

FIRST DIVISION

[G.R. NO. 157835, July 27, 2006]

FE M. CABRERA, PETITIONER, VS. HON. SIMEON V. MARCELO, IN HIS CAPACITY AS OMBUDSMAN, THE HON. SANDIGANBAYAN (THIRD DIVISION) AND FRANCO P. CASANOVA, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure which seeks for the nullification of the Resolution^[1] dated 3 June 2002 and Order^[2] dated 5 February 2003, both issued by the Office of the Ombudsman.

The antecedents are the following:

Pursuant to Commission on Audit (COA) Special Order No. 99-04 dated 21 October 1999, the COA Regional Office No. IV conducted in December 1999 a special audit on the funds of the Municipality of Taal, Batangas, covering the period from January 1998 to September 1999.

The audit team headed by Auditor Ely G. Valdez found, among other things, that:

Checks issued as payments to suppliers/creditors were deposited into the account of the Municipal Mayor at Philippine Savings Bank, Lemery Branch under Account # 1818010393 in violation of R.A. 6713.

Section 7, Par. a of R.A. 6713 otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" states that: Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

Review of cleared checks issued as payments to suppliers/creditors of the municipality (Annex Ak) revealed that the payees had indorsed the checks to the Municipal Mayor who eventually deposited the same to her personal account with Philippine Savings Bank under account no. 1818010393, which is contrary to the aforesaid regulation.

Details are shown below:

Disb.	Voucher	Payee	Check#	Date	Amount
			#		
1	101-98-Budget	Wise	64131	9/23/98	19,308.64
	09-	Marketing			

1025					
2	Narciso Gumapac	68614	11/26/98	13,363.64	
3	Taal Volcano Restaurant	68616	11/26/98	11,672.73	
4	Taal Volcano Restaurant	68615	11/26/98	11,672.73	
5	101-98-Aguila 12- Hardware 1302	68622	12/1/98	19,386.45	
6	101-98-Aguila 12- Hardware 1303	68623	12/1/98	19,221.10	
7	101-98-Aguila 12- Hardware 1350	68651	12/14/98	19,221.10	
8	Aguila Hardware	68654	12/14/98	19,454.55	
9	101-98-Hipolito 12- Hardware 1393	68676	12/21/98	19,109.23	
10	Jeery Encarnacion	68677	12/21/98	19,545.55	
			Total	P171,955.72	

Management Comments:

And the suppliers/creditors wanted to have their checks converted into cash. Wanting to help, the mayor gave in to their request. She encashed their checks without charge. She did not earn even a single centavo from any of said transaction, on the contrary she was always at the losing end of the deal.

Despite of her good intention, at the start of CY 1999 and up to the present the Honorable Mayor stops and no longer accommodate the request of the suppliers and creditors, because the people might perceived (sic) that she would be benefiting from said transaction.

Team Rejoinder:

Considering that the payees are known businessmen/women of the locality and have been a supplier of the municipality for quite some time and that the depository bank is just located to a nearby municipality, it is unlikely that they do not maintain their own bank account.

Team Recommendation:

Instruct the Municipal Treasurer to ensure that checks payments should be released only to payee and that the checks should be properly stamped "For Payees Account Only" to avoid being encashed by other person or deposited to account other than the payee's.

Also, municipal officials should be prohibited from being used as conduit or facilitator/fixer by supplier/contractor for the early or expeditious

release of their financial claims against the municipality for financial consideration.^[3]

On the strength of said audit report, an amended complaint-affidavit dated 8 March 2002 was filed by respondent Franco P. Casanova accusing petitioner Fe M. Cabrera, former Mayor, and her husband, incumbent Mayor Librado M. Cabrera, both of the Municipality of Taal, Batangas, with violations of Article 217 in relation to Articles 171 and 48 of the Revised Penal Code, ^[4] and of Republic Act No. 3019, as amended. The case was docketed as OMB-L-C-02-0166-B.

Petitioner and Librado M. Cabrera alleged, *inter alia*, that the subject checks were issued as payment to the different suppliers that transacted business with the municipal government. Petitioner asserted that her signatures at the back of the subject checks were mere accommodations to the requests of the suppliers in order that the checks can be encashed, and that she did not forge the signature of any of the suppliers.

Complainant Casanova filed his Reply-Affidavit.

On 3 June 2002, Graft Investigation Officer II Adoracion A. Agbada, finding probable cause, issued a resolution recommending the filing of 10 informations against petitioner for violation of Section 3(h) of Republic Act No. 3019, as amended. The recommendation was approved by Jesus F. Guerrero, Deputy Ombudsman for Luzon, and by then Ombudsman Aniano A. Desierto on 5 July 2002.

On 18 July 2002, 10 informations for violation of Section 3(h) of Republic Act No. 3019, as amended, were filed before the Sandiganbayan against petitioner and docketed as Criminal Cases Nos. 27538 to 27547. The cases were raffled to the court's Third Division. The accusatory portion of the Information in Criminal Case No. 27538 reads:

That on or about December 01, 1998, or sometime prior or subsequent thereto, in the Municipality of Taal, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, accused FE M. CABRERA, a public officer, being then the Municipal Mayor of Taal, Batangas, and as such had administrative control of the funds of the municipality and whose approval is required in the disbursements of municipal funds, committing the crime herein charged in relation to her official functions and taking advantage of her public position, did then and there, willfully, unlawfully and feloniously deposit to her personal account at Philippine Savings Bank, Lemery Branch under Account No. 1818010393 a Land Bank Check No. 68623 issued by the Municipal Government of Taal, Batangas to Aguila Hardware in the amount of NINETEEN THOUSAND THREE HUNDRED EIGHTY SIX PESOS and 45/100 (P19,386.45) thereby having financial or pecuniary interest in the business, contract or transaction in connection which she intervened or took part in her official capacity as the Mayor of Taal, Batangas.^[5]

The nine other Informations are similarly worded except for the date, number, amount, and payee of the checks. The pertinent data in the other informations are as follows:

Crim. Case No.	Date	Check No.	Amount	Payee
27539	Dec. 01, 1998	68622	P19,221.10	Aguila Hardware
27540	Dec. 14, 1998	68651	P19,221.10	Aguila Hardware
27541	Dec. 14, 1998	68654	P19,454.55	Aguila Hardware
27542	Dec. 21, 1998	68676	P19,109.23	Hipolito Hardware
27543	Dec. 21, 1998	68677	P19,545.55	Jeery Encarnacion
27544	Sept. 23, 1998	64131	P19,308.64	Budget Wise Marketing
27545	Nov. 26, 1998	68614	P13,363.64	Narciso Gumapac
27546	Dec. 01, 1998	68616	P11,672.73	Taal Volcano Restaurant
27547	Dec. 01, 1998	68615	P11,672.73	Taal Volcano Restaurant

Petitioner filed a Motion for Reinvestigation dated 30 August 2002. In an Order dated 30 September 2002, the Sandiganbayan granted the motion and directed the Office of the Special Prosecutor (OSP) to conduct a reinvestigation of the cases.

In an Order dated 27 November 2002, Ombudsman Prosecutor II Cicero D. Jurado, Jr. recommended that the cases against petitioner be dismissed. Said recommendation was approved by Deputy Special Prosecutor Robert E. Kallos and by Special Prosecutor Leonardo P. Tamayo.

On 5 February 2003, Ombudsman Simeon V. Marcelo disapproved the recommendation of Ombudsman Prosecutor Jurado and directed the OSP to proceed with the prosecution of the cases.

The 5 February 2003 order issued by Ombudsman Simeon V. Marcelo denied petitioner's Motion for Reinvestigation and directed the Office of the Special Prosecutor to proceed with the prosecution of the cases before the Sandiganbayan. It disapproved the order of Ombudsman Prosecutor II Cicero D. Jurado dated 27 November 2002 recommending the dismissal of the cases against petitioner.

Petitioner raises the following grounds to support her petition:

WITH ALL DUE RESPECT, PUBLIC RESPONDENT OMBUDSMAN ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN APPROVING THE RESOLUTION DATED 03 JUNE 2002.

WITH ALL DUE RESPECT, PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION (sic) DISAPPROVING THE ORDER DATED 27 NOVEMBER 2002 OF THE OSP WHICH HAD RECOMMENDED THE DISMISSAL OF CRIMINAL CASES NOS. 27538 TO 27547.

Petitioner contends that the Ombudsman acted without or in excess of his jurisdiction or with grave abuse of discretion in approving the resolution dated 3 June 2002 issued by Graft Investigation Officer II Adoracion A. Agbada recommending the filing of 10 informations against her for violation of Section 3(h) of Republic Act No. 3019, as amended. She explains that she merely acceded to the request of the payees of the subject checks to advance to them their cash value to spare them the hassle of encashing the same with the drawee bank. She claims the

payees, in turn, endorsed the checks to her which she then deposited to her account with the Philippine Savings Bank. She contends that her signature at the back of the subject checks does not constitute evidence of an alleged financial or pecuniary interest contemplated in Section 3(h) of Republic Act No. 3019. She adds that the transactions covered by said checks actually took place and that her participation was limited to co-signing the checks which were issued in payment therefor.

From the foregoing, it appears that petitioner would like to show that the elements of the offense charged are not present -- that she has no financial or pecuniary interest in the contracts or transactions for which the checks were issued, and that she did not intervene or take part in her official capacity as Mayor regarding said contracts or transactions.

The essential elements of a violation of Section 3(h) of Republic Act No. 3019, as amended, are as follows: (1) The accused is a public officer; (2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and (3) he either: (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by law.^[6]

The 10 informations charge petitioner for having a financial or pecuniary interest in the contracts or transactions entered into by the Municipality of Taal, Batangas, where she, being then the Mayor of said municipality who has administrative control of the funds of the municipality and whose approval is required in the disbursements of municipal funds, intervened and took part in her official capacity by issuing the checks involved and who thereafter deposited the same in her personal bank account.

The arguments advanced by petitioner clearly involve the elements of the offense charged. In support thereof, petitioner presented during the reinvestigation five affidavits to prove that the affiants merely requested petitioner to give them the cash equivalent of the checks involved and that they were indeed given the value thereof. At this juncture, petitioner cannot be exonerated without going through trial considering that the checks she signed as Municipal Mayor as payment to suppliers, ended up in her personal bank account. The mere presentation of said affidavits will not suffice without further elucidation on the matter.

Settled is the rule that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.^[7] In the case at bar, the grounds relied upon by petitioner should be fully explained and threshed out not in a preliminary investigation but during trial as the same are matters of defense involving factual issues.

The Ombudsman, in his Order dated 5 February 2003, aptly explained why the cases against petitioner should not be dismissed. It reads:

In support of her Motion for Reinvestigation, accused Cabrera submitted the Affidavits of Antonio Aguila, proprietor of Aguila Hardware; Paulina Aala, General Manager of Taal Volcano Restaurant; Narciso Gumapac and Jeery Encarnacion, two of the payees in the checks issued by the Municipality, all of whom claim that they requested accused Cabrera to