

SECOND DIVISION

[G.R. No. 192334, June 13, 2012]

CONRADO CASING, PETITIONER, VS. HON. OMBUDSMAN, JAIME C. VELASCO AND ANGELES DELLOVA, RESPONDENTS.

DECISION

BRION, J.:

Before the Court is a petition for *certiorari*^[1] filed by Conrado Casing (petitioner), assailing the March 29, 2007 resolution^[2] and the January 22, 2009 joint order^[3] issued by the Ombudsman in OMB-P-C-06-0437-E. These assailed issuances found probable cause against the petitioner for violation of Section 3, paragraph b of Republic Act (R.A.) No. 3019 and denied the petitioner's motion for reconsideration, respectively.

ANTECEDENT FACTS

The petitioner was a Traffic Enforcer and was also designated as Head of Task Force Traffic of "SB" Novaliches District Center (NDC), Quezon City. The officer-in-charge of the NDC was Mr. Tadeo Palma.^[4]

Sometime in 2003, Jaime C. Velasco and Angeles Dellova (*complainants*) were hired as contractual Traffic Enforcer/Field Coordinator at the NDC, with a monthly salary of P6,000.00, under the petitioner's supervision. Upon hiring, the petitioner informed the complainants that they may obtain their salary in advance through one Arlene Sebastian. As advised, and being in dire financial need, the complainants obtained a two-month cash advance from Sebastian. The complainants were surprised to learn that the amount of P2,000.00 was automatically deducted from their advanced salary, half of which was given to the petitioner for his effort in helping them find employment.^[5]

In December 2003, the Quezon City government allocated an amount of P2,500.00 as "*Pamaskong Handog*" for its employees. However, when the complainants went to Ms. Fe Chua (the liaison officer at the time), they learned that their *Pamaskong Handog* had already been withdrawn by Chua, who in turn gave it to the petitioner upon the latter's instruction. Despite repeated demands, the petitioner failed to make good his promise to return the amount to the complainants. Worse, according to the complainants, in December 2005, the petitioner recommended to Mr. Palma not to renew the complainants' contract, resulting in the termination of their employment.^[6]

The complainants filed a complaint with the Office of the Ombudsman, narrating the foregoing account and charging the petitioner with malversation, violation of R.A. No. 3019 and dishonesty.

The petitioner denied the complainants' allegations, arguing that he had no hand in releasing the complainants' salary or monetary benefits. The petitioner added that the complainants have an axe to grind against him for the "unsatisfactory performance" rating he gave them, resulting in the termination of their contractual employment.^[7]

In a decision dated August 6, 2007,^[8] the Ombudsman found the petitioner administratively liable for grave misconduct and ordered his dismissal from the service. The petitioner appealed the decision to the Court of Appeals.

On the other hand, in a resolution dated March 29, 2007, Graft Investigation Officer Yvette Marie S. Evaristo, with the approval of Ombudsman Ma. Merceditas N. Gutierrez, found probable cause against the petitioner for violation of Section 3 (b), R.A. No. 3019, which reads:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law. [emphasis and italics supplied]

The Ombudsman found:

In the present case, [the petitioner] indirectly demanded and received a share from the salary of complainants, as a consideration for having successfully employed the latter as traffic enforcers in the former's area of jurisdiction. Complainants['] employment/commission as traffic enforcers is by virtue of a contract to render service to which [the petitioner] has the capacity to intervene through the exercise of his recommendatory powers for the hiring or employment of the [complainants].

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WHEREFORE, in this light, let an Information for Violation of R.A. 3019, Section 3(b) be **FILED** against [the petitioner] with the proper court.^[9] (emphases supplied)

The petitioner moved for reconsideration^[10] of this resolution but his motion was

rebuffed in this wise:

The issue in this case is more on the credibility of the complainants and their testimony as against the denial of the [petitioner]. xxx There is no indication that the allegations of the complainant are tainted with bad faith or motivated by ill will against the respondent. As a matter of fact, their story is not uncommon in the bureaucracy especially in the hiring of casual employees who do not enjoy any security of tenure, and whose jobs depend primarily on the discretion of the employer. As to [the petitioner's statement] that he had no hand in the approval or termination of the complainants' job orders, documentary evidence showed otherwise.^[11]

Undaunted, the petitioner comes to this Court via a *certiorari* petition questioning the Ombudsman's determination of probable cause.

THE PETITION

The petitioner argues that the Ombudsman's finding of probable cause for violation of Section 3(b) of R.A. No. 3019 "should be proved by clear and convincing evidence,"^[12] and not by the mere say-so of the complainants that the petitioner deducted an amount from their salary. The petitioner argues that to be charged with violation of Section 3(b) of R.A. No. 3019, the benefit or favor must have been in connection with a transaction with the government in which the public officer has the legal right to intervene. In the present case, the complainants have not presented evidence to prove that he indeed intervened in the process of hiring the complainants, much less that he had a legal right to do so, making the complainants' allegation incredible. The absence of this element alone negates the Ombudsman's finding of probable cause.

The petitioner adds that the Ombudsman should have dismissed outright the complaints against him for (i) being filed more than one (1) year from the occurrence of the act complained of, citing Section 4(a), Rule III of Administrative Order (A.O.) No. 17, in relation to Section 20 of the Ombudsman Act of 1989, and (ii) failure to attach a certificate of non-forum shopping, citing Section 3, Rule III of A.O. No. 17.

COMMENT^[13]

The Office of the Ombudsman submits that its appreciation of the evidence and its ratiocination in finding the existence of probable cause, while adverse to the petitioner, are not enough to substantiate a claim of grave abuse of discretion. As against its findings, contained in the assailed issuances, the petitioner offered nothing but bare denial of the charges against him – a factual and evidentiary matter that must be properly ventilated in a criminal trial.

The Ombudsman implores the Court to apply its policy of non-interference with the Ombudsman's determination (i) of the presence or absence of probable cause and, concomitantly, (ii) of the sufficiency of the evidence before it. Citing *Lazatin v. Desierto*,^[14] the Ombudsman argues that the issue of the correctness of the

Ombudsman's determination of these matters is outside the province of *certiorari*.

THE COURT'S RULING

We dismiss the petition for lack of merit.

The Court's policy of non-interference with the Office of the Ombudsman except in a clear case of grave abuse of discretion

The Constitution and R.A. No. 6770^[15] endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees.^[16] Specifically, the determination of whether probable cause exists^[17] is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.^[18]

As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers,^[19] and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."^[20] While the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court,^[21] where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power *and* duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."^[22]

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 or to act at all in contemplation of law - in order to exceptionally warrant judicial intervention. The petitioner failed to show the existence of grave abuse of discretion in this case.

Evidentiary basis of probable cause

The petitioner argues that in finding probable cause for violation of Section 3(b) of R.A. No. 3019, the Ombudsman should have used the clear-and-convincing-evidence standard as threshold.

We strongly disagree.

In line with the constitutionally-guaranteed independence of the Office of the Ombudsman^[23] and coupled with the inherent limitations in a *certiorari* proceeding in reviewing the Ombudsman's discretion,^[24] we have consistently held that so long as *substantial evidence* supports the Ombudsman's ruling, his decision should stand.^[25] In a criminal proceeding before the Ombudsman, the Ombudsman merely

determines whether probable cause exists, *i.e.*, whether there is a *sufficient ground* to engender a well-founded belief that a crime has been committed and that the respondent is *probably guilty* thereof.^[26] Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.^[27] As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty;^[28] it is merely based on opinion and reasonable belief.^[29] On this score, *Galario v. Office of the Ombudsman (Mindanao)*^[30] is instructive

[A] finding of probable cause needs only to rest on evidence showing that *more* likely than not a crime has been committed and there is *enough reason* to believe that it was committed by the accused. It **need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.** A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. [*italics, underscoring and emphasis ours.*]

A finding of 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. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.^[31]

In the present case, the Ombudsman's finding of probable cause for violation of Section 3(b) of R.A. No. 3019 against the petitioner is supported by substantial evidence. *First*, the petitioner himself recommended the non-renewal of the complainants' contractual employment;^[32] and *second*, the petitioner is the head of the Task Force where the complainants were previously employed. As the Ombudsman does, we find these facts sufficient to engender a reasonable belief that the petitioner's act satisfies one of the elements^[33] of the law allegedly violated, and whose existence the petitioner strongly disputes. In turn, these facts rule out any arbitrariness in the Ombudsman's determination of probable cause. Whether the evidence before the Ombudsman will be sufficient to procure a conviction is a different matter that must await the trial of the criminal case.

Outright dismissal of complaint not warranted

Lastly, the petitioner argues that the Ombudsman should have dismissed the complaint outright for having been filed more than one year from the occurrence of the act or omission complained of.

Again, we disagree. Section 4 of A.O. No. 17 of the Office of the Ombudsman reads:

PROCEDURE IN ADMINISTRATIVE CASES

Section 4. Evaluation. – Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be: