

FIRST DIVISION

[G.R. No. 245862, November 03, 2020]

**HERMIS CARLOS PEREZ, PETITIONER, VS. SANDIGANBAYAN
AND THE OMBUDSMAN, RESPONDENTS.**

DECISION

CAGUIOA, J:

This is a petition^[1] for *certiorari* and prohibition, with a prayer for the issuance of writ of preliminary injunction and temporary restraining order, filed by the petitioner Hermis Carlos Perez (Perez), seeking to nullify the Resolutions dated January 29, 2019^[2] and March 8, 2019^[3] of the Sandiganbayan in SB-18-CRM-0526. The challenged resolutions of the Sandiganbayan denied Perez's Motion to Quash^[4] for lack of merit, ruling that that the offense has not prescribed and there was no violation of Perez's right to the speedy disposition of cases.

The Facts

On April 27, 2016, a complaint for Malversation of Public Funds or Property, for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019,^[5] and for violation of Sections 37 and 48 of R.A. No. 9003^[6] was filed against Perez, in his capacity as the Mayor of Biñan, Laguna. The complaint also impleaded Victor G. Rojo (Rojo), a private individual connected with Etsaw Consultancy and Construction of Environmental Technologies International Corporation of the Philippines^[7] (ECCE).

The complaint stemmed from a Memorandum of Agreement^[8] (MOA) executed on November 12, 2001 between the Municipality of Biñan, as represented by Perez, and ECCE, as represented by Rojo, wherein the Municipality of Biñan agreed to use ECCE's Hydromex Technology for its solid waste management program, and to obtain its services for project management, documentation, as-built drawings, installation, testing, supervision, and training. The MOA further stated that the Municipality of Biñan was satisfied and convinced of ECCE's capability to carry out the solid waste management program after it had observed ECCE's Hydromex Technology in the Quezon City Hall compound. Perez's authority to enter into the MOA was earlier granted by the *Sangguniang Bayan* of Biñan through *Kapasiyahan Blg. 239*-(2001),^[9] issued on October 1, 2001.

An amended MOA was supposedly executed on March 25, 2002, having the same terms and conditions as the original MOA, except for the price and terms of payment. From P75,000,000.00, the price was reduced to P71,000,000.00, and the terms of payment were accelerated.^[10]

The complaint, filed 14 years after the execution of the MOA, alleged that there was

no competitive bidding undertaken to procure ECCE's solid waste management program and other services. Furthermore, it was alleged in the complaint that ECCE is incapable of complying with its contractual obligations under the MOA, especially since its investment in a Waste Treatment Machine is P130,303.39 but ECCE's subscribed capital stock amounts only to P28,000.00. The complaint further cited the harm and injury to residents near the dumpsite operations of ECCE.^[11]

After more than four months from the filing of the complaint, the Office of the Ombudsman (OMB) Graft Investigation & Prosecution Officer issued a report on September 6, 2016, recommending the assignment of the case to a member of the Environmental Ombudsman Team. On October 13, 2016, Perez and Rojo were directed to file their respective counter-affidavits.^[12]

On November 22, 2016, Perez's counsel filed a formal entry of appearance, and moved for the extension of time to submit the required counter-affidavit. On December 20, 2016, Perez submitted his counter-affidavit to the OMB, denying the accusations in the complaint.^[13] Perez argued that the transaction between ECCE and the Municipality of Biñan was reviewed by the Local Prequalification, Bids and Awards Committee (PBAC). According to him, R.A. No. 9184,^[14] or the Government Procurement Reform Act, is not applicable to the ECCE contract, and that Sections 37 and 38 of the Local Government Code^[15] (LGC) should instead apply.^[16]

In a Resolution^[17] dated February 22, 2018, the OMB Graft Investigation and Prosecution Officer found probable cause to charge Perez with the violation of Section 3(e) of R.A. No. 3019:

WHEREFORE, this Office finds probable cause to indict respondent HERMIS C. PEREZ for violation of Section 3(e) of R.A. No. 3019. Let the corresponding Information be **FILED** before the Sandiganbayan.

The charges for Malversation of Public Funds or Property and violation of Section 3(g) of R.A. No. 3019 and Sections 37 and 48 [of R.A. No. 9003] against respondent Perez are **DISMISSED** for lack of merit.

The charges against respondent VICTOR G. ROJO are **DISMISSED** for lack of merit.

SO ORDERED.^[18]

The OMB held that the execution of the MOA with ECCE was an act of manifest partiality on the part of Perez. ECCE was chosen without the benefit of a public bidding, which was the default mode of procurement even prior to the enactment of the Government Procurement Reform Act in 2003. Both the Local Government Code and the Commission on Audit (COA) Circular No. 92-386^[19] prescribe competitive public bidding. The OMB also found that Perez was unable to substantiate his defense that the MOA was reviewed by the Local PBAC of Biñan.^[20]

Moreover, the OMB held that Perez acted with gross inexcusable negligence in awarding the solid waste management program to ECCE. Since ECCE has a subscribed capital stock of only P28,000.00 and a paid-up capital of P7,000.00, the

OMB found that Perez failed to conduct his own due diligence prior to the execution of the MOA. As a result, the OMB ruled that unwarranted benefits were given to ECCE.^[21]

As for the charge of conspiracy with Rojo, the OMB held that there was no evidence to establish this fact. The OMB also found insufficient evidence to prove the elements of the other criminal charges against Perez.^[22]

On February 28, 2018, Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) approved the February 22, 2018 Resolution finding probable cause against Perez.^[23] Perez moved for the partial reconsideration of this resolution on May 7, 2018.^[24] This motion was denied in the June 7, 2018 Order of the OMB.^[25]

On July 19, 2018, an Information^[26] was prepared against Perez, the accusatory portion of which reads as follows:

That from 12 November 2001 to 25 March 2002, or sometime prior or subsequent thereto, in Biñan, Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused **HERMIS CARLO PEREZ**, a high-ranking public officer, being then the Municipal Mayor of Biñan, Laguna, while in the performance of his administrative and/or official functions and committing the crime in relation to office, taking advantage of his official position, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give Etsaw Consultancy and Construction of Environmental Technologies International Corporation of the Philippines (ECCE) and/or Victor G. Rojo, President of ECCE, unwarranted benefit, advantage or preference by awarding, causing and/or ensuring the award to the latter the contract for the solid waste management program of the municipality, as well as the services for the project management, documentation/as-built drawings, installation, testing, acceptance, supervision and training services via Memorandum of Agreement dated 12 November 2001, and Agreement for the Supply of Hydromex Technology-Related Equipment dated 25 March 2002, in the amount of Php71,000,000.00 despite the following irregularities: (a) the absence of a public bidding as ECCE was only selected based on the latter's presentation of the Hydromex Technology, in violation of the Local Government Code and COA Circular No. 92-386; (b) the lack of the recommendation and/or approval of the bids and awards committee; (c) failure to conduct due diligence and background check on the financial qualification and technical capability of ECCE to undertake the project, which only had the subscribed capital stock of Php28,000.00, and a paid-up capital of Php7,000.00, and by causing or facilitating the payments in favor of ECCE notwithstanding the said irregularities, to the damage and prejudice of the government.

CONTRARY TO LAW.^[27]

Ombudsman Carpio Morales approved the Information on July 20, 2018. Later, or on October 2, 2018, Ombudsman Samuel R. Martires likewise signified his approval to the filing of the Information with the Sandiganbayan.^[28] The Information was finally

filed with the Sandiganbayan on October 5, 2018.^[29]

On October 31, 2018, Perez moved to quash^[30] the Information on the ground of prescription of the offense. Perez pointed out that the alleged violation of Section 3(e) of R.A. No. 3019 occurred on November 12, 2001 up to March 25, 2002. Under Section 11 of R.A. No. 3019, all offenses punishable under this law prescribe after 15 years. Since the Information was filed with the Sandiganbayan only on October 5, 2018, or more than 16 years from the commission of the offense, the criminal charges should be dismissed on the ground of prescription. In addition, Perez invoked his constitutional right to the speedy disposition of cases.^[31]

The People of the Philippines (People) opposed Perez's motion to quash. In its comment,^[32] the People argued that the prescription of the offense charged against Perez should be reckoned from the discovery of its commission. Even if the court were to reckon the period of prescription from the commission of the offense on November 12, 2001, the complaint against Perez was filed with the OMB on April 27, 2016, effectively tolling the running of the prescriptive period. As regards the right to the speedy disposition of cases, the People maintained that there was no delay, and even if there was any, the delay was not inordinate.^[33]

Ruling of the Sandiganbayan

In a Resolution dated January 29, 2019, the Sandiganbayan found Perez's motion bereft of merit:

WHEREFORE, premises considered, the motion to quash of accused **Hermis Carlo Perez** is hereby **DENIED** for lack of merit.

Let the arraignment of the above-named accused be set accordingly.

SO ORDERED.^[34]

On the issue of prescription of the offense, the Sandiganbayan ruled that the 15-year period is applicable because R.A. No. 10910,^[35] the amendatory law of R.A. No. 3019, took effect only on July 21, 2016. The Sandiganbayan likewise ruled that the prescriptive period commenced to run only from the discovery of the commission of the offense, pursuant to the "blameless ignorance"^[36] doctrine in Section 2 of Act No. 3326.^[37] For this reason, it was only when the problems with the MOA became evident that the offense was discovered. In any case, the Sandiganbayan held that even if it were to reckon the prescriptive period on the *Sangguniang Bayan's* passage of its resolution on October 1, 2001, which approved the execution of the subject MOA, the filing of the complaint with the OMB interrupted the running of the prescriptive period.^[38]

Further, the Sandiganbayan held that there was no violation of Perez's right to speedy disposition of cases. Since the complaint was filed on April 27, 2016 and the Information was filed with the Sandiganbayan on October 5, 2018, the OMB was able to resolve the preliminary investigation within a reasonable period of time. The Sandiganbayan further ruled that even if there was delay, Perez impliedly acquiesced when he failed to file a motion for the early resolution of his case.^[39]

On February 13, 2019, Perez filed a motion for the reconsideration^[40] of the Sandiganbayan's January 29, 2019 Resolution. Again, he argued that information as to the commission of the offense is readily available as early as October 1, 2001, the date of the *Sangguniang Bayan* resolution, or as late as March 25, 2002, the date of the MOA's amendment. He also stated that the filing of the complaint with the OMB cannot interrupt the prescriptive period, as only judicial or court proceedings may toll prescription.^[41] The People opposed this motion.^[42]

The Sandiganbayan, in its Resolution dated March 8, 2019, denied Perez's motion for having been filed beyond the reglementary period under the Revised Guidelines for Continuous Trial of Criminal Cases. The Sandiganbayan also ruled on the merits and found the motion of Perez unmeritorious:

WHEREFORE, the instant motion is *DENIED* for lack of merit. This Court's Resolution dated January 29, 2019, is hereby *AFFIRMED IN TOTO*.

SO ORDERED.^[43]

Hence, Perez filed the instant petition.

Perez insists that prescription of the offense had set in his favor. Since October 1, 2001, or the date of approval of the *Sangguniang Bayan* resolution, the MOA was known to the public and irregularities in its execution may already be discovered. Perez also argues that prescription may be reckoned on November 12, 2001, the date of the notarization of the MOA, or at most, on March 25, 2002, when the MOA was amended. Insofar as the interruption of the prescriptive period is concerned, Perez disputes the Sandiganbayan ruling that the filing of the complaint with the OMB tolled the prescription of the offense. Finally, Perez again invokes his right to the speedy disposition of cases, positing that the OMB took more than two (2) years to resolve the complaint.^[44] The petition also prays for the issuance of an injunctive writ against the Sandiganbayan to enjoin further proceedings in the criminal case.^[45]

Issues

There are two issues for the resolution of the Court:

- (a) Whether the offense charged against Perez has prescribed; and
- (b) Whether Perez's right to the speedy disposition of cases was violated.

The Court's Ruling

The Court finds the petition meritorious.

Before proceeding with the merits of this case, the Court first determines whether Perez's motion for reconsideration was timely filed. The challenged March 8, 2019 Resolution of the Sandiganbayan states that Perez filed his motion for the reconsideration of the denial of his motion to quash beyond the five day period