

MARIANO F. OCAMPO, IV, PETITIONER, VS. THE HONORABLE OMBUDSMAN, AND THE HONORABLE SANDIGANBAYAN (SECOND DIVISION), RESPONDENTS.

G.R. Nos. 103446-47. August 30, 1993

Ponente: PADILLA, J.

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PADILLA, J.:

Governor Mariano Un Ocampo III and his son, herein petitioner Mariano F. Ocampo IV, were charged with violation of Sec. 3(h) of Republic Act No. 3019, as amended, in two (2) separate informations filed before the Sandiganbayan, and docketed therein as Criminal Case Nos. 16801 and 16804, in that on 1 September 1988 and 30 August 1988, the said Mariano Un Ocampo III, being then the governor of the province of Tarlac and at the same time President-Chairman of the Board of Trustees of the Lingkod Tarlac Foundation, Inc. (LTFI), in connivance with his son, Mariano F. Ocampo IV, loaned the amounts of P5,476,031.00 and P7,000,000.00 out of the National Aid for Local Government Funds (NALGF) of the province of Tarlac to the IMCOR, now the New Territory Manufacturing, Inc., a private corporation, of which the said Mariano F. Ocampo IV is an incorporator and stock-holder, under terms and conditions grossly disadvantageous to the government the same being interest-free, without collateral, and without a definite date of repayment.

On 28 June 1991, Mariano F. Ocampo IV filed with the Sandiganbayan a motion for reinvestigation which was granted by the said court on 8 August 1991.

After conducting the reinvestigation of the cases, Special Prosecutors Roger C. Berbano, Sr. and Rodolfo F. Reynoso of the Office of the Special Prosecutor found that Mariano F. Ocampo IV did not connive with his father, Gov. Mariano Un Ocampo III in the two loan transactions in question between LTFI and IMCOR since "it was the responsible officers of IMCOR who were more directly involved in the questioned loan transactions, namely, Federico Reyes, Jr. and Honorio C. Bulos, Jr., the latter having been at one time the Chairman of the Board of said corporation" and that there is a very strong probability that herein petitioner (Ocampo IV) was "merely being used by his father, Gov. Ocampo to complete the organizational set-up of IMCOR for purposes of registration with the Securities and Exchange Commission."

The special prosecutors recommended that the informations filed in Crim. Case Nos. 16801 and 16804 against Gov. Mariano Un Ocampo III and his son Mariano F. Ocampo IV be dismissed and that the corresponding motions to withdraw them be filed with the Sandiganbayan.[1]

But the Ombudsman, in a memorandum to the Office of the Special Prosecutor, dated 27 November 1991, disapproved the recommendation of the special prosecutors.[2] As a result, Mariano F. Ocampo IV filed the present petition for certiorari to annul and set aside the said memorandum on the ground that the same was rendered with grave abuse of discretion amounting to lack of jurisdiction.

Required to comment on the petition, the Solicitor General submitted a manifestation in lieu of comment, stating that since "it will be just a matter of determining whether the mere fact that the petitioner was an incorpora-

and stockholder of the firms with which his father transacted as Governor of Tarlac taints the act of the father, (t)he stockholder son in person need not be impleaded" and "should not be made to suffer the pain of going through a trial as it is already ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to his guilt." [3]

The respondent Ombudsman, upon the other hand, maintains that his disapproval of the recommendation of the prosecuting officers cannot be branded as an abuse of discretion, but an exercise of a prerogative expressly conferred upon him by law since he found sufficient evidence to indict the petitioner and his father.

Well settled is the rule that criminal prosecutions may not be restrained, either through a preliminary or final injunction or a writ of prohibition, except in the following instances:

- "(1) To afford adequate protection to the constitutional rights of the accused;
- (2) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- (3) When there is a pre-judicial question which is sub judice;
- (4) When the acts of the officer are without or in excess of authority;
- (5) Where the prosecution is under an invalid law, ordinance or regulation;
- (6) When double jeopardy is clearly apparent;
- (7) Where the court has no jurisdiction over the offense;
- (8) Where it is a case of persecution rather than prosecution;
- (9) Where the charges are manifestly false and motivated by lust for vengeance;
- (10) When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied;
- (11) Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners." [4]

Consistent with the foregoing is the rule that the courts cannot interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation if the complaint is, in his view, in due and proper form. [5]

Deliberating upon the issues raised in the present petition for certiorari, the arguments in support thereof, as well as the comments of the respondents thereon and the reply thereto, we find that the petition fails to show a grave abuse of discretion or any act without or in excess of jurisdiction on the part of the respondent Ombudsman. The said respondent's act of disapproving the recommendation of the special prosecutors to dismiss the informations filed in Crim. Case Nos. 16801 and 16804 against Gov. Mariano Un Ocampo III and his son, Mariano F. Ocampo IV, is not whimsical nor capricious. Neither is it tainted with vindictiveness or arbitrariness. He disapproved the recommendation of the special prosecutors because he sincerely believed that there is sufficient evidence to indict both accused. This is an exercise of the Ombudsman's powers based upon constitutional mandate and the courts should not interfere in such exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of

investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[6]

It should however be reiterated that, while it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the informations may not be dismissed without the approval of the said court.[7]

ACCORDINGLY, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, and Vitug, JJ., concur.

[1] Rollo, p. 27

[2] Ibid., p. 24

[3] Rollo, p. 137

[4] Brocka vs. Enrile, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183

[5] Tabujara vs. Office of the Special Prosecutor, G.R. No. 87912, January 18, 1990

[6] Sesbreno vs. Deputy Ombudsman, G.R. No. 92789, March 21, 1991

[7] Dungog vs. CA, G.R. Nos. 77850-51, March 25, 1988, 159 SCRA 145

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