

## SECOND DIVISION

[ G.R. No. 169253, February 20, 2013 ]

**PACIFICO C. VELASCO, PETITIONER, VS. THE HON.  
SANDIGANBAYAN (FIFTH DIVISION) AND THE PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**PEREZ, J.:**

In this petition for *certiorari* under Rule 65 or the Rules of Court, petitioner alleges grave abuse of discretion on the part of the Fifth Division of the Sandiganbayan for issuing the Resolution<sup>[1]</sup> dated 9 June 2005 denying his motion for reinvestigation and the subsequent Resolution<sup>[2]</sup> dated 15 August 2005, denying his motion for reconsideration in Criminal Case No. 28097.

The antecedents follow.

Philip Corpus Velasco, then Mayor of the Municipality of Bacarra in Ilocos Norte, filed an Affidavit-Complaint against his predecessor, petitioner Pacifico C. Velasco, containing the following pertinent allegations:

1. On 21 September 1998, the Sangguniang Bayan of Bacarra passed Resolution No. 98-065 entitled "RESOLUTION GRANTING AUTHORITY TO THE LOCAL CHIEF EXECUTIVE, HON. PACIFICO C. VELASCO TO PURCHASE ONE (1) UNIT ROAD GRADER-KOMATZU G-D 31 TO BE USED BY THE MUNICIPALITY OF BACARRA FOR THE MAINTENANCE OF MUNICIPAL AND BARANGAY ROADS", the dispositive portion of which reads as follows, to wit:

x x x

"HEREBY RESOLVED to grant authority to the Local Chief Executive, Hon. Pacifico C. Velasco to purchase one (1) unit of Road Grader-KOMATZU GD 31 to be used by the Municipality of Bacarra for the maintenance of municipal and barangay roads."

x x x

x x x x

2. Shortly thereafter, on 20 October 1998, a Disbursement Voucher was issued in favor of PACIFICO C. VELASCO for the amount of P670,000.00 "To cash advance the amount of SIX HUNDRED SEVENTY THOUSAND PESOS (P670,000.00) for the purchase of one

(1) Road Grader to be used by municipality per L[BP] Check No. 106353 dated 10-13-98. x x x.

3. After the election of May 14, 2001, and after the turn-over, it was found out during the inventory of municipal properties that the Road Grader was nowhere to be found. x x x.

4. In fact, a Joint Certification was issued by the Office of the Treasurer that there was NO ROAD GRADER-KOMATZU GD 30 (sic) OWNED BY THE MUNICIPALITY OF BACARRA, x x x.

5. It was discovered later that sometime on 29 December 1998, PACIFICO C. VELASCO allegedly made a refund of the afore-stated amount to the Municipal Treasurer x x x.

x x x x

8. Despite the alleged refund made by PACIFICO C. VELASCO, he hired the services of a certain Bernardo J. Bernardo (sic) as Heavy Equipment Operator I, SG-4 on 16 August 2000, x x x.

9. Despite the alleged refund made by PACIFICO C. VELASCO, several Requests for Pre-Repair inspections, Job orders and corresponding Disbursement Vouchers were made for "repairs, spare parts, etc. of a Komatsu GD 30, Road Grader, x x x.

x x x x

17. From the foregoing statement of facts, as supported by documentary evidences, I am accusing former mayor Pacifico C. Velasco now Provincial Board Member of Ilocos Norte and the Municipal Treasurer of Bacarra, Ilocos Norte, Lorna S. Dumayag, for violation of the Anti-Graft Law and the Revised Penal Code as amended for using public funds in the amount of Six Hundred Seventy Thousand Pesos (P670,000.00) in the purchase of a Road Grader that [was] subsequently appropriated by former mayor Pacifico C. Velasco as his personal property.<sup>[3]</sup>

In his Counter-Affidavit, petitioner branded the filing of the Complaint as politically motivated. He admitted requesting for a cash advance from the municipality for the purpose of acquiring the road grader, which was subsequently utilized by the municipality to repair and maintain roads. When the expected funds from the national government were not released, petitioner was faced with the problem of liquidating said cash advance. Thus, he was forced to mortgage the road grader just so he could reimburse the municipality in the sum of P670,000.00. Petitioner justified the need for replacement of spare parts and/or necessary repairs to be paid out of municipal funds because the municipal government was using the road grader from October 1998 up to the end of his term in June 2001. He also defended the appointment of Bernardo Bernardino (Bernardino), who was initially employed as a casual employee and made permanent six (6) months later. According to petitioner, Bernardino was an all-around heavy equipment operator and was not solely assigned as operator of the subject road grader.<sup>[4]</sup>

On 11 December 2002, the Office of the Deputy Ombudsman for Luzon issued a Resolution dismissing the Complaint for lack of probable cause. Then Acting Mayor Nicomedes C. Dela Cruz (Acting Mayor Dela Cruz) moved for reconsideration on 15 October 2003. A Motion to Strike Out the Motion for Reconsideration was filed by petitioner for lack of *locus standi*.<sup>[5]</sup> In an Order dated 13 February 2004, the Office of the Deputy Ombudsman for Luzon denied the motion for reconsideration.

However, Deputy Ombudsman for the Military and Other Law Enforcement Offices (MOLEO), Orlando Casimiro, pursuant to the authority<sup>[6]</sup> given by Ombudsman Simeon Marcelo, directed the Office of Legal Affairs to review the case. On 8 July 2004, the Office of Legal Affairs recommended that petitioner be indicted for technical malversation. The Office of Legal Affairs found that while the *Sangguniang Bayan* authorized the purchase of a road grader, no sum was appropriated for its purchase. The source of the funding of the P670,000.00 cash advance came from the municipality's funds for personal services, which were originally appropriated for salaries of municipal employees.<sup>[7]</sup>

Upon receipt of the Memorandum-Resolution, petitioner filed an Omnibus Motion (Motion for Reconsideration with Prayer to Hold in Abeyance the Filing of Information) citing the failure of the 13 February 2004 Order to consider his Motion to Strike Out the Motion for Reconsideration filed by Acting Mayor Dela Cruz. Petitioner also argued that not all elements constitutive of technical malversation were present.

On 16 February 2005, the Office of the Special Prosecutor issued a Memorandum denying the Omnibus Motion. A revised/modified Information was filed with the Sandiganbayan charging petitioner of the crime of Illegal Use of Public Funds under Article 220 of the Revised Penal Code, committed, thus:

That on or about 20 October 1998 and sometime prior or subsequent thereto, in the Municipality of Bacarra, Ilocos Norte, Philippines, within the jurisdiction of this Honorable Court, the accused PACIFICO C. VELASCO, a high-ranking public official, being then the Mayor of the aforesaid municipality and as such is accountable for public funds received by or entrusted to him by reason of the duties of his office, while in the performance and taking advantage of his official and administrative functions, did then and there wilfully, unlawfully and feloniously apply or misapply the amount of SIX HUNDRED SEVENTY THOUSAND PESOS (P670,000.00), Philippine Currency, under his administration to a public use other than that for which such fund was originally appropriated by law or ordinance, when the accused cash advanced the said amount of SIX HUNDRED SEVENTY THOSUAND PESOS (P670,000.00) under Disbursement Voucher No. 101-98-10-037 which amount was appropriated or intended for the payment of personal services for the municipal employees of the local government of Bacarra, particularly for their salaries, 13<sup>th</sup> month pay and other benefits, and utilized the said amount to purchase one (1) unit road grader but was never recorded as property of the above-named Municipality, and thereafter, accused mortgaged said road grader to private individuals

without authority from the Sangguniang Bayan of Bacarra, Ilocos Norte, thereby resulting to the damage and embarrassment to the public service as the public was made to believe that the road grader purchased by the accused was public property for use of the municipal government and its constituent barangays.<sup>[8]</sup>

On 18 March 2005, petitioner moved for a reinvestigation of the case before the Sandiganbayan. According to petitioner, the Office of the Special Prosecutor, without conducting a preliminary investigation, indicted him not for the offense of which he was charged but for another offense, hence violating his right to due process.

On 9 June 2005, the Sandiganbayan issued a Resolution denying the motion for reinvestigation for lack of merit. The Sandiganbayan found that petitioner had already filed a motion for reconsideration assailing the 8 July 2004 Memorandum. The Sandiganbayan considered the filing of this motion for reconsideration as compliance with the due process requirement. The Sandiganbayan added that since petitioner had already filed a motion for reconsideration, he is no longer entitled to move for a second reconsideration pursuant to the Rules of Procedure of the Office of the Ombudsman which prohibits the filing of such motion. The Sandiganbayan refuted petitioner's claim that the offenses charged against him in the complaint are different from the offense charged in the information. The Sandiganbayan countered that the complaint and the information are based on substantially the same factual settings except that the respective designations are different.

On 15 August 2005, the Sandiganbayan issued a Resolution denying for lack of merit petitioner's motion for reconsideration.

Petitioner submits in support of his petition that:

THE RESPONDENT COURT ACTED WITHOUT JURISDICTION OR IN EXCESS THEREOF, OR AT THE VERY LEAST, GRAVELY ABUSED ITS DISCRETION, IN NOT ORDERING THE REINVESTIGATION OF THE CASE OR, TO BE MORE PRECISE, A PRELIMINARY INVESTIGATION, AFTER THE OFFICE OF THE SPECIAL PROSECUTOR FILED AN INFORMATION AGAINST THE HEREIN PETITIONER BASED ON A MOTION FOR RECONSIDERATION FILED, NOT BY THE COMPLAINANT THEREIN, BUT BY ANOTHER PERSON WHO IS NOT A PARTY AND THEREFORE, A STRANGER IN THE CASE, AND THEREAFTER, INSTEAD OF MERELY ACTING ONLY ON THE ISSUES AND GROUNDS RAISED IN THE SAID MOTION, THE OFFICE OF THE SPECIAL PROSECUTOR, WITHOUT CONDUCTING A PRELIMINARY INVESTIGATION ON THE PURPORTED OFFENSE OF WHICH THE HEREIN PETITIONER IS NOW INDICTED, ISSUED INSTEAD, THE MEMORANDUM DATED FEBRUARY 16, 2005, WHICH NOW INDICTS THE HEREIN PETITIONER NOT FOR THE OFFENSE OF WHICH HE IS CHARGED BUT FOR ANOTHER OFFENSE, THEREBY BLATANTLY VIOLATING THE PETITIONERS' SUBSTANTIAL RIGHT TO DUE PROCESS, RENDERING THE RESPONDENT COURT'S ASSAILED RESOLUTIONS AS NULL AND VOID.<sup>[9]</sup>

Petitioner, in the main, assails the denial of his motion for reinvestigation on two (2)