

FELIX L. SARIGUMBA, SHERLITA R. GALLEGO, AND EMMA C. DAGONDON, PETITIONERS, VS. THE SANDIGANBAYAN, FIRST DIVISION, RESPONDENT.

G.R. NOS. 154239-41. February 16, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 of the Rules of Court for the nullification of the March 20, 2002 Resolution[1] of the Sandiganbayan denying the motion to dismiss Criminal Cases Nos. 24505-07 as well as the June 13, 2002 Resolution which denied the motion for reconsideration thereof.

The Antecedents

Sometime in 1994, in a meeting held at the residence of Atty. Bernadette P. Encinareal, then Congressman Hilarion J. Ramiro, Jr. promised to give P10,000.00 to each of the 33 barangay captains of the Municipality of Tudela, Misamis Occidental. The Congressman assured the barangay captains that the amount was his personal gift to each of them.

It turned out that the amount provided by Congressman Ramiro came from his Countrywide Development Fund (CDF) which was remitted to the Municipal Treasurer of Tudela per Allotment Advice No. F2-6781-94-315 in the amount of P220,000.00 under Check No. 497664; and Allotment Advice No. F2-7784-94-415 in the amount of P110,000.00 under Check No. 497679. Forthwith, petitioner Mayor Felix Sarigumba secured a cash advance chargeable against the CDF of Congressman Ramiro and submitted to the Municipal Treasurer Voucher Nos. 9411-422 and 9412-445 in the total amount of P330,000.00. The particulars contained in the said vouchers read: “to cash advance the CDF for payment of snacks during assembly meeting for peace and order meeting of 33 barangays of Tudela, Misamis Occidental.”

Petitioner Sarigumba, thereafter, gave P9,500.00 to each of the barangay captains through two members of his staff, Loreta Salinasal and Crosita Singidas. As per his agreement with the barangay captains, each of the latter was to give P500.00 to the Association of Barangay Captains (ABC) which would serve as contributions for projects. The barangay captains thought that the amount given to each of them was a “cash gift” or “pahalipay” from Congressman Ramiro.[2]

Petitioner Sarigumba later liquidated his cash advance of P220,000.00 via Liquidation Voucher No. 9412-478, stating therein that the said amount was used as follows:

- (1) “For the liquidation of cash advance amounting TWO HUNDRED TWENTY THOUSAND PESOS, to furnish to various barangays of Tudela under check #497664 for meals and snacks during peace and order meeting as per supporting papers hereto attached in the total amount of P220,000....”[3]

The petitioner-mayor also liquidated his cash advance of P110,000.00 via Voucher No. 9412-488, in which he stated that he used the amount –

(2) “For the liquidation of cash advance under check #497679 on V #9412-445 to cover up expenses on peace and order meeting to various barangays of Tudela, Misamis Occidental from CDF Fund under AA #F2-6781-94-315 in the total amount P110,000. ...”[4]

He then supported his liquidation vouchers with attendance sheets bearing the signatures of those who purportedly attended the assembly meetings. Petitioner Emma C. Dagondon approved Voucher No. 9412-478, while petitioner Sherlita R. Gallego approved Voucher No. 9412-488.

Subsequently, Flaviano Zaide, William Gumisad, Edilberto Quinalagan, Maria Pacaro and Virginia Tampoog, filed a complaint before the Ombudsman against the petitioners Sarigumba, Gallego and Dagondon, alleging, inter alia –

That we strongly deny that there had been an assembly or meeting where free meals and snacks during a peace and order meeting were given to the barangay people in the year 1994 and 1995 except during the SOT at Barangays Napurog, Duangican and Maribojoc but we knew for a fact that the said snacks were not given from the above vouchers but the money out of the above disbursements were given as cash gifts to the Barangay Captains of Tudela, Misamis Occidental. In support to the liquidation of the withdrawal of the aforesaid amount were the signatures of the barangay people not for the purpose as alleged in those vouchers but obtained in different manners like attendance during the monthly barangay assembly, or signatures for the retention of the Tudela, Public High School at the Tudela Central School while other signatures were obtained to reimburse payment of a hand-set radio (two-way) procured for the different barangays by the Mayor;

That signatures of the undersigned and numerous signatures of barangay folks including children were forged or obtained under other pretense by the aforesaid mayor in support of the vouchers thereby cheating the people of their money.[5]

The Ombudsman requested the Commission on Audit (COA) to conduct an investigation of the Peace and Order Campaign Funds for 1994. The Auditor directed each of the barangay captains who received the P9,500.00 from petitioner Sarigumba to remit the said amounts to their respective barangay treasurers and to submit the receipts the latter would issue thereon.

When the barangay captains received the letter of the COA, they were surprised. They then secured receipts from their respective barangay treasurers which indicated that they had returned the amount they received from petitioner Sarigumba although no such amounts had yet been received by the former. The barangay captains were thereafter accorded a chance to re-liquidate the amounts they received from the petitioner-mayor and they did so.

In their Memorandum Report to the Provincial Auditor dated December 3, 1995, the auditors declared that, with the barangay captains’ submission of official receipts, there had been, in effect, no loss of government funds.

When the Sandiganbayan received a copy of the COA Report, its Committee on Legal Matters and Committee on Finance, Budget and Appropriations, conducted an investigation, which yielded the following findings as per Committee Report No. 96-13:

- That the amount released to each Barangay Captain was only P9,500.00 and others P9,400.00 per affidavit submitted by Loreta Salinasal, the Private Secretary to the Mayor.

- That sometime in 1994 Congressman Hilarion J. Ramiro, [Jr.] assured the Barangay Captains of a personal cash gift of P10,000.00 for each Barangay from his own pocket, but it was never meant that the amount would come from Congressman Ramiro’s CDF for peace and order campaign in the Municipality of Tudela. All Barangay Captains received the amount as promised by Congressman Ramiro and disbursed it for their personal benefit. But later on re-submitted liquidation papers for Peace and Order Campaigns in their respective barangays.

- That the barangay captains changed their positions and denied, as shown in their uniform testimonies, that the amount was indeed for Peace and Order Campaign and not a personal cash gift from Congressman Hilarion J. Ramiro, Jr. The illegal act was already consummated.

- That COA initiated the investigation of the release of said amounts only after the directive of the Ombudsman arrived. Directing all Barangay Captains to return the amount of P10,000.00 and to produce official receipts acknowledging that said amount had been received by the Barangay Treasurers even if no actual cash was turned over. It appears also that the Municipal Treasurer issued official receipts without actual cash involved to make it appear that said amounts were returned by the barangay captains. The barangay then re-submitted liquidations to justify the earlier liquidations where the forged signatures of barangay constituents were first presented to COA as liquidation of said vouchers. The amounts released were already disbursed. The liquidation papers for P220,000.00 and P110,000.00 were already submitted to COA as final liquidation. For all intent and purposes the act was already consummated. The second liquidation would appear to have been fabricated and had been compromised to legalize the unlawful act.

After the requisite preliminary investigation, the Ombudsman issued a resolution finding probable cause for malversation against petitioner Sarigumba; two counts of falsification of public documents under Article 171, paragraph 4 of the Revised Penal Code also against the petitioner-mayor; and one count of falsification of public documents against petitioners Dagondon and Gallego.

Accordingly, the Ombudsman filed an Information for malversation under Article 217 of the Revised Penal Code against petitioner Sarigumba with the Sandiganbayan. The accusatory portion of the Information docketed as Criminal Case No. 24505 reads:

That sometime in November and December 1994 or sometime prior or subsequent thereto in the Municipality of Tudela, Province of Misamis Occidental, and within the jurisdiction of this Honorable Court, above-named accused FELIX L. SARIGUMBA, a high-ranking public officer, being then the Municipal Mayor of Tudela, while in the performance of his official functions, committing the offense in relation to his office, taking advantage of his official positions, did then and there, willfully, unlawfully and feloniously take, embezzle and appropriate unto himself and/or thru abandonment, or gross negligence allowed other parties to misappropriate, embezzle and/or use to some other purpose the total sum of P330,000.00 he had earlier obtained as cash advance from the Municipality intended for the Peace and Order Campaign of the different Barangays of the same municipality, thereby constituting him a special disbursing officer and for which he is accountable, to the damaged (sic) and prejudice of the government and of public interest.

CONTRARY TO LAW.[6]

Another Information for falsification of public document under Article 171 of the Revised Penal Code against petitioners Sarigumba and Gallego was filed with the Sandiganbayan. The accusatory portion of the Information, docketed as Criminal Case No. 24506 reads:

That sometime in December 1994, or sometime prior or subsequent thereto in the Municipality of Tudela, Province of Misamis Occidental, and within the jurisdiction of this Honorable Court, above-named accused FELIX L. SARIGUMBA, a high-ranking public officer, being then the Municipal Mayor of Tudela, and SHERLITA R. GALLEGO, a low-ranking public officer, being then the Municipal Accountant, both accused, while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official positions, in order to cover up the misuse of public funds advanced by respondent FELIX L. SARIGUMBA intended for the Peace and Order Campaign of the 33 Barangays of the same Municipality, did then and there, willfully, unlawfully and feloniously falsify Liquidation Voucher No. 9412-488 amounting to P110,000.00 by making it appear it was for expenses during the peace and order

meeting when, in truth and in fact, both accused knew well that there were no such peace and order meetings being held; furthermore, fabricated attendance sheets and list of signatures were used as supporting documents causing it to appear that persons attended such peace and order meetings when, [in] truth and in fact, they did not for there was no such meetings being held, to the damaged (sic) and prejudice of the government and of public interest.

CONTRARY TO LAW.[7]

A third Information was filed with the graft court against petitioners Sarigumba and Dagondon for falsification of a public document under Article 171 of the Revised Penal Code. The inculpatory portion of the Information, docketed as Criminal Case No. 24507, reads:

That sometime in December 1994 or sometime prior or subsequent thereto in the Municipality of Tudela, Province of Misamis Occidental, and within the jurisdiction of this Honorable Court, above-named accused FELIX L. SARIGUMBA, a high-ranking public officer, being then the Municipal Mayor of Tudela, and EMMA C. DAGONDON, a low-ranking public officer, being then the Municipal Accountant-Designate, both accused, while in the performance of their official functions committing the offense in relation to their office, were taking advantage of their official positions, in order to cover up the misuse of public funds advanced by respondent FELIX L. SARIGUMBA intended for the Peace and Order Campaign of the 33 Barangays of the same Municipality, did then and there, willfully, unlawfully and feloniously falsify Liquidation Voucher No. 9412-478 amounting to P220,000.00 by making it appear it was for meal and snacks during the peace and order meeting when, in truth and in fact, both accused knew well there were no such peace and order meetings being held and much more on the serving of meals and snacks; furthermore, fabricated attendance sheets and list of signatures were used as support documents causing it to appear that persons attended such peace and order meetings when, [in] truth and in fact, they did not for there was no such meetings being held, to the damaged (sic) and prejudice of the government and of public interest.

CONTRARY TO LAW.[8]

During the hearing of March 30, 1998, the Sandiganbayan expressed anxiety over the number of crimes committed, and issued a Resolution worded as follows:

This morning, this court expressed its anxieties over the correctness of the accusation herein against the Mayor and separately against the municipal accountant for the alleged malversation of sum of money and acts of falsification involving the conversion of portions of the total amount by the accused. It would appear that, considering that there are two amounts, two (2) offenses may have been committed; furthermore, the prosecution can clarify whether or not the alleged falsification took place after the completion of the malversation or was part of the total plan in order to effect the malversation without the same coming to the attention of the examining authorities. Answers to these questions might result in the re-arrangement of the statement of accusation against the accused charged for separate offenses.[9]

This prompted the Special Prosecutor to ask for a period of fifteen (15) days within which to respond to the misgivings of the graft court. In the meantime, the trial court deferred the issuance of any warrants of arrest against the petitioners.

During the hearing of April 29, 1998, the trial court issued an Order, quoted infra:

This morning, the Court expressed its uncertainty over the propriety of proceeding with these cases as they stand at this time considering that, on the basis of the very records of the prosecution at preliminary investigation, it would appear that there is a need to determine whether or not the barangay captains did, in fact, receive the amounts allegedly distributed by the accused mayor to them or whether or not any deficiency in the liquidation of these cash advances were deficiencies in the submissions by the barangay captains alone or the barangay captains in conspiracy with any other official.

Considering the concurrence of Prosecutor Victorio U. Tabanguil with the doubts expressed by this Court on this matter, as prayed for by him, he is given sixty (60) days from today within which to determine whether or not there exists probable cause against Mayor Felix L. Sarigumba as well as the subordinate officials of the Municipality of Tudela, Misamis Occidental, or against any other persons not yet charged. Should he wish, he may summon other witnesses herefor, including the initiation of another preliminary investigation to summon the barangay captains or such other persons who may have been involved in the receipt and distribution of these funds. The prosecution shall furnish this Court with all of its issuances and orders both in Manila and in Mindanao, should the Deputy Ombudsman for that area deem it wise to take over the case one more time.[10]

In the meantime, during the period of July 22 to 31, 1998, Graft Investigation Officer I Elmer Ben V. Pasion of the Office of the Ombudsman for Mindanao conducted clarificatory hearings. In the course of the proceedings, petitioner Sarigumba admitted that he and the barangay captains had agreed that each of the latter would contribute P500.00 for the ABC projects, and that the amount actually received by each was only P9,500.00. The said accused submitted deposit slips showing that the barangay captains had deposited the amounts they received to the barangay treasurers. It appears that the barangay captains executed separate affidavits explaining the circumstances under which they received the amounts from the petitioner Sarigumba through his employees, and how the said amounts were spent.

In a Memorandum to the Ombudsman dated December 21, 1998, Graft Investigator Pasion summarized his findings:

- That the barangay captains did, in fact, receive the amount distributed by Mayor Sarigumba through his representatives Loreta Salinasal and Crosita Singidas. That the amount actually received by the barangay captains was only P9,500.00 as the barangay captains agree to contribute P500.00 each to the project of the Association of Barangay Captains (ABC).
- That some of the Barangay Captains in good faith had spent the money for their personal use having thought all along that the amount distributed was a “cash gift” or “pahalipay” promised by Congressman Ramiro. It was, however, refunded back to the barangay government by the barangay captains concerned as barangay funds upon learning that the amount distributed was from the CDF of Congressman Ramiro and intended for the Peace and Order Campaign.
- The requirement of COA for the 33 barangay units to issue Official Receipts (Record, pp. 340-372) for the receipts of the money corrected the recording in the Municipal Government of Tudela and properly recorded the transfer of funds and accountability to the 33 different barangay governments.
- That the 33 different barangay governments subsequently submitted their liquidations with the municipal government of Tudela.
- That based on the corresponding liquidation reports submitted by different barangay units, only some of the barangays conducted the barangay assemblies where meals and snacks were served particularly during the Service Orientation Training (SOT) with the 32nd Infantry battalion. That generally, the amount distributed was not spent by the different barangay units for meals and snacks in the peace and order assembly but on some other immediate needs for their peace and order programs as determined by the barangay captains.[11]

Graft Investigator Pasion thus recommended the withdrawal of the Information for malversation and the retention

of the Informations for falsification, as follows:

- Considering that during the clarificatory hearing, it was duly established by evidence and by admissions that the barangay captains did, in fact, receive the amount distributed by respondent Mayor Sarigumba, the Information for Malversation against the respondents is hereby recommended to be withdrawn in the absence of evidence of shortage, taking, appropriation, conversion or loss of public funds.

For lack of criminal intent, probable cause could not be established against the barangay captains who, in an honest mistake of fact, spent the money for their personal use, believing in good faith that the money distributed was a cash gift or “pahalipay” promised by Congressman Ramiro.

- Respondents, however, were unable to satisfactorily explain and justify the preparation of falsified Liquidation Vouchers No. 9412-478 and 9412-488 by making it appear therein that the amount distributed [was] expended for meals and snacks during the peace and order meetings when, in truth and in fact, peace and order meetings were conducted only in some of the barangays. Moreover, fabricated attendance sheets and list of signatures were used as supporting documents for the questioned Liquidation Vouchers causing it to appear that persons named therein attended such peace and order meetings when, in truth and in fact, they did not so attended (sic).

Premised, therefore, on the pronouncement of the Supreme Court in *Domagas vs. Malana*, 223 SCRA 359, that “In the crime of falsification of a public document, the principal thing punished is the violation of public faith and the destruction of truth as therein solemnly proclaimed,” it is hereby maintained that the Informations for Falsification of Public Documents against the accused Municipal Mayor Felix L. Sarigumba and Municipal Accountants Emma C. Dagondon and Sherlita R. Gallego be prosecuted before the Sandiganbayan.[12]

The Deputy Ombudsman for Mindanao, Margarito P. Gervacio, Jr., approved the said Memorandum, a copy of which was filed with the Sandiganbayan by Special Prosecution Officer Victorio U. Tabanguil on February 4, 1999.[13] On February 22, 1999, Special Prosecutor Tabanguil submitted a Review Memorandum to the Ombudsman recommending that the three Informations be withdrawn. However, the Ombudsman denied the recommendation with the following notation: “Present the Documents containing the false entries for the scrutiny of the Court.”

In their comment on the Memorandum of the Graft Investigator Pasion, the petitioners reiterated that, as found by the investigator, they had acted in good faith and that there was an absence of damage and prejudice to the government. They, thus, prayed that the cases against them be dismissed. Appended thereto was the joint affidavit of the barangay captains.

Despite the Ombudsman’s denial of his Review Memorandum, the Special Prosecutor filed a Manifestation and Motion for the withdrawal of the three Informations for falsification of public documents on March 29, 1999.[14]

During the proceedings on October 17, 2000, the graft court addressed clarificatory questions to the Special Prosecutor regarding the Memorandum of Graft Investigator Pasion which the Ombudsman concurred with.

Despite the responses of the Special Prosecutor, the Sandiganbayan found probable cause against the petitioners and ordered the cases to remain in the court docket.[15] Warrants were issued for the arrest of the petitioners. They forthwith posted cash bail bonds for their provisional release[16] which were later approved by the graft court.

On December 26, 2000, the Special Prosecutor filed a Manifestation[17] with the Sandiganbayan reiterating his March 29, 1999 Manifestation and Motion.

The petitioners then filed a “Motion to Hold in Abeyance the Arraignment and to Motion to Quash” the Informations. However, on February 15, 2001, the Sandiganbayan issued an Order denying the motion.[18] The graft court, likewise, denied the oral motion for reconsideration thereof made by the petitioners.

All of the petitioners were arraigned on February 19, 2001 and pleaded not guilty.[19]

On May 28, 2001, the petitioners filed an “Omnibus Motion to Cancel Pre-Trial and Trial, Motion to Dismiss” the cases, claiming that:

- In the early part of May 2001, undersigned counsel, however, received from the accused a copy of the Settlement and Balances dated April 16, 2001, from the Commission on Audit, Province of Misamis Occidental, Oroquieta City, clearly showing that the amount of P330,000.00 subject of the controversy in the instant case and which was disallowed in 1995 for lack of proper documentation, had been fully settled and allowed as of April 16, 2001.[20]

The complaining witnesses, through counsel, opposed the motion; the Special Prosecutor, however, concurred with the said motion. After due hearing, the Sandiganbayan issued a Resolution[21] denying the motion of the petitioners on March 20, 2002. The graft court reiterated its finding of probable cause against them. The petitioners then filed a motion for the reconsideration thereof, which was denied by the Sandiganbayan in its Resolution dated June 13, 2002.

The Present Petition

In the present petition, the petitioners assert that the court committed grave abuse of its discretion amounting to excess or lack of jurisdiction when it found probable cause against them, denied their motion to dismiss the cases, as well as their motion for reconsideration thereof. The petitioners proffer the following arguments:

First. Petitioner Sarigumba did not make use of the P330,000.00 subject of the Informations in Criminal Cases No. 24506, considering that the said amount came from Congressman Ramiro’s CDF, and was distributed to and received by the 33 barangay captains of Tudela, Misamis Occidental, who submitted the appropriate documents liquidating said amounts. Moreover, as per the COA Report, the government did not suffer any loss of funds and until clearance of the barangay captains.

Second. The Deputy Ombudsman for Mindanao and Special Prosecutor Tabanguil recommended the withdrawal of the three Informations in said case.

The Ruling of the Court

The petition has no merit.

For grave abuse of discretion to prosper as a ground for certiorari, it must first be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough. Excess of jurisdiction signifies that the court, board or office, has jurisdiction over the case but has transcended the same or acted without authority.[22]

In a case where a lower court or quasi-judicial body commits an error in the exercise of its jurisdiction and which is only one of judgment, such error is reviewable only by appeal. On the other hand, if the act complained of was issued by such court or body with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction, the remedy of the aggrieved party is to file a petition for certiorari under Rule 65 of the Rules of

Court.[23]

In the present cases, the Sandiganbayan did not commit grave abuse of its discretion in issuing the assailed resolutions. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party.[24] Probable cause is meant such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion, it requires less than evidence which would justify conviction.[25] Specifically, probable cause to warrant arrest requires “such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.”[26]

Once the Informations are filed with the trial court, the determination of the presence or absence of probable cause for the issuance of warrants of arrest against the accused, or for the withdrawal of the Informations, or for the dismissal of the cases, is addressed to its sound discretion. As such, the trial court is not bound by the recommendation of the Prosecutor. The trial court’s exercise of its judicial discretion should not, as a general rule, be interfered with in the absence of grave abuse of discretion. Indeed, certiorari will not lie to cure errors in the trial court’s appreciation of the evidence of the parties, the conclusion of facts it reached based on the said findings, as well as the conclusions of law. The general rule is that as long as the trial court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than mere errors of judgment, correctible by appeal.[27]

Whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.

In the present case, the Sandiganbayan found probable cause for the issuance of warrants for the arrest of the petitioners for one count of malversation and two counts of falsification of public documents against petitioner Sarigumba. The graft court’s finding was based on the allegation in the Information, the Resolution of the Ombudsman finding probable cause for the filing of the said Informations, the documentary evidence appended thereto, as well as the facts and circumstances unearthed during the clarificatory hearing of October 17, 2000. After the clarificatory hearings on the petitioners’ motion to dismiss the cases, the Sandiganbayan found probable cause for the issuance of warrants for their arrest and for the court to proceed to trial, on the following ratiocination:

It was not denied by the accused that the P330,000.00 came from the Countrywide Development Fund of Congressman Hilarion J. Ramiro, Jr. The documentation for the cash advances taken out by the accused mayor shows that the money was to be used for “peace and order campaign.”

Mayor Sarigumba is charged in the instant cases for malversation of the total amount of P330,000.00, as well as for falsification of the attendance sheets attached to the first set of vouchers he had submitted to liquidate the cash advances for P220,000.00 and for P110,000.00. It is claimed by the accused, however, that since the liquidation was finally approved, no injury resulted from the cash advances he had made.

It will be noted that the cash advances were taken out by the accused mayor with the following particulars: “To

cash advance the CDF for the payment of various expenses during the assembly meeting for peace and order of 33 barangays of Tudela, Misamis Occidental” as shown by the Prosecution’s findings.

From the clarificatory hearings conducted during the review hereof, it appeared that the barangay captains were also under the impression that the amounts given to them were the cash gifts or “pahalipay” earlier promised by then Congressman Ramiro. That was the reason why, as one of them explained, they spent the amounts on personal matters although, later, they were required to refund the same.

The complainant made a list of her own findings after going over the receipts made by the barangay captains. According to her, these documents were inappropriate for the liquidation of the cash advances. Her findings ranged from inadequacy in the amounts accounted for to impropriety of the expenditures made vis-à-vis the purpose for which the funds were intended per the terms of the voucher. Furthermore, there is also the finding by the prosecutor at review that these were understood by the barangay captains to be cash gifts and not for the purpose for which they were purportedly drawn by the mayor.[28]

What militates against the petition at bench is the failure of the petitioners to append thereto certified copies of the transcripts taken during the clarificatory hearings. Without such transcripts, the Court cannot review the factual findings of the Sandiganbayan and determine whether or not it committed grave abuse of its discretion amounting to excess of jurisdiction in finding probable cause against the petitioners, and in denying their motion to dismiss the cases.

Indeed, petitioner Sarigumba failed to establish that the Sandiganbayan committed grave abuse of its discretion in finding probable cause against him for malversation. Malversation is defined in Article 217 of the Revised Penal Code, thus:

ART. 217. Malversation of public funds or property - Presumption of malversation. Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation of malversation of such funds or property, shall suffer:

- The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
- The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.
- The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than 6,000 pesos but is less than 12,000 pesos.
- The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly-authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses. (As amended by Rep. Act No. 1060, approved June 12, 1954.)

The elements of the crime are the following:

- (a) The offender is a public officer;
- (b) He has the custody or control of funds or property by reason of the duties of his office;
- (c) The funds or property involved are public funds or property for which he is accountable; and
- (d) He has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of, such funds or property.[29]

The felony consists not only in misappropriation or converting public funds or property to one's personal use but also by knowingly allowing others to make use of or misappropriate the same.[30] The felony may thus be committed by dolo or by culpa. The crime is consummated and the appropriate penalty is imposed regardless of whether the mode of commission is with intent or due to negligence.[31] An accountable officer may thus be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in the officer's account which he has not been able to explain satisfactorily. All that is essential is proof that the accountable officer has received public funds but that when demand therefor is made, he is unable to satisfactorily account for the same.[32]

The law declares that the failure of the public officer to account for such public funds or property upon demand by any duly-authorized officer shall be prima facie evidence that he has appropriated the same for his personal use.

Based on the record, it is true that petitioner Sarigumba did not make use of the P330,000.00 which he received from the Municipal Treasurer which was chargeable to the CDF of Congressman Ramiro; hence, there is no probable cause for the charge of malversation by dolo against him. It must be stressed, however, that the petitioner-mayor is also charged with malversation by culpa under the Information, allegedly committed by distributing P9,500.00 to each of the barangay captains without bothering to inform them that the amount was from the CDF of Congressman Ramiro and that the money should be used for the peace and order campaign in their respective jurisdictions. All along, the barangay captains were of the belief that the amounts they received were from the personal funds of the Congressman and that they had unfettered use of the money, for whatever purpose they chose.

Indeed, Barangay Captain Cosme D. Sarabia admitted that he used the P9,500.00 he received from the petitioner to pay his personal debts. The petitioner and the barangay captains agreed to remit P500.00 each from the amounts they received from petitioner Sarigumba to the ABC for its projects. Indeed, the barangay captains were astounded when they received the directives from the Auditor to remit the amounts they received from the petitioner to the barangay treasurers, and to submit receipts as proof that they had followed the directive. However, the barangay captains merely secured receipts from the barangay treasurers without actually refunding the amounts, and were only later given a chance to liquidate the same.

The bare fact that the barangay captains were able to return the amounts they received from the petitioner or liquidate the same after demand therefor does not preclude the finding of probable cause for malversation. As this Court held in *Kimpo v. Sandiganbayan*:

... In malversation of public funds, payment, indemnification, or reimbursement of funds misappropriated, after the commission of the crime, does not extinguish the criminal liability of the offender which, at most, can merely affect the accused's civil liability thereunder and be considered a mitigating circumstance being analogous to voluntary surrender.[33]

Indeed, the matter of whether the barangay captains were able to liquidate the said amounts and whether the bases

thereof are justified are matters of defense during trial, and not before trial, in a motion to dismiss the case.

Whether or not the barangay captains acted in good faith is a matter of defense on the part of the petitioner Sarigumba. Even if the barangay captains had indeed acted in good faith, still, if petitioner Sarigumba had failed to make it clear before or when he distributed the money to them that the money was for the peace and order campaign in their respective barangays, he may be criminally liable for malversation by culpa.

Likewise barren of merit is the petitioners' claim that there is colorable truth in the allegations of petitioner Sarigumba in his liquidation vouchers, that the amounts given to the barangay captains were used mostly or substantially for snacks or related expenses and that there was no probable cause against him for malversation, and against all the petitioners for falsification. It must be stressed that the barangay captains themselves disavowed such claim in their respective affidavits.

Demosthenes Singidas of Barangay Cahayag declared that there was a peace and order assembly which coincided with their Barangay Assembly in 1994, where he gave P50.00 for meals to those who attended and that he spent a total of only P4,000.00. Adelaida Paigan of Camating admitted that she spent the money for seminar registration (no specific amount), a hand-held radio antennae (no amount also), P85.00 for the peace and order campaign, food and snacks for the soldiers who guarded the election at around P1,000.00; Service Orientation Training (SOT) meals and snacks in the amount of P1,184.00, and leveling and improving barangay roads in the amount of P2,000.00. She also declared that papers were passed for signatures of the population of Camating, but there had been no peace and order assembly held for the release of said amount. For his part, Francisco Jerusalem of Barangay Casilak San Agustin alleged that he was given P10,000.00 by the mayor for no stated purpose; that he did not want to receive it; and that it was given to him as "cash gift." He did not even know that the money was for the peace and order campaign. He stated further, however, that he spent the money for meals and snacks during the peace and order assembly and for the SOT but did not state a specific amount. Gaudencio Olarte of Barangay Upper Centro averred, among others, that he used the P10,000.00 for the jackets and flashlights of three (3) barangay tanods; and for the construction of an outpost and a playhouse for the day-care center. There was also a peace and order assembly in his Barangay in 1994 where the attendance was taken, and he served meals and snacks with no statement as to where he got the funds. Edilberto Castro of Barangay Centro Hulpa declared that he received the P10,000.00 which he thought came from Congressman Ramiro for the election of the ABC President, Emeterio Valmoria and that he divided the P10,000.00 among his councilmen and the members of the peace and order council. Edilberto Cobrado of Barangay Colambutan Bajo asserted that he did not have his constituents sign for peace and order assembly. He maintained that he served snacks during the peace and order assembly but out of his personal money. The P10,000.00 which he believed to be a cash gift from Congressman Ramiro was spent for a barangay tanod outpost, posts for every purok and meals for visitors of the barangay. Delio Cagas of Barangay Colambutan Settlement admitted that he received the P10,000.00 and thought that the money was for his own use and that it was up for him to spend it or share it with his councilmen. Perlito Yamaro of Barangay Duanguican alleged that in 1995 a "Barkadahan" which was a sort of peace and order assembly was held, during which the attendees signed their attendance in the record book. He also admitted that he received the P10,000.00 from the petitioner-mayor through Mrs. Salinasal, and it was up for him to spend it.

Equally damaging to the petitioners is the admission of Juan Gumilos of Barangay Gala that he received the P10,000.00 from Mrs. Salinasal with no mention as to its purpose. Eduardo Rara of Barangay Gumbil was as candid when he stated that he received the P10,000.00 from Mrs. Salinasal and learned that it was a "cash gift" coming from Congressman Ramiro. Nido Madrazo of Barangay Maikay likewise stated that he received the P10,000.00 from Mrs. Salinasal with no mention as to its purpose. It was somehow conveyed to him that the money was for his own use, and that it was up to him how to spend it. Feliciano Sumader of Barangay Mitugas

also admitted that he received P10,000.00 which he shared with his councilmen. He also bought a battery charger for a hand-held radio, aerial antennae, battery pack, and also spent some for the Lupong Tagapayapa. He had no receipts to prove his claim.

Cosme Sarabia of Barangay Nailon alleged that he received the P10,000.00 from Mrs. Salinasal which he believed was a “cash gift” promised to him by Congressman Ramiro. Luther Limbaga of Barangay Silongon declared that he received the P10,000.00 from the petitioner-mayor’s secretary, and that he believed it was a “cash gift” to encourage him to vote for Emeterio Valmoria who was then running as ABC president. He added that he gave P150.00 each to seven (7) CVOs from December 1994 to July 1995, meals and snacks for the assembly and the SOT. Sabino Dagondon of Barangay Taguima averred that he received the P10,000.00 in cash from Mrs. Salinasal and it was said to be for his own use. Vicente Lagas of Barangay Tigdok even admitted that he did not hold a peace and order assembly in 1994, only the monthly regular meeting, and that no meals and snacks were served. He also stated that he used the P10,000.00 for wire and antennae in the amount of P500.00 (no receipt); gave P200.00 each for councilmen including his secretary and treasurer; P3,800.00 for food items when barangay officials conducted patrols around the barangay; and spent P100.00 during the seminar of hand held radio users. Cipriano Sumondong of Barangay Yahong alleged that he received the P10,000.00 as cash gift from Congressman Ramiro and that he presumed the money as the promised “cash gift.” Caridad Lagunay of Barangay Bongabong alleged that she received the P10,000.00 as “cash gift” and was told that it was up to her how to spend it. She alleged that there was no peace and order assembly but only the monthly barangay assembly where the names of those present were checked against the logbook. When asked what she did with the P10,000.00, she answered: “I bought some things for the barangay office like curtains, plates, chairs and dividers and others.” Bebiana Saligan of Barangay Barra declared that she received the P10,000.00 as “cash gift” from Congressman Ramiro for voting for Emeterio Valmoria as ABC president but after three weeks, she was required to submit an attendance sheet. This confused her, and it was only then that she decided to return the P10,000.00 to the municipality. Rodolfo Ontulan of Barangay Basirang averred that he received the P10,000.00 from Loreta Salinasal at the mayor’s office for the incoming election of the ABC president. He, however, stated further that he used the P10,000.00 to buy a hand-held radio antennae in the amount of P500.00 and that he gave P100.00 to each member of the barangay council.[34]

In fine, no less than the barangay captains belied petitioner Sarigumba’s claims in his liquidation vouchers that the cash advances the latter received from the CDF of Congressman Ramiro were used for meals and snacks during the peace and order meetings.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Presiding Justice Francis E. Garchitorena (retired), with Associate Justices Catalino R. Castañeda, Jr. (retired) and Gregory S. Ong, concurring.

[2] Records, p. 60 (Vol. I).

[3] Id. at 54.

[4] Id.

[5] Id. at 9.

- [6] Rollo, p. 58.
- [7] Id. at 61.
- [8] Id. at 64-65.
- [9] Records, p. 27.
- [10] Id. at 33.
- [11] Id. at 60-61.
- [12] Id. at 61-62.
- [13] Id. at 51-63.
- [14] Id. at 132-134.
- [15] Id. at 111.
- [16] Id. at 127-128.
- [17] Id. at 132.
- [18] Id. at 153-154.
- [19] Id. at 157-159.
- [20] Id. at 185.
- [21] Id. at 282-286.
- [22] *People of the Philippines v. Court of Appeals*, G.R. No. 144332, June 10, 2004.
- [23] Ibid.
- [24] *Advincula v. Court of Appeals*, 343 SCRA 583 (2000).
- [25] *Teresita Tanghal Okabe v. Hon. Pedro de Leon Gutierrez*, in his capacity as Presiding Judge of RTC, Pasay City, Branch 119; *People of the Philippines*; and *Cecilia Maruyamat*, G.R. No. 150185, May 27, 2004.
- [26] *Webb v. De Leon*, 247 SCRA 652 (1995).
- [27] *People v. Court of Appeals*, 308 SCRA 687 (1999).
- [28] Id. at 284-285.
- [29] *Nizurtado v. Sandiganbayan*, 239 SCRA 33 (1994).
- [30] *Labatagos v. Sandiganbayan*, 183 SCRA 415 (1990).
- [31] *Kimpo v. Sandiganbayan*, 232 SCRA 53 (1994).
- [32] *Tanggote v. Sandiganbayan*, 236 SCRA 273 (1994).
- [33] Supra at note 31.
- [34] Rollo, pp. 85-91.

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