

ALVAREZ ARO YUSOP, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (FIRST DIVISION), RESPONDENT.

G.R. Nos. 138859-60. February 22, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The right of a person to preliminary investigation is recognized by the law and is governed by the Rules of Court. However, the failure to accord this right does not ipso facto result in the dismissal of the information; the case is merely suspended, and the prosecutor directed to conduct the proper investigation.

The Case

Before us is a Petition for Certiorari under Rule 65 of the Rules of Court, assailing two Orders[1] of the Sandiganbayan,[2] both dated February 15, 1999. The first Order rejected the attempt of petitioner to stop his arraignment in Criminal Case Nos. 24524-25, on the ground that he had been denied the right to a preliminary investigation. In the assailed second Order, the Sandiganbayan directed that a plea of not guilty be entered for all the accused, including herein petitioner.

The Facts

Acting on an Affidavit-Complaint[3] filed by a certain Erlinda Fadri, the Office of the Ombudsman-Mindanao issued an Order[4] dated September 19, 1995, naming the following as respondents: Benjamin Arao, Frederick Winters, Pelaez Pantaran, Eduardo Dablo, Efren Sissay and the city jail warden of Pagadian City. The Order also required respondents, within ten days from receipt thereof to submit their counter-affidavits and other pieces of controverting evidence.

The Office of the Ombudsman for Mindanao issued a Resolution dated January 15, 1998,[5] recommending the prosecution of "the aforementioned respondents" for violation of Article 269 of the Revised Penal Code and Section 3-a in relation to Section 3-e of Republic Act No. 3019 as amended. Significantly, the name of Petitioner Alvarez A. Yusop was included as one of the persons to be prosecuted, although he was not one of the original respondents mentioned in the Order of September 19, 1995. Ombudsman Aniano A. Desierto approved the recommendation.

Accordingly, two Informations were filed with the Sandiganbayan. They were docketed as Criminal Case Nos. 24524 (violation of Section 3-a of RA 3019) and 24525 (unlawful arrest under Article 269 of the Revised Penal Code).

On April 16, 1998, an Order of Arrest was issued by the Sandiganbayan in Criminal Case No. 24524. Petitioner, however, posted a bail bond before the Regional Trial Court of Dipolog City on May 20 of the same year. On the same day, he filed a "Motion To Remand Case To The Ombudsman - Mindanao For Preliminary Investigation."

In a Resolution dated June 8, 1998, the Sandiganbayan denied the Motion of petitioner for his alleged failure to submit himself to the jurisdiction of the anti-graft court.

On August 8, 1998, petitioner filed a Motion to Dismiss, grounded again on the lack of preliminary investigation. In an Order dated September 22, 1998, the Sandiganbayan resolved not to take action on the Motion, because petitioner had not yet submitted himself to its jurisdiction insofar as Criminal Case No. 24525 was concerned.

On the scheduled arraignment on February 15, 1999, petitioner reiterated his claim that he had not been accorded preliminary investigation. In its two assailed Orders, the Sandiganbayan rejected his claim and proceeded with the arraignment.

Hence, this recourse.[6]

Ruling of the Sandiganbayan

The Sandiganbayan rejected petitioner's plea for preliminary investigation in this wise:

"This morning, the accused herein appeared for arraignment duly represented by their counsel. Before proceeding, Atty. Omar A. Rivera appearing in behalf of accused Yusop informed this court of his reservations about proceeding with the arraignment this morning, primarily on the ground that accused Yusop did not undergo preliminary investigation, with the additional claim that he had not been furnished any notice nor was he informed of the proceedings before the Ombudsman with respect to these cases. It would appear that one of the reasons [therefor] is that the accused despite notice of the existence of the accusation against him in Criminal Case No. 24525, had not given any timely notice nor any statement of any alleged inadequacy of the proceeding regarding the filing of the Information herein; thus, the Court is not persuaded that the claim of the accused Yusop with regard to the inadequacy of the proceedings as against him could still be validly entertained at this time. This is more particularly significant under Section 27 of Republic Act 6770 and x x x Criminal Cases 24524 and 24525 refer to the same incident although the prosecution, for its part, has filed Informations under different statutes covering the same incident. Thus, the claim of accused Yusop that he was not notified with respect to one of the cases on an identical set of facts herein is not [of] particular significance since this would be indulging in a superfluity.

x x x x x x x x

"Thus, in view of all the following, the Court will now proceed to the arraignment of the accused herein."

The Issue

Although the parties did not specify the issue in this case, it is clear from their submissions that they are asking this Court to resolve this question: Whether the Sandiganbayan, despite being informed of the lack of preliminary investigation with respect to petitioner, in Criminal Case No. 24524, committed grave abuse of discretion in proceeding with his arraignment.

The Court's Ruling

The Petition is meritorious in part. While petitioner is entitled to preliminary investigation, the case against him should not be dismissed.

Main Issue:

Preliminary Investigation

Preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." [7] The Court explained that the rationale of a preliminary investigation is to "protect the accused from the inconvenience, expense and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer." [8]

The Rules of Court requires such investigation before an information for an offense punishable by at least four

years, two months and one day may be filed in court.[9] The old Rules, on the other hand, mandates preliminary investigation of an offense cognizable by the regional trial court.[10]

Petitioner is charged in Criminal Case No. 24524 with violation of Section 3-a of RA 3019. Such offense is punishable with, among other penalties, imprisonment of six years and one month to fifteen years.[11] Under the aforecited Rules, whether in the old or the revised version, he is entitled to a preliminary investigation.

It is undisputed, however, that before the Information against petitioner was filed, no preliminary investigation had been conducted. In fact, the Office of the Ombudsman admitted that "petitioner was denied of his right to preliminary investigation." [12]

We find no basis for the Sandiganbayan's ruling that petitioner "had not given timely notice nor any statement of the alleged inadequacy of the proceeding regarding the filing of the Information."

First, there was no showing that petitioner was notified of the charges filed by Erlinda Fadri. As earlier noted, he had not been named as a respondent in the September 19, 1995 Order of the Office of the Ombudsman in Mindanao. His name did not even appear in the caption of its January 15, 1998 Resolution,[13] which recommended the filing of charges against the accused. Indeed, in his Compliance with the August 26, 1998 Sandiganbayan Resolution,[14] Special Prosecution Officer Diosdado V. Calonge manifested that petitioner "was not notified of the proceedings of the preliminary investigation and was accordingly not given the opportunity to be heard thereon." [15]

After learning of the filing of the Information against him when he was served a Warrant of Arrest, petitioner did not dally. He immediately informed the Sandiganbayan that no preliminary investigation had been conducted in regard to him. Several months later, moments before his arraignment, he reiterated his prayer that the preliminary investigation be conducted. In this light, the Sandiganbayan erred in saying that he had not given the court timely notice of this deficiency.

Even assuming that prior to the filing of the Information, petitioner had known that the proceedings and the investigation against his co-accused were pending, he cannot be expected to know of the investigator's subsequent act of charging him. Precisely, he had not been previously included therein and, consequently, he had not been notified thereof.

In *Go v. Court of Appeals*, [16] this Court held that "the right to preliminary investigation is waived when the accused fails to invoke it before or at the time of entering a plea at arraignment." Conversely, if the accused does invoke it before arraignment, as the petitioner did in this case, the right is not waived.

Neither did the filing of a bail bond constitute a waiver of petitioner's right to preliminary investigation. Under Section 26, Rule 114 of the Revised Rules of Criminal Procedure, "[a]n application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. x x x."

We stress that the right to preliminary investigation is substantive, not merely formal or technical. To deny it to petitioner would deprive him of the full measure of his right to due process.[17] Hence, preliminary investigation with regard to him must be conducted.

We disagree with the Sandiganbayan's reliance on Section 27 of Republic Act 6770.[18] This provision cannot justify the evasion of the requirement set forth in the Rules of Court for conducting preliminary investigation. The law does not sanction such interpretation, for it deals merely with the finality of orders, directives and decisions of

the Office of the Ombudsman -- not the deprivation of the substantive right to a preliminary investigation. Moreover, petitioner cannot be bound by the Ombudsman's January 15, 1998 Resolution, which recommended the filing of charges. He was not a party to the case and was not accorded any right to present evidence on his behalf.

In any event, even the Ombudsman agrees that petitioner was deprived of this right and believes that the former "has the duty x x x to see to it that the basic rudiments of due process are complied with." [19] For its part, the Sandiganbayan opted to remain silent when asked by this Court to comment on the Petition.

Dismissal of the Charges

Not Justified

Petitioner also prays that the cases against him be dismissed for lack of preliminary investigation. [20] We disagree. In the first place, nowhere in the Revised Rules of Criminal Procedure, or even the old Rules, is there any mention that this lack is a ground for a motion to quash. [21] Furthermore, it has been held that responsibility for the "absence of a preliminary investigation does not go to the jurisdiction of the court but merely to the regularity of the proceedings." [22] We reiterate the following ruling of the Court in *People v. Gomez*:

"If there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted." [23]

In sum, Criminal Case No. 24524 must be suspended with respect to petitioner even if the case is already undergoing trial, because "[t]o reach any other conclusion here, that is, to hold that petitioner's rights to a preliminary investigation and to bail were effectively obliterated by evidence subsequently admitted into the record would be to legitimize the deprivation of due process and to permit the government to benefit from its own wrong or culpable omission and effectively to dilute important rights of accused persons well-nigh to the vanishing point." [24]

WHEREFORE, the Petition is partially GRANTED. The assailed Orders are REVERSED, and the Office of the Ombudsman is hereby ORDERED to conduct forthwith a preliminary investigation of the charge of violation of Section 3-a of RA 3019 against Petitioner Alvarez Aro Yusop. The trial on the merits of Criminal Case No. 24524 shall be SUSPENDED in regard to petitioner until the conclusion of the preliminary investigation. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 23-26.

[2] First Division. The Orders were signed by Presiding Justice Francis E. Garchitorena and Justices Catalino R. Castaneda Jr. and Gregory S. Ong.

[3] Rollo, pp. 35-36.

[4] Rollo, p. 40.

[5] Rollo, pp. 27-31; signed by Graft Investigation Officer II Pepito A. Manriquez and reviewed by Director Rodolfo M. Elman. It was approved by Ombudsman Aniano A. Desierto, upon the recommendation of Margarito P. Gervacio Jr., deputy ombudsman for Mindanao.

[6] In a Resolution dated August 7, 2000, the Court directed that "[t]he Sandiganbayan may file its own comment on the Petition, as the Comment of the Ombudsman is favorable to petitioner, within thirty (30) days from notice, otherwise, the case shall be considered submitted for deliberation." In its November 27, 2000 Order, the Court deemed the Sandiganbayan to have waived its right to file its own comment. The Petition for Certiorari was signed by Atty. Manileno N. Apiag. The Ombudsman's Comment was signed by Leonardo P. Tamayo, Robert E. Kallos, Rodrigo V. Coquia and Ireneo M. Paldeng.

[7] Section 1, Rule 112, Revised Rules of Criminal Procedure, which took effect on December 1, 2000.

[8] *Tandoc v. Resultan*, 175 SCRA 37, 42, July 5, 1989, per Padilla, J.; citing *Salta v. Court of Appeals*, 143 SCRA 228.

[9] Second paragraph, Section 1, Rule 112 of the Revised Rules of Criminal Procedure, states: "Except as provided in section 7 or this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least (4) years, two (2) months and one (1) day without regard to the fine."

[10] Section 3, Rule 112 of the Rules of Court before the 2000 Rules, states that "except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted x x x." Under BP 129, as amended by RA 7691, Regional Trial Courts have jurisdiction over offenses punishable with imprisonment of more than six years.

[11] Section 9, RA No. 3019. It may be noted that in *Crim. Case No. 24525*, a preliminary investigation was not required because unlawful arrest under Article 269 of the Revised Penal Code was punishable by *arresto mayor* - imprisonment of one month and one day to six months.

[12] Comment, p. 7; rollo, p. 101.

[13] Rollo, pp. 27-31.

[14] Rollo, p. 51.

[15] Rollo, p. 52.

[16] 206 SCRA 138, 153, February 12, 1992, per Feliciano, J.

[17] *Duterte v. Sandiganbayan*, 289 SCRA 721, April 27, 1998; citing *Doromal v. Sandiganbayan*, 177 SCRA 354, September 7, 1989 and *Go v. Court of Appeals*, 206 SCRA 138, February 11, 1992.

[18] "Sec. 27. Effectivity and Finality of Decisions. - All provisional orders of the Office of the Ombudsman are immediately effective and executory.

"A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

"(1) New evidence has been discovered which materially affects the order, directive or decision;

"(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing; Provided, That only one motion for reconsideration shall be entertained.

"Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than

one month's salary shall be final and unappealable.

"In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

"The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require."

[19] Comment, pp. 7-8; rollo, pp. 101-102.

[20] Petition, p. 13; rollo, p. 18.

[21] *Villaflor v. Vivar*, GR No. 134744, January 16, 2001.

[22] *Paderanga v. Drilon*, 196 SCRA 86, April 19, 1991, per Regalado, J.

[23] 117 SCRA 73, 77-78, September 30, 1982, per Relova, J; citing *People v. Casiano*, 1 SCRA 478, February 16, 1961.

[24] *Go v. Court of Appeals*, *supra*, p. 162.

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