

AURELIO G. ICASIANO, JR., PETITIONER, VS. HON. SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 95642. May 28, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

Romana Magbago filed an administrative complaint dated 17 February 1987 with the Supreme Court against then acting Municipal Trial Court Judge of Naic, Cavite, herein petitioner Aurelio G. Icasiano, Jr. for grave abuse of authority, manifest partiality and incompetence.[1]

The administrative complaint arose from two (2) orders of detention dated 18 and 27 November 1986 issued by the said acting judge against complainant (Magbago) for contempt of court because of her continued refusal to comply with a fifth alias writ of execution.

After evaluating the allegations of the complaint, respondent's comment thereon and the Court Administrator's recommendation, the Supreme Court dismissed the administrative complaint for lack of merit in an en banc resolution dated 2 February 1988.[2]

Meanwhile, on 17 March 1987, complainant Magbago also filed with the Office of the Ombudsman the same letter?complaint earlier filed with the Supreme Court; this time, she claimed violation by Judge Icasiano, Jr. of the Anti-Graft and Corrupt Practices Act (R.A. 3019, sec. 3 par. [e]). The complaint with the Ombudsman was docketed as TBP-87- 00924.

After considering respondent Judge Icasiano's answer, in a resolution dated 7 April 1988 Special Prosecutor Evelyn Almogela-Baliton recommended dismissal of the complaint for lack of merit. The recommendation was approved by then Special Prosecutor/Tanodbayan Raul M. Gonzales. It appears from the records of the Tanodbayan, which were forwarded to the Supreme Court, upon order of the Court in connection with this case, that the resolution dismissing the complaint was released on 14 April 1988.

The Solicitor General's memorandum in the present case (p. 3, par. 2) states that the office of the Tanodbayan received another complaint from the same Romana Magbago (complainant in TBP-87-00924) which was docketed this time as TBP-87-01546. The exact date of filing of the second complaint is not stated but the records of the case were allegedly among those transmitted to the then newly created office of the Ombudsman; unfortunately, the transmitted records did not contain the earlier resolution of dismissal in TBP-87-00924.

Special Prosecutor Nicanor Cruz, Jr. who was assigned to investigate the case (TBP-87-01546) appeared completely unaware of the earlier case, TBP-87-00924, because the following transpired in TB-87-01546:

1. Preliminary investigation.
2. Petitioner (Icasiano, Jr.) appeared on 7 November 1989 and asked for 5 days to file counter affidavit; however no such counter?affidavit was filed.

3. The Clerk of Court of the Municipal Trial Court of Naic, Cavite was summoned to testify on the contempt proceedings held before said court.

4. A resolution of the investigator dated 30 January 1990 was issued recommending the filing of the information.

5. A memorandum dated 5 March 1990 of Special Prosecution Officer III Jane Aurora L. Lantion adopted the recommendation of the investigator.

The corresponding information against herein petitioner was thereafter filed with the Sandiganbayan and docketed as Criminal Case No. 14563.

After said information was filed on 21 March 1990, petitioner (as accused) filed a motion for reinvestigation which resulted in the issuance of two (2) separate resolutions from the respondent Sandiganbayan, namely, resolution dated 9, May 1990, reading:

"Considering that the 'MOTION FOR REINVESTIGATION' filed by accused Judge Aurelio Icasiano, Jr., which, among other things indicates that he has been exonerated by the Supreme Court in Administrative Matter No. MTJ-87-81 filed by the complaining party herein against the accused, the prosecution is given fifteen (15) days from receipt hereof to indicate if the judicial act or acts complained of have been taken to a superior court for review (and the resolution thereof, if any) as well as whether or not the Supreme Court Resolution dated February 2, 1988 in the above mentioned administrative matter had already resolved the issue at bar, considering that the question of evidence required therein cannot be greater than in criminal cases such as that initiated by the instant Information."

and Order dated 21 May 1990, reading:

"It appearing that the prosecution is still to submit its comment on this Court's Resolution requiring a review and affirmation of the alleged exoneration of the accused herein by the Supreme Court which exoneration, if true, would put at very serious doubt the prosecution of this case against him, by agreement of the parties, the arraignment of the accused is hereby reset for July 9, 1990 at 8:00 o'clock in the morning."

Special Prosecution Officer III Erdulfo Q. Querubin responded to the resolution of 9 May 1990 with a Compliance/Manifestation dated 28 May 1990 stating:

"x x x x x x x x x"

1. That the records in the hands of the prosecution do not show any indication that the judicial acts complained of have been taken to a superior court for review;

2. That prosecution's records do not contain any document or paper relative to A.M. No. MTJ-87-81, Romana Magbago vs. Judge Aurelio G. Icasiano, Jr., Municipal Trial Court, Tanza, Cavite, except a xerox copy of the Supreme Court's Resolution, dated February 2, 1988, which was attached to copy (sic) of the Motion For Reinvestigation and Deferment of Arraignment, dated May 8, 1990, furnished to the Office of the Deputy Special Prosecutor on same date, and prosecution's information on the matter is limited to the text of said resolution." [3]

The petitioner's motion for reinvestigation was denied in the 29 June 1990 resolution, of respondent court, which stated thus:

"Both the accused and Atty. Jaime C. Baldos having received this Court's Resolution dated May 29, 1990 before June 7, 1990 (when the registry notices were received by this Court) or more than twenty-one (21) days ago, despite which the accused had failed to present relevant papers and documents to demonstrate action by the Supreme Court as (in) Administrative Matter MTJ 87-81 which would support his claims that the subject

matter of this case has been resolved by the Supreme Court in his favor, his motion for reinvestigation is DENIED."

Petitioner then moved to quash the information on the following grounds:

1. that the accused shall be placed in double jeopardy in so far as the resolution of the Hon. Supreme Court in Administrative Case No. RTJ-87-81;
2. that there exists no valid cause of action as may be filed against the accused.
3. that the Hon. Sandiganbayan cannot acquire valid jurisdiction over the person of the accused and subject matter of this instant case.[4]

Denying the motion to quash, the Sandiganbayan held:

"Judge Aurelio Icasiano, Jr.'s Motion to Quash dated July 16, 1990 is denied.

"The Supreme Court's resolution in Administrative Matter No. MTJ-87-81 lodged by the same complaining person, Romana Magbago, whether of exoneration or conviction, even if evidence beyond reasonable doubt is required for conviction in said proceedings, cannot serve as basis for the defense of double jeopardy because MTJ-87-81 remains an administrative case and the instant proceeding is criminal. One is not a bar to the other.

"In an administrative matter against a deputy clerk of court of a Court of First Instance and a clerk thereof for shortages in the collection of court fees, the Supreme Court said, '.... It is clear that both respondents Armando Soriano and Milo Tijam are still administratively and criminally liable (despite restitution) for which they may still be prosecuted for malversation.' (Office of the Court Administrator vs. Soriano, 136 SCRA 461, 465, underscoring and words in parenthesis supplied).

"Necessarily, the Sandiganbayan would have jurisdiction over the criminal action arising from the subject matter of the administrative case against the accused since it is only the Sandigan-bayan which may hear prosecutions for the violation of R.A. No. 3019."

A motion for reconsideration was likewise denied; hence the present petition relying on the sole ground that the respondent court acted without or in excess of its jurisdiction, or with grave abuse of discretion in denying his motion to quash the information, and that there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

Initially, a temporary restraining order was issued by this Court ordering the Sandiganbayan to cease and desist from further proceeding with the criminal case.[5] After a closer look at the records of the case, the Court is of the view that the distinction between administrative and criminal proceedings must be upheld, and that a prosecution in one is not a bar to the other.

It is, therefore, correct for the Sandiganbayan to hold that double jeopardy does not apply in the present controversy because the Supreme Court case (against the herein petitioner) was administrative in character while the Sandiganbayan case also against said petitioner is criminal in nature.

When the Supreme Court acts on complaints against judges or any of the personnel under its supervision and control, it acts as personnel administrator, imposing discipline and not as a court judging justiciable controversies. Administrative procedure need not strictly adhere to technical rules. Substantial evidence is sufficient to sustain conviction. Criminal proceedings before the Sandiganbayan, on the other hand, while they may involve the same acts subject of the administrative case, require proof of guilt beyond reasonable doubt.

To avail of the protection against double jeopardy, it is fundamental that the following requisites must have obtained in the original prosecution: (a) a valid complaint or information; (b) a competent court; c) a valid

arraign-ment; (d) the defendant had pleaded to the charge; and (e) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his express consent.[6] All these elements do not apply vis-a-vis the administrative case, which should take care of petitioner's contention that said administrative case against him before the Supreme Court, which was, as aforesaid, dismissed, entitles him to raise the defense of double jeopardy in the criminal case in the Sandiganbayan.[7]

The charge against petitioner Judge Icasiano before the Sandiganbayan is for grave abuse of authority, manifest partiality and incompetence in having issued two (2) orders of detention against complaining witness Magbago. Ordinarily, complainant's available remedy was to appeal said orders of detention in accordance with the Rules. It is only when an appellate court reverses the lower court issuing the questioned orders can abuse, partiality or incompetence be imputed to the judge[8]. Here no appeal from the questioned orders of the issuing judge (petitioner Icasiano) was taken: instead, administrative and criminal cases were filed against the judge for issuing the orders.

It is precisely for this reason among others, that the administrative case against petitioner was dismissed by the Supreme Court for lack of merit; and yet, it cannot be assumed at this point that petitioner is not criminally liable under R.A. 3019, par. 3(e) for issuing the questioned orders of detention. In fact, the Ombudsman has found a prima facie case which led to the filing of the information.

We now recur to the fact that the Tanodbayan had earlier dismissed the complaint against petitioner Judge Icasiano for violation of Sec. 3(e) of R.A. 3019. This was in TBP-87-00924. The case was dismissed for lack of merit on 14 April 1988. Because no motion to re-open or revive the case could be found in the pleadings, a resolution of this Court dated 30 April 1991 required the Office of the Ombudsman to submit the pertinent office memorandum justifying the re-opening of a case which had already been dismissed and to elevate the records to this Court.

The Ombudsman's compliance claims that it is not true that TBP-87-01546 was "reopened." "TBP-87-01546 was another case involving the same parties and the same facts docketed separately from TBP-87-00924." [9]

He further explained:

"TBP-87-01546 was among the several cases transmitted to the then newly created Office of the Ombudsman in line with the intention to relieve the former Office of the Tanodbayan of some of its long-pending cases. The record of TBP-87-01546 did not contain the resolution previously issued in TBP-87-00924 which was approved by former Tanodbayan Raul M. Gonzales.

Upon the record of TBP-87-01546 being received in the Office of the Ombudsman, it was assigned to Investigator Nicanor J. Cruz, Jr. for appropriate action. Upon his recommendation, a preliminary investigation was conducted with the respondent therein (herein petitioner Judge Icasiano, Jr.) having been served with subpoena for the preliminary investigation scheduled on November 7, 1989. Judge Icasiano affixed his signature to the said subpoena and appeared at the hearing to ask for an extension of five (5) days within which is to file his counter-affidavit. Despite the extension granted him, Judge Icasiano failed to file any counter-affidavit nor to call attention to the fact that a similar case had earlier been dismissed by the former Office of the Tanodbayan."

No memorandum justifying reopening of a case previously dismissed by the Tanodbayan was submitted to this Court by the Office of the Ombudsman. What was submitted is a memorandum dated 5 March 1990 signed by Jane Aurora C. Lantion, Special Prosecution Officer III, which justifies the filing of the information for violation of sec. 3(e), R.A. 3019 as amended, thus:

"x x x x x x x x x x

While there is no showing that a charge in writing or Petition for Contempt has been filed against defendant Magbago before respondent's sala, records bear out that petitions to declare defendant for Contempt have been previously filed in Civil Case No. 404 on 10 February 1984, 13 June 1984 and 12 September 1984. There is no showing that these petitions have been acted upon by the judges before whom the same were filed. This, plus the fact that the writs of execution could not be enforced against defendant Magbago, could have been the reasons for respondent's action herein complained of. Though the ends may be justifiable, the means employed which contravene the requirements of due process cannot put the imprimatur of legality to respondent's judicial actuation subject of this case.

x x x x x x x x"

In any case, the dismissal by the Tanodbayan of the first complaint cannot bar the present prosecution, since double jeopardy does not apply. As held in *Cirilo Cinco, et al. vs. Sandiganbayan and the People of the Philippines*,¹¹ a preliminary investigation (assuming one had been conducted in TBP-87- 00924) is not a trial to which double jeopardy attaches.

In *Gaspar vs. Sandiganbayan*,¹⁰ this Court also held:

"Moreover, there is no rule or law requiring the Tanodbayan to conduct another preliminary investigation of a case under review by it (him). On the contrary, under Presidential Decree No. 911, in relation to Rule 12, Administrative Order No. VII, the Tanodbayan may, upon review, reverse the findings of the investigator, and thereafter 'where he finds a prima facie case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted, without the necessity of conducting another preliminary investigation.'"

In the present controversy, it will be noted that a preliminary investigation was conducted by the Office of the Ombudsman in TBP-87-01546 to accord the herein petitioner due process even if it could be argued that in TBP-87-01546, the Ombudsman was merely reviewing the Tanodbayan's original dismissal of the complaint in TBP-00924 (involving the same parties and the same facts), and he could have filed the information even without a new preliminary investigation.

WHEREFORE, the petition is DENIED. The temporary restraining order issued earlier is LIFTED; the Sandigan-bayan is ordered to proceed with Criminal Case No. 14563.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Bellosillo, JJ., concur.

Nocon, J., on leave.

[1] Docketed as Adm. Matter No. MTJ-87-81

[2] Rollo, pp. 35-36

[3] Sandiganbayan Record

[4] Rollo, pp. 5-6

[5] Resolution of 8 November 1990

[6] *People vs. Bocar*, G.R. No. L-27735, 16 August 1985, 138 SCRA 166

[7] Consider however, *Alejandro Suerte v. Municipal Judge Marcial G. Ugbinar* (Adm. Matter No. 88-MJ, 25

January 1977, 75 SCRA 69), where former Chief Justice Enrique M. Fernando reiterated the concept first enunciated by Mr. Justice Malcolm in 1922 in *re Horrilleno* (43 Phil. 212) that an administrative charge against a judge, being in its nature highly penal, the charge of serious misconduct against a judge must be proved beyond reasonable doubt and governed by the rules of law applicable to criminal cases. (*De Guzman vs. De Leon*, Administrative Case No. 1328-MJ, 30 July 1987, 72 SCRA 177).

[8] *Garcia v. Alconcel*, Adm. Matter No. 2499-CC [OCA-101], 30 January 1982, 111 SCRA 178.

[9] *Rollo*, p. 72.

10 G.R. No. 68086, 24 September 1986, 144 SCRA 415.

11 G.R. Nos. 92362- 67, 15 October 1991

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