

FIRST DIVISION

[G.R. No. 174504, March 21, 2011]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON.
SANDIGANBAYAN (THIRD DIVISION) AND MANUEL G.
BARCENAS, RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

The dismissal order arising from the grant of a demurrer to evidence amounts to an acquittal and cannot be appealed because it would place the accused in double jeopardy. The order is reviewable only by *certiorari* if it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

This is a Petition for *Certiorari* which seeks to nullify the *Sandiganbayan's* July 26, 2006 Resolution^[1] which granted private respondent's demurrer to evidence.

Factual Antecedents

On May 21, 2004, private respondent was charged with violation of Section 89 of Presidential Decree (P.D.) No. 1445^[2] before the *Sandiganbayan*. The Information reads --

That on or about December 19, 1995, and for sometime prior or subsequent thereto at Toledo City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused MANUEL G. BARCENAS, a high-ranking public officer, being a Vice-Mayor of Toledo City, and committing the offense in relation to office, having obtained cash advances from the City Government of Toledo in the total amount of SIXTY-ONE THOUSAND SEVEN HUNDRED SIXTY FIVE PESOS (P61,765.00), Philippine Currency, which he received by reason of his office, for which he is duty bound to liquidate the same within the period required by law, with deliberate intent and intent to gain, did then and there, willfully, unlawfully and criminally fail to liquidate said cash advances of P61,765.00, Philippine Currency, despite demands to the damage and prejudice of the government in the aforesaid amount.^[3]

The case was docketed as Criminal Case No. 27990 and raffled to the Third Division. On October 20, 2004, private respondent was arraigned for which he pleaded not guilty. The prosecution presented its lone witness, Manolo Tulibao Villad, Commission on Audit (COA) State Auditor. Thereafter, the prosecution filed its formal offer of evidence and rested its case.

On April 20, 2006, private respondent filed a motion^[4] for leave to file demurrer to evidence. On June 16, 2006, the *Sandiganbayan* issued a Resolution^[5] granting the motion. On June 30, 2006, private respondent filed his demurrer^[6] to evidence.

Sandiganbayan's Ruling

On July 26 2006, the *Sandiganbayan* promulgated the assailed Resolution, viz:

WE find the demurrer to evidence well taken.

The testimony of the prosecution's lone witness City Auditor Manolo Tulibao confirming his Report (Exhibit "D") that the accused had indeed liquidated his cash advances did not help the prosecution but rather weakened its cause of action against the accused. At the time this case was filed in Court, the accused had already liquidated his cash advances subject matter hereof in the total amount of P61,765.00. Hence, We find the element of damages wanting in this case.

PREMISES CONSIDERED, the Demurrer to Evidence is hereby granted and this case is hereby ordered **DISMISSED**.^[7]

Issue

Whether the *Sandiganbayan* acted with grave abuse of discretion amounting to lack or excess of jurisdiction in giving due course to and eventually granting the demurrer to evidence.^[8]

Petitioner's Arguments

Petitioner contends that the prosecution was able to establish all the elements of the offense defined and penalized under Section 89 of P.D. No. 1445: (1) the private respondent, an accountable officer, received cash advances in the total amount of P120,000.00 to defray the expenses of the Public Assistance Committee and Committee on Police Matters covering the period January-March 1993, (2) the purpose of the cash advance has been served, (3) the private respondent settled his cash advances only in March 1996, (4) the city auditor sent a demand letter to the private respondent to settle the cash advance within 72 hours from receipt thereof, and (5) the private respondent received said letter on December 22, 1995 but failed to liquidate the same within the aforestated period.

Although it concedes that the private respondent eventually settled the subject cash advances sometime in March 1996, petitioner theorizes that damage is not one of the elements of the offense charged. Hence, the settlement of the cash advance would not exonerate the private respondent but only mitigate his criminal liability. Otherwise, the purpose of the law would be rendered futile since accountable officers can easily make cash advances and liquidate the same beyond the period prescribed by law without being penalized for doing so.

Finally, petitioner argues that double jeopardy does not lie in this case because the

order of dismissal was issued with grave abuse of discretion amounting to lack of jurisdiction.

Private Respondent's Arguments

Private respondent counters that the grant of a demurrer to evidence is equivalent to an acquittal from which the prosecution cannot appeal as it would place the accused in double jeopardy. Further, assuming that the *Sandiganbayan* erroneously granted the demurrer, this would, at most, constitute an error of judgment and not an error of jurisdiction. Thus, *certiorari* does not lie to correct the grant of the demurrer to evidence by the *Sandiganbayan*.

Our Ruling

The petition lacks merit.

An order of dismissal arising from the grant of a demurrer to evidence has the effect of an acquittal unless the order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In criminal cases, the grant of a demurrer^[9] is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy.^[10] Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court.^[11] For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void.^[12] The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.^[13]

In the case at bar, the *Sandiganbayan* granted the demurrer to evidence on the ground that the prosecution failed to prove that the government suffered any damage from private respondent's non-liquidation of the subject cash advance because it was later shown, as admitted by the prosecution's witness, that private respondent liquidated the same albeit belatedly.

Sections 89 and 128 of P.D. No. 1445 provide--

SECTION 89. *Limitations on Cash Advance.* -- No cash advance shall be given unless for a legally authorized specific purpose. **A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served.** No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

SECTION 128. *Penal Provision.* -- Any violation of the provisions of Sections 67, 68, **89**, 106, and 108 of this Code **or any regulation**

issued by the Commission [on Audit] implementing these sections, shall be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court. (Emphasis supplied.)

On the other hand, COA Circular No. 90-331^[14] or the "Rules and Regulations on the Granting, Utilization and Liquidation of Cash Advances" which implemented Section 89 of P.D. No. 1445 pertinently provided-

5. LIQUIDATION OF CASH ADVANCES

5.1 The AO (Accountable Officer) shall liquidate his cash advance as follows:

5.1.1 Salaries, Wages, etc. - within 5 days after each 15 day/end of the month pay period.

5.1.2 Petty Operating Expenses and Field Operating Expenses - within 20 days after the end of the year; subject to replenishment during the year.

5.1.3 Foreign Travel - within 60 days after return to the Philippines.

Failure of the AO to liquidate his cash advance within the prescribed period shall constitute a valid cause for the withholding of his salary.

x x x x

5.7 When a cash advance is no longer needed or has not been used for a period of two (2) months, it must be returned to or deposited immediately with the collecting officer.

5.8 All cash advances shall be fully liquidated at the end of each year. Except for petty cash fund, the AO shall refund any unexpended balance to the Cashier/Collecting Officer who will issue the necessary official receipt.

x x x x

9. DUTIES AND RESPONSIBILITIES OF THE COA AUDITOR

x x x x

9.6 Upon failure of the AO to liquidate his cash advance within one month for AOs within the station and three months for AOs outside the station from date of grant of the cash advance, the Auditor shall issue a letter demanding liquidation or explanation for non-liquidation.