TERESITA A. CIRON, PETITIONER, VS. MA. MERCEDITAS N. GUTIERREZ, IN HER OFFICIAL CAPACITY AS OMBUDSMAN, FLORIZA A. BRIONES AND TERESITA P. BUTARDO- TACATA, IN THEIR OFFICIAL CAPA...

G.R. Nos. 194339-41. April 20, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Before the Court is a petition for certiorari[1] assailing the Joint Resolution[2] dated February 16, 2009 and the Joint Order[3] dated June 1, 2010 of the Office of the Ombudsman (Ombudsman) in OMB-L-C-08-0527-G, OMB-L-C-08-0662-H, and OMB-L-C-08-0663-H, which dismissed petitioner Teresita A. Ciron's (Ciron) complaint charging respondents Nonna O. Beltran (Beltran), Raul E. Contreras (Contreras) and Santiago D. Ortega, Jr. (Ortega, Jr.) of violating Section 3 (e)[4] of Republic Act No. (RA) 3019[5] for lack of probable cause.

The Facts

Pursuant to the criminal complaints filed by Ortega, Jr., the Office of the City Prosecutor of Iriga City (OCP-Iriga) found probable cause to indict Ciron, then Credit and Collection Officer of the University of Saint Anthony (USANT), of two (2) counts of estafa in connection with the latter's failure to remit the following amounts: (a) P239,542.22 representing deductions made from the salaries of the employees of USANT in payment of various accounts (I.S. Case No. 2004-093);[6] and (b) P2,656,117.37 representing tuition and other fees collected from the USANT students in the school year 2001-2002 (I.S. Case No. 2004-094).[7] Consequently, Informations therefor were filed before the Regional Trial Court of Iriga City, Branch 36 (RTC), respectively docketed as Criminal Case Nos. IR-6760 and IR-6759.[8]

Subsequently, Ciron filed the following motions: (a) motion for a bill of particulars alleging that both Informations were deficient because they simply state that the estafa was committed "during the period from June, 2001 to May 31, 2002" without specifying when she received the money;[9] and (b) supplement motion for re-investigation.[10] On January 17, 2005[11] and January 27, 2005,[12] the RTC issued Orders directing the prosecution to amend said Informations and state therein the particulars sought for by Ciron, as well as to conduct re-investigation of the charges against her.[13] This notwithstanding, the OCP-Iriga issued two (2) Resolutions[14] both dated June 30, 2006 holding that there is no cogent reason to alter, modify, or reconsider its earlier resolutions finding probable cause against Ciron for estafa and, accordingly, ordered the elevation of the case back to the RTC.[15]

Due to the OCP-Iriga's insistence of the sufficiency of its Informations, the RTC issued an Order[16] dated August 9, 2006 (August 9, 2006 Order) dismissing both Criminal Case Nos. IR-6760 and IR-6759 without prejudice to their re-filing.[17] Such Order attained finality on September 2, 2006.[18]

In view of the dismissals without prejudice of the aforesaid criminal cases, the OCP-Iriga reviewed the evidence

on hand pertaining to I.S. Case Nos. 2004-093 and 2004-094 resulting in its issuance of two (2) Supplemental Resolutions dated March 28, 2008[19] and June 10, 2008,[20] which were penned by Beltran in her capacity as 2[nd] Assistant City Prosecutor and approved by Contreras as City Prosecutor.[21] In these Supplemental Resolutions, the OCP-Iriga recommended the filing of a total of 21 Informations for estafa against Ciron, broken down as follows: (a) as regards I.S. Case No. 2004-093, Ciron accumulated the amount of P239,542.22 in twelve (12) separate instances and, thus, the filing of the same number of Informations is in order;[22] and (b) as regards I.S. Case No. 2004-094, Ciron was able to obtain the aggregate sum of P2,656,117.37 on nine (9) occasions, necessitating the filing of the same number of Informations before the RTC.[23]

Aggrieved by the actions of the OCP-Iriga, Ciron filed a Complaint-Affidavit[24] dated July 14, 2008 against Beltran, Contreras, and Ortega, Jr. before the Ombudsman, accusing them of violating Section 3 (e) of RA 3019. In her complaint, Ciron contended that since the August 9, 2006 Order had already attained finality, the OCP-Iriga could no longer revive nor reinstate the estafa charges against her without Ortega, Jr. filing a new complaint before it.[25] Thus, Ciron concludes that Beltran and Contreras' acts of issuing the Supplemental Resolutions and filing the Informations for estafa before the RTC were made with manifest partiality, evident bad faith, or gross negligence and gave unwarranted preference to Ortega, Jr., to her prejudice since she had to post bail to secure her temporary liberty.[26]

In her counter-affidavit,[27] Beltran denied the charges against her and maintained that she issued the Supplemental Resolutions after reviewing all the evidence.[28] She argued that the August 9, 2006 Order was without prejudice and, as such, the OCP-Iriga still had the authority to issue new resolutions and to file new Informations even without the filing of a new complaint.[29] Also, she pointed out that Ciron failed to exhaust the administrative remedies available to her by filing a motion for reconsideration of the OCP-Iriga Supplemental Resolutions and/or elevating the case to the Department of Justice (DOJ) via petition for review.[30]

For his part,[31] Ortega, Jr. denied conspiring with Beltran and Contreras. He emphasized that Ciron's predicament was her own doing when her motion for bill of particulars resulted in the filing of multiple cases against her.[32] Contreras, on the other hand, did not submit his counter-affidavit.[33]

The Ombudsman Ruling

In a Joint Resolution[34] dated February 16, 2009, the Ombudsman found no probable cause to indict Beltran, Contreras, and Ortega, Jr. of the violations charged, and accordingly, dismissed the complaint against them. It did not find any showing of manifest partiality, evident bad faith, or gross inexcusable negligence on the part of Beltran and Contreras when they issued the Supplemental Resolutions, as they were made after a circumspect review of the records, as well as the voluminous evidence submitted by Ortega during the preliminary investigation. The Ombudsman likewise agreed with respondents that Ciron should have sought reconsideration of the Supplemental Resolutions or a review thereof before the DOJ instead of filing her complaint before it.[35]

Dissatisfied, Ciron moved for reconsideration,[36] which was, however, denied in a Joint Order[37] dated June 1, 2010, hence, this petition.

The Issue Before the Court

The issue raised for the Court's resolution is whether or not the Ombudsman gravely abused its discretion in finding no probable cause to indict respondents of violating Section 3 (e) of RA 3019.

The Court's Ruling

The petition is without merit.

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At the outset, it must be stressed that the Court has consistently refrained from interfering with the discretion of the Ombudsman to determine the existence of probable cause and to decide whether an Information should be filed. In this relation, it is settled that the Ombudsman has the full discretion to determine whether or not a criminal case should be filed. Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[38] The Court's pronouncement in Tetangco v. Ombudsman[39] is instructive regarding this matter, to wit:

> xxx this Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on 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 Court will be seriously 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 with cases 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.[40] (Emphasis and underscoring supplied)

Guided by the foregoing considerations, the Court finds that the Ombudsman did not gravely abuse its discretion in dismissing the complaints against respondent for lack of probable cause.

As already stated, respondents were accused of violating Section 3 (e) of RA 3019 for issuing the Supplemental Resolutions without Ortega filing a new complaint before the OCP-Iriga. The essential elements of such crime are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers[41]); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[42]

As will be explained hereunder, the Ombudsman correctly found that Beltran and Contreras' acts of issuing the Supplemental Resolutions and filing of new Informations before the RTC, even without Ortega, Jr. filing a new complaint before the OCP-Iriga, is in accordance with prevailing rules and jurisprudence and, thus, were not tainted with manifest partiality, evident bad faith, or inexcusable negligence.

Ciron posits that the August 9, 2006 Order dismissing the cases against her without prejudice had already attained finality and, as such, Beltran and Contreras should have required Ortega to file a new complaint before the OCP-Iriga for preliminary investigation before reviving the charges against her. In support of her argument, Ciron cites Bañares II v. Balising[43] (Bañares II) where it was held that "[a]fter the order of dismissal of a case without prejudice has become final, and therefore becomes outside the court's power to amend and modify, a party wishes to reinstate the case has no other remedy but to file a new complaint."[44]

Her reliance on Bañares II is misplaced.

In Bañares II, the private prosecutor attempted to reinstate the criminal cases which had been dismissed without prejudice by mere motion more than two (2) months after it had notice of the order of dismissal, without a motion for reconsideration or an appeal having been filed. The Court explained that an order dismissing a case without prejudice can attain finality if no motion for reconsideration or appeal therefrom is timely filed and that, in such

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case, the proper remedy to revive the case is not to file a motion as the court already lost its power to amend or modify its order, viz.:

> This Court has previously held that an order dismissing a case without prejudice is a final order if no motion for reconsideration or appeal therefrom is timely filed.
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> x x x x x x x x x
>
> After the lapse of the fifteen-day period, an order becomes final and executory and is beyond the power or jurisdiction of the court which rendered it to further amend or revoke. A final judgment or order cannot be modified in any respect, even if the modification sought is for the purpose of correcting an erroneous conclusion by the court which rendered the same.
>
> After the order of dismissal of a case without prejudice has become final, and therefore becomes outside the court's power to amend and modify, a party wishes to reinstate the case has no other remedy but to file a new complaint.[45] (Emphasis and underscoring supplied)

In Ortigas & Company Limited Partnership v. Velasco[46] (Ortigas), a civil case which was cited in Bañares II, the Court explained the nature of dismissals without prejudice:

> The dismissal of the case, and the lapse of the reglementary period to reconsider or set aside the dismissal, effectively operated to remove the case from the Court's docket. Even assuming the dismissal to be without prejudice, the case could no longer be reinstated or "revived" by mere motion in the original docketed action, but only by the filing of another complaint accompanied, of course, by the payment of the corresponding filing fees prescribed by law. x x x.[47] (Emphasis and underscoring supplied)

The Court is not oblivious to the fact that Bañares II, where criminal cases were involved, uses the phrase "file a new complaint." It must be clarified, however, that Bañares II and Ortigas merely state the rule that when an order dismissing a case without prejudice has attained finality, the case may no longer be revived by mere motion as it is no longer within the court's power to modify or amend; instead, the action must be instituted anew. Bañares II and Ortigas did not require a new complaint for preliminary investigation in order to revive a criminal case. In this regard, it must be emphasized that "complaint" in civil cases is different from a "complaint" in criminal cases. In civil cases, the complaint is the initiatory pleading filed in court,[48] whereas in criminal cases, what is filed in court is an| Information and not a complaint, which is filed before the public prosecutor for purposes of conducting a preliminary investigation. Thus, "complaint" for purposes of reviving a case must then refer to Informations where what is involved is a criminal case.

Verily, the Court has, in several cases, held that criminal cases which have been dismissed without prejudice may be reinstated by motion before the order of dismissal becomes final, or thereafter, by filing a new Information for the offense.[49] The Court, therefore, disagrees with Ciron's view that a new complaint for preliminary investigation had to be filed before the charges against her could be revived.

Anent the argument that a new preliminary investigation must be conducted, it is settled that the same is only required in order to accord the accused the right to submit counter-affidavits and evidence only in the following instances: (a) where the original witnesses of the prosecution or some of them may have recanted their testimonies or may have died or may no longer be available and new witnesses for the State have emerged; (b) where aside from the original accused, other persons are charged under a new criminal complaint for the same offense or necessarily included therein; (c) if under a new criminal complaint, the original charge has been upgraded; or (d) if under a new criminal complaint, the criminal liability of the accused is upgraded from being an accessory to that of a principal.[50] Since none of the foregoing instances obtain in this case, the Court holds that the OCP-Iriga, through Beltran and Contreras, need not conduct another preliminary investigation before it can issue

the Supplemental Resolutions and subsequently, file the consequent Informations in court.

In sum, the Ombudsman did not gravely abuse its discretion in dismissing the complaint against respondents since the issuance of the Supplemental Resolutions and the filing of the new Informations against Ciron even without a new complaint having been filed for preliminary investigation were done in accordance with prevailing rules and jurisprudence.

On a final note, the Court emphasizes that in our criminal justice system, the public prosecutor, which is the Office of the Ombudsman in this case, exercises wide latitude of discretion in determining whether a criminal case should be filed in court.[51] Courts cannot interfere with the Ombudsman's discretion in the conduct of preliminary investigations and in the determination of probable cause where the Ombudsman's discretion prevails over judicial discretion except when there is grave abuse of discretion,[52] which does not obtain in this case.

WHEREFORE, the petition is DISMISSED. The Joint Resolution dated February 16, 2009 and the Joint Order dated June 1, 2010 of the Office of the Ombudsman in OMB-L-C-08-0527-G, OMB-L-C-08-0662-H, and OMB-L-C-08-0663-H are hereby AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Perez, JJ., concur.

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[1] Rollo, pp. 3-18.

[2] Id. at 21-33. Penned by Graft Investigation & Prosecution Officer II Floriza A. Briones with Acting Director Rolando B. Zoleta concurring.

[3] Id. at 35-40.

[4] 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 x 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 x x x x x x

[5] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT" (August 17, 1960).

[6] See Resolution dated May 3, 2004 penned by 3rd Assistant City Prosecutor Dorotea Amparo C. Cruz; rollo, pp. 92-95.

[7] See Resolution dated May 4, 2004; id. at 96-99.

[8] See id. at 25.

[9] See id. at 68.

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[10] See id. at 70.

[11] Id. at 68-69. Penned by Judge Milagros G. Quijano.

[12] Id. at 70.

[13] See id. at 69-70.

[14] Id. at 102-105. Penned by 1[st] Assistant City Prosecutor Mariano H. Canuto.

[15] See id. at 103-104.

[16] Id. at 106-107.

[17] Id. at 107.

[18] See Entry of Final Judgment dated September 26, 2006; id. at 75.

[19] Id. at 108-110.

[20] Id. at 111-112.

[21] See id. at 110 and 112.

[22] See id. at 108-110.

[23] See id. at 111-112.

[24] Id. at 49-54.

[25] See id. at 53.

[26] See id. at 53-54.

[27] Id. 85-91.

[28] See id. at 86-87.

[29] Id. at 87.

[30] Id. at 89.

[31] See Counter-Affidavit dated October 16, 2008; id. at 81-84.

[32] See id. 83-84.

[33] Id. at 24.

[34] Id. at 21-33.

[35] See id. at 29-32.

[36] Dated May 14, 2010. Id. at 41-47.

[37] Id. at 35-40.

[38] Soriano v. Marcelo, 610 Phil. 72, 79 (2009), citing PCGG v. Desierto 563 Phil. 517, 525-526 (2007).

[39] 515 Phil. 230 (2006).

[40] Id. at 234-235, citing Roxas v. Vasquez, 411 Phil. 276, 288 (2001).

[41] See People v. Balao, 655 Phil. 563, 572 (2011), citing Dela Chica v. Sandiganbayan, 462 Phil. 712, 720 (2003).

[42] See Consigna v. People, G.R. No. 175750-51, April 2, 2014, citing Cabrera v. Sandiganbayan, 484 Phil. 350, 360 (2004).

[43] 384 Phil. 567(2000).

[44] Id. at 578.

[45] Id. at 577-578.

[46] G.R. Nos. 109645 and 112564, July 25, 1994, 234 SCRA 455.

[47] Id. at 486.

[48] See Section 3, Rule 6 of the Rules of Court.

[49] See Jaca v. Blanco, 86 Phil. 452, 453-455 (1950). See also Condrada v. People, 446 Phil. 635, 637-642 (2003) and People v. Lacson, 448 Phil. 317, 372-373 (2003).

[50] See People v. Lacson, id.

[51] Schroeder v. Saldevar, 550 Phil. 719, 723-724 (2007).

[52] See Tetangco v. Ombudsman, supra note 39, at 234.

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