



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

G.R. No. 170046

- versus -

MAXIMO A. BORJE, JR., BURT
B. FAVORITO, FLORENDO B.
ARIAS, ERDITO Q. QUARTO,
AGERICO C. PALAYPAY,
NAPOLEON S. ANAS, DANILO
C. PLANTA, LUISITO S. DELA
ROSA, ROGELIO L. BERAY,
NORMA A. VILLARMINO,
RICARDO M. JUAN, JR.,
NELSON UMALI, MARIA LUISA
T. CRUZ, MELISSA T. ESPINA,
VIOLETA R. TADEO, JESSICA
J. CATIBAYAN, VIOLETA C.
AMAR, RONALDO G.
SIMBAHAN, FELIPE A. SAN
JOSE, ROLANDO C. CASTILLO,
CONCHITA N. DELA CRUZ,
JANETTE A. BUGAYONG,
JESUS D. CAPUZ, RODELIA R.
UY, ROMEO C. FULLIDO,
NONETTE H. FULLIDO,
VICTORIA M. GO, CARMELITO
V. EDEM, AUGUSTO C.
CAPUZ,⁺ VICENTE SANTOS,
JR., JOHN DOES AND JANE
DOES, AND THE
SANDIGANBAYAN (SECOND
DIVISION),

Respondents.

Present:

VELASCO, JR., J., *Chairperson*,
PERALTA,
VILLARAMA, JR.,
MENDOZA,* and
REYES, JJ.

Promulgated:

December 10, 2014

Victor S. Lopez

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* Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 1896 dated November 28, 2014.

DECISION

PERALTA, J.:

Before the Court is a petition for review under Rule 45 of the Rules of Court seeking to reverse and set aside the Resolutions dated January 20, 2005¹ and October 12, 2005² of the Sandiganbayan in Criminal Case No. 27969 dismissing the same for lack of probable cause for the crime of plunder without prejudice to the filing of appropriate charges against respondents.

The factual antecedents follow.

On January 9, 2002, the Secretary of the Department of Public Works and Highways (*DPWH*), Simeon Datumanong, issued Department Order No. 15, Series of 2002, creating a committee for the purpose of investigating alleged anomalies and illegal disbursements in connection with the repair of DPWH-owned motor vehicles and equipment.³ As a result of the investigation, it was discovered that during the period of March 2001 to December 2001, the emergency repairs conducted on hundreds of DPWH vehicles, approved and paid for by the government, did not actually take place, resulting in the loss of about One Hundred Thirty-Nine Million Pesos (₱139,000,000.00).⁴

On August 7, 2002, Atty. Irene D. Ofilada, of the Internal Audit Service of the DPWH and member of the committee, filed with the Office of the Ombudsman a criminal complaint for violation of Section 3(e)(g) of Republic Act (*RA*) No. 3019, as amended, in relation to Sections 20 and 9 of the General and Special Provisions, respectively, of the General Appropriations Act, Memorandum of the Secretary on the Guidelines on Purchases of Spare Parts and Repair of Vehicles dated July 19, 1997, Department Order No. 33, Series of 1988 of RA 6770, as amended by RA No. 3018, COA Circular 85-55 A, Series of 1985, COA Circular 76-412, Series of 1976 on splitting of RSE, PO, vouchers and payrolls, against the several officials/employees of the DPWH, including respondents herein.⁵

On March 1, 2004, the Special Prosecution Officer, Humphrey T. Monteroso, of the Office of the Special Prosecutor of the Office of the

¹ Penned by Associate Justice Efren N. De la Cruz, with Associate Justices Edilberto G. Sandoval and Francisco H. Villaruz, Jr., concurring; Annex “A” to Petition, *rollo*, pp. 56-76.

² Annex “B” to petition, *id.* at 77-83.

³ Department Order No. 15, Series of 2002.

⁴ *Rollo*, p. 12.

⁵ *Id.* at 10.

Ombudsman, filed an Information⁶ with respondent Sandiganbayan accusing Maximo A. Borje, Jr., Burt B. Favorito, Florendo B. Arias, Erdito Q. Quarto, Agerico C. Palaypay, Napoleon S. Anas, Danilo C. Planta, Luisito S. Dela Rosa, Rogelio L. Beray, Norma A. Villarmino, Ricardo M. Juan, Jr., Nelson Umali, Maria Luisa T. Cruz, Melissa T. Espina, Violeta R. Tadeo, Jessica J. Catibayan, Violeta C. Amar, Ronaldo G. Simbahan, Felipe A. San Jose, Rolando C. Castillo, Conchita N. Dela Cruz, Janette A. Bugayong, Jesus D. Capuz, Rodellia D. Uy, Romeo C. Fullido, Nonette H. Fullido, Victoria M. Go, Carmelito V. Edem, Augusto C. Capuz, Vicente Santos, Jr., of the crime of Plunder defined and penalized under RA No. 7080, as amended, committed as follows:

That during the period from March to December, 2001, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **MAXIMO BORJE, JR. y AQUINO**, a public officer, being then the Chief of the Motorpool Section of the Department of Public Works and Highways, Port Area, Manila, by himself and in connivance/conspiracy with his co-accused **BURT FAVORITO y BARBA, FLORENDO ARIAS y BUÑAG, ERDITO QUARTO y QUIAOT, AGERICO PALAYPAY y CORTES, NAPOLEON ANAS y SEBASTIAN, DANILO PLANTA y CALUYA, LUISITO S. DELA ROSA, ROGELIO BERAY y LAGANGA, NORMA VILLARMINO y AGCAOILI, RICARDO M. JUAN, JR., NELSON UMALI, MARIA LUISA CRUZ y TALAO, MELISSA ESPINA y TANGPUZ, VIOLETA TADEO y RAGASA, JESSICA CATIBAYAN y JARDIEL, VIOLETA AMAR y CASTILLO, RONALDO G. SIMBAHAN, FELIPE A. SAN JOSE, ROLANDO C. CASTILLO**, and **JOHN DOES** and **JANE DOES**, who are his officemates being likewise officials and employees of the Department of Public Works and Highways (DPWH), two of whom are **high ranking public officers**, namely: **BURT FAVORITO y BARBA**, Director III, Administrative and Manpower Management Services [**Salary Grade 27**] and **FLORENDO ARIAS y BUÑAG**, Assistant Director, Bureau of Equipment [**Salary Grade 27**], and in further connivance/conspiracy with his other co-accused private individuals engaged in the business of motor vehicle and spare parts supply, namely: **CONCHITA N. DELA CRUZ, JANETTE A. BUGAYONG, JESUS D. CAPUZ, RODELLIA UY y DEL ROSARIO, ROMEO C. FULLIDO, NONETTE H. FULLIDO, VICTORIA GO y MANIEGO, CARMELITO EDEM y VARGAS, AUGUSTO CAPUZ y CO, VICENTE SANTOS, JR.**, as well as other **JOHN DOES** and **JANE DOES**, with evident bad faith and intent to defraud and cause damage to the government, and taking undue advantage of his official position, authority, connection or influence as such public officer, did then and there, wilfully, unlawfully, and criminally, amass, accumulate and acquire, by himself, ill-gotten wealth in the aggregate amount of **EIGHTY-TWO MILLION THREE HUNDRED TWENTY-ONE THOUSAND EIGHT HUNDRED FIFTY-FIVE AND 38/100 PESOS (₱82,321,855.38)**, more or less, thereby unjustly enriching himself at the expense and to the damage of the Filipino People

6Annex "E" of Petition, *id.* at 160-166.

and the Republic of the Philippines in the aforestated amount, through a series and/or combination of overt or criminal acts or similar schemes or means, consisting of misappropriations, conversions, misuses, diversions and/or malversation of public funds and/or raids on the public treasury, by means of false pretenses and fraudulent acts executed prior to, or simultaneously with, the fraud, by falsifying public, official and/or commercial documents, such as Job Orders, Pre-Repair Inspection Reports, Post-Repair Inspection Reports, Requisition for Supplies and/or Equipment (RSE), Certificates of Emergency Purchases/Repair, Waste Material Reports, Certificate of Acceptance, Certificates of Fair Wear and Tear, Price Verifications, Requests for Obligation Allotment and Disbursement Vouchers, and such other falsified documents, untruthfully narrating therein material facts on fictitious emergency repairs of various DPWH vehicles and/or ghost purchases of spare parts, which are, in truth, imaginary or spurious transactions, and by using such falsified documents of said imaginary or spurious transactions for said accused to unlawfully cause the undue releases of public funds and obtain undue payments on 4,406 transactions, more or less, for said fictitious emergency repairs of DPWH vehicles and/or ghost purchases of spare parts, thereby misappropriating, converting, misusing, diverting and/or malversing the proceeds thereof for **MAXIMO BORJE, JR. y AQUINO**'s personal use and benefit.

Thereafter, respondents filed their responsive pleadings essentially assailing the Ombudsman's finding of probable cause. On March 19, 2004, the Sandiganbayan issued an Order⁷ giving respondents a period within which to submit their memoranda of authority. In its Omnibus Comment/Opposition⁸ of even date, petitioner questioned the authority of the Sandiganbayan to act on respondents' motions, arguing that the same had not yet acquired jurisdiction over the persons of the respondents and, hence, it had no authority to hear and decide their motions. Petitioner also alleged that it successfully established probable cause justifying the issuance by the respondent court of a warrant of arrest.

On January 20, 2005, respondent Sandiganbayan issued the assailed Resolution⁹ upholding its authority to act on respondents' motions for their filing of the same may be considered as voluntary submission to the jurisdiction of the court and dismissing the case for lack of probable cause for the crime of plunder without prejudice to the filing of appropriate charges against the accused-respondents. It ruled that as the records reveal, not all elements of the crime are present for the accused Borje had not amassed ill-gotten wealth of at least ₱50 million. It further denied petitioner's Motion for Reconsideration in its Resolution¹⁰ dated October 12, 2005 for lack of merit.

⁷ Annex "I" to Petition, *id.* at 224.

⁸ Annex "F" to Petition, *id.* at 169-191.

⁹ Annex "A" to Petition, *id.* at 56-76.

¹⁰ Annex "B" to Petition, *id.* at 77-83.

Hence, the instant petition invoking the following grounds:

I.

THE EXECUTIVE FUNCTION OF DETERMINING THE EXISTENCE OF PROBABLE CAUSE FOR THE FILING OF AN INFORMATION IS VESTED SOLELY IN THE PROSECUTION.

II.

THE OFFICE OF THE OMBUDSMAN IS NOT BOUND BY THE FINDINGS OF ADMINISTRATIVE BODIES IN ITS DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE FOR THE FILING OF A CRIMINAL CASE.

Petitioner maintains that the preliminary investigation conducted by the Office of the Ombudsman is an executive, not a judicial function. As such, it asserts that respondent Sandiganbayan should have given deference to the finding and determination of probable cause in their preliminary investigation. Moreover, petitioner faulted the respondent court for taking into consideration the findings of Atty. Irene Ofilada of the Investigating Committee that it was not respondent Borje who encashed the checks but the respondent-suppliers, by virtue of a blanket authority given by the former to the latter. It posits that said findings cannot bind the Office of the Ombudsman in its determination of the existence of probable cause.

Respondents counter that the respondent court correctly dismissed the case for the evidence clearly shows the absence of certain elements of the crime. They maintain that while investigating officers have a wide latitude of discretion in the determination of probable cause, which deserves respect from the courts, the acts of the Ombudsman in disregarding essential pieces of evidence are tantamount to an abuse of discretion authorizing the dismissal by the court of the case.

We rule in favor of petitioner.

It is well to recall that there are two kinds of determination of probable cause: executive and judicial. On the one hand, executive determination of probable cause ascertains whether a criminal case must be filed in court.¹¹ It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as

¹¹ *People of the Philippines v. Court of Appeals*, G.R. No. 161083, August 3, 2010, 626 SCRA 352, 368, citing *AAA v. Carbonell*, 551 Phil. 936, 948 (2007), citing *People v. Inting*, G.R. No. 88919, July 25, 1990, 187 SCRA 788, 792-793.

defined by law and should be held for trial.¹² On the other hand, judicial determination of probable cause ascertains whether a warrant of arrest should be issued against the accused. It is one made by a judge who must satisfy himself that based on the evidence presented, there is necessity in placing the accused under custody so that the ends of justice will not be frustrated.¹³

Verily, as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Office of the Ombudsman, which is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.¹⁴

It is well settled that courts do not interfere with the discretion of the Ombudsman to determine the presence or absence of probable cause believing that a crime has been committed and that the accused is probably guilty thereof necessitating the filing of the corresponding information with the appropriate courts.¹⁵ This rule is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. If it were otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.¹⁶

The Office of the Ombudsman, in this case, found probable cause which would warrant the filing of an information against respondents. For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be

¹² *People of the Philippines v. Castillo*, 607 Phil. 754, 764 (2009), citing *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.

¹³ *Id.*

¹⁴ *Fuentes v. Sandiganbayan*, 528 Phil. 388, 406 (2006).

¹⁵ *Principio v. Honorable Barrientos, et. al.*, 514 Phil. 799, 811 (2005).

¹⁶ *Tetangco v. Honorable Ombudsman*, 515 Phil. 230, 234 (2006), citing *Roxas v. Vasquez*, 411 Phil. 276, 288 (2006).

arrested.¹⁷ A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.¹⁸ Thus, unless it is shown that the Ombudsman's finding of probable cause was done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere with the same.¹⁹

In the instant case, the act of filing an Information against respondents by the Ombudsman cannot be characterized as arbitrary, capricious, whimsical, or despotic amounting to a grave abuse of discretion. A review of the records clearly reveals that accused Borje, Jr. was the payee of 4,406 checks amounting to ₱82,321,855.38 covering the reimbursements of the supposed payments for the anomalous and questionable repairs of the DPWH vehicles. While there may have been evidence presented which may lead to an inference that the end-receiver of the amounts covered by the checks is not actually accused Borje, Jr., but the accused private individuals-suppliers, the fact that the name of accused Borje, Jr. appears on the subject checks cannot be denied. Indeed, mere belief that respondents probably committed the crime suffices to establish probable cause. Whether they are, in fact, guilty of plunder is a different matter, which can properly be determined at a full-blown trial on the merits of this case.²⁰ As this Court has ruled in *People v. Castillo*:²¹

Moreover, it was clearly premature on the part of the Sandiganbayan to make a determinative finding prior to the parties' presentation of their respective evidence that there was no bad faith and manifest partiality on the respondents' part and undue injury on the part of the complainant. In *Go v. Fifth Division, Sandiganbayan*, we held that "it is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits." Also, it would be unfair to expect the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter. The reason is found in the nature and objective of a preliminary investigation. Here, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-

¹⁷ *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148, citing *Okabe v. Hon. Gutierrez, in his capacity as Presiding Judge of RTC, Pasay City, Branch 119, et al.*, 473 Phil. 758, 781 (2004).

¹⁸ *De Guzman v. Gonzalez, et. al.*, G.R. No. 158104, March 26, 2010, 616 SCRA 546, 554, citing *Webb v. Hon. De Leon*, 317 Phil. 758, 789 (1995).

¹⁹ *Kalalo v. Office of the Ombudsman*, *supra* note 17, at 149, citing *Galario v. Ombudsman*, 554 Phil. 86, 103 (2007).

²⁰ *Schroeder v. Saldevar*, 550 Phil. 719, 724 (2007).

²¹ *Supra* note 12, citing *Go v. Fifth Division, Sandiganbayan*, 549 Phil. 783, (2007), *Andres v. Cuevas*, 499 Phil. 36 (2005), *People v. Court of Appeals*, 361 Phil. 401 (1999).

founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.

Moreover, the fact that the decision of the Office of the Ombudsman differs from the findings of Atty. Irene D. Ofilada, of the Internal Audit Service of the DPWH, who conducted the initial investigation, falls short of being capricious or arbitrary. It has consistently been held that there is grave abuse of discretion where power is exercised in an arbitrary or despotic manner by reason of passion or hostility. The abuse must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty or to act at all in contemplation of law.²²

The Ombudsman in this case, however, was merely performing his duty as mandated by the Constitution²³ and by law.²⁴ Filing an Information against respondents in this case based on sufficient ground to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof cannot be said to be whimsical or despotic. As effectively shown by evidence, the Ombudsman's charge was not at all baseless for the link between the respondents and the anomalous transactions herein has been satisfactorily established. In the absence, therefore, of any showing that the questioned acts of the Ombudsman were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction, this Court will not interfere with the Ombudsman's exercise of his constitutionally mandated powers.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed Resolutions dated January 20, 2005 and October 12, 2005 of the Sandiganbayan in Criminal Case No. 27969 are **SET ASIDE**. The Resolution dated January 7, 2004 of the Ombudsman in OMB-

²² *Acuña v. Deputy Ombudsman for Luzon*, 490 Phil. 640, 653 (2005), citing *Alafriz v. Nable*, 72 Phil. 278 (1941).

²³ Sections 12 and 13, Article XI of the Constitution provide:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation and shall, in appropriate cases, notify the complainants of the action taken and results thereof.

Sec. 13. The Office of the Ombudsman shall have the following powers, function and duties:

(1.) Investigate on its own or on complaint by any person, any act or omission of any public official, employee, officer or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.


²⁴ Section 15 of the Ombudsman Act of 1989 provides:

Sec. 15. *Powers, Functions and Duties*. - The Office of the Ombudsman shall have the following powers, functions and duties:


(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of the government, the investigation of such cases


C-C-02-0507-H, finding probable cause to indict respondents for the crime of plunder is **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

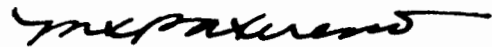
ATTESTATION

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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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