

FIRST DIVISION

[G.R. No. 201069, June 16, 2021]

BANGKO SENTRAL NG PILIPINAS, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND BENJAMIN M. JAMORABO,* RESPONDENTS. D E C I S I O N

GAERLAN, J.:

The Case

This petition for *certiorari*^[1] under Rule 65 of the Rules of Court assails the following issuances of the Office of the Ombudsman in Case No. OMB-C-C-09-0465-I: 1) February 9, 2011 Resolution dismissing the complaint filed by the Bangko Sentral ng Pilipinas (BSP) against private respondent Benjamin M. Jamorabo (Jamorabo) for lack of probable cause;^[2] and 2) July 28, 2011 Order denying the motion for reconsideration filed by the BSP.^[3]

The Facts

Petitioner BSP is the constitutionally mandated^[4] central monetary authority of the Philippines, created through Republic Act (R.A.) No. 7653.^[5] Jamorabo was a former Bank Officer I in the BSP's Supervision and Examination Sector (SES). As earlier mentioned, BSP filed a complaint dated August 11, 2009,^[6] against Jamorabo before the Office of the Ombudsman for violation of Section 27(d) of R.A. No. 7653 and BSP Office Order No. 423, series of 2002, for obtaining a loan with the Rural Bank of Kiamba, Sarangani, Inc. (RBKSI) while he was conducting the regular examination of said bank from July 6 to 22, 2006. The complaint alleged the following:

3. The investigation of the OSI revealed that, during the RBKSI examination, specifically on 17 July 2006, Mr. Jamorabo took out an unsecured loan in the amount of P200,000 with RBKSI. He promised RBKSI's president Cornelio T. Falgui [Falgui], and manager, William C. Nero [Nero] (Affidavit, attached as Annex _____ together with all the supporting documents), that he would settle the loan prior to the next BSP general examination of RBKSI, which is conducted every two-year interval, so that the loan would no longer be in RBKSI's books. According to Mr. Nero, Mr. Falgui had wanted to turn down the application, but could not do so because he feared he might offend Mr. Jamorabo. 4. For a loan of such amount, RBKSI would normally require from the borrower a collateral, presentation of documentary proof of income, and credit investigation. Mr. Jamorabo's loan, however, did not undergo the ordinary processes and was approved without him offering a collateral. He convinced Mr. Nero that he would just issue post-dated checks payable to RBKSI. 5. Mr. Jamorabo issued a total of eight personal post-dated

checks, six in the amount of P30,000 and two in blank, drawable against his checking account maintained at the Philippine National Bank ("PNB")-Central Bank ("CB") Service Unit-Manila, representing eight payments for his quarterly amortizations of P30,000. The first amortization was due 17 October 2006. 6. It must be emphasized that in the loan documents, Mr. Jamorabo did not indicate his name as the principal borrower but the name of his wife, Marites B. Jamorabo (Marites). He made himself as her co-maker. He, however, was the one who filled out and signed the loan documents, including signing in the name of his wife. Ms. Marites B. Jamorabo neither went to the bank nor signed any loan documents. 7. On 18 July 2006, Mr. Nero deposited, through inter-bank transaction at PNB-Santiago Boulevard Branch, General Santos City, the net proceeds of the loan in the amount of P198,000 into the savings account of Mr. Jamorabo maintained at PNB-CB Service Unit-Manila. 8. When the loan became due, he was able to pay only the first and second amortizations and only after his first check had already "bounced" for the reason that it was drawn against insufficient funds ("DAIF"). His first and second amortizations were due on 17 October 2006 and 17 January 2007, respectively, but he remitted his loan payment only on 9 February 2007 to RBKSI's depository bank ("Equitable-PCI Bank") via inter-bank deposit at Equitable-PCI Bank in Bacoor, Cavite, and after requesting RBKSI not to deposit his second check. 9. When his third amortization became due, Mr. Jamorabo began calling RBKSI's cashier, Aurora Cagas, advising her not to deposit his check dated 17 April 2007 representing payment for his third amortization. His communication with the bank, however, suddenly stopped even after his check dated 17 July 2007 representing payment for his fourth amortization became due. 10. In September 2007, Mr. Nero decided to deposit in RBKSI's depository bank Mr. Jamorabo's check dated 17 April 2007 representing payment for his third amortization. The check was dishonored for the reason that Jamorabo's checking account was already closed as of 17 September 2007. Mr. Nero sent a text message to Mr. Jamorabo urging him to pay his loan but Mr. Nero did not receive any reply. Mr. Nero also tried calling Mr. Jamorabo's cellular phone but the same could no longer be contacted. Considering that Mr. Jamorabo's checking account was already closed, Mr. Nero decided not to deposit the rest of Mr. Jamorabo's checks. Mr. Falgui thought of suing Mr. Jamorabo, but he died in July 2008 without a case having been filed. 11. Sometime in December 2008, Mr. Nero received a cell phone call from Mr. Jamorabo using a different number. Mr. Jamorabo informed the manager that he would settle his loan account with RBKSI and instructed the Manager to text to him the outstanding balance of his loan. Mr. Jamorabo also reasoned out that he failed to make good his checks because he was sent for further studies by the BSP to Malaysia. 12. Despite the promise, Mr. Jamorabo did not pay his loan. 13. On 14 to 29 April 2009, the Anti-Money Laundering Specialist Group, SES, conducted a regular examination of RBKSI. Taking this as an opportunity, Mr. Nero divulged Mr. Jamorabo's loan to the examiner-in-charge. The examiner-in-charge informed the manager that Mr. Jamorabo had just retired from the BSP and advised the manager to write a letter to Mr. Willie Asto, Managing Director of Financial Accounting Department of the BSP, requesting assistance in deducting from Mr. Jamorabo's retirement benefits the outstanding balance of his loan amounting to P210,829.49 as of 23 April

2009. 14. The loan is undeniably Mr. Jamorabo's loan even if he deceptively misrepresented that the principal borrower was his wife. As positively disclosed by Mr. Nero, there was no Ms. Marites Jamorabo who appeared in the bank and signed the loan documents. Be that as it may, having signed as a co-maker, in the eyes of the law, he is also considered a principal borrower being jointly and severally liable for payment of the loan. 15. Thus, when he took out the loan on 17 July 2006, during which period the RBKSI was under his examination, he clearly committed a violation of Section 27(d) of R.A. No. 7653. x x x^[7]

The complaint was docketed as a criminal case^[8] and preliminary investigation was conducted thereon. On November 17, 2009, the Ombudsman ordered Jamorabo to submit his counter-affidavit.^[9] On December 10, 2009, Jamorabo complied with the anti-graft agency's order by submitting his own affidavit together with the affidavits of his witnesses, his wife Marites, and his sister-in-law, Honeyve Montecalvo.^[10] In dismissing the complaint, the Ombudsman ruled that a violation of R.A. No. 7653, Section 27(d) and BSP Office Order No. 423, series of 2002 does not entail criminal liability; hence Jamorabo can only be held administratively liable. However, since Jamorabo had already retired from government service on December 31, 2008,^[11] before the complaint was filed, he cannot be sanctioned anymore.^[12] The anti-graft agency also ruled that Jamorabo cannot be held liable for violating Section 3(e) of R.A. No. 3019 because the BSP failed to prove any injury, loss or damage to the government caused by Jamorabo's acts, since he was able to pay the loan in full.^[13] Finally, the Ombudsman held that the officers of RBKSI were also at fault for approving Jamorabo's loan application. Given the high standards of diligence expected from banks, RBKSI's officers should have exercised extreme caution in processing Jamorabo's loan application. Furthermore, they reported the incident only in 2009; almost three years after Jamorabo availed of the loan.^[14]

The BSP sought reconsideration^[15] but the Ombudsman rendered the assailed July 28, 2011 order affirming the dismissal of the complaint. The Ombudsman maintained that Jamorabo can no longer be administratively sanctioned because the case against him was filed *after* he had retired from government service and that full payment of the loan in question negated the existence of undue injury.

On April 3, 2012, the BSP filed the present petition for *certiorari*.^[16] On June 18, 2012, this Court ordered respondents to file their respective comments on the petition;^[17] however, only the Office of Ombudsman complied.^[18] During the pendency of the case, it was discovered that Jamorabo had migrated to Canada with his family on April 14, 2010, with no intention of returning to the Philippines;^[19] hence, the Court dispensed with his comment.^[20] On April 24, 2013, the BSP filed its reply. The issues having been joined, the Court now resolves the following questions posed by the pleadings:

- 1) What liabilities arise from a violation of R.A. No. 7653, Section 27(d)?
- 2) Can Jamorabo still be held administratively liable even if the present complaint was filed after his retirement from government service?

3) Is there a *prima facie* case for Section 3(e) of R.A. No. 3019 against Jamorabo?

The Court's Ruling

The petition is partially meritorious. While this Court respects the wide latitude given to the Office of the Ombudsman in the exercise of its investigatory and prosecutorial powers,^[21] it is likewise this Court's power and duty to set aside the rulings of the Ombudsman if such rulings are tainted with grave abuse of discretion.^[22]

Violation of R.A. No. 7653, Section 27(d) gives rise to both administrative and criminal liability.

Section 27(d) of R.A. No. 7653 is composed of two parts: a general rule and a proviso. The first part of the provision states the general rule: BSP personnel are not allowed to "[borrow] from any institution subject to supervision or examination by the Bangko Sentral x x x unless said borrowings are adequately secured, fully disclosed to the Monetary Board, and x x x subject[ed] to such further rules and regulations as the Monetary Board may prescribe." The second part, or the proviso, further qualifies this rule with a second, more specific prohibition: **"That personnel of the supervising and examining departments are prohibited from borrowing from a bank under their supervision or examination."** This qualification to the general rule is specifically targeted at the BSP personnel who do the actual work of supervising and examining banks, and who are absolutely prohibited from borrowing from banks under their supervision or examination.

The absolute and unqualified ban on borrowings by the BSP's supervision and examination personnel was removed by R.A. No. 11211,^[23] which amended Section 27(d) as follows:

SEC. 27. *Prohibitions.* — In addition to the prohibitions found in Republic Act Nos. 3019 and 6713, personnel of the Bangko Sentral are hereby prohibited from:

x x x x

(d) borrowing from any institution subject to supervision or examination by the Bangko Sentral unless said borrowing is transacted on an arm's length basis, fully disclosed to the Monetary Board, and shall be subject to such rules and regulations as the Monetary Board may prescribe.

Nevertheless, the provision, as amended, maintains the general rule in R.A. No. 7653: BSP personnel cannot borrow loans from entities that are subject to the BSP's supervision or examination, unless the conditions set forth in the provision are met. To penalize violations thereof, R.A. No. 7653 contains a general penal clause, which is essentially retained in R.A. No. 11211, *viz.*:

Original text	As amended
Section 36. Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations,	SEC. 36. Proceedings upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or

Orders or Instructions. – Whenever a bank or quasi-bank, or **whenever any person or entity willfully violates this Act** or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, **the person or persons responsible for such violation shall unless otherwise provided in this Act be punished** by a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Two hundred thousand pesos (P200,000.00) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

Instructions. – Whenever a bank, quasi-bank, including their subsidiaries and affiliates engaged in allied activities or other entity which under this Act or special laws is subject to Bangko Sentral supervision or **whenever any person or entity willfully violates this Act** or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, **the person or persons responsible for such violation shall unless otherwise provided in this Act be punished** by a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Two million pesos (P2,000,000.00) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

Read together, Sections 27(d) and 36 categorically provide that BSP personnel who borrow from institutions under BSP supervision or examination without complying with the requisite former provision shall be penalized by a fine or imprisonment, or both, at the discretion of the court. Thus, the Ombudsman committed a glaring mistake amounting to grave abuse of discretion when it ruled that a violation of R.A. No. 7653, Section 27(d) entails administrative liability only. A cursory reading of the statute *in its entirety* clearly shows that Section 27(d) is a penal provision, a violation of which gives rise to criminal liability,^[24] apart from the administrative liability imposed by BSP Office Orders No. 423,^[25] series of 2002; and No. 860, series of 2007;^[26] and the Uniform Rules on Administrative Cases in the Civil Service.^[27] Settled is the rule that wrongful acts or omissions of public officers may give rise to civil, criminal, and administrative liability, each of which is separate and distinct from the other.^[28]

In the case at bar, there is no dispute that: 1) Jamorabo was one of the BSP personnel assigned to conduct the examination of RBKSI from July 5 to 22, 2006; and 2) Jamorabo, as co-maker^[29] for his wife, took out a 200,000-peso loan from RBKSI during the examination period thereof.^[30] However, in view of our finding that Section 27(d) is a penal provision, the repeal by R.A. No. 11211 of the absolute prohibition on borrowings by BSP supervision and examination personnel should be given retroactive effect in favor of Jamorabo, pursuant to Article 22 of the Revised Penal Code.^[31] Consequently, Jamorabo's loan with RBKSI can no longer be considered a *per se* violation of Section 27(d); rather, its compliance with the requisites of Section 27(d), as amended, must be ascertained.

Jamorabo's loan does not meet the requisites of Section 27(d), as amended.