

RODOLFO SORIA AND EDIMAR BISTA, PETITIONERS, VS. HON. ANIANO DESIERTO IN HIS CAPACITY AS HEAD OF THE OFFICE OF THE OMBUDSMAN, HON. ORLANDO C. CASIMIRO IN HIS CAPACITY AS DEPUTY ...

G.R. NOS. 153524-25. January 31, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Yet again, we are tasked to substitute our judgment for that of the Office of the Ombudsman in its finding of lack of probable cause made during preliminary investigation. And, yet again, we reaffirm the time-honored practice of non-interference in the conduct of preliminary investigations by our prosecutory bodies absent a showing of grave abuse of discretion on their part.

Petitioners, thru a special civil action for certiorari,[1] contend precisely that the public respondents herein – officers of the Office of the Ombudsman – gravely abused their discretion in dismissing the complaint for violation of Article 125 of the Revised Penal Code (Delay in the delivery of detained persons) against private respondents herein, members of the Philippine National Police stationed at the Municipality of Santa, Ilocos Sur.

From the respective pleadings[2] of the parties, the following facts appear to be indubitable:

- On or about 8:30 in the evening of 13 May 2001 (a Sunday and the day before the 14 May 2001 Elections[3]), petitioners were arrested without a warrant by respondents police officers for alleged illegal possession of firearms and ammunition;
- Petitioner Soria was arrested for alleged illegal possession of .38 cal. revolver (a crime which carries with it the penalty of prision correccional in its maximum period) and for violation of Article 261 par. (f) of the Omnibus Election Code in relation to the Commission on Election Resolution No. 3328 (which carries the penalty of imprisonment of not less than one [1] year but not more than six [6] years);
- Petitioner Bista was arrested for alleged illegal possession of sub-machine pistol UZI, cal. 9mm and a .22 cal. revolver with ammunition;
- Immediately after their arrest, petitioners were detained at the Santa, Ilocos Sur, Police Station. It was at the Santa Police Station that petitioner Bista was identified by one of the police officers to have a standing warrant of arrest for violation of Batas Pambansa Blg. 6 issued by the Municipal Trial Court (MTC) of Vigan, Ilocos Sur, docketed as Criminal Case No. 12272;
- The next day, at about 4:30 p.m. of 14 May 2001 (Monday and election day), petitioners were brought to the residence of Provincial Prosecutor Jessica Vilorio in San Juan, Ilocos Sur, before whom a “Joint-Affidavit” against them was subscribed and sworn to by the arresting officers. From there, the arresting officers brought the petitioners to the Provincial Prosecutor’s Office in Vigan, Ilocos Sur, and there at about 6:00 p.m. the “Joint-Affidavit” was filed and docketed;

- At about 6:30 in the evening of the same day, 14 May 2001, petitioner Soria was released upon the order of Prosecutor Viloria to undergo the requisite preliminary investigation, while petitioner Bista was brought back and continued to be detained at the Santa Police Station. From the time of petitioner Soria's detention up to the time of his release, twenty-two (22) hours had already elapsed;
- On 15 May 2001, at around 2:00 in the afternoon, petitioner Bista was brought before the MTC of Vigan, Ilocos Sur, where the case for violation of Batas Pambansa Blg. 6 was pending. Petitioner Bista posted bail and an Order of Temporary Release was issued thereafter;
- At this point in time, no order of release was issued in connection with petitioner Bista's arrest for alleged illegal possession of firearms. At 4:30 in the afternoon of the same day (15 May 2001), an information for Illegal Possession of Firearms and Ammunition, docketed as Criminal Case No. 4413-S, was filed against petitioner Bista with the 4th Municipal Circuit Trial Court of Narvacan, Ilocos Sur. At 5:00 in the afternoon, informations for Illegal Possession of Firearms and Ammunition and violation of Article 261 par. (f) of the Omnibus Election Code in relation to COMELEC Resolution No. 3328, docketed as Criminal Cases No. 2269-N and No. 2268-N, respectively, were filed in the Regional Trial Court at Narvacan, Ilocos Sur;
- On 08 June 2001, petitioner Bista was released upon filing of bail bonds in Criminal Cases No. 2268-N and No. 4413-S. He was detained for 26 days.
- On 15 August 2001, petitioners filed with the Office of the Ombudsman for Military Affairs a complaint-affidavit for violation of Art. 125 of the Revised Penal Code against herein private respondents.
- After considering the parties' respective submissions, the Office of the Ombudsman rendered the first assailed Joint Resolution dated 31 January 2002 dismissing the complaint for violation of Art. 125 of the Revised Penal Code for lack of merit; and
- On 04 March 2002, petitioners then filed their motion for reconsideration which was denied for lack of merit in the second assailed Resolution dated 25 March 2002.

Article 125 of the Revised Penal Code states:

Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

It is not under dispute that the alleged crimes for which petitioner Soria was arrested without warrant are punishable by correctional penalties or their equivalent, thus, criminal complaints or information should be filed with the proper judicial authorities within 18 hours of his arrest. Neither is it in dispute that the alleged crimes for which petitioner Bista was arrested are punishable by afflictive or capital penalties, or their equivalent, thus, he could only be detained for 36 hours without criminal complaints or information having been filed with the proper judicial authorities.

The sole bone of contention revolves around the proper application of the 12-18-36 periods. With respect specifically to the detention of petitioner Soria which lasted for 22 hours, it is alleged that public respondents gravely erred in construing Article 125[3] as excluding Sundays, holidays and election days in the computation of the periods prescribed within which public officers should deliver arrested persons to the proper judicial

authorities as the law never makes such exception. Statutory construction has it that if a statute is clear and unequivocal, it must be given its literal meaning and applied without any attempts at interpretation.[4] Public respondents, on the other hand, relied on the cases of *Medina v. Orozco, Jr.*,^[5] and *Sayo v. Chief of Police of Manila*^[6] and on commentaries^[7] of jurists to bolster their position that Sundays, holidays and election days are excluded in the computation of the periods provided in Article 125,^[8] hence, the arresting officers delivered petitioners well within the allowable time.

In addition to the foregoing arguments and with respect specifically to petitioner Bista, petitioners maintain that the filing of the information in court against petitioner Bista did not justify his continuous detention. The information was filed at 4:30 p.m. of 15 May 2001 but the orders for his release were issued by the Regional Trial Court and Municipal Trial Court of Narvacan, Ilocos Sur, only on 08 June 2001. They argued that based on law and jurisprudence, if no charge is filed by the prosecutor within the period fixed by law, the arresting officer must release the detainee lest he be charged with violation of Article 125.^[9] Public respondents countered that the duty of the arresting officers ended upon the filing of the informations with the proper judicial authorities following the rulings in *Agbay v. Deputy Ombudsman for the Military*,^[10] and *People v. Acosta*.^[11]

From a study of the opposing views advanced by the parties, it is evident that public respondents did not abuse their discretion in dismissing for lack of probable cause the complaint against private respondents.

Grave abuse of discretion is such capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^[12]

No grave abuse of discretion, as defined, can be attributed to herein public respondents. Their disposition of petitioners' complaint for violation of Article 125 of the Revised Penal Code cannot be said to have been conjured out of thin air as it was properly backed up by law and jurisprudence. Public respondents ratiocinated thus:

As aptly pointed out by the respondents insofar as the complaint of Rodolfo Soria is concerned, based on applicable laws and jurisprudence, an election day or a special holiday, should not be included in the computation of the period prescribed by law for the filing of complaint/information in courts in cases of warrantless arrests, it being a "no-office day." (*Medina vs. Orozco*, 125 Phil. 313.) In the instant case, while it appears that the complaints against Soria for Illegal Possession of Firearm and Violation of COMELEC Resolution No. 3328 were filed with the Regional Trial Court and Municipal Trial Court of Narvacan, Ilocos Sur, only on May 15, 2001^[1] at 4:30 p.m., he had already been released the day before or on May 14, 2001 at about 6:30 p.m. by the respondents, as directed by Prov. Prosecutor Jessica [Viloria]. Hence, there could be no arbitrary detention or violation of Article 125 of the Revised Penal Code to speak of.^[13]

Indeed, we did hold in *Medina v. Orozco, Jr.*,^[14] that —

. . . The arresting officer's duty under the law was either to deliver him to the proper judicial authorities within 18 hours, or thereafter release him. The fact however is that he was not released. From the time of petitioner's arrest at 12:00 o'clock p.m. on November 7 to 3:40 p.m. on November 10 when the information against him for murder actually was in court, over 75 hours have elapsed.

But, stock should be taken of the fact that November 7 was a Sunday; November 8 was declared an official holiday; and November 9 (election day) was also an official holiday. In these three no-office days, it was not an easy matter for a fiscal to look for his clerk and stenographer, draft the information and search for the Judge to have him act thereon, and get the clerk of court to open the courthouse, docket the case and have the order of

commitment prepared. And then, where to locate and the uncertainty of locating those officers and employees could very well compound the fiscal's difficulties. These are considerations sufficient enough to deter us from declaring that Arthur Medina was arbitrarily detained. For, he was brought to court on the very first office day following arrest.

And, in *Sayo v. Chief of Police of Manila*[15] --

. . . Of course, for the purpose of determining the criminal liability of an officer detaining a person for more than six hours prescribed by the Revised Penal Code, the means of communication as well as the hour of arrest and other circumstances, such as the time of surrender and the material possibility for the fiscal to make the investigation and file in time the necessary information, must be taken into consideration.

As to the issue concerning the duty of the arresting officer after the information has already been filed in Court, public respondents acted well within their discretion in ruling thus:

In the same vein, the complaint of Edimar Bista against the respondents for Violation of Article 125, will not prosper because the running of the thirty-six (36)-hour period prescribed by law for the filing of the complaint against him from the time of his arrest was tolled by one day (election day). Moreover, he has a standing warrant of arrest for Violation of B.P. Blg. 6 and it was only on May 15, 2001, at about 2:00 p.m. that he was able to post bail and secure an Order of Release. Obviously, however, he could only be released if he has no other pending criminal case requiring his continuous detention.

The criminal Informations against Bista for Violations of Article 125, RPC and COMELEC Resolution No. 3328 were filed with the Regional Trial Court and Municipal Trial Court of Narvacan, Ilocos Sur, on May 15, 2001 (Annexes "G" and "I", Complaint-Affidavit of Edimar Bista) but he was released from detention only on June 8, 2001, on orders of the RTC and MTC of Narvacan, Ilocos Sur (Annexes "J" and "K", Complaint-Affidavit). Was there a delay in the delivery of detained person to the proper judicial authorities under the circumstances? The answer is in the negative. The complaints against him was (sic) seasonably filed in the court of justice within the thirty-six (36)-hour period prescribed by law as discussed above. The duty of the detaining officers is deemed complied with upon the filing of the complaints. Further action, like issuance of a Release Order, then rests upon the judicial authority (*People v. Acosta* [CA] 54 O.G. 4739).[16]

The above disposition is in keeping with *Agbay v. Deputy Ombudsman for the Military*,[17] wherein we ordained that --

. . . Furthermore, upon the filing of the complaint with the Municipal Trial Court, the intent behind Art. 125 is satisfied considering that by such act, the detained person is informed of the crime imputed against him and, upon his application with the court, he may be released on bail. Petitioner himself acknowledged this power of the MCTC to order his release when he applied for and was granted his release upon posting bail. Thus, the very purpose underlying Article 125 has been duly served with the filing of the complaint with the MCTC. We agree with the position of the Ombudsman that such filing of the complaint with the MCTC interrupted the period prescribed in said Article.

All things considered, there being no grave abuse of discretion, we have no choice but to defer to the Office of the Ombudsman's determination that the facts on hand do not make out a case for violation of Article 125 of the Revised Penal Code.

As we have underscored in numerous decisions --

We have consistently refrained from interfering with the investigatory and prosecutorial powers of the Ombudsman absent any compelling reason. This policy is based on constitutional, statutory and practical considerations. We are mindful that the Constitution and RA 6770 endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or

judicial intervention, in order to insulate it from outside pressure and improper influence. Moreover, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal. Hence, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless clothed with grave abuse of discretion. 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, the courts will be swamped with cases if they will have to review the exercise of discretion on the part of fiscals or prosecuting attorneys each time the latter decide to file an information in court or dismiss a complaint by a private complainant.[18] (Emphasis supplied)

WHEREFORE, premises considered, the petition dated 27 May 2002 is hereby **DISMISSED** for lack of merit. The Joint Resolution dated 31 January 2002 and the Order dated 25 March 2002 of the Office of the Ombudsman are hereby **AFFIRMED**. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 3-22.

[2] Petitioners' "PETITION FOR CERTIORARI (UNDER RULE 65 OF THE RULES OF COURT)" dated 27 May 2002, Rollo, pp. 3-22; Public Respondents' "COMMENT" dated 09 October 2002, Rollo, pp. 105-128; Petitioners' reply (To: Respondents' Comment dated 09 October 2002), Rollo, pp. 130-137; Petitioners' "MEMORANDUM" dated 25 March 2003, Rollo, pp. 140-164; Public Respondents' "MEMORANDUM" dated 01 April 2003, Rollo, pp. 168-189.

[3] Erroneously designated by the public respondents as "Presidential Elections."

[3] Revised Penal Code.

[4] Rollo, p. 131.

[5] No. L-26723, 22 December 1966, 18 SCRA 1168, 1170.

[6] No. L-2128, 12 May 1948, 80 Phil. 859.

[7] (1) Aquino, The Revised Penal Code, 1997 ed., p. 74.

(2) Boado, Notes and Cases on the Revised Penal Code, 2001 ed., p. 318 (Rollo, pp. 117 & 179).

[8] Revised Penal Code.

[9] Id.

[10] G.R. No. 134503, 02 July 1999, 309 SCRA 726 (Rollo, pp. 123-124).

[11] C.A. 54 Official Gazette 4739 (Rollo, pp. 122-123).

[12] Duero v. Court of Appeals, G.R. No. 131282, 04 January 2002, 373 SCRA 11, 17; Perez v. Office of the Ombudsman, G.R. No. 131445, 27 May 2004.

[13] Rollo, pp. 25-26

[14] Supra, note 5.

[15] Supra, note 6 at 870.

[16] Rollo, p. 26.

[17] Supra, note 10 at 739-740.

[18] Perez v. Office of the Ombudsman, supra, note 12, citing Presidential Commission on Good Government v. Desierto, G.R. No. 140232, 19 January 2001, 349 SCRA 767; and Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, G.R. No. 136192, 14 August 2001, 362 SCRA 730.

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