567 Phil. 70

SECOND DIVISION

[G.R. No. 175057, January 29, 2008]

MA. ROSARIO SANTOS-CONCIO, MA. SOCORRO V. VIDANES, MARILOU ALMADEN, CIPRIANO LUSPO, MORLY STEWART NUEVA, HAROLD JAMES NUEVA, NORBERT VIDANES, FRANCISCO RIVERA, MEL FELICIANO, and JEAN OWEN ERCIA, Petitioners, vs. DEPARTMENT OF JUSTICE, HON. RAUL M. GONZALEZ, as Secretary of the Department of Justice, NATIONAL CAPITAL REGION - NATIONAL BUREAU OF INVESTIGATION, PANEL OF INVESTIGATING PROSECUTORS created under Department of Justice Department Order No. 165 dated 08 March 2006, LEO B. DACERA III, as Chairman of the Panel of Investigating Prosecutors, and DEANA P. PEREZ, MA. EMILIA L. VICTORIO, EDEN S. WAKAY-VALDES and PETER L. ONG, as Members of the Panel of Investigating Prosecutors, the EVALUATING PANEL created under Department of Justice Department Order No. 90 dated 08 February 2006, JOSELITA C. MENDOZA as Chairman of the Evaluating Panel, and MERBA WAGA, RUEL LASALA and ARNOLD ROSALES, as Members of the Evaluating Panel, Respondents.

D E C I S I O N

CARPIO MORALES, J.:

On challenge via petition for review on certiorari are the Court of Appeals May 24, 2006 Decision and October 10, 2006 Resolution[1] in CA-G.R. SP No. 93763 dismissing herein petitioners' petition for certiorari and prohibition that sought to (i) annul respondent Department of Justice (DOJ) Department Order Nos. 90[2] and 165[3] dated February 8, 2006 and March 8, 2006, respectively, and all orders, proceedings and issuances emanating therefrom, and (ii) prohibit the DOJ from further conducting a preliminary investigation in what has been dubbed as the "Ultra Stampede" case.

In the days leading to February 4, 2006, people started to gather in throngs at the Philsports Arena (formerly Ultra) in Pasig City, the publicized site of the first anniversary episode of "Wowowee," a noontime game show aired by ABS-CBN Broadcasting Corporation (ABS-CBN). With high hopes of winning the bonanza, hundreds queued for days and nights near the venue to assure themselves of securing tickets for the show. Little did they know that in taking a shot at instant fortune, a number of them would pay the ultimate wager and place their lives at stake, all in the name of bagging the prizes in store.

Came the early morning of February 4, 2006 with thousands more swarming to the venue. Hours before the show and minutes after the people were allowed entry through two entry points at six o'clock in the morning, the obstinate crowd along

Capt. Javier Street jostled even more just to get close to the lower rate pedestrian gate. The mad rush of the unruly mob generated much force, triggering the horde to surge forward with such momentum that led others to stumble and get trampled upon by the approaching waves of people right after the gate opened. This fatal stampede claimed 71 lives, 69 of whom were women, and left hundreds wounded[4] which necessitated emergency medical support and prompted the cancellation of the show's episode.

The Department of Interior and Local Government (DILG), through then Secretary Angelo Reyes, immediately created an inter-agency fact-finding team[5] to investigate the circumstances surrounding the stampede. The team submitted its report[6] to the DOJ on February 7, 2006.

By Department Order No. 90 of February 8, 2006, respondent DOJ Secretary Raul Gonzalez (Gonzalez) constituted a Panel (Evaluating Panel)[7] to evaluate the DILG Report and "determine whether there is sufficient basis to proceed with the conduct of a preliminary investigation on the basis of the documents submitted."

The Evaluating Panel later submitted to Gonzalez a February 20, 2006 Report[8] concurring with the DILG Report but concluding that there was no sufficient basis to proceed with the conduct of a preliminary investigation in view of the following considerations:

a) No formal complaint/s had been filed by any of the victims and/or their relatives, or any law enforcement agency authorized to file a complaint, pursuant to Rule 110 of the Revised Rules of Criminal Procedure;

b) While it was mentioned in the Fact-Finding Report that there were 74 deaths and 687 injuries, no documents were submitted to prove the same, e.g. death certificates, autopsy reports, medical certificates, etc.;

c) The Fact-Finding Report did not indicate the names of the persons involved and their specific participation in the "Ultra Incident";

d) Most of the victims did not mention, in their sworn statements, the names of the persons whom they alleged to be responsible for the "Ultra Incident".[9]

Respondent National Bureau of Investigation-National Capital Region (NBI-NCR), acting on the Evaluating Panel's referral of the case to it for further investigation, in turn submitted to the DOJ an investigation report, by a March 8, 2006 transmittal letter (NBI-NCR Report[10]), with supporting documents recommending the conduct of preliminary investigation for Reckless Imprudence resulting in Multiple Homicide and Multiple Physical Injuries[11] against petitioners and seven others[12] as respondents.

Acting on the recommendation of the NBI-NCR, Gonzalez, by Department Order No. 165 of March 8, 2006, designated a panel of state prosecutors[13] (Investigating Panel) to conduct the preliminary investigation of the case, docketed as I.S. No. 2006-291, "*NCR-NBI v. Santos-Concio, et al.,*" and if warranted by the evidence, to file the appropriate information and prosecute the same before the appropriate court. The following day or on March 9, 2006, the Investigating Panel issued subpoenas[14] directing the therein respondents to appear at the preliminary investigation set on March 20 and 27, 2006.

At the initial preliminary investigation, petitioners sought clarification and orally moved for the inhibition, disqualification or desistance of the Investigating Panel from conducting the investigation.[15] The Investigating Panel did not formally resolve the motion, however, as petitioners manifested their reservation to file an appropriate motion on the next hearing scheduled on March 27, 2006, without prejudice to other remedies.[16]

On March 23, 2006, petitioners filed a petition for certiorari and prohibition with the Court of Appeals which issued on March 27, 2006 a Resolution[17] granting the issuance of a temporary restraining order,[18] conducted on April 24, 2006 a hearing on the application for a writ of preliminary injunction, and subsequently promulgated the assailed two issuances.

In the meantime, the Investigating Panel, by Resolution[19] of October 9, 2006, found probable cause to indict the respondents-herein petitioners for Reckless Imprudence resulting in Multiple Homicide and Physical Injuries, and recommended the conduct of a separate preliminary investigation against certain public officials.[20] Petitioners' Motion for Reconsideration[21] of the said October 9, 2006 Resolution, filed on October 30, 2006 "with abundance of caution," is pending resolution, and in the present petition they additionally pray for its annulment.

In asserting their right to due process, specifically to a fair and impartial preliminary investigation, petitioners impute reversible errors in the assailed issuances, arguing that:

> Respondents have already prejudged the case, as shown by the public declarations of Respondent Secretary and the Chief Executive, and have, therefore, lost their impartiality to conduct preliminary investigation.
>
> Respondents have already prejudged the case as shown by the indecent haste by which the proceedings were conducted.
>
> The alleged complaint-affidavits filed against Petitioners were not under oath.
>
> The supposed complaint-affidavits filed against Petitioners failed to state the acts or omissions constituting the crime.
>
> Although Respondents may have the power to conduct criminal investigation or preliminary investigation, Respondents do not have the

power to conduct both in the same case.[22] (Emphasis and underscoring supplied)

The issues shall, for logical reasons, be resolved in reverse sequence.

On the Investigatory Power of the DOJ

In the assailed Decision, the appellate court ruled that the Department Orders were issued within the scope of authority of the DOJ Secretary pursuant to the Administrative Code of 1987[23] bestowing general investigatory powers upon the DOJ.

Petitioners concede that the DOJ has the power to conduct both criminal investigation and preliminary investigation but not in their case,[24] they invoking *Cojuangco, Jr. v. PCGG*.[25] They posit that in *Cojuangco*, the reshuffling of personnel was not considered by this Court which ruled that the entity which conducted the criminal investigation is disqualified from conducting a preliminary investigation in the same case. They add that the DOJ cannot circumvent the prohibition by simply creating a panel to conduct the first, and another to conduct the second.

In insisting on the arbitrariness of the two Department Orders which, so they claim, paved the way for the DOJ's dual role, petitioners trace the basis for the formation of the five-prosecutor Investigating Panel to the NBI-NCR Report which was spawned by the supposed criminal investigation[26] of the Evaluating Panel the members of which included two, albeit different, prosecutors. While petitioners do not assail the constitution of the Evaluating Panel,[27] they claim that it did not just evaluate the DILG Report but went further and conducted its own criminal investigation by interviewing witnesses, conducting an ocular inspection, and perusing the evidence.

Petitioners' position does not lie. Cojuangco was borne out of a different factual milieu.

In Cojuangco, this Court prohibited the Presidential Commission on Good Government (PCGG) from conducting a preliminary investigation of the complaints for graft and corruption since it had earlier found a *prima facie* case – basis of its issuance of sequestration/freeze orders and the filing of an ill-gotten wealth case involving the same transactions. The Court therein stated that it is "difficult to imagine how in the conduct of such preliminary investigation the PCGG could even make a turn about and take a position contradictory to its earlier findings of a *prima facie* case," and so held that "the law enforcer who conducted the criminal investigation,

gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint."[28] The present case deviates from *Cojuangco*.

The measures taken by the Evaluating Panel do not partake of a criminal investigation, they having been done in aid of evaluation in order to relate the incidents to their proper context. Petitioners' own video footage of the ocular

inspection discloses this purpose. Evaluation for purposes of determining whether there is sufficient basis to proceed with the conduct of a preliminary investigation entails not only reading the report or documents in isolation, but also deems to include resorting to reasonably necessary means such as ocular inspection and physical evidence examination. For, ultimately, any conclusion on such sufficiency or insufficiency needs to rest on some basis or justification.

Had the Evaluating Panel carried out measures partaking of a criminal investigation, it would have gathered the documents that it enumerated as lacking. *Notatu dignum* is the fact that the Evaluating Panel was dissolved *functus oficio* upon rendering its report. It was the NBI, a constituent unit[29] of the DOJ, which conducted the criminal investigation. It is thus foolhardy to inhibit the entire DOJ from conducting a preliminary investigation on the sheer ground that the DOJ's constituent unit conducted the criminal investigation.

Moreover, the improbability of the DOJ contradicting its prior finding is hardly appreciable. It bears recalling that the Evaluating Panel found no sufficient basis to proceed with the conduct of a preliminary investigation. Since the Evaluating Panel's report was not adverse to petitioners, prejudgment may not be attributed "vicariously," so to speak, to the rest of the state prosecutors. Partiality, if any obtains in this case, in fact weighs heavily in favor of petitioners.

On the Alleged Defects of the Complaint

On the two succeeding issues, petitioners fault the appellate court's dismissal of their petition despite, so they claim, respondents' commission of grave abuse of discretion in proceeding with the preliminary investigation given the fatal defects in the supposed complaint.

Petitioners point out that they cannot be compelled to submit their counter-affidavits because the NBI-NCR Report, which they advert to as the complaint-affidavit, was not under oath. While they admit that there were affidavits attached to the NBI-NCR Report, the same, they claim, were not executed by the NBI-NCR as the purported complainant, leaving them as "orphaned" supporting affidavits without a sworn complaint-affidavit to support.

These affidavits, petitioners further point out, nonetheless do not qualify as a complaint[30] within the scope of Rule 110 of the Rules of Court as the allegations therein are insufficient to initiate a preliminary investigation, there being no statement of specific and individual acts or omissions constituting reckless imprudence. They bewail the assumptions or conclusions of law in the NBI-NCR Report as well as the bare narrations in the affidavits that lack any imputation relating to them as the persons allegedly responsible.

IN FINE, petitioners contend that absent any act or omission ascribed to them, it is unreasonable to expect them to confirm, deny or explain their side.

A complaint for purposes of conducting a preliminary investigation differs from a complaint for purposes of instituting a criminal prosecution. Confusion apparently springs because two complementary procedures adopt the usage of the same word, for lack of a better or alternative term, to refer essentially to a written charge.