

BENEDICTO E. KUIZON, JOSELITO RANIERO J. DAAN AND ROSALINA T. TOLIBAS, PETITIONERS, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN AND THE HON. SANDIGANBAYAN (FOURTH ...

G.R. Nos. 140619-24. March 09, 2001

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court filed by incumbent Municipal Mayor of Bato, Leyte, Benedicto E. Kuizon, Joselito Raniero J. Daan and Rosalina T. Tolibas to set aside the approval by the respondent Ombudsman Aniano A. Desierto of the Memorandum dated May 17, 1999 of Paul Elmer M. Clemente of the Office of the Chief Legal Counsel, Office of the Ombudsman, recommending the prosecution of herein petitioners.

The cases subject of this petition emanated from a complaint[1] filed on December 8, 1995 by one Melanio Saporas with the Office of the Ombudsman-Visayas (OMB-Visayas) against petitioner Benedicto Kuizon for Nepotism and Malversation Thru Falsification of Public Documents in connection with the forging of signatures of some casual laborers of Bato, Leyte in the payroll slips of the municipality and the drawing of their salaries on different dates. The case was docketed as OMB-VIS-CRIM-95-0646.

Attached to Saporas' complaint is the affidavit of one Zacarias Kuizon who claimed to have been formerly hired by petitioner Kuizon as a laborer at Bato, Leyte. Petitioner Kuizon allegedly had already dispensed with the services of Zacarias for the month of February, 1995 but the latter's signature was forged in the payroll for the said month and somebody took his salary in the amount of P890.00 for that period.[2]

In an Evaluation Report dated December 19, 1995, June L. Iway, Graft Investigation Officer I of the OMB-Visayas, recommended that petitioners Rosalina T. Tolibas and Joselito Raniero J. Daan, Paymaster/Municipal Treasurer and Timekeeper, respectively, should be included in the complaint as respondents.

In an Order dated December 19, 1995, petitioners were ordered to file their counter-affidavits. On February 20, 1996, petitioners submitted their Answer with Special Affirmative Defenses,[3] attaching therewith the counter-affidavits of petitioners Daan and Tolibas[4] as well as the affidavits of several witnesses[5] to rebut the accusations of Saporas and Zacarias Kuizon.

Meanwhile on November 15, 1995, Saporas filed another complaint against petitioners with the Office of the Ombudsman, Manila docketed as OMB-2-96-0049. The complaint was referred to the Office of the Deputy Ombudsman for the Visayas in an Indorsement dated January 29, 1996. On March 21, 1996, petitioners were required to file their respective counter-affidavits. On April 22, 1996, petitioner Kuizon, assisted by Atty. Leo Giron, filed his counter-affidavit,[6] attaching therewith the counter-affidavits of petitioners Tolibas and Daan.

OMB-Visayas granted petitioners' Motion for Consolidation of Cases and Setting of Hearing of the two (2) complaints.

On May 28, 1996, complainant Saporas submitted the affidavits of Ceferino Cedejana[7] and Concordio Cedejana[8] in support of his allegations in OMB-2-96-0049. Both Ceferino and Concordio made virtually similar allegations as those made by Zacarias except the amounts representing their salaries for the month of February, 1995 which are P2,136.00 and P1,157.00, respectively.

Petitioners filed a Motion to Exclude the Affidavits of Ceferino and Concordio[9] which was denied in an Order dated July 8, 1996. They filed their supplemental counter-affidavit on July 26, 1996 in compliance with the order requiring them to do so. On separate dates, petitioners filed their Joint Position Paper[10] and Joint Supplemental Memorandum.[11]

On June 20, 1997, OMB-Visayas thru Graft Investigation Officer I Samuel Malazarte issued a Resolution[12] in OMB-VIS-CRIM-95-0646 and OMB-2-96-0049 recommending the filing of the Informations for Malversation and Falsification of Public/Official Document on two (2) counts each against all the petitioners before the Sandiganbayan. GIO Malazarte recommended however the dismissal of the complaint for nepotism against petitioner Kuizon. The pertinent portion of the said Resolution states:

"While complainant's witnesses, Zacarias Kuizon, is shown to have used two different signatures in signing documents, such as those found on a Joint Affidavit and an Affidavit (Annexes "1" and "2", respectively, of respondent Mayor's Counter-Affidavit), yet there is no proof shown that the aforesaid witness has affixed on any other document a signature similar, if not exactly the same, as the questioned signature purportedly that of the same witness appearing on the above-mentioned Time Book and Payroll for the period February 16 to 28, 1995. It is likewise not shown that complainants' two other witnesses, Ceferino Cedejana and Concordio Cedejana, has [sic] signed on any other document signatures similar, if not the same, as the questioned signature(s) appearing on the Time Book and payroll for the periods February 1 to 15, 1995 and February 16 to 28, 1995, in the case of Ceferino Cedejana, and February 1 to 15, 1995, in the case of Concordio Cedejana. Indeed, a person may use two or more signatures. But in a case as this, where the complainant, or his witnesses, specifically denied the particular signatures in question and imputed authorship of the falsifications thereof against the respondents, who otherwise claimed that said questioned signatures belong to the complainant's witnesses, it is incumbent upon the latter to disprove the denial by solid evidence, such as a finding of a handwriting examiner/expert - considering that they (respondents) are in possession of the original documents bearing the allegedly falsified/forged signatures. No such kind of evidence, however, was adduced.

The respondents relied heavily for corroboration on the testimonies of witnesses who, at one time or another, were co-workers/laborers of complainant's witnesses in the above-mentioned construction of [a] new Municipal Hall Building of Bato, Leyte. But owing to a high possibility that said respondents' witnesses were coaxed, influenced, or pressured into signing the affidavits and to so testify, considering the circumstances of their work and place of residence, the undersigned cannot give full credence to the testimonies of said respondents' witnesses as against the complainant's witnesses' specific denial of ownership of the questioned signatures, for the purpose of this preliminary investigation.

From the claims of respondents Joselito Raniero J. Daan and Rosalina T. Tolibas that they personally know the aforementioned complainant's witnesses and had called their names, made them sign on the payroll[s] in question in their (respondents') presence and gave them their corresponding salaries, a clear inference can be drawn that there was collusion or connivance of the aforesaid respondents which is made more manifest by their respective certifications on the questioned Time Book and Payrolls for the periods February 1 to 15, 1995, and February 16 to 28, 1995. And the respondent Mayor Benedicto E. Kuizon's certification on the same questioned payrolls and his statement that he knows for a fact that the complainant's witnesses have actually worked during the questioned period of February 1995 serve to complete the conspiracy." [13]

The Resolution was approved by the respondent Ombudsman Aniano A. Desierto on September 5, 1997.

Petitioners learned that four (4) Informations dated June 20, 1997 were filed against them on September 16, 1997 with the Sandiganbayan[14] by the Office of the Ombudsman.[15] The cases were docketed as Criminal Case Nos. 24167[16] and 24169[17] for Falsification of Public/Official Document and Criminal Case Nos. 24168[18] and 24170[19] for Malversation of Public Funds.

On October 22, 1996, Saporas filed with the OMB-Visayas another Affidavit-Complaint[20] for Malversation of Public Funds Thru Falsification of Public Documents and violation of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act against herein petitioners and three others, namely, Municipal Treasurer Lolita S. Regana, Municipal Accountant Ofelia F. Boroy and Budget Officer Glafica R. Suico for alleged connivance in including in the payrolls for the construction of the municipal building of Bato, Leyte, names of workers whose services were already terminated, making it appear that they still worked and received salaries even after their termination from service. The affidavits of Andres Soso Pague[21] and Danilo Cortes[22] were attached to the said complaint which was docketed as OMB-VIS-CRIM-96-1173 and OMB-VIS-ADM-96-0474.

Only petitioner Daan filed his counter-affidavit in OMB-VIS-CRIM-96-1173.[23] Petitioners Kuizon and Tolibas as well as the three (3) other respondents therein, namely, Regana, Boroy and Suico filed an Answer/Counter-Affidavits/Manifestation in OMB-VIS-ADM-96-0474[24] as shown in the caption of their pleading. Attached therewith were the affidavits of petitioners' witnesses Felipe Cortez[25], Melquiades Jupista, Alberto Gerongco, Noel Umapas,[26] Jhonny Mariño, Ricardo Garao, Savino Kuizon,[27] Domingo Echevarre,[28] Alfonso Tabale, Alberto Gerongco, Romeo Marino, Vicente Marino[29] and Marciano Bohol.[30]

On July 28, 1997, OMB-Visayas thru Graft Investigation Officer I Venerando Ralph P. Santiago, Jr. issued a Resolution[31] in OMB-VIS-CRIM-96-1173 finding sufficient grounds to hold petitioners for trial for Malversation of Public Funds and Falsification of Public Documents. The Resolution reads in part, thus:

"Joselito Rainero (sic) K. (sic) Daan, the lone respondent who filed his counter-affidavit, claimed that Danilo S. Cortez and Andres S. Pague, personally signed the payrolls. If these were true, then Messrs. Cortez and Pague must have worked during those times indicated in the payrolls when their names appeared. But according to them they worked only for less than one month, and this allegation was not controverted by the respondents - even by the answering respondent. How could they have claimed their salaries without working for these?

The claim of respondent Daan is even belied by the copies of the payrolls attached to the complaint. A scrutiny between the signatures of Danilo S. Cortez and Andres S. Pague in their affidavits and those in the payrolls reveals a striking difference, especially that of Danilo S. Cortez in the payrolls for the months of November and December, 1995 (pp. 22, 24 & 28, record). This dissimilarity of signatures of Messrs. Cortez and Pague in their affidavits and in the payrolls is sufficient to form a well founded belief that the latter documents had been forged and their salaries were maliciously appropriated by the respondents for their personal use. And the Forgery and Malversation could only be committed by the persons who prepared and approved the payrolls, namely: Benedicto E. Kuizon, Joselito Rainero (sic) K. (sic) Daan and Rosalinda T. Tolibas. This is not a farfetched conclusion because respondents Kuizon and Daan certified that the persons whose names appeared in the payrolls had rendered their services, while respondent Tolibas certified that he had paid in cash to the persons whose names appeared on the payrolls, the amount set opposite their names, they having presented themselves, established their identity and affixed their signatures or thumb marks on the space provided therefor.

This Office also finds that the falsification was committed to conceal the malversation, the payrolls having been used by the above-named respondents as supporting documents to liquidate the cash advances they had received for the payment of the salaries of the workers." [32]

The Resolution was approved by the respondent Ombudsman Aniano A. Desierto on September 19, 1997.

Upon verification, the petitioners learned that two (2) Informations[33] both dated July 28, 1997 were filed against them in September, 1997 by the Office of the Ombudsman with the Sandiganbayan.[34] The cases were docketed as Criminal Case Nos. 24195 for Malversation of Public Funds and 24196 for Falsification of Public Documents.

Petitioners filed two (2) separate Motions for Reinvestigation[35] both dated October 4, 1997 in Criminal Case Nos. 24167 to 24170 and Criminal Case Nos. 24195 to 24196. Petitioners likewise filed a Motion for Consolidation of Criminal Case Nos. 24195 and 24196 with the four (4) other cases which was granted by the Sandiganbayan (Third Division) in its Order[36] dated October 30, 1997.

In an Order dated November 24, 1997,[37] the Sandiganbayan (Fourth Division) granted the two (2) Motions for Reinvestigation filed by the petitioners. On June 10, 1999, Special Prosecution Officer II Lemuel M. De Guzman filed a Manifestation[38] with the Sandiganbayan which reads as follows:

"1.

In a Memorandum dated August 19, 1998, a certified true copy of which is hereto attached and made an integral part hereof as Annex "A", the undersigned terminated action on the two (2) Motions for Reconsideration dated October 4, 1997 filed by all the accused as well as the Counter-Affidavit dated February 7, 1998 filed by accused Benedicto E. Kuizon in the above-captioned cases and recommended the exclusion of accused Mayor Benedicto E. Kuizon as party-accused therein and to remand the case to the regular court for the prosecution of accused Joselito Ramiero (sic) K. (sic) Daan and Rosalina T. Tolibas.

2.

On September 8, 1998, the Honorable Special Prosecutor Leonardo P. Tamayo required Special Prosecution Officer Norberto B. Ruiz to take a second look into the undersigned's memorandum. In another Memorandum dated November 16, 1998, a certified true copy of which is hereto attached and made [an] integral part hereof as Annex "B", Prosecutor Ruiz recommended the affirmation of the previous memorandum, which the Honorable Special Prosecutor concurred in.

3.

On May 7, 1999, before acting on the cases, the Honorable Ombudsman referred the records thereof to the Office of the Chief Legal Counsel (OCLC) '(F)or review considering that OSP seeks to reverse the Ombudsman's findings.'

4.

In a Memorandum dated May 17, 1999, a certified true copy of which is hereto attached and made [an] integral part hereof as Annex "C", OCLC recommended the continued prosecution of all the accused 'there being no cogent grounds to warrant a reversal of the finding of probable cause by OMB-Visayas.' This memorandum was approved by the Honorable Ombudsman on June 1, 1999 and, accordingly, the undersigned's memorandum was disapproved with the following marginal note: 'Prosecution of all the accused shall proceed as recommended by OCLC.'"[39]

Thereafter, the Sandiganbayan set the criminal cases for hearing on August 16, 18 to 20, 1999. Petitioner Daan filed with the Sandiganbayan an Urgent Motion for Reinvestigation and to Defer Arraignment[40] dated August 12, 1999. In an Order dated August 16, 1999, the motion was denied by the Sandiganbayan.[41] Petitioners were arraigned on the same date and they all pleaded "not guilty" to the crimes charged.[42] The pre-trial and the trial on the merits were then set upon agreement of the parties.

On September 6, 1999, petitioners filed a petition before the Court of Appeals captioned "Benedicto E. Kuizon, et al. vs. Hon. Aniano A. Desierto, et al." and docketed as CA-G.R. SP No. 54898, assailing the approval by the respondent Aniano A. Desierto of the Memorandum of his Legal Counsel which recommended the continued prosecution of the petitioners. The Court of Appeals issued a temporary restraining order in a Resolution dated September 17, 1999. On even date, petitioners filed a Motion for Suspension of Proceedings and/or Postponement with the Sandiganbayan.

On October 19, 1999, the Court of Appeals promulgated a Resolution[43] which states:

"Per the decision of the Supreme Court in the case of Teresita G. Fabian vs. Aniano A. Desierto, G.R. No. 129742, September 16, 1998, the jurisdiction of this Court extends only to decisions of the Office of the Ombudsman in administrative cases. The cases involved in the instant petition are criminal cases.

WHEREFORE, the petition for certiorari is DENIED DUE COURSE and accordingly DISMISSED, for lack of jurisdiction."[44]

On November 4, 1999, petitioners filed the instant petition based on the following grounds:

A.

The Office of the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction when it deprived herein petitioners of the opportunity to file motions for reconsideration of the resolutions of the Office of Ombudsman-Visayas (Annexes "G" and "M" hereof);[45]

B.

The Honorable Ombudsman Aniano A. Desierto committed grave abuse of discretion amounting to lack of jurisdiction when he approved the Memorandum of Legal Counsel Paul Elmer M. Clemente (Annex "C", Manifestation of Special Prosecution Officer Lemuel De Guzman) despite the fact that no reinvestigation was conducted with respect to herein petitioners Joselito Raniero J. Daan and Rosalina T. Tolibas;[46]

C.

The Honorable Ombudsman Aniano A. Desierto committed grave abuse of discretion amounting to lack of jurisdiction when he approved the Memorandum of Legal Counsel Paul Elmer M. Clemente (Annex "C", Manifestation of Special (sic) Prosecution Lemuel De Guzman to the Sandiganbayan) reinstating the prosecution of the criminal cases as against petitioner Benedicto Kuizon;[47] and

D.

The Honorable Sandiganbayan, with due respect, also committed grave abuse of discretion amounting to lack of jurisdiction in proceeding with the trial of the cases against herein petitioners."[48]

On December 1, 1999, this Court issued a Status Quo Order.

We will first dispose of the procedural issues raised by the parties. Respondent alleges that the petition was filed out of time considering that more than sixty (60) days had elapsed from the time respondent Sandiganbayan's Order dated August 16, 1999 denying petitioners' Motion to Defer Arraignment and petitioner Daan's Urgent Motion for Reinvestigation and to Defer Arraignment was rendered. The erroneous filing by the petitioners of their petition with the Court of Appeals did not allegedly toll the running of the period to file the same with this Court.[49] In reply thereto, petitioners submit that the 60-day period should not be strictly applied to them considering that they originally filed their petition with the Court of Appeals within the prescribed period. They maintain that the Court of Appeals has concurrent jurisdiction with this Court on special civil actions for certiorari under Rule 65 applying the doctrine in *St. Martin Funeral Homes vs. National Labor Relations Commission*. [50]

Petitioners now raise the issue as to which court has jurisdiction over petitions for certiorari under Rule 65 questioning resolutions or orders of the Office of the Ombudsman in criminal cases.[51]

In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto*.^[52] The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases.^[53] In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770^[54] as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by certiorari under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for certiorari under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action.^[55] In fine, we hold that the present petition should have been filed with this Court.

It follows that the instant petition was filed late. A petition for certiorari should be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.^[56] The present petition was filed with this Court only on November 24, 1999 which is more than sixty (60) days from the time petitioners were notified of the adverse resolutions issued by the Office of the Ombudsman. The erroneous filing of the petition with the Court of Appeals did not toll the running of the period.

But even on its merit, the petition cannot succeed. Petitioners primarily invoke denial of due process. They contend that they were not accorded the opportunity to file a Motion for Reconsideration since they were not furnished copies of the adverse Resolutions issued by the OMB-Visayas prior to their approval by the respondent Ombudsman Desierto. The Office of the Ombudsman allegedly railroaded the preliminary investigation of the cases in violation of Sections 6 and 7 of Administrative Order No. 07, as amended by Administrative Order No. 09 which provides that:

"Sec. 6. Notice to parties. - The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.

Sec. 7. Motion for Reconsideration. -

(a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the Deputy Ombudsman as the case may be.

(b) x x x x x x x x."

Section 6 of the aforequoted provision speaks of two (2) approving authorities with respect to resolutions issued by the Office of the Ombudsman. Hence, the phrase "as finally approved by the Ombudsman or by the proper Deputy Ombudsman."

As succinctly discussed in the respondent's Comment, it is the procedure in the Office of the Ombudsman that any Memorandum and/or Resolution of any criminal case pending before its Office which involves high ranking officials under R.A. 8249^[57] should have the approval of the Ombudsman before the same may be released and considered the official action of the Office of the Ombudsman. Since petitioner Kuizon falls under the category of high ranking officials under R. A. 8249 who is charged with conspiracy with the other two (2) petitioners, the Resolutions dated June 20, 1997 and July 28, 1997 need the approval of the Honorable Ombudsman.^[58] This finds support in Sec. 4 (g), Rule II of Administrative Order No. 07 which provides:

"Sec. 4. Procedure. - The preliminary investigations of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112

of the Rules of Court, subject to the following provisions:

x x x x x x x x

(g) Upon the termination of the preliminary investigation, the investigation officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases." (emphasis supplied)

Prescinding from the foregoing discussions, the resolutions which must be furnished to the petitioners refer to those approved by the respondent Ombudsman. Respondent alleges that copies of the challenged Resolutions as approved by the Honorable Ombudsman on different dates[59] were sent to the parties by registered mail on September 12, 1997 and September 24, 1997, respectively.[60] Petitioners deny having received copies of these resolutions.

The issue is not of momentous legal significance for non-compliance with Sections 6 and 7 of Administrative Order No. 7 does not affect the validity of the Informations filed with the Sandiganbayan. In the case of *Pecho vs. Sandiganbayan*,[61] we held:

"Equally devoid of merit is the alleged non-compliance with Sections 6 and 7, Rule II of the Rules of Procedure of the Office of the Ombudsman. The presumption of regularity in the performance of official duty on the part of the investigating Prosecutor was not rebutted. Moreover, the failure to furnish the respondent with a copy of an adverse resolution pursuant to Section 6 which reads:

'SEC. 6. Notice to parties. - The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.'

does not affect the validity of an information thereafter filed even if a copy of the resolution upon which the information is based was not served upon the respondent. The contention that the provision is mandatory in order to allow the respondent to avail of the 15-day period to file a motion for reconsideration or reinvestigation is not persuasive for under Section 7 of the said Rule, such motion may, nevertheless, be filed and acted upon by the Ombudsman if so directed by the court where the information was filed. Finally, just as in the case of lack of or irregularity in the conduct of the preliminary investigation, a party, like the petitioner herein, should have seasonably questioned the procedural error at any time before he entered his plea to the charge. His failure to do so amounted to a waiver or abandonment of what he believed was his right under Sections 6 and 7, Rule II of the Rules of Procedure of the Office of the Ombudsman."[62] (emphasis supplied)

Petitioners further allege that the OMB-Visayas resolved the case in OMB-CRIM-96-1173 solely on the basis of the complaint of Saporas and the affidavits of Cortes and Pague. Petitioners' Answer/ Counter-Affidavits/ Manifestation were allegedly ignored.[63] The contention is belied by the records of the case. Petitioners were all required to file their counter-affidavits but only petitioner Daan complied. Petitioners (except Daan) must perforce suffer the consequences of their inaction.

Petitioners also claim that their Answer/Counter-Affidavits/Manifestation was intended for both the administrative as well as the criminal complaints. The records reveal otherwise. The docket number in the said pleading's caption which states "OMB-VIS-ADM-96-0474" indicates that it is for the administrative case only. The fault lies with the petitioners when they indicated therein an incomplete docket number. It is their duty to see to it that all the entries in their pleading including its caption are accurate. If indeed the petitioners committed an oversight in placing the wrong or incomplete docket number in their pleading, they should have filed the proper motion or manifestation to correct the purported inaccuracies. It is not the obligation of the Office of the Ombudsman to supply or supplant any deficiency found in the litigants' pleadings.

The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense.[64] What the law proscribes is lack of opportunity to be heard.[65] The facts show that preliminary investigations were conducted prior to the filing of the Informations. Petitioners filed their Answer with Special Affirmative Defenses in OMB-VIS-CRIM-95-0646. Petitioner Kuizon filed his Counter-Affidavit together with the attached affidavits of petitioners Tolibas and Daan in OMB-2-96-0049. When petitioners learned that four (4) Informations were filed against them, they filed a Motion for Reinvestigation which the Sandiganbayan granted. It is clear therefore that petitioners were not deprived of due process.

We now come to the issue raised by petitioners Daan and Tolibas that there was no reinvestigation conducted on them. It appears from the records that the Office of the Special Prosecutor who was authorized to conduct the reinvestigation of the cases did not notify petitioners Daan and Tolibas of the proceedings. Only petitioner Kuizon filed his counter-affidavit which was solely considered by Special Prosecutor Lemuel de Guzman in his Memorandum.[66] Be that as it may, we rule against the petitioners. The procedural defect was waived by petitioners when they entered their plea of "not guilty" to the informations. The settled rule is that when an accused pleads to the charge, he is deemed to have waived the right to preliminary investigation and the right to question any irregularity that surrounds it.[67] The invalidity or absence of a preliminary investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair the validity of the information or otherwise render it defective.[68]

The petitioners further asseverate that respondent Desierto gravely abused his discretion when he simply approved the recommendation of the Legal Counsel recommending the filing of informations in court despite the clear absence of reasonable justification.[69] We reject petitioners' claim. What is involved is merely a review and affirmation by the respondent Ombudsman of the findings made by the investigating prosecutor. He need not restate the facts and elaborate on the applicable law. In Cruz, Jr. vs. People,[70] we held:

"It may seem that the ratio decidendi of the Ombudsman's order may be wanting but this is not a case of a total absence of factual and legal bases nor a failure to appreciate the evidence presented. What is actually involved here is merely a review of the conclusion arrived at by the investigating prosecutor as a result of his study and analysis of the complaint, counter-affidavits, and the evidence submitted by the parties during the preliminary investigation. The Ombudsman here is not conducting anew another investigation but is merely determining the propriety and correctness of the recommendation given by the investigating prosecutor, that is, whether probable cause actually exists or not, on the basis of the findings of the latter. Verily, it is discretionary upon the Ombudsman if he will rely mainly on the findings of fact of the investigating prosecutor in making a review of the latter's report and recommendation, as the Ombudsman can very well make his own findings of fact. There is nothing to prevent him from acting one way or the other. x x x"[71]

In case of conflict in the conclusions of the Ombudsman and the special prosecutor, it is self-evident that the former's decision shall prevail since the Office of the Special Prosecutor is under the supervision and control of the Ombudsman.[72] The action of the respondent Ombudsman in disapproving the findings of Special Prosecutor De Guzman and approving that of Legal Counsel Clemente does not per se constitute grave abuse of discretion.

Petitioners Daan and Tolibas also claim that their evidence consisting of the affidavit of Pague will show that there is no probable cause to indict them. The contention lacks merit. We reiterate the rule of long standing that in the absence of grave abuse of discretion, this Court will not interfere with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers.[73] His findings of probable cause are entitled to great respect. The rationale behind the said rule has been aptly discussed in Ocampo, IV vs. Ombudsman,[74] thus:

"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." [75]

Equally unmeritorious is the petitioners' claim that the Sandiganbayan committed grave abuse of discretion in proceeding with the trial of their cases. The Sandiganbayan granted petitioners' motion for reinvestigation. It correctly denied petitioner Daan's subsequent Motion for Reinvestigation and to Defer Arraignment in view of the respondent Ombudsman's final action to proceed with the prosecution of the cases. Jurisdiction has been acquired by the Sandiganbayan over the person of the petitioners as they appeared at the arraignment and pleaded not guilty to the crimes charged.

WHEREFORE, the petition is DISMISSED and the Sandiganbayan is hereby ORDERED to proceed with the trial of the cases at bar with dispatch. Costs against petitioners.

SO ORDERED.

Davide, Jr., C.J., Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Annex "A" of the Petition; Rollo, pp. 28-29.

[2] Annex "A-1", id.; id., pp. 30-31.

[3] Annex "B", id.; id., pp. 32-36.

[4] Annexes "6" and "7" of Annex "B", id.; id., pp. 45-47.

[5] Sabino Kuizon (Annex "2", Rollo, p. 40); Rogelio Gesulga, Emeterio Cortez and Alfonso Tabale (Annex "3", Rollo, p. 41); Noel Umapas, Felipe Cortez, Julianio Jumadas, Alberto Gerongco, Vicente Marino and Ricardo Garao (Annex "4", Rollo, pp. 42-43); Engr. Luzvimindo Ecoben (Annex "5", Rollo, p. 44).

[6] Rollo, pp. 55-58.

[7] Annex "C" of the Petition; Rollo, pp. 63-64.

[8] Annex "D", id.; id., pp. 65-66.

[9] Dated June 17, 1996; Annex "E" of the Petition; Rollo, pp. 67-68.

[10] Filed on November 21, 1996.

[11] Filed on November 27, 1996.

[12] Annex "G" of the Petition; Rollo, pp. 69-75.

[13] Resolution dated June 20, 1997, pp. 5-6; Rollo, pp. 73-74.

[14] Which were raffled to the Fourth Division.

[15] Petition, p. 10; Rollo, p. 13.

[16] Annex "H", id.; id., pp. 76-78.

- [17] Annex "J", id.; id., pp. 82-84.
- [18] Annex "I", id.; id., pp. 79-81.
- [19] Annex "K", id.; id., pp. 85-86.
- [20] Annex "L", id.; id., p. 87.
- [21] Annex "L-1", id.; id., pp. 88.
- [22] Annex "L-3", id.; id., pp. 90.
- [23] Resolution dated July 28, 1997, p. 2; Rollo, p. 112.
- [24] Annex "M" of the Petition; id., pp. 92-95.
- [25] Annex "4" of Answer/Counter-Affidavits/Manifestation; id., p. 100.
- [26] Annex "5", id.; id., p. 101.
- [27] Annex "6", id.; id., p. 102.
- [28] Annex "7", id.; id., p. 103.
- [29] Annex "8", id.; id., p. 104.
- [30] Annex "8-A", id.; id., p. 105.
- [31] Annex "N" of the Petition; id., pp. 111-114.
- [32] Resolution dated July 28, 1997, pp. 2-3; Rollo, pp. 112-113.
- [33] Annexes "O" and "P" of the Petition; id., pp. 115-118.
- [34] Which were raffled to the Third Division.
- [35] Annexes "Q" and "R" of the Petition; Rollo, pp. 120-129.
- [36] Annex "S", id.; id., pp. 133-134.
- [37] Annex "T", id.; id., pp. 135-136.
- [38] Annex "U", id.; id., pp. 137-148; Records, pp. 142-157.
- [39] Id., pp. 137-138; Records, pp. 142-143.
- [40] Annex "V" of the Petition; Rollo, pp. 149-151.
- [41] Annex "W", id.; id., p. 162.
- [42] Records, pp. 184-186.
- [43] Annex "Z" of the Petition; Rollo, pp. 166-167.
- [44] Annex "Z", id., p. 2; id., p. 167.
- [45] Petition, p. 9; id., p. 12.
- [46] Id., p. 12; Rollo, p. 15.
- [47] Id., p. 13; id., p. 16.

[48] Id., p. 20; id., p. 23.

[49] Comment, pp. 8-9; id., pp. 185-186.

[50] 295 SCRA 494 (1998).

[51] Reply, pp. 1-2; Rollo, pp. 206-207.

[52] 295 SCRA 470 (1998).

[53] Supra, note 43.

[54] Ombudsman Act of 1989.

[55] Fabian vs. Desierto, supra, pp. 481-482.

[56] Section 4, Rule 65 of the 1997 Rules of Civil Procedure.

[57] "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as amended, Providing Funds Therefor, and For Other Purposes."

[58] Comment, pp. 9-10; Rollo, pp. 186-187.

[59] September 5, 1997 and September 19, 1997, respectively.

[60] Comment, p. 5; Rollo, p. 182.

[61] 238 SCRA 116 (1994).

[62] Id., pp. 124-125.

[63] Petition, p. 10; Rollo, p. 13.

[64] Salonga vs. Court of Appeals, 269 SCRA 534 (1997).

[65] United Placement International vs. National Labor Relations Commission, 257 SCRA 404 (1996).

[66] Rollo, pp. 140-148.

[67] Gonzales vs. Court of Appeals, 277 SCRA 518 (1997); Pecho vs. Sandiganbayan, supra citing Zacarias vs. Cruz, 30 SCRA 728 (1969); People vs. Baluran, 32 SCRA 71 (1970); People vs. Umbrero, 196 SCRA 821 (1991).

[68] People vs. Narca, 275 SCRA 696 (1997); Socrates vs. Sandiganbayan, 253 SCRA 773 (1996).

[69] Petition, p. 20; Rollo, p. 23.

[70] 233 SCRA 439 (1994).

[71] Id., pp. 450-451.

[72] Section 11, Subparagraph 4 (a) of R.A. 6770.

[73] Alba vs. Nitorreda, 254 SCRA 753 (1996); Young vs. Office of the Ombudsman, 228 SCRA 718 (1993).

[74] 225 SCRA 725 (1993).

[75] Ibid., p. 730.

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