

## SECOND DIVISION

[ G.R. No. 204739, November 13, 2019 ]

**SALVACION ZALDIVAR-PEREZ, PETITIONER, VS. HON. FIRST DIVISION OF THE SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, REPRESENTED BY ASSISTANT SPECIAL PROSECUTOR III MA. HAZELINA TUJAN-MILITANTE, OFFICE OF THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

### DECISION

**HERNANDO, J.:**

Before this Court is a Petition for *Certiorari*<sup>[1]</sup> (under Rule 65 of the Rules of Court) with Prayer for Temporary Restraining Order assailing the August 28, 2012<sup>[2]</sup> and October 10, 2012<sup>[3]</sup> Resolutions of the Sandiganbayan in Criminal Case No. SB-12-CRM-0149, entitled *People v. Salvacion Z. Perez*, for having been rendered with grave abuse of discretion. The August 28, 2012 Resolution denied petitioner Salvacion Zaldivar-Perez's (Perez) Urgent Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment, while the October 10, 2012 Resolution denied her Motion for Reconsideration.

The case stemmed from the following facts:

A Complaint-Affidavit<sup>[4]</sup> dated April 28, 2006 for Unlawful Appointment, defined and penalized under Article 244 of the Revised Penal Code (RPC), was filed on May 17, 2006 with the Office of the Provincial Prosecutor of San Jose, Antique (OPP-Antique), Department of Justice, by Numeriano Tamboong (Tamboong) against petitioner Perez, who was then the Provincial Governor of Antique. Tamboong alleged that petitioner Perez appointed Atty. Eduardo S. Fortaleza (Fortaleza) on January 30, 2006 as the Provincial Legal Officer of the province despite knowing that he did not meet the minimum requirement of five (5) years in the practice of law under Section 481, Article XI, Title V of the Local Government Code of 1991.<sup>[5]</sup>

In her Counter-Affidavit<sup>[6]</sup> dated September 20, 2006, petitioner Perez argued that the appointment of Fortaleza is well-deserved because during his tenure as Provincial Legal Officer, he has been performing his duties and responsibilities with competence, honesty and integrity. She added that the position is confidential and co-terminus, thus experience can be dispensed with as provided under Rule X, Section 1(e) of the Omnibus Rules on Appointments and Other Personnel Actions under the Civil Service Commission (CSC) Memorandum Circular (MC) No. 40, Series of 1998.<sup>[7]</sup> She also averred that as Provincial Governor, she is authorized to appoint employees embraced in the Non-Career Service in the Government.

In its Resolution<sup>[8]</sup> dated August 6, 2009, the OPP-Antique ruled that there was

sufficient evidence to support the existence of probable cause for Violation of Article 244 (Unlawful Appointments) of the RPC committed by petitioner Perez. It was noted that at the time of his appointment as Provincial Legal Officer, Fortaleza was a member of the Philippine Bar for only three (3) years, eight (8) months and twenty-eight (28) days, which is short of the 5-year minimum experience requirement as provided in Section 481 of the Local Government Code of 1991. In finding untenable petitioner Perez's justification that experience can be dispensed with as Fortaleza's position is confidential, the OPP-Antique opined that CSC MC No. 1, series of 1977, is a rule of general application with respect to appointment and other personnel action, thus it cannot amend a specific provision of a law. It is only the legislature that has the plenary power to repeal, abrogate or revoke existing laws. Thus, the OPP-Antique, in its August 6, 2009 Resolution, recommended that a criminal complaint for Violation of Article 244 of the RPC (Unlawful Appointments) be filed against petitioner Perez.

The original records of the case, together with the August 6, 2009 Resolution, were forwarded and received by the Deputy Ombudsman for Visayas on October 8, 2009 for approval.<sup>[9]</sup>

On October 12, 2009, the Deputy Ombudsman for Visayas endorsed<sup>[10]</sup> the August 6, 2009 Resolution, together with the records of the case, to the Preliminary Investigation, Administrative Adjudication and Review Bureau, an office under the supervision of Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman Casimiro) who has the investigative jurisdiction over the case, pursuant to the July 10, 2008 Memorandum of Ombudsman Ma. Merceditas Gutierrez (Ombudsman Gutierrez).

The initial indorsement of the Review Resolution of the said August 6, 2009 Resolution, recommending the approval of the filing of the Information against petitioner Perez for the offense complained of, was made on March 3, 2011 to Ombudsman Gutierrez.<sup>[11]</sup> As there was a change of leadership in the Office of the Ombudsman (OMB), a Review dated September 8, 2011 of the August 6, 2009 Resolution was again indorsed on September 26, 2011 by Deputy Ombudsman Casimiro to the newly appointed Ombudsman Conchita Carpio Morales<sup>[12]</sup> who approved the said Resolution on April 24, 2012.<sup>[13]</sup> Petitioner Perez was furnished a copy of the September 8, 2011 Review on May 10, 2012.

On May 24, 2012, an Information<sup>[14]</sup> indicting petitioner Perez for Violation of Article 244 of the RPC (Unlawful Appointments) was filed before the Sandiganbayan. On May 28, 2012, the Sandiganbayan issued a Resolution directing the Bureau of Immigration to bar petitioner Perez from leaving the country without its prior approval. Petitioner Perez received a copy of the May 28, 2012 Resolution of the Sandiganbayan on May 30, 2012.

Incidentally, petitioner Perez filed a Motion for Reconsideration<sup>[15]</sup> of the September 8, 2011 Review on June 19, 2012<sup>[16]</sup> with the Office of the Overall Deputy Ombudsman who in turn indorsed the same to the OPP-Antique on June 26, 2012.

On July 3, 2012, the OPP-Antique received<sup>[17]</sup> petitioner Perez's Urgent Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment

dated July 2, 2012 which was set for hearing<sup>[18]</sup> on July 5, 2012. In the said Motion, petitioner Perez complained of the delay in the preliminary investigation both before the OPP-Antique and the OMB Visayas,<sup>[19]</sup> which violated her constitutional right to a speedy disposition of the case, thus prayed for the dismissal of her case.<sup>[20]</sup> According to petitioner Perez, it took the OPP-Antique more than three (3) years from the filing of the Affidavit-Complaint to conclude the preliminary investigation and to arrive at the Resolution dated August 6, 2009, which it indorsed to the Deputy Ombudsman for Visayas on October 8, 2009 for approval, while it took the OMB almost two (2) years from the date the Resolution of the OPP-Antique was endorsed to them up to the time the Review Resolution came out and almost three years from the date of the Resolution of the OPP-Antique to the filing of the Information before the Sandiganbayan. Petitioner Perez argued that this protracted delay in the disposition of her case was prejudicial to her rights.

On July 12, 2012, the prosecution filed its Comment Opposition<sup>[21]</sup> dated July 11, 2012 to the Petitioner's Urgent Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment. It argued that "there was no intentional delay on the part of the Office of the Ombudsman in the conduct of the preliminary investigation[,] neither was the proceeding attended by vexatious, capricious or oppressive delays [as] to prejudice the[petitioner] in her right to speedy disposition of her case."<sup>[22]</sup>

### ***Ruling of the Sandiganbayan***

On August 28, 2012, the Sandiganbayan issued its first assailed Resolution denying Petitioner Perez's Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment for lack of merit.

While the Sandiganbayan agreed with petitioner Perez that the Constitution guarantees her right to due process and speedy disposition of her case, however, it found that based on the circumstances obtaining in this case, both the OPP-Antique and the OMB-Visayas committed no violation of petitioner Perez's aforesaid rights. The Sandiganbayan noted that although there was a long delay in the preliminary investigation of the case starting from the OPP-Antique, the record does not show that petitioner Perez had ever asserted her right to the speedy resolutions of the said preliminary investigation by following it up after she submitted her counter-affidavit or by filing any motion for the early resolution of the same both before the OPP Antique and OMB-Visayas. It was only after the arraignment was set on July 5, 2012 that petitioner Perez filed a Motion for Reconsideration raising delay in the conduct of the preliminary investigation. Having slept on her right to speedy disposition of her case for an unreasonable and unexplained length of time, the Sandiganbayan ruled that petitioner Perez cannot now invoke violation of such right to justify the dismissal of the case as her inaction was tantamount to the waiver of her right.

As to the contention of petitioner Perez that the proceeding in this case should be deferred because of the pendency of the Motion for Reconsideration before the OMB-Visayas, the Sandiganbayan ruled that the filing of the Information with the Court on May 24, 2012 did not affect the validity of the Information as it did not deprive her of her right to seek reconsideration of the said Resolution. Moreover, the only requirement under Section 7(a), Rule II of the Rules of Procedure of the OMB

(Administrative Order No. 07, as amended) is that the Motion for Reconsideration should be filed within five (5) days from notice thereof with the OMB, or the Deputy Ombudsman as the case may be, with the corresponding leave of court in cases where the Information has already been filed in court. The prosecution alleged that petitioner Perez failed to comply with the said requirement when she filed her motion for reconsideration on the 21<sup>st</sup> day from receipt of the September 11, 2011 Review of the Resolution date August 6, 2009. However, petitioner Perez argued that her Motion for Reconsideration was filed within the period required by law. At any rate, Section (b), Rule II of the Rules of Procedure of the OMB also provides that the "filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion."

In the end, the Sandiganbayan ruled:

**WHEREFORE**, in light of all the foregoing, the accused's *Urgent Motion to Dismiss With Notice of Entry of Appearance and Prayer for Deferment of Arraignment*, dated July 2, 2012, is hereby **DENIED** for lack of merit.

The arraignment of the accused is hereby set on September 27, 2012 at 8:30 in the morning.

SO ORDERED.<sup>[23]</sup>

Aggrieved, petitioner Perez filed a Motion for Reconsideration of the above Resolution of the Sandiganbayan which was opposed by the prosecution for being a reiteration of her arguments in her previous motion.<sup>[24]</sup>

In its Resolution<sup>[25]</sup> dated October 10, 2012, the Sandiganbayan denied petitioner Perez's Motion for Reconsideration on the ground that the arguments set forth therein were a mere rehash or reiteration of the arguments in her Urgent Motion to Dismiss, and Reply which the Court had already judiciously considered and passed upon, except for the issue that the Information was filed by the Investigating Prosecutor without the prior written authority or approval of the Provincial or City Prosecutor or Chief State Prosecutor or the Ombudsman or his Deputy.

Hence, this Petition for *Certiorari*.

Petitioner Perez seeks to reverse and set aside the August 28, 2012 and October 10, 2012 Resolutions of the Sandiganbayan on the ground that said court gravely abused its discretion when it refused: 1) to defer the proceeding in the criminal case in light of the pending Motion for Reconsideration filed before the OMB-Visayas; 2) to dismiss the criminal case despite the fact that an Information was filed without proper authority; and 3) to dismiss the criminal case despite the fact that there was undue and unjustifiable delay in the resolution of the said case by the OMB-Visayas in grave violation of her constitutional right to due process and speedy disposition of the case against her.

Petitioner Perez maintains that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to defer the proceeding in this case due to the pending Motion for Reconsideration before the OMB.

We hold otherwise.

The issue raised by petitioner has already been addressed by the Court in *Garcia v. Sandiganbayan*<sup>[26]</sup> where We held:

From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it. Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest, HDOs and other processes that it deems warranted under the circumstances.

In this case, the Sandiganbayan acted within its jurisdiction when it issued the HDOs against the petitioner. *That the petitioner may seek reconsideration of the finding of probable cause against her by the OMB does not undermine nor suspend the jurisdiction already acquired by the Sandiganbayan. There was also no denial of due process since the petitioner was not precluded from filing a motion for reconsideration of the resolution of the OMB. In addition, the resolution of her motion for reconsideration before the OMB and the conduct of the proceedings before the Sandiganbayan may proceed concurrently.*

Moreover, the Rules of Procedure of the Office of the Ombudsman expressly provides that the filing of motion of reconsideration does not prevent the filing of information. Section 7, Rule II of Administrative Order No. 07 reads:

#### Section 7. Motion for reconsideration

- a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;
- b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2000) x x x

As can be understood from the foregoing, an information may be filed even before the lapse of the period to file a motion for reconsideration of the finding of probable cause. The investigating prosecutor need not wait until the resolution of the motion for reconsideration before filing the information with the Sandiganbayan especially that his findings and recommendation already carry the stamp of approval of the Ombudsman. In any case, the continuation of the proceedings is not