

SECOND DIVISION

[G.R. No. 171491, September 04, 2009]

DR. CASTOR C. DE JESUS, PETITIONER, VS. RAFAEL D. GUERRERO III, CESARIO R. PAGDILAO, AND FORTUNATA B. AQUINO, RESPONDENTS.

DECISION

QUISUMBING, J.:

Before us is a petition for review seeking to reverse and set aside the Decision^[1] dated September 30, 2005 of the Court of Appeals, in CA-G.R. SP No. 83779, and its Resolution^[2] dated February 9, 2006 denying petitioner's motion for reconsideration.

Culled from the records are the following facts:

Nilo A. Bareza, Records Officer III of the Philippine Council for Aquatic and Marine Research and Development (PCAMRD), made out a check payable to himself and drawn against the Asean-Canada Project Fund, a foreign-assisted project being implemented by PCAMRD. To avoid being caught, Bareza stole Land Bank Check No. 070343 from the trust fund of the PCAMRD from the desk of Arminda S. Atienza, PCAMRD Cashier III. He filled out the check for the amount of P385,000.00, forged the signatures of the authorized signatories, made it appear that the check was endorsed to Atienza, and with him as the endorsee, encashed the check that was drawn against the PCAMRD Trust Fund. Then, he deposited part of the money to the Asean-Canada Project Fund and pocketed the difference.^[3]

Atienza discovered that the check in question was missing on the third week of February 1999 while preparing the Report of Checks Issued and Cancelled for the Trust Fund for the month of January. Not finding the check anywhere in her office, Atienza called the bank to look for the same. She was shocked to learn from a bank employee that the check had been issued payable in her name. When Atienza went to the bank to examine the check, she noticed that her signature and the signature of Dir. Rafael D. Guerrero III (Guerrero), PCAMRD Executive Director, were forged. She also found out that Bareza appeared to be the person who encashed the check.

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Bareza admitted his wrongdoings when he was confronted by Atienza about the incident, but begged that he be not reported to the management. Bareza also promised to return the money in a few days. Against her good judgment, Atienza acquiesced to Bareza's request, seeing Bareza's remorse over his transgressions. But Atienza also felt uneasy over her decision to keep silent about the whole thing, so Atienza persuaded Bareza to inform Fortunata B. Aquino (Aquino), PCAMRD Director of Finance and Administrative Division, about what he did. Bareza, however, decided to confess to Carolina T. Bosque, PCAMRD Accountant III, instead.^[5]

When Bareza revealed to Bosque what he had done, he was also advised to report the matter to Aquino, but, Bareza became hysterical and threatened to commit suicide if his misdeeds were ever exposed. Due to his fervent pleading and his promise to repay the amount he took, Bosque, like Atienza, assented to his plea for her to remain silent.^[6]

True to his word, Bareza deposited back P385,000.00 to the PCAMRD account on February 25, 1999.^[7]

On July 27, 2001, following rumors that an investigation will be conducted concerning irregularities in the said project, Bareza set fire to the PCAMRD Records Section in order to clear his tracks.^[8]

A fact-finding committee was thus created by virtue of PCAMRD Memorandum Circular No. 30^[9] to investigate the burning incident and forgery of checks by Bareza. After investigation, the fact-finding committee found sufficient evidence to charge Bareza with dishonesty, grave misconduct and falsification of official document.^[10] The fact-finding committee likewise found sufficient evidence to charge Atienza with inefficiency and incompetence in the performance of official duties^[11] and Bosque with simple neglect of duty.^[12]

Concomitant to the above findings, Guerrero formed an investigation committee to conduct formal investigations on the charges filed against Bareza, Atienza and Bosque.^[13] The investigation committee found Bareza guilty of dishonesty and grave misconduct and recommended his dismissal from the service. It also found sufficient basis to uphold the charge filed against Atienza and Bosque, and recommended a minimum penalty of six (6) months and one (1) day suspension for Atienza, and a maximum penalty of six (6) months suspension for Bosque.^[14]

On September 10, 2001 the PCAMRD adopted the findings of the investigation committee but imposed only the penalty of six (6) months suspension on Atienza and only three (3) months suspension on Bosque.^[15]

Not convinced with the results of the investigation and the penalties imposed on Bareza, Atienza and Bosque, petitioner exerted efforts to obtain a copy of the complete records of the proceedings had. Upon reading the same, petitioner was of the opinion that the investigation conducted by the fact-finding committee and investigation committee was perfunctorily and superficially done, and made only to whitewash and cover-up the real issues because the report exonerated other persons involved in the crimes and omitted other erroneous acts. According to him, these circumstances led to partiality in deciding the charges. Hence, petitioner filed with the Office of the Deputy Ombudsman for Luzon (Ombudsman) a complaint against Guerrero, Cesario R. Pagdilao (Pagdilao), PCAMRD Deputy Executive Director, and Aquino, among others, for incompetence and gross negligence.^[16] The case was docketed as OMB Case No. L-A-02-0209-D.

In their Joint Counter-Affidavit and Complaint for Malicious Prosecution^[17] dated July 9, 2002, the respondents argued that the complaint is wanting in material, relevant and substantive allegations and is clearly intended only to harass them.

Furthermore, they contended that petitioner failed to identify the persons he claims were exonerated, and worse, petitioner failed to state with particularity their participation in the crimes.^[18]

In his Consolidated Reply and Counter-Affidavit^[19] dated July 25, 2002, petitioner belied the allegation of the respondents that his complaint was lacking in substance. He stressed that the report of the investigation committee that was submitted by the respondents reinforced his claim that the investigation relative to the forgery and arson case was indeed perfunctory and superficial, designed only to whitewash and cover-up the real issues. To bolster his contention, he pointed out that the sworn affidavit of Bareza revealed that the latter was able to use certain funds of the Asean-Canada Project by encashing blank checks that were previously signed by Pagdilao. Thus, he averred that the failure to implicate Pagdilao as a conspirator to the crime of forgery shows that the investigation was just a farce. Petitioner also claimed that Atienza and Bosque were not charged with the proper administrative offense to avoid their dismissal from the service. Petitioner pointed to the command responsibility of respondents over Bareza, Atienza and Bosque. He maintained that had they been prudent enough in handling PCAMRD's finances, the forgery of checks and the arson incident could have been avoided. Furthermore, petitioner alleged that being the head of PCAMRD, Guerrero should have pursued investigations on the criminal aspect of the cases of forgery and arson because a huge amount of government money was involved therein. His act, therefore, of declaring the cases closed after the conduct of the investigations in the administrative aspect only is contrary to the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) because its object is to conceal "*more big anomalies and issues.*"^[20]

In a Decision^[21] dated August 5, 2002, the Ombudsman recommended the dismissal of the administrative case filed against the respondents for lack of merit. It agreed with the respondents that the complaint was couched in general terms that contains no material, relevant and substantial allegation to support the theory of cover-up or whitewash. The Ombudsman also held that there is nothing to sustain petitioner's allegation that Pagdilao should be implicated in the forgery because petitioner failed to sufficiently prove that the check that was signed in blank by Pagdilao was Land Bank Check No. 070343, or the subject check encashed by Bareza. Even assuming that the forged check was the one signed in blank by Pagdilao, the Ombudsman opined that the latter still cannot be said to have participated in the forgery because the check was in the custody and safekeeping of Atienza, the cashier, when it was stolen. In the same vein, the Ombudsman found no adequate basis in the petitioner's allegation that Guerrero charged Atienza and Bosque with erroneous administrative infractions to lessen their liability, noting that Guerrero merely adopted the recommendation of the fact-finding and investigation committees as to what they should be charged with. The Ombudsman added that Guerrero cannot be indicted for violation of Section 3(e) of Rep. Act No. 3019 or be held administratively liable for his failure to initiate criminal cases against Bareza, Atienza and Bosque because he had no personal knowledge of the commission of the crimes allegedly committed by them.^[22]

Petitioner moved for reconsideration, but the Ombudsman denied it in an Order^[23] dated November 25, 2003. According to the Ombudsman, nowhere in petitioner's complaint did he allege that respondents should be blamed for arson and forgery because of command responsibility. It held that petitioner's averment of the same

only in his reply-affidavit and in his motion for reconsideration should be disregarded altogether since it materially and belatedly alters his original cause of action against the respondents, which cannot be allowed.^[24]

Not accepting defeat, petitioner elevated the matter by way of a petition for review^[25] under Rule 43 before the appellate court. Petitioner claimed that the Ombudsman gravely erred when it recommended the dismissal of the charges against the respondents and denied his motion for reconsideration despite the existence of a *prima facie* case against them for incompetence and gross negligence.

On September 30, 2005, the Court of Appeals rendered a Decision affirming the August 5, 2002 Decision and November 25, 2003 Order of the Ombudsman in OMB Case No. L-A-02-0209-D. The appellate court found that the Ombudsman correctly dismissed the complaint against the respondents. The appellate court held that petitioner questioned the handling of the PCAMRD finances without specifying the particular acts or omissions constituting the gross negligence of the respondents. The charges, being broad, sweeping, general and purely speculative, cannot, by their nature, constitute a *prima facie* case against the respondents.^[26]

Petitioner moved for the reconsideration of the said Decision but it was denied by the appellate court in the Resolution dated February 9, 2006.

Hence, the present petition raising the following issues for our resolution:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT DENIED IN ITS DECISION PETITIONER'S PETITION AND AFFIRMED THE OMBUDSMAN'S DECISION OF AUGUST 5, 2002 IN OMB-L[-A]-02-020^[9]-D, RECOMMENDING DISMISSAL OF THE CASE BY RELYING SOLELY AND EXCLUSIVELY ON THE GENERAL RULE/PRINCIPLE THAT THE COURTS WILL NOT INTERFERE IN THE INVESTIGATORY AND PROSECUTORY POWERS OF THE OMBUDSMAN, IGNORING THE EXCEPTIONS TO THE RULE - PRESENCE OF COMPELLING REASONS AND GRAVE ABUSE OF DISCRETION IN THE EXERCISE THEREOF.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR AND A GRAVE MISAPPREHENSION OF FACTS AND MISAPPRECIATION OF THE EVIDENCE WHEN IT RULED THAT THERE IS NO *PRIMA FACIE* OR PROBABLE CAUSE AGAINST RESPONDENTS, [THAT] IF CONSIDERED, WILL ALTER THE OUTCOME OF THE CASE.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A