



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PACIFICO C. VELASCO,
Petitioner,

G.R. No. 169253

Present:

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

-VERSUS-

THE HON. SANDIGANBAYAN (Fifth
Division) and THE PEOPLE OF THE
PHILIPPINES,

Respondents.

Promulgated:

FEB 20 2013

[Signature]

X

DECISION

PEREZ, J.:

In this petition for *certiorari* under Rule 65 of the Rules of Court, petitioner alleges grave abuse of discretion on the part of the Fifth Division of the Sandiganbayan for issuing the Resolution¹ dated 9 June 2005 denying his motion for reinvestigation and the subsequent Resolution² dated 15 August 2005, denying his motion for reconsideration in Criminal Case No. 28097.

The antecedents follow.

[Signature]

¹ Penned by Associate Justice Ma. Cristina G. Cortez-Estrada with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring. Sandiganbayan *rollo*, pp. 46-55.
² Id. at 56-57.

Philip Corpus Velasco, then Mayor of the Municipality of Bacarra in Ilocos Norte, filed an Affidavit-Complaint against his predecessor, petitioner Pacifico C. Velasco, containing the following pertinent allegations:

1. On 21 September 1998, the Sangguniang Bayan of Bacarra passed Resolution No. 98-065 entitled “RESOLUTION GRANTING AUTHORITY TO THE LOCAL CHIEF EXECUTIVE, HON. PACIFICO C. VELASCO TO PURCHASE ONE (1) UNIT ROAD GRADER-KOMATZU G-D 31 TO BE USED BY THE MUNICIPALITY OF BACARRA FOR THE MAINTENANCE OF MUNICIPAL AND BARANGAY ROADS”, the dispositive portion of which reads as follows, to wit:

x x x

“HEREBY RESOLVED to grant authority to the Local Chief Executive, Hon. Pacifico C. Velasco to purchase one (1) unit of Road Grader-KOMATZU GD 31 to be used by the Municipality of Bacarra for the maintenance of municipal and barangay roads.”

x x x

x x x x

2. Shortly thereafter, on 20 October 1998, a Disbursement Voucher was issued in favor of PACIFICO C. VELASCO for the amount of P670,000.00 “To cash advance the amount of SIX HUNDRED SEVENTY THOUSAND PESOS (P670,000.00) for the purchase of one (1) Road Grader to be used by municipality per L[BP] Check No. 106353 dated 10-13-98. x x x.
3. After the election of May 14, 2001, and after the turn-over, it was found out during the inventory of municipal properties that the Road Grader was nowhere to be found. x x x.
4. In fact, a Joint Certification was issued by the Office of the Treasurer that there was NO ROAD GRADER-KOMATZU GD 30 (*sic*) OWNED BY THE MUNICIPALITY OF BACARRA, x x x.
5. It was discovered later that sometime on 29 December 1998, PACIFICO C. VELASCO allegedly made a refund of the afore-stated amount to the Municipal Treasurer x x x.

x x x x

8. Despite the alleged refund made by PACIFICO C. VELASCO, he hired the services of a certain Bernardo J. Bernardo (*sic*) as Heavy Equipment Operator I, SG-4 on 16 August 2000, x x x.

9. Despite the alleged refund made by PACIFICO C. VELASCO, several Requests for Pre-Repair inspections, Job orders and corresponding Disbursement Vouchers were made for “repairs, spare parts, etc. of a Komatsu GD 30, Road Grader, x x x.

x x x x

17. From the foregoing statement of facts, as supported by documentary evidences, I am accusing former mayor Pacifico C. Velasco now Provincial Board Member of Ilocos Norte and the Municipal Treasurer of Bacarra, Ilocos Norte, Lorna S. Dumayag, for violation of the Anti-Graft Law and the Revised Penal Code as amended for using public funds in the amount of Six Hundred Seventy Thousand Pesos (P670,000.00) in the purchase of a Road Grader that [was] subsequently appropriated by former mayor Pacifico C. Velasco as his personal property.³

In his Counter-Affidavit, petitioner branded the filing of the Complaint as politically motivated. He admitted requesting for a cash advance from the municipality for the purpose of acquiring the road grader, which was subsequently utilized by the municipality to repair and maintain roads. When the expected funds from the national government were not released, petitioner was faced with the problem of liquidating said cash advance. Thus, he was forced to mortgage the road grader just so he could reimburse the municipality in the sum of ₱670,000.00. Petitioner justified the need for replacement of spare parts and/or necessary repairs to be paid out of municipal funds because the municipal government was using the road grader from October 1998 up to the end of his term in June 2001. He also defended the appointment of Bernardo Bernardino (Bernardino), who was initially employed as a casual employee and made permanent six (6) months later. According to petitioner, Bernardino was an all-around heavy equipment operator and was not solely assigned as operator of the subject road grader.⁴

On 11 December 2002, the Office of the Deputy Ombudsman for Luzon issued a Resolution dismissing the Complaint for lack of probable cause. Then Acting Mayor Nicomedes C. Dela Cruz (Acting Mayor Dela Cruz) moved for reconsideration on 15 October 2003. A Motion to Strike Out the Motion for Reconsideration was filed by petitioner for lack of *locus standi*.⁵ In an Order dated 13 February 2004, the Office of the Deputy Ombudsman for Luzon denied the motion for reconsideration.

³ Id. at 58-60.

⁴ Records, pp. 43-50.

⁵ Id. at 162-165.

However, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), Orlando Casimiro, pursuant to the authority⁶ given by Ombudsman Simeon Marcelo, directed the Office of Legal Affairs to review the case. On 8 July 2004, the Office of Legal Affairs recommended that petitioner be indicted for technical malversation. The Office of Legal Affairs found that while the *Sangguniang Bayan* authorized the purchase of a road grader, no sum was appropriated for its purchase. The source of the funding of the ₱670,000.00 cash advance came from the municipality's funds for personal services, which were originally appropriated for salaries of municipal employees.⁷

Upon receipt of the Memorandum-Resolution, petitioner filed an Omnibus Motion (Motion for Reconsideration with Prayer to Hold in Abeyance the Filing of Information) citing the failure of the 13 February 2004 Order to consider his Motion to Strike Out the Motion for Reconsideration filed by Acting Mayor Dela Cruz. Petitioner also argued that not all elements constitutive of technical malversation were present.

On 16 February 2005, the Office of the Special Prosecutor issued a Memorandum denying the Omnibus Motion. A revised/modified Information was filed with the Sandiganbayan charging petitioner of the crime of Illegal Use of Public Funds under Article 220 of the Revised Penal Code, committed, thus:

That on or about 20 October 1998 and sometime prior or subsequent thereto, in the Municipality of Bacarra, Ilocos Norte, Philippines, within the jurisdiction of this Honorable Court, the accused PACIFICO C. VELASCO, a high-ranking public official, being then the Mayor of the aforesaid municipality and as such is accountable for public funds received by or entrusted to him by reason of the duties of his office, while in the performance and taking advantage of his official and administrative functions, did then and there wilfully, unlawfully and feloniously apply or misapply the amount of SIX HUNDRED SEVENTY THOUSAND PESOS (P670,000.00), Philippine Currency, under his administration to a public use other than that for which such fund was originally appropriated by law or ordinance, when the accused cash advanced the said amount of SIX HUNDRED SEVENTY THOUSAND PESOS (P670,000.00) under Disbursement Voucher No. 101-98-10-037 which amount was appropriated or intended for the payment of personal services for the municipal employees of the local government of Bacarra, particularly for their salaries, 13th month pay and other benefits, and utilized the said amount to purchase one (1) unit road grader but was never

⁶ Per Memorandum dated 9 September 2003, delegating the authority of the Ombudsman to the undersigned to act on this matter with finality. Sandiganbayan *rollo*, p. 84.

⁷ Id. at 81-82.

recorded as property of the above-named Municipality, and thereafter, accused mortgaged said road grader to private individuals without authority from the Sangguniang Bayan of Bacarra, Ilocos Norte, thereby resulting to the damage and embarrassment to the public service as the public was made to believe that the road grader purchased by the accused was public property for use of the municipal government and its constituent barangays.⁸

On 18 March 2005, petitioner moved for a reinvestigation of the case before the Sandiganbayan. According to petitioner, the Office of the Special Prosecutor, without conducting a preliminary investigation, indicted him not for the offense of which he was charged but for another offense, hence violating his right to due process.

On 9 June 2005, the Sandiganbayan issued a Resolution denying the motion for reinvestigation for lack of merit. The Sandiganbayan found that petitioner had already filed a motion for reconsideration assailing the 8 July 2004 Memorandum. The Sandiganbayan considered the filing of this motion for reconsideration as compliance with the due process requirement. The Sandiganbayan added that since petitioner had already filed a motion for reconsideration, he is no longer entitled to move for a second reconsideration pursuant to the Rules of Procedure of the Office of the Ombudsman which prohibits the filing of such motion. The Sandiganbayan refuted petitioner's claim that the offenses charged against him in the complaint are different from the offense charged in the information. The Sandiganbayan countered that the complaint and the information are based on substantially the same factual settings except that the respective designations are different.

On 15 August 2005, the Sandiganbayan issued a Resolution denying for lack of merit petitioner's motion for reconsideration.

Petitioner submits in support of his petition that:

THE RESPONDENT COURT ACTED WITHOUT JURISDICTION OR IN EXCESS THEREOF, OR AT THE VERY LEAST, GRAVELY ABUSED ITS DISCRETION, IN NOT ORDERING THE REINVESTIGATION OF THE CASE OR, TO BE MORE PRECISE, A PRELIMINARY INVESTIGATION, AFTER THE OFFICE OF THE SPECIAL PROSECUTOR FILED AN INFORMATION AGAINST THE HEREIN PETITIONER BASED ON A MOTION FOR RECONSIDERATION FILED, NOT BY THE COMPLAINANT

⁸

Id. at 97-98.

THEREIN, BUT BY ANOTHER PERSON WHO IS NOT A PARTY AND THEREFORE, A STRANGER IN THE CASE, AND THEREAFTER, INSTEAD OF MERELY ACTING ONLY ON THE ISSUES AND GROUNDS RAISED IN THE SAID MOTION, THE OFFICE OF THE SPECIAL PROSECUTOR, WITHOUT CONDUCTING A PRELIMINARY INVESTIGATION ON THE PURPORTED OFFENSE OF WHICH THE HEREIN PETITIONER IS NOW INDICTED, ISSUED INSTEAD, THE MEMORANDUM DATED FEBRUARY 16, 2005, WHICH NOW INDICTS THE HEREIN PETITIONER NOT FOR THE OFFENSE OF WHICH HE IS CHARGED BUT FOR ANOTHER OFFENSE, THEREBY BLATANTLY VIOLATING THE PETITIONERS' SUBSTANTIAL RIGHT TO DUE PROCESS, RENDERING THE RESPONDENT COURT'S ASSAILED RESOLUTIONS AS NULL AND VOID.⁹

Petitioner, in the main, assails the denial of his motion for reinvestigation on two (2) grounds: 1) he was denied the right to file a motion for reconsideration of the 16 February 2005 Office of the Special Prosecutor's Memorandum, recommending his indictment for Technical Malversation under Article 220 of the Revised Penal Code, and 2) he was indicted for an offense that was not originally charged in the criminal complaint against him.¹⁰

We briefly review the material facts. A complaint for malversation and violation of the Anti-Graft and Corrupt Practices Act was filed by then Mayor Philip Velasco against former Mayor Pacifico Velasco, now petitioner. The Office of the Deputy Ombudsman for Luzon dismissed the complaint for lack of probable cause. Then Acting Mayor Dela Cruz moved for reconsideration. Petitioner filed a motion to strike out the pleading grounded on the lack of legal personality of Acting Mayor Dela Cruz to file the motion. The Office of the Deputy Ombudsman for Luzon eventually denied the motion for reconsideration. However, upon instructions of the Deputy Ombudsman for MOLEO, the Director of the Office of Chief Legal Counsel, after reviewing the case, recommended the filing of an Information for Technical Malversation. Petitioner, thus, filed an Omnibus Motion for Reconsideration. The Office of the Special Prosecutor denied petitioner's motion and filed the Information for technical malversation before the Sandiganbayan.

Indeed, the recital of facts reveals that petitioner filed a motion for reconsideration, which he labelled as "Omnibus Motion (Motion for Reconsideration with Prayer to Hold in Abeyance Filing of Information)" on

⁹ Id. at 16.

¹⁰ See Sandiganbayan Resolution dated 9 June 2005. Id. at 48.

15 October 2003. A perusal of the Omnibus Motion shows that petitioner anchored his motion for reconsideration on two (2) grounds – first, the legal incapacity of the Vice-Mayor to file a motion for reconsideration of an earlier Order by the Office of the Deputy Ombudsman for Luzon, dismissing the complaint against petitioner; and second, some elements of the crime of technical malversation were lacking in the complaint.

Thus, it is incorrect for petitioner to insist that he was denied the right to file a motion for reconsideration of the Order of the Special Prosecutor. Records prove that it was Special Prosecutor Dennis Villa-Ignacio who deputized the Deputy Ombudsman for MOLEO to act on the case with finality. Pursuant to this authority, the Deputy Ombudsman for MOLEO approved the Memorandum-Resolution dated 8 July 2004 indicting petitioner. Thus, this Memorandum-Resolution proceeds from the authority of the Special Prosecutor and is virtually his own memorandum. So when petitioner filed an Omnibus Motion for Reconsideration, he was effectively appealing a Memorandum issued by the Office of the Special Prosecutor. The filing of another motion for reconsideration constitutes a prohibited pleading. Under Section 7 of the Rules of Procedure of the Office of the Ombudsman, “Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, x x x.”

In an apparent attempt to mislead, petitioner brings up the alleged incapacity of Acting Mayor Dela Cruz to file a motion for reconsideration pertaining to the earlier 13 February 2004 Resolution which dismissed the complaint against him. This argument cannot prosper. The issue has already been resolved. In fact, the Office of the Ombudsman for Luzon dismissed the complaint against petitioner. The purported legal incapacity of Acting Mayor Dela Cruz, therefore, bears no relevance to the indictment on hand. At any rate, Acting Mayor Dela Cruz, in fact, did possess the legal capacity to file the motion on behalf of the local government unit he represented. Under Section 46 of the Local Government Code, the vice-mayor automatically assumes the powers and duties of the mayor in case of the latter’s temporary absence, thus:

SEC. 46. Temporary Vacancy in the Office of the Local Chief

Executive. - (a) When the governor, city or municipal Mayor, or *punong barangay* is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office, the vice-governor, city or municipal vice-mayor, or the highest ranking *sangguniang barangay* member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend,

or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

In fact, Acting Mayor Dela Cruz explained that at that time he filed the motion, Mayor Philip Velasco was “on official vacation leave and out of the country.”¹¹ It is likewise incontrovertible that Mayor Philip Velasco instituted the complaint in his capacity as then Mayor of Bacarra, Ilocos Norte. Petitioner premises his challenge on legal standing on the mere failure of the complainant to state in his complaint that he was suing on behalf of the municipality. His argument is specious. As correctly asserted by Mayor Philip Velasco in his Comment/Opposition to the Motion to Strike, the property sought to be recovered in the complaint will revert to the municipality and not to him.¹²

We likewise find no merit in petitioner's contention that he was deprived of due process because while the accusation in the information was for technical malversation, the crime charged in the complaint was for malversation and violation of the Anti-Graft and Corrupt Practices Act.

The Court had the occasion to rule on this issue in *Pilapil v. Sandiganbayan*.¹³ Petitioner therein was accused of malversation under Article 217 of the Revised Penal Code before the Ombudsman for failing to deliver the ambulance that he had received on behalf of the municipality. The complaint for malversation was initially dismissed for lack of probable cause, but petitioner was later on charged for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. Petitioner decried lack of due process because there was no preliminary investigation conducted on the offense of which he was being charged in the Information. The Court held otherwise, thus:

Petitioner loses sight of the fact that preliminary investigation is merely inquisitorial, and it is often the only means of discovering whether a person may be reasonably charged with a crime, to enable the prosecutor to prepare his complaint or information. The preliminary designation of the offense in the directive to file a counter-affidavit and affidavits of one's witnesses is not conclusive. Such designation is only a conclusion of law of Deputy Ombudsman Domingo. The Ombudsman is not bound by the said qualification of the crime. Rather, he is guided by the evidence presented in the course of a preliminary investigation and on the basis of which, he may formulate and designate the offense and direct the filing of the corresponding information. In fact, even the designation of the offense

¹¹ Id. at 69.

¹² Records, p. 167.

¹³ G.R. No. 101978, 7 April 1993, 221 SCRA 349.

by the prosecutor in the information itself has been held inconclusive, to wit:

[t]he real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information . . . it is not the technical name given by the Fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the Information.¹⁴

What matters is compliance with due process during the preliminary investigation. That was accorded to petitioner. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.¹⁵ As aptly pointed out by the Court of Appeals, “Mr. Velasco was properly informed of the acts for which he was being investigated and later charged. He participated actively in the preliminary investigation and in fact, was given ample opportunity to buttress the allegations against him when he filed his counter-affidavit and submitted evidence on his behalf.”¹⁶ Upon issuance of the Memorandum indicting petitioner, petitioner even filed the corresponding motion for reconsideration. Thus, petitioner was given all avenues to present his side and refute all allegations against him. He was accorded, and he availed of, due process.

After the preliminary investigation compliant with due process, the Ombudsman, guided by the evidence presented during the preliminary investigation formulates and designates the offense. The Ombudsman did so in this case. The formulation of the offense depends on the evidence presented, not on the conclusionary designation in the complaint.

In all, we see no grave abuse of discretion on the part of the Sandiganbayan in denying the motion for reinvestigation.

WHEREFORE, the instant petition for *certiorari* is **DISMISSED** for lack of merit.

¹⁴ Id. at 356-357 (internal citation omitted).

¹⁵ *Redulla v. Sandiganbayan (First Division)*, 545 Phil. 711, 723 (2007) citing *Roxas v. Hon. Vazquez*, 411 Phil. 276, 287 (2001).

¹⁶ *Sandiganbayan rollo*, p. 55.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

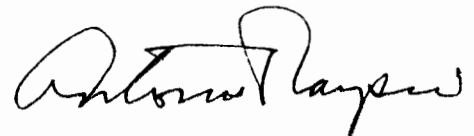

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

Associate Justice
Chairperson

CERTIFICATION

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

**MARIA LOURDES P. A. SERENO**

Chief Justice