

## FIRST DIVISION

[ G.R. NO. 167025, December 19, 2005 ]

**HERMINIO C. PRINCIPIO, PETITIONER, VS. THE HON. OSCAR BARRIENTOS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 26, PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS, AND HILARIO SORIANO, RESPONDENTS**

### *DECISION*

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari under Rule 45 of the Rules of Court assails the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 82190 dated July 30, 2004 and its Resolution<sup>[2]</sup> dated February 9, 2005.

Petitioner Herminio C. Principio is a bank examiner at the Supervisions and Examination Department IV of the Bangko Sentral ng Pilipinas (BSP).

On June 25, 2001, respondent Hilario P. Soriano, president and stockholder of the Rural Bank of San Miguel, Inc. (RBSMI for brevity), filed an affidavit-complaint<sup>[3]</sup> against petitioner with the Office of the Ombudsman for violation of Section 3(e) of Republic Act (RA) No. 3019. Respondent alleged that petitioner, through manifest partiality, evident bad faith and gross inexcusable negligence, caused undue injury to RBSMI by reporting that the bank incurred legal reserve deficiencies of P18 million from December 31, 1995 up to August 21, 1996 and P13 million from August 22, 1996 up to September 1, 1996, and by recommending the imposition of a fine in the amount of P2,538,000.00, which was adopted by the Monetary Board in its Resolution No. 724 dated June 13, 1997.

On September 26, 2002, the Office of the Ombudsman issued a Resolution<sup>[4]</sup> finding probable cause to indict petitioner for violation of Section 3(e) of RA No. 3019. On November 12, 2002, an information<sup>[5]</sup> was filed against the petitioner with the Regional Trial Court (RTC) of Manila docketed as Crim. Case No. 02-207793.

On November 25, 2002, petitioner filed a motion for reconsideration<sup>[6]</sup> which was denied by the Office of the Ombudsman on the ground that the information had already been filed in court.

Accordingly, petitioner filed a motion with the trial court praying that the motion for reconsideration filed with the Office of the Ombudsman be given due course and thereafter, to rule that no probable cause exists.<sup>[7]</sup>

On December 3, 2003, the trial court denied petitioner's motions to give due course to his motion for reconsideration and to defer proceedings until resolution of the

pending issues. It also suspended petitioner from office for a period of 60 days.<sup>[8]</sup> His motion for reconsideration was denied on January 27, 2004.<sup>[9]</sup>

Petitioner thus filed a petition for certiorari with the Court of Appeals praying for the annulment of respondent judge's Orders of December 3, 2003 and January 27, 2004 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

On July 30, 2004, the Court of Appeals dismissed the petition and affirmed the assailed orders of the RTC. On February 9, 2005, the appellate court denied petitioner's motion for reconsideration.

In dismissing the petition, the appellate court noted that:

... [T]he petition stems from an order denying the petitioner's motion to dismiss. The general rule is that the denial of a motion to dismiss is interlocutory and hence, it cannot be questioned in a special civil action of certiorari ....

In effect, petitioner's motion to dismiss is a motion to quash. In the case of *Lee vs. People of the Philippines, et al.* (393 SCRA 397), it was elucidated that where a motion to quash is denied, the remedy is not certiorari but to go to trial without prejudice to reiterating the special defenses involved in said motion, and if, after trial on the merits an adverse decision is rendered, to appeal therefrom in the manner authorized by law.

....

In the case at bench, while petitioner ostensibly alleges grave abuse of discretion amounting to lack or excess of jurisdiction, the record does not show such kind of actuation on the part of respondent Judge. Specifically, petitioner delves on the finding of probable cause of respondent Judge. He avers that respondent Judge did not bother to deliberate on the specific circumstances of his case but merely defined "probable cause." From this, it cannot be said that the respondent Judge did not independently evaluate or assess the merits of the case. While it is true that respondent Judge defined "probable cause" in the assailed order, it may not be amiss to state that he clearly stated that probable cause exists in the case below. Respondent Judge's failure to clearly express the nitty-gritty of his findings of probable cause cannot be characterized as an error of jurisdiction.<sup>[10]</sup>

Hence, the instant petition based on the sole ground that the Court of Appeals erred in ignoring relevant law, jurisprudence, and evidence negating the Ombudsman's finding of probable cause.<sup>[11]</sup>

Petitioner argues that the general rule that certiorari is not the proper remedy to the denial of a motion to quash is subject to the exception laid down in *Mead v. Hon. Argel, etc., et al.*,<sup>[12]</sup> where recourse to the extraordinary legal remedies of certiorari, prohibition and mandamus is considered proper in the interest of "more

enlightened and substantial justice." Citing *Yap v. Hon. Lutero*,<sup>[13]</sup> petitioner points out that it would be unfair to require the accused to go through the inconvenience, mental agony and torture of a trial on the merits, incurring expenses incidental thereto, when, on appeal, the Supreme Court may set aside judgment of conviction.

Petitioner insists that the Court of Appeals ignored the ruling in *Reyes v. Rural Bank of San Miguel (Bulacan), Inc.*<sup>[14]</sup> where this Court exonerated herein petitioner from administrative liability on the ground that he was not guilty of undue haste in the submission of report on RBSMI's general examination.

Petitioner also contends that the Court of Appeals erred in disregarding the fact that the Monetary Board had confirmed the factual and legal bases for the imposition of the penalty against RBSMI. In support of this contention, petitioner explains that although the Ombudsman, in finding probable cause to hold him for trial, found that the BSP approved the reversal of the penalty, this was, however, not an admission by the Monetary Board that it erred in imposing the penalty. The Court in *Reyes* explained that "it (the reversal) was only an accommodation on the part of the BSP to ease the financial difficulties of RBSMI. More importantly, it was a conditional reversal pending the resolution of the dispute on the finding of legal reserve deficiency." In fact, the Monetary Board, in Resolution No. 462, subsequently confirmed the factual and legal bases for the imposition of the penalty against RBSMI.

Private respondent argues that petitioner's reliance on the Supreme Court's findings in *Reyes* where petitioner was exonerated from administrative liability is not conclusive of his lack of criminal liability and therefore does not bar a criminal prosecution; that even assuming that the BSP examiners may not be held administratively liable for reports that were recommendatory in nature, they may however be held liable for not following the law, or BSP rules and regulations; that petitioner precipitately concluded that RBSMI incurred legal reserve deficiencies which led to the imposition of the penalty despite his failure to make a cash count; that the Court of Appeals correctly held that the determination of whether there is probable cause is the function of the Office of the Ombudsman, hence, in the absence of clear showing of arbitrariness in the findings and determination of probable cause by the prosecution in the preliminary investigation, the courts must give credence to the same.

The present petition arose from the denial by the trial court of petitioner's motions praying for the dismissal of the criminal charge against him for lack of probable cause. The trial court upheld the Ombudsman's finding of probable cause and dismissed petitioner's arguments ratiocinating that the determination of the existence or absence of probable cause lies within the sound discretion of the Office of Ombudsman. Petitioner filed a petition for certiorari with the Court of Appeals alleging that the trial court acted with grave abuse of discretion in denying the motion. Instead of ruling on the merits of the petition, the Court of Appeals dismissed the petition on a technicality.

Petitioner now seeks a review of the decision of the Court of Appeals, which affirmed the orders of the trial court denying petitioner's motion to dismiss/quash for lack of probable cause.

At the outset, we reiterate the fundamental principle that an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. In other words, it cannot be the subject of appeal until the judgment, or a final order is rendered. The proper procedure to be followed is to enter a plea, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment. Although the special civil action for certiorari may be availed of in case there is a grave abuse of discretion or lack of jurisdiction, that vitiating error is not attendant in the present case.<sup>[15]</sup>

However, the general rule is not absolute. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* or prohibition may exceptionally be allowed. We categorically stated in *Salonga v. Cruz Paño*<sup>[16]</sup> that:

... [I]t is also recognized that, under certain situations, recourse to the extraordinary legal remedies of certiorari, prohibition or mandamus to question the denial of a motion to quash is considered proper in the 'interest of more enlightened and substantial justice', ....

After a careful review of the records, we find that such special circumstance obtains in the case at bar. Simply stated, the existing evidence is insufficient to establish probable cause against the petitioner and therefore, the petition must be granted.

In arriving at the conclusion that probable cause exists to prosecute the petitioner, the Ombudsman relied on the ruling of the Court of Appeals in CA-G.R. SP No. 60184 entitled *Rural Bank of San Miguel, Inc. v. Alberto V. Reyes, Wilfredo B. Domo-ong, Herminio C. Principio; the BSP; and Members of the Monetary Board* wherein petitioner, together with BSP Deputy Governor Alberto Reyes, Director Wilfredo B. Domo-ong of the BSP Department of Rural Bank were held administratively liable for unprofessionalism and meted the penalty of fine equivalent to six months salary.<sup>[17]</sup>

In the same case, the Court of Appeals concluded that petitioner's undue haste in submitting the report is part of the orchestrated scheme by the BSP officials to pressure RBSMI to sell out by subjecting it to many impositions through the Monetary Board.

On appeal, however, the Supreme Court reversed the finding of the appellate court and exonerated petitioner from administrative liability, holding that he is not liable for undue haste in submitting the report to the Monetary Board; and that the imposition of the fine was based on the finding of legal reserve deficiencies. Pertinent portions of the decision are quoted hereunder, thus: <sup>[18]</sup>

... Soriano wrote to the BSP authorizing the latter to debit its demand deposit in the amount of the penalty a few days after MB Resolution No. 96 was issued. It took RBSMI more than one year before it contested the imposition of the penalty. **That the BSP subsequently reversed, albeit conditionally, the debiting of the amount of penalty is not an admission that it erred in imposing the same. It was only an accommodation on the part of the BSP to ease the financial difficulties of RBSMI. More importantly, it was a conditional**