

TWELFTH DIVISION

[CA-G.R. SP No. 131184, March 23, 2015]

**ROCKY F. CAPONONG, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, RESPONDENT.**

D E C I S I O N

MACALINO, J:

This is a Petition for Review^[1] under Rule 43 of the Rules of Court assailing the Decision^[2] dated February 5, 2013 of respondent office of the Ombudsman (respondent), which found petitioner Rocky F. Caponong (petitioner) guilty of grave misconduct and ordered his dismissal from service with forfeiture of retirement benefits and perpetual disqualification from holding public office; and its Order^[3] dated June 14, 2013, which denied petitioner's Motion for Reconsideration in OMB-C-A-12-0227-E. The dispositive portion of the assailed Decision reads:

"WHEREFORE, respondent ROCKY F. CAPONONG is found guilty of GRAVE MISCONDUCT and meted the penalty of DISMISSAL from the service with accessory penalty of forfeiture of retirement benefits and perpetual disqualification from holding public office.

SO ORDERED."^[4]

FACTS

Petitioner was an Assistant City Prosecutor in Makati City. On the other hand, private complainant Herminio L. Sablawan, Jr. (private complainant) filed a case for reckless imprudence which was raffled to petitioner.^[5]

In his Sinumpaang Salaysay,^[6] private complainant stated that on April 10, 2012, he filed a case against a driver of JAC Liner; that on May 17, 2012, at about 1:00 p.m., he went to the office of petitioner for the hearing of said case; that during the hearing, petitioner asked him about the job estimate of his vehicle; that petitioner got angry at him when he was unable to produce said estimate; that petitioner told him that for the speedy resolution of his case, he should give petitioner ten thousand pesos (PhP10,000.00); that he told petitioner that he did not have such amount of money but petitioner insisted; and that he informed petitioner that he only had five hundred pesos (PhP500.00), which petitioner accepted.

Private complainant likewise alleged that petitioner told him to prepare the "balance" for the resolution his case. Later, petitioner tried calling him through phone, asking him if he already produced the subject money. He replied that he did not have the money yet. Petitioner got angry at him.

Furthermore, private complainant claimed that on May 22, 2012, he went to the

office of Erwin Tulfo (Tulfo) of TV5 and sought assistance. He spoke with a member of the staff of Tulfo, who, told him to send a text message to petitioner informing him that he already prepared the money being asked by petitioner. On May 23, 2012, along with the staff of TV5, he went to the office of petitioner. Subsequently, petitioner and private complainant went inside the former's office. There, private complainant gave petitioner one thousand pesos (PhP1,000.00). Allegedly, such meeting was caught on camera by the staff of TV5.

In his Karagdagang Sinumpaang Salaysay,^[7] private complainant alleged that he received from the police marked money amounting to five thousand pesos (PhP5,000.00). The marked money was intended for the entrapment operation against petitioner. Also, he declared that on May 24, 2012, at about 1:25 p.m., he handed to petitioner the marked money. Thereafter, he signaled the police who accompanied him that he already gave petitioner the marked money. Consequently, the police arrested petitioner.

In addition, Jerico Francis Javier (Javier), segment producer of the Aksyon Center of TV5 executed a Sinumpaang Salaysay^[8] stating that private complainant sought assistance from their program because petitioner was asking money from him (private complainant). Upon coordination with the Regional Intelligence Unit of the Philippine National Police Intelligence Group (PNP), a surveillance was undertaken against petitioner. Specifically, a surveillance camera was attached to private complainant and through it, petitioner's act of asking money from private complainant was recorded as well as the latter's receipt of one thousand pesos (PhP1,000.00) from the former. Javier asserted that on May 24, 2012, his team went to the PNP for the entrapment of petitioner.

Moreover, PO1 Marvin M. Ancanan (PO1 Ancanan) and PO1 Marlon P. Darpiquez (PO1 Darpiquez) executed a Joint Affidavit of Arrest.^[9] They alleged that on May 24, 2012, they were part of the team who entrapped petitioner. In particular, they stated that on May 24, 2012, at around 1:25 p.m., private complainant gave the marked money to petitioner. Afterwards, he made the pre-arranged signal to the team of PO1 Ancanan and PO1 Darpiquez, which immediately entered the office of petitioner at the Makati City Prosecutor's Office on the 16th floor of the Makati City Hall. Upon entry, the team saw petitioner in possession of the marked money.

Finally, private complainant, submitted, among others, a copy of the initial Laboratory Report^[10] indicating that petitioner was found positive of "bright orange ultraviolet fluorescent powder on both palmar and both dorsal portion of his hands." Said powder was the same with that of the marked money prepared by the PNP.

For his part, petitioner averred in his Partial and Supplemental Counter-Affidavits^[11] that on or about May 17, 2012, at around 1:30 p.m., private complainant appeared in his office for the preliminary investigation of his complaint for reckless imprudence resulting to damage to property and physical injuries against one Roberto R. Ibarreta (Ibarreta). During the investigation, he asked private complainant if he had a repair estimate of his damaged taxi. Private complainant replied that he had no repair estimate. Petitioner told him to submit it in order to support his complaint. Purportedly, private complainant told petitioner that he needed money for the medication of his child, who was inflicted of a kidney ailment; and his taxi operator was not helping him secure said estimate. Out of pity, he told

private complainant that he could accompany him to repair shops once private complainant had budget for the estimate or the actual repair of his taxi.

Petitioner also averred that the sum of five thousand pesos (PhP5,000.00) to ten thousand pesos (PhP10,000.00) he told private complainant pertained to his estimate of the expenses that private complainant would incur for the repair of his taxi. Such expenses would be paid to the repair shop, not to him. Additionally, petitioner explained that once said repair estimate was submitted, he could immediately file the resolution of private complainant's case.

Petitioner denied that he received or accepted five hundred pesos (PhP500.00) from private complainant. He alleged that private complainant placed five hundred pesos (PhP500.00) on his table and hurriedly left. Further, he denied that he received one thousand pesos (PhP1,000.00) from private complainant on May 23, 2012. He maintained that said one thousand pesos (PhP1,000.00) was intended for the repair estimate of private complainant's taxi. Because private complainant allegedly told petitioner that he could not secure a repair estimate, private complainant placed one thousand pesos (PhP1,000.00) on petitioner's table and left.

Lastly, petitioner stated that on May 24, 2012, at around 1:30 p.m., he was in his office with private complainant, who told him that he had five thousand pesos (PhP5,000.00) for the repair estimate of his vehicle. Private complainant placed said amount on the table. Petitioner claimed that he did not receive, accept or even touch it. Thereafter, several men entered his office and arrested him. Petitioner narrated that he was boarded to a van and while in transit, one of the persons arresting him made him clasped on several five hundred peso (PhP500.00) bills. He also averred that he was brought to Camp Crame and was placed in its ultraviolet fluorescent powder examination room. There, he was forcibly made to hold and count several five hundred peso (PhP500.00) bills.

On February 5, 2013, respondent rendered a Decision finding petitioner guilty of grave misconduct and meted the penalty of dismissal from service with accessory penalty of forfeiture of retirement benefits and perpetual disqualification from holding public office. On June 14, 2013, respondent denied petitioner's Motion for Reconsideration.

Ground

Hence, petitioner filed the Petition for Review at bench raising the sole ground as follows:

"The Honorable Ombudsman gravely erred in finding that there is substantial evidence that established [that] Petitioner has solicited and accepted money from Respondent to expedite the disposition of his complaint for Reckless Imprudence constituting Grave Misconduct."^[12]

Petitioner argues that the sum of five thousand pesos (PhP5,000.00) to ten thousand pesos (PhP10,000.00) he mentioned to private complainant was the amount that the latter needed for repair estimate of the latter's vehicle. This amount is not intended to be paid to petitioner. He maintains that he did not receive the money that private complainant left on his (petitioner's) table. He, however,