

THIRD DIVISION

[G.R. No. 162808, April 22, 2008]

FELICIANO GALVANTE, PETITIONER, VS. HON. ORLANDO C. CASIMIRO, DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES, BIENVENIDO C. BLANCAFLOR, DIRECTOR, DENNIS L. GARCIA, GRAFT INVESTIGATION AND PROSECUTION OFFICER, SPO4 RAMIL AVENIDO, PO1 EDDIE DEGRAN, PO1 VALENTINO RUFANO, AND PO1 FEDERICO BALLOT, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Assailed herein by Petition for *Certiorari* and *Mandamus* under Rule 65 of the Rules of Court are the October 30, 2003 Resolution^[1] of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices - Office of the Ombudsman (Ombudsman) which dismissed for lack of probable cause the criminal complaint, docketed as OMB-P-C-02-0109-B, filed by Feliciano Galvante^[2] (petitioner) against SPO4 Benjamin Conde, PO1 Ramil Avenido, PO1 Eddie Degran, PO1 Valentino Rufano, and PO1 Federico Balot (private respondents) for arbitrary detention, illegal search and grave threats; and the January 20, 2004 Ombudsman Order^[3] which denied his motion for reconsideration.

The facts are of record.

In the afternoon of May 14, 2001 at Sitio Cahi-an, Kapatungan, Trento, Agusan del Sur, private respondents confiscated from petitioner one colt pistol super .38 automatic with serial no. 67973, one short magazine, and nine super .38 live ammunitions.^[4] The confiscated materials were covered by an expired Memorandum Receipt dated September 2, 1999.^[5]

Consequently, the Assistant Provincial Prosecutor filed against petitioner an Information^[6] for Illegal Possession of Firearms and Ammunitions in Relation to Commission on Elections (Comelec) Resolution No. 3258, docketed as Criminal Case No. 5047, before the Regional Trial Court (RTC), Prosperidad, Agusan del Sur.

Pending resolution of Criminal Case No. 5047, petitioner filed against private respondents an administrative case, docketed as Administrative Case No. IASOB-020007 for Grave Misconduct, before the Internal Affairs Service (IAS), Region XIII, Department of Interior and Local Government (DILG);^[7] and a criminal case, docketed as OMB-P-C-02-0109-B for Arbitrary Detention, Illegal Search and Grave Threats, before the Ombudsman.^[8]

In the June 21, 2001 Affidavit-Complaint he filed in both cases, petitioner narrated

how, on May 14, 2001, private respondents aimed their long firearms at him, arbitrarily searched his vehicle and put him in detention, thus:

1. That sometime on May 14, 2001 I left my house at around 1:00 o'clock in the afternoon after having lunch for Sitio Cahian, Brgy. Kapatungan, Trento, Agusan del Sur to meet retired police Percival Plaza and inquire about the retirement procedure for policemen;
2. That upon arrival at the house of retired police Percival Plaza, together with Lorenzo Sanoria, Delfin Ramirez and Pedro Ramas who asked for a ride from the highway in going to Sitio Cahian, I immediately went down of the jeep but before I could call Mr. Plaza, four policemen in uniform blocked my way;
3. That the four policemen were [private respondents] PO1 Romil Avenido PNP, PO1 Valentino Rufano, PNP both member of 142nd Company, Regional Mobile Group and PO1 Eddie Degran PNP and PO1 Federico Balolot PNP members of 1403 Prov'l Mobile Group, all of Bunawan Brook, Bunawan, Agusan del Sur; who all pointed their long firearms ready to fire [at] me, having heard the sound of the release of the safety lock;
4. That raising my arms, I heard [private respondent] PO1 Avenido saying, "ANG IMONG PUSIL, IHATAG" which means "Give me your firearm," to which I answered, "WALA MAN KO'Y PUSIL" translated as "I have no firearm," showing my waistline when I raised my T-shirt;
5. That my other companions on the jeep also went down and raised their arms and showed their waistline when the same policemen and a person in civilian attire holding an armalite also pointed their firearms to them to which Mr. Percival Plaza who came down from his house told them not to harass me as I am also a former police officer but they did not heed Mr. Plaza's statements;
6. That while we were raising our arms [private respondent] SPO4 Benjamin Conde, Jr. went near my owner type jeep and conducted a search. To which I asked them if they have any search warrant;
7. That after a while they saw my super .38 pistol under the floormat of my jeep and asked me of the MR of the firearm but due to fear that their long arms were still pointed to us, I searched my wallet and gave the asked [sic] document;
8. That immediately the policemen left me and my companions without saying anything bringing with them the firearm;
9. That at about 2:30 p.m., I left Mr. Percival's house and went to Trento Police Station where I saw a person in civilian attire with a revolver tucked on his waist, to which I asked the police officers including those who searched my jeep to apprehend him also;

10. That nobody among the policemen at the station made a move to apprehend the armed civilian person so I went to the office of Police Chief Rocacorba who immediately called the armed civilian to his office and when already inside his office, the disarming was done;
11. That after the disarming of the civilian I was put to jail with the said person by Police Chief Rocacorba and was released only at 4:00 o'clock in the afternoon of May 16, 2001 after posting a bailbond;
12. That I caused the execution of this document for the purpose of filing cases of Illegal Search, Grave Misconduct and Abuse of Authority against SPO4 Benjamin Conde, Jr., of Trento Police Station; PO1 Ramil Avenido, PO1 Velantino Rufano, PO1 Federico Balolot and PO1 Eddie Degran.^[9]

Petitioner also submitted the Joint Affidavit^[10] of his witnesses, Lorenzo Sanoria and Percival Plaza.

Private respondent Conde filed a Counter-Affidavit dated March 20, 2002, where he interposed the following defenses:

First, he had nothing to do with the detention of petitioner as it was Chief of Police/Officer-in-Charge Police Inspector Dioscoro Mehos Rocacorba who ordered the detention. Petitioner himself admitted this fact in his own Complaint-Affidavit,^[11] and

Second, he denies searching petitioner's vehicle,^[12] but admits that even though he was not armed with a warrant, he searched the person of petitioner as the latter, in plain view, was committing a violation of Comelec Resolutions No. 3258 and No. 3328 by carrying a firearm in his person.

Private respondents Avenido, Degran, Rufano and Balolot filed their Joint-Affidavit dated March 25, 2002, which contradicts the statements of private respondent Conde, viz:

1. that we executed a joint counter-affidavit dated August 28, 2001 where we stated among other things, that "we saw Feleciano "Nani" Galvante armed with a handgun/pistol tucked on his waist;"
2. that this statement is not accurate because the truth of the matter is that the said handgun was taken by SPO4 BENJAMIN CONDE, JR., who was acting as our team leader during the May 14, 2001 Elections, from the jeep of Mr. Galvante after searching the same; and
3. that we noticed the aforementioned discrepancy in our affidavit dated August 28, 2001 after we have already affixed our signatures thereon.^[13]

Consequently, petitioner filed an Affidavit of Desistance dated March 25, 2002 with both the IAS and Ombudsman, absolving private respondents Avenido, Degran, Rufano and Balolot, but maintaining that private respondent Conde alone be

prosecuted in both administrative and criminal cases.^[14]

On July 17, 2002, the IAS issued a Decision in Administrative Case No. IASOB-020007, finding all private respondents guilty of grave misconduct but penalized them with suspension only. The IAS noted however that private respondents were merely being "[enthusiastic] in the conduct of the arrest in line of duty." ^[15]

Meanwhile, in Criminal Case No. 5047, petitioner filed with the RTC a Motion for Preliminary Investigation and to Hold in Abeyance the Issuance of or Recall the Warrant of Arrest.^[16] The RTC granted the same in an Order^[17] dated August 17, 2001. Upon reinvestigation, Prosecutor II Eliseo Diaz, Jr. filed a "Reinvestigation with Motion to Dismiss" dated November 22, 2001, recommending the dismissal of Criminal Case No. 5047 on the ground that "the action of the policemen who conducted the warrantless search in spite of the absence of any circumstances justifying the same intruded into the privacy of the accused and the security of his property."^[18] Officer-in-Charge Prosecutor II Victoriano Pag-ong approved said recommendation.^[19]

The RTC granted the prosecution's motion to dismiss in an Order^[20] dated January 16, 2003.

Apparently unaware of what transpired in Criminal Case No. 5047, Ombudsman Investigation & Prosecution Officer Dennis L. Garcia issued in OMB-P-C-02-0109-B, the October 30, 2003 Resolution, to wit:

After a careful evaluation, the undersigned prosecutor finds no probable cause for any of the offenses charged against above-named respondents.

The allegations of the complainant failed to establish the factual basis of the complaint, ***it appearing from the records that the incident stemmed from a valid warrantless arrest.*** The subsequent execution of an affidavit of desistance by the complainant rendered the complaint even more uncertain and subject to doubt, especially so since it merely exculpated some but not all of the respondents. These circumstances, coupled with the presumption of regularity in the performance of duty, negates any criminal liability on the part of the respondents.

WHEREFORE, premises considered, it is hereby recommended that the above-captioned case be dismissed for lack of probable cause.^[21]
(Emphasis supplied)

Upon the recommendation of Director Bienvenido C. Blancaflor, Deputy Ombudsman for the Military Orlando C. Casimiro (Deputy Ombudsman) approved the October 30, 2003 Resolution.^[22]

In his Motion for Reconsideration,^[23] petitioner called the attention of the Ombudsman to the earlier IAS Decision, the Reinvestigation with Motion to Dismiss of Prosecutor II Eliseo Diaz, Jr. and the RTC Order, all of which declared the warrantless search conducted by private respondents illegal,^[24] which are contradicted by the October 30, 2003 Ombudsman Resolution declaring the

warrantless search legal.

The Ombudsman denied petitioner's motion for reconsideration on the ground that the latter offered "no new evidence or errors of law which would warrant the reversal or modification"^[25] of its October 30, 2003 Resolution.

Petitioner filed the present petition, attributing to Deputy Ombudsman Casimiro, Director Blancaflor and Prosecutor Garcia (public respondents) the following acts of grave abuse of discretion:

I. Public respondents acted without or in excess of their jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction when, in their Resolution dated October 30, 2003, public respondents found that the incident upon which petitioner's criminal complaint was based stemmed from a valid warrantless arrest and dismissed petitioner's complaint despite the fact that:

A. Petitioner has clearly shown that the search conducted by the private respondents was made without a valid warrant, nor does it fall under any of the instances of valid warrantless searches.

B. Notwithstanding the absence of a valid warrant, petitioner was arrested and detained by the private respondents.

II. Public respondents acted without or in excess of their jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction when, in their Order dated January 20, 2004, public respondents denied the petitioner's motion for reconsideration in a capricious, whimsical, despotic and arbitrary manner. ^[26]

In its Memorandum,^[27] the Office of the Solicitor General argued that public respondents acted within the bounds of their discretion in dismissing OMB-P-C-02-0109-B given that private respondents committed no crime in searching petitioner and confiscating his firearm as the former were merely performing their duty of enforcing the law against illegal possession of firearms and the Comelec ban against the carrying of firearms outside of one's residence.

Private respondent Conde filed a Comment^[28] and a Memorandum for himself.^[29] Private respondents Avenido, Degran, Rufano and Balolot filed their separate Letter-Comment dated June 25, 2004.^[30]

The petition lacks merit.

The Constitution vests in the Ombudsman the power 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.^[31] The Court respects the relative autonomy of the Ombudsman to investigate and prosecute, and refrains from interfering when the latter exercises such powers either directly or through the Deputy Ombudsman,^[32] except when the same is shown to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[33]