

## SECOND DIVISION

**[ G.R. Nos. 189161 & 189173, March 21, 2012 ]**

**JUDGE ADORACION G. ANGELES, PETITIONER, VS. HON. MA. MERCEDITAS N. GUTIERREZ, OMBUDSMAN; HON. ORLANDO C. CASIMIRO, OVERALL DEPUTY OMBUDSMAN; HON. SYLVIA A. SEVERO, GRAFT INVESTIGATOR AND PROSECUTION OFFICER I; HON. MARILOU B. ANCHETA-MEJICA, ACTING DIRECTOR, PIAB-D; HON. JOSE T. DE JESUS, JR., ASSISTANT OMBUDSMAN, PAMO; ALL OF THE OMBUDSMAN; AND SSP EMMANUEL Y. VELASCO, RESPONDENTS.**

### DECISION

**SERENO, J.:**

#### *The Case*

This is a special civil action for certiorari under Rule 65 of the 1997 Rules of Court. The Court is once again asked to determine whether the Office of the Ombudsman (Ombudsman) committed grave abuse of discretion in the exercise of its discretionary powers to investigate and prosecute criminal complaints.

This Petition dated 01 September 2009 seeks to set aside the Joint Order<sup>[1]</sup> dated 21 March 2007 of the Ombudsman (the questioned Joint Order) exonerating respondent Senior State Prosecutor Emmanuel Y. Velasco (respondent Velasco or respondent) from the charges filed by petitioner Judge Adoracion G. Angeles (petitioner Judge Angeles or petitioner).

#### *The Facts*

##### **The Complaint filed with the Ombudsman**

Petitioner Judge Angeles was, at the time this Petition was filed, the Presiding Judge of Branch 121 of the Caloocan City Regional Trial Court (RTC); while private respondent Velasco was a senior state prosecutor at the Department of Justice (DOJ).

On 20 February 2007, petitioner Judge Angeles filed a criminal Complaint against respondent Velasco with the Ombudsman<sup>[2]</sup> and sought his indictment before the Sandiganbayan for the following acts allegedly committed in his capacity as a prosecutor:

1. Giving an unwarranted benefit, advantage or preference to the accused in a criminal case for smuggling by failing to present a material witness;
2. Engaging in private practice by insisting on the reopening of child abuse cases

against petitioner;

3. Falsifying a public document to make it appear that a clarificatory hearing on the child abuse Complaint was conducted.<sup>[3]</sup>

### ***Failure to present a material witness***

According to the Complaint, respondent Velasco, who was the trial prosecutor in a criminal case involving the smuggling of jewelry,<sup>[4]</sup> failed to present a material witness in the aforesaid case.<sup>[5]</sup> The witness, a gemmologist of the Bureau of Customs, was to testify on the type of substance making up the pieces of smuggled jewelry.<sup>[6]</sup>

According to petitioner, considering the materiality of the gemmologist's testimony, which respondent must have known of, since he was the handling trial prosecutor of the case, his failure to offer the said testimony in court shows that he tried to suppress the evidence in favor of the accused in the said case. This act was alleged to be in violation of Section 3(e) of the Anti Graft and Corrupt Practices Act,<sup>[7]</sup> which considers as a corrupt practice the acts of public officers that give unwarranted benefits to any private party through either manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of their official functions.<sup>[8]</sup>

The gemmologist, however, was eventually presented as a witness after respondent Velasco had filed a Motion to adduce additional evidence in the said case.<sup>[9]</sup>

### ***Insistence on the reopening of child abuse cases***

The second act complained of refers to respondent Velasco's filing of two Petitions to reopen the child abuse cases filed against petitioner Judge Angeles. Petitioner was previously charged with inflicting physical and psychological abuse on Maria Mercedes Vistan, her 13-year-old grandniece.<sup>[10]</sup> Respondent was the one who conducted the preliminary investigation of the Complaint for child abuse and later indicted petitioner for 21 counts thereof.<sup>[11]</sup> However, the DOJ later on reversed respondent Velasco's recommendation<sup>[12]</sup> upon a Petition for Review filed by respondent. Consequently, the Informations, which had been filed in the meantime, were ordered withdrawn by the trial court.<sup>[13]</sup> Petitioner later filed an administrative Complaint against respondent for gross misconduct, gross ignorance of the law, incompetence, and manifest bad faith arising from the alleged malicious indictment.

According to petitioner, the move of respondent to reopen the child abuse cases was allegedly meant to exact vengeance for petitioner's filing of the above-mentioned administrative Complaint.<sup>[14]</sup> Meanwhile, the two Petitions to reopen the child abuse cases, which were filed by respondent in the DOJ and the Office of the President, were denied for having been filed in the wrong venues.

Petitioner alleges in her Complaint that since respondent Velasco was not the trial prosecutor in the said case, his unauthorized act of filing two Petitions to reopen the child abuse cases constituted a violation of Section 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>[15]</sup> This code considers as

unlawful the acts of public officials and employees engaging in the private practice of their profession, unless authorized by the Constitution or by law.<sup>[16]</sup> This single act of moving to reopen the child abuse cases was the only instance of private practice imputed to respondent Velasco. No other act constituting private practice was cited by petitioner.

### ***Falsification of Public Document***

The alleged falsification of public document arose from the same preliminary investigation conducted by respondent in the child abuse cases mentioned above. According to petitioner Judge Angeles, respondent Velasco made it appear that he had conducted a clarificatory hearing on the Complaint for child abuse on 22 June 1999 as shown in the Minutes<sup>[17]</sup> of the said hearing.<sup>[18]</sup> Petitioner alleges that Leonila Vistan, the witness who supposedly attended the hearing, was seriously sick and could not have appeared at the alleged clarificatory hearing.<sup>[19]</sup> Moreover, respondent had, in fact, resolved the cases two days earlier, on 20 June 1999, as shown by the date on the Resolution indicting petitioner. Thus, the latter alleges, the Minutes of the hearing on 22 June 1999 must have been falsified by respondent by making it appear that Leonila Vistan had participated in an inexistent proceeding. This act is in violation of Article 171 of the Revised Penal Code,<sup>[20]</sup> which criminalizes it as a falsification of a public document.<sup>[21]</sup>

### **The Decision of the Ombudsman**

In the questioned Joint Order, the Ombudsman dismissed the charges against respondent Velasco. It found that after evaluation of the facts and evidence presented by complainant, there was no cause to conduct a preliminary investigation or an administrative adjudication with regard to the charges.

On the first charge of suppression of testimonial evidence in connection with the smuggling case, the Ombudsman dismissed the charge on the ground that petitioner had no sufficient personal interest in the subject matter of the grievance.<sup>[22]</sup> The Ombudsman explained that petitioner was neither one of the parties nor the presiding judge in the said criminal case and, therefore, had no personal interest in it.

Moreover, granting that the personal interest of petitioner was not in issue, respondent Velasco acted based on his discretion as prosecutor and his appreciation of the evidence in the case, and any lapse in his judgment cannot be a source of criminal liability. The Ombudsman said that it had no authority to investigate the prosecutor's exercise of discretion, unless there was sufficient evidence that the exercise was tainted with malice and bad faith.<sup>[23]</sup>

The Ombudsman likewise dismissed the second charge of private practice of profession on the ground of failure to exhaust administrative remedies.<sup>[24]</sup> It pointed out that petitioner should have first elevated her concern to the DOJ, which had primary jurisdiction over respondent's actions and conduct as public prosecutor.<sup>[25]</sup> Moreover, the Ombudsman found that respondent Velasco was not engaged in private practice when he filed the two Petitions for the reopening of the child abuse cases against petitioner, since he was the investigating prosecutor of the said cases.

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Finally, on the falsification of a public document, which was also dismissed, the Ombudsman said that the issue should have been raised earlier, when petitioner Judge Angeles filed her Petition for Review of the Resolution of respondent Velasco. Moreover, petitioner should have substantiated the allegation of falsification, because the mere presentation of the alleged falsified document did not in itself establish falsification. The Ombudsman also ruled that with the belated filing of the charge and the reversal by the DOJ of respondent Velasco's Resolution indicting petitioner, the materiality of the alleged falsified document is no longer in issue.<sup>[27]</sup>

Petitioner filed a Motion for Reconsideration<sup>[28]</sup> of the questioned Joint Order, which was denied by the Ombudsman for lack of merit.<sup>[29]</sup>

Hence, the present Rule 65 Petition.

### **Issue**

Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the Complaint against respondent Velasco.

### **The Court's Ruling**

We dismiss the Petition.

### **I**

#### **Power of the Court over the Ombudsman's Exercise of its Investigative and Prosecutorial Powers**

As a general rule, the Court does not interfere with the Ombudsman's exercise of its investigative and prosecutorial powers without good and compelling reasons. Such reasons are clearly absent in the instant Petition.

At the outset, we emphasize that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. Also, it is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the case of the exercise by the Ombudsman of its constitutionally mandated powers. That is why this Court has consistently maintained its well-entrenched policy of non-interference in the Ombudsman's exercise of its investigatory and prosecutorial powers.<sup>[30]</sup>

#### **General Rule of Non-Interference with the Plenary Powers of the Ombudsman**

The general rule has always been non-interference by the courts in the exercise by the office of the prosecutor or the Ombudsman of its plenary investigative and prosecutorial powers. In *Esquivel v. Ombudsman*,<sup>[31]</sup> we explained thus:

The Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. **Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise.** Said exercise of powers is based upon the constitutional mandate and the court will not interfere in its exercise. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of 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 office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant. (Emphasis supplied; citations omitted.)

In *Presidential Commission on Good Government v. Desierto*,<sup>[32]</sup> we further clarified the plenary powers of the Ombudsman. We emphasized that if the latter, using professional judgment, finds a case dismissible, the Court shall respect that finding, unless the exercise of such discretionary power was tainted with grave abuse of discretion.

*The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*<sup>[33]</sup> explained the rationale for the plenary powers of the Ombudsman, which is **virtually free** from legislative, executive or judicial intervention. Its plenary powers were constitutionally designed to insulate it from outside pressure and improper influence. Accordingly, the Court has consistently respected and recognized, as we do now in this case, the independence and competence of the Ombudsman, as it acts as "the champion of the people and the preserver of the integrity of public service."

### ***The Discretionary Nature of Preliminary Investigation***

The determination by the Ombudsman of probable cause or of whether there exists a reasonable ground to believe that a crime has been committed, and that the accused is probably guilty thereof, is usually done after the conduct of a preliminary investigation. However, a preliminary investigation is by no means mandatory.

The Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure),<sup>[34]</sup> specifically Section 2 of Rule II, states:

*Evaluation.* — Upon evaluating the complaint, the investigating officer shall recommend whether it may be: a) **dismissed outright for want of palpable merit**; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d) forwarded to the appropriate officer or official for fact-finding