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FIRST DIVISION

[G.R. No. 135715, April 13, 2011]

PRESIDENTIAL AD HOC FACT- FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY MAGDANGAL B. ELMA, PCGG CHAIRMAN AND ORLANDO C. SALVADOR AS CONSULTANT OF THE TECHNICAL WORKING GROUP OF THE AD-HOC COMMITTEE, PETITIONERS, VS. HONORABLE ANIANO A. DESIERTO AS OMBUDSMAN, PANFILO O. DOMINGO, CONRADO S. REYES, ENRIQUE M. HERBOZA, MOHAMMAD ALI DIMAPORO, ABDULLAH DIMAPORO AND AMER DIANALAN, RESPONDENTS.

D E C I S I O N

PEREZ, J.:

This petition for review on *certiorari*[1] is one among the 17 cases filed before us by the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, charging public respondent Ombudsman Aniano A. Desierto (Ombudsman) for grave abuse of discretion, when, on the ground of prescription and insufficiency of evidence, he dismissed all of these cases then pending before him, including this case in OMB-0-97-1718.

The Facts

Respondents Mohammad Ali Dimaporo, Abdullah Dimaporo, and Amer Dianalan, were stockholders and officers of the Mindanao Coconut Oil Mills (MINCOCO), a domestic corporation established in 1974,[2] while respondents Panfilo O. Domingo, Conrado S. Reyes, Enrique M. Herboza, and Ricardo Sunga, were then officers of the National Investment and Development Corporation (NIDC).

On 10 May 1976, MINCOCO applied for a Guarantee Loan Accommodation with the NIDC for the amount of approximately P30,400,000.00, which the NIDC's Board of Directors approved on 23 June 1976.

The guarantee loan was, however, both undercapitalized and under-collateralized because MINCOCO's paid capital then was only P7,000,000.00 and its assets worth is P7,000,000.00.

This notwithstanding, MINCOCO further obtained additional Guarantee Loan Accommodations from NIDC in the amount of P13,647,600.00 and P7,000,000.00, [3] respectively.

When MINCOCO's mortgage liens were about to be foreclosed by the government banks due its outstanding obligations, Eduardo Cojuangco issued a memorandum dated 18 July 1983, bearing the late President Ferdinand E. Marcos' (President Marcos) marginal note, disallowing the foreclosure of MINCOCO's properties.[4] The

government banks were not able to recover any amount from MINCOCO and President Marcos' marginal note was construed by the NIDC to have effectively released MINCOCO, including its owners, from all of its financial liabilities.[5]

The above mentioned transactions, were, however, discovered only in 1992 after then President Fidel V. Ramos (President Ramos), in an effort to recover the ill-gotten wealth of the late President Marcos, his family, and cronies, issued Administrative Order No. 13[6] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans **(the Committee)**, with the Chairman of the Philippine Commission on Good Government (PCGG) as the Committee's head. The Committee was directed, *inter alia,* to inventory all behest loans, and identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for the granting of loans or who influenced the grant thereof.[7] Subsequently, then President Ramos issued Memorandum Order No. 61[8] outlining the criteria which may be utilized as a frame of reference in determining a behest loan, *viz:*

a. It is under-collateralized;
b. The borrower corporation is undercapitalized;
c. Direct or indirect endorsement by high government officials like presence of marginal note;
d. Stockholders, officers or agents of the borrower corporation are identified as cronies;
e. Deviation of use of loan proceeds from the purpose intended;
f. Use of corporate layering;
g. Non-feasibility of the project for which financing is being sought;
h. Extraordinary speed in which the loan release was made.

The Committee found that twenty-one (21) corporations, including MINCOCO, obtained behest loans. It claimed that the fact that MINCOCO was under-collateralized and undercapitalized; that its officers were identified as cronies; that the late President Marcos had marginal note, effectively waiving the government's right to foreclose MINCOCO's mortgage liens; and, that the Guarantee Loan Accommodation were approved in an extraordinary speed of one month, bore badges of behest loans.

Subsequently, the Committee filed with the Ombudsman a sworn complaint against MINCOCO's Officers and NIDC's Board of Directors for violation of Section 3(e) and (g) of Republic Act No. 3019,[9] as amended.

By Resolution dated 9 July 1998, the Ombudsman *motu prorio* dismissed the complaint on the grounds that, *first,* there was insufficient evidence to warrant the indictment of the persons charged; and, *second,* the alleged offenses had prescribed.[10] The Ombudsman explained:

> Being undercapitalized, standing alone is meaningless. The approval of the loans/guarantees was still based on sound lending practice, otherwise, MINCOCO would have been disqualified from obtaining the

same. If MINCOCO's equity was more than the amount of the loans, there was no need for it to obtain the latter.

Anent the claim that Mohammad Ali Dimaporo was a crony of the late President Marcos, no evidence was adduced to prove the same, hence, remains a bare allegation. x x x.

On the issue that the notation by President Marcos in the Memorandum of July 18, 1983 is a behest order, suffice it to state that these marginal notes, if they meant endorsement as defined under Memorandum Order No. 61, endorsed the recommendation regarding the mortgage liens of the government banks of the Mothballed Coconut Oil Mills and not the approval/grant of the loans/guarantees in 1976. **It is in effect approved the release of the liabilities of the former owners of coconut oil mills, one of which was MINCOCO,** but not the acquisition of the said loans/guarantees.

The take over of MINCOCO by UNICOM without the consent of NIDC is not a characteristic of a behest loan. **It is a mere violation of procedures that does not warrant a criminal action.**

x x x x

For the perpetration of the acts being complained of, the respondents are charged of violations of Sections 3(e) and (g) of Republic Act No. 3019. The instant case however will no longer prosper for the offenses have already **prescribed.**

Be it remembered that MINCOCO applied for and was granted loans/guarantees way back in 1976. Thus, these acts are governed by the law in force at the time of their commission, which is the old R.A. No. 3019 before its amendment by *Batas Pambansa Blg.* 195 in March 1982. Offenses perpetrated prior to the enactment of this latter law prescribed ten (10) years later. And since the case was filed against the herein respondents only in September 1997, the offenses have long prescribed in 1986.

Prescription commenced to run in 1976 when the assailed transaction happened. x x x.[11]

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court.[12]

The petitioner argued that the right of the State to recover behest loans as ill-gotten wealth is imprescriptible under Section 15, Article XI of the 1987 Constitution;[13] and, assuming that the period to file criminal charges herefore is subject to prescription, the prescriptive period should be counted from the time of discovery of behest loans or sometime in 1992 when the Committee was constituted.[14]

The Ombudsman, in his Comment, countered that his office has the discretionary power during preliminary investigation to determine the sufficiency of evidence for

indictment;[15] that it is beyond the ambit of the Court to review this exercise of discretion;[16] that Section 15, Article XI of the 1987 Constitution applies only to civil suits and not to criminal proceedings;[17] and, that the crime under which the respondents herein were charged had already prescribed.[18]

Private respondents Panfilo O. Domingo and Enrique M. Herboza, filed their respective Comments mainly reiterating the Ombudsman's contentions. The other respondents did not file their Comments, and, thus, considered to have waived their chance thereto.

The Court's Ruling

The remedy from an adverse resolution of the Ombudsman is a petition for *certiorari* under Rule 65 of the Rules of Court; what was filed with the Court, however, was a petition for review on *certiorari* under Rule 45. Nevertheless, the Court will treat this petition as one filed under Rule 65 since a reading of its contents shows that the Committee imputes grave abuse of discretion to the Ombudsman for dismissing the complaint.[19] This was how we also treated the previous cases marred by the same procedural lapse, the latest of which is the 2009 *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto* (G.R. No. 135703).[20]

At the core of the controversy is the Ombudsman's Resolution holding that prescription had already set-in effectively barring the institution of charges against the private respondents. The Ombudsman claimed that the alleged behest loans, transpired in 1976,[21] and, thus, the complaint filed after more than two decades from the commission thereof or on 8 October 1997, was well beyond the 10-year prescriptive period provided for under the old Republic Act No. 3019.[22]

In resolving the issue of prescription, the following shall be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription started to run; and (3) the time the prescriptive period was interrupted.[23]

At the outset, the provision found in Section 15, Article XI of the 1987 Constitution that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, **shall not be barred by prescription,** laches or estoppels," has already been settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130140),[24] where the Court held that the above cited constitutional provision "applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases."[25]

The period of prescription for the crime charged in this petition, committed in 1976 and prior to the amendment of Republic Act No. 3019, is ten (10) years.

Section 11[26] of Republic Act No. 3019 as amended by *Batas Pambansa Blg.* 195, provides that the offenses committed under Republic Act No. 3019 shall prescribe in fifteen (15) years; prior to this amendment, however, under the old Republic Act No.

3019, this prescriptive period was only ten (10) years. In *People v. Pacificador,*[27] the Court held that the longer prescriptive period of 15-years does not apply in crimes committed prior to the effectivity of *Batas Pambansa Blg.* 195, which was approved on 16 March 1982, because, not being favorable to the accused, it cannot be given retroactive effect. Considering that the alleged crime was committed in 1976, and in line with the Court's ruling in *Pacificador,* the prescription period should be ten (10) years.

Prescription of crime shall begin to run from the day of its commission, 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.

While we sustain the Ombudsman's contention that the prescriptive period for the crime charged herein is 10 years and not 15 years, we are not persuaded that in this specific case, the prescriptive period began to run in 1976, when the loans were transacted.

The time as to when the prescriptive period starts to run for crimes committed under Republic Act No. 3019, a special law, is covered by Act No. 3326,[28] Section 2 of which provides that:

> Section 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 proceedings for its investigation and punishment.
>
> The 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 double jeopardy.

Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period.[29] An exception to this rule is the *"blameless ignorance"* doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations **where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action."**[30] It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque*[31] which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149),[32] and the subsequent cases[33] which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases,[34] that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.