

## SECOND DIVISION

[ G.R. NO. 163656, April 27, 2007 ]

**MARINA B. SCHROEDER, PETITIONER, VS. ATTYS. MARIO A. SALDEVAR AND ERWIN C. MACALINO, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review on certiorari are the Decision<sup>[1]</sup> dated October 30, 2003 and the Resolution<sup>[2]</sup> dated May 6, 2004 of the Court of Appeals in CA-G.R. SP No. 63418, entitled "*Attys. Mario A. Saldevar and Erwin C. Macalino v. Hon. Lydia Querubin-Layosa, in her capacity as Presiding Judge, Branch 217, Regional Trial Court, Quezon City, The Ombudsman, The Department of Justice, National Bureau of Investigation, and Marina B. Schroeder,*" that partly set aside the Order<sup>[3]</sup> dated October 30, 2000 of the Office of the Ombudsman (Ombudsman) in OMB-0-00-1090 [I.S. No. 98-394].

The pertinent facts are as follows.

Petitioner Marina B. Schroeder owns a liquor store in Robinson's Galleria, Pasig City. Respondents Mario A. Saldevar and Erwin C. Macalino are the Legal Division Chief and Attorney II, respectively, of the Bureau of Internal Revenue, Revenue District Office No. 7 in Quezon City.

Sometime in 1998, respondents were arrested by agents of the National Bureau of Investigation (NBI) in an entrapment operation conducted upon petitioner's complaint.

After inquest, the Department of Justice (DOJ) filed in the Regional Trial Court of Quezon City, Branch 217, an information for direct bribery against respondents. The case was remanded to the DOJ for preliminary investigation.

The DOJ issued a Resolution<sup>[4]</sup> finding probable cause to indict respondents for direct bribery. Aggrieved, respondents filed in the DOJ a petition for review of the said Resolution. The DOJ, however, endorsed the petition to the Ombudsman.

The Ombudsman treated the petition for review as a motion for reconsideration of the aforesaid DOJ Resolution. It denied the petition for review for lack of merit, thus:

WHEREFORE, premises considered and finding no merit to the petition for review of public respondents Mario A. Saldevar and Erwin C. Macalino, treated herein as a motion for reconsideration of the Resolution of the Department of Justice, Manila, dated 07 June 1999, in I.S. No. 98-394 [Crim. Case No. Q-98-76453], finding probable cause to continue with

the prosecution in court of said respondents for Direct Bribery, the same [Petition for Review a.k.a. Motion for Reconsideration] is hereby DENIED, with finality.

SO ORDERED.<sup>[5]</sup>

Respondents filed in the Court of Appeals a petition for certiorari and mandamus. The appellate court found no probable cause against respondent Saldevar, but upheld the finding of probable cause against respondent Macalino. The dispositive portion of its assailed Decision reads:

**WHEREFORE**, the instant petition is **GRANTED** insofar as petitioner Mario A. Saldevar is concerned. Accordingly, the order of the Ombudsman dated October 30, 2000 finding probable cause to prosecute said petitioner for direct bribery is **ANNULLED** and **SET ASIDE**. The subject order is **AFFIRMED** in all other aspects.

SO ORDERED.<sup>[6]</sup>

Petitioner filed a motion for reconsideration of the aforequoted Decision, but it was denied for lack of merit. Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THERE WAS NO PROBABLE CAUSE AGAINST RESPONDENT SALDEVAR; and

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT SUBSTITUTED ITS OWN FINDINGS FOR THE FINDINGS OF PROBABLE CAUSE BY THE PROSECUTORIAL ARMS OF THE GOVERNMENT.<sup>[7]</sup>

Petitioner contends that the determination of probable cause is an executive function lodged with the prosecutorial arm of the government, not with the judiciary. Petitioner argues the evidence on record clearly establish probable cause to indict Saldevar with Macalino. Petitioner stresses Saldevar need not actually demand and receive the marked money in order for him to be indicted for direct bribery. Petitioner adds that since respondents never ascribed any ill motive to the NBI agents who conducted the entrapment operation, the presumption of regularity in the performance of their duties applies.

Respondents, however, insist that the DOJ erred in endorsing the petition for review to the Ombudsman. They aver that the Ombudsman cannot deny the petition for review filed in the DOJ. Respondents maintain that the Court of Appeals can determine probable cause because the DOJ erred in not resolving the petition for review. They also point out that the Ombudsman glossed over the issue of illegal arrest. Respondents posit that the operation conducted by the NBI was an instigation, not an entrapment.

We find the petition meritorious.