

THIRD DIVISION

[G.R. No. 134503, July 02, 1999]

JASPER AGBAY, PETITIONER, VS. THE HONORABLE DEPUTY OMBUDSMAN FOR THE MILITARY, SPO4 NEMESIO NATIVIDAD, JR. AND SPO2 ELEAZAR M. SOLOMON, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

This petition for *certiorari* seeks to nullify the Resolution of the Deputy Ombudsman for the Military dated 19 January 1998^[1] which recommended the dismissal of the criminal complaint filed by petitioner against herein private respondents for violation of Article 125 of the Revised Penal Code for delay in the delivery of detained persons, and the Order of April 13 1998^[2] which denied his motion for reconsideration.

The pertinent facts leading to the filing of the petition at bar are as follows:

On September 7, 1997, petitioner, together with a certain Sherwin Jugalbot, was arrested and detained at the Liloan Police Station, Metro Cebu for an alleged violation of R.A. 7610, the "Special Protection of Children Against Child abuse, Exploitation and Discrimination Act."^[3] The following day, or on September 8, 1997, a Complaint for violation of R.A. 7610 was filed against petitioner and Jugalbot before the 7th Municipal Circuit Trial Court of Liloan, Metro Cebu by one Joan Gicaraya for and in behalf of her daughter Gayle^[4] The complaint, insofar as pertinent, reads as follows:

"That on the 7th day of September 1997 at Sitio Bonbon, Brgy. Catarman, Liloan, Metro Cebu, Philippines and within the Preliminary Jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, feloniously and unlawfully, conspiring, confederating, helping with one another, while accused JASPER AGBAY manipulating to finger the vagina of GAYLE FATIMA AMIGABLE GICAYARA, his companion block the sight of the Private Complainant, Mrs. JOAN A. GICAYARA, while on board a tricycle going their destinations. Upon initial investigation of the Bgy, Captain of Bgy. Catarman, accused SHERWIN JUGALBOT was released and accused JASPER AGBAY is presently detain Liloan Police Station Jail. Medical Certificate issued from Don Vicente Sotto Memorial Medical Center, Cebu City is hereto attached."

On September 10, 1997, counsel for petitioner wrote the Chief of Police of Liloan demanding the immediate release of petitioner considering that the latter had "failed to deliver the detained Jasper Agbay to the proper judicial authority within thirty-six (36) hours from September 7, 1997."^[5] Private respondents did not act on this letter and continued to detain petitioner.^[6]

On September 12, 1997, the 7th Municipal Circuit Trial Court of Liloan, Metro Cebu issued an order, denominated as "Detention During the Pendency of the Case", committing petitioner to the jail warden of Cebu City.^[7] Five (5) days later, or on September 17, 1997, petitioner was ordered released by the said court after he had posted bond.^[8]

On September 26, 1997, petitioner filed a complaint for delay in the delivery of detained persons against herein private respondents SPO4 Nemesio Natividad, Jr., SPO2 Eleazar M. Salomon and other unidentified police officers stationed at the Liloan Police Substation, before the Office of the Deputy Ombudsman for the Visayas.^[9]

Regarding the complaint for violation of R.A. 7610, it is alleged by petitioner that on November 10, 1997, the 7th MCTC of Liloan, Metro Cebu issued a resolution containing the following dispositive portion:

"WHEREFORE, finding probable cause for the crime in Violation of Republic Act 7610, it is hereby recommended that an INFORMATION be filed against the two aforementioned accused.

Forward the record of this case to the Provincial Fiscal's Office for appropriate action."^[10]

By virtue of Memorandum Circular No. 14, Series of 1995, dated 10 October 1995 of the Office of the Ombudsman,^[11] the case for delay in delivery filed by petitioner against herein private respondents before the Deputy Ombudsman for the Visayas was transferred to the Deputy Ombudsman for the Military for its proper disposition. Thus, it was this office which acted on the complaint, now denominated as OMB-VIS-CRIM-97-0786, and which issued the questioned Resolution dated January 19, 1998 recommending its dismissal against herein private respondents. Petitioner moved for reconsideration of this Resolution but this motion was denied in an Order dated April 13, 1998.

Hence, this petition for *certiorari*.

The grounds relied upon in the present petition^[12] are as follows:

I.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN RELYING ON MEMORANDUM CIRCULAR NO. 14, SERIES OF 1995, DATED 10 OCTOBER 1995, OF THE OFFICE OF THE OMBUDSMAN IN HOLDING THAT IT HAS COMPETENCE TO ACT ON THE ABOVE-ENTITLED CASE BEFORE IT, THE SAID CIRCULAR BEING UNCONSTITUTIONAL AND ILLEGAL, HENCE, NULL AND VOID.

II.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN NOT HOLDING THAT IT IS BEYOND ITS COMPETENCE TO DETERMINE

WHETHER OR NOT THE MUNICIPAL CIRCUIT TRIAL COURT OF LILOAN-COMPOSTELA HAS IN FACT NO JURISDICTION TO TRY THE CASE FILED AGAINST HEREIN PETITIONER.

III.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN NOT HOLDING THAT THE MCTC, WHILE HAVING AUTHORITY TO CONDUCT A PRELIMINARY INVESTIGATION, IS NOT THE "PROPER JUDICIAL AUTHORITY" CONTEMPLATED IN ARTICLE 125 OF THE REVISED PENAL CODE AND, HENCE, THE FILING OF THE COMPLAINT BEFORE IT FOR THE PURPOSE OF CONDUCTING A PRELIMINARY INVESTIGATION DID NOT INTERRUPT THE PERIOD PRESCRIBED BY ART. 125.

IV.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE ISSUE OF THE VALIDITY OF THE *ORDER OF DETENTION* IS IRRELEVANT TO THE ISSUE OF CRIMINAL LIABILITY OF PRIVATE RESPONDENTS FOR DELAY IN THE DELIVERY OF DETAINED PERSONS.

V.

THE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION IN HOLDING THAT THE DUTY OF PRIVATE RESPONDENTS TO FILE THE NECESSARY COMPLAINT IN COURT WAS FULFILLED WHEN THEY FILED A FORMAL COMPLAINT ON 8 SEPTEMBER 1997 WITH THE 7TH MCTC OF LILOAN-COMPOSTELA.

On the first issue, petitioner argues that due to the civilian character of the Philippine National Police, the Office of the Deputy Ombudsman for the Military, by virtue of the description of the Office, has no competence or jurisdiction to act on his complaint against private respondents who are members of the PNP. Petitioner also questions the constitutionality of Memorandum Circular No. 14 insofar as it purports to vest the Office of the Deputy Ombudsman for Military Affairs with jurisdiction to investigate all cases against personnel of the Philippine National Police.

There is no dispute as to the civilian character of our police force. The 1987 Constitution, in Section 6, Article XVI, has mandated the establishment of "one police force, which shall be national in scope and civilian in character (underscoring supplied)." Likewise, R.A. 6975^[13] is categorical in describing the civilian character of the police force.^[14] The only question now is whether Memorandum Circular No. 14, in vesting the Office of the Deputy Ombudsman for the Military with jurisdiction to investigate complaints against members of the PNP, violates the latter's civilian character.

As opined by the Office of the Solicitor General in its Comment dated 7 December 1998^[15], the issue as to whether the Deputy Ombudsman for the Military has the authority to investigate civilian personnel of the government was resolved in the

affirmative in the case of *Acop v. Office of the Ombudsman*.^[16] In that case, the petitioners, who were members of the Philippine National Police questioned the jurisdiction of the Deputy Ombudsman to investigate the alleged shootout of certain suspected members of the "Kuratong Baleleng" robbery gang; this Court held that:

"The deliberations on the Deputy for the military establishment do not yield conclusive evidence that such deputy is prohibited from performing other functions or duties affecting non-military personnel. On the contrary, a review of the relevant Constitutional provisions reveal otherwise.

As previously established, the Ombudsman 'may exercise such other powers or perform such functions or duties' as Congress may prescribe through legislation. Therefore, nothing can prevent Congress from giving the Ombudsman supervision and control over the Ombudsman's deputies, one being the deputy for the military establishment. In this light, Section 11 of R.A. No. 6770 provides:

SEC. 11. *Structural Organization*.- The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said Office.

While Section 31 thereof declares:

SEC, 31. *Designation of Investigators and Prosecutors*.- The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein shall be under his supervision and control.

Accordingly, the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy for Military Affairs. In these cases at bench, therefore, no irregularity attended the referral by the Acting Ombudsman of the *Kuratong Baleleng* case to respondent Casaclang who, in turn, created a panel of investigators."^[17]

The cited case is determinative of the issue. However, petitioner, in his Reply to Comment dated February 1, 1999, argues that the ruling in the *Acop* case is not on all fours with the case at bar^[18]. Petitioner states that the doctrine laid down in the said case is simply that "the Ombudsman may refer cases involving non-military personnel for investigation by the Deputy for Military Affairs. This doctrine, petitioner argues, "applies only to isolated or individual cases involving non-military personnel referred by the Ombudsman to the Deputy for Military Affairs" and does not apply when, as in this case, there is a wholesale or indiscriminate referral of such cases to the Deputy Ombudsman for Military Affairs in the form of an Office Memorandum Circular.

Petitioner's arguments do not convince as there is no basis for the distinction.

There is no basis in the above-cited decision to limit the referral of cases involving

non-military personnel to the Deputy Ombudsman for Military Affairs to isolated or individual cases.

The Office of the Ombudsman, in issuing Memorandum Circular No. 15, is simply exercising the power vested in the Ombudsman "to utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases." This Court, absent any grave abuse of discretion, may not interfere with the exercise by the Ombudsman of his power of supervision and control over the said Office.

Petitioner further argues that Memorandum Circular No. 14 violates the clear intent and policy of the Constitution and of R.A. 6975 to maintain the civilian character of the police force and "would render nugatory and meaningless the distinction between cases involving civilian and military personnel and the creation of separate divisions of the Ombudsman."^[19]

Said contentions are misplaced.

The Deputy Ombudsman for the Military, despite his designation as such, is by no means a member of the military establishment. The said Office was established "to extend the Office of the Ombudsman to the military establishment just as it champions the common people against bureaucratic indifference". The Office was intended to help the "ordinary foot soldiers" to obtain redress for their grievances against higher authorities and the drafters of the Constitution were aware that the creation of the Office, which is seemingly independent of the President, to perform functions which constitutionally should be performed by the President, might be in derogation of the powers of the President as Commander-In-Chief of the Armed Forces^[20]

It must be borne in mind that the Office of the Ombudsman was envisioned by the framers of the 1987 Constitution as the "eyes and ears of the people"^[21] and "a champion of the citizen."^[22] Sec. 12, Art. XI of the 1987 Constitution describes the Ombudsman and his deputies as "protectors of the people." Thus, first and foremost, the Ombudsman and his deputies, including the Deputy Ombudsman for the Military owe their allegiance to the people and ordinary citizens; it is clearly not a part of the military. We fail to see how the assumption of jurisdiction by the said office over the investigation of cases involving the PNP would detract from or violate the civilian character of the police force when precisely the Office of the Ombudsman is a civilian office.

The other issues raised by petitioner concerns the application of Art. 125 of the Revised Penal Code which provides as follows:

"Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or