

SECOND DIVISION

[G.R. No. 208243, June 05, 2017]

**EDWIN GRANADA REYES, PETITIONER, VS. THE OFFICE OF THE
OMBUDSMAN, THE SANDIGANBAYAN, AND PAUL JOCSON
ARCHES, RESPONDENTS.**

DECISION

LEONEN, J.:

This resolves a Petition for Certiorari^[1] under Rule 65 of the Rules of Court, filed by petitioner Edwin Granada Reyes (Reyes), together with Rita Potestas Domingo (Domingo) and Solomon Anore de Castilla (de Castilla).^[2] This Petition assails the Office of the Ombudsman's March 20, 2013 Resolution^[3] in Case No. OMB-M-C-11-0005-A and the June 26, 2013

Memorandum^[4] denying their motion for reconsideration. The assailed March 20, 2013 Resolution found probable cause to indict petitioner Reyes, Domingo, de Castilla, and Gil C. Andres (Andres) for violation of Section 3(e) of Republic Act No. 3019 and directed that an information against them be filed before the Sandiganbayan.^[5]

On November 21, 2005, the Sangguniang Bayan of Bansalan, Davao del Sur passed Municipal Ordinance No. 357, prohibiting the "storing, displaying, selling, and blowing up ('pagpabuto') of those pyrotechnics products allowed by law, commonly called 'firecrackers' or 'pabuto' within the premises of buildings 1 and 2 of the Bansalan Public Market."^[6] On December 14, 2009, then Bansalan Mayor Reyes approved a permit allowing vendors to sell firecrackers at the Bansalan Public Market from December 21, 2009 to January 1, 2010.^[7]

On December 27, 2009, a fire befell the Bansalan Public Market. It caused extensive damage and destroyed fire hydrants of the Bansalan Water District. Subsequently, private respondent Paul Jocson Arches (Arches) filed a complaint dated December 20, 2010 against Reyes before the Office of the Ombudsman, Mindanao (Ombudsman-Mindanao). Arches questioned the approval and issuance of a mayor's permit agreeing to sell firecrackers, in violation of Municipal Ordinance No. 357. He claimed that this permit caused the fire the previous year.^[8]

By order of the Ombudsman-Mindanao, Chief of Police de Castilla, Fire Marshall Andres,^[9] and Permits and Licensing Officer Designate Domingo were made respondents in the case, considering that they recommended the approval of the mayor's permit's.^[10]

The respondents *a quo* filed their respective counter-affidavits. Reyes alleged that

Andres filed two (2) different counter-affidavits, and Reyes was not furnished a copy of the second counter-affidavit (Andres' affidavit).^[11]

After concluding the preliminary investigation, the Ombudsman issued the assailed Resolution^[12] dated March 20, 2013 and found that probable cause existed to charge Reyes and his co-respondents *a quo* with violation of Section 3(e) of Republic Act No. 3019. The Ombudsman held that Reyes and his co-respondents *a quo* were public officers during the questioned acts.^[13] Both the government and private stall owners suffered undue injury due to the fire at the Bansalan Public Market.^[14] While the mayor's permit was not the proximate cause of the fire, it nonetheless, "gave unwarranted benefit and advantage to the fire cracker vendors . . . [to sell] firecrackers in the public market despite existing prohibition."^[15] The issuance of the mayor's permit was "patently tainted with bad faith and partiality or, at the very least, gross inexcusable negligence."^[16] The Ombudsman appreciated the evidence presented and found that Reyes and his co-respondents *a quo* were aware of Municipal Ordinance No. 357.^[17] Despite this, Reyes approved and issued a mayor's permit stating, "Permit is hereby granted to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur."^[18] The assailed Resolution read:

WHEREFORE, this Office finds probable cause to indict respondents Edwin G. Reyes, Solomon A. De Castilla, Gil C. Andres, and Rita P. Domingo for violation of Section 3 (e) of Republic Act No. 3019, as amended (Anti-Graft and Corrupt Practices Act). Let an Information for violation of Section 3 (e) of Republic Act No. 3019 be filed against the respondents before the Sandiganbayan.

The other charges against the respondents are dismissed.^[19]

Thus, an Information^[20] was filed against Reyes, together with his corespondents *a quo* Domingo, de Castilla, and Andres for violating Section 3(e) of Republic Act No. 3019. It read:

On December 14, 2009, or sometime prior or subsequent thereto, in the Municipality of Bansalan, Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, EDWIN GRANADA REYES, RITA POTESTAS DOMINGO, SOLOMON ANORE DE CASTILLA, GIL CURAMENG ANDRES, public officers being then the Mayor, Permits and Licensing Officer Designate, Chief of Police, and Fire Marshall, respectively, of the Municipality of Bansalan, while in the discharge of their official functions, conspiring and confederating with one another, with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefit to a group of firecracker vendors by approving and issuing them a mayor's permit "to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur" despite fully knowing the existence of a municipal ordinance expressly prohibiting the storing, displaying, selling and blowing-up of firecrackers at the Bansalan Public Market and the non-issuance of the requisite Fire Safety Inspection Certificate (FSIC) to the firecracker vendors, thereby giving the said firecracker vendors the

unwarranted benefit and advantage of holding the business of selling firecrackers at the Bansalan Public Market.

CONTRARY TO LAW.^[21]

The Ombudsman denied a motion for reconsideration of its March 20, 2013 Resolution.^[22]

Thus, petitioner filed this petition, arguing that public respondent Ombudsman gravely abused its discretion considering there was no legal basis to support the finding of probable cause against petitioner.^[23]

Petitioner argues that there was no probable cause, insisting that there was not enough basis for the finding of bad faith, manifest partiality, or gross inexcusable negligence in this case.^[24] There was no unwarranted advantage or preference given to the firecracker vendors because the mayor's permit was granted based on a long-standing practice to allow them to sell their wares during the Christmas season.^[25] All firecracker vendors received similar treatment and were allowed to sell their wares, provided they submitted the requirements.^[26] Acts done in a public official's performance of official duty are presumed to have been done in good faith, and mistakes committed are not actionable unless malice or gross negligence amounting to bad faith is shown.^[27]

Petitioner insists that public respondent Ombudsman committed grave abuse of discretion when it relied solely on Andres' affidavit, which was not furnished to petitioner, to indict him.^[28] Petitioner did not know of Andres' affidavit, which contained accusations against petitioner, until he received the assailed Resolution.^[29] Thus, petitioner's right to due process was violated. Petitioner imputes bad faith in the filing of the complaint against him.^[30]

In support of his prayer for injunctive relief, petitioner claims that he and his family will suffer financial, emotional, and psychological hardship. The issuance of injunctive relief is necessary because the Sandiganbayan has already set the arraignment date of petitioner.^[31]

In his Comment,^[32] private respondent Arches argues that there was probable cause,^[33] that none of the grounds for enjoining a criminal prosecution exists,^[34] and that the assailed Resolution was not based solely on Andres' affidavit.^[35]

The Office of the Ombudsman argues in its Comment^[36] that petitioner failed to show any grave abuse of discretion on the part of the Ombudsman. There were sufficient bases to indict petitioner for violation of Section 3(e) of Republic Act No. 3019. The findings of the Ombudsman were based on the evidence presented.^[37] In the absence of grave abuse of discretion, this Court has consistently refrained from interfering with the Ombudsman's exercise of its mandate.^[38] The Ombudsman opposes petitioner's prayer for injunctive relief, as no invasion of any clear or legal right has been established by the petitioner.^[39]

In his Reply,^[40] petitioner Reyes argues that conspiracy could not be present, considering that the respondents did not even agree with one another, as shown by Andres' affidavit.^[41] Further, it was not shown that petitioner intentionally disregarded the Fire Safety Inspection Certificate requirement as mandated by law. Without this, only administrative liability would attach. The Ombudsman also did not show that the vendors enjoyed any undue benefit or that the government suffered any undue disadvantage.^[42] Lastly, there was no showing of manifest partiality, evident bad faith, or gross inexcusable neglect without which petitioner cannot be held criminally liable.^[43]

Petitioner avers that during the preliminary investigation, he was not clearly informed of the nature of the charge against him, in violation of his constitutional right to due process.^[44] The findings of the Ombudsman were confusing,^[45] and petitioner was not provided a copy of co-respondent *a quo* Andres' affidavit, upon which the Ombudsman relied in its finding of probable cause against petitioner.^[46]

Petitioner insists that this Court can interfere with the findings of the investigatory powers of the Ombudsman in this case, considering that "this is a case of persecution, [not] prosecution."^[47] Private respondent Arches was compelled by vengeance in filing the complaint.^[48]

The sole issue for resolution of this Court is whether the Ombudsman committed grave abuse of discretion in determining that probable cause against petitioner exists.

We dismiss the Petition.

I

This Court generally does not interfere with the Ombudsman's findings of probable cause. In *Dichaves v. Office of the Ombudsman*:^[49]

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"

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." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within*

the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, 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.

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:

[T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.^[50] (Emphasis in the original, citations omitted)

Despite this well-established principle, petitioner would have this Court interfere with the Ombudsman's assessment on the basis of grave abuse of discretion. However, disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion. It is settled:

An act of a court or tribunal may constitute **grave abuse of discretion** when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.^[51] (Emphasis in the original, citations omitted)

Thus, for this Petition to prosper, petitioner would have to show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law. Petitioner has failed to do this. "A preliminary investigation is only for the determination of probable cause."^[52] Further, probable cause is:

[T]he 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. 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.^[53] (Citations omitted)