

SECOND DIVISION

[G.R. No. 219772, July 17, 2019]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. P/SUPT.
CRISOSTOMO P. MENDOZA, RESPONDENT.**

DECISION

REYES, J. JR., J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the October 10, 2014 Decision^[1] and July 31, 2015 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 131931, which reversed and set aside the January 21, 2013 Decision^[3] and the April 18, 2013 Joint Order^[4] of the Office of the Ombudsman (OMB).

Factual Antecedents

On January 11, 2010, at around 9:30 P.M., Muhad Pangandaman y Makatanong (Muhad), was arrested by police officers of Police Station 6 and was released after giving P200,000.00 in exchange for his liberty. As a consequence, Muhad filed an administrative case before the OMB against the police officers involved.

In his *Sinumpaang Salaysay*,^[5] Muhad particularly alleged that: while tending his store in Litex IBP Road in Quezon City, SPO2 Dante Naguera (Naguera), with five other police officers in civilian clothing, arrested him; Muhad was brought to Police Station 6 in Batasan Hills and was asked to give P200,000.00 in exchange for his freedom; Muhad's relatives Diamungan Pangandaman (Diamungan) and Mampao Rasul (Rasul) gave the P200,000.00 to Naguera; and Naguera threatened Muhad that he would be arrested again if he squealed on them.

In their *Pinagsamang Salaysay*,^[6] Diamungan and Rasul corroborated Muhad's narration. Specifically, they averred that: while they were at their stalls, they saw police officers in civilian clothing approached Muhad's store; they saw the police officers arrested Muhad and heard that it was for violating the gun ban; at around 1:00 A.M. of January 12, 2010, Muhad's sister-in-law Nanayaon Sangcopan Mute went to their homes, informed them that the police officers were asking P200,000.00 for Muhad's release and asked them to request assistance from Mangorsi Ampaso (Ampaso), the president of the Muslim Vendors Association in Litex; when they went to Ampaso's office, they reiterated the demand of the police officers and Ampaso accompanied them to Police Station 6 where Ampaso gave the money to Naguera; they were told to leave and Muhad would then be released; they gave an additional P50,000.00 after Ampaso went to their house and informed them that the police officers were demanding for the said amount; and Muhad was released after the payment of the additional amount.

Diamungan and Rasul executed another affidavit to provide supplemental details to their earlier *Pinagsamang Salaysay*. In their *Karagdagan Sinumpaang Salaysay*,^[7] they averred that before they left the police station, Naguera accompanied Rasul inside the office of respondent P/Supt. Crisostomo P. Mendoza (Mendoza) where Rasul saw Naguera hands P100,000.00 to Mendoza.

In his Counter-Affidavit,^[8] Mendoza denied the accusations against him claiming that Naguera was neither assigned nor detailed at Police Station 6. He explained that Muhad's arrest was done without his knowledge and that he would never tolerate any wrongdoings done by his subordinates. Mendoza expounded that he was not the one who arrested Muhad and he was only implicated in the additional statement given by Diamungan and Rasul. He lamented that the narrations of Muhad's relatives were inconsistent and contrary to what Ampaso had stated in his Affidavit, who had denied that he gave money to Naguera. Mendoza added that at the time of the incident, he was at a church in Pasig attending religious services.

OMB Decision

In its February 8, 2013 Decision, the OMB found Mendoza, along with some police officers implicated in Muhad's complaint, guilty of grave misconduct and meted the penalty of dismissal from the service. It ruled that there is substantial evidence to hold Mendoza and his co-respondents guilty of the administrative charge levied against them. The OMB noted that Ampaso admitted that there was a demand and an exchange of money for Muhad's release. While Ampaso denied Naguera's involvement, it ruled that his statement still confirmed the claims of Muhad and his relatives that Mendoza and his cohorts extorted money for Muhad's release. The OMB disregarded the defense of denial and alibi in light of the positive identification done by Muhad, Diamungan and Rasul. It ruled:

WHEREFORE, P[/]Supt. Crisostomo Mendoza, SPO1 Amor Guiang, PO2 Rodger Ompoy, SPO2 Dante [Naguera] and PO3 Jerry Ines are hereby found **GUILTY** of Grave Misconduct and are meted the penalty of Dismissal from the Service with its accessory penalties namely, disqualification to hold public office, forfeiture of retirement benefits, cancellation of civil service eligibilities and bar from taking future civil service examinations.

PROVIDED, that in case respondents are already retired from the government service, the alternative penalty of **FINE** equivalent to **ONE YEAR** salary is hereby imposed, with the same accessory penalties mentioned above.

Let a copy of this Decision be forwarded to the Secretary, Department of Interior and Local Government, and the Chief, Philippine National Police for appropriate action and implementation.

As to the other respondents, namely Mangorsi Ampaso, PO3 Polito, PO3 Perez and PO2 Vacang, the instant administrative case against them is **DISMISSED**.

SO ORDERED.^[9]

Undeterred, Mendoza and the other police officers who were found guilty of grave misconduct, moved for reconsideration but was denied by the OMB in its April 18, 2013 Joint Order.

As such, Mendoza filed a petition for review before the CA questioning the decision of the OMB in the administrative case against him.

CA Decision

In its October 10, 2014 Decision, the CA granted Mendoza's petition and absolved him from any liability in connection with the administrative case filed against him. The CA posited that there was no substantial evidence to find Mendoza guilty of grave misconduct because the OMB's decision was mainly anchored on the affidavits of Muhad, Diamungan and Rasul without any documentary evidence to corroborate the same. It pointed out that the OMB based Mendoza's participation on the allegations of Diamungan and Rasul's second affidavit. The CA noted that Diamungan and Rasul's first affidavit did not implicate Mendoza. The CA found Mendoza's belated inclusion suspicious, considering that it was an important detail to be forgotten or omitted in the initial affidavit.

Further, the CA highlighted that while the OMB relied on Ampaso's affidavit to establish that a demand for money took place, he never mentioned any participation of Mendoza in the extortion. In addition, the CA explained that Mendoza was under no obligation to present certifications or affidavits to support his claim that he attended a religious activity in his church. The CA expounded that it was enough for Mendoza to deny participation and need not prove his negative averment especially that complainant was unable to prove anything. Thus, it ruled:

WHEREFORE, in light of the foregoing premises, the petition is GRANTED and accordingly the assailed Decision dated 21 January 2013 is REVERSED and SET ASIDE.

Consequently, the administrative charge against petitioner is DISMISSED for lack of merit.

With respect to the assailed Joint Order dated 18 April 2013 (criminal aspect) issued by the Office of the Ombudsman, this Court has no jurisdiction to review the same.

SO ORDERED.^[10]

Aggrieved, the OMB moved for reconsideration but it was denied by the CA in its July 31, 2015 Resolution.

Hence, this present petition, raising:

Issues

I

[WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED AND SET ASIDE THE JANUARY 21, 2013 DECISION AND APRIL 18, 2013 JOINT ORDER OF THE PETITIONER OFFICE OF THE OMBUDSMAN IN OMB-P-A-10-0879-H CONSIDERING THAT THERE IS SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT LIABLE FOR GRAVE MISCONDUCT; AND

II

[WHETHER] THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE MOTION FOR RECONSIDERATION OF THE PETITIONER OFFICE OF THE OMBUDSMAN AND HELD THAT EXECUTIVE ORDER [E.O.] NO. 226 DATED FEBRUARY 17, 1995 IS INAPPLICABLE TO RESPONDENT'S CASE.^[11]

The OMB argues that the CA erred in reversing its decision finding Mendoza guilty of Grave Misconduct. It reiterates that there is substantial evidence to establish that Mendoza took part in the extortion of Muhad. The OMB laments that its findings of fact are conclusive when supported by substantial evidence. It notes that the two affidavits of Diamungan and Rasul were not inconsistent with one another and that the latter affidavit merely supplemented the first one. The OMB points out that the Second Affidavit specifically identified the police officers who took part in the extortion and narrated how Naguera handed P100,000.00 to Mendoza. It assails that the CA should have disregarded Mendoza's unsubstantiated alibi that he attended a religious activity at the time the extortion took place.

Further, the OMB posits that the CA erred in ruling that E.O. No. 226^[12] did not apply to Mendoza. It explains that E.O. No. 226 institutionalized the doctrine of Command Responsibility holding superior officers administratively liable for neglect of duty for failure to take appropriate action to discipline their subordinates. The OMB expounds that neglect of duty includes gross neglect of duty, the latter being necessarily included in the definition of grave misconduct.

In his Comment^[13] dated March 17, 2016, Mendoza assails that the OMB's petition for review on *certiorari* should be dismissed outright for failing to append a Verification and Certification against Non-Forum Shopping. As to the merits of the case, he argues that there is no substantial evidence to hold him guilty of grave misconduct. Mendoza avers that the OMB merely relied on the affidavits of Muhad and his witnesses, as well as that of Ampaso's. He explains that affidavits, even in administrative proceedings, are not accorded great weight.

Mendoza expounds that the accusation of extortion against him is akin to bribery, which the Court described in *Re: Allegations Made Under Oath at the Senate Blue*

Ribbon Committee Hearing held on September 26, 2013, against Associate Justice Gregory S. Ong, Sandiganbayan (*In Re: Ong*)^[14] as easy to concoct and difficult to disprove. In addition, he posits that the OMB has an inconsistent treatment of Ampaso's affidavit because while it agreed that extortion took place, it did not believe Ampaso's affidavit that Naguera did not receive the extortion money.

On the other hand, Mendoza agrees with the CA that E.O. No. 226 is inapplicable to the present case. He postulates that E.O. No. 226 only applies when a crime has been committed or is being committed by a subordinate. He believes that since the criminal cases against him had been dismissed, the presumption of knowledge under Section 2 of E.O. No. 226 would not arise. Further, Mendoza bewails that to apply E.O. No. 226 would violate due process as he is charged with grave misconduct and not neglect of duty.

In its Reply^[15] dated October 24, 2016, the OMB counters that its petition for review on *certiorari* has the necessary Verification and Certification against Forum Shopping. It further explains that it did not merely rely on Ampaso's affidavit, but also on the narrations of Muhad and his witnesses.

The Court's Ruling

The petition is meritorious.

At the onset, Mendoza's allegation that the OMB's petition for review on *certiorari* should be dismissed for lack of Verification and Certification against Forum Shopping should be swept aside. The records indubitably show that, the present petition has the required Verification and Certification.^[16]

*E. O. No. 226 applies only when
the superior had no direct
participation in the act
complained of*

E.O. No. 226 seeks to institutionalize command responsibility in the Philippine National Police and other law enforcement agencies in recognition of the duty of superiors to closely monitor and supervise the overall activities and actions of their subordinates within their jurisdiction or command. Section 1 thereof, holds superiors administratively liable for failing to discipline their erring personnel, to wit:

SEC. 1. Neglect of Duty Under the Doctrine of "Command Responsibility." — Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "Neglect of Duty" under the doctrine of "command responsibility" if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he **did not take preventive or corrective action either before, during, or immediately after its commission.** (Emphasis supplied)