

## FIRST DIVISION

[ G.R. NOS. 165510-33, September 23, 2005 ]

**BENJAMIN ("KOKOY") T. ROMUALDEZ, PETITIONER, VS. HON. SIMEON V. MARCELO, IN HIS OFFICIAL CAPACITY AS THE OMBUDSMAN, AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is a petition for certiorari<sup>[1]</sup> under Rule 65 of the Revised Rules of Civil Procedure assailing the resolutions dated July 12, 2004,<sup>[2]</sup> and September 6, 2004<sup>[3]</sup> of the Office of the Special Prosecutor (OSP)/Ombudsman, recommending that informations be filed in the Sandiganbayan charging petitioner Benjamin "Kokoy" T. Romualdez with violation of Section 7 of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) for non-filing of Statement of Assets and Liabilities (SAL).<sup>[4]</sup>

The antecedent facts show that on February 22, 1989, 24 informations docketed as Criminal Cases Nos. 13406-13429 were filed against petitioner before the Sandiganbayan for his alleged failure to file the SAL from 1962 to 1985.<sup>[5]</sup>

A warrant of arrest was issued on February 28, 1989,<sup>[6]</sup> but this was not served because of petitioner's exile from the country. On October 21, 1991, he filed through counsel a *Motion to Recall Warrants of Arrest*,<sup>[7]</sup> alleging that the preliminary investigation conducted by the Presidential Commission on Good Government (PCGG) was invalid for lack of jurisdiction. He also filed an *Urgent Ex-Parte Motion to Hold in Abeyance Implementation of Warrants of Arrest and/or to Recall the Same*.<sup>[8]</sup> On November 4, 1991, the Sandiganbayan issued an order to defer the enforcement of the arrest warrant on the condition:

- (1) that the cash deposit equivalent to the aggregate amount of the bond shall serve as a provisional cash bond for the accused's temporary liberty upon his personal appearance to the court;
- (2) that the cash deposit shall be made within five (5) days from receipt hereof by movant's counsel, said act of deposit representing the conformity of the accused to the conditions hereof;
- (3) that the accused himself shall arrive in the Philippines within thirty (30) days from counsel's receipt hereof;
- (4) that accused shall personally present himself to this Court

on the next succeeding working day after his arrival for completion of the bailbond process.<sup>[9]</sup>

Due to his non-compliance with these terms, the Sandiganbayan denied on January 24, 1992<sup>[10]</sup> petitioner's motion to recall the warrant of arrest. Petitioner moved for reconsideration which the Sandiganbayan denied on April 24, 1992. It also declared that until petitioner submits himself to the jurisdiction of the court, the issue regarding his compliance with the conditions imposed in the resolution of November 4, 1991, will not be entertained.<sup>[11]</sup>

Hence, on May 27, 1992, he filed a petition<sup>[12]</sup> with this Court, docketed as G.R. No. 105248, assailing the resolutions of the Sandiganbayan dated January 24, 1992, April 24, 1992 and November 4, 1991.

In a Decision dated May 16, 1995, this Court declared invalid the preliminary investigation conducted by the PCGG for lack of jurisdiction. However, it held that the invalidity or absence of a preliminary investigation did not affect the jurisdiction of the Sandiganbayan or impair the validity of the informations. Thus, the Sandiganbayan was ordered to suspend the proceedings pending the holding of a proper preliminary investigation by the Office of the Ombudsman.<sup>[13]</sup>

The dispositive portion of the Decision reads:

WHEREFORE, the petition is DENIED and the challenged Resolutions of January 24, 1992 and April 24, 1992 are AFFIRMED; but the respondent Sandiganbayan is DIRECTED to order the Office of the Ombudsman to forthwith conduct a proper preliminary investigation of the charges embodied in the informations filed against petitioner; to suspend the proceedings pending termination thereof; and thereafter to take action on petitioner's cases as may be warranted by the results of said preliminary investigation.

IT IS SO ORDERED.<sup>[14]</sup>

Pursuant to the above Decision, the Sandiganbayan ordered<sup>[15]</sup> the petitioner to submit his counter-affidavit, the PCGG its reply-affidavit, and the OSP its report on the reinvestigation.

Petitioner failed to file his counter-affidavit as directed. On April 27, 2000, he returned to the Philippines and voluntarily surrendered.<sup>[16]</sup> He filed a *Motion to Quash* on June 2, 2000.<sup>[17]</sup> The clarificatory hearing scheduled on the same date was reset to June 9, 2000.

On June 8, 2000, one day before the scheduled clarificatory hearing, the Sandiganbayan denied in open court petitioner's motion to quash<sup>[18]</sup> and the reconsideration thereof and also terminated the preliminary investigation.<sup>[19]</sup> His arraignment scheduled on June 26, 2000<sup>[20]</sup> was reset to July 28, 2000.<sup>[21]</sup>

On July 27, 2000, petitioner filed a petition for certiorari and prohibition<sup>[22]</sup> with this Court, docketed as G.R. Nos. 143618-41. He assailed the orders of the

Sandiganbayan (1) denying his motion to quash and his oral motion for reconsideration; (2) ordering the termination of the preliminary investigation; and (3) setting his arraignment on July 28, 2000. He claimed that the criminal cases against him were based on void informations, hence, the Sandiganbayan must be enjoined from arraigning him on July 28, 2000.

On July 30, 2002, we granted the petition holding that it is the prosecutor which is the Ombudsman, and not the PCGG, which must subscribe and file the informations because the crimes ascribed to petitioner do not relate to alleged ill-gotten wealth, and were therefore, beyond the ambit of the PCGG's jurisdiction. The informations were filed by PCGG, an unauthorized party and could not even be cured by conducting another preliminary investigation. Since the informations were invalid, they cannot serve as basis for criminal proceedings. We also found that the Sandiganbayan gravely abused its discretion when it abruptly terminated the reinvestigation.<sup>[23]</sup>

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the petition is *GRANTED*. The assailed orders of the Sandiganbayan dated June 8, 2000 are *ANNULLED* and *SET ASIDE*.

SO ORDERED.<sup>[24]</sup>

Pursuant to the foregoing Decision, the Sandiganbayan in a resolution dated February 10, 2004, dismissed Criminal Cases Nos. 13406-13429.<sup>[25]</sup>

On March 3, 2004, the OSP directed petitioner to submit his counter-affidavit. He failed to comply so another order dated April 14, 2004 was issued but this was returned because petitioner was not found in the given address.

On April 26, 2004, petitioner filed a *Motion to Dismiss* instead of a counter-affidavit.<sup>[26]</sup> He alleged that the order involved previously dismissed cases, hence, there was no legal justification for the OSP and the Ombudsman to further conduct preliminary investigation.

On May 12, 2004, petitioner filed a counter-affidavit<sup>[27]</sup> adopting all the allegations in the motion to dismiss. The PCGG filed its *Opposition*<sup>[28]</sup> insisting that the quashal of the informations for lack of authority by the PCGG to file the same did not mean that petitioner is already exempt from criminal prosecution. The Ombudsman can still file new informations should it find that probable cause exists.

In a Memorandum dated July 12, 2004,<sup>[29]</sup> the OSP ordered the *Motion to Dismiss* filed by petitioner expunged for being a prohibited pleading pursuant to Section 3(c), Rule 112 of the Revised Rules of Criminal Procedure and Section 4(d), Rule II of the Rules of Procedure of the Office of the Ombudsman. Considering that the motion to dismiss was grounded on the quashal of the informations and not on lack of jurisdiction, the OSP declared the motion to dismiss as a mere scrap of paper. Also, the petitioner was deemed to have waived his right to file a counter-affidavit. As such, his counter-affidavit was not given due course.

Consequently, based solely on complainant's evidence, the OSP determined there was probable cause that petitioner violated Section 7 of RA No. 3019 and accordingly recommended the filing of 24 informations before the Sandiganbayan.

On September 6, 2004, the OSP denied petitioner's motion for reconsideration.<sup>[30]</sup>

Thereafter, 19 informations docketed as Criminal Cases Nos. 28031-28049 were filed with the Sandiganbayan for failure of petitioner to file his SAL for the period 1967-1985 during his tenure as Ambassador Extraordinary and Plenipotentiary,<sup>[31]</sup> while 4 informations docketed as Criminal Cases Nos. 04-231857-04-231860<sup>[32]</sup> were filed with the Regional Trial Court of Manila for petitioner's failure to file his SAL from 1963 to 1966 during his tenure as Technical Assistant in the Department of Foreign Affairs.

Hence, this petition on the following grounds:

I. RESPONDENT ACTED WITHOUT JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING PETITIONER'S MOTION TO DISMISS THE PRELIMINARY INVESTIGATION OF CRIM. CASES NOS. 13406-13429 NOTWITHSTANDING THE FACT THAT THE SAID CASES HAD ALREADY BEEN DISMISSED BY THE SUPREME COURT AND BY THE SANDIGANBAYAN;

II. RESPONDENT ACTED WITHOUT JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN CONDUCTING A PRELIMINARY INVESTIGATION OF ALLEGED OFFENSES THAT HAD ALREADY PRESCRIBED.

The issues for resolution are the following: (1) whether or not the Ombudsman acted with grave abuse of discretion in denying petitioner's motion to dismiss the preliminary investigation; and (2) whether or not the offenses charged against petitioner have prescribed.

Petitioner argues that respondent's act of proceeding with the preliminary investigation constitutes patently reversible error. He claims that since Criminal Cases Nos. 13406-13429 have already been dismissed, the PCGG should have filed a new complaint with a new docket number. He insists that the Ombudsman could not conduct another preliminary investigation using the old docket numbers.

Petitioner also maintains that the offenses for which he was charged had already prescribed in February 2001, hence the preliminary investigation conducted anew by the Ombudsman should be terminated.

In their Comments,<sup>[33]</sup> respondents aver that the dismissal of Criminal Cases Nos. 13406-13429 did not mean that the preliminary investigation was terminated, as this Court specifically directed the Ombudsman to conduct the same. Besides, the Ombudsman is duly authorized to investigate on its own or upon complaint the acts or omissions of public officials or employees. Thus, it need not wait for the filing of another complaint before conducting a preliminary investigation. Respondents also deny that the offenses have prescribed since the period was tolled when the petitioner was out of the country.

The petition lacks merit.

Petitioner came to this Court through a special civil action for certiorari under Rule 65 of the Revised Rules of Civil Procedure imputing grave abuse of discretion on the Ombudsman in denying his motion to dismiss the preliminary investigation.

A petition for certiorari is the proper remedy when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy, and adequate remedy at law.<sup>[34]</sup>

In *Punzalan v. Dela Peña*,<sup>[35]</sup> lack of jurisdiction and excess of jurisdiction were distinguished. Respondent acts without jurisdiction if he does not have the legal power to determine the case. Where the respondent, being clothed with the power to determine the case, oversteps his authority as determined by law, then he is performing a function in excess of his jurisdiction.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. In other words, the power of discretion is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty and a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[36]</sup>

In denying the motion to dismiss the preliminary investigation, the Ombudsman resolved:

After a careful evaluation of the arguments/contentions of both parties, complainant (PCGG) and respondent Romualdez, the undersigned finds the contentions of the PCGG more credible.

The Motion to Dismiss filed by respondent Benjamin Romualdez should be expunged, the same being a prohibited pleading. Sec. 3 (c) of Rule 112 of the Revised Rules of Criminal Procedure, which provides that "the respondents shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit." Thus, it is incumbent upon the accused to file a counter-affidavit, and not a motion to dismiss. Moreover, Section 4 (d) of the Rules of Procedure of the Office of the Ombudsman provides: "No motion to dismiss shall be allowed except for lack of jurisdiction." Respondent argued in his motion to dismiss that Criminal Cases Nos. 13406-13429 were already dismissed by the Sandiganbayan by virtue of its Minute Resolution dated February 10, 2004, and not lack of jurisdiction. Hence, such motion is a mere scrap of paper, without any legal force and effect.

...

The authority of the Office of The Special Prosecutor/Ombudsman to conduct preliminary investigation in these cases is pursuant to the