

FIRST DIVISION

[G.R. No. 132816, February 05, 2002]

**SUSANA B. CABAUG, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, SANDIGANBAYAN, 3RD DIVISION, AND OFFICE OF
THE SPECIAL PROSECUTOR, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for Certiorari and/or Prohibition with Preliminary Injunction and/or Temporary Restraining Order assailing two (2) Orders of the Sandiganbayan in Criminal Case No. 23458, quoted as follows:

Considering that the "Motion for Re-determination of Existence of Probable Cause" is in effect a second Motion for Reinvestigation and that the facts alleged therein are evidentiary in character which could be threshed out during the trial of this case, said motion is hereby denied. The arraignment of accused in Cebu shall proceed as scheduled.

SO ORDERED.^[1]

x x x

x x x

x x x

When this case was called, Prosecutors Cicero Jurado and Jackielyn Ompaoco-Cortel appeared for the State while Atty. Filemon Flores appeared for accused Susana Cabahug. Again, the Court having already denied as of yesterday, the Motion for Reconsideration, the Court stands pat on its order and consequently denies the motion at hand for lack of merit.

Let this case be reset for the arraignment of the accused on March 20, 1998, at 2:00 o'clock in the afternoon.

Notify counsel accordingly.

SO ORDERED.^[2]

The instant controversy stems from a negotiated contract^[3] entered into by the Department of Education, Culture and Sports (DECS) represented by herein petitioner Susana Cabahug, by virtue of her position as Department of Education, Culture and Sports Director for Region XI, for the purchase of 46,000 units of Topaz Monobloc Armchairs from Rubber Worth Industries Corporation (RWIC). It was stipulated that the price of P495.00 per unit would cover costs for transportation, handling, insurance and delivery of the said chairs. The negotiated contract was approved by Ricardo T. Gloria, then Secretary of the Department of Education,

Culture and Sports.

However, before the contract could be consummated, another Department of Education, Culture and Sports supplier, a certain Jesusa T. de la Cruz, assisted by her lawyer, wrote a letter^[4] to Secretary Gloria stating her objections to the said contract and seeking its disapproval for the reason, *inter alia*, that the chairs were patently overpriced, to the prejudice of the government, and in violation of Republic Act No. 3019.

On January 2, 1996, counsel for Jesusa T. de la Cruz, Atty. Meliton R. Reyes, wrote another letter^[5] to Secretary Gloria informing the latter that the negotiated contract for the purchase of the chairs was overpriced by P5,000,000.00. This letter was subsequently referred to Antonio E.B. Nachura, Department of Education, Culture and Sports Undersecretary for Legal Affairs, who required petitioner Cabahug to comment on the said letter. Petitioner Cabahug filed her comment on January 5, 1996, explaining therein the grounds why the purchase should be given due course.

Thereafter, Department of Education, Culture and Sports Undersecretary Nachura issued a Memorandum^[6] addressed to Secretary Gloria, which stated in part:

CONSIDERING all the foregoing, it is respectfully recommended that the Honorable Secretary give due course to the transaction aforesaid and, upon valid proof of delivery of the arm chairs with tablets subject of the contract, payment thereof be allowed.

Consequently, Atty. Reyes filed a complaint before the Office of the Ombudsman-Mindanao, against petitioner Cabahug, Secretary Gloria, Undersecretary Nachura, and several others. All three (3) respondents submitted their counter-affidavits. They claimed that the negotiated contract was executed only after proper consultation with the chairman of the Commission on Audit (COA) and the Department of Education, Culture and Sports resident auditor; that the bare allegations of de la Cruz and Atty. Reyes can not overcome the presumption of regularity in the performance of public duty; that there was no overpricing because the stipulated price was still lower than that offered by de la Cruz; and that the latter cannot deny that she made such an offer to petitioner Cabahug on June 20, 1995.

On August 28, 1996, Jovito A. Coresis, Jr., Graft Investigation Officer (GIO) of the Office of the Ombudsman-Mindanao issued a Resolution^[7] as follows:

WHEREFORE, FINDING PROBABLE CAUSE that violation of Section 3 (e) has been committed and that respondent Cabahug is probably guilty thereof, the FILING of the enclosed Information with the Sandiganbayan by the Office of the Special Prosecutor is hereby recommended.

Finding insufficient evidence to hold respondents Gloria and Nachura liable for the charge, let the instant case against them be dismissed.

AS RESOLVED.

On September 13, 1996, the following Information against petitioner Cabahug was filed before the Sandiganbayan:

That sometime on or about 15 December 1995, in Davao City, and within the jurisdiction of the Honorable Court, the accused a public officer being then the Regional Director of the Department of Education, Culture and Sports (DECS), Region XI, Southern Mindanao, Torres St., Davao City, with salary grade 29, committing the offense in relation to her office and taking advantage of the same, did there and then, willfully, unlawfully and criminally, cause undue injury to the government particularly the DECS and give unwarranted benefits to Rubber Worth Industrial Corporation (RWIC), a private enterprise engaged in the sale of Plastic Monobloc Arm Chairs thru gross inexcusable negligence in the performance of her official duties, namely: as representative of the Department of Education, Culture and Sports, by entering into a contract with RWIC to purchase 46,000 units of Plastic Monobloc Arm Chairs at a unit cost of P495.00 and a total cost of Twenty One Million Nine Hundred Twenty One Thousand and Three Hundred Pesos (P21,921,300.00) less tax without public bidding and consummating the same without even verifying the information given to her that the same unit could be obtained from other stores at P300.00 each, thus depriving the government of the overpriced amount of Five Million (P5,000,000.00) more or less and of the opportunity thru public bidding to obtain the best deal at the lowest cost and at the same time giving unwarranted benefit to RWIC.

CONTRARY TO LAW. ^[8]

Unaware that an Information had already been filed before the Sandiganbayan, petitioner Cabahug filed a Motion before the Office of the Special Prosecutor seeking a reconsideration of the August 28, 1996 Resolution issued by GIO Coresis, Jr. She reasoned therein that the said Resolution was based on an erroneous appreciation of the facts and evidence adduced in the preliminary investigation; and that it did not take into consideration relevant and material evidence showing lack of malice or negligence on her part. She assails the finding of probable cause against her, while at the same time dismissing the complaint against co-respondents Gloria and Nachura who, as her superiors, found her action proper and even ordered the consummation of the assailed transaction.

Petitioner claims that Jesusa de la Cruz was a disgruntled Department of Education, Culture and Sports supplier who wanted to supply the chairs subject of the negotiated contract, that when she failed to get petitioner's cooperation, she filed the complaint out of spite and with a desire for vengeance. Thus, petitioner prayed for the dismissal of the complaint against her.

Petitioner later learned of the filing of the Information with the Sandiganbayan. On April 3, 1997, she filed a Motion for Reinvestigation, praying that the Motion for Reconsideration filed before the Office of the Special Prosecutor be admitted by the graft court as her Motion for Reinvestigation.^[9] The Third Division of the Sandiganbayan issued an Order^[10] on April 17, 1997, granting the Motion for Reconsideration.

Accordingly, the case was evaluated by the Office of the Special Prosecutor. On December 8, 1997, Cicero D. Jurado, Jr., Special Prosecution Officer (SPO) II

assigned to review the case, issued an Order^[11] recommending that the case against petitioner Cabahug be dismissed, there being no showing that she acted in bad faith or with gross negligence.

While the Special Prosecutor, Leonardo P. Tamayo, and his Deputy, Robert E. Kallos, concurred in the findings and recommendation to dismiss the case, Ombudsman Aniano Desierto did not agree. He rejected the Order of Special Prosecution Officer II Jurado, noting thereunder that:

Bad faith and/or gross inexcusable negligence is deducible from the acts of the accused.

Prosecution shall proceed.^[12]

On February 19, 1998, petitioner Cabahug filed a Motion for Re-determination of Existence of Probable Cause,^[13] citing the divergence of opinion between the Office of the Special Prosecutor and the Ombudsman. She argued that the former, as the office mandated under RA 6770, Section 11, Subsection 4 (a) to conduct preliminary investigation and to prosecute criminal cases within the jurisdiction of the Sandiganbayan, found no probable cause to prosecute her.

The Sandiganbayan denied petitioner's Motion for Re-determination of Existence of Probable Cause and treated the same as a second motion for reconsideration which is not allowed by the Rules of Court.

Petitioner Cabahug filed a Very Urgent Motion for Reconsideration of the Order denying her earlier motion for the re-determination of existence of probable cause. She argued therein that the said motion cannot be considered a second motion for reconsideration since it was addressed to the court, and not anymore to the Office of the Special Prosecutor or the Ombudsman. She cited the Sandiganbayan's ruling in the case of *People v. Rosario N. Lopez* (Criminal Case No. 20625) dismissing the case against Lopez after giving due course to the latter's "Motion to Determine Probable Cause and to Dismiss the Case for Lack Thereof."

At the hearing on February 25, 1998, the Sandiganbayan denied the petitioner's Motion for Re-determination of Existence of Probable Cause in open court. A written Order (Annex "A") to that effect was issued the following day. Petitioner Cabahug filed a Very Urgent Motion for Reconsideration^[14] seeking a reversal of the court's denial of the Motion for Re-determination of Existence of Probable Cause. On February 27, 1998, the Sandiganbayan issued the second assailed Order (Annex "A-1") denying the petitioner's Very Urgent Motion for Reconsideration.

Hence, the instant petition, which assails the said Orders of the Sandiganbayan for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner argues that such whimsical and arbitrary exercise of discretion effectively denied her due process of law.

We find merit in the petition.

We are not unaware of the established principle that the preliminary investigation proper, that is the determination of whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or

not he should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.^[15] The Ombudsman Act of 1989 (R.A. No. 6770) confers on the Office of the Special Prosecutor, as an organic component of the Office of the Ombudsman, the power to conduct preliminary investigations and prosecute criminal cases within the jurisdiction of the Sandiganbayan.^[16] It is the Office of the Special Prosecutor, under the supervision of the Office of the Ombudsman, that exercises the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.^[17]

In fact, the Sandiganbayan in this case deferred to the authority of the prosecution when it granted petitioner Cabahug's motion for reinvestigation, guided by the rule that courts should not interfere with the Ombudsman's exercise of his investigatory powers.^[18] The strict application of this rule, insofar as the Ombudsman is concerned, is not a trivial matter. We have time and again declared that:

The rule is based not only upon the respect for the investigatory and prosecutory powers granted by the Constitution to the Office of Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously 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 if they would be compelled to review the exercise of discretion on the part of fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.^[19]

As in every rule, however, there are settled exceptions, such as those enumerated in the landmark case of *Brocka v. Enrile*.^[20] Thus, the courts may interfere with the investigatory powers of the Ombudsman –

- a) To afford protection to the constitutional rights of the accused;
- b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c) When there is a prejudicial question which is *sub judice*;
- d) When the acts of the officer are without or in excess of authority;
- e) Where the prosecution is under an invalid law, ordinance or regulation;
- f) When double jeopardy is clearly apparent;
- g) Where the court has no jurisdiction over the offense;
- h) Where it is a case of persecution rather than prosecution;
- i) Where the charges are manifestly false and motivated by the lust for vengeance;
- j) Where there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; and
- k) Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.