

HEIDE M. ESTANDARTE, Petitioner, vs. PEOPLE OF THE PHILIPPINES, Respondent.

G.R. Nos. 156851-55. February 18, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court are Petitions for Review on Certiorari under Rule 45 of the Rules of Court, filed by Heide[1] M. Estandarte (petitioner) which seek to reverse and set aside the Order[2] dated September 24, 2002 of the Regional Trial Court (RTC) of Bago City, Branch 62 denying the petitioner's Motion for Reinvestigation and the Order[3] dated December 20, 2002 of the same court denying petitioner's Motion for Reconsideration issued in consolidated Criminal Case Nos. 1918-1922.

The records disclose the following antecedent facts:

Petitioner was the school principal of the Ramon Torres National High School (RTNHS) in Bago City, Negros Occidental.[4]

Sometime in 1998, a group of concerned RTNHS teachers, composed of the Faculty and Personnel Club Officers and department heads (private complainants), sent an undated letter to the Schools Division of Bago City (Schools Division)[5] attaching a list of 15 irregularities allegedly committed by the petitioner, which the private complainants requested to be investigated.[6]

Two complaints were eventually filed by private complainants against petitioner with the Office of the Ombudsman-Visayas (Ombudsman-Visayas) docketed as OMB-VIS-Crim-99-1094 and OMB-VIS-Crim-2000-1127.

The Ombudsman-Visayas forwarded the complaint docketed as OMB-VIS-Crim-99-1094 to the Office of the City Prosecutor of Bago City (City Prosecutor) for preliminary investigation, pursuant to Section 31 of Republic Act (R.A.) No. 6770, otherwise known as the Ombudsman Act of 1989.[7] The City Prosecutor served the petitioner with a subpoena on August 28, 2000 and another on August 30, 2000, requiring her to submit her counter-affidavit.[8]

On September 6, 2000, instead of filing a counter-affidavit, petitioner filed before the City Prosecutor a Motion for Bill of Particulars with Motion for Extension of Time to File Counter-Affidavit.[9] In the Motion for Bill of Particulars, petitioner alleged that there were no specific criminal charges that were stated in the subpoenas. Thus, petitioner insisted that she cannot intelligently prepare her counter-affidavit unless the criminal charges and the laws she violated are specified.[10]

On March 10, 2000, the City Prosecutor issued an Order[11] attaching the private complainants' Bill of Particulars,[12] pertinent portions of which read:

- That complainants are charging respondent for violation of Sec. 68 and 69 of PD 1445[13] in connection with the above-entitled case;

- That to support their complaint, private complainants adopt the investigation report of the provincial [sic] Auditor on [sic] complaint No. 23 and 25 which states:

Complaint 23 & 25

The principal Ms. Estandarte accepted cash and in kind donations without being properly channeled and accounted first by the property custodian and the cash without first deposited in the Trust Fund.

x x x x

and directing the petitioner to file her counter-affidavit.[14] Petitioner filed her counter-affidavit limiting herself only to the charges specified in the Bill of Particulars.[15]

Thereafter, the City Prosecutor referred the case back to the Ombudsman-Visayas. The latter found sufficient grounds to hold petitioner liable for five counts of violation of Section 3(e)[16] of R.A. No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act, and filed before the RTC the corresponding Informations,[17] all dated October 12, 2001, with the following charges:

- In Criminal Case No. 1918, for receiving cash donations from private individuals and establishments in the total amount P163,400.00;[18]
- In Criminal Case No. 1919, for collecting contributions or allowing the collection of contributions in the amount of P10.00 from the enrollees of the school without authority of law;[19]
- In Criminal Case No. 1920, for purchasing guns using the students' Trust Fund and registering the same in her name, depriving the Security Guard of the school of the use of said guns;[20]
- In Criminal Case No. 1921, for double charging of the expenses of P1,500.00 incurred for the video coverage of the coronation night;[21]
- In Criminal Case No. 1922, for double charging of the expenses amounting to P45,000.00 incurred in the repairs of the Home Economics Building of the school.[22]

The criminal cases were consolidated.

On May 21, 2002, petitioner filed a Motion for Reinvestigation[23] before the RTC on the ground that she cannot allegedly be charged with violation of Sections 68 and 69 of Presidential Decree (P.D.) No. 1445 since she was not a collecting officer. She also asserts that she cannot be charged under Section 3(e) of R.A. No. 3019, as the acts which she was charged with, did not constitute "manifest partiality, evident bad faith or inexcusable negligence." [24]

The RTC, in its assailed Order[25] dated September 24, 2002, ruled against the petitioner.[26] In denying the Motion for Reinvestigation, the RTC held that the petitioner's claim that her acts for which she is charged do not constitute "manifest partiality, evident bad faith or grossly inexcusable negligence" and is evidentiary in nature, and the same can only be appreciated after a full-blown trial.[27]

Feeling aggrieved, the petitioner filed a Motion for Reconsideration[28] of the September 24, 2002 Order. Petitioner maintains that when the five Informations for the violation of Section 3(e) of R.A. No. 3019 were filed by the Ombudsman-Visayas, her right to due process was violated; and that the Ombudsman-Visayas in effect went beyond the Bill of Particulars filed by the private complainants.[29]

In the other assailed Order[30] dated December 20, 2002, the RTC denied the Motion for Reconsideration.[31]

Hence, herein petition.

Petitioner claims that the RTC erred when it overlooked the following “formulations,” viz:

- (1) THE HONORABLE OFFICE OF THE OMBUDSMAN (VISAYAS) CANNOT NOW QUESTION THE “BILL OF PARTICULARS” FILED BY COUNSEL FOR COMPLAINANTS;
- (2) WHEN THE HONORABLE OFFICE OF THE OMBUDSMAN WENT BEYOND THE “BILL OF PARTICULARS” FILED BY THE COMPLAINANTS THROUGH THEIR COUNSEL, SHE WAS EFFECTIVELY DENIED OF HER RIGHT TO DUE PROCESS.[32]

The petition is partly meritorious.

The Court shall first discuss the procedural aspect of the case.

The herein assailed RTC Order dated September 24, 2002 denied petitioner’s Motion for Reinvestigation, and the other assailed RTC Order dated December 20, 2002 denied her Motion for Reconsideration.

From the RTC, petitioner went straight to this Court via a petition for review on certiorari under Rule 45 apparently on the basis of Section 2(c), Rule 41[33] of the Rules of Court, which provides that in all cases where only questions of law are raised, the appeal from a decision or final order of the RTC shall be to the Supreme Court by a petition for review on certiorari in accordance with Rule 45.[34]

However, considering that herein assailed Orders are obviously interlocutory orders, the proper recourse of petitioner should have been by way of a petition for certiorari as prescribed in Section 1, Rule 41 of the Rules of Court, which specifically allows the aggrieved party to file a petition for certiorari under Rule 65.[35]

The herein petition for review on certiorari assails the jurisdiction of the RTC in issuing the Orders in question denying petitioner’s Motion for Reinvestigation, on the ground that the five Informations filed against the petitioner contained charges beyond the Bill of Particulars filed by the private complainants, thereby depriving her of due process.

The Court has treated a petition for review on certiorari under Rule 45 as a petition for certiorari under Rule 65 of the Rules of Court in cases where the subject of the recourse was one of jurisdiction, or the act complained of was perpetrated by a court with grave abuse of discretion amounting to lack or excess of jurisdiction. [36]

Moreover, in the exercise of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits based on records and evidence of the parties.[37] Proceeding from the time-honored principle that rules of procedure should promote, not defeat substantial justice, the Court may opt to apply the Rules liberally to resolve the substantial issues raised by the parties.[38]

Accordingly, the Court shall treat the instant petition as a petition for certiorari under Rule 65 of the Rules of Court since the primordial issue to be resolved is whether the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner’s Motion for Reinvestigation.

Thus, the Court will now proceed to determine the merits of the present petition.

On the first assigned error, petitioner insists that the Ombudsman-Visayas should have limited the charges filed against her to the crimes mentioned in the Bill of Particulars, and that the filing of the Informations charging her with crimes different from those specified in the Bill of Particulars violates her right to due process.

The Office of the Solicitor General (OSG) counters that a bill of particulars is not allowed by Administrative Order No. 7, entitled Rules of Procedure in the Office of the Ombudsman[39] (A.O. No. 7); and that therefore the Ombudsman cannot be bound by the Bill of Particulars submitted by private complainants.

The Court agrees with the OSG. Clearly, the act of the prosecutor in granting the petitioner's Motion for Bill of Particulars is an act contrary to the express mandate of A.O. No. 7, to wit:

Section 4. Procedure- The preliminary investigation 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

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If the respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

The Court finds the argument of petitioner that when the City Prosecutor was deputized by the Ombudsman-Visayas to conduct the preliminary investigation, any action taken therein is, in effect, an action of the Ombudsman, who is bound by the act of the City Prosecutor in granting the Motion for Bill of Particulars, and is not tenable.

Section 31 of R.A. No. 6770 or The Ombudsman Act of 1989 expressly provides that those designated or deputized to assist the Ombudsman shall be under his supervision and control. Indubitably, when the City Prosecutor is deputized by the Office of the Ombudsman, he comes under the "supervision and control" of the Ombudsman which means that he is subject to the power of the Ombudsman to direct, review, approve, reverse or modify the prosecutor's decision.[40]

Consequently, in the present case, petitioner has no valid basis for insisting that the Ombudsman-Visayas must be bound by the erroneous act of the City Prosecutor in granting petitioner's Motion for Bill of Particulars. Laws and jurisprudence grant the Office of the Ombudsman the authority to reverse or nullify the acts of the prosecutor pursuant to its power of control and supervision over deputized prosecutors. Hence, it was within the prerogative of the Ombudsman-Visayas not to consider the Bill of Particulars submitted by the private complainants.

This brings the Court to the second assigned error.

Petitioner claims that her right to due process was violated when the Ombudsman-Visayas filed the Informations charging her with violations of R.A. No. 3019, which went beyond the charges specified in the Bill of Particulars.[41] Petitioner further argues that since there were no criminal charges stated in the subpoenas served on her on August 28, 2000 and August 30, 2000, she was not properly informed of the nature of the crime which she was supposed to answer in her counter-affidavit.[42]

While the Bill of Particulars is not allowed under the Rules of Procedure of the Office of the Ombudsman and therefore should not be the basis for determining what specific criminal charges should be filed against herein petitioner, it behooves the Ombudsman to accord the petitioner her basic rights to due process in the conduct of the preliminary investigation.

In a preliminary investigation, Section 3, Rule 112 of the Rules of Court guarantees the petitioner's basic due process rights, such as the right to be furnished a copy of the complaint, the affidavits, and other supporting documents, and the right to submit counter-affidavits and other supporting documents in her defense,[43] to wit:

Section 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

x x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he

finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x x

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

Likewise, Section 4 of A.O. No. 7 provides:

Section 4. Procedure. – The preliminary investigation 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:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If the respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

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

h) No information may be filed and no complaint may be dismissed without 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)

In the pleadings submitted before this Court, petitioner complained that the subpoenas served on her did not state

the law allegedly violated by her.[44]

In the Motion for Bill of Particulars she filed before the City Prosecutor, she declared that she was served with “subpoena together with the documents attached therein.”[45]

However, after a thorough examination of the records, the Court does not find the subpoenas and the alleged documents served on her. Absent the subpoenas and the documents attached to the subpoenas, how could it be intelligently determined whether she was fully apprised of the acts complained of and imputed to her; whether she was given the opportunity to submit an appropriate counter-affidavit to the charges; and whether the charges in the five Informations filed against petitioner were based on the same acts complained of and stated in the subpoena and the documents attached thereto?

While there is no rule that the initial complaint filed against an accused with the prosecutor’s office should specifically state the particular law under which he is being charged, it is a basic elementary rule that the complaint should specifically allege the criminal acts complained of, so as to enable the accused to prepare his answer or counter-affidavit accurately and intelligently.

The determination of the issue whether the criminal charges were indeed alleged or specified in the subpoenas and in the documents attached thereto, is a factual issue and therefore outside the province of this Court. It is a well-settled rule that the Supreme Court is not the proper venue in which to consider a factual issue, as it is not a trier of facts.[46]

In resolving the question whether petitioner was denied due process, the RTC or this Court cannot rely on the disputable presumption that official duties have been regularly performed. The RTC should have required the petitioner to submit the subpoenas and the attached documents served on her to enable it to examine the same and resolve whether the petitioner’s right to be informed was violated. It was only upon ascertaining this fact that the RTC could have validly determined whether petitioner was denied due process.

It must be stressed that the primordial issue in the present petition is not whether the Ombudsman-Visayas had correctly found a probable cause to justify the filing of the five Informations against herein petitioner, but whether she was not accorded due process in the conduct of the preliminary investigation as to entitle her to a reinvestigation. A valid and just determination of whether there is a probable cause on the part of the Ombudsman to bring the cases to court against petitioner would ensue only when the petitioner has been fully accorded due process in the conduct of the preliminary investigation.

A preliminary investigation is a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer.[47] Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime, with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case.[48] In order to satisfy the due process clause, it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity.[49] A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantee of freedom and fair play which are birthrights of all who live in our country.[50]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Orders dated September 24, 2002 and December 20, 2002 of the Regional Trial Court of Bago City, Branch 62 are **SET ASIDE**. The case is remanded to the trial court for determination whether petitioner was denied due process in the conduct of the preliminary

investigation.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Spelled as “Heidi” in the Information and other pleadings.

[2] Penned by Judge Henry J. Trocino, rollo, pp. 21-23.

[3] Id. at 29-33.

[4] Rollo, p. 6.

[5] Id. at 34-36.

[6] Id. at 36.

[7] Records (Criminal Case No. 1918), p. 72.

[8] Rollo, p. 8.

[9] Id. at 39-40.

[10] Rollo, p. 40.

[11] Id. at 43.

[12] Id. at 41-A.

[13] Section 68 and Section 69 of Presidential Decree 1445 or the “Government Auditing Code of the Philippines” provide:

Section 68. Issuance of Official receipt.- (1) No payment of any nature shall be received by a collection officer without immediately issuing an official receipt in acknowledgment thereof. The receipt may be in the form of postage, internal revenue or documentary stamps and the like, or officially numbered receipts, subject to proper custody, accountability, and audit.

(2) Where mechanical devices are used to acknowledge cash receipts, the Commission may approve, upon request, exemption from the use of accountable forms.

Section 69. Deposit of moneys in the treasury.- (1) Public officers authorized to receive and collect moneys arising from taxes, revenues, or receipts of any kind shall remit or deposit intact the full amounts so received and collected by them to the treasury of the agency concerned and credited to the [particular accounts to which the said money belong. The amount of the collections ultimately payable to other agencies of the government shall thereafter be remitted to the respective treasuries of these agencies, under regulations which the Commission and the Department (Ministry) of Finance shall prescribe.

(2) When exigencies of the service so require, under such rules and regulations as the Commission and the Department (Ministry) of Finance may prescribe. Postmasters may be authorized to use their collections to pay money orders, telegraphic transfers and withdrawals from the proper depository bank whenever their cash advance funds for the purpose have been exhausted. The amount of collections so used shall be restored upon receipt by the postmaster of the replenishment of his cash advance.

(3) Pending remittance to the proper treasury, collecting officers may temporarily deposit collections received by them with any treasury, subject to regulations of the Commission.

(4) The respective treasuries of these agencies shall in turn deposit with the proper government depository the full amount of the collections not later than the following banking day.”

[14] Rollo, p. 41.

[15] Id. at 9.

[16] Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act provides: “Sec. 3 Corrupt practices of public officers.- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. x x x.”

[17] Criminal Case Nos. 1918-1922, all entitled “People of the Philippines v. Heidi M. Estandarte”.

[18] Records (Crim. Case No.1918), pp. 1-3.

[19] Records (Crim. Case No. 1919), pp. 1-3.

[20] Records (Crim. Case No. 1920), pp. 1-3.

[21] Records (Crim. Case No. 1921), pp. 1-3.

[22] Records (Crim. Case No. 1922), pp. 1-3.

[23] Records (Crim. Case No. 1918), pp. 33-37.

[24] Id.

[25] Rollo, pp. 21-23.

[26] Id.

[27] Id.

[28] Id. at 24-28.

[29] Id.

[30] Id. at 29-33.

[31] Id.

[32] Rollo, p. 11.

[33] Sec.2. Modes of Appeal.- x x x (c) Appeal by certiorari.- In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

- [34] Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co., G.R. No. 161882, July 8, 2005, 463 SCRA 222, 232.
- [35] As amended by A.M. No. 07-7-12-SC, effective December 27, 2007.
- [36] See Longos Rural Waterworks and Sanitation Association, Inc. v. Desierto, 434 Phil. 618, 624 (2002); Fortich v. Corona, 352 Phil. 461, 477 (1998).
- [37] Security Bank Corporation v. Indiana Aerospace University, G.R. No. 146197, June 27, 2005, 461 SCRA 260, 268.
- [38] Id. at 268-269.
- [39] Effective May 1, 1990.
- [40] Lastimosa v. Vasquez, 313 Phil. 358, 372-373 (1995); Office of the Ombudsman v. Valera, G.R. No. 164250, September 30, 2005, 471 SCRA 715, 743-744.
- [41] Rollo, p. 16.
- [42] Rollo, p. 92.
- [43] Secretary of Justice v. Lantion, 379 Phil. 165, 210 (2000).
- [44] Petition for Review on Certiorari, rollo, p. 5; Reply to Comment, id. at 92; Memorandum of the Petitioner, id. at 107.
- [45] Id. at 39.
- [46] Development Bank of the Philippines v. Perez, G.R. No. 148541, November 11, 2004, 442 SCRA 238, 248.
- [47] Cruz, Jr. v. People of the Philippines, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 449.
- [48] Olivas v. Office of the Ombudsman, G.R. No. 102420, December 20, 1994, 239 SCRA 283, 295.
- [49] Ortiz v. Palaypayon, A.M. No. MTJ-93-823, July 25, 1994, 234 SCRA 391, 396.
- [50] Id. at 396-397.

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