

FIRST DIVISION

[G.R. NO. 147911, October 14, 2005]

**FEDERICO B. DIAMANTE III, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

Before us is a petition for review on *certiorari*^[1] to set aside the 20 April 2001 Minute Resolution^[2] of the Sandiganbayan in Criminal Case No. 25979. The assailed resolution denied petitioner's Motion for Reconsideration of the decision issued by the Office of the Ombudsman to pursue the prosecution against petitioner for violation of Section 3(e) of Republic Act No. 3019.

The Antecedents

This petition stems from the complaint filed by Barangay Chairman Raul Ilagan ("Ilagan") of Barangay San Miguel, Palo, Leyte with the Office of the Ombudsman-Visayas on 21 September 1999. Ilagan accused petitioner Mayor Federico B. Diamante III ("Diamante") and some municipal officials of violating Section 3(e) of Republic Act No. 3019 ("RA 3019"),^[3] Section 4(b), (c), and (d) of Republic Act No. 6713^[4] as well as Section 512 of Republic Act No. 7160^[5] for withholding his honoraria.

On 5 November 1999, Diamante filed his counter-affidavit^[6] denying the allegations in the complaint. Diamante averred that he had already released the honoraria as certified by the Municipal Accountant. Diamante justified the withholding of the honoraria by pointing out Ilagan's failure to submit all Monthly Accomplishment Reports and other administrative requirements.

On 25 April 2000, the Office of the Ombudsman filed with the Sandiganbayan an Information charging Diamante with violation of Section 3(e) of RA 3019. The Information reads:

That on or about the 16th of August 1999 and for sometime prior or subsequent thereto, at the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being the Mayor of said municipality, in such capacity and committing the offense in relation to office, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously withhold the honoraria of the barangay officials of Barangay San Miguel, Palo, Leyte, for the

months of July and August, 1999, amounting to THIRTY THREE THOUSAND SIX HUNDRED THIRTY FIVE [PESOS] (P33,635.00), without any legal basis, and despite demands, thereby depriving said barangay officials of said honoraria for said period, thus accused in the performance of his official functions has caused undue injury to said barangay officials in the amount aforestated.

CONTRARY TO LAW.^[7]

On 22 May 2000, Diamante filed a Motion for Reinvestigation. The prosecution did not oppose the motion for reinvestigation.

After the reinvestigation, Ombudsman Prosecutor III Reynaldo S. Aguas ("Aguas") submitted his Compliance and Memorandum to the Sandiganbayan on 14 December 2000. In his Memorandum, Aguas recommended the dismissal of the charge of violation of Section 3(e) of RA 3019 against Diamante.^[8] However, Deputy Special Prosecutor Robert E. Kallos ("Kallos") disapproved the recommendation in a marginal note stating that "whether there was evident bad faith in the withholding of the honoraria or not should be left to the Hon[orable] Court to decide."^[9] Special Prosecutor Leonardo P. Tamayo ("Tamayo") concurred with the recommendation of Kallos.^[10] Ombudsman Aniano A. Desierto agreed with Special Prosecutor Tamayo and Deputy Special Prosecutor Kallos to pursue the prosecution of the case.^[11]

On 2 January 2001, Diamante filed a Motion for Reconsideration of the decision of the Ombudsman. The Sandiganbayan denied the motion for reconsideration in its Minute Resolution of 20 April 2001.

Hence, this petition.

The Issue

The issue in this case is whether there is probable cause against Diamante for violation of Section 3(e) of RA 3019.

The Ruling of the Court

We dismiss the petition.

At the outset, we declare that Diamante availed of a wrong remedy in assailing the resolution of the Sandiganbayan. Though this petition is captioned "Petition for Certiorari," its body conforms to a petition for review on *certiorari* under Rule 45. Since resolutions of the Ombudsman on preliminary investigations in criminal cases are not appealable to this Court by petition for review on *certiorari* under Rule 45, the instant petition merits outright dismissal.^[12]

Under Rule 45 of the Rules of Court, only judgments or final orders or resolutions of lower courts, whenever authorized by law, are appealable by petition for review to this Court. Since the assailed resolution is neither a judgment nor a final order of the Sandiganbayan, the proper course of action for Diamante should have been a special civil action for *certiorari* before this Court under Rule 65. Anyway, Diamante's case should have taken its regular course, and if the Sandiganbayan issued an

unfavorable verdict, he could have appealed in the manner authorized by law.^[13]

Assuming we rule on the merits of the case, we still have to dismiss the present petition because of the settled principle of non-interference in the exercise of the Ombudsman's constitutionally mandated powers.^[14] As we stated in ***Perez v. Office of the Ombudsman***^[15] -

We have consistently refrained from interfering with the investigatory and prosecutorial powers of the Ombudsman absent any compelling reason. This policy is based on constitutional, statutory and practical considerations. We are mindful that the Constitution and RA 6770 endowed the Office of the Ombudsman with a wide latitude of investigatory and prosecutorial powers, virtually free from legislative, executive or judicial intervention, in order to insulate it from outside pressure and improper influence.

In ***Ocampo, IV v. Ombudsman***,^[16] we held that -

xxx The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

Further, Diamante's arguments deserve scant consideration. Citing ***Llorente, Jr. v. Sandiganbayan***,^[17] Diamante contends that Ilagan did not suffer undue injury, which is an element of the offense of violation of Section 3(e) of RA 3019, because he was already paid his honoraria on 8 October 1999. Diamante justifies the withholding of the honoraria with Ilagan's alleged failure to submit his Monthly Accomplishment Reports and other administrative requirements. Diamante also insists that Ilagan did not put up the Data Board in Barangay San Miguel, Palo, Leyte as required by the Department of Interior and Local Government.

We adopt our ruling in ***Diamante III v. People***,^[18] which involved the same petitioner and almost the same issue. In ***Diamante III***, we ruled as follows:

We agree with the Sandiganbayan that **the grounds relied upon by the petitioner in support of his motion for reinvestigation are matters of defense involving factual and profound legal issues which involve, *inter alia*, the application of the rulings of this Court in *Llorente* and *Pecho* and should be resolved by it, namely: a) whether the private complainant suffered undue injury because of the petitioner's obstinate refusal to reinstate her before he was charged with violation of Section 3(e) of Rep. Act No. 3019; b) whether the petitioner acted in good faith in terminating the employment of the private complainant; and, c) whether the *post facto* reinstatement of the private complainant and the payment of her monetary benefits**