allowances pursuant to LWUA Resolution No. 313.

At the outset, the Ombudsman recommended the filing of two Informations with the RTC of Calamba City against the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended. One of the two Informations was lodged before Branch 35 of the

RTC of Calamba City, and is now the subject of this Petition. After the Information was filed with the court a quo, the private respondent and the other members of the Board of Directors of CWD conversely filed an Omnibus Motion for Determination of the Existence of Probable Cause, Motion to Dismiss for Lack of Probable Cause and Motion to Hold in Abeyance the Issuance of Warrant of Arrest. In resolving the said Omnibus Motion, the trial court issued an Order dated 24 May 2006 finding probable cause for the issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD. The trial court, thus, directed the issuance of a warrant of arrest and the suspension pendente lite of private respondent and the other members of the Board of Directors of CWD. In effect, the trial court denied the Omnibus Motion of the private respondent and the other members of the Board of Directors of CWD, thus, sustaining the Ombudsman's findings of probable cause against them for violation of Section 3(e) of Republic Act No. 3019, as amended. The subsequent Motion for Reconsideration of the private respondent and the other members of the Board of Directors of CWD was denied in the trial court's Order dated 5 July 2006. Consequently, the private respondent filed a Petition for Certiorari with the Court of Appeals questioning the aforesaid two Orders of the court a quo.

It is a fundamental principle that an order denying a Motion to Dismiss is an interlocutory order, which neither terminates nor finally disposes of a case, as it leaves something to be done by the court before the case is finally decided on the merits. As such, the general rule is that the denial of a Motion to Dismiss cannot be questioned in a special civil action for certiorari, which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a Motion to Dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of certiorari, the denial of the Motion to Dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[21]

There is "grave abuse of discretion" where "a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and so gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law." [22]

With the aforesaid definition, it cannot be said that the trial court gravely abuse its discretion in finding probable cause for the issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD, thus, denying their Omnibus Motion. It bears emphasis that the trial court itself carefully scrutinized the documents submitted by the parties and personally evaluated the Resolution of the Ombudsman finding probable cause for the filing of the Information against the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended. After it was convinced that probable cause exists to issue a warrant of arrest, it was only then that it directed the issuance thereof.

The aforesaid general rule, however, is not absolute. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of certiorari may exceptionally be allowed. This Court categorically stated in *Salonga v. Cruz Paño* [23] that under certain situations, recourse to the extraordinary legal remedies of certiorari, prohibition or mandamus to question the denial of a motion to quash is considered proper in the interest of more enlightened and substantial justice. [24]

After a careful review of the records, this Court finds that such special circumstance obtains in the present case. Simply stated, the existing evidence is insufficient to establish probable cause against the private respondent to prosecute him for violation of Section 3(e) of Republic Act No. 3019, as amended, vis-à-vis to establish probable cause for the issuance of a warrant of arrest against him.

The Ombudsman, in arriving at the conclusion that probable cause exists to prosecute the private respondent and

the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended, relied heavily on the findings of fact of the COA audit team and the ruling of this Court in *Baybay Water District v. Commission on Audit*.^[25] Such finding of probable cause by the Ombudsman was affirmed by the trial court in its two Orders dated 24 May 2006 and 5 July 2006 resulting in its issuance of a warrant of arrest against the private respondent and the other members of the Board of Directors of CWD,

The findings of fact of the COA audit team revealed that the Board of Directors of CWD passed several resolutions granting benefits and allowances to its officers, employees and members of its Board of Directors, including the private respondent. The said benefits and allowances granted to the members of the Board of Directors of CWD amounting to P4,378,908.58, are as follows: (1) director's fee; (2) RATA; (3) extra and miscellaneous expense; (4) mid-year productivity incentive; (5) anniversary incentive; (6) 13th month pay; (7) Christmas incentive; (8) yearend incentive; (9) uniform allowance; (10) medical and hospitalization, and traveling and per diem during official business; and (11) employer's contribution to the Board of Directors' share in the welfare/provident fund. The COA audit team in its audit report stated that the aforesaid benefits and allowances granted to the members of the Board of Directors of CWD were without basis. The COA audit team explained that the functions of the members of the Board of Directors of Water Districts are limited only to policy-making as provided for in Section 18, Presidential Decree No. 198, as amended. Moreover, Section 13 of Presidential Decree No. 198, as amended, explicitly states that the director of water districts shall receive no other compensation other than the per diem.

In *Baybay Water District v. Commission on Audit*,^[26] this Court made a categorical pronouncement that Presidential Decree No. 198, as amended, expressly prohibits the grant of compensation other than the payment of per diems, to directors of water districts. The erroneous application and enforcement of the law by public officers does not estop the Government from making a subsequent correction of such errors. More specifically, where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties due to an error committed by public officials in granting the benefit. Practice, without more, no matter how long continued, cannot give rise to any vested right if it is contrary to law.

Despite the foregoing, this Court strongly holds that there was no probable cause to prosecute the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended, and to issue warrant of arrest against them.

Section 3(e) of Republic Act No. 3019, as amended, provides:

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 licenses or permits or other concessions.

From the aforequoted provisions, the elements of violation of Section 3(e) of Republic Act No. 3019, as amended, are as follows: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (3) his action caused undue injury to any party, including the government, or gave any private party an unwarranted benefit,

advantage or preference in the discharge of his functions.[27]

In the present case, the second element of violation of Section 3(e) of Republic Act No. 3019, as amended, i.e., that the private respondent and the other members of the Board of Directors of CWD acted with manifest partiality, evident bad faith or inexcusable negligence, is absent.

In *Soriano v. Marcelo*,[28] citing *Albert v. Sandiganbayan*,[29] this Court discussed the second element, to wit:

There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. (Emphases supplied.)

Based on the foregoing definitions, this Court does not find the act of the private respondent and the other members of the Board of Directors of CWD of passing resolutions granting benefits and allowances to have been committed with manifest impartiality, evident bad faith or gross inexcusable negligence.

It bears stressing that in granting those benefits and allowances, the Board of Directors of CWD relied on Resolution No. 313, Series of 1995, as amended by Resolution No. 39, Series of 1996, entitled "Policy Guidelines on Compensation and Other Benefits to Water District Board of Directors," which was issued by the LWUA itself, the body that oversees and regulates the operations of the local water districts. The benefits granted by the said LWUA Resolution No. 313, Series of 1995, to the board of directors of water districts are the following: rata, travel allowance, extraordinary and miscellaneous expense, Christmas bonus, cash gift, uniform allowance, rice allowance, medical/dental benefits and productivity incentive bonus.[30]

More so, at the time that the private respondent and the other members of the Board of Directors of CWD passed the resolutions from 1993-2001 granting benefits and allowances, this Court had not yet decided *Baybay Water District v. Commission on Audit*, which was promulgated only in 2002. Also, it was only in *De Jesus v. Commission on Audit*,[31] applying *Baybay Water District v. Commission on Audit*, that this Court declared that LWUA Resolution No. 313, Series of 1995, which grants compensation and other benefits to the members of the Board of Directors of Local Water Districts, is not in conformity with Section 13 of Presidential Decree No. 198, as amended.

Therefore, in relying on LWUA Resolution No. 313, Series of 1995 in passing several resolutions granting the disputed benefits and allowances, the private respondent and the other members of the Board of Director of CWD acted in good faith, as they were of the honest belief that LWUA Board Resolution No. 313, as amended, was valid.

Bad faith is never presumed, while good faith is always presumed; and the chapter on Human Relations of the Civil Code directs every person, *inter alia*, to observe good faith, which springs from the fountain of good conscience.[32]

In the absence of manifest partiality, evident bad faith or inexcusable negligence in passing several resolutions granting benefits and allowances, there can be no probable cause to prosecute the private respondent and the other members of the Board of Directors of CWD for violation of Section 3(e) of Republic Act No. 3019, as amended. Consequently, there was also no probable cause for the issuance of a warrant of arrest against them.

Clearly, where the evidence patently demonstrates the innocence of the accused, as in this case, this Court finds no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result.[33]

In *Principio v. Barrientos*,^[34] petitioner therein filed a motion with the trial court praying that its motion for reconsideration filed with the Ombudsman be given due course and thereafter, rule that no probable cause exists. The trial court denied the said motion of the petitioner, thus, affirming the finding of probable cause. Petitioner filed a Petition for Certiorari with the Court of Appeals, but it dismissed the petition and affirmed the RTC. On appeal to this Court via a Petition for Review on Certiorari, this Court ratiocinated that:

At the outset, we reiterate the fundamental principle that an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari. x x x The proper procedure to be followed is to enter a plea, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment. x x x.

However, the general rule is not absolute. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of certiorari or prohibition may exceptionally be allowed. x x x.

After a careful review of the records, we find that such special circumstance obtains in the case at bar. Simply stated, the existing evidence is insufficient to establish probable cause against the petitioner and therefore, the petition must be granted.

x x x x

Furthermore, the Ombudsman cannot impute bad faith on the part of the petitioner on the assumption that he, together with other BSP officials, was part of a cabal to apply pressure on RBSMI to sell out by subjecting it to many impositions through the Monetary Board. Bad faith is never presumed while good faith is always presumed x x x. Therefore, he who claims bad faith must prove it. x x x The Ombudsman should have first determined the facts indicating bad faith instead of relying on the tenuous assumption that there was an orchestrated attempt to force RBSMI to sell out.

As a general rule, courts do not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. There are, however, well-recognized exceptions to this rule, such as those enumerated in *Brocka v. Enrile* [G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189] to wit:

- To afford adequate protection to the constitutional rights of the accused x x x;
- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions x x x;
- When there is a pre-judicial question which is subjudice x x x;
- When the acts of the officer are without or in excess of authority x x x;
- Where the prosecution is under an invalid law, ordinance or regulation x x x;
- When double jeopardy is clearly apparent x x x;
- Where the court has no jurisdiction over the offense x x x;
- Where it is a case of persecution rather than prosecution x x x ;
- Where the charges are manifestly false and motivated by the lust for vengeance x x x;

- j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied x x x; and
- Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners x x x.

This is not the first time that we are dismissing a case for want of probable cause. In *Cabahug v. People* [426 Phil. 490, 510 (2002)], we took exception to the Ombudsman's determination of probable cause and accordingly dismissed the case against the accused before the Sandiganbayan. Therein, we observed:

While it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the courts' time and saves the precious resources of the government. (Emphases supplied.)

Thus, the Court of Appeals did not err in granting the Petition for Certiorari of the private respondent and in pronouncing that he and the other members of the Board of Directors of CWD acted in good faith.

Similarly, petitioner contends that the substantial facts and issues involved in the Petition for Review in CA-G.R. SP No. 92474 were the same facts and issues raised in the Petition for Certiorari in CA-G.R. SP No. 96293, the subject of the present Petition. With the dismissal of the Petition for Review in CA-G.R. SP No. 92474, which became final and executory on 29 March 2006, petitioner insists that the Court of Appeals should have also dismissed outright the private respondent's Petition for Certiorari in CA-G.R. SP No. 96293 on the ground of res judicata.

Res judicata exists when the following elements are present: (a) the former judgment must be final; (b) the court that rendered it had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be -- between the first and the second actions -- identity of parties, subject matter, and cause of action.[35]

Emphasis must be given to the fact that CA-G.R. No. 92474 was dismissed based on pure technicalities and not on the merits, to wit: (1) therein petitioners' (now private respondent's) counsels failed to indicate their respective Integrated Bar of the Philippines (IBP) Official Receipt numbers, in violation of Bar Matter No. 1132; (2) the Petition did not contain an affidavit of service, as required by Section 13, Rule 13 and Section 5, Rule 43, of the Rules of Procedure, as proof that copy of the said Petition had been served on the adverse party; (3) the Petition does not contain any explanation of why a personal service upon therein private respondent (now petitioner) was not resorted to pursuant to Section 11, Rule 13; and therein petitioners failed to furnish the Ombudsman and the Office of the Solicitor General (OSG) with a copy of their Petition.

Clearly from the foregoing, the dismissal of CA-G.R. SP No. 92474 was based on sheer technicality. Since no judgment on the merits was rendered after consideration of the evidence or stipulation submitted by the parties at the trial of the case, it falls short of one of the essential requisites of res judicata, that the judgment should be one on the merits.[36]

WHEREFORE, premises considered, the instant Petition for Review on Certiorari is hereby DENIED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, Bersamin, JJ., concur.

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 51-65.

[2] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Apolinario D. Bruselas, Jr. and Romeo F. Barza, concurring; id. at 93-94.

[3] 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 licenses or permits or other concessions.

[4] Penned by Judge Romeo C. de Leon, rollo, pp. 397-401.

[5] The following are the co-accused of private respondent Atty. Fandiño: (1) Vivencio P. Leus, Vice-Chairman; (2) Sylvia V. Tancangco, Corporate Secretary; and (3) Severino M. Arambulo, Press Relations Officer (P.R.O).

[6] SEC 13. Suspension and loss of benefits. Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

[7] Also known as the Anti-Graft and Corrupt Practices Act.

[8] Rollo, pp. 227-236.

[9] SEC 18. Functions Limited to Policy-Making. - The function of the board shall be to establish policy. The Board shall not engaged in the detailed management of the district.

[10] SEC. 13. Compensation. - Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diems of four meetings in any given month. No director shall receive other compensation for services to the district.

[11] 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

(i) Directly or indirectly becoming interested, for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercise of discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

[12] Rollo, pp. 329-333.

[13] *Id.* at 368-373.

[14] Herein private respondent Atty. Fandiño and the two members of the Board of Directors of CWD, namely, Vivencio P. Leus and Sylvia V. Tancangco, elevated the Resolution dated 26 August 2005 of the Office of the Deputy Ombudsman for Luzon to the Court of Appeals by way of a Petition for Review under Rule 43 of the 1997 Revised Rules of Civil Procedure. The said case was docketed as CA-G.R. SP No. 92474. On 28 December 2005, the Court of Appeals dismissed outrightly the Petition on technical grounds. Private respondent Atty. Fandiño and the two members of the Board of Directors of CWD moved for the reconsideration of the said Decision, but the same was denied for lack of merit in a Resolution dated 8 March 2006. On 29 March 2006, the said Decision dated 28 December 2005 of the Court of Appeals became final and executory as evidenced by an Entry of Judgment. (See rollo, pp. 85-91, 367).

[15] Rollo, pp. 368-370.

[16] *Id.* at 371-373.

[17] *Id.* at 368-369.

[18] *Id.* at 374-382.

[19] *Id.* at 383-384.

[20] *Id.* at 401.

[21] *Lu Ym v. Nabua*, G.R. No. 161309, 23 February 2005, 452 SCRA 298, 305-306.

[22] *Bayas v. Sandiganbayan*, 440 Phil. 54, 71-72 (2002).

[23] G.R. No. L-59524, 18 February 1985, 134 SCRA 438, 448.

[24] *Principio v. Barrientos*, G.R. No. 167025, 19 December 2005, 478 SCRA 639, 646.

[25] 425 Phil. 326 (2002).

[26] *Id.*

[27] *Soriano v. Marcelo*, G.R. No. 160772, 13 July 2009.

[28] *Id.*

[29] G.R. No. 164015, 26 February 2009.

[30] *Molen, Jr. v. Commission on Audit*, 493 Phil. 874, 883 (2005).

[31] 451 Phil. 812, 822 (2003).

[32] *Principio v. Barrientos*, supra note 24.

[33] *Id.*

[34] *Id.* at 645-651.

[35] *Avisado v. Rumbaua*, 406 Phil. 704, 716 (2001).

[36] *Barranco v. Commission on the Settlement of Land Problems*, G.R. No. 168990, 16 June 2006, 491 SCRA 222, 230.

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