

FIRST DIVISION

[G.R. No. 194159, October 21, 2015]

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
PETITIONER, VS. MA. MERCEDITAS NAVARRO-GUTIERREZ (AS
THEN OMBUDSMAN), DON M. FERRY, JOSE R. TENGCO, JR.,
ROLANDO M. ZOSA, CESAR C. ZALAMEA, OFELIA I. CASTELL, AND
RAFAEL A. SISON, PUBLIC RESPONDENTS, RODOLFO M. CUENCA,
MANUEL I. TINIO, AND ANTONIO R. ROQUE, PRIVATE
RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition for *certiorari*^[1] assailing the Resolution^[2] dated May 30, 2007 and the Order^[3] dated April 13, 2009 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-03-0500-I, which dismissed the affidavit-complaint^[4] of petitioner Presidential Commission on Good Government (PCGG) charging individual respondents Don M. Ferry (Ferry), Jose R. Tengco, Jr. (Tengco), Rolando M. Zosa (Zosa), Cesar C. Zalamea (Zalamea), Ofelia I. Castell (Castell), Rafael A. Sison (Sison), Rodolfo M. Cuenca (Cuenca), Manuel I. Tinio (Tinio), and Antonio R. Roque (Roque) for allegedly violating Sections 3 (e) and (g) of Republic Act No. (RA) 3019,^[5] for lack of probable cause.

The Facts

The instant case arose from an Affidavit-Complaint^[6] dated July 15, 2003 filed by the PCGG - through Rene B. Gorospe, the Legal Consultant in-charge of reviewing behest loan cases - against former officers/directors of the Development Bank of the Philippines (DBP), namely, Ferry, Tengco, Zosa, Zalamea, Castell, and Sison, as well as former officers/stockholders of National Galleon Shipping Corporation (Galleon),^[7] namely, Cuenca, Tinio, and Roque charging them of violating Sections 3 (e) and (g) of RA 3019. In the Affidavit-Complaint, the PCGG alleged that on October 8, 1992, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 13,^[8] creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans (*Ad Hoc* Committee) in order to identify various anomalous behest loans entered into by the Philippine Government in the past. Later on, President Ramos issued Memorandum Order No. 61^[9] on November 9, 1992, laying down the criteria which the Ad Hoc Committee may use as a frame of reference in determining whether or not a loan is behest in nature. Thereafter, the *Ad Hoc* Committee, with the assistance of a Technical Working Group (TWG) consisting of officers and employees of different government financial institutions (GFIs), examined and studied documents relative to loan accounts extended by GFIs to various corporations during the regime of the late President Ferdinand E. Marcos (President Marcos) -one of which is the loan account granted by the DBP to Galleon.^[10]

After examining the aforesaid loan account, the TWG found, *inter alia*, that: (a) on September 19, 1979, DBP, pursuant to its Board Resolution No. 3002,^[11] approved guarantees in favor of Galleon in the aggregate amount of US\$90,280,000.00 for the purpose of securing foreign currency borrowings from financial institutions related to Galleon's acquisition of five (5) brand new and two (2) secondhand vessels;^[12] (b) Board Resolution No. 3002 specifically stated that such accommodation "shall be undertaken at the behest of the Philippine Government;"^[13] (c) as a condition for the grant of the guarantees, Board Resolution No. 3002 required Galleon to raise its paid up capital to P98.963 Million by 1981,^[14] but Galleon was only able to raise its capital to P46,740.755.00;^[15] (d) despite Galleon's failure to comply with such condition, DBP still granted the guarantees; (e) as of June 30, 1981, Galleon's arrearages had already amounted to P40,684,059.37, while the aggregate DBP obligations of Galleon already totaled P691,058,027.92;^[16] (f) despite the outstanding debts, DBP still issued Board Resolution Nos. 4008^[17] and 3001,^[18] approving further accommodations in Galleon's favor in the form of one-year foreign currency loans to refinance the latter's arrearages, which amounted to P58,101,718.89 as of September 30, 1982;^[19] (g) despite Galleon's arrearages amounting to P128,182,654.38 and obligations accumulating to P904,277,536.96, DBP still approved the release of Galleon's two (2) secondhand vessels as collaterals resulting in collateral deficiency;^[20] and (h) as of March 31, 1984, Galleon's total obligations to DBP amounted to P2,039,284,390.85, while the value of its collaterals was only P539,000,000.00.^[21] These findings were then collated in an Executive Summary^[22] which was submitted to the *Ad Hoc* Committee.

Based on the foregoing, the *Ad Hoc* Committee concluded that the loans/accommodations obtained by Galleon from DBP possessed positive characteristics of behest loans, considering that: (a) Galleon was undercapitalized; (b) the loan itself was undercollateralized; (c) the major stockholders of Galleon were known to be cronies of President Marcos; and (d) certain documents pertaining to the loan account were found to bear "marginal notes" of President Marcos himself.^[23] Resultantly, the PCGG filed the instant criminal complaint against individual respondents, docketed as OMB-C-C-03-0500-I.

Except for Roque, Zalamea, Tengco, and Castell, the other individual respondents impleaded in the affidavit-complaint did not file their respective counter-affidavits despite due notice.^[24]

In his defense,^[25] Roque denied being a Marcos crony, and averred that he was only a minor shareholder of Galleon and that he was in no position to influence the DBP in extending the subject loan to Galleon.^[26] For his part,^[27] Zalamea maintained that he had no participation or hand in the subject loan transactions as he joined the DBP as Chairman only in 1982, while the execution of the transactions pertaining to such loan was done in 1979-1981, and that the criminal charges against them are barred by prescription since it had been more than 20 years before the complaint against them was filed on July 15, 2003.^[28] Similarly, Tengco also argued^[29] that the criminal charges against them had already prescribed. He also

contended that his participation in the approval of the subject loan was at the board level only and was done in the exercise of his sound business judgment through the collective act of the DBP Board of Directors.^[30] Finally, Castell pleaded^[31] that her role in the handling of the projects and transactions of Galleon involved only the supervision of employees, but with no approving authority for matters like those involving the transactions pertaining to the subject loan obtained by Galleon from DBP.^[32]

The Ombudsman Ruling

In a Resolution^[33] dated May 30, 2007, the Ombudsman found no probable cause against private respondents and, accordingly, dismissed the criminal complaint against them.^[34] It found that the pieces of evidence attached to the case records were not sufficient to establish probable cause against the individual respondents, considering that the documents presented by the PCGG consisted mostly of executive summaries and technical reports, which are hearsay, self-serving, and of little probative value.^[35] In this relation, the Ombudsman noted that the PCGG failed to present "the documents which would directly establish the alleged illegal transactions like, the Loan Agreement between DBP and [Galleon], the approved Board Resolutions by the DBP officers/board of directors, the participation/voting that transpired at the board meetings wherein the alleged behest loans were granted."^[36]

Aggrieved, the PCGG moved for reconsideration,^[37] which was, however, denied in an Order^[38] dated April 13, 2009; hence, this petition.^[39]

The Issue Before the Court

The issue raised for the Court's resolution is whether or not the OMB gravely abused its discretion in finding no probable cause to indict respondents of violating Sections 3 (e) and (g) of RA 3019.

The Court's Ruling

The petition is meritorious.

At the outset, it must be stressed that the Court has consistently refrained from interfering with the discretion of the Ombudsman to determine the existence of probable cause and to decide whether or not an Information should be filed. Nonetheless, the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.^[40] The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[41] The Court's pronouncement in *Ciron v. Gutierrez*^[42] is instructive on this matter, to wit:

xxx **this Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy 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.** 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.^[43] (Emphasis and underscoring in the original)

In this regard, it is worthy to note that the conduct of preliminary investigation proceedings - whether by the Ombudsman or by a public prosecutor - is geared only to determine whether or not probable cause exists to hold an accused-respondent for trial for the supposed crime that he committed. In *Fenequito v. Vergara, Jr.*,^[44] the Court defined probable cause and the parameters in finding the existence thereof in the following manner, to wit:

Probable cause, for the purpose of filing a criminal information, has been defined as **such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.** The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. **Probable cause does not require an inquiry whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.**

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. **It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.** In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. **What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.**^[45] (Emphases and underscoring supplied)

Verily, preliminary investigation is merely an inquisitorial mode of discovering

whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction.^[46] "[A preliminary investigation] is not the occasion for the full and exhaustive display of [the prosecution's] evidence. The presence and absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits."^[47] Hence, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."^[48]

Guided by the foregoing considerations, the Court finds that the Ombudsman gravely abused its discretion in dismissing the criminal complaint against individual respondents for lack of probable cause, as will be explained hereunder.

As already stated, individual respondents were accused of violating Section 3 (e) of RA 3019, the elements of which are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.^[49] In the same vein, they were likewise charged with violation of Section 3 (g) of the same law, which has the following elements: (a) that the accused is a public officer; (b) that he entered into a contract or transaction on behalf of the government; and (c) that such contract or transaction is grossly and manifestly disadvantageous to the government.^[50] Notably, private individuals may also be charged with violation of Section 3 (g) of RA 3019 if they conspired with public officers.^[51]

A review of the records of the case reveals that Galleon made a request for guarantees from DBP to cover its foreign borrowings for the purpose of acquiring new and secondhand vessels. In an evaluation memorandum^[52] dated August 27, 1979, the DBP itself already raised various red flags regarding Galleon's request, such as the following: (a) its guarantee accommodation request covers 100% of its project cost, which is in excess of DBP's normal practice of financing only 80% of such cost; (b) its net profit margin was experiencing a steady decrease due to high operating costs; (c) its paid-up capital is only P9.95 Million; and (d) aside from its proposal to source the increase in equity from the expected profits from the operations of the vessels to be acquired, Galleon has not shown any concrete proof on how it will be funding its equity build-up.^[53] Despite the foregoing, DBP still agreed to grant Galleon's request under certain conditions (e.g., increase in paid-up capital, placement of adequate collaterals), which were eventually not complied with. Further, when Galleon's arrearages and obligations skyrocketed due to its failure to service its debts, DBP, instead of securing its interest by demanding immediate payment or the foreclosure of the collaterals, granted Galleon further accommodations in the form of foreign currency loans and release of certain collaterals. As a result of the foregoing, among other things, Galleon's total obligations to DBP ballooned all the way to P2,039,284,390.85, while the collaterals securing such obligations were only valued at P539,000,000.00 as of March 31,