

## SECOND DIVISION

[ G.R. No. 185685, January 31, 2011 ]

### OFFICE OF THE OMBUDSMAN, PETITIONER, VS. NIETO A. RACHO, RESPONDENT.

#### DECISION

##### MENDOZA, J.:

This petition for review on certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court filed by the Office of the Ombudsman (*Ombudsman*) assails the February 21, 2008 Decision<sup>[2]</sup> and November 20, 2008 Resolution<sup>[3]</sup> of the Court of Appeals-Cebu (CA) in CA-G.R. CEB-SP No. 00694 which reversed and set aside the administrative aspect of the April 1, 2005 Joint Order<sup>[4]</sup> of the Office of the Ombudsman-Visayas.

The April 1, 2005 Joint Order of the Ombudsman found respondent Nieto A. Racho (*Racho*) guilty of dishonesty and ordered him dismissed from the service with forfeiture of all benefits and perpetual disqualification from public office. The assailed CA Decision, however, found Racho guilty of negligence only and reduced the penalty to suspension from office for six months, without pay.

From the records, it appears that DYHP Balita Action Team (*DYHP*), in a letter dated November 9, 2001, reported to Deputy Ombudsman for the Visayas, Primo Miro, a concerned citizen's complaint regarding the alleged unexplained wealth of Racho, then Chief of the Special Investigation Division of the Bureau of Internal Revenue (*BIR*), Cebu City.<sup>[5]</sup> To support the allegation, the complainant attached copies of bank certifications, all issued in June of 1999, by Metrobank Cebu (Tabunok Branch),<sup>[6]</sup> BPI Cebu (Mango Branch),<sup>[7]</sup> and PCI Bank (Magallanes Branch).<sup>[8]</sup> In total, Racho appeared to have an aggregate bank deposit of P5,798,801.39.

Acting on the letter, the Ombudsman launched a fact-finding investigation and directed the BIR to submit Racho's Statements of Assets, Liabilities and Net Worth (*SALN*) from 1995 to 1999. BIR complied with the order and gave copies of Racho's SALN. Soon, the Ombudsman found that Racho did not declare the bank deposits in his SALN, as mentioned in the DYHP's letter. Accordingly, the Ombudsman filed a Complaint for Falsification of Public Document under Article 171 of the Revised Penal Code (OMB-V-C-02-0240-E) and Dishonesty (OMB-V-A-02-0214-E) against Racho.

The Ombudsman, in its August 21, 2002 Memorandum, adopted the Final Evaluation Report<sup>[9]</sup> of Administrative Officer Elpidio Montecillo as the sworn complaint. Thereafter, Racho submitted his counter-affidavit attacking the procedural infirmities of the complaint against him.<sup>[10]</sup> At the scheduled clarificatory hearing, Racho invoked his right to remain silent. On January 02, 2003, Graft Prosecution Officer (*GPO*) Pio Dargantes did not give weight to the bank documents because they were mere photocopies. As a result, he dismissed the complaint for dishonesty (OMB-V-A-

02-214-E) due to insufficiency of evidence.<sup>[11]</sup>

On review, Director Virginia Palanca, through a memorandum dated May 30, 2003,<sup>[12]</sup> decreed that Racho's act of not declaring said bank deposits in his SALN, which were disproportionate to his and his wife's salaries, constituted falsification and dishonesty. She found Racho guilty of the administrative charges against him and imposed the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold public office.

Racho moved for reconsideration<sup>[13]</sup> but his motion was denied in an Order dated July 15, 2003.<sup>[14]</sup>

Racho appealed the said order of dismissal to the CA. On January 26, 2004, the CA reversed the Ombudsman's ruling and ordered the reinvestigation of the case.<sup>[15]</sup>

In compliance with the CA's decision, the Ombudsman reinvestigated the case. In his Comment,<sup>[16]</sup> Racho denied sole ownership of the bank deposits. In support of his position, he presented the Joint Affidavit<sup>[17]</sup> of his brothers and nephew, particularly Vieto, Dean and Henry Racho, allegedly executed on December 18, 2004. In the joint sworn statement, it was alleged that he and his siblings planned to put up a business and eventually established "*Angelsons Lending and Investors, Inc.*," a corporation registered<sup>[18]</sup> with the Securities and Exchange Commission (SEC) on April 30, 1999. To prove their agreement, Racho presented a Special Power of Attorney,<sup>[19]</sup> dated January 28, 1993, wherein his brothers and nephew designated him as the trustee of their investments in the business venture they were intending to put up and authorized him to deposit their money into his questioned bank accounts to defray business-related expenses. Racho averred that his wife also set up a small business named "*Nal Pay Phone Services*" registered under the Department of Trade and Industry (DTI) on April 30, 1999.<sup>[20]</sup>

On January 10, 2005, in its Reinvestigation Report, the Office of the Ombudsman-Visayas found no reason to deviate from its previous findings against Racho.<sup>[21]</sup> Thus, the Reinvestigation Report disposed:

With all the foregoing, undersigned finds no basis to change, modify nor reverse her previous findings that there is probable cause for the crime of FALSIFICATION OF PUBLIC DOCUMENT, defined and penalized under Article 171 of the Revised Penal Code, against respondent Nieto A. Racho for making untruthful statements in a narration of facts in his SALN. As there are additional facts established during the reinvestigation, re: failure of Mr. Racho to reflect his business connections, then the Information filed against him should be amended to include the same. Let this Amended Information be returned to the court for further proceedings.

SO RESOLVED.<sup>[22]</sup>

Racho filed a motion for reconsideration<sup>[23]</sup> but the Ombudsman denied it in its April 1, 2005 Joint Order.<sup>[24]</sup>

Racho elevated the case to the CA by way of a petition for review<sup>[25]</sup> under Rule 43 of the Rules of Court assailing the administrative aspect of the April 1, 2005 Joint Order of the Ombudsman-Visayas.

On February 21, 2008, the CA rendered the challenged decision. Citing *Pleyto v. Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG)*,<sup>[26]</sup> the CA opined that in charges of dishonesty "intention is an important element in its commission."<sup>[27]</sup> The CA ruled that Racho "never denied the existence of the bank accounts. Instead, he undertook to explain that those were not wholly owned by him and endeavored to secure and submit documentary evidence to buttress explanation. Judging from his conduct, there is want of intent to conceal information. Intent, as held in the *Pleyto* case, is essential to constitute dishonesty and without the intent to commit a wrong, the public officer is not dishonest, albeit he is adjudged to be negligent."<sup>[28]</sup>

Accordingly, the decretal portion of the CA decision reads:

WHEREFORE, the instant Petition for Review on the administrative aspect of Ombudsman Visayas JOINT ORDER dated April 1, 2005 is hereby GRANTED. The said JOINT ORDER, in so far as it affirmed the petitioner's guilt for dishonesty and imposed the penalty of dismissal with forfeiture of all benefits and perpetual disqualification to hold office is hereby REVERSED and SET ASIDE. Petitioner is adjudged GUILTY of NEGLIGENCE in accomplishing his Statement of Assets, Liabilities and Networth (SALN) and is ORDERED to be SUSPENDED FROM OFFICE WITHOUT PAY FOR A PERIOD OF SIX (6) MONTHS.<sup>[29]</sup>

The Ombudsman moved for reconsideration,<sup>[30]</sup> but the CA stood by its decision and denied said motion in its November 20, 2008 Resolution.<sup>[31]</sup>

Hence, this petition.

In its Memorandum,<sup>[32]</sup> the Office of the Ombudsman submits the following:

## **ISSUES**

### **I.**

**THE ACTIVE PARTICIPATION OF THE OFFICE OF THE OMBUDSMAN IN THE INSTANT CASE IS SANCTIONED BY THE MANDATE OF THE OFFICE AS AN "ACTIVIST WATCHMAN."**

### **II**

**THE HONORABLE COURT OF APPEALS' RELIANCE ON A**

**FICTITIOUS DOCUMENT WHOSE AUTHENTICITY HAS BEEN PUT TO QUESTION IN A SEPARATE CRIMINAL CASE PRESENTS AN EXCEPTION TO THE GENERAL RULE THAT AN APPEAL BY CERTIORARI UNDER RULE 45 SHOULD RAISE ONLY QUESTIONS OF LAW CONSIDERING THAT -**

**THE OFFICE OF THE OMBUDSMAN FOUND THE SPECIAL POWER OF ATTORNEY AND THE JOINT AFFIDAVIT OFFERED AS EVIDENCE BY RESPONDENT TO BE SPURIOUS, HOWEVER, THE HONORABLE COURT OF APPEALS WITHOUT RULING ON THE AUTHENTICITY OF THE SAME DOCUMENTS, RELIED ON THE SAME TO FIND RESPONDENT GUILTY ONLY OF NEGLIGENCE;**

**AND**

**THE COURT OF APPEALS' FINDING OF LACK OF INTENT ON THE PART OF RESPONDENT RACHO TO CONCEAL INFORMATION IS NOT BASED ON THE EVIDENCE**

**III**

**THE OFFICE OF THE OMBUDSMAN HAS REPEATEDLY RAISED THE SPURIOUS CHARACTER OF THE JOINT AFFIDAVIT AND SPECIAL POWER OF ATTORNEY BEFORE THE COURT OF APPEALS. THE COUNTER-AFFIDAVITS COUNTERING ITS AUTHENTICITY WAS SUBMITTED FOR THE FIRST TIME BEFORE THE COURT OF APPEALS, AND NOT BEFORE THIS HONORABLE COURT.**

**IV**

**THE DECISIONS, RESOLUTIONS AND ORDERS OF THE OFFICE OF THE OMBUDSMAN ARE IMMEDIATELY EXECUTORY EVEN PENDING APPEAL UNDER SECTION 7, RULE III OF THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, AS AMENDED; CONSEQUENTLY THE WRIT OF INJUNCTION EARLIER ISSUED SHOULD BE LIFTED.<sup>[33]</sup>**

The Ombudsman argues that the CA failed to see the discrepancies on Racho's Special Power of Attorney itself "such as a statement that the date of registration of the Nal Pay Phone Services was `last April 30, 1999,' when the Special Power of Attorney had been allegedly executed on 28 January 1993."<sup>[34]</sup> The Ombudsman insists that these inconsistencies should have alerted the CA to delve more deeply into the case and check if Racho's explanation through the supposed dubious documents should be given weight at all.<sup>[35]</sup>

#### **THE COURT'S RULING**

The Court finds merit in the petition.

As a general rule, only questions of law may be raised in a petition for review on certiorari because the Court is not a trier of facts.<sup>[36]</sup> When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) **When the findings of fact are conflicting;**
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
- (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>[37]</sup> [Emphasis supplied]

Undeniably, the findings of fact of the Ombudsman are different from those of the CA. Thus, the Court finds it necessary to take a second look at the factual matters surrounding the present case.

From the records, it is undisputed that Racho admitted the bank accounts, but explained that the deposits reflected therein were not entirely his. Racho proffered that some of the money came from his brothers and nephew as part of their contribution to the business that they had planned to put up. He presented a Special Power of Attorney (SPA), dated January 28, 1993, and Joint Affidavit of his siblings that echoed his explanation.

In the appreciation of the said documents, the Ombudsman and the CA took opposing views. The Ombudsman did not give weight to the SPA due to some questionable entries therein. The CA, on the other hand, recognized the fact that Racho never denied the existence of the bank accounts and accepted his