



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ATTY. MOISES DE GUIA G.R. No. 257358
DALISAY, JR.,

Petitioner,

Present:

CAGUIOA, J., *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO,* and
SINGH, JJ.

- versus -

OFFICE OF THE OMBUDSMAN
MINDANAO AND ATTY.
DEXTER REY T. SUMAOY,

Promulgated:

Respondents. December 5, 2022

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RESOLUTION

INTING, J.:

Before the Court is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court on the Joint Resolution² dated May 16, 2019, and the Joint Order³ dated October 16, 2020, of the Office of the Ombudsman (Ombudsman) which dismissed, for insufficiency of evidence, the following cases:

1. OMB-M-C-18-0324 for “Violation of Section 3(e) of [Republic Act] No. [RA] 3019; Violation of Article 171 of the Revised Penal Code [RPC]”; and

* On official leave.

¹ *Rollo*, pp. 4-27.

² *Id.* at 28-34. Penned by Graft Investigation and Prosecution Officer II Modesto F. Onia Jr. with Deputy Ombudsman for Mindanao Rodolfo M. Elman and Ombudsman Samuel R. Martires approving.

³ *Id.* at 35-41.

2. OMB-M-A-18-0352 for “Grave Abuse of Authority; Grave Misconduct; Serious Dishonesty; Violation of Section 1 of Administrative Order No. [AO] 239, Series of 2008.”

In the Joint Resolution dated May 16, 2019, the Ombudsman dismissed both the criminal and administrative charges filed by Atty. Moises De Guia Dalisay, Jr. (petitioner) against Atty. Dexter Rey T. Sumaoy (private respondent). On motion for reconsideration,⁴ the Ombudsman issued the Joint Order dated October 16, 2020, denying it for lack of merit.

The present petition before the Court explicitly states that it assails only the dismissal of the criminal charges under OMB-M-C-18-0324 for violation of Section 3(e) of RA 3019 and violation of Article 171 of the RPC.

The Antecedents

This case stemmed from petitioner’s Affidavit-Complaint⁵ dated April 12, 2018, filed against private respondent, who is the City Administrator of Iligan City, for violation of Section 3(e)⁶ of RA 3019⁷ violation of Article 171⁸ of the RPC, Grave Abuse of Authority, Grave Misconduct, Serious Dishonesty, and violation of Section 1 of AO 239,⁹ series of 2008.¹⁰

In the complaint, petitioner alleged that on August 1 and August 14, 2017, private respondent appeared as private counsel for John Philip Aragon Burlado (Burlado) in a libel case filed before Branch 44, Regional Trial Court (RTC), Initao, Misamis Oriental; that private respondent used

⁴ Id. at 42-57.

⁵ Id. at 59-69.

⁶ Section 3(e) of the RA 3019 provides:

Section 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.

⁷ Anti-Graft and Corrupt Practices Act, approved on August 17, 1960.

⁸ Falsification by a Public Officer or Employee or Notary Public.

⁹ Prohibiting the Use of Government Vehicles for Purposes Other than Official Business, and for Other Purposes, signed on September 15, 2008.

¹⁰ *Rollo*, p. 28.

a government vehicle to attend the preliminary and pre-trial conference on the dates mentioned in violation of Section 1,¹¹ AO 239; and that private respondent falsified his Daily Time Record (DTR) for August 2017 by making it appear that he worked full-time on August 1 and August 14, 2017, when in fact he did not.¹²

In his Counter-Affidavit,¹³ private respondent averred that Iligan City Mayor Celso G. Regencia (Mayor Regencia) authorized him to engage in private practice and to serve as counsel for the city. He admitted having represented Burlado in the libel case but explained that it was only in a temporary capacity, and he already withdrew his appearance in the case. Private respondent emphasized that his appearance as Burlado's private counsel was ordered by Mayor Regencia because the cases filed against Burlado arose out of the latter's official duties; thus, Burlado as an employee of the City Information Office, should thus be assisted by the City Government. In support of his defense, he presented the following: (1) Memorandum¹⁴ dated July 25, 2017, issued by Mayor Regencia; (2) Approved Request to Travel¹⁵ on August 1, 2017; and (3) Approved Request to Travel¹⁶ on August 14, 2017.¹⁷

In petitioner's reply, he argued that private respondent could not appear for and defend a government official at any stage of a criminal case.¹⁸

Ruling of the Ombudsman

On May 16, 2019, the Ombudsman rendered the assailed Joint Resolution¹⁹ dismissing both the criminal and administrative charges against private respondent for insufficiency of evidence. The Ombudsman ruled that petitioner failed to discharge the burden of proving the existence of probable cause and to prove by substantial evidence the charges against private respondent.

¹¹ Section 1 of Administrative Order No. 239, s. 2008 provides:
Section 1. All government agencies and offices are prohibited from using government vehicles for purposes other than official business: *Provided*, That in every case, the trip ticket authorizing the use of the vehicle shall be displayed on the windshield or in another conspicuous place on the vehicle x x x.

x x x x

¹² *Rollo*, p. 29.

¹³ *Id.* at 91-96.

¹⁴ *Id.* at 100.

¹⁵ *Id.* at 102.

¹⁶ *Id.* at 101.

¹⁷ *Id.* at 30.

¹⁸ *Id.*

¹⁹ *Id.* at 28-34.

Petitioner filed a Joint Motion for Reconsideration of the Joint Resolution dated 16 May 2019 and for Reinvestigation²⁰ raising grave errors of facts and law or irregularities prejudicial to the rights or interests of petitioner.

On October 16, 2020, the Ombudsman rendered the assailed Joint Order²¹ denying the joint motion for lack of merit.

Hence, the instant petition.

Petitioner's Arguments

In the petition, petitioner is hinging on the following arguments to warrant the finding of probable cause against private respondent: *First*, there is no employer-employee relationship between Burlado and the City Government of Iligan because Burlado is a job order worker, and thus, Burlado is not entitled to the assistance of a government counsel, including lawyers from the City Government;²² *second*, even if Burlado is an employee of the City Government, he is still not entitled to representation of a counsel from the City Government because he committed libel in his personal and not in his official capacity;²³ *lastly*, private respondent, in representing Burlado in the libel suit, was engaged in a private practice of law which needs an authority to practice pursuant to Section 12,²⁴ Rule XVIII of the Revised Civil Service Rules.²⁵

The Issue

Whether the Ombudsman acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in not finding probable cause

²⁰ Id. at 42-57.

²¹ Id. at 35-41.

²² Id. at 11, 14.

²³ Id. at 12-13.

²⁴ Section 12, Rule XVIII of the Revised Civil Service Rules provides:

Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the officer or employee x x x.

²⁵ *Rollo*, p. 14.

to charge private respondent with violations of Section 3(e) of RA 3019 and Article 171 of the RPC.

The Court's Ruling

The petition is without merit.

It is well-entrenched in our jurisprudence that jurisdiction of the Court extends only to decisions of the Ombudsman in criminal or non-administrative cases.²⁶ While the right to appeal is not granted to an aggrieved party in the orders and decisions of the Ombudsman in criminal cases, the aggrieved party may file directly before the Court a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure on the ground of grave abuse of discretion.²⁷

The sole issue for the Court's resolution is whether the Ombudsman committed grave abuse of discretion in not finding probable cause against private respondent for violation of Section 3(e) of RA 3019 and Article 171 of the RPC. Generally, the Court does not interfere with the Ombudsman's findings as to whether probable cause exists.²⁸ To stress, this is an executive function and this exercise is in accordance with the Ombudsman's constitutionally-granted investigatory and prosecutorial powers.²⁹ In *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*,³⁰ the Court ratiocinated as follows:

The Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. **In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation, since he is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court. The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his prerogative.**

In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers.

²⁶ *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ 579 Phil. 312 (2008).

Various cases held that it is beyond the ambit of this Court to review the exercise of discretion of the Office 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.

The rationale underlying the Court's ruling has been explained in numerous cases. 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 would 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. In order to insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution as well as Republic Act No. 6770 saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive or judicial intervention. **If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless they are tainted with grave abuse of discretion.**³¹ (Emphasis supplied.)

However, while the Ombudsman's findings as to whether probable cause exists are generally not reviewable by the Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "*to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*"³²

By grave abuse of discretion, the Court means that which is capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. Thus, for the Court's exercise of judicial intervention, the Ombudsman's exercise of power must be done in an arbitrary or despotic manner or that which is 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.³³

A study of the present petition shows that petitioner failed to prove

³¹ Id. at 324-325

³² *Casing v. Ombudsman*, 687 Phil. 468, 476 (2012).

³³ Id.

that the Ombudsman committed grave abuse of discretion in not finding probable cause against private respondent. In fact, petitioner did not mention of any specific act or omission on the part of the Ombudsman that would show capricious or whimsical exercise of judgment amounting to lack or excess of jurisdiction.

As aptly determined by the Ombudsman, it is beyond dispute that the questioned travels of private respondent to Initao, Misamis Oriental, on August 1 and August 14, 2017, and his appearance before the RTC as Burlado's counsel were all duly approved and made upon the directive of Mayor Regencia.³⁴ Following the principle of presumption of regularity, private respondent's travels were considered official in character and his use of government vehicle for the purpose of attending the preliminary and pre-trial conference for Burlado's libel case was also considered valid and legal³⁵ unless substantially proved otherwise. Thus, respondent's DTRs cannot be said to have been falsified³⁶ on the ground that respondent cannot be faulted for following, in good faith, the order of Mayor Regencia.³⁷ Therefore, petitioner's allegation that private respondent committed the crime of Falsification under Section 171 of the RPC holds no water.

Moreover, the Court, in *Uriarte v. People*,³⁸ explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa* as when the accused committed gross inexcusable negligence. Manifest partiality is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Evident bad faith, on the other hand, does not only connote bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. In other words, it requires the state of mind to be affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. Lastly, gross inexcusable negligence is the degree of negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.³⁹

³⁴ *Rollo*, p. 31.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ 540 Phil. 477.

³⁹ *Id.* at 494-495.

In this case, however, petitioner failed to prove that private respondent caused undue injury to the government, or that he gave any party unwarranted benefits, advantage, or preference to be indicted for Section 3(e) of RA 3019.

In other words, it is clear from the findings above that the Ombudsman considered, weighed, and passed upon all the evidence in the case. Notably, there was nothing capricious, whimsical, or arbitrary in the Ombudsman's exercise of judgment. Thus, any error committed by the Ombudsman in the evaluation of evidence "is merely an error of judgment that cannot be remedied by *certiorari*."⁴⁰

To reiterate, the Court stresses that the purpose of a preliminary investigation is to secure innocent persons against hasty, malicious and oppressive prosecution, and to protect them from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trial.⁴¹ To meet this end, it becomes imperative upon the prosecutorial arms of the State to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie case*, or that no probable cause exists to form a sufficient belief as to the guilt of the accused.⁴²

In sum, the petition must be dismissed absent a compelling reason to reverse the Ombudsman's factual findings and conclusion of lack of probable cause.

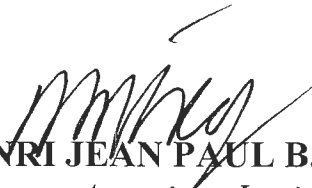
WHEREFORE, the Petition for *Certiorari* against the Joint Resolution dated May 16, 2019, and the Joint Order dated October 16, 2020, of the Office of the Ombudsman dismissing the charges under OMB-M-C-18-0324 for violation of Section 3(e) of Republic Act No. 3019 and violation of Article 171 of the Revised Penal Code is **DISMISSED**.

⁴⁰ See *People v. Tria-Tirona*, 502 Phil. 31 (2005).

⁴¹ *Quiogue v. Estacio, Jr.*, G.R. No. 218530 (Resolution), January 13, 2021.


⁴² *Id.*

SO ORDERED.

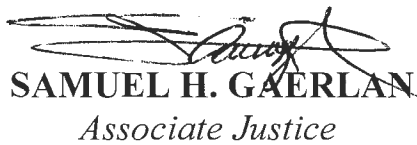


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

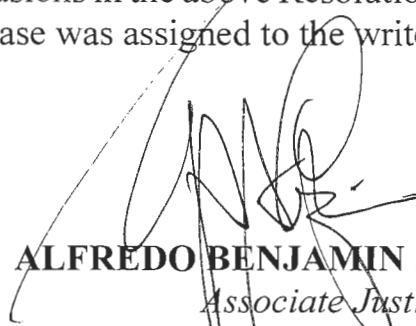
(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

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