

## THIRD DIVISION

[ G.R. No. 221418, January 23, 2019 ]

**JOSE T. VILLAROSA, CARLITO T. CAJAYON AND PABLO I. ALVARO, PETITIONERS, VS. THE HONORABLE OMBUDSMAN AND ROLANDO C. BASILIO, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

For this Court's consideration is the Petition for *Certiorari* under Rule 65 of the Rules of Court dated December 1, 2015 of petitioners Jose T. Villarosa, Carlito T. Cajayon and Pablo I. Alvaro that seeks to reverse and set aside the Joint Resolution<sup>[1]</sup> dated March 23, 2015 and the Order<sup>[2]</sup> dated July 29, 2015 of the Office of the Ombudsman (*Ombudsman*) in OMB-L-C-11-0652-J finding probable cause against petitioners for the crime of Technical Malversation and violation of Section 3 (e) of Republic Act (R.A.) No. 3019.

Private respondent Rolando C. Basilio filed criminal and administrative complaints dated September 23, 2011 with the Ombudsman against petitioners Villarosa, Municipal Mayor; Alvaro, Municipal Accountant; and Cajayon, Municipal Treasurer; all of San Jose, Occidental Mindoro, for Malversation of Public Funds defined and penalized under Article 220 of the Revised Penal Code (*RPC*); violation of Section 3 (a), (e), (g) and (i) of R.A. No. 3019; violation of R.A. No. 8240; grave abuse of authority; grave misconduct; dishonesty; and conduct prejudicial to the best interest of the service.

According to private respondent Basilio, petitioner Villarosa, together with petitioners Alvaro and Cajayon, approved the use of the municipality's "Trust Fund" derived from tobacco excise taxes (*Tobacco Fund*) under R.A. No. 8240<sup>[3]</sup> to finance the regular operations of the municipality. It was also alleged that the expenses of the municipality which the Tobacco Fund was made to account for were not within the purpose for which said fund was created. Petitioner Villarosa was further alleged to have procured ten (10) "reconditioned" multi-cab vehicles amounting to P2,115,000.00, but the invitation to bid and the contracts executed therefor did not indicate that said vehicles were "reconditioned." Private respondent Basilio, thus, theorized that conspiracy attended the commission of the acts complained of because the disbursements lacked prior budgetary authorization and showed that petitioners misappropriated the funds to the damage and prejudice of the intended beneficiaries.

The Ombudsman, on December 28, 2011, issued an Order directing petitioners to submit their counter-affidavits and other controverting documents in support of their defense in the criminal case.

In their counter-affidavits, petitioners denied having committed the charges against

them. Petitioner Alvaro argued that his participation was ministerial in nature considering his lack of discretion in disallowing purchases that passed through the required procedure. He also claimed that the use of the Tobacco Fund did not constitute a violation of any law and that the bulk of the said fund came from Representative Amelita Villarosa (*Rep. Villarosa*), who issued an authority delegating the power to determine how to spend said funds to the Office of the Municipal Mayor of San Jose, Occidental Mindoro. According to petitioner Alvaro, given the due delegation of authority and the absence of any prohibition in R.A. No. 8240 regarding the treatment of funds derived from the Tobacco Fund as part of the "General Fund," the issue is already moot.

Petitioner Cajayon also claimed that his act was ministerial considering that he signed the disbursement vouchers after confirming that the supporting documents were complete, and the municipality had funds available. He also argued that his certification of the availability of funds was based on the existence of "allotment for the requisitioned purchases"<sup>[4]</sup> since said funds were already apportioned by the *Sangguniang Bayan* in Resolutions allowing the appropriations.

For his defense, petitioner Villarosa asserted that the Tobacco Fund came from Rep. Villarosa as Occidental Mindoro's congressional share in the Tobacco Fund, pursuant to R.A. No. 8240, and that the municipality possessed the prerogative to appropriate or use such fund "based on the authority given by Congresswoman Ma. Amelita Villarosa."<sup>[5]</sup> Thus, according to petitioner Villarosa, given that the statute contained no prohibition for treating funds derived therefrom as part of the "General Fund," there was no violation to speak of. He also justified the purchase of ten (10) multi-cab vehicles, as necessitated by the clamor of different agricultural sectors, for the use of farmers attending seminars and conventions inside and outside the province.

Another Order was also issued on October 1, 2012, directing the parties to submit their position papers for the administrative case. Private respondent Basilio complied while petitioners separately moved for additional time to file their position papers.

In his position paper, private respondent Basilio, aside from reiterating his previous position, also averred that the administrative case filed before the *Sangguniang Panlalawigan* was already the subject of a Petition for Prohibition to enjoin the *Sanggunian* from proceeding with its investigation. The Ombudsman opted to take cognizance of the administrative complaint and informed the *Sanggunian* of such action considering the corroboration given by the *Sanggunian* of the fact that its investigation had been suspended by virtue of the prohibition case before the Regional Trial Court of Occidental Mindoro.

Another Order was issued by the Ombudsman directing petitioner Villarosa to submit a certified copy of the Escrow Agreement, dated June 10, 2010, mentioned in Annex "G" of his counter-affidavit, which petitioner Alvaro complied with by attaching a copy of Rep. Villarosa's letter to Land Bank of the Philippines (*LBP*) - Trust Banking Group dated February 22, 2010 and the municipality's Subscription Agreement with LBP.

Petitioners failed to file their position papers after a lapse of a reasonable time; hence, the Ombudsman deemed the case submitted for decision.

In its Joint Resolution<sup>[6]</sup> dated March 23, 2015, the Ombudsman found probable cause to indict petitioners for Technical Malversation and violation of Section 3 (e) of R.A. No. 3019. It also found petitioners guilty of grave misconduct, dishonesty and conduct prejudicial to the best interest of the service. The dispositive portion of the resolution reads, as follows:

WHEREFORE, it is respectfully recommended that JOSE T. VILLAROSA, PABLO I. ALVARO and CARLITO T. CAJAYON be charged with Technical Malversation and violation of Section 3(e) of Republic Act No. 3019; and that accordingly, the attached Informations be APPROVED for filing before the Sandiganbayan.

It is respectfully recommended, moreover, that the criminal charges for violation of Section 3(a), (g) and (i) of Republic Act No. 3019 against the same respondents be DISMISSED for lack of probable cause.

Furthermore, finding substantial evidence against respondents, they are hereby found GUILTY of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service and are each meted the penalty of DISMISSAL FROM THE SERVICE, with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification from re-employment in the Government Service.

Let copies of this Joint Resolution be furnished the Honorable Secretary of the Department of Interior and Local Government for his information and for the implementation of the same.

In the event that the penalty of Dismissal can no longer be enforced due to a respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from his/her office.

It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

SO RESOLVED.<sup>[7]</sup>

Petitioners filed their motion for reconsideration, but it was denied in the Order dated July 29, 2015 of the Ombudsman.

Hence, the present petition.

In their petition, petitioners relied on the following grounds:

I. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction and/or without jurisdiction in issuing the questioned Joint Resolution dated 23 March 2015 (Annex "C"), which finds probable cause against the petitioners, and the Order dated 29 July 2015 (Annex "E"), which denied their Motion for Reconsideration.

II. There is no appeal or any plain and speedy remedy in the ordinary course of law other than the instant petition.<sup>[8]</sup>

It is the contention of the petitioners that they duly explained in their respective counter-affidavits that there was no technical malversation nor was there any violation of the provisions of R.A. No. 3019. Petitioners also claim that their actions were duly supported by public documents and that the expenses incurred are for the constituents of the Municipality of San Jose, Occidental Mindoro's public purpose. They further argue that there was no law or ordinance which earmarked the public funds for a specific purpose and that the provision of Section 8 of R.A. No. 8240 cannot be used as justification in order for them to be held criminally liable. They also assert that their action did not cause any undue injury to any party, including the government, or give any private party unwarranted benefits, advantage or preference in the discharge of their functions.

In its Comment dated June 22, 2016, the Office of the Solicitor General maintains that the Ombudsman did not commit grave abuse of discretion in finding probable cause to indict petitioners of the crime of Technical Malversation and violation of Section 3 (e) of R.A. No. 3019.

The petition is partly meritorious.

"Both the Constitution<sup>[9]</sup> and [R.A. No.] 6770,<sup>[10]</sup> or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. As an independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service."<sup>[11]</sup>

"This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman."<sup>[12]</sup>

"This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant."<sup>[13]</sup>

"Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.<sup>[14]</sup> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law."<sup>[15]</sup>

For the present petition to prosper, petitioners must show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty mandated by law, which petitioners have failed to do. "A preliminary investigation is only for the determination of probable cause."

[16] Probable cause is "the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty.[17] Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction." [18]

This Court finds no grave abuse of discretion on the part of the Ombudsman when it found probable cause to indict petitioners of the crime of Technical Malversation.

In finding probable cause for the crime of Technical Malversation, the Ombudsman based its findings on the strength of the evidence submitted by the private complainant, as well as the weak defense of the petitioners, thus:

Respondents were **public officers** who received from Occidental Mindoro's Congressional Representative a portion of the province's share in the revenue from the tobacco excise tax for proper administration. **Pursuant to RA 8240, the local government unit's share in the proceeds should be used solely for cooperative, livelihood and/or agro industrial projects** that enhance the quality of agricultural products, develop alternative farming systems, or enable tobacco farmers to manage and own post-harvest enterprises like cigarette manufacturing and byproduct utilization. The clear intention to limit the use of such proceeds to the above-mentioned specific purposes was further made known to and disseminated among Governors, Municipal and City Mayors, *Sanggunian* Members and all other concerned officials through Joint Circular No. 2009-1 dated 3 November 2009 entitled "Guidelines and Procedure on the Release of the Share of Local Government Units Producing Burley and Native Tobacco Products from the Fifteen Percent (15%) of the Incremental Revenue Collected from the Excise Tax on Tobacco Products."

Notwithstanding the mandate of the law and the circular, respondents **applied the fund to the purchase of vehicles, Christmas lights, meals and snacks of newly-elected Barangay Captains and SK Chairpersons, medicines, and gravel and sand. They also used said fund for the maintenance of a PNP vehicle and other service vehicle, for bus rentals, and various other municipal activities.**

No genius is required to discern the disparity between the Legislature's declared policy and respondents' actual expenditures. The former unequivocally intended the revenue from the tax on tobacco products to benefit local farmers through projects aimed at maximizing agricultural production and tobacco-product utilization. The latter, on the other hand,