

THIRD DIVISION

[G.R. No. 163178, January 30, 2009]

HILARIO P. SORIANO, PETITIONER, VS. OMBUDSMAN SIMEON V. MARCELO; HON. LOURDES S. PADRE JUAN, GRAFT INVESTIGATION OFFICER II; AND RAMON GARCIA, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for *Certiorari* under Rule 65 of the Rules of Court, assailing the October 3, 2002 Order^[1] of the Ombudsman (respondent) which dismissed the Complaint of Hilario Soriano (petitioner) against Manila City Prosecutor Ramon Garcia (Garcia); and the July 14, 2003 Ombudsman Order^[2] which denied petitioner's motion for reconsideration.

The antecedent facts are related to those involved in *Hilario Soriano v. Ombudsman Simeon V. Marcelo* (G.R. No. 163017) which the Court decided on June 18, 2008.

Petitioner filed with the Office of the City Prosecutor of Manila an Affidavit-Complaint,^[3] docketed as I.S. No. 01F-22547, against Bank Examiner Mely Palad (Palad) of the *Bangko Sentral ng Pilipinas* for falsification of public document and use of falsified document. Assistant City Prosecutor Celedonio P. Balasbas (Balasbas) issued a Resolution^[4] dated August 27, 2001 recommending that Palad be charged in court for falsification of public document. First Assistant City Prosecutor Leoncia R. Dimagiba (Dimagiba) recommended the approval of the Resolution. But, upon Motion to Re-open filed by Palad, Dimagiba recommended the re-opening of I.S. No. 01F-22547.^[5] Garcia approved the recommendation of Dimagiba to re-open the case.^[6] However, in an Indorsement^[7] dated August 5, 2002, Garcia forwarded the complete records of I.S. No. 01F-22547 to Chief State Prosecutor Jovencito R. Zuño of the Department of Justice (DOJ), with the following recommendation:

x x x [T]hat the preliminary investigation of this case be transferred to the Department of Justice ***considering that herein complainant has recently filed with the Office of the Ombudsman separate complaints against the undersigned City Prosecutor*** and Assistant City Prosecutor Celedonio P. Balasbas which are both presently pending thereat, hereby requesting that a State Prosecutor be designated to conduct the preliminary investigation thereof in order to avoid any suspicion of partiality and bias against the Office of the City Prosecutor of Manila.^[8] (Emphasis supplied)

On September 5, 2002, petitioner filed with the respondent an Affidavit-Complaint against Garcia for violation of Article 208^[9] of the Revised Penal Code and Section

3(e)^[10] of Republic Act (R.A.) No. 3109, allegedly committed as follows:

7. On August 5, 2002, or more than fourteen (14) months after I filed my complaint against Ms. Palad, respondent Ramon Garcia unilaterally endorsed and forwarded to the Honorable Jovencito R. Zuño, Chief State Prosecutor of the Department of Justice, for investigation and resolution [of] said complaint against Mely Palad. A copy of the Indorsement dated August 5, 2002 is attached herewith as Annex "E".

8. By refusing to allow the Manila prosecutors to finally resolve said complaint respondent Ramon Garcia has in effect managed to evade his statutory duty to act on the resolution of my criminal complaint. Thus, his unilateral endorsement of the complaint to the DOJ is in dereliction of the duties of his office to investigate and institute prosecution for the punishment of violators of the law. His refusal to perform such duties is malicious as it is obviously a form of retaliation for my having filed a complaint against him. At any rate, his dereliction of his duties had no legal basis.

The same deliberate omission to perform the duties of his office which is evidently in bad faith has caused me undue injury because the resolution of my complaint has been even more unduly delayed, in effect denying me justice for justice delayed is justice denied.^[11]

Respondent issued the herein assailed October 3, 2002 Order, dismissing the complaint for lack of probable cause, thus:

It must be noted that the violation of Art. 208 of the Revised Penal Code requires the presence of the following essential elements, to wit:

1. That the offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses;
2. That there is dereliction of the duties of his office; that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed he tolerates its commission; and
3. The offender acts with malice and deliberate intent to favor the violator of the law.

In addition thereto, however, the Supreme Court in the case of U.S. vs. Mendoza, 23 Phil. 194, ruled that:

The crime committed by the law-violator must be proved first. If the guilt of the law-violator is not proved, the person charged with dereliction of duty under this article is not liable.

Taking into account the aforequoted jurisprudence and elements relative to the offense charged, it is clear that the filing of the instant suit is still premature considering the observation that the questioned controversy against Ms. Palad is still pending.

Even the element of malice and deliberate intent to favor the violator of the law cannot be entrenched without Ms. Palad's guilt for the alleged defiance having been pronounced first.

The referral of the dispute against Ms. Palad to the DOJ by the herein respondent cannot be construed as malicious constitutive of dereliction of duty since the same is being called for under the circumstances in order not to invite doubts on the respondent's impartiality in the disposition of the subject case.

On the other hand, the violation of Sec. 3(e) of R.A. 3019, as amended, requires that the undue injury sustained as an element thereof must be actual and certain. This rule had been pronounced by the Supreme Court in the case of *Llorente vs. Sandiganbayan, et al.*, G.R. No. 122166, promulgated on March 11, 1998 x x x.

x x x x

While it may be true that justice delayed is justice denied, however, the damages caused thereby will not fall within the meaning of the undue injury contemplated in Sec. 3(e) of R.A. 3019, as amended, as the same pertains to actual damages capable of pecuniary estimation and is quantifiable as to its amount.

x x x x

WHEREFORE, premises considered, let the instant complaint against City Prosecutor Ramon Garcia of Manila be, as it is hereby, **dismissed**.

SO RESOLVED.^[12]

Petitioner filed a Motion for Reconsideration but respondent denied it in the herein assailed Order dated July 14, 2003.

By the present recourse, petitioner seeks the annulment of the assailed Orders on the ground that respondent issued the same with grave abuse of discretion.^[13]

Petitioner argues that granting for the sake of argument that his complaint against Garcia for violation of Article 208 of the Revised Penal Code is premature, considering that the complaint against Palad is still in the preliminary investigation stage with Investigating Prosecutor Liberato Cabaron (Cabaron),^[14] his other complaint against Garcia for violation of Sec. 3(e) of R.A. No. 3019 should have been sustained by respondent because Garcia committed a clear dereliction of duty in referring I.S. No. 01F-22547 to the DOJ; that the referral of the case was unilateral, for neither petitioner nor Palad sought such relief; that Cabaron did not recommend the referral; that Garcia should have awaited Cabaron's recommendation for the latter was already in the process of conducting a preliminary investigation; and that, in referring the case to the DOJ instead, Garcia caused an unwarranted delay of the investigation, thereby inflicting upon petitioner a clear and ascertainable injury.^[15]

The Solicitor General filed his Comment^[16] and Memorandum^[17] for the respondent. He maintains that the respondent's plenary power to conduct a preliminary investigation cannot be interfered with by the Court, especially when the validity of its finding of lack of probable cause is discernible from the records of the case, such as in I.S. No. 01F-22547 where it is clear that it was well within the discretion of Garcia to refer the case to the DOJ after he was administratively charged by petitioner.^[18]

The Court agrees with the Solicitor General.

Sections 12 and 13, Article XI of the 1987 Constitution and R. A. No. 6770 (The Ombudsman Act of 1989) endow the respondent with plenary powers to investigate and prosecute public officers or employees for acts or omissions which appear to be illegal, unjust, improper or inefficient. Its power is virtually free from legislative, executive or judicial intervention, and insulated from outside pressure and improper influence. Thus, the Court generally adheres to a policy of non-interference in the investigatory and prosecutorial powers of the respondent.^[19]

However, where the findings of the respondent on the existence of probable cause in criminal cases are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for *certiorari* with this Court under Rule 65 of the Rules of Court,^[20] upon a showing that the Ombudsman acted with grave abuse of discretion, or more specifically, that it exercised its power arbitrarily or despotically by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law.^[21]

Much like *G.R. No. 163017*, petitioner herein failed to establish that the respondent committed grave abuse of discretion in dismissing his complaint against Garcia.

To justify an indictment under Sec. 3(e) of R.A. No. 3019, there must be a showing of the existence of the following elements: a) that the accused are public officers or private persons charged in conspiracy with them; b) that said public officers committed the prohibited acts during the performance of their official duties or in relation to their public positions; c) that they caused undue injury to any party, whether the Government or a private party; d) that such injury was caused by giving unwarranted benefits, advantage or preference to such parties; and e) that the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.^[22]

In *Santos v. People*,^[23] the Court equated undue injury -- in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party - with that civil law concept of "actual damage." As the Court elaborated in *Llorente v. Sandiganbayan*,^[24] to wit:

x x x Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest