

FIRST DIVISION

[G.R. NO. 167743, November 22, 2006]

HILARIO P. SORIANO, PETITIONER, VS. OMBUDSMAN SIMEON V. MARCELO, HON. PLARIDEL OSCAR J. BOHOL, GRAFT INVESTIGATION OFFICER II, AND RAMON R. GARCIA, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before this Court is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 85319 dated January 20, 2005 and its Resolution^[2] dated April 12, 2005 which denied the motion for reconsideration thereof.

On July 9, 2001, Hilario P. Soriano, the President of Rural Bank of San Miguel, Inc. (RBSM), filed a criminal complaint for violation of Republic Act (R.A.) No. 3019 against Norberto Nazareno, Philippine Deposit Insurance Corporation (PDIC) President and Chief Executive, charging the latter, among others, with illegal pre-termination of RBSM's lease contracts over certain lots while under receivership. Nazareno filed his counter-affidavit appending thereto the affidavit of Teodoro Jose B. Hirang, the Department Manager of the Takeover Center of the PDIC. Nazareno claimed that the notices of termination of the lease contracts were without prejudice to the claim for reimbursement for the remaining value of the bank buildings constructed on the leased lot with a book value of P5,728,000.70.^[3]

Soriano filed a complaint for perjury against Hirang with the Office of the Manila City Prosecutor. Soriano claimed that the statement of Hirang in his affidavit is totally untrue and a deliberate falsehood because PDIC, or any of its authorized representatives, made no reservation whatsoever concerning the claim for reimbursement when the lease contracts were pre-terminated. Soriano relied on the letter of Deputy Receiver Mauricia Manzanares to one of the lessors, attached to the complaint as Annex "D" thereof. The complaint was docketed as I.S. No. 01J-43460.

^[4] The case was assigned to Assistant City Prosecutor Joel Lucasan.

Soriano likewise filed a complaint for libel against Nazareno. He alleged therein that Nazareno uttered malicious and libelous statements when he was interviewed by a reporter of Business World on July 16, 2001. Nazareno declared in the interview that a case for *estafa* filed in the Department of Justice (DOJ) against Soriano for alleged self-dealing after a P10.5 million RBSM loan was used by affiliate Coconut Rural Bank in Batangas, and that some other *estafa* cases for P100 million were also filed by the DOJ in the Regional Trial Court (RTC) of Manila.^[5] The case was docketed as I.S. No. 01H-32904.

Thereafter, Soriano filed a third criminal complaint in the Office of the Manila City Prosecutor for violation of Articles 183 and 184 of the Revised Penal Code against Zenaida A. Cabais, the comptroller appointed by the Bangko Sentral ng Pilipinas (BSP) to oversee the operations of RBSM, particularly the proper utilization of emergency loans extended to it by the BSP. The complaint alleged that Cabais submitted an affidavit in support of the Monetary Board in the petition filed by RBSM against BSP with the CA. It further alleged that Cabais made a false statement in the said affidavit when she stated that, before RBSM declared a bank holiday, it paid Force Collect Professional Solution, Inc. and Sure Collect Professional Solution, Inc., which are allegedly owned by Soriano and other RBSM officers, P5.3 million and P5.75 million, respectively, without any supporting documents as payment of 25% collection fee. Soriano averred that this statement is not correct as the manager's checks for the said amounts were, in fact, withheld and no payment was made to the two corporations.^[6] The case, docketed as I.S. No. 00D-18089, was assigned to Assistant City Prosecutor Anabel Magabilin.

On January 14, 2002, Assistant City Prosecutor Joel A. Lucasan recommended the dismissal of the criminal complaint against Hiran in I.S. No. 01J-43460 for lack of probable cause. He noted that the Office of the Ombudsman had not yet made a finding that Hiran made a deliberate and willful assertion of falsehood in the affidavit submitted to it. He opined that without such finding, it cannot be concluded that Hiran had made such alleged falsehood which would constitute the crime of perjury.^[7] First Assistant City Prosecutor Eufrosino A. Sulla approved this recommendation for City Prosecutor Ramon R. Garcia.^[8] The criminal complaint was consequently dismissed. Soriano filed a petition for review of the resolution with the DOJ on March 21, 2002.^[9]

On January 24, 2002, Assistant City Prosecutor Yvonne G. Corpuz also recommended the dismissal of the complaint for libel against Nazareno for lack of probable cause. Prosecutor Corpuz made the following findings:

A perusal of the subject article shows that they are true and fair reports on a matter of public interest. It must be noted that when respondent Nazareno was interviewed by the reporter, Ms. Yap, he just mentioned facts which the public was entitled to know because complainant Soriano headed a bank that dealt with the public. These are matters of public interests and concerns of which the citizenry has the right to be informed especially when it affects the integrity of the banking system. Being a matter of public interest, the alleged defamatory articles are protected by the mantle of privilege communication, which does away with presumption of malice. The privilege character of the news article in question stems from constitutional guarantee of free speech and free press.

Moreover, malice in fact has not been shown in the case at bar. Respondent was not prompted by ill will or spite. He merely makes a disclosure of facts and not an imputation affecting character.^[10]

City Prosecutor Ramon R. Garcia approved the recommendation of Prosecutor Corpuz and the criminal complaint was therefore dismissed.^[11] Soriano filed a petition for review of the resolution with the DOJ.

On the other hand, in I.S. No. 00D-18089, Assistant City Prosecutor Anabel D. Magabilin recommended that the complaint against Cabais be dismissed for lack of probable cause. However, City Prosecutor Garcia merely recommended to the Ombudsman the approval of Prosecutor Magabilin's findings. In a March 4, 2002 Indorsement,^[12] he forwarded the records of the said complaint to the Office of the Ombudsman upon his finding that Cabais was a public officer and that the complaint imputed against her was related to the performance of her duties.

On July 2, 2002, Soriano filed an Affidavit-Complaint^[13] charging City Prosecutor Ramon Garcia with gross inexcusable negligence or manifest partiality in the performance of his duties as City Prosecutor which resulted in unwarranted benefits to Hiran and Nazareno, compromising public interest and injuring complainant's private rights, and violation of Section 3(e) of R.A. No. 3019. Soriano alleged in his affidavit-complaint that respondent erred in forwarding the records of I.S. No. 00D-18089 for perjury to the Ombudsman because in perjury, public office is not an essential ingredient. Soriano averred that if public office was an ingredient for perjury, then respondent should have forwarded his complaints against Hiran and Nazareno to the Office of the Ombudsman together with his recommendations thereon for final resolution, conformably with paragraph 1 of OMB-DOJ Joint Circular No. 95-001 dated October 5, 1995. The Circular states that preliminary investigation and prosecution of offenses committed by public officers and employees in relation to office whether cognizable by the Sandiganbayan or the regular courts, and whether filed with the Office of the Provincial/City Prosecutor shall be under the control and supervision of the Office of the Ombudsman.

Soriano likewise relied on Section 4(8), Rule II of the Rules of Procedure of the Office of the Ombudsman, which provides that, 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 appropriate action; and that no information may be filed and no complaint may be dismissed without the 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.^[14] Soriano alleged that Hiran and Nazareno committed the crime charged against them in relation to their office; hence, respondent Garcia should not have dismissed the Hiran and Nazareno complaints without the written authority or approval of the Deputy Ombudsman.

Soriano averred that respondent acted unlawfully in authorizing the dismissal of the complaints against Hiran and Nazareno instead of endorsing the complaints to the Office of the Ombudsman, together with the recommendations for dismissal, in the same way that the Cabais case was endorsed. He insisted that the special treatment of the Nazareno and Hiran cases, which resulted in their dismissal without having been reviewed by the Office of the Ombudsman, was uncalled for.^[15]

The Office of the Ombudsman docketed the criminal aspect of the complaint as OMB-C-C-02-0416-G, and the administrative aspect as OMB-C-A-02-0287-G.

In his Counter-Affidavit,^[16] respondent declared that although Nazareno was a public officer (being the President and Chief Executive Officer of PDIC, a government-owned or controlled corporation), since the offense of libel for which he

was charged does not appear to have been committed in relation to his office, it is the regular courts, particularly the RTC, not the Sandiganbayan, that has jurisdiction over the case. The Business World interview was his personal and private undertaking which was not related to the performance of his duty as PDIC President and Chief Executive Officer. Hence, respondent retained the authority to conduct the preliminary investigation of a complaint conformably with OMB-DOJ Joint Circular No. 95-001, Series of 1995 which reads, thus:

(2) Unless the OMBUDSMAN under his constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted by the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR, which shall rule thereon with finality.^[17]

He cannot be faulted for the dismissal of the Hirang case because the recommendation of the Investigating Prosecutor was approved by First Assistant City Prosecutor Eufrosino A. Sulla. Under Office Order No. 24 which he issued on February 5, 1996 and which remained in effect, only those cases involving offenses which are within the trial jurisdiction of the RTCs shall be forwarded to him for final disposition. Those cases for offenses cognizable by the Metropolitan Trial Courts (MeTCs) are forwarded to then First Assistant City Prosecutor Vicenta Ofilada, whose functions were performed by incumbent First Assistant City Prosecutor Sulla upon Ofilada's retirement from the service.^[18]

Respondent further averred that perjury is within the trial jurisdiction of the MeTC. The final disposition of the said case, which includes the determination of whether or not it should be endorsed to the Office of the Ombudsman, is vested with Prosecutor Sulla. He explained that he ordered the indorsement of the case against Cabais to the Ombudsman for final disposition because Cabais, being the comptroller appointed by the BSP to oversee the operations of the RBSM while the latter was under receivership, was a public officer. Hence, his actions in the Hirang, Nazareno and Cabais cases cannot be considered as unlawful, irregular or inconsistent or in total disregard of established procedure. Respondent averred that even if he erred in his actions on said cases, said error cannot be made the basis of a criminal or administrative action especially in the absence of any allegation, much less any evidence, showing that such disposition was done out of certain extraneous consideration other than plain appreciation of the evidence on hand. The remedy of complainant was to file a motion for the reconsideration of his resolutions in the said cases and/or appeal to the DOJ which he, in fact, did. Respondent pointed out that, on March 13, 2002, complainant, through counsel, filed a 20-page petition for review with the DOJ in the Nazareno case. On March 21, 2002, he appealed the Hirang case to the DOJ.^[19]

After due proceedings, the Ombudsman, through Graft Investigator Plaridel Oscar J. Bohol, dismissed the administrative complaint against respondent Garcia on October 25, 2002.^[20] The dispositive portion of the decision reads:

WHEREFORE, the foregoing premises considered, the instant administrative case against RAMON R. GARCIA, City Prosecutor of the Office of the City Prosecutor of Manila, with address at Room 208, City Hall Building, Manila, is hereby DISMISSED.

SO ORDERED.^[21]

The Ombudsman held that Soriano's complaint was premature. It is not within the province of its administrative disciplinary jurisdiction to review the quasi-judicial findings and decisions of government officials such as the City Prosecutor of Manila. If complainant was dissatisfied with such findings of the City Prosecutor, his remedy was to move for reconsideration or file a petition for review with the DOJ, the proper office mandated by law to review the resolutions of the Office of the City Prosecutor of Manila. The Ombudsman noted that, on March 13, 2002 and March 21, 2002, complainant had, in fact, filed the appropriate petition with the DOJ seeking the review of the Nazareno and Hirang cases.

Moreover, Section 20(1) of R.A. No. 6770, the Ombudsman Act of 1989, provides that the Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that the complainant has an adequate remedy in another judicial or quasi-judicial body. The Ombudsman opined that, unless there is a final determination by the appropriate office that, indeed, respondent Garcia abused his position and/or violated pertinent rules in issuing the questioned resolution, any administrative complaint against respondent was premature.^[22]

Soriano filed a Motion for Reconsideration^[23] which was likewise denied on February 16, 2004.^[24] Thereafter, he filed a petition for *certiorari* under Rule 65 with the CA submitting the sole issue —

Whether or not public respondents gravely abused their discretion in rendering the impugned Order exonerating respondent Ramon Garcia from any administrative liability and the Order denying petitioner's Motion for Reconsideration.^[25]

On January 20, 2005, the CA dismissed the petition.^[26] It stressed that under Section 3(e) of R.A. No. 3019, the public officer complained of should have acted with manifest partiality, evident bad faith or gross inexcusable negligence. The appellate court held that the assailed orders of the Ombudsman dismissing the complaint against respondent were justified considering that there was no evident bad faith on his part nor was there any act of irregularity from which an inference of malice or bad faith could be made. The CA found satisfactory respondent Garcia's explanation on why he could not be made liable. He explained that, in Nazareno's case, the alleged libelous act appears not to have been committed in relation to the performance of his duty as PDIC Chief but as a personal remark based on existing records. As for the Hirang case, he had no participation thereon, as the same was not forwarded to his office for final disposition.^[27]

On April 12, 2005, the CA resolved to deny Soriano's motion for reconsideration of its decision.^[28] Dissatisfied, Soriano filed this petition for review.

In this petition, Soriano as petitioner avers that he is not asking the Office of the Ombudsman to review or reverse or do any act relative to the resolutions of the Hirang and Nazareno complaints. He avers that what he is questioning is respondent Garcia's failure to comply with OMB-DOJ Joint Circular No. 95-001^[29] which calls for