

## **FIRST DIVISION**

**[ G.R. NO. 164678, October 20, 2005 ]**

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MARY ANN T. CASTRO, RESPONDENT.**

### **D E C I S I O N**

**YNARES-SANTIAGO, J.:**

This petition for review on certiorari under Rule 45 of the Rules of Court assails the July 23, 2004 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 77646 which annulled and set aside the October 17, 2002 Decision<sup>[2]</sup> of the Ombudsman in OMB-V-A-02-0124-C. The Ombudsman found respondent Asst. City Prosecutor Mary Ann T. Castro guilty of Conduct Prejudicial to the Best Interest of the Service.

The antecedent facts show that on June 19, 2001, a complaint for violation of Social Security Act of 1997 was filed by Charito C. Ocampo against spouses Salvador and Ethel Gonzales of Audionet Trading, before the Office of the City Prosecutor. After preliminary investigation, Asst. City Prosecutor Victor C. Laborte recommended in a resolution dated August 7, 2001, the filing of an information against the spouses Gonzales for non-remittance of premiums to the Social Security System (SSS). On September 28, 2001, an information was filed in court.

On October 10, 2001, spouses Gonzales filed a Motion for Reconsideration of the August 7, 2001 resolution before the Office of the City Prosecutor without leave of court. On November 7, 2001, respondent Asst. City Prosecutor Mary Ann T. Castro filed a Comment on the motion for reconsideration and recommended the dismissal of the complaint.

Ocampo alleged that the filing of a comment by Castro after the information has been filed in court is irregular. She claimed that once an information has been filed in court, the investigating prosecutor or the Secretary of Justice should no longer entertain a motion for reinvestigation or a motion for reconsideration. Hence, she filed an administrative complaint<sup>[3]</sup> against Castro charging her with conduct prejudicial to the best interest of the service.

Respondent Castro claimed that on October 30, 2001, Asst. City Prosecutor Oscar Capacio, Chief of the Review and Reconsideration Section, Office of the City Prosecutor, ordered her to reinvestigate the case filed against the spouses Gonzales. After evaluation of the records and the documentary evidence, she was convinced that there was no basis for the complaint hence she recommended its dismissal. She submitted her comment and recommendation to Capacio for review, then to City Prosecutor Jose Pedrosa, for approval.

She maintained that pursuant to Section 56 of the Manual for Prosecutors, a motion for reconsideration is part of due process in preliminary investigation. She alleged

that depriving the accused of this right would be a denial of the right to a full preliminary investigation preparatory to the filing of the information. The court may therefore not proceed with the arraignment and trial pending resolution of the motion for reconsideration. She claimed that leave of court is not necessary for the filing of the comment as it was still part of the preliminary investigation over which the Office of the City Prosecutor exercises jurisdiction.

On April 4, 2003, the Ombudsman rendered a Decision finding Castro guilty of conduct prejudicial to the best interest of the service. The dispositive portion of which reads:

Wherefore, premises considered, it is hereby deemed that respondent Asst. City Prosecutor Mary Ann Castro is guilty of Conduct Prejudicial To The Best Interest of The Service, and is hereby meted the penalty of SUSPENSION FOR SIX MONTHS WITHOUT PAY.

The administrative complaint against prosecutor Jesus Feliciano is hereby Dismissed.

SO DECIDED.<sup>[4]</sup>

The Ombudsman found that when the motion for reconsideration was filed, the Office of the City Prosecutor no longer has jurisdiction over the complaint considering that an information has been filed in court. Hence, the filing of a comment thereon without leave of court was not proper, moreso because it effectively resolved the merits of the motion for reconsideration without prior court approval.

The Ombudsman noted that although the accused has the right to file a motion for reconsideration, Castro should have verified the status of the case before recommending its dismissal, which was done beyond the scope of her authority in view of the prior filing of the information in court.

Upon denial of her motion for reconsideration,<sup>[5]</sup> Castro appealed to the Court of Appeals which annulled the decision of the Ombudsman, thus:

WHEREFORE, finding merit in the Petition, the same is hereby GRANTED and the Ombudsman (Visayas) Decision dated October 17, 2002 and Order dated June 5, 200<sup>[3]</sup> are hereby ANNULLED AND SET ASIDE. Without costs.

SO ORDERED.<sup>[6]</sup>

The Court of Appeals held that the Regional or City Prosecutor may exercise the power and authority of their superior, the Secretary of Justice, to review resolutions of their subordinate in criminal cases despite an information filed in court. The act of filing does not foreclose the authority of the City Prosecutor, in behalf of the Secretary of Justice, to review the previously approved resolution of Laborte.<sup>[7]</sup> Moreover, since Castro's comment and recommendation was reviewed by Capacio and approved by Pedrosa, the same is presumed to have been performed in the regular performance of her duties.<sup>[8]</sup>

The appellate court likewise observed that the filing of the comment without prior leave of court has been clarified by the trial judge. The latter disregarded Ocampo's claim that she was not notified of the filing of the comment or given the chance to oppose the same considering that her counsel was properly served with a copy of the motion to withdraw information based on the motion for reconsideration and the comment earlier filed. Ocampo and her counsel were aware of the pending motion to withdraw the information based on the comment submitted by Castro as the same was heard on October 7, 2002. The trial judge was convinced that there was no basis for the complaint, hence, it was ordered dismissed.<sup>[9]</sup>

The Court of Appeals noted that Castro's actuations did not amount to gross misconduct. The Office of the Solicitor General (OSG) admitted that there was no particular law that Castro violated.<sup>[10]</sup>

Hence, the Ombudsman filed this petition on the sole issue of whether or not Castro usurped the jurisdiction of the trial court in filing the Comment and recommending the dismissal of the criminal case filed in court.

The petition lacks merit.

Petitioner avers that Castro disregarded the basic rule that once the case is filed in court, leave of court must be secured prior to taking any action on a motion for reconsideration filed by the accused with the Office of the City Prosecutor. Thus, it is the intentional disregard of this established jurisprudence on jurisdiction and the doctrinal laws on delineation of authority that made her administratively liable for conduct prejudicial to the best interest of the service.<sup>[11]</sup>

Respondent Castro claims that she has not violated any law, rule or regulation that would warrant any administrative sanction. She maintains that she was following the order of her superior to reinvestigate the case. Therefore, there was no reason for her to be suspended by the Ombudsman.<sup>[12]</sup>

She asserts that she is being discriminated and singled out by the Ombudsman who should also have investigated her superiors who ordered the reinvestigation and approved her recommendation, and the Secretary of Justice who gave his imprimatur to the dismissal of the case. Notably, even the trial judge approved its dismissal.<sup>[13]</sup>

Upon review, we find that Castro's conduct in resolving the motion for reconsideration is not prejudicial to the best interest of the service.

We note that it was Laborte who initially handled the case; found probable cause that spouses Gonzales violated the SSS law; and recommended that an information be filed against them. Capacio, as Chief of the Review and Reconsideration Section, assigned the case to Castro after a motion for reconsideration was filed with the Office of the City Prosecutor. By virtue of her functions, Castro has the discretion to uphold, modify or reverse the findings and conclusion of Laborte. Consequently, it was not unusual that, upon review of the evidence presented, her observations would be diverse from that of Laborte's.

Besides, a motion for reconsideration of the resolution of the preliminary