

RONALD K. GO (FORMER MUNICIPAL MAYOR OF THE MUNICIPALITY OF KAPATAGAN), ROLANDO T. LABITAD, PRAXEDES V. DUHAYLUNGSOD, LAUREANO O. DELA CRUZ, (ALL FORMER SANGGUNIANG BAYAN MEMBER...

G.R. NOS. 150329-30. September 11, 2007

Ponente: TINGA, J.

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TINGA, J.:

This is a Petition for Certiorari and Prohibition[1] with a Prayer for Temporary Restraining Order and Writ of Preliminary Injunction under Rule 67 of the 1997 Rules of Civil Procedure filed by petitioners Ronald K. Go (Former Municipal Mayor of the Municipality of Kapatagan), Rolando T. Labitad, Praxedes V. Duhaylungsod, Laureano O. Dela Cruz (all former Sangguniang Bayan members), Jessica R. Mama-chan, and Anecita C. Go (incumbent Sangguniang Bayan members).

In this petition, petitioners assail: (a) the Order[2] dated 15 October 2001 of the First Division of the Sandiganbayan in Criminal Case Nos. 26285-26286 (the criminal cases) denying petitioners' motion to quash; (b) the Resolution[3] dated 11 September 2000 of the Graft Investigation Officer II, approved by Ombudsman Aniano A. Desierto, finding probable cause to indict petitioners for violation of Section 3 (e) and (g) of Republic Act (R.A.) No. 3019, as amended; and (c) the disapproval[4] dated 17 August 2001 by Ombudsman Desierto of the Memorandum dated 26 January 2001 of the Office of the Special Prosecutor (OSP) recommending the dismissal of the criminal cases. In addition, petitioners seek to prohibit the Ombudsman from further prosecuting the criminal cases and the Sandiganbayan from trying the same.[5]

The antecedents follow.

On 9 October 2000, the Office of the Ombudsman filed with the Sandiganbayan two (2) Informations against petitioners, docketed as Criminal Case Nos. 26285-26286, entitled "People of the Philippines v. Ronald K. Go, et al." for violation of Section 3 (e) and (g) of R.A. No. 3019, as amended. Both criminal cases were raffled to the First Division of the Sandiganbayan.[6] Subsequently, on 13 October 2000, the Sandiganbayan ordered the arrest of petitioners.[7]

After posting bail, petitioners filed a motion for re-investigation of the criminal cases.[8] On 21 November 2000, the Sandiganbayan ordered a re-investigation of the case.[9] Pursuant to this directive, the OSP conducted a reinvestigation and recommended the dismissal of the criminal cases.[10] Then, in accordance with standard practice, the Ombudsman instructed the Office of the Chief Legal Counsel (OCLC) of the Office of the Ombudsman to review the OSP memorandum. In a Memorandum[11] dated 18 July 2001, the OCLC recommended the disapproval of the OSP's recommendation. The pertinent portions of the OCLC memorandum read as follows:

However, after perusal of the evidence on record, it is submitted that the allegations in the Motion have not

changed the complexion of the case, such that contrary to the recommendation of the OSP, prosecution of Criminal Cases Nos. 26285 & 26286 for violation of Section 3 (e) and (g), R.A. [No.] 3019 should proceed.

As previously found by this Office, the terms and conditions of the lease contract in favor of Noel Lim are grossly and manifestly disadvantageous to the Municipality of Kapatagan. First, unlike in the contract of lease in favor of Globe Telecom, no escalation clause was provided in the lease contract with accused Mayor's son-in-law. Second, Noel Lim only pays a monthly rental of P112.00 for 56 sq. meters while Globe pays a monthly rental of P5,000.00 for 100 sq. meters. Third, the duration of the contract with Lim is ten (10) years, which is twice longer than the lease contract of Globe which has a period of five (5) years.

It is also observed that the award of the lease contract of Noel Lim was objected to by Sangguniang Bayan member Joselito C. Deloria on the ground that there was a previous applicant and Noel Lim was the son-in-law of accused Mayor (Minutes of the SB session dated May 20, 1988). The apparent conflict-of-interest may be gleaned as Noel Kim is related by affinity to the accused Mayor.

x x x x

As to the third issue raised by the accused, this Office believes that no prejudicial question exists in the present case.

As defined, a prejudicial question is one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined (*Alfredo Ching v. Hon. Court of Appeals*, G.R. 110844, April 27, 2000).

In the instant case, the criminal liability of the accused for violation of Section 3, paragraphs (e) and (g) of R.A. [No.] 3019, may still be shown through the presentation of evidence to the effect that the accused is a public officer; that he entered into a contract or transaction on behalf of the government; and that such contract or transaction is grossly and manifestly disadvantageous to the government.

The act treated in the Anti-Graft and Corrupt Practices Act partakes of the nature of a *malum prohibitum*: it is the commission of that act as defined by law, not the character or effect thereof, that determines whether or not the provision has been violated. This construction would be in consonance with the announced purpose for which R.A. [No.] 3019 was enacted, which is the repression of certain acts of public officers constituting graft or corrupt practices or which may lead thereto (Section 1, R.A. [No.] 3019).

Thus, to require for conviction under the Anti-Graft and Corrupt Practices Act that the validity of the contract or transaction be first proved would be to enervate, if not defeat, the intention of the Act. For what would prevent the officials from entering into those kinds of transactions against which R.A. [No.] 3019 is directed, and then deliberately omit the observance of certain formalities just to provide a convenient leeway to avoid the clutches of the law in the event of discovery and consequent prosecution (*Luciano v. Estrella*, 34 SCRA 769).

WHEREFORE, x x x it is respectfully recommended that accused's motion for reinvestigation/reconsideration be DENIED, and the accused be accordingly prosecuted.[12]

On 17 August 2001, the Ombudsman approved the foregoing OCLC memorandum and, accordingly, disapproved the recommendation of the OSP.[13]

On 5 October 2001, petitioners filed a Motion to Quash[14] dated 2 October 2001 before the Sandiganbayan, principally arguing that there is neither probable cause nor *prima facie* case to warrant and sustain the indictment

and/or prosecution of the accused in the criminal cases.

In an Order[15] dated 15 October 2001, the Sandiganbayan denied the motion to quash in this wise:

The Motion to Quash filed by accused Ronald K. Go for reasons therein stated, namely[,] to obtain a determination of probable cause in the exercise of the very functions of this Court, is denied for lack of merit. While the accused premises his motion on the conflict of views between the Ombudsman and the prosecution at the preliminary investigation, the fact is that the Ombudsman's conclusion is what controls the filing of the Information and the Court itself had already found probable cause. All the matters of fact earlier raised by the accused before this Court and at review by the prosecution are matters of evidence proper for presentation at trial.[16]

Petitioners did not move for a reconsideration of the order and instead filed the instant petition. In this petition, petitioners impute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of: (1) the Sandiganbayan, when it allegedly refused to independently assess the Ombudsman's disapproval of the OSP recommendation; and (2) the Ombudsman, (a) when he disregarded the OSP recommendation for the dismissal of the criminal cases; (b) when he excluded the OSP's statement that no unwarranted benefit, advantage or preference had been given to petitioner Go's son-in-law, Noel Lim; and (c) when he overlooked the presence of a prejudicial question and ignored the political undertones manifested by private respondents' filing of similarly baseless complaints.[17]

In his Comment[18] dated 1 June 2002, the Ombudsman, through the OSP, asserts that the Sandiganbayan in its assailed order declared in no uncertain terms that it found probable cause against petitioners. He also avers that his decision to proceed with the criminal cases, which the Sandiganbayan sustained, was not arbitrary as it was based on the OCLC recommendation, which detail the instant petition conveniently failed to mention. And even if there was no such recommendation from the OCLC, the Ombudsman states that he cannot be accused of acting with grave abuse of discretion as the OSP is merely a subordinate office of the Office of the Ombudsman, with the latter having the powers of supervision and control over the former. Moreover, the Ombudsman insists that there is evidence to show that the lease contract with Noel Lim was grossly disadvantageous to the Municipality of Kapatagan. Finally, on the issue of existence of a prejudicial question, the Ombudsman asseverates that petitioners failed to show that the civil case for annulment of Resolution No. 98-02-055,[19] which authorized petitioner Go to enter into a contract of lease[20] with his son-in-law Noel Lim, involved an issue similar to or intimately related to the issue raised in the criminal cases.[21]

In a Resolution[22] dated 21 April 2003, the Court required both parties to file their respective memoranda. The Ombudsman submitted his Memorandum dated 28 May 2003[23] while petitioners complied likewise with their Memorandum dated 17 June 2003.[24]

On 14 January 2004, the Sandiganbayan promulgated a resolution granting the demurrer of evidence filed by petitioners. Accordingly, it dismissed the criminal cases against petitioners.[25] The Sandiganbayan ruled in part as follows:

This Court finds that the evidence of the prosecution for violation of Section 3(e) of R[.]A[.] [No.] 3019 is not sufficient to overcome the presumption of innocence in favor of herein accused.

x x x x

It bears to stress that the information for violation of Section 3(e) of R[.]A[.] [No.] 3019 filed by the prosecution against herein accused even failed to allege an essential element thereof, i.e., that the unwarranted benefits allegedly given to Noel Lim resulted in undue injury to the government. Logically, without undue injury or damage to any party, the lease contract in favor of Noel Lim cannot be said to be irregularly executed.

x x x x

Neither was the prosecution able to prove the fourth and fifth elements of Section 3(e) of R[.]A[.] [No.] 3019, i.e., that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence in giving unwarranted benefits or advantage to Noel Lim. Again, the instant information insufficiently made out an accusation of violation of Section 3(e) of R[.]A[.] [No.] 3019 as it did not even allege that the accused were motivated by manifest partiality, evident bad faith or gross inexcusable negligence in approving the contract in favor of Noel Lim. In the absence of such imputation, this Court cannot presume, solely from the accused's act of approving Resolution No. 98-02-055 which granted the lease contract in favor of Noel Lim, that the accused were so actuated. Evident bad faith connotes a manifest, deliberate intent on the part of the accused to do wrong or cause damage. Bad faith is not presumed and he who alleges the same has the onus of proving it. In the instant cases, the prosecution, relying solely on its presentation of the lease contracts of Noel Lim and Globe Telecom as proof that the accused gave unwarranted benefits to Noel Lim, failed to establish with convincing evidence that the accused were actuated by a dishonest purpose or ill will partaking of a fraud or furtive design or ulterior purpose to do wrong and cause damage.

x x x x

Anent the charge for violation of Section 3(g) of R[.]A[.] [No.] 3019, the elements thereof are the following: (1) the offender is a public officer; (2) he entered into a contract or transaction in behalf of the government; and (3) the contract or transaction is grossly and manifestly disadvantageous to the government. And, as previously discussed herein, there is no dispute as to the presence of the first and second elements of Section 3(g) of R[.]A[.] [No.] 3019. The only issue left to be resolved then is whether the evidence of the prosecution sufficiently established that the contract or transaction is grossly and manifestly disadvantageous to the government.

x x x x

x x x Hence, the accused cannot be blamed for the higher rental rate of Globe Telecom considering that it was the latter that offered and fixed a higher rate per square meter for a chosen and specified lot for its particular use, which is not among the commercial lots priced at P1.50 per square meter, and to the exclusion of other telecommunication networks.

x x x x

WHEREFORE, in view of the foregoing, this Court is constrained to GRANT, as it hereby GRANTS, the Demurrer to Evidence filed by herein accused as the evidence of the prosecution failed to sufficiently establish the essential elements of the offenses charged and to overcome the presumption of innocence in favor of the accused. Accordingly, the cases against the accused are hereby DISMISSED.

The cash bond posted by accused Laureano O. Dela Cruz is hereby ordered released to him upon presentation of the original receipt evidencing payment thereof and subject to the usual accounting and auditing procedures. As to those accused who posted bail bonds, the same are hereby ordered cancelled.

The hold departure order dated October 13, 2000 against all herein accused is hereby recalled or revoked and declared functus officio.

SO ORDERED.[26]

Evidently, in view of the foregoing resolution of the Sandiganbayan in the criminal cases, the present petition has become moot and academic. An issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[27]

The prayer in the instant petition is for the nullification of: (a) the Sandiganbayan's Order dated 15 October 2001

denying petitioners' motion to quash; (b) the Resolution dated 11 September 2000, approved by Ombudsman Aniano A. Desierto, finding probable cause to prosecute the criminal cases against petitioners; and (c) the disapproval^[28] dated 17 August 2001 by Ombudsman Desierto of the OSP memorandum recommending the dismissal of the criminal cases. In addition, petitioners pray that the Sandiganbayan be enjoined from further hearing the criminal cases.

With the dismissal of the criminal cases by the Sandiganbayan, the Court's opinion on whether the same should proceed and whether the Sandiganbayan should try the cases will serve no useful purpose other than as a theoretical exercise. Be it noted that the Sandiganbayan resolution is immediately final and executory since the rule against double jeopardy does not brook any appeal from an order dismissing the case against a criminal defendant.^[29]

Courts of justice constituted to pass upon substantial rights will not consider questions where no actual interests are involved. Courts generally decline jurisdiction over moot cases because there is no substantial relief to which petitioner will be entitled and which WILL anyway be negated by the dismissal of the petition. This Court, therefore, ought to abstain from expressing its opinion in the case at bar where no legal relief is needed or called for.^[30]

WHEREFORE, the Court DISMISSES the instant petition for having become moot and academic.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 6-29; Dated 29 October 2001.

[2] Sandiganbayan Records, Vol. I, pp. 279-280.

[3] Rollo, pp. 32-38.

[4] Id. at 43.

[5] Id. at 7.

[6] Id. at 206.

[7] Sandiganbayan Records, Vol. I, pp. 36-37.

[8] Id. at 43-51; Dated 31 October 2000; Id. at 72-80; Dated 31 October 2000.

[9] Id. at 103-104.

[10] Rollo, pp. 39-42; In a Memorandum dated 26 January 2001.

[11] Sandiganbayan Records, Vol. 1, pp. 245-247.

[12] Rollo, pp. 207-209.

[13] Sandiganbayan Records, Vol. 1, pp. 247.

[14] Rollo, pp. 46-59.

[15] Supra note 2.

[16] Id. at 279.

[17] Rollo, pp.16-17, 230-231.

[18] Id. at 129-145.

[19] Sandiganbayan Records, Vol. I, p. 61.

[20] Id. at 62-63.

[21] Rollo, pp. 211-219.

[22] Id. at 177.

[23] Id. at 204-221.

[24] Id. at 224-246.

[25] Sandiganbayan Records, Vol. II, pp. 289-301; Penned by Associate Justice Diosdado M. Peralta with the concurrence of Associate Justices Teresita J. Leonardo-De Castro and Roland B. Jurado.

[26] Sandiganbayan Records, Vol. II, pp. 295-300.

[27] Vda. de Dabao v. Court of Appeals, G.R. No. 116526, 23 March 2004, 426 SCRA 91, 97; Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr., G.R. No. 132795, 10 March 2004, 425 SCRA 129, 134.

[28] Rollo, p. 43.

[29] People v. Sandiganbayan, G.R. Nos. 137707-11, 17 December 2004, 447 SCRA 291, 307-308.

[30] Desaville, Jr. v. Court of Appeals, G.R. No. 128310, 13 August 2004, 436 SCRA 387, 391-392; Korea Exchange Bank v. Gonzales, G.R. No. 139460, 31 March 2006, 486 SCRA 166, 176.

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