

THIRD DIVISION

[G.R. No. 170046, December 10, 2014]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. MAXIMO A. BORJE, JR., BURT B. FAVORITO, FLORENDO B. ARIAS, ERDITO Q. QUARTO, AGERICO C. PALAYPAY, NAPOLEON S. ANAS, DANILO C. PLANTA, LUISITO S. DELA ROSA, ROGELIO L. BERAY, NORMA A. VILLARMINO, RICARDO M. JUAN, JR., NELSON UMALI, MARIA LUISA T. CRUZ, MELISSA T. ESPINA, VIOLETA R. TADEO, JESSICA J. CATIBAYAN, VIOLETA C. AMAR, RONALDO G. SIMBAHAN, FELIPE A. SAN JOSE, ROLANDO C. CASTILLO, CONCHITA N. DELA CRUZ, JANETTE A. BUGAYONG, JESUS D. CAPUZ, RODELIA R. UY, ROMEO C. FULLIDO, NONETTE H. FULLIDO, VICTORIA M. GO, CARMELITO V. EDEM, AUGUSTO C. CAPUZ,+ VICENTE SANTOS, JR., JOHN DOES AND JANE DOES, AND THE SANDIGANBAYAN (SECOND DIVISION),
RESPONDENTS.**

DECISION

PERALTA, J.:

Before the Court is a petition for review under Rule 45 of the Rules of Court seeking to reverse and set aside the Resolutions dated January 20, 2005^[1] and October 12, 2005^[2] of the Sandiganbayan in Criminal Case No. 27969 dismissing the same for lack of probable cause for the crime of plunder without prejudice to the filing of appropriate charges against respondents.

The factual antecedents follow.

On January 9, 2002, the Secretary of the Department of Public Works and Highways (DPWH), Simeon Datumanong, issued Department Order No. 15, Series of 2002, creating a committee for the purpose of investigating alleged anomalies and illegal disbursements in connection with the repair of DPWH-owned motor vehicles and equipment.^[3] As a result of the investigation, it was discovered that during the period of March 2001 to December 2001, the emergency repairs conducted on hundreds of DPWH vehicles, approved and paid for by the government, did not actually take place, resulting in the loss of about One Hundred Thirty-Nine Million Pesos (P139,000,000.00).^[4]

On August 7, 2002, Atty. Irene D. Ofilada, of the Internal Audit Service of the DPWH and member of the committee, filed with the Office of the Ombudsman a criminal complaint for violation of Section 3(e)(g) of Republic Act (RA) No. 3019, as amended, in relation to Sections 20 and 9 of the General and Special Provisions, respectively, of the General Appropriations Act, Memorandum of the Secretary on the Guidelines on Purchases of Spare Parts and Repair of Vehicles dated July 19, 1997, Department Order No. 33, Series of 1988 of RA 6770, as amended by RA No.

3018, COA Circular 85-55 A, Series of 1985, COA Circular 76-412, Series of 1976 on splitting of RSE, PO, vouchers and payrolls, against the several officials/employees of the DPWH, including respondents herein.^[5]

On March 1, 2004, the Special Prosecution Officer, Humphrey T. Monteroso, of the Office of the Special Prosecutor of the Office of the Ombudsman, filed an Information^[6] with respondent Sandiganbayan accusing Maximo A. Borje, Jr., Burt B. Favorito, Florendo B. Arias, Erdito Q. Quarto, Agerico C. Palaypay, Napoleon S. Anas, Danilo C. Planta, Luisito S. Dela Rosa, Rogelio L. Beray, Norma A. Villarmino, Ricardo M. Juan, Jr., Nelson Umali, Maria Luisa T. Cruz, Melissa T. Espina, Violeta R. Tadeo, Jessica J. Catibayan, Violeta C. Amar, Ronaldo G. Simbahan, Felipe A. San Jose, Rolando C. Castillo, Conchita N. Dela Cruz, Janette A. Bugayong, Jesus D. Capuz, Rodellia D. Uy, Romeo C. Fullido, Nonette H. Fullido, Victoria M. Go, Carmelito V. Edem, Augusto C. Capuz, Vicente Santos, Jr., of the crime of Plunder defined and penalized under RA No. 7080, as amended, committed as follows:

That during the period from March to December, 2001, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **MAXIMO BORJE, JR. y AQUINO**, a public officer, being then the Chief of the Motorpool Section of the Department of Public Works and Highways, Port Area, Manila, by himself and in connivance/conspiracy with his co-accused **BURT FAVORITO y BARBA, FLORENDO ARIAS y BUÑAG, ERDITO QUARTO y QUIAOT, AGERICO PALAYPAY y CORTES, NAPOLEON ANAS y SEBASTIAN, DANILO PLANTA y CALUYA, LUISITO S. DELA ROSA, ROGELIO BERAY y LAGANGA, NORMA VILLARMINO y AGCAOILI, RICARDO M. JUAN, JR., NELSON UMALI, MARIA LUISA CRUZ y TALAO, MELISSA ESPINA y TANGPUZ, VIOLETA TADEO y RAGASA, JESSICA CATIBAYAN y JARDIEL, VIOLETA AMAR y CASTILLO, RONALDO G. SIMBAHAN, FELIPE A. SAN JOSE, ROLANDO C. CASTILLO, and JOHN DOES and JANE DOES**, who are his officemates being likewise officials and employees of the Department of Public Works and Highways (DPWH), two of whom are **high ranking public officers, namely: BURT FAVORITO y BARBA**, Director III, Administrative and Manpower Management Services [**Salary Grade 27**] and **FLORENDO ARIAS y BUÑAG**, Assistant Director, Bureau of Equipment [**Salary Grade 27**], and in further connivance/conspiracy with his other co-accused private individuals engaged in the business of motor vehicle and spare parts supply, namely: **CONCHITA N. DELA CRUZ, JANETTE A. BUGAYONG, JESUS D. CAPUZ, RODELLIA UY y DEL ROSARIO, ROMEO C. FULLIDO, NONETTE H. FULLIDO, VICTORIA GO y MANIEGO, CARMELITO EDEM y VARGAS, AUGUSTO CAPUZ y CO, VICENTE SANTOS, JR.**, as well as other JOHN DOES and JANE DOES, with evident bad faith and intent to defraud and cause damage to the government, and taking undue advantage of his official position, authority, connection or influence as such public officer, did then and there, wilfully, unlawfully, and criminally, amass, accumulate and acquire, by himself, ill-gotten wealth in the aggregate amount of **EIGHTY-TWO MILLION THREE HUNDRED TWENTY-ONE THOUSAND EIGHT HUNDRED FIFTY-FIVE AND 38/100 PESOS (P82,321,855.38)**, more or less, thereby

unjustly enriching himself at the expense and to the damage of the Filipino People and the Republic of the Philippines in the aforestated amount, through a series and/or combination of overt or criminal acts or similar schemes or means, consisting of misappropriations, conversions, misuses, diversions and/or malversation of public funds and/or raids on the public treasury, by means of false pretenses and fraudulent acts executed prior to, or simultaneously with, the fraud, by falsifying public, officials and/or commercial documents, such as Job Orders, Pre-Repair Inspection Reports, Post-Repair Inspection Reports, Requisition for Supplies and/or Equipment (RSE), Certificates of Emergency Purchases/Repair, Waste Material Reports, Certificate of Acceptance, Certificates of Fair Wear and Tear, Price Verifications, Requests for Obligation Allotment and Disbursement Vouchers, and such other falsified documents, untruthfully narrating therein material facts on fictitious emergency repairs of various DPWH vehicles and/or ghost purchases of spare parts, which are, in truth, imaginary or spurious transactions, and by using such falsified documents of said imaginary or spurious transactions for said accused to unlawfully cause the undue releases of public funds and obtain undue payments on 4,406 transactions, more or less, for said fictitious emergency repairs of DPWH vehicles and/or ghost purchases of spare parts, thereby misappropriating, converting, misusing, diverting and/or malversing the proceeds thereof for **MAXIMO BORJE, JR. y AQUINO's** personal use and benefit.

Thereafter, respondents filed their responsive pleadings essentially assailing the Ombudsman's finding of probable cause. On March 19, 2004, the Sandiganbayan issued an Order^[7] giving respondents a period within which to submit their memoranda of authority. In its Omnibus Comment/Opposition^[8] of even date, petitioner questioned the authority of the Sandiganbayan to act on respondents' motions, arguing that the same had not yet acquired jurisdiction over the persons of the respondents and, hence, it had no authority to hear and decide their motions. Petitioner also alleged that it successfully established probable cause justifying the issuance by the respondent court of a warrant of arrest.

On January 20, 2005, respondent Sandiganbayan issued the assailed Resolution^[9] upholding its authority to act on respondents' motions for their filing of the same may be considered as voluntary submission to the jurisdiction of the court and dismissing the case for lack of probable cause for the crime of plunder without prejudice to the filing of appropriate charges against the accused-respondents. It ruled that as the records reveal, not all elements of the crime are present for the accused Borje had not amassed ill-gotten wealth of at least P50 million. It further denied petitioner's Motion for Reconsideration in its Resolution^[10] dated October 12, 2005 for lack of merit.

Hence, the instant petition invoking the following grounds:

I.

THE EXECUTIVE FUNCTION OF DETERMINING THE EXISTENCE OF PROBABLE CAUSE FOR THE FILING OF AN INFORMATION IS VESTED

SOLELY IN THE PROSECUTION.

II.

THE OFFICE OF THE OMBUDSMAN IS NOT BOUND BY THE FINDINGS OF ADMINISTRATIVE BODIES IN ITS DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE FOR THE FILING OF A CRIMINAL CASE.

Petitioner maintains that the preliminary investigation conducted by the Office of the Ombudsman is an executive, not a judicial function. As such, it asserts that respondent Sandiganbayan should have given deference to the finding and determination of probable cause in their preliminary investigation. Moreover, petitioner faulted the respondent court for taking into consideration the findings of Atty. Irene Ofilada of the Investigating Committee that it was not respondent Borje who encashed the checks but the respondent-suppliers, by virtue of a blanket authority given by the former to the latter. It posits that said findings cannot bind the Office of the Ombudsman in its determination of the existence of probable cause.

Respondents counter that the respondent court correctly dismissed the case for the evidence clearly shows the absence of certain elements of the crime. They maintain that while investigating officers have a wide latitude of discretion in the determination of probable cause, which deserves respect from the courts, the acts of the Ombudsman in disregarding essential pieces of evidence are tantamount to an abuse of discretion authorizing the dismissal by the court of the case.

We rule in favor of petitioner.

It is well to recall that there are two kinds of determination of probable cause: executive and judicial. On the one hand, executive determination of probable cause ascertains whether a criminal case must be filed in court.^[11] It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and should be held for trial.^[12] On the other hand, judicial determination of probable cause ascertains whether a warrant of arrest should be issued against the accused. It is one made by a judge who must satisfy himself that based on the evidence presented, there is necessity in placing the accused under custody so that the ends of justice will not be frustrated.^[13]

Verily, as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Office of the Ombudsman, which is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.^[14]

It is well settled that courts do not interfere with the discretion of the Ombudsman to determine the presence or absence of probable cause believing that a crime has been committed and that the accused is probably guilty thereof necessitating the filing of the corresponding information with the appropriate courts.^[15] This rule is