

SECOND DIVISION

[G.R. No. 124471, November 28, 1996]

**RODOLFO E. AGUINALDO, PETITIONER, VS. SANDIGANBAYAN
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari to annul the order, dated September 18, 1995, of the Sandiganbayan, denying petitioner's motion to quash the informations filed against him in two criminal cases (Nos. 20948 and 20949), as well as the resolution, dated April 12, 1996, ordering his suspension for ninety (90) days as Provincial Governor of Cagayan.

The background of this case is as follows. Petitioner is the Provincial Governor of Cagayan. At the time material to this decision he was serving his first term as Governor of that province.

In 1990, the Commission on Audit (COA) found that claims of petitioner for intelligence operations in 1988 and 1989 in the amounts of P400,000 and P350,000, respectively, had been charged to the 20% Development Fund and that some of the claims were covered by disbursement vouchers with only reimbursement receipts to support them, most of which were signed by only one person, while other claims had no supporting papers at all. For this reason the audit team submitted a report (SAO Report No. 90-25), recommending the following measures to be taken:

Require the submission of the required documents covering claims for intelligence activities, before making payment. Require claimant to complete the documentation on payments made with incomplete papers otherwise, refund of the same should be made. Stop provincial officials from using the 20% Development Fund for purposes other than for development projects under MLG Circular No. 83-4.

On February 3, 1992, the COA Director, Feliciano B. Clemencio, filed with the Office of the Ombudsman a complaint, alleging "anomalies consisting of irregular/illegal disbursements of government funds." Named respondents in the complaint were petitioner and the members of the Provincial Board of Cagayan, the Assistant Provincial Treasurer and the Accountant.

In a resolution dated May 31, 1994 the Ombudsman found that, in all, petitioner had distributed the amount of P750,000 to the military, police and civilian informers to fight insurgency.

[Petitioner] cannot, however submit receipts or documents evidencing disbursements for intelligence activities which are required under paragraph B-4 of COA Circular No. 77-17D dated April 15, 1977. Under

these circumstances, being an accountable public officer and who could not account for the insurgency funds when audited, there is prima-facie evidence that he has put such missing funds to personal use and therefore liable for malversation of public funds under Article 217 of the Revised Penal Code. Likewise there is also prima-facie evidence to charge respondent Governor Aguinaldo with violation of Section 3 , paragraph (3) of R.A. 3019.

Two cases of Malversation of Public Funds under Art. 217 of the Revised Penal Code were accordingly filed against petitioner on August 16, 1994.

In Crim. Case No. 20948, the information states:

That in or about the year 1988 in the Municipality of Tuguegarao, Province of Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Rodolfo E. Aguinaldo, then holding the position of Provincial Governor of Cagayan Province, hence a public officer who, by reason of the duties of his office, is accountable for public funds or property, taking advantage of his official position, did then and there wilfully, unlawfully and feloniously take or misappropriate for his personal use public funds in his custody in the total amount of Four Hundred Thousand Pesos (P400,000.00), Philippine Currency, which amount he had earlier withdrawn from the provincial treasury of Cagayan to be used in the province's intelligence activities, to the damage and prejudice of the provincial government of Cagayan.

In Crim. Case No. 20949, the information alleges:

That in or about the year 1989 in the Municipality of Tuguegarao, Province of Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Rodolfo E Aguinaldo, then holding the position of Provincial Governor of Cagayan province, hence a public officer who, by reason of the duties of his office, is accountable for public funds or property, taking advantage of his official position, did then and there wilfully, unlawfully and feloniously take or misappropriate for his personal use public funds in his custody in the total amount of Three Hundred Fifty Thousand Pesos (P350,000.00), Philippine Currency, to the damage and prejudice of the provincial government of Cagayan.

Upon motion of petitioner, the Sandiganbayan ordered the Office of the Ombudsman to reinvestigate the cases. Petitioner was allowed to submit the affidavits executed by twelve military officers who acknowledged receipt from petitioner of unspecified amounts which they claimed had been used for counter-insurgency operations. In addition petitioner presented his counter-affidavit.

In a letter dated January 19, 1995, Prosecutor Espinosa requested information from the Special and Technical Audit Division of the COA whether there had been compliance with the recommendations in the latter's SAO Report No. 90-25 which, as already stated, required the submission of documents covering claims for intelligence activities and the complete documentation of payments made, and the provincial officials to stop using the 20% Development Fund for purposes other than for development projects. He also inquired whether on the basis of the affidavits executed by the twelve military officers, the disbursements could be considered fully

liquidated. In reply, COA Special and Technical Audit Division, through Provincial Auditor Teresita Rios, stated:

[E]xcept for the list of recipients and the machine copies of the duly subscribed affidavits of some of the recipients, records do not show that this office received the documents required from the Governor. However, the list of recipients and the duly subscribed affidavits including the representations made in the letter of the Provincial Treasurer and the Provincial Auditor, may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption. It could also be surmised that even the former Provincial Auditor may be convinced as to the existence of the recipients of counter-insurgency/intelligence funds as no notice of disallowance or suspension was issued on the reimbursements.^[1]

Apparently not satisfied with the explanation, Prosecutor Espinosa recommended to the Ombudsman that the malversation cases against petitioner be pressed. His recommendation was approved and so, on April 26, 1995, he asked the Sandiganbayan for the suspension pendente lite of petitioner.

Petitioner opposed the motion and moved to quash the informations against him, contending that-

First. THE PRELIMINARY INVESTIGATION CONDUCTED HEREIN WAS TAINTED BY SERIOUS IRREGULARITIES THAT EFFECTIVELY DENIED THE ACCUSED OF HIS RIGHT TO DUE PROCESS AND THEREBY RENDERED THE PROCEEDINGS TAKEN THEREIN NULL AND VOID; and

Second. EVEN IF THE IRREGULARITIES THAT INFECT THE PRELIMINARY INVESTIGATION ARE OVERLOOKED, NO PROBABLE CAUSE FOR THE CRIME OF MALVERSATION IS MADE OUT BY THE EVIDENCE ON RECORD AND, CONSEQUENTLY, THE INFORMATIONS FILED HEREIN ARE INVALID.

In a supplemental motion to quash the informations filed on May 29, 1995, petitioner submitted to the court indorsements by officials. In a first indorsement to the Chairman of the COA, Regional Director Rafael Marquez stated that he agreed with Provincial Auditor Teresita Rios that the documents submitted by petitioner "may be a convincing proof that the questioned disbursements were disbursed according to the intended purpose and not for private consumption." In turn, in a second indorsement addressed to petitioner, COA Chairman Celso D. Gangan stated that the documents submitted by petitioner "are substantial evidence to support disbursements of the intelligence and confidential funds in question" as required by COA Circular No. 92-385, dated October 1, 1992.

The Sandiganbayan therefore gave the prosecution fifteen (15) days within which "to firm up its position" on the COA statements, "it appearing that the position taken by the various officers of the Commission on Audit seemed to be tentative in the sense that there is no categorical claim that these sworn statements indeed confirm the disbursement of the aggregate of P750,000." However, on July 5, 1995, the prosecution reported that it had made inquiries from the legal office of the COA but the COA did not reply. For his part, petitioner asked the COA Chairman for a definitive statement of his liability, but his request was referred to Regional Director Marquez who merely reiterated his previous statement that the "affidavits

[submitted by petitioner] could be considered as sufficient/adequate documents to liquidate the accountability of Governor Aguinaldo."

Deeming the COA statements to be lacking in definiteness, the Sandiganbayan, on September 18, 1995, denied petitioner's motion to quash the informations and set his arraignment, during which petitioner pleaded "not guilty." The Sandiganbayan said:

Notwithstanding the repeated efforts of the Court as well as of the prosecution to categorically identify the position of the COA on the matter, what consistently appears in the various communications is that the COA is of the view that the affidavits in lieu of the actual liquidation of expenses might serve as adequate liquidation. This position has been the same view which the prosecution has earlier seen and has rejected.

Undoubtedly, the COA could have been more responsive to the request both of the Court and of the accused itself in stating its position on the matter more categorically. However, the fact is that it did not do so, and even if it had done so, the same does not appear to have altered the fact that the prosecution at this time is of the view that the adequate cause exists to proceed with the prosecution of the accused Governor Rodolfo E. Aguinaldo. It is for this reason that the Instant Urgent Motion to Defer Arraignment wherein the various endorsements of COA officials are appended is denied as is the Motion to Quash and other pleadings in connection herewith.

The Sandiganbayan withheld action on the prosecution's motion to suspend petitioner pending the pretrial.

Still in an effort to convince the Sandiganbayan that there was no case against him, petitioner submitted on January 29, 1996 a Certificate of Settlement and Balances dated January 24, 1996, issued by Provincial Auditor Teresita Rios, allowing petitioner's claim in audit and relying for this purpose on the credit advice of Regional Director Marquez that the documents submitted by petitioner were "sufficient enough to liquidate these expenses/disbursements." When asked by the prosecutor whether Marquez's credit advice was final, COA Chairman Celso D. Gangan stated that it was "normally not subject to the review of [COA], the matter being within [Director Marquez's] audit competence."^[2]

The Sandiganbayan was unconvinced. On March 4, 1996, it terminated the pretrial and, on April 12, 1996, ordered the suspension of petitioner as Provincial Governor for ninety (90) days. Its resolution reads:

It is well to note that prosecution of cases is left in the hands of the prosecutor. While the COA can and may assist in collating evidence to substantiate a charge of malversation, it does not preclude the Ombudsman from conducting its own investigation, and filing the appropriate charge if, by its own determination, the evidence warrants the same.

The COA is merely the source of the facts in these cases. Any determination made by the COA outside of the narration of facts duly

supported by evidence will not by itself determine whether or not adequate cause exists to prosecute a case. To demonstrate this point, the Supreme Court has ruled that a public officer may be held guilty of malversation based on a 'preliminary' audit report (De Guzman v. People, 119 SCRA 337, 348 (1982) and that[t]he absence of a post-audit is not ... a fatal omission... nor is it a preliminary requirement to the filing of an information for malversation as long as the prima facie guilt of the suspect has already been established.. (Corpuz v. People, 194 SCRA 73, 79 (1990))

Nor is COA's final determination required for a malversation case to prosper, much less will it decide one way or the other the propriety of the suspension of an accused in a malversation case filed, as sought herein.

Hence this petition for certiorari. Petitioner alleges that:

1. The Sandiganbayan gravely abused its discretion by completely disregarding the COA findings and post-audit clearances, including the COA Chairman's confirmation, which the respondent court itself, together with the prosecution, sought and solicited during the course of the proceedings;
2. In the higher interest of justice, the consideration of the post-audit findings of the COA can still be the subject of the motion to dismiss even after arraignment of the petitioner;
3. And then, the presumptive validity of informations has been conclusively overcome by the subsequent post audit of accountability of the accused petitioner by the COA which had since issued a certificate of settlement and balances by which the accused's subject claims have been allowed in audit; and such audit was confirmed by the COA Chairman.

On the other hand, the prosecution argues that the affidavits of military officers are inadequate for the purpose of liquidating disbursements in view of COA Circular No. 92-385 which provides that "any disbursement from the confidential and/or intelligence fund shall be accounted for solely on the certification of the head of the agency or by the officer-in-charge of the intelligence, confidential or national security mission" and MLG Circular No. 83-4, dated February 7, 1983, which provides that the 20% Development Fund should be utilized exclusively for development projects and excludes expenditures for counter-insurgency operations.

After due consideration of the petition, the Court finds it to be without merit.

Petitioner alleges irregularity in the conduct of preliminary investigation and lack of probable cause. In our opinion, the allegation as to irregularity in the preliminary investigation was properly rejected by the respondent court. As already noted, after the cases had been filed, the Sandiganbayan, upon petitioner's request, ordered the Office of the Ombudsman to conduct a reinvestigation. Petitioner was allowed to submit affidavits and other documents in support of his defense and an opportunity to argue his case. The prosecutor remained fundamentally unconvinced, however, by the additional evidence presented by petitioner.