BRIG. GEN. (RET.) JOSE RAMISCAL, JR., PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 172476-99. September 15, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a special civil action for certiorari[1] seeking to annul the 5 April 2006 Resolution[2] of the Sandiganbayan Fourth Division in Criminal Case Nos. 25122-45. The assailed Resolution denied petitioner's motion to set aside his arraignment on 26 February 2006 pending resolution of his motion for reconsideration of the Ombudsman's finding of probable cause against him.

The Facts

Petitioner Jose S. Ramiscal, Jr. was a retired officer of the Armed Forces of the Philippines (AFP), with the rank of Brigadier General, when he served as President of the AFP-Retirement and Separation Benefits System (AFP-RSBS) from 5 April 1994 to 27 July 1998.[3]

During petitioner's term as president of AFP-RSBS, the Board of Trustees of AFP-RSBS approved the acquisition of 15,020 square meters of land situated in General Santos City for development as housing projects.[4]

On 1 August 1997, AFP-RSBS, represented by petitioner, and Atty. Nilo J. Flaviano, as attorney-in-fact of the 12 individual vendors,[5] executed and signed bilateral deeds of sale over the subject property, at the agreed price of P10,500.00 per square meter. Petitioner forthwith caused the payment to the individual vendors of the purchase price of P10,500.00 per square meter of the property.

Subsequently, Flaviano executed and signed unilateral deeds of sale over the same property. The unilateral deeds of sale reflected a purchase price of only P3,000.00 per square meter instead of the actual purchase price of P10,500.00 per square meter. On 24 September 1997, Flaviano presented the unilateral deeds of sale for registration. The unilateral deeds of sale became the basis of the transfer certificates of title issued by the Register of Deeds of General Santos City to AFP-RSBS.[6]

On 18 December 1997, Luwalhati R. Antonino, the Congresswoman representing the first district of South Cotabato, which includes General Santos City, filed in the Ombudsman a complaint-affidavit[7] against petitioner, along with 27 other respondents, for (1) violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act; and (2) malversation of public funds or property through falsification of public documents. The case was docketed as Case No. OMB-3-98-0020.

After preliminary investigation, the Ombudsman, in its 20 January 1999 Resolution,[8] found petitioner probably guilty of violation of Section 3(e) of RA 3019 and falsification of public documents, thus:

> WHEREFORE, PREMISES CONSIDERED, this Office finds and so holds that the following crimes were committed and that respondents, whose names appear below, are probably guilty thereof:
>
> x x x x
>
> 4. JOSE RAMISCAL, JR., WILFREDO PABALAN, NILO FLAVIANO, conspirators for twelve (12) counts of falsification of public documents relative to the twelve (12) unilateral Deeds of Sale;
>
> x x x x
>
> 6. JOSE RAMISCAL, JR. WILFREDO PABALAN, and NILO FLAVIANO twelve (12) counts of violation of section 3(e) of RA 3019 for short-changing the government in the correct amount of taxes due for the sale of Lot X to AFP-RSBS;[9]

On 28 January 1999, the Ombudsman filed in the Sandiganbayan 12 informations[10] for violation of Section 3(e) of RA 3019 and 12 informations[11] for falsification of public documents against petitioner and several other co-accused.

Petitioner filed his first motion for reconsideration dated 12 February 1999,[12] with a supplemental motion dated 28 May 1999,[13] of the Ombudsman's finding of probable cause against him. In its 11 June 1999 Order,[14] the Sandiganbayan disposed of petitioner's first motion for reconsideration, thus:

> WHEREFORE, the prosecution is given 60 days from today within which to evaluate its evidence and to do whatever is appropriate on the Motion for Reconsideration dated February 12, 1999 and supplemental motion thereof dated May 28, 1999 of accused Jose Ramiscal and to inform this Court within the said period as to its findings and recommendations together with the action thereon of the Ombudsman.

In a memorandum dated 22 November 2001, the Office of the Special Prosecutor (OMB-OSP) recommended that petitioner be excluded from the informations. On review, the Office of Legal Affairs (OMB-OLA), in a memorandum dated 18 December 2001, recommended the contrary, stressing that petitioner participated in and affixed his signature on the contracts to sell, bilateral deeds of sale, and various agreements, vouchers, and checks for the purchase of the subject property.[15]

The memoranda of OMB-OSP and OMB-OLA were forwarded for comment to the Office of the Ombudsman for Military (OMB-Military). In a memorandum dated 21 August 2002, the OMB-Military adopted the memorandum of OMB-OSP recommending the dropping of petitioner's name from the informations. Acting Ombudsman Margarito Gervacio approved the recommendation of the OMB-Military. However, the recommendation of the OMB-Military was not manifested before the Sandiganbayan as a final disposition of petitioner's first motion for reconsideration.

A panel of prosecutors[16] was tasked to review the records of the case. After thorough review, the panel of prosecutors found that petitioner indeed participated in and affixed his signature on the contracts to sell, bilateral deeds of sale, and various agreements, vouchers, and checks for the purchase of the property at the price of P10,500.00 per square meter. The panel of prosecutors posited that petitioner could not feign ignorance of the execution of the unilateral deeds of sale, which indicated the false purchase price of P3,000.00 per square meter. The panel of prosecutors concluded that probable cause existed for petitioner's continued prosecution. In its 19 December 2005 memorandum,[17] the panel of prosecutors recommended the following:

> WHEREFORE, premises considered, undersigned prosecutors recommend the following:
>
> 1. The August 2002 approved Recommendation of the Ombudsman-Military be set aside and the Motion for Reconsideration filed by Ramiscal (petitioner) be DENIED;

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> 2. Another information for violation of Section 3(e) of RA 3019 be filed against Ramiscal and all the other accused for causing damage to the government when it caused the payment of the amount of Php 10,500.00 per square meter for the subject lots when the actual amount should only be Php 3,000.00 per square meter.[18] (Emphasis supplied)

Ombudsman Ma. Merceditas N. Gutierrez approved the recommendation of the panel of prosecutors. Upon receipt of the final findings of the Ombudsman, the Sandiganbayan scheduled the arraignment of petitioner.

Meanwhile, on 26 January 2006, petitioner filed his second motion for reconsideration[19] of the Ombudsman's finding of probable cause against him.

On 26 February 2006, petitioner was arraigned. For his refusal to enter a plea, the Sandiganbayan entered in his favor a plea of not guilty. On 9 March 2006, petitioner filed a motion to set aside his arraignment[20] pending resolution of his second motion for reconsideration of the Ombudsman's finding of probable cause against him.

The Ruling of the Sandiganbayan

The Sandiganbayan pointed out that petitioner's second motion for reconsideration of the Ombudsman's finding of probable cause against him was a prohibited pleading. The Sandiganbayan explained that whatever defense or evidence petitioner may have should be ventilated in the trial of the case. In its assailed 5 April 2006 Resolution, the Sandiganbayan denied for lack of merit petitioner's motion to set aside his arraignment, thus:

> WHEREFORE, the Motion to Set Aside Arraignment is hereby DENIED for lack of merit.
>
> SO ORDERED.[21]

The Issue

Did the Sandiganbayan commit grave abuse of discretion when it denied petitioner's motion to set aside his arraignment pending resolution of his second motion for reconsideration of the Ombudsman's finding of probable cause against him?

The Court's Ruling

The petition has no merit.

Petitioner contends that the Ombudsman should have excluded him from the informations. He claims lack of probable cause to indict him considering the prior findings of the Ombudsman recommending the dropping of the cases against him. Petitioner claims that heads of offices have to rely to a reasonable extent on their subordinates and that there should be grounds other than the mere signature appearing on a questioned document to sustain a conspiracy charge.

Respondent Sandiganbayan counters that it correctly denied petitioner's motion to set aside his arraignment. Respondent court argues that petitioner's motion for reconsideration, filed on 26 January 2006 and pending with the Ombudsman at the time of his arraignment, violated Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman, as amended. Respondent court maintains that the memorandum of the panel of prosecutors finding probable cause against petitioner was the final decision of the Ombudsman.

The Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 15, Series of 2001,[22] sanction the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration. Section 7, Rule II of the Rules, as amended, provides:

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> Section 7. Motion for Reconsideration. -
>
> a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where the information has already been filed in court;
>
> b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (Emphasis supplied)

If the filing of a motion for reconsideration of the resolution finding probable cause cannot bar the filing of the corresponding information, then neither can it bar the arraignment of the accused, which in the normal course of criminal procedure logically follows the filing of the information.

An arraignment is that stage where, in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty.[23]

Under Section 7 of Republic Act No. 8493,[24] otherwise known as the Speedy Trial Act of 1998, the court must proceed with the arraignment of an accused within 30 days from the filing of the information or from the date the accused has appeared before the court in which the charge is pending, whichever is later, thus:

> Section 7. Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial. - The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. x x x (Emphasis supplied)

Section 1(g), Rule 116 of the Rules of Court, which implements Section 7 of RA 8493, provides:

> Section 1. Arraignment and plea; how made. -
>
> (g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. xxx (Emphasis supplied)

Section 1(g), Rule 116 of the Rules of Court and the last clause of Section 7 of RA 8493 mean the same thing, that the 30-day period shall be counted from the time the court acquires jurisdiction over the person of the accused, which is when the accused appears before the court.

The grounds for suspension of arraignment are provided under Section 11, Rule 116 of the Rules of Court, which applies suppletorily in matters not provided under the Rules of Procedure of the Office of the Ombudsman or the Revised Internal Rules of the Sandiganbayan, thus:

> Sec. 11. Suspension of arraignment. - Upon motion by the proper party, the arraignment shall be suspended in the following cases:
>
> (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.
>
> (b) There exists a prejudicial question; and
>
> (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided, that the period of suspension shall not exceed sixty (60) days counted

> from the filing of the petition with the reviewing office.[25]

Petitioner failed to show that any of the instances constituting a valid ground for suspension of arraignment obtained in this case. Thus, the Sandiganbayan committed no error when it proceeded with petitioner's arraignment, as mandated by Section 7 of RA 8493.

Further, as correctly pointed out by the Sandiganbayan in its assailed Resolution, petitioner's motion for reconsideration filed on 26 January 2006 was already his second motion for reconsideration of the Ombudsman's finding of probable cause against him. The Ombudsman, in its 19 December 2005 memorandum, has already denied petitioner's first motion for reconsideration,[26] impugning for the first time the Ombudsman's finding of probable cause against him. Under Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman, petitioner can no longer file another motion for reconsideration questioning yet again the same finding of the Ombudsman. Otherwise, there will be no end to litigation.

We agree with the Sandiganbayan that petitioner's defenses are evidentiary in nature and are best threshed out in the trial of the case on the merits. Petitioner's claim that the Ombudsman made conflicting conclusions on the existence of probable cause against him is baseless. The memorandum of the OMB-Military, recommending the dropping of the cases against petitioner, has been effectively overruled by the memorandum of the panel of prosecutors, thus:

> WHEREFORE, premises considered, undersigned prosecutors recommend the following:
>
> 1. The August 2002 approved Recommendation of the Ombudsman-Military be set aside and the Motion for Reconsideration filed by Ramiscal be DENIED;[27] (Emphasis supplied)

As the final word on the matter, the decision of the panel of prosecutors finding probable cause against petitioner prevails. This Court does not ordinarily interfere with the Ombudsman's finding of probable cause.[28] The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints.[29] As this Court succinctly stated in Alba v. Hon. Nitorreda:[30]

> Moreover, this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.[31]

In Ocampo, IV v. Ombudsman,[32] the Court explained the rationale behind this policy, thus:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[33]

Significantly, while it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case.[34]

In this case, petitioner failed to establish that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's motion to set aside his arraignment. There is grave

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abuse of discretion when power is exercised in an arbitrary, capricious, whimsical, or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[35]

Absent a showing of grave abuse of discretion, this Court will not interfere with the Sandiganbayan's jurisdiction and control over a case properly filed before it. The Sandiganbayan is empowered to proceed with the trial of the case in the manner it determines best conducive to orderly proceedings and speedy termination of the case.[36] There being no showing of grave abuse of discretion on its part, the Sandiganbayan should continue its proceedings with all deliberate dispatch.

We remind respondent to abide by this Court's ruling in Republic v. Sandiganbayan,[37] where we stated that the mere filing of a petition for certiorari under Rule 65 of the Rules of Court does not by itself merit a suspension of the proceedings before the Sandiganbayan, unless a temporary restraining order or a writ of preliminary injunction has been issued against the Sandiganbayan. Section 7, Rule 65 of the Rules of Court so provides:

> Section 7. Expediting proceedings; injunctive relief. - The court in which the petition [for certiorari, prohibition and mandamus] is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case. (Emphasis supplied)

WHEREFORE, we DENY the petition. We AFFIRM the assailed 5 April 2006 Resolution of the Sandiganbayan in Criminal Case Nos. 25122-45, which denied petitioner's motion to set aside his arraignment. This Decision is immediately executory.

Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[*]Peralta, Bersamin,[**] and Abad, JJ., concur.

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[*] Designated additional member per Special Order No. 883 dated 1 September 2010.

[**] Designated additional member per Special Order No. 886 dated 1 September 2010.

[1] Under Rule 65 of the Rules of Court.

[2] Rollo, pp. 264-269. Penned by Associate Justice Rodolfo A. Ponferrada, with Associate Justices Jose R. Hernandez (Acting Chairman) and Roland B. Jurado (Sitting as Special Member per Administrative Order No. 25 dated 24 March 2006), concurring.

[3] Id. at 338.

[4] Id. at 565.

[5] Alex Guaybar, Jack Guiwan, Mad Guaybar, Oliver Guaybar, Jonathan Guaybar, Miguela Cabi-ao, Jose Rommel Saludar, Joel Teves, Rico Altizo, Martin Saycon, Johnny Medillo, and Jolito Poralan,

[6] Rollo, p. 565.

[7] Id. at 359-375.

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[8] Id. at 393-425.

[9] Id. at 423-424.

[10] Id. at 426-461.

[11] Id. at 462-485.

[12] Id. at 498-525.

[13] Id. at 526-559.

[14] Id. at 560.

[15] Id. at 561, 566.

[16] Consisting of Acting Deputy Special Prosecutor Wendell E. Barreras-Sulit, Acting Director of the Prosecution Bureau John I.C. Turalba, and Assistant Special Prosecutor Almira A. Abella-Orfanel.

[17] Rollo, pp. 564-570.

[18] Id. at 570.

[19] Id. at 572-578.

[20] Id. at 579-581.

[21] Id. at 268.

[22] Signed on 16 February 2001.

[23] Albert v. Sandiganbayan, G.R. No. 164015, 26 February 2009, 580 SCRA 279.

[24] AN ACT TO ENSURE A SPEEDY TRIAL OF ALL CRIMINAL CASES BEFORE THE SANDIGANBAYAN, REGIONAL TRIAL COURT, METROPOLITAN TRIAL COURT, MUNICIPAL TRIAL COURT, AND MUNICIPAL CIRCUIT TRIAL COURT, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on 12 February 1998.

[25] Revised Rules of Criminal Procedure. Effective 1 December 2000.

[26] Dated 12 February 1999, with a supplemental motion for reconsideration dated 28 May 1999.

[27] Rollo, p. 570.

[28] Venus v. Desierto, 358 Phil. 675 (1998).

[29] Presidential Commission on Good Government v. Desierto, 445 Phil. 154 (2003).

[30] 325 Phil. 229 (1996).

[31] Id. at 244.

[32] G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.

[33] Id. at 730.

[34] Nava v. National Bureau of Investigation, 495 Phil. 354 (2005).

[35] Fuentes, Jr. v. Office of the Ombudsman, G.R. No. 164865, 11 November 2005, 474 SCRA 779.

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[36] Serapio v. Sandiganbayan, 444 Phil. 499 (2003).

[37] G.R. No. 166859, 26 June 2006, 492 SCRA 747.

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