

SECOND DIVISION

[G.R. No. 129904, March 16, 2000]

DIRECTOR GUILLERMO T. DOMONDON, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, SECOND DIVISION; HONORABLE ANIANO A. DESIERTO, IN HIS OFFICIAL CAPACITY AS OMBUDSMAN; HONORABLE FRANCISCO A. VILLA, IN HIS CAPACITY AS OVERALL DEPUTY OMBUDSMAN; AND LEONARDO P. TAMAYO, IN HIS OFFICIAL CAPACITY AS DEPUTY SPECIAL PROSECUTOR & CONCURRENT OFFICER-IN-CHARGE, OFFICE OF THE SPECIAL PROSECUTOR; RESPONDENTS.

D E C I S I O N

BUENA, J.:

Before this Court is a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction seeking to nullify and set aside the Order^[1] of the Office of the Special Prosecutor/Ombudsman, dated November 29, 1995, in Criminal Case No. 20574 (OMB-AFP-CRIM-93-0047), as having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.

The factual and procedural antecedents are as follows:

On February and May 1994, four (4) separate informations^[2] were filed against petitioner and several others before the Third Division of the Sandiganbayan, docketed as Crim. Case No. 20185 (OMB Case No. AFP-CRIM-93-0026), Crim. Case No. 20191 (OMB Case No. AFP-CRIM-93-0049, OMB-4-93-1476), Crim. Case No. 20192 (OMB Case No. 93-0050, OMB-4-93-1476) and Crim. Case No. 20576 (OMB-CRIM-AFP-93-0048).^[3]

In May 1994, an additional information was filed against petitioner and several others before the First Division of the Sandiganbayan, docketed as Crim. Case No. 20574 (OMB-AFP-CRIM-93-0047).^[4] The said case allegedly arose from a complaint filed on May 11, 1993 against certain officials of the Philippine National Police (PNP), including petitioner, "...due to the discovery of a chain of irregularities within the PNP Commands in CY 1992, ranging from the irregular issuance of Advices of Sub-Allotments, ghost purchases/deliveries, forged payrolls up to false issuances of the combat, clothing and individual equipment (CCIE) to the uniformed personnel of the PNP valued at P83,600,000.00"^[5] Petitioner was included as an accused in Crim. Case No. 20574 on account of his approval for the Chief, PNP, as then Director of the Office of the Directorate for Comptrollership (ODC), of the release of Advice of Allotment (ASAs) Nos. 4363 and 4400 in the amount of P5 million and P15 million, respectively. The said ASAs were actually signed by his co-accused Superintendent Van Luspo, with authority from petitioner.^[6]

On May 12, 1994, petitioner filed a motion for consolidation before the First Division of the Sandiganbayan seeking the consolidation of Crim. Case No. 20574 (OMB-AFP-CRIM-93-0047) with Crim. Case Nos. 20185, 20191, 20192 and 20576, all pending before the Third Division of the Sandiganbayan.^[7]

On May 17, 1994, the First Division of the Sandiganbayan issued two (2) Orders, the first, ordering the prosecution, through prosecutor Erdulfo Q. Querubin, "...to demonstrate the probable complicity of the three (3) accused herein [referring to General Cesar Nazareno, General Joven Domondon and Senior Superintendent Van Luspo] in the transaction described in the Information resulting in a violation of [the] Anti-graft Law under Sec. 3 (e) of R.A. 3019;"^[8] considering its uncertainty as to the probable cause against the aforementioned accused,^[9] and the second Order, deferring action on the motion for consolidation "[c]onsidering the uncertainty of this Court to even proceeding (sic) with this case at this time and considering further that the motion for consolidation is (sic) filed by only one of the fifteen (15) accused, and considering finally the statement of Prosecutor Erdulfo Q. Querubin that this case can stand independently of the proceeding in the other cases...until at least two (2) of the observations of this Court above on this matter shall have been responded to."^[10]

On June 8, 1994, the First Division of the Sandiganbayan cancelled the scheduled arraignment in Crim. Case No. 20574 until further advice from the prosecution.^[11]

On November 8, 1994, Erdulfo Q. Querubin, Special Prosecution Officer III of the Office of the Special Prosecutor/Ombudsman, issued an Order, approved by [then] Ombudsman Conrado M. Vasquez,^[12] recommending that the information in Crim. Case No. 20574 be amended to exclude six (6) accused (not including the petitioner), and that the prosecution against the other remaining accused (including the petitioner) be continued.^[13]

On May 17, 1995, petitioner filed a motion for reconsideration of the foregoing Order with prayer for the consolidation of Crim. Case No. 20574 with Crim. Case Nos. 20185, 20191, 20192, 20576 and 22098,^[14] which are allegedly pending reinvestigation by the Office of the Ombudsman.^[15]

On November 29, 1995, Joselito R. Ferrer, Special Prosecutor I of the Office of the Special Prosecutor / Ombudsman, issued an Order recommending that the Order of Special Prosecution Officer Erdulfo Q. Querubin, dated November 8, 1994, be modified to exclude petitioner from the information in Crim. Case No. 20574; and denying the prayer for consolidation.^[16] However, the foregoing Order was disapproved by Ombudsman Aniano A. Desierto on February 19, 1997, on the basis of the recommendation of Overall Deputy Ombudsman Francisco A. Villa.^[17] In his memorandum dated September 2, 1996 and addressed to the Ombudsman, Overall Deputy Ombudsman Francisco A. Villa proposed the setting of the arraignment and pre-trial conference in Crim. Case No. 20574.^[18] Accordingly, a Motion to Admit Amended Information was filed with the Sandiganbayan on August 26, 1997.^[19] The amended information excluded some of the accused but included petitioner among others as they were recommended for further prosecution by the Ombudsman.^[20]

Hence, this petition. The following issues are raised:

- A. WHETHER THERE WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THE RESPONDENTS VILLA AND DESIERTO DENIED THE PETITIONER'S MOTION FOR RECONSIDERATION;
- B. WHETHER THERE WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THE RESPONDENTS VILLA, DESIERTO, AND TAMAYO DENIED THE PETITIONER'S MOTION FOR CONSOLIDATION;
- C. WHETHER THE RESPONDENT FIRST DIVISION, SANDIGANBAYAN SHOULD BE ENJOINED FROM PROCEEDING WITH THE HEARING AND OTHER INCIDENTS OF CRIMINAL CASE NO. 20574 AGAINST THE PETITIONER DURING THE PENDENCY OF THE PETITION.

Petitioner contends that respondents Villa and Desierto acted with grave abuse of discretion in denying his motion for reconsideration, arguing that there is no probable cause against him and that the said respondents disregarded the evidence he adduced.

Petitioner also alleges that respondents Desierto, Villa and Tamayo acted with grave abuse of discretion in denying his motion for consolidation, claiming that since all of the pertinent cases have been remanded by the Sandiganbayan to the Office of the Special Prosecutor under the Office of the Ombudsman for reinvestigation, "jurisdiction has reverted" in the latter and "...it is grave abuse of discretion to refuse to perform the duty of consolidating these cases."^[21]

The contentions are untenable.

As this Court stated in *Ocampo, IV vs. Ombudsman*:^[22]

"Well settled is the rule that criminal prosecutions may not be restrained, either through a preliminary or final injunction or a writ of prohibition, except in the following instances:

- (1) To afford adequate protection to the constitutional rights of the accused;
- (2) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- (3) When there is a prejudicial question which is sub-judice;
- (4) When the acts of the officer are without or in excess of authority;
- (5) Where the prosecution is under an invalid law, ordinance or regulation;
- (6) When double jeopardy is clearly apparent;
- (7) Where the Court has no jurisdiction over the offense;
- (8) Where it is a case of persecution rather than prosecution;
- (9) Where the charges are manifestly false and motivated by lust for vengeance;
- (10) When there is clearly no prima facie case against the accused