



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

**GOVERNOR MARIA GRACIA
CIELO M. PADACA**

G.R. No. 201800

Petitioner,

- versus -

**HONORABLE OMBUDSMAN
CONCHITA CARPIO MORALES
AND SANTIAGO RESPICIO,**

Respondents.

X-----X

**SERVANDO SORIANO AND
DIONISIO PINE**

G.R. Nos. 204007-08

Petitioners,

Present:

- versus -

CARPIO, J.,
Chairman,
PERALTA,
PERLAS-BERNABE,
CAGUIOA,* and
REYES, JR., JJ.

**HONORABLE
SANDIGANBAYAN, OFFICE OF
THE OMBUDSMAN and
SANTIAGO RESPICIO,**

Respondents.

Promulgated:

08 AUG 2018

On Wellness leave.

Handwritten signature: Reyes

X-----X

RESOLUTION**REYES JR., J.:**

Before the Court are two consolidated cases: (1) G.R. No. 201800, a petition for *certiorari* under Rule 65 filed by then Governor Maria Gracia Cielo M. Padaca (Padaca) seeking to nullify and set aside the Resolutions dated January 11, 2011 and February 17, 2012 of the Office of the Ombudsman, which found probable cause to indict her for violation of Section 3(e) of Republic Act (R.A.) No. 3019,¹ otherwise known as the Anti-Graft and Corrupt Practices Act, and for Malversation of Public Funds; and (2) G.R. Nos. 204007-08, a petition for *certiorari* under Rule 65 filed by Servando Soriano (Soriano) and Dionisio Pine (Pine),² assailing the Resolution³ dated September 13, 2012 of the Sandiganbayan, which denied their Omnibus Motion to recall the warrant of arrest and motion to dismiss for lack of probable cause.

On December 5, 2012, the Court dismissed Soriano and Pine's petition (G.R. Nos. 204007-08) for failure to sufficiently show that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing Resolution dated September 13, 2012.⁴ Soriano and Pine filed a motion for reconsideration and motion to consolidate their petition with G.R. No. 201800. On August 28, 2013, the Court directed the consolidation of G.R. Nos. 204007-08 with G.R. No. 201800.⁵ Thereafter, the petition for *certiorari* in G.R. Nos.

¹ **Section 3. Corrupt practices of public officers.** In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X X

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

² Per Manifestation dated December 13, 2017, Atty. Rodolfo V. Tagapan, Jr. informed the Court of Servando Soriano's and Salvador Pine's death.

³ *Rollo* (G.R. 204007-08), pp. 45-53.

⁴ *Id.* at 182.

⁵ *Id.* at 202.

204007-08 was reinstated pursuant to the Court's Resolution⁶ dated January 15, 2014.

These are the facts of the instant consolidated petitions.

In his Complaint⁷ dated February 26, 2007, Santiago Respicio (Respicio) alleged that in January 2006, the Provincial Government of Isabela (Provincial Government) obtained a loan from the Development Bank of the Philippines (DBP), Ilagan, Isabela Branch, in the amount of ₱35 Million for the purpose of funding the Priority Agricultural Modernization Project of the province of Isabela. From the said amount, ₱25 Million was released to Economic Development for Western Isabela and Northern Luzon Foundation, Inc., (EDWINLFI), a private foundation headed by Municipal Councilor Servando Soriano (Soriano) as Chairman, Dionisio Pine (Pine) as Manager, and Provincial Government Legal Officer, Atty. Johnas Lamorena (Atty. Lamorena) as Director.⁸ The full amount of the loan, along with the interests and documentary stamp taxes, was paid using the Economic Development Fund of the province.⁹

Respicio further stated that, to replenish the amount taken from the Economic Development Fund, Padaca caused the release of the same amount from the unreleased approved loans of the provincial government from the previous administration.¹⁰ Hence, the complaint against Provincial Administrator Ma. Theresa Flores, then Provincial Treasurer William Nicolas, Atty. Lamorena, Padaca, Soriano, and Pine for violation of Section 3 (e) of R.A. No. 3019, Illegal Use of Funds, and Malversation of Public Funds.¹¹

In her Counter-Affidavit,¹² Padaca alleged that the Sangguniang Panlalawigan (SP) issued Resolution No. 061,¹³ which granted her authority to enter into a loan contract with the Land Bank of the Philippines under the hold-out on special savings deposit scheme from the DBP. This is to finance the Priority Agricultural Program of the province. She also claimed that the SP's subsequent ratification¹⁴ of the

⁶ *Rollo* (G.R. 204007-08), p. 203

⁷ *Rollo* (G.R. 201800), pp. 73-76

⁸ *Id.* at 73.

⁹ *Id.* at 74.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 217-220.

¹³ *Id.* at 221-222.

¹⁴ *Id.* at 216.

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Memorandum of Agreement¹⁵ between the provincial government and EDWINLFI, is an express affirmation not only of the program's legality and propriety, but that it was carried out in accordance with the mandate of the SP.¹⁶

Soriano and Pine, in their Joint Counter-Affidavit¹⁷ denied Respicio's allegations. While Soriano admitted that he is a member of the Sangguniang Bayan,¹⁸ he claimed that he is not a member of the SP that ratified the transaction with EDWINLFI.¹⁹ For his part, Pine contended that he is a private individual who cannot be held as a conspirator in the absence of evidence proving the same.²⁰

On January 11, 2011, the Office of the Ombudsman, through Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman), issued a Resolution,²¹ recommending that:

1. Information for the crime defined in and penalized under Section 3(e), [R.A. No. 3019] be FILED in the Sandiganbayan against GOVERNOR MARIA GRACIA CIELO M. PADACA, Province of Isabela, ATTY. JOHNAS M. LAMONERA, Provincial Legal Officer, MUNICIPAL COUNCILOR SERVANDO SORIANO, and DIONISIO PINE of the Economic Development for Western Isabela and Northern Luzon Foundation, Inc. (EDWINLFI);
2. Information for Malversation of Public Funds be FILED in the Sandiganbayan against GOVERNOR MARIA GRACIA CIELO M. PADACA, Province of Isabela, ATTY. JOHNAS M. LAMONERA, Provincial Legal Officer, MUNICIPAL COUNCILOR SERVANDO SORIANO, and DIONISIO PINE of the Economic Development for Western Isabela and Northern Luzon Foundation, Inc. (EDWINLFI);
3. The charges of Malversation of Public Funds and the crime defined in and penalized under Section 3(e) of Republic Act No. 3019 against MA. THERESA FLORES and WILLIAM NICOLAS in their capacity as Provincial Treasurer, be DISMISSED for lack of evidence;
4. The charge of Illegal Use of Public Funds against all the respondents be DISMISSED for lack of evidence.

¹⁵ Id. at 101-103

¹⁶ Id. at 218.

¹⁷ Id. at 233-240

¹⁸ Id. at 234.

¹⁹ Id. at 235.

²⁰ Id.

²¹ Id. at 54-71.

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SO RESOLVED.²²

Padaca, Pine, and Soriano (petitioners) filed their respective motion for reconsideration.²³ Meanwhile, the corresponding Informations²⁴ for Malversation of Public Funds and Violation of R.A. No. 3019(e) were filed against them. Upon the joint motion of the petitioners, the Sandiganbayan ordered the deferral of the proceedings pending the resolution of the motion for reconsideration.²⁵

On December 9, 2011, Assistant Special Prosecutor II May Ann T. Vela (ASP Vela) of the Office of the Special Prosecutor (OSP) issued a Memorandum,²⁶ recommending that the Resolution dated January 11, 2011 be set aside for lack of probable cause to hold the petitioners liable for Malversation of Public Funds and Violation of Section 3(e) of R.A. No. 3019.²⁷ In her Memorandum, ASP Vela referred to a previously denied recommendation of Prosecutor Pilarita T. Lapitan (Prosecutor Lapitan) to conduct further investigation to ascertain some factual issues.²⁸

On February 17, 2012, Assistant Special Prosecutor III/ Acting Director Omar L. Sagadal (Acting Director Sagadal) issued a Memorandum²⁹ stating that no sufficient basis to reverse the finding of probable cause for the following reasons:

1. Accused [Padaca] entered into a memorandum of agreement (MOA) with EDWINLFI and gave [P]25 Million to the latter even as the MOA was not yet ratified by the [SP]. About a year later, SP ratified the MOA but only after the Commission on Audit (COA) requested for a copy of the required SP resolution ratifying the transaction with EDWINLFI. Even so, the irregularities were already committed.
2. The amount released to EDWINLFI has not been fully accounted for according to COA. Furthermore, there is no showing that the farmers benefited from the agreement.

²² Id. at 70-71.

²³ Id. at 133-149, 157-168, 281-286.

²⁴ Id. at 289-294

²⁵ *Rollo* (G.R. 201800), p. 401-402, 116

²⁶ Id. at 116-130

²⁷ Id. at 129.

²⁸ Id. at 118-119

²⁹ Id. at 132.

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3. Accused [Lamorena], who is the Provincial Legal Officer, is also a Director of EDWINLFI. A case of conflict of interest is present.
4. Accused [Padaca] was given general authorization to negotiate and enter into agreements, subject to SP ratification, with people's organizations and non-governmental organizations to implement the Hybrid Rice Program of the Province. The agreement entered into by [Padaca] with EDWINLFI, however, does not even mention the *Hybrid Rice Program*. It appears, instead, that the agreement was for a *Supervised Credit facility* with no provisions dealing on repayments to the province, etc.
5. The services supposed to be rendered by EDWINLFI are akin to management or consulting services which, under R.A. No. 9184, require public bidding. No bidding was conducted.³⁰

Acting Director Sagadal's Memorandum was approved by Ombudsman Conchita Carpio Morales, prompting Padaca to file the present petition for *certiorari* (G.R. No. 201800).

In her petition, Padaca argues that: a public bidding was not required under the circumstances and that the absence of the same did not result to undue injury to the Provincial Government nor did it create unwarranted benefits in favor of EDWINLFI;³¹ the MOA created sufficient safeguards to protect the Provincial Government from being injured or disadvantaged;³² she acted within the bounds of her authority and in good faith; she had no custody of the public funds, nor is she the accountable officer for the same;³³ there is no showing that she derived any benefit from the loan proceeds;³⁴ and there is no showing that she negligently caused or consented to any appropriation, taking, or misappropriation of public funds.³⁵

Meanwhile, in its Resolution dated March 23, 2012, the Sandiganbayan found probable cause against the petitioners and ordered the issuance of warrants of arrest against them.³⁶ Soriano and Pine filed an Omnibus Motion³⁷ to: (1) recall the warrant of arrest issued against them; and (2) motion to dismiss for lack of probable cause.

³⁰

Id.

³¹

Id. at 21

³²

Id. at 29

³³

Id. at 34.

³⁴


Id. at 37.

³⁵

Id. at 41.

³⁶*Rollo* (G.R. 204007-08), p. 48³⁷

Id. at 54-63.



On September 13, 2012, the Sandiganbayan issued the assailed Resolution³⁸ denying Soriano and Pine's Omnibus Motion. According to the Sandiganbayan, the fact that it already ordered the arrest of the petitioners shows that it found the Informations charging them with the crimes of Malversation of Public Funds and Violation of Section 3(e), valid on their faces and that the Ombudsman did not commit any manifest error or grave abuse of discretion in filing the same.³⁹ Moreover, the Sandiganbayan resolved that the arguments of Pine and Soriano are matters of defense which are properly threshed out in trial.⁴⁰ The decretal portion of the Resolution reads:

WHEREFORE, accused Servando Soriano and Dionisio Pine's Omnibus Motion (Re: [a] motion to recall the warrant of arrest issued against Servando Soriano and Dionsio Pine; [b] Motion to Dismiss for Lack of Probable Cause dated April 26, 2012 is hereby DENIED for utter lack of merit.⁴¹

Undaunted, Soriano and Pine filed the present petition for *certiorari* (G.R. Nos. 204007-08), challenging the Resolution dated September 13, 2012 of the Sandiganbayan. They maintain that the offense of Violation of Section 3(e) of R.A. No. 3019 can only be committed by public officers in the performance of their official duties or in relation to their public position.⁴² As regards the charge for Malversation of Public Funds, they insist that they did not appropriate, misappropriate or take public funds, and that the release of the funds was legal.⁴³ They also assert that the conflicting decisions of the Ombudsman and of the Special Prosecutor should not be taken lightly, and that the arguments they raise are not matters of defense but the very essence of the purpose of preliminary investigation.⁴⁴

ISSUE

Whether the Ombudsman and/or the Sandiganbayan committed any grave abuse of discretion amounting to lack or excess in jurisdiction in rendering the assailed resolutions finding probable cause to charge the

³⁸ Id. at 45-53

³⁹ Id. at 48.

⁴⁰ Id. at 58

⁴¹ Id. at 53.

⁴² Id. at 23-24.

⁴³ Id. at 28-29.

⁴⁴ Id. at 34.

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petitioners with Violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds

RULING OF THE COURT

The Court does not, as a general rule, intrude in the Ombudsman's determination of probable cause.⁴⁵ In *Dichaves vs. Office of the Ombudsman and the Special Division of the Sandiganbayan*,⁴⁶ it was held:

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman."⁴⁷

As an exception however, "the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction."⁴⁸ "The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."⁴⁹ Otherwise, there is no basis for the Court to intervene in the Ombudsman's exercise of its investigatory and prosecutory powers.

In determining the existence of probable cause, "the Ombudsman does not touch on the issue of guilt or innocence of the accused."⁵⁰ It is not the function of the Office of the Ombudsman to rule on such issue. Being merely based on opinion and belief, "a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to

⁴⁵ *Casing v. Ombudsman*, 687 Phil. 468, 475 (2012).

⁴⁶ G.R. Nos. 206310-11 (OMB-0-01-0211 and OMB-0-01 0291; Sandiganbayan Special Division-Criminal Case No. 26558), December 07, 2016, 813 SCRA 273.

⁴⁷ *Id.* at 297-298.

⁴⁸ *Presidential Commission on Good Government v. Gutierrez*, 772 Phil. 91, 99 (2015).

⁴⁹ *Reyes v. Ombudsman*, 783 Phil. 304, 332-333 (2016).

⁵⁰ *Ganaden, et al. v. Honorable Office of the Ombudsman and Humiwat*, 665 Phil. 224, 231 (2011).

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secure a conviction.”⁵¹ In *Galario vs. Office of the Ombudsman (Mindanao)*,⁵² the Court explained:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.⁵³

Based on its investigation, the Ombudsman found that Padaca engaged the services of EDWINLFI to manage Isabela’s provincial rice program without due regard to the rules on government procurement and notwithstanding that the MOA was yet to be ratified by the SP.⁵⁴ The Ombudsman also noted that the fact that EDWINLFI’s officers include Soriano (Municipal Councilor) and Atty. Lamorena (Provincial Government’s Legal Officer), engenders a suspicion as to the regularity of the transaction.⁵⁵ Thus, the Ombudsman concluded that there is probable cause to believe that through manifest partiality, Padaca gave unwarranted preference and benefits to EDWINLFI in the discharge of her official function as governor of the Province of Isabela, which is penalized under Section 3(e) of R.A. No. 3019. Concomitantly, Soriano and Pine were charged based on their collaborative actions in the implementation of the Provincial Rice Program, which according to the Ombudsman, indicate the existence of common design to obtain unwarranted benefits at the expense of the Provincial Government.⁵⁶

The Ombudsman also found probable cause to charge the petitioners for Malversation of Public Funds. It discussed that based on Section 340 of the Local Government Code, Padaca is accountable for public funds through her individual participation in the use and application thereof.⁵⁷ The Ombudsman held that Padaca’s giving preference to EDWINLFI in the release of ₱25 Million without stipulations in the MOA as to the amount of the contract, the cost estimates, and terms of reference with respect to the scope of services for the implementation of the provincial rice program, including terms of repayment of the funds in favor of the provincial government and accountability of EDWINLFI for such funds, is as good as permitting,

⁵¹ Supra note 49, at 333.

⁵² 554 Phil. 86 (2007).

⁵³ Id. at 101.

⁵⁴ *Rollo* (G.R. 201800), p. 64

⁵⁵ Id. at 64

⁵⁶ Id. at 65.

⁵⁷ Id. at 67.

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through abandonment or negligence, the latter to take such funds. Again, the charge against Soriano and Pine was due to their personal and deliberate participation in the transaction.⁵⁸

With the foregoing, the Court concurs with the Sandiganbayan that no grave abuse of discretion amounting to lack or excess in jurisdiction can be attributed to the Ombudsman, as the latter's finding of probable cause rests on substantial basis. The Sandiganbayan, citing *People vs. Castillo*, correctly pointed out that absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.⁵⁹

Consequently, the Court finds that no grave abuse of discretion amounting to lack or excess in jurisdiction was committed by the Sandiganbayan in denying Soriano and Pine's Omnibus Motion. The Omnibus Motion clearly calls for a determination of the propriety of the issuance of the Informations against them,⁶⁰ which as stated earlier, is a function that belongs to the Ombudsman. The Sandiganbayan aptly limited its determination of probable cause to resolve whether arrest warrants should be issued against the petitioners. There is no allegation, much less proof, how this judicial determination was exercised in a capricious, whimsical or arbitrary manner.

With regard to the Ombudsman's affirmance of Acting Director Sagadal's Memorandum, the Court notes that he raised legitimate concerns whereas the petitioners' defenses are factual in nature, which are best ventilated in a trial of the case on the merits. Besides, in *Nava vs. National Bureau of Investigation*,⁶¹ the Court held that "if the Ombudsman may dismiss a complaint outright for lack of merit, it necessarily follows that it is also within his discretion to determine whether the evidence before him is sufficient to establish probable cause." Since the Office of the Special Prosecutor is under the supervision and control of the Ombudsman, the latter's decision shall prevail in case of conflict between the decision of the Ombudsman and the Special Prosecutor.⁶²

⁵⁸ Id. at 67-68.

⁵⁹ *Rollo* (G.R. No. 204007-008), p. 48

⁶⁰ Id. at 22.

⁶¹ 495 Phil. 354 (2005).


⁶² Id. at 367-368.

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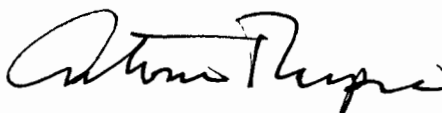
In sum, there is no cogent reason to disturb the Ombudsman's finding of probable cause and the Sandiganbayan's denial of Soriano and Pine's Omnibus Motion. "[T]he Court cannot and will not nullify the Ombudsman's factual findings on the sole ground that the complainant does not agree with such findings."⁶³

WHEREFORE, premises considered, the consolidated petitions are hereby **DISMISSED** for lack of merit. The Resolutions dated January 11, 2011 and February 17, 2012 of the Office of the Ombudsman in OMB-L-C-07-0224-B, and Resolution dated September 13, 2012 of the Sandiganbayan in SB-11-CRM-0282-0283 are **AFFIRMED**. The Sandiganbayan, as trial court, is **DIRECTED** to commence/continue with the necessary proceedings in these cases with deliberate dispatch.

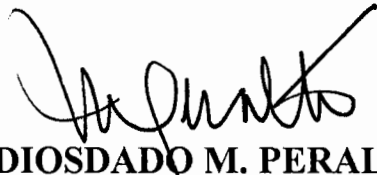
SO ORDERED.



ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice

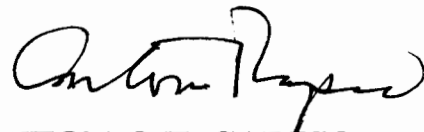

ESTELA M. PERLAS-BERNABE
Associate Justice

⁶³ *Artex Development Co., Inc., v. Office of the Ombudsman, et al.*, G.R. No. 203538, June 27, 2016, 794 SCRA 530, 546.

On Wellness leave
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. No. 296 The
Judiciary Act of 1948, as amended)

