

FIRST DIVISION

[G.R. Nos. 237888 & 237904, July 28, 2020]

WENCESLAO A. SOMBERO, JR., PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND NATIONAL BUREAU OF INVESTIGATION, RESPONDENTS.

DECISION

REYES, J. JR., J.:

Certiorari is an extraordinary prerogative writ that is not demandable as a matter of right. For the Court to even consider a petition for *certiorari*, it must clearly and convincingly show the presence of grave abuse of discretion.^[1] Unfortunately, such is not the case here.

Before this Court, on March 26, 2018, petitioner Wenceslao "Wally" A. Sombero, Jr. (Sombero) filed the instant Petition^[2] for *Certiorari* under Rule 65 of the Rules of Court with Urgent Application for the Issuance of a Restraining Order or *Status Quo Ante Order* seeking to annul and set aside the Consolidated Resolution^[3] dated October 23, 2017 and Consolidated Order^[4] dated November 23, 2017 of the Office of the Ombudsman (OMB) in OMB-C-C-16-0525, OMB-C-C-17-0001, and OMB-C-C-17-0089 finding probable cause to indict him, along with several others, for: (i) Plunder defined and penalized under Section 2 of Republic Act (R.A.) No. 7080^[5]; (ii) Violation of Section 3(e) of R.A. No. 3019^[6]; (iii) Direct Bribery under Article 210 of the Revised Penal Code (RPC); and (iv) Presidential Decree No. (PD) 46.^[7]

Factual Antecedents

On December 16, 2016, Sombero filed before the OMB a Complaint-Affidavit^[8] for violation of Section 3(e) of R.A. No. 3019 against Bureau of Immigration (BI) Deputy Commissioners Al C. Argosino (Argosino) and Michael B. Robles (Robles). This was docketed as OMB-C-C-16-0525.

On December 22, 2016, a Second Complaint^[9] was filed by the then BI Acting Intelligence Chief Charles T. Calima, Jr. (Calima) before the OMB also charging Argosino and Robles with violation of Section 3(e) of R.A. No. 3019 and R.A. No. 7080, docketed as OMB-C-C-17-0001.

Lastly, on January 26, 2017, National Bureau of Investigation (NBI) Director Dante A. Gierran filed the Third Complaint,^[10] this time charging Argosino, Robles, Calima, Sombero, and Jack Lam (Lam) with direct bribery, receiving/soliciting gifts, violation of Section 3(e) of R.A. No. 3019, and PD 46. This was docketed as OMB-C-C-17-0089.

All three complaints are predicated upon the same set of facts summarized below:

On November 24, 2016, pursuant to BI Mission Order (MO) No. JHM-2016-065^[11] issued by Commissioner Jaime H. Morente (Commissioner Morente), the Fugitive Search Unit of the BI conducted a law enforcement operation at the Fontana Leisure Park and Casino (Fontana) in Clark Freeport Zone, Angeles, Pampanga, resulting in the apprehension of 1,316 undocumented Chinese nationals who were running an illegal online casino.^[12] Fontana was reportedly owned by Lam and managed by Ng Khoen Hon also known as Norman Ng (Ng).^[13]

Amidst the crisis in Fontana, Sombero allegedly reached out to Ng, introduced himself as the President of the Asian Gaming Service Providers Association, Inc. (AGSPA), and arranged for the latter to meet with Department of Justice (DOJ) Secretary Vitaliano N. Aguirre II (Secretary Aguirre) and Argosino.^[14]

On November 26, 2016, at the VIP room of High Street Cafe situated inside Shangri-La Hotel in Bonifacio Global City, Sombero introduced Lam, Ng, and a certain Alex Yu (Yu) to Secretary Aguirre and Argosino.^[15] Sombero then told Secretary Aguirre about the plight of the businessmen and even uttered the words: "*Secretary, matagalna walang nag-aalaga Icay Jack Lam. Sopwede ho ba ang Secretary of Justice ang mang (sic) ninong sa kanya?*"^[16] However, Secretary Aguirre ignored this and left the room within minutes.^[17] Thus, it was Sombero and Argosino who allegedly agreed on the amount of P100 Million and P50 Million of which must be given immediately.^[18] That same day, before midnight, Argosino and Robles showed up in the City of Dreams (COD) in Pasay City and waited at a restaurant.^[19] At around 2:00 a.m. on November 27, 2016, Sombero, carrying two paper bags each containing P10 Million, met with Argosino and Robles at the restaurant.^[20] After a few conversations, Sombero left the restaurant, leaving the two bags with Argosino and Robles.^[21] By 5:45 a.m., Sombero was back with three more paper bags filled with P10 Million each.^[22] They then proceeded to the parking lot and loaded three paper bags in Argosino's car and the other two paper bags in Robles' car.^[23] Sombero also took P2 Million from the P50 Million.^[24]

On November 30, 2016, Argosino, Robles, Sombero, Ng, and Yu met at a suite at the Crown Hotel and discussed bail matters.^[25] After that, Argosino kept on demanding the other P50 Million even though none of the Chinese workers had been released.^[26] Thus, Sombero went to Calima and divulged the transaction.^[27] Consequently, Calima visited Argosino and Robles on separate occasions and informed them that he knew about the P50 Million exchange on November 27, 2016 at COD.

On December 8, 2016, Argosino and Robles approached Commissioner Morente and claimed that Calima was harassing them. Calima was thus summoned to the Commissioner's office.^[28] There, Calima showed Commissioner Morente the evidence pertaining to Argosino and Robles' transaction with Sombero.^[29] It was then that the two Deputy Commissioners admitted that they were in possession of the P50 Million.^[30] Thereafter, Calima and Argosino met after office hours to discuss damage control during which, Calima's share was fixed at P18 Million.^[31] On

December 9, 2016, at around 2:00 p.m., Argosino delivered two paper bags containing a total of P18 Million to Calima.^[32] Thereafter, Calima was fired by Secretary Aguirre while Robles and Argosino resigned.

Pursuant to the Order^[33] dated March 10, 2017 of the OMB directing the respondents in OMB-C-C-17-0089 to submit their counter-affidavits, Sombero, in particular, submitted his Counter-Affidavit^[34] on April 10, 2017, claiming that he only assisted the detained Chinese nationals in his capacity as President of AGSPA. Moreover, he asserted that it was Argosino who asked for P100Million and insisted that half of the said amount be given at once as a show of goodwill. He also contended that he received P2 Million from Argosino for the puipose of forming a legal team to assist in the processing of the release of the Chinese individuals.

OMB Consolidated Resolution and Order

On October 23, 2017, the OMB issued the assailed Consolidated Resolution finding probable cause to charge Sombero, Argosino, Robles, Calima, and Lam. The dispositive portion of which, reads:

WHEREFORE, finding probable cause to indict respondents, let the appropriate Informations be **FILED** before the proper court/s for the following criminal charges:

One (1) count of **Violation of Section 3 (e) of [RA. No.] 3019** against **[ARGOSINO, ROBLES, and petitioner]**;

One (1) count of **Violation of Section 3 (e) of [R.A. No.] 3019** against **[CALIMA]**;

One (1) count of **Violation [of R.A.. No.] 7080** against **[ARGOSINO, ROBLES, and petitioner]**;

One (1) count of **Direct Bribery (Article 210, Revised Penal Code)** against **[ARGOSINO, ROBLES, and petitioner]**;

One (1) count of **Direct Bribery (Article 210, Revised Penal Code)** against **[CALIMA]**;

One (1) count of **Violation of [PD 46]** against **[ARGOSINO, ROBLES, petitioner, and LAM]**; and

One (1) count of **Violation of [PD 46]** against **[ARGOSINO, ROBLES, and CALIMA]**.

SO ORDERED.^[35]

However, upon separate Motions for Reconsideration filed by Sombero, Calima, Lam, Argosino, and Robles, the OMB issued a Consolidated Order dated November 23, 2017, modifying its earlier Resolution, viz.:

WHEREFORE, finding probable cause to indict respondents except [Calima], let the appropriate Informations be **FILED** before the proper court/s for the following criminal charges:

One (1) count of Violation of Section 3 (e) of [R.A. No.] 3019 against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Violation [of R.A. No] 7080 against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Article 210, Revised Penal Code against [ARGOSINO, ROBLES, and petitioner];

One (1) count of Violation of [PD 46] against [ARGOSINO, ROBLES, petitioner, and LAM].

SO ORDERED.^[36]

After due consideration of the testimonial and documentary evidence, the OMB concluded that Argosino and Robles, taking advantage of their official positions as BI Deputy Commissioners, conspired with Sombero in acquiring ill-gotten wealth in the aggregate amount of P50 Million intended as a bribe to release the 1,316 undocumented Chinese nationals found illegally working inside Fontana.

As regards Calima, the OMB found that Commissioner Morente's testimony before the Committee on Accountability of Public Officers and Investigations on February 16, 2017 validated Calima's contention that his actions were pursuant to a duly authorized counter-intelligence operation that he was conducting and that his receipt of the PI 8 Million was solely for the purpose of gathering more evidence against Argosino and Robles. Thus, the charges against Calima were dropped.

Accordingly, on March 23, 2018, the OMB filed before the Sandiganbayan (SB) an Information^[37] charging Argosino, Robles, and Sombero with violation of R.A. No. 7080 docketed as SB-18-CRM-0241.

Hence, this Petition for *Certiorari* filed by Sombero raising the following issues:

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FOUND PROBABLE CAUSE TO CHARGE [HIM] WITH PLUNDER.

THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT VIOLATED [HIS] RIGHT TO DUE PROCESS.^[38]

Our Ruling

Plainly stated, the issue in this case is whether or not the OMB committed any grave abuse of discretion in rendering the assailed Consolidated Resolution and Consolidated Order finding probable cause against Sombero, *et al.* for the charges against them.

The Court rules in the negative.

Article XI, Section 12 of the Constitution^[39] and R.A. No. 6670^[40] empower the OMB to act on criminal complaints against public officials and government employees with a wide latitude of investigatory and prosecutory prerogatives.^[41] Respect for the OMB's constitutional mandate and practicality leads this Court to exercise restraint in interfering with the former's performance of its functions.^[42] Besides, its power to investigate^[43] puts OMB in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. And, being a non-trier of facts, this Court generally defers to the sound judgment of the OMB except if it has been made with grave abuse of discretion.^[44]

Certainly, the burden of demonstrating all the facts essential to establish the right to a writ of *certiorari* lies with Sombero.^[45] He must sufficiently prove that the OMB's Consolidated Resolution and Consolidated Order finding probable cause to indict him may be reviewed or even set aside by this Court based on the narrow ground of grave abuse of discretion amount to lack or excess of jurisdiction.

Here, Sombero posits that there is no probable cause to charge him with plunder, in conspiracy or otherwise, since: (a) the amassing, accumulation, and acquisition of the ill-gotten wealth must be accomplished through a series or combination of overt or criminal acts; and (b) the element of a "main plunderer" is missing. Clearly, Sombero's arguments are centered on the OMB's appreciation of facts. And, if only to determine the presence or absence of grave abuse of discretion, the Court now looks into the OMB's justifications in concluding that probable cause exists in this case.

There is probable cause to indict Sombero, et al.

Let it first be emphasized that Sombero's Petition involves the preliminary stage in a criminal case. During a preliminary investigation, the OMB merely determines whether probable cause exists to warrant the filing of a criminal case against an accused. Such investigation is not a part of the trial and is executive in nature.^[46] The executive finding of probable cause requires only substantial evidence and not absolute certainty of guilt.^[47] The finding of probable cause need only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused.^[48] Thus, the OMB is not bound by the technical rules on evidence.^[49] Therefore, in order to arrive at its finding of probable cause, the OMB only has to find enough relevant evidence to support its belief that the accused most likely committed the crime charged. Otherwise, grave abuse of discretion can be attributed to its ruling.^[50]

After a judicious review, the Court holds that, in the present case, the OMB's finding of probable cause for violation of R.A. No. 7080 against Sombero, *et al.* is supported by substantial evidence. The crime of Plunder, as culled from the law itself (*i.e.*, R.A. No. 7080), has the following elements: (a) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (b) that he