

THIRD DIVISION

[G.R. NO. 156427, January 20, 2006]

**AMANDO TETANGCO, PETITIONER, VS. THE HON. OMBUDSMAN
AND MAYOR JOSE L. ATIENZA, JR., RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This petition for certiorari seeks to annul and set aside the **Order**,^[1] dated April 16, 2002, of public respondent Ombudsman in OMB-CC-02-0151-C which dismissed the Complaint of petitioner Amando Tetangco against private respondent Mayor Jose L. Atienza, Jr., for violation of Article 220^[2] of the Revised Penal Code (RPC). Also assailed is the **Order**,^[3] dated August 1, 2002, denying the motion for reconsideration.

On March 8, 2002, petitioner filed his Complaint before the Ombudsman alleging that on January 26, 2001, private respondent Mayor Atienza gave P3,000 cash financial assistance to the chairman and P1,000 to each tanod of *Barangay* 105, Zone 8, District I. Allegedly, on March 5, 2001, Mayor Atienza refunded P20,000 or the total amount of the financial assistance from the City of Manila when such disbursement was not justified as a lawful expense.

In his Counter-Affidavit, Mayor Atienza denied the allegations and sought the dismissal of the Complaint for lack of jurisdiction and for forum-shopping. He asserted that it was the Commission on Elections (COMELEC), not the Ombudsman that has jurisdiction over the case and the same case had previously been filed before the COMELEC. Furthermore, the Complaint had no verification and certificate of non-forum shopping. The mayor maintained that the expenses were legal and justified, the same being supported by disbursement vouchers, and these had passed prior audit and accounting.

The Investigating Officer recommended the dismissal of the Complaint for lack of evidence and merit. The Ombudsman adopted his recommendation.

The Office of the Ombudsman, through its Over-all Deputy Ombudsman, likewise denied petitioner's motion for reconsideration.

Before us, petitioner assigns for resolution a single issue:

WHETHER OR NOT THE RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISMISSED THE CRIMINAL CHARGE AGAINST RESPONDENT MAYOR ATIENZA FOR VIOLATION OF ART. 220 OF THE RPC DESPITE THE EXISTENCE OF A *PRIMA FACIE* CASE AND PROBABLE CAUSE TO INDICT HIM FOR THE CRIME CHARGED OR, AT THE

VERY LEAST, FOR VIOLATION OF SEC. 3(e) OF R.A. NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT).^[4]

The sole issue is, did the Ombudsman commit grave abuse of discretion in dismissing the Complaint?

Petitioner insists that Mayor Atienza illegally disbursed public funds when he gave the aforementioned financial assistance to the chairman and *tanods* of *Barangay* 105 since the disbursement was not authorized by law or ordinance, which the Ombudsman did not consider when it dismissed the Complaint of petitioner. According to petitioner, the dismissal by the Ombudsman was capricious since the evidence on record was clear that the mayor was guilty of graft and corruption.^[5]

The Ombudsman, through the Solicitor General, contends that it did not abuse its discretion and there was also no probable cause against private respondent for violation of Art. 220 of the RPC.^[6]

For his part, Mayor Atienza avers that there was no grave abuse of discretion on the part of the Ombudsman when it dismissed the Complaint.^[7]

After considering the submissions of the parties, we find that the petition lacks merit. No grave abuse of discretion is attributable to the Ombudsman.

It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion.^[8] Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law.^[9] Thus, we held in *Roxas v. Vasquez*,^[10]

... this Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

In this case, the action taken by the Ombudsman cannot be characterized as arbitrary, capricious, whimsical or despotic. The Ombudsman found no evidence to prove probable cause. Probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.^[11] Here, the Complaint merely alleged that the disbursement for financial