746 PHIL. 995

# THIRD DIVISION

# [ G.R. No. 206357, November 25, 2014 ]

## PRESIDENTIAL COMMISISON ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. THE HONORABLE OMBUDSMAN CONCHITA CARPIO-MORALES, GREGORIO S. LICAROS, GAUDENCIO BEDUYA, JOSE R. TENGCO, JR., JOSE S. ESTEVES, PLACIDO T. MAPA, JR., JULIO V. MACUJA, VICENTE PATERNO, RAFAEL A. SISON, ROBERTO V. ONGPIN, ALICIA LL. REYES, FORMER MEMBERS OF THE BOARD OF GOVERNORS OF THE DEVELOPMENT BANK OF THE PHILIPPINES (DBP), RODOLFO M. CUENCA, EDILBERTO M. CUENCA, JOSE Y. VILLONGCO, RODOLFO B. SANTIAGO, AURELIO Y. BAUTISTA, GENOVEVA L. BUENO, BIENVENIDO D. CRUZ, ROMEO R. ECHAUZ, JORGE W. JOSE, LEONILO M. OCAMPO, ANTONIO P. SAN JUAN, JR., CLARENCIO S. YUJIOCO, ALL OFFICERS OF RESORTS HOTELS CORPORATION, RESPONDENTS.

## D E C I S I O N

**VELASCO JR., J.:**

### The Case

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking the annulment and setting aside of the Orders dated July 19, 2011 and March 8, 2012, rendered by the Office of the Ombudsman in OMB-C-C-03-0008-A, entitled *"Presidential Commission on Good Government (PCGG) v. Rodolfo Cuenca, et al."*

### The Facts

On October 18, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating a Presidential Ad-Hoc Fact-Finding Committee on Behest Loans (Ad Hoc Committee). A few months later, President Ramos issued Memorandum Order No. 61 prescribing certain criteria to be used by the Ad Hoc Committee as a guide in investigating and studying loans granted by government financing institutions that amount to behest loans.

One of the loan accounts referred to the Ad Hoc Committee for investigation was that of Resorts Hotel Corporation (RHC).

Incorporated in 1968 with a paid-up capital of P1.0 million, RHC was 37.2% owned by Rodolfo Cuenca, a known Marcos business associate. In 1969, RHC obtained a total of P9.7 million from DBP, allegedly to pay the balance of the purchase price of Baguio Pines Hotel and to construct an 8-storey building. In 1973, the loan was restructured and DBP granted a direct loan of P14.4 million and guaranteed another P11.2 million. In 1974, an additional loan of P8.9 million was granted to RHC for the

expansion of its hotel project, and P3.6 million for the cost of 10 luxury buses. In 1975, an additional loan of P27.8 million was again granted to RHC for another expansion project, and in 1977, it again obtained P11.3 million to refinance its unpaid obligations and partly to finance Taal Vista.

To secure the loans totaling P86.9 million, RHC offered as collaterals the assets that were acquired by these loans which included the Baguio Pines Hotel, Taal Vista Lodge, Hotel Mindanao and the luxury buses.

In 1980, 40% of the amount were converted into DBP's common shareholding in RHC, and the balance of P58.4 million was restructured. The properties were foreclosed in 1983 with arrearages of P1.97 million.

On the basis of the foregoing, the Ad Hoc Committee found that DBP's total exposure as of 1986 amounted to P99.1 million.[1]

Based on the above, the Ad Hoc Committee, on January 4, 1993, submitted a report to the President where it concluded that the RHC account qualifies as behest in character anchored on the following grounds:

> a) The loans are under collateralized;
>
> b) The borrower corporation is undercapitalized, for its paid-up capital amounted only to P10.3 million upon the approval of the loans which totaled to P99,133,765.14 in 1986;
>
> c) Stockholders and officers of the borrower corporation are identified as Marcos cronies; and
>
> d) As revealed by the marginal notes based on Hawaii documents on file with PCGG, it was found out that then- President Marcos owned 20% of the shares of stocks in RHC.

Agreeing that the said loans bear the characteristics of a behest loan on the basis of the said Committee Report, the Republic of the Philippines, represented by the PCGG, filed an Affidavit-Complaint on January 6, 2003 with the Office of the Ombudsman, against respondent directors and officers of RHC and the directors of DBP for violation of Sections 3(e) and 3 (g) of Republic Act (RA) No. 3019 or the Anti-Graft and Corrupt Practices Act.[2] Later, or on June 4, 2004, petitioner filed a Supplemental Complaint-Affidavit.[3]

In the questioned July 19, 2011 Order, the Ombudsman dismissed petitioner's Affidavit-Complaint for lack of jurisdiction. The *fallo* of the Order reads:

> *PREMISES CONSIDERED,* this complaint is *DISMISSED* for lack of jurisdiction inasmuch as only Private (sic) parties are charged due to the refusal of the Development (sic) Bank of the Philippines to furnish the [p]ertinent documents that will identify the public respondents Involved (sic).

Petitioner moved for reconsideration, arguing, among others, that the Ombudsman erred in dismissing its Affidavit-Complaint since its Supplemental Complaint-Affidavit enumerates the directors of DBP who conspired with herein private respondents in granting the behest loans subject of the case.

Acting on the motion, the Ombudsman, on March 8, 2012, issued the second assailed Order dismissing the complaint on the ground of prescription, effectively denying the motion for reconsideration.

In the said Order, the Ombudsman stated that:

> In as much as the record indicates that the instant complaint was filed with this office only on **6 January 2003**, or more than ten (10) years from the time the crimes were discovered on **4 January 1993**, the offenses charged herein had already prescribed. This office, therefore has no other recourse but to DISMISS the instant complaint.
>
> In light of the foregoing discussion, this Office sees no need to dispose of the other issues complainant raised in its Motion for Reconsideration.
>
> *WHEREFORE*, on account of prescription of the offenses charged, the criminal complaint for violation of Section 3 (e) and (g) of (sic) R.A. 3019 against respondents is hereby *DISMISSED.*
>
> *SO ORDERED.*

Aggrieved, petitioner seeks recourse from this Court, arguing that contrary to the decision of the Ombudsman, the offense has not yet prescribed. Petitioner insists that the prescriptive period should only commence to run on January 6, 2003 when it filed the Affidavit-Complaint with the Office of the Ombudsman, and not on January 4, 1993 when the crimes were discovered. This argument, according to petitioner, is based on Section 2 of Act No. 3326[4] which states that "[prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment." Moreover, Section 11 of RA 3019 sets the prescription of offenses under said law at fifteen (15) years,[5] not ten (10) as held by the Ombudsman.

**The Issue**

Based on the above backdrop, the issue submitted for this Court's resolution is whether or not respondent Ombudsman committed grave abuse of discretion in dismissing the Affidavit-Complaint dated January 6, 2003 on the ground of prescription.

**Our Ruling**

The petition is without merit.

RA 3019, Section 11 provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of Batas Pambansa (BP) Blg. 195, which took effect on March 16, 1982. This does not mean, however, that the longer prescriptive period shall apply to all violations of RA 3019.

Following Our pronouncements in *People v. Pacificador*,[6] the rule is that "in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted." As such, the longer prescriptive period of 15 years pursuant to BP Big. 195 cannot be applied to crimes committed prior to the effectivity of the said amending law on March 16, 1982.

Considering that the crimes were committed in 1969, 1970, 1973, 1975, and 1977, the applicable prescriptive period thereon is the ten-year period set in RA 3019, the law in force at that time. What is, then, left for Our determination is the reckoning point for the 10-year period.

Notably, RA 3019 is silent as to when the period of prescription shall begin to run. This void, however, is remedied by Act No. 3326,[7] Section 2 of which provides in part:

> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment, xxx.

Based on the above, there are two reckoning points for the counting of the prescription of an offense: 1) the day of the commission of the violation of the law; and 2) if the day when the violation was committed be not known, then it shall begin to run from the discovery of said violation and the institution of judicial proceedings for investigation and punishment.

The first mode being self-explanatory, We proceed with Our construction of the second mode.

In interpreting the meaning of the phrase "if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation," this Court has, as early as 1992 in *People v. Duque,*[8] held that in cases where the illegality of the activity is not known to the complainant at the time of its commission, Act No. 3326, Section 2 requires that prescription, in such a case, would begin to run only from the discovery thereof, i.e. discovery of the unlawful nature of the constitutive act or acts.[9]

It is also in *Duque*[10] where this Court espoused the raison d'etre for the second mode. We said, "[i]n the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts."[11]

Further clarifying the meaning of the second mode, the Court, in *Duque*,[12] held that Section 2 should be read as "[prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and *until* the institution of judicial proceedings for its investigation and punishment."[13] Explaining the reason therefor, this Court held that a contrary interpretation would create the absurd situation where "the prescription period would both begin and be interrupted by the same occurrence; the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period."[14] Additionally, this interpretation is consistent with the second paragraph of the same provision which states that "prescription shall be interrupted when proceedings are instituted against the guilty person, [and shall] begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

Applying the same principle, We have consistently held in a number of cases, some of which likewise involve behest loans contracted during the Marcos regime, that the prescriptive period for the crimes therein involved generally commences from the discovery thereof, and not on the date of its actual commission.

In the 1999[15] and 2011[16] cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, the Court, in said separate instances, reversed the ruling of the Ombudsman that the prescriptive period therein began to run at the time the behest loans were transacted and instead, it should be counted from the date of the discovery thereof.

In the 1999 case, We recognized the impossibility for the State, the aggrieved party, to have known the violation of RA 3019 at the time the questioned transactions were made in view of the fact that the public officials concerned connived or conspired with the "beneficiaries of the loans." There, We agreed with the contention of the Presidential Ad Hoc Fact-Finding Committee that the prescriptive period should be computed from the discovery of the commission thereof and not from the day of such commission. It was also in the same case where We clarified that the phrase "if the same be not known" in Section 2 of Act No. 3326 does not mean "lack of knowledge" but that the crime "is not reasonably knowable" is unacceptable. Furthermore, in this 1999 case, We intimated that the determination of the date of the discovery of the offense is a question of fact which necessitates the reception of evidence for its determination.

Similarly, in the 2011 *Desierto* case, We ruled that the "blameless ignorance" doctrine applies considering that the plaintiff therein had no reasonable means of knowing the existence of a cause of action.[17] In this particular instance, We pinned the running of the prescriptive period to the completion by the Presidential Ad Hoc Fact-Finding Committee of an exhaustive investigation on the loans. We elucidated that the first mode under Section 2 of Act No. 3326 would not apply since during the Marcos regime, no person would have dared to question the legality of these transactions.[18]

Prior to the 2011 Desierto case came Our 2006 Resolution[19] in *Romualdez v. Marcelo*,[20] which involved a violation of Section 7 of RA 3019. In resolving the