

THIRD DIVISION

[G.R. No. 223405, February 20, 2019]

**CARLOS L. REYNES, PETITIONER, V. OFFICE OF THE
OMBUDSMAN (VISAYAS), LUCRESIA M. AMORES, AND MARIBEL
HONTIVEROS, RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

Determining probable cause for the filing of a criminal information is an executive function. Resolutions made by public prosecutors in exercise of this function shall generally not be disturbed by courts.^[1] However, determinations that arbitrarily disregard the jurisprudential parameters for determining probable cause are tainted with grave abuse of discretion.^[2] Such iniquitous determinations are correctible by certiorari.^[3] A public prosecutor who does not merely disregard, but even grossly misinterprets to the point of distorting evidence and the Revised Penal Code's standards for liability, turning a blind eye to palpable indicators of criminal liability, commits grave abuse of discretion.

This resolves a Petition for Certiorari^[4] under Rule 65 of the 1997 Rules of Civil Procedure praying that the assailed February 20, 2015 Resolution^[5] and September 29, 2015 Order^[6] in OMB-V-C-14-0510 of public respondent Office of the Ombudsman (Visayas), through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr. (Atty. Mernado), be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its assailed Resolution, the Office of the Ombudsman (Visayas) dismissed the Complaint for Illegal Exactions, penalized under Article 213(2)^[7] of the Revised Penal Code, and violation of Section 48 of Republic Act No. 9003 (otherwise known as the Ecological Solid Waste Management Act of 2000)^[8] filed by petitioner Carlos L. Reynes (Reynes), manager of Blue Reef Beach Resort Cottages and Hotel (the resort) located in Barangay Marigondon, Lapu-Lapu City, Cebu, against private respondents Lucrecia M. Amores (Barangay Captain Amores), punong barangay of Barangay Marigondon (the Barangay), and Maribel Hontiveros (Kagawad Hontiveros), a member of the Sangguniang Barangay.^[9] In its assailed Order,^[10] the Office of the Ombudsman (Visayas) denied Reynes' Motion for Reconsideration.

In an Affidavit-Complaint,^[11] Reynes alleged that Barangay Captain Amores collected increased monthly garbage collection fees amounting to P2,000.00, even without any ordinance or statute, or any other regulation authorizing its collection, and despite the City of Lapu-Lapu already collecting its own garbage fees.^[12]

Reynes explained that, prior to the material incidents in this case, the Barangay had been collecting P1,000.00 monthly as garbage collection fee.^[13] In his subsequent

Reply to Barangay Captain Amores and Kagawad Hontiveros' Joint Counter-Affidavit, Reynes annexed a copy of Official Receipt No. 2827422, dated January 31, 2011, acknowledging a total of P3,000.00 collected as "garbage collection fee for the month (sic) of Jan to March 2011."^[14] He noted in his Complaint that the resort's garbage was segregated and deposited on Tongo Road, outside the resort's premises and there collected twice a week.^[15]

When Barangay Captain Amores ordered that the fee be increased to P2,000.00, while reducing the frequency of garbage collection to once a week,^[16] Reynes questioned the increase. He pointed out that no ordinance, statute, or regulation authorized it. However, Barangay Captain Amores never gave an explanation in response; instead, on July 27, 2011, she ordered the cessation of the collection of the resort's garbage.^[17]

On August 8, 2011, Reynes wrote to Barangay Captain Amores^[18] questioning her authority to levy garbage collection fees, considering that the same fees were already being paid to the City of Lapu-Lapu alongside business taxes and fees for licenses, and considering that no public hearing was ever conducted. Copies of this letter were furnished to the offices of the City Mayor, Vice Mayor, City Attorney, and City Secretary.^[19] It stated in part:

On August 5, 2011 at 8:30 AM, my wife Dra. Reynes went to the Barangay Office to see you personally. It was also confirmed that you really demanded for an increase of garbage collection fee from P1,000.00 to P2,000.00 without giving her any document to show as basis for the exaction of garbage collection fee or any ordinance to show that you are authorized to demand such increase. I could not also remember of a public hearing being conducted relative to your imposition of garbage collection fee pursuant to the Local Government Code. There was also no ordinance passed upon by the barangay relative to imposition of garbage collection fee which is to be reviewed and approved by the Lapu-Lapu City Council pursuant to the said law.

For the information of the Honorable Barangay Chairman, Blue Reef Resort has paid business taxes and licenses to the City of Lapu-Lapu government for the year 2011 in the amount of P67,752.34 for the cottage. Inclusive of this amount is garbage collection fee of Php1,764.38.^[20]

Barangay Captain Amores still offered no explanation and, in a meeting, merely told Reynes' wife, Dr. Sonia Beth Reynes^[21] (Dr. Reynes), that the collection of P2,000.00 was "final and unalterable[.]"^[22] Left with no alternative, lest the resort's garbage be left uncollected, Reynes relented to paying P2,000.00 monthly.^[23]

Evidencing his subsequent payments, Reynes adduced copies of:

1. Official Receipt No. 3058061, dated August 16, 2011, acknowledging a total of P4,000.00 collected as "donation - garbage";^[24]
2. Official Receipt No. 3058539, dated September 28, 2011, acknowledging a total of P4,000.00 collected as "donation for garbage collection Oct [and] Nov";^[25]

3. Official Receipt No. 3088196, dated December 14, 2011, acknowledging a total of P4,000.00 collected as "donation to [the Barangay,]"^[26] which was backed by a petty cash voucher for the disbursement of P4,000.00 for "Garbage collection fee for the month[s] of Dec 2011 Jan 2012";^[27]
4. Official Receipt No. 3261377, dated March 19, 2012, acknowledging a total of P6,000.00 collected as "donation for garbage collection Feb, March, April 2012";^[28]
5. Official Receipt No. 3341848, dated May 22, 2012, acknowledging a total of P4,000.00 collected as "donation for garbage collection May [and] June 2012";^[29]
6. Official Receipt No. 3591932, dated November 26, 2012, acknowledging a total of P4,000.00 collected as "donation for garbage collection[,]" which was backed by a petty cash voucher for the disbursement of P4,000.00 for "garbage collection month of November to December 2012";^[30]
7. Official Receipt No. 3627148, dated January 14, 2013, acknowledging a total of P4,000.00 collected as "donation for garbage collection[,]" which was backed by a petty cash voucher for the disbursement of P4,000.00 for "Payment/Donation for Garbage Collection. Jan.-Feb. 2013";^[31] and
8. Official Receipt No. 3794645, dated April 12, 2013, acknowledging a total of P8,000.00 collected as "donation for garbage collection[,]" which was backed by a petty cash voucher for the disbursement of P8,000.00 for "garbage collection March to June 2013[.]"^[32]

Such was the state of affairs when, on June 3, 2014, the Barangay stopped collecting the resort's garbage. Reynes recounted Fredo Amores, the Barangay's garbage truck driver, informing both the resort's supervisor and checker that Barangay Captain Amores ordered the cessation of garbage collection. This was allegedly upon Kagawad Hontiveros' instigation, as she was offended by an incident from two (2) days prior. Referring to an Incident Report prepared by the resort's staff, Reynes recalled that on June 1, 2014, Kagawad Hontiveros, along with some companions, tried to enter the resort but was not immediately allowed to enter. Instead, she was asked to present an identification card per the resort's standard procedure.^[33]

On June 6, 2014, Dr. Reynes sought an audience with Barangay Captain Amores to settle the matter. In a meeting held on June 11, 2014, Barangay Captain Amores maintained that her decision to stop collecting the resort's garbage was final. She supposedly justified this by saying that the resort's garbage was "bulky." She added that her decision was merely in keeping with a July 18, 2007 Memorandum issued by the Lapu-Lapu City Administrator.^[34]

In their Joint Counter-Affidavit,^[35] Barangay Captain Amores and Kagawad Hontiveros maintained that the Barangay was not in a position to collect the resort's garbage in view of a July 18, 2007 Memorandum issued by the Office of the City Administrator.^[36] The Memorandum stipulated that while "barangay authorities are responsible for garbage collection in their respective jurisdictions[,]" barangay garbage trucks/collectors shall not encroach or enter into private properties such as subdivisions, resorts[,]" and residences,"^[37] and that "garbage trucks/collectors shall only collect garbage from garbage stations and/or dumps along barangay roads."^[38] It also stated that "unsegregated garbage shall not be collected."^[39]

Barangay Captain Amores and Kagawad Hontiveros claimed that the resort neither segregated its garbage nor used a garbage depository situated along a public road. Still, Reynes wished to still have the Barangay collect the resort's garbage. Beseeching the Barangay's accommodation, Reynes supposedly offered to pay P2,000.00 monthly to defray the costs of garbage collection.^[40]

Barangay Captain Amores and Kagawad Hontiveros faulted the resort for failing, allegedly unlike other resorts, to obtain the services of private concessionaires.^[41] Bewailing the resort's continuing reliance on the Barangay, they justified the cessation of the resort's garbage collection on its continuing inability to segregate and process its own garbage.^[42]

In his Reply,^[43] Reynes refuted Barangay Captain Amores and Kagawad Hontiveros' claims. He explained the resort's waste processing system and facilities, noting its use of a waste storage area with two (2) compartments— one (1) for biodegradable waste and another for non biodegradable waste— both of which were secured by locks. There were also two (2) composting units for used oil and other biodegradable wastes. He maintained that the resort complied with the prescribed plastic bag color coding scheme for segregating waste.^[44]

In its assailed February 20, 2015 Resolution,^[45] the Office of the Ombudsman (Visayas), through Atty. Mernado, dismissed Reynes' Complaint.

In dismissing the charge of violating Section 48 of the Ecological Solid Waste Management Act, Atty. Mernado noted that the allegations against Barangay Captain Amores and Kagawad Hontiveros do not fall under the 16 prohibited acts in Section 48.^[46]

In dismissing the charge of illegal exactions as penalized under Article 213(2) of the Revised Penal Code, Atty. Mernado gave a one (1)-paragraph explanation:

Complainant failed to present the Ordinance on garbage fees. Thus, there is lack of evidence that respondent Amores demanded payment of sums different from or larger than that authorized by law. The payment complainant made to Barangay Marigondon appeared to be a donation as reflected in the Official Receipt issued. Complainant did not bother to question why the payments he made were reflected in the Official Receipt as donations. Also, complainant failed to show any proof that the donation he gave to the barangay is prohibited by law.^[47]

In its assailed September 29, 2015 Order,^[48] the Office of the Ombudsman (Visayas), still through Atty. Mernado, denied Reynes' Motion for Reconsideration.

Thereafter, Reynes filed this Petition for Certiorari.^[49] While he no longer makes averments concerning private respondents Barangay Captain Amores' and Kagawad Hontiveros' liability for violating Section 48 of the Ecological Solid Waste Management Act, he insists that both of them must still stand trial for the offense of illegal exactions.^[50]

On September 26, 2016, public respondent Office of the Ombudsman (Visayas) filed its Comment.^[51] Private respondents filed their Compliance (Explanation) with Comments^[52] on April 18, 2017, only after being required to show cause^[53] why

they should not be cited in contempt for failing to timely file their Comment. On March 7, 2018, Reynes filed a Consolidated Reply^[54] to both comments.

The issue for this Court's resolution is whether or not public respondent Office of the Ombudsman (Visayas), acting through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr., committed grave abuse of discretion amounting to lack or excess of jurisdiction in not finding probable cause to file criminal charges against private respondents Lucrecia M. Amores and Maribel Hontiveros, and in dismissing petitioner Carlos L. Reynes' Complaint against them.

This Court partly grants the Petition. It was grave abuse of discretion for Atty. Mernado to dismiss the Complaint with respect to private respondent Amores. She must stand trial for violating Article 213(2) of the Revised Penal Code.

I

Jurisprudence has settled that probable cause for the filing of an information is "a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on 'clear and convincing evidence[.]'"^[55] In *Reyes v. Pearlbank Securities, Inc.*:^[56]

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. *It is merely based on opinion and reasonable belief.* Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. *It is enough that it is believed that the act or omission complained of constitutes the offense charged.*

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. ***It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.*** In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. *He relies on common sense.* What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.^[57] (Emphasis supplied, citations omitted)

Determining whether probable cause exists for the filing of an information is an executive function. It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors. This is due to the basic principle of separation of powers. Nonetheless, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause."^[58] As such, in keeping with the principle of checks and balances, a writ of certiorari may issue and undo the prosecutor's iniquitous determination. In *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*:^[59]