

FIRST DIVISION

[G.R. NO. 166062, September 26, 2006]

**SALVADOR M. PEREZ AND JUANITA A. APOSTOL, PETITIONERS,
VS. HON. SANDIGANBAYAN (2ND DIVISION) AND PEOPLE OF
THE PHILIPPINES REPRESENTED BY THE SPECIAL PROSECUTOR
OF THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court, questioning the twin Resolutions^[1] of the Sandiganbayan dated 7 May 2004 (promulgated 18 May 2004),^[2] and 27 September 2004 (promulgated 1 October 2004).^[3]

The following facts were culled from the records of the case:

In a resolution dated 24 April 2001, the Office of the Deputy Ombudsman for Luzon resolved to file charges of violation of Section 3(e)^[4] of Republic Act No. 3019^[5] against petitioners, San Manuel, Pangasinan Mayor Salvador M. Perez, and Municipal Treasurer Juanita Apostol. The Information alleges a crime committed as follows:

That on or about September of 1998, or sometime prior or subsequent thereto, in the Municipality of San Manuel, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, SALVADOR PEREZ, being then the Municipal Mayor and JUANITA APOSTOL, ZAPANTA, Municipal Treasurer of said municipality, conspiring and confederating with one another, committing the crime herein charged in relation to and taking advantage of their official functions, and through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, wilfully, unlawfully and criminally cause the purchase of one (1) computer unit costing P120,000.00 acquisition by personal canvass which is in violation of Secs. 362 and 367 of R.A. 7160, thereby causing undue injury to the Municipality of San Manuel, Pangasinan.^[6]

On 16 January 2002, prior to the scheduled arraignment, petitioners filed with the Sandiganbayan a Motion for Leave of Court to File Motion for Reconsideration/Reinvestigation alleging the discovery of new evidence which will change the outcome of the case if presented and appreciated. The alleged newly discovered evidence consists in the reassessment by the auditors of the Commission on Audit (COA) that, though the prices between the subject computer and that canvassed by the COA are different, such difference is "not really that material."^[7]

The Sandiganbayan denied the Motion for Leave of Court to File Motion for Reconsideration/Reinvestigation in an Order dated 4 April 2002. On a subsequent Motion for Reconsideration, however, the Sandiganbayan reconsidered the 4 April

2002 Order, and granted petitioners ten days from receipt of the current 6 September 2002 Resolution within which to formalize their Motion for Reconsideration in the Office of the Ombudsman.

Complying with the 6 September 2002 Resolution, petitioners formalized their Motion for Reconsideration in the Office of the Ombudsman.

Accordingly, the Office of the Special Prosecutor conducted a reinvestigation. Assistant Special Prosecutor Warlito F. Galisanao prepared a Memorandum dated 23 October 2003, recommending the withdrawal of the Information.^[8] However, in the portion of the Memorandum earmarked for the Special Prosecutor's action, Special Prosecutor Dennis M. Villa-Ignacio chose the action "DO NOT CONCUR" by drawing two lines on the action "I CONCUR," and wrote the following marginal note:

I am, instead adopting the enclosed memorandum of Pros. Chua dated Jan. 22, 2004 recommending that in the meantime, further fact-finding be conducted, and an administrative case be filed against accused Apostol, after withdrawing the Information for viol. of Sec. 3(e) R.A. 3019.^[9]

On the other hand, new Ombudsman Simeon V. Marcelo crossed out both actions (APPROVED/DISAPPROVED), and wrote the following marginal note dated 16 February 2004:

The resolution of this case is deferred. There are two modes of violating Section 3(e) of RA 3019, to wit: a) causing undue injury or b) giving unwarranted benefits, advantage or preference. OSP should study whether the accused, assuming arguendo that there was no overprice, gave unwarranted benefits, advantage or preference to the seller of the subject computer. Kindly submit your recommendation soonest. ^[10]

In an 8 March 2004 Supplemental Memorandum, Assistant Special Prosecutor III Warlito F. Galisanao recommended an amendment of the Information, instead of a withdrawal thereof, to wit:

This is a Supplemental Memorandum to an earlier Memorandum dated October 23, 2003 to the Honorable Tanodbayan, Simeon V. Marcelo who directed the deferment of action on undersigned's recommendation for the withdrawal of the Information.

As earlier found, the acquisition of the unbranded computer set was questionable on the following grounds:

1. There was no public bidding and the mode of procurement was by canvass.
2. Under Sec. 367 of the Local Government Code, procurement through Personal Canvass requires approval of the Committee on Awards. There was no committee approval to speak of in this case because none has been constituted. This committee is supposed to be composed of :
 - a. Local General Services Officer or the Municipal Treasurer;

- b. Local Accountant;
 - c. The head of office of department for whose use the supplies are being procured.
3. Purchases under this section allows municipalities outside Metro Manila with the following limits:

Second and Third Class - Forty Thousand Pesos
(P40,000.00)

Fourth Class and Below - Twenty Thousand Pesos
(P20,000.00)

These limits are applicable for all items procured by any one (1) month period only. The local government of San Manuel, Pangasinan, incidentally, is a fourth class municipality.

It must be noted that the canvass made on all the stores/suppliers were done by accused Treasurer Juanita Apostol and attested by Mayor, Salvador Perez. To attest means to affirm to be correct, true or genuine (Blacks Law Dictionary, Fifth Edition)[.]

In the earlier memorandum, there is no unanimity of conclusion as far as the reasonableness of the purchase price of the computer set is concern[ed]. However, the circumstances of its acquisition clearly indicate that the public officials involved gave the supplier, Mobil Link Enterprises/Starlet Sales Center, a private party, unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence by paying much more than the prevailing price for a comparable computer set in the market.

This conclusion is derived from accused's deliberate disregard of the rules on procurement discussed above. The Information must, therefore, be amended to reflect the manner of the commission of the offense. In regard to Prosecutor Elvira Chua's recommendation which is endorsed by the Special Prosecutor, the issue of overpricing must be referred to the appropriate office for further fact-finding and probable administrative investigation for violation of COA rules and RA 7160 otherwise, known as the Local Government Code of 1991.

In light of the foregoing, it is recommended that the Information be amended instead of withdrawing the same. Further, the case of overpricing be referred for fact-finding and possible administrative investigation for violation of Secs. 362 and 367 of RA 7160, otherwise known as the Local Government Code of 1991.^[11]

This time around, Special Prosecutor Villa-Ignacio approved the Supplemental Memorandum and, pursuant thereto, Assistant Special Prosecutor Galisanao filed a Motion for Leave to File Amended Information dated 12 March 2004. The Amended Information, which again charges petitioners Perez and Apostol for violation of Sec. 3(e) of Republic Act No. 3019, provides:

That on or about January 21, 1998, or sometime prior or subsequent thereto, in the Municipality of San Manuel, Pangasinan, Philippines, and

within the jurisdiction of this Honorable Court, the above-named accused, SALVADOR PEREZ, being then the Municipal Mayor and JUANITA A. APOSTOL, Municipal Treasurer of said municipality, conspiring and confederating with one another, committing the crime herein charged in relation to and taking advantage of their official functions, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally, give unwarranted benefits, advantage or preference in the discharge of official functions to Mobil Link Enterprises/Starlet Sales Center causing the purchase of one (1) computer unit costing P120,000.00, an acquisition by personal canvass which is in violation of Sections 362 and 367 of RA 7160, thereby causing damage and prejudice to the Municipality of San Manuel, Pangasinan.^[12]

The Sandiganbayan granted the motion in the first assailed resolution, thus:

There having been no arraignment yet and the pre-maturity of the amendment is of the prosecution's risk, the motion to Amend the Information is GRANTED.

Accordingly, the Amended Information submitted by the prosecution is admitted.^[13]

Petitioners filed a motion for reconsideration, but the same was denied in the second assailed resolution:

The Court resolves to deny the Motion for Reconsideration filed by the accused. Indeed, the power of a prosecuting prosecutor to amend or cause the amendment of the information does not need the approving authority of the Ombudsman. The Information was maintained only with some amendments made which the Court feels do not violate any law since there was no arraignment yet.

Accordingly, accused Motion for Reconsideration dated June 4, 2004 is denied for lack of merit.^[14]

Petitioners assail the foregoing Resolutions before this Court, presenting the following issues for resolution:

1. Whether or not there is a denial of procedural due process on the part of the petitioners when the Special Prosecutor filed the Amended Information without authority from or the approval of the Honorable Ombudsman, and against the latter's specific instruction;
2. Whether or not the Amended Information is valid in the absence of such authority or approval of the Ombudsman under the circumstances; and
3. Whether or not respondent Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction, when it admitted the Amended Information which bears no approval of the Honorable Ombudsman, and against the latter's written instruction

to submit to him for approval the result of the re-study before the filing of said Amended Information.^[15]

This is not the first time the respective powers of the Ombudsman and the Special Prosecutor were pitted at loggerheads against each other since these positions were reinvented in the 1987 Constitution. The Offices of the Ombudsman (now *also* called the Tanodbayan) and the Special Prosecutor (then called the Tanodbayan) were reintroduced, with modified powers and designation, in the following provisions of Article XI of the Constitution:

Sec. 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, and at least one Deputy each for Luzon, Visayas and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

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Sec. 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

A judicial examination of the prosecutorial powers of these two Constitutional positions came barely a year after the effectivity of the 1987 Constitution, when then Special Prosecutor Raul Gonzalez filed criminal cases against Antique Governor Enrique Zaldivar. Zaldivar claimed that said cases were filed without legal and constitutional authority since, under the 1987 Constitution, it is only the Ombudsman (not the incumbent Tanodbayan who should now be called the Special Prosecutor) who has the authority to file the cases with the Sandiganbayan. In granting the petitions and nullifying the criminal informations filed against Zaldivar, this Court held:

Under the 1987 Constitution, the Ombudsman (as distinguished from the incumbent Tanodbayan) is charged with the duty to:

"Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient." (Sec. 13, par. 1)

The Constitution likewise provides that:

"The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, *except those conferred on the Office of the Ombudsman created under this Constitution.*" (Art. XI, Section 7) (Italics ours).

Now then, inasmuch as the aforementioned duty is given to the Ombudsman, the incumbent Tanodbayan (called Special Prosecutor under the 1987 constitution and who is supposed to retain powers and duties