

THIRD DIVISION

[G.R. No. 213957-58, August 07, 2019]

ELENITA S. BINAY, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, SANDIGANBAYAN (THIRD DIVISION), OFFICE OF THE SPECIAL PROSECUTOR, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

LEONEN, J.:

Generally, this Court will not interfere with the Office of the Ombudsman's determination of probable cause, unless there is a clear and convincing showing of grave abuse of discretion.^[1]

For this Court's resolution is a Petition for Certiorari and Prohibition^[2] seeking to nullify the Office of the Ombudsman's Consolidated Resolution^[3] and Resolution.^[4] In the Office of the Ombudsman's Consolidated Resolution, then Makati City Mayor Elenita S. Binay (Mayor Binay) was added among the accused in both the Information for violation of Section 3(e) of Republic Act No. 3019 and in the amended Information for malversation.^[5]

Records disclose that from September 2001 to February 2002, the Commission on Audit's Special Task Force of Local Government Units audited the financial transactions of the local government units in Metro Manila. The audit focused on their purchase of supplies, materials, and equipment amounting to PI million and above.^[6]

The audit revealed that on March 14, 2001, the City of Makati, through its General Services Department Head Ernesto A. Aspillaga (Aspillaga) and former Mayor Binay, entered into a contract with Apollo Medical Equipment and Supplies (Apollo), which was represented by its owner, Apollo B. Carreon (Carreon).^[7] Under the contract, the City of Makati was to purchase from Apollo P38,799,700.00 worth of hospital beds and bedside cabinets for the Ospital ng Makati.^[8]

Below is the breakdown of the contract price:

Item	Quantity	Price per Unit
Hospital beds	188	P 148,000.00
Bedside cabinets	220	P 17,850.00
Intensive Care Unit beds	10	P 545,000.00
Orthopedic beds	4	P 480,000.00 ^[9]

To facilitate the payment of the hospital items, Check No. 06279, covered by Disbursement Voucher No. 1730, was issued on April 30, 2001. This, however, only covered the amount of P35,106,910.91.^[10]

The audit revealed that the contract was awarded to Apollo without the benefit of public bidding.^[11] Instead, the public officials involved allegedly relied on Apollo's representation that it was the sole and exclusive Philippine distributor of UGM-Medysis of New Jersey, USA. However, when Apollo delivered the beds, it was discovered that the beds were not manufactured by UGM-Medysis, but by Juhng Mei Medical Instruments Co., Ltd. (Chya Hung Medical Treatment Instruments Factory Co., Ltd.), a Taiwanese company.^[12]

Moreover, the manufacturer's invoice for the transaction showed that the items' actual total cost was merely P2,447,376.14, which was well below P36,431,700.00, the amount paid to Apollo.^[13]

As a result of these findings, two (2) Complaints were filed separately by the Commission on Audit and one Roberto G. Brillante (Brillante) before the Office of the Ombudsman.^[14]

On May 9, 2011, the Office of the Overall Deputy Ombudsman issued a Resolution^[15] finding probable cause to indict 15 officials for violation of Section 3(e)^[16] of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and for malversation of public funds through falsification.^[17] The 15 officials who were indicted are:

- a. Nicanor V. Santiago, Jr. (SG 27), Former City Administrator, Makati City;
- b. Ernesto A. Aspillaga (SG 27), Head, General Services Department, Makati City;
- c. Ramoncito R. Coronel (SG 25), Officer-in-Charge, Assistant Medical Director, Ospital ng Makati;
- d. Lolita G. Valdez (SG 16), Head, Nursing Services, Ospital ng Makati;
- e. Althea C. Suico (SG 14), Nurse, Department of Obstetrics and Gynecology, Ospital ng Makati;
- f. Maria Perpetua Q. Reyeg (SG 16), Head Nurse, Department of Medicine, Ospital ng Makati;
- g. Jaime P. de los Reyes (SG 11), Administrative Officer I, General Services Division, Makati City;
- h. Conrado B. Pamintuan (SG 14), Supply Officer II, Supply and Property Division, Makati City;

- i. Rudolfo B. Fernandez, Chief, Supply and Property Department Office of the Treasurer, Makati City;
- j. Eduardo G. de Guzman (SG 6), Storekeeper II, Supply and Property Division, General Services Department, Makati City;
- k. Nestor R. Bulos (SG 11), Storekeeper IV, General Services Department, Makati City;
- l. Lilia Nonato (SG 6), Clerk III, Supply and Property Department, General Services Division, Makati City;
- m. Ligaya Ibay (SG 6), Inspector, Medical Section, Supply and Property Department, General Services Division, Makati City;
- n. Apollo B. Carreon, and
- o. Carmen C. Maano[.][¹⁸]

No probable cause was found against Mayor Binay. In so ruling, the Office of the Overall Deputy Ombudsman cited the Arias doctrine:

As the final approving authority for the Award of Purchase and of the Purchase Orders, respondent Binay is within the scope of the Arias doctrine, the evidence showing that she had relied in good faith on the representations of respondent Aspillaga, as City General Services Officer, and of respondent Santiago, as City Administrator, that the transaction was regular on its face.

A painstaking review of the evidence reveals that respondents Santiago and Coronel had crafted the Purchase Requests and Purchase Orders so well that by the time that the City Government of Makati had to issue the Award of Purchase dated 13 March 2001, there was nothing before respondent Binay that would have behooved her to examine the purchase further.

Without any further evidence, the signatures of respondent Binay on the Purchase Requests, Purchase Orders, and Award of Purchase, standing alone, cannot sustain a finding of probable cause sufficient to prosecute respondent Binay for Violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.[¹⁹]

On July 4, 2011, two (2) Informations were filed before the Sandiganbayan based on the May 9, 2011 Ombudsman Resolution.[²⁰] The cases were raffled to the Sandiganbayan Third Division.[²¹]

Three (3) Motions for Reconsideration were filed, all assailing the Ombudsman Resolution. The first was filed by Ramoncito R. Coronel, Jaime P. Delos Reyes, Conrado B. Pamintuan, Eduardo G. De Guzman, and Lilia Nonato. The second was filed by Aspillaga and Nicanor V. Santiago, Jr. (Santiago). The third was filed by Ma. Perpetua B. Reyeg.[²²]

Former City Administrator Santiago and Former City General Services Head Aspillaga argued that they could not be held liable for malversation because they were not the funds' custodians. They averred that it was Mayor Binay who not only was the custodian, but was also the approving authority in their disbursement.^[23]

On August 29, 2013, the Office of the Special Prosecutor issued a Consolidated Resolution^[24] recommending the inclusion of Mayor Binay as an accused for violation of Section 3(e) of Republic Act No. 3019. She also recommended that the Information for malversation through falsification be withdrawn and an amended information for malversation against Mayor Binay and the other accused be filed.^[25] It justified the finding of probable cause against Mayor Binay:

With respect to Binay, the *Arias* doctrine cannot be properly invoked so as to relieve her from any liability. It is undeniable that Binay extensively participated in the most decisive parts of the procurement process and in the eventual disbursement of funds. On the whole, she had an extensive and active participation in this transaction for which she cannot disclaim responsibility and liability. She cannot feign good faith in claiming that she merely relied in the representations of Aspillaga and Santiago. As the local chief executive of the City of Makati, it is her bounden duty to see to it that laws are faithfully complied with. Good faith is a matter of defense that should be determined in the course of trial. . . .

. . . .

Quite notable, likewise, is the unusual haste in the procurement of the subject items. It took only thirty (30) days from February 12, 2001 to award the contract to Apollo on March 14, 2001. It cannot be ignored that the amount involved in this procurement is not a measly sum of P36Million. Considering the magnitude of the amount involved before her, it should have put her on guard to have assured the propriety of the transaction.

There was likewise no claim nor proof that the need for the subject items was urgent or under an emergency that would prompt a hasty procurement. Absent such a situation, the Committee on Awards of which she is the chairman, could have directed a re-assessment or re-validation of Apollo's credentials in order to comply with the mandatory requisites of resorting to exclusive distributorship or at best directed the conduct of a public bidding.^[26] (Citations omitted)

On October 4, 2013, then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) approved the Consolidated Resolution.^[27] Subsequently, the Informations^[28] filed before the Sandiganbayan were amended to reflect the recommendation in the August 29, 2013 Consolidated Resolution.

Mayor Binay filed a Motion for Reconsideration,^[29] but this was denied in the Office of the Special Prosecutor's June 16, 2014 Resolution,^[30] which was approved by Ombudsman Carpio Morales.^[31]

Thus, Mayor Binay comes to this Court through a Petition for Certiorari^[32] under Rule 65 of the Rules of Court, seeking, among others, to nullify public respondent Office of the Ombudsman's Consolidated Resolution finding probable cause against her. She also prays that a temporary restraining order or a writ of preliminary injunction be issued to enjoin public respondents Office of the Special Prosecutor and Sandiganbayan from continuing with the trial or any other proceeding in the criminal cases against her.^[33]

Petitioner argues that since neither the Commission on Audit nor Brillante moved for reconsideration of the May 9, 2011 Resolution, it turned final and executory and, thus, could not be reviewed or reversed by public respondent Office of the Ombudsman.^[34] She maintains that the doctrine of finality of judgment applies to preliminary investigations it had conducted.^[35]

Petitioner also avers that her right to due process was violated when she was not served with copies of her co-accused's motions for reconsideration. She claims that she was not informed of the allegations contained in these pleadings, which effectively deprived her of her right to be notified and heard.^[36]

Finally, petitioner contends that the failure of public respondent Office of the Ombudsman to immediately resolve the complaints against her constitutes a violation of her right to speedy disposition of cases.^[37]

On November 24, 2014, this Court ordered public respondents to file their Comment.^[38]

In their Comment,^[39] public respondents countered that the filing of motions for reconsideration by petitioner's co-accused prevented the May 9, 2011 Resolution from attaining finality.^[40]

Furthermore, public respondents maintain that a sitting Ombudsman has the authority to abrogate a predecessor's ruling.^[41]

Finally, they belie petitioner's claim of violation of her constitutional rights to due process^[42] and speedy disposition of cases.^[43]

On April 6, 2015, this Court required petitioner to file a reply.^[44]

In her Reply,^[45] petitioner insists that the failure of the Commission on Audit and Brillante to move for reconsideration rendered public respondent Office of the Ombudsman's May 9, 2011 Resolution final and executory.^[46]

On July 22, 2015, this Court required the parties to file their respective memoranda.^[47]

In her Memorandum,^[48] petitioner reiterates her argument that the May 9, 2011 Resolution became final and executory when the complainants failed to move for reconsideration.^[49] She further insists that her right to due process and speedy disposition of cases were violated, citing the same reasons she mentioned in her