

THIRD DIVISION

[G.R. No. 135249, January 16, 2004]

ATTY. ORLANDO SALVADOR FOR AND IN BEHALF OF THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, PETITIONER, VS. HON. ANIANO DESIERTO, AS OMBUDSMAN, RAFAEL A. SISON, CESAR ZALAMEA, ALICIA LL. REYES, ARISTON S. MARTINEZ, IN THEIR CAPACITY AS OFFICIALS OF THE DEVELOPMENT BANK OF THE PHILIPPINES, AND JOSE O. COBARRUBIAS, ARMANDO V. LIM, CANDIDO P. SORIENTE, FRANCISCO G. GREGORIO, JUAN A. SISON, AND ROLANDO LORENTE, DIRECTORS/OFFICERS OF HOTEL MIRADOR, INC., RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for certiorari^[1] filed by Atty. Orlando Salvador on behalf of the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, assailing the Resolution dated April 27, 1998^[2] of then Ombudsman Aniano A. Desierto dismissing the complaint against respondents in OMB-0-96-2539; and his Order dated June 29, 1998^[3] denying petitioner's motion for reconsideration.

From March 19, 1975 to April 22, 1977, Hotel Mirador, Inc. (Hotel Mirador) obtained three (3) loans from the Development bank of the Philippines (DBP) amounting to a total of P95,000,000.00, to finance the construction and development of its hotel building.

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13^[4] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee) to inventory all behest loans, determine the parties responsible therefore, and recommend the appropriate actions to be taken by the government. In determining a behest loan, he also issued Memorandum Order No. 61^[5] dated November 9, 1992, specifying the following criteria as a frame of reference:

It is under-collateralized;

Borrower corporation is undercapitalized;

Direct or indirect endorsement by high government officials, like presence of marginal notes;

Stockholders, officers or agents of the borrower corporation are identified as cronies;

Deviation of use of loan proceeds from the purpose intended;

Use of corporate layering;

Non-feasibility of the project for which financing is being sought;

Extra-ordinary speed in which the loan release is made.

Among the accounts acted upon by the Committee were the loans obtained by Hotel Mirador from the DBP. Petitioner Atty. Orlando Salvador was then the PCGG consultant detailed with the Committee.

Based on the criteria provided by Memorandum Order No. 61, the Committee, through petitioner, found that the loans obtained by Hotel Mirador from the DBP were behest loans. Thus, petitioner filed with the Office of the Ombudsman a sworn complaint^[6] dated September 18, 1996 against the directors and officers of Hotel Mirador, namely: Jose O. Cobarrubias, Armando V. Lim, Candido P. Soriente, Francisco G. Gregorio, Juan A. Sison, and Rolando Lorente; and the DBP directors who approved the loans, namely: Rafael A. Sison, Cesar Zalamea, Alicia Ll. Reyes, and Ariston S. Martinez, for violation of Section 3 (e) and (g), of Republic Act No. 3019, as amended, quoted as follows:

"Sec. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

"x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions;

x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby."

The complaint, docketed as OMB-0-96-2539, alleges *inter alia*:

"4. The evidence submitted to us show that:

'a) Hotel Mirador was registered with the SEC on November 5, 1974 with the following incorporators:

Armando V. Lim

Quintin Lee See

Jose O. Cobarrubias

Juan A. Sison

Manuel Q. Salintes

'b) Hotel Mirador was granted by DBP a loan on March 19, 1975 in the amount of P60 million under B/R 1206 for the following purposes:

Construction of hotel building

Purchase of machinery and equipment

Payment of interim obligation

'c) The loan was without sufficient collateral and Hotel Mirador itself had no sufficient capital to be entitled to the amount of the loan considering that at the time the P60 million loan was granted the offered existing collateral (land) amounts to P2,025,100.00 and the rest amounting to P73 million represents assets to be acquired out of the loan and its paid-up capital amounted P17 million only as of December 31, 1976.

'd) Despite the foregoing facts, Hotel Mirador obtained additional loans up to P35 million as shown below without sufficient capital to ensure not only viability of its operations but its ability to repay all its loans.'"

On May 8, 1998, then Ombudsman Desierto issued the assailed Resolution dated April 27, 1998 dismissing petitioner's complaint on the following grounds: (a) there is no sufficient evidence to prove that the loans in question are behest loans considering that Hotel Mirador has sufficient collateral for the loans and that the value of its properties and assets at the time was P92,025,100.00; and (b) the crime has prescribed because the latest transaction complained of occurred on April 22, 1977, thus, beyond the 15-year prescriptive period provided by Section 11 of the same law.

Petitioner filed a motion for reconsideration but was denied. Hence, this petition for certiorari.

Petitioner alleges that respondent Ombudsman gravely abused his discretion in ruling that the complaint against respondent was barred by prescription and that Hotel Mirador had sufficient assets at the time the DBP loans were granted. Respondent further alleges that the right of the Republic to recover behest loans may not be barred by prescription because it is imprescriptible.^[7] Even assuming it can prescribe, the offense was discovered only in 1992 when the Committee was created. Thus, the complaint was seasonably filed on September 18, 1996.

In his comment, respondent Ombudsman claims that the crime has prescribed and that the imprescriptibility clause applies only to recovery of ill-gotten wealth, not to the prosecution of criminal actions.^[8] He insists that in dismissing petitioner's complaint, he did not commit any grave abuse of discretion.

The applicable laws on prescription of criminal offenses defined and penalized under