

## **SECOND DIVISION**

**[ G.R. No. 152244, September 27, 2004 ]**

**OFFICE OF THE OMBUDSMAN AND THE NATIONAL BUREAU OF  
INVESTIGATION, PETITIONERS, VS. JENNIFER R. ANGELES,  
RESPONDENT.**

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

**CALLEJO, SR., J.:**

Before us is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 61667, finding the respondent not guilty of simple neglect of duty, and its Resolution denying the petitioners' motion for reconsideration of the said decision.

#### **The Antecedents**

The CA set forth the antecedents in its assailed decision, thus:

The genesis to this instant petition can be traced from the July 9, 1999 resolution of Graft Investigation Officer I Emora C. Pagunuran as follows:

"This pertains to the sworn complaint filed by the National Bureau of Investigation (NBI) against JENNIFER RAMOS ANGELES, Acting Immigration Officer (Salary Grade III) of the Bureau of Immigration assigned at the Travel Control Service, Departure Area of the Ninoy Aquino International Airport (NAIA) for alleged violation of Section 3(e), R.A. No. 3019.

"Complainant alleged that on January 23, 1996, one Myrna Arcilla Llaneta departed for New York, USA using Passport No. N348389; that on January 25, 1996, said Ms. Llaneta was refused entry in the USA and deported back to the Philippines because it was discovered that the passport she was using was issued in Bonn, Germany on September 28, 1994 to one Dessie S. Cadornigara; that Immigration Departure Stamp No. 332 which was imprinted on the said passport was issued to respondent on January 6, 1996; that had respondent exercised reasonable diligence, she could have detected that the passport Ms. Llaneta was using does not belong to her considering the difference between the subject passenger's physical appearance and the picture in the passport.

"In her counter-affidavit, respondent pointed out that the same charge based on the same facts and circumstances has been subject of complaint filed before the Office of the City Prosecutor, Pasay City docketed as I.S. No. 98-B 0792; that

the said complaint was dismissed in a Resolution dated April 7, 1998; and that the said resolution has already become final as no Motion for Reconsideration was filed therefrom. Respondent adopted and adduced in evidence a copy of her counter-affidavit in the said case.

"In that counter-affidavit which forms an integral part of respondent's present counter-affidavit, respondent alleged, among others, that per Disposition Form of the NBI, there are no indications of alterations on the questioned passport; that on January 23, 1996 while she was on duty at the Travel Control Service, Departure Area, NAIA, a certain Dessie S. Cadornigara presented to her Passport No. N348389 issued in Bonn, Germany together with a ticket boarding pass and a departure card; that following the normal procedure, she checked the passenger's name in the Derogatory Book and after finding that the passenger's name was not in the Hold Departure List and that her passport bears several stamps of arrivals and departure and appears to be in order, she had the said passport and the boarding pass stamped; that departing passengers have already been cleared by several check-in points by the time they reach her counter, to wit: (1) by the PASSCOR on duty to whom tickets and passports are first presented, (2) by the airline counter to whom the same documents are presented and cleared including baggage after which a boarding pass and a departure card are issued, (3) by the NAIA police which checks again if the passenger was already issued a boarding pass, and (4) by the Immigration Departure Clearance counter which checks and clears the passenger's documents after which a second clearing will again be conducted before the passenger proceeds to the gate for the final departure area and a double checking by the Immigration Enforcement Unit; that even at the gate, several checking officers roam around and check passenger's documents; that she exercised due diligence and judicious efforts to verify and check the departure documents of the passenger in question; and that the charge against her is based on "speculation" and founded on imagined irregular acts or omissions." (Pages 26 to 28, *Rollo*)

After careful consideration of the evidence on hand, the said [I]nvestigator recommended the dismissal of the complaint for insufficiency of evidence after reasoning in this manner, to wit:

"Be that as it may, the undersigned investigator finds the evidence against respondent weak and conjectural. Surmises and conjectures have no place in a judicial inquiry and are especially anathema in a criminal prosecution. (People v. Furugganan, 193 SCRA 471).

"As borne by the NBI Questioned Documents Report No. 173-296 dated 29 February 1996 (pp. 0021-0022, Records), there

are no evidences/indications of alterations on the questioned passport that could have aroused respondent's suspicion.

"Respondent should be accorded the presumption of regularity in the performance of her official functions (Section 3[m], Rule 131, Rules of Court).

"WHEREFORE, premises considered, the complaint is dismissed for insufficiency of evidence." (Pages 29 to 30, *Rollo*)

Unfortunately, while Assistant Ombudsman Abelardo L. Aportadera, Jr. recommended approval of the findings of GIO Pagunuran, Overall Deputy Ombudsman Margarito P. Gervacio, Jr. disagreed and had the findings reversed by Graft Investigator II, Julita M. Calderon, who, in a memorandum dated October 18, 1999 (pp. 50-51, *Rollo*) made the following recommendation, which was approved by ODO Gervacio, to wit:

"WHEREFORE, foregoing premises being considered, we most respectfully recommend that the herein Resolution be MODIFIED so as to include further recommendations that the administrative aspect of the case be referred to AAB for proper disposition and there being no evidence sufficient to indict respondent for the crime charged, the criminal aspect of the case be considered as DISMISSED as previously recommended." (Page 51, *Rollo*)

The Administrative Adjudication Bureau, to whom the administrative aspect was assigned for investigation, acting through Helen M. Acuña, GIO-I in a decision dated June 26, 2000 (pp. 44 to 48, *Rollo*) made the following conclusion, thus:

"Moreover, as borne by the NBI Questioned Document Report No. 173-296 dated 28 February 1996 (pp. 032-033), there are no evidences/indications of alteration on the questioned passport that could have aroused respondent's suspicion, much less, doubt its authenticity. Thus, the presumption of regularity in the performance of her duties have not been overturned by the complainant." (Page 48, *Rollo*)

Sadly, ODO Gervacio again disagreed with the findings and recommendation and had the matter again investigated by GIO II Julita M. Calderon, who issued the assailed memorandum (pp. 27 to 35, *Rollo*) with the following recommendations, approved by the Ombudsman upon recommendation alone of the Overall Deputy Ombudsman, to wit:

"WHEREFORE, in the light of the foregoing discussions, this office finds respondent **JENNIFER R. ANGELES** **be GUILTY OF SIMPLE NEGLIGENCE OF DUTY** thereby imposing on her the maximum penalty of six (6) months suspension pursuant to Section 22(a), Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292.

"Accordingly, the herein Decision of GIO Acuña is therefore  
**SET ASIDE.**

**"RESPECTFULLY SUBMITTED."** (Page 25, *Rollo*)

The motion for reconsideration of petitioner having been denied, this instant petition was resorted to on the theory "that the Honorable Ombudsman, with wanton and palpable disrespect and disregard of the law and the Constitutional right of the Petitioner to security of tenure, acted, in the manner hereinafter described, **with grave abuse of discretion amounting to lack of jurisdiction** in imposing upon petitioner the undeserved and unwarranted penalty of six (6) months suspension merely on the basis of the **unaffirmed** and **unsubstantiated** report of the respondent NBI's agent, a certain investigator by the name of Carpeso Jr. (1<sup>st</sup> par., Petition, p. 8, *Rollo*).<sup>[2]</sup>

On September 28, 2001, the CA rendered a decision granting the petition and exonerating the respondent of the charge. The *fallo* of the decision reads:

WHEREFORE, foregoing premises considered, the petition, having merit in fact and in law, is hereby GIVEN DUE COURSE. Resultantly, the assailed orders are hereby NULLIFIED and SET ASIDE and a new one issued finding petitioner NOT GUILTY OF SIMPLE NEGLIGENCE, as charged. No costs.

SO ORDERED.<sup>[3]</sup>

The CA held that the respondent was denied due process. It noted that Carpeso Jr., who signed the NBI report, did not appear before the Office of the Ombudsman, and that no witness testified on and explained the said report.<sup>[4]</sup> It concluded that the Overall Deputy Ombudsman committed grave abuse of discretion when he insisted on the finding of guilt despite the two earlier recommendations of Graft Investigation Officers to exonerate the respondent. Moreover, the Overall Deputy Ombudsman arrived at his findings without any valid or competent evidence to support the same, in derogation of the respondent's right to due process.<sup>[5]</sup>

On February 13, 2002, the CA denied a motion for reconsideration of the said decision filed by the petitioners.

Hence, this petition for review.

The petitioners, through the Office of the Solicitor General (OSG), rely on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED IN ANNULING THE OMBUDSMAN'S MEMORANDUM SIGNED ON AUGUST 18, 1999 FOR THE MERE REASON THAT THE NBI REPORT WHICH FORMED THE BASIS OF THE OMBUDSMAN'S MEMORANDUM WAS NOT SUBSCRIBED BY A COMPLAINANT OR ANY WITNESS;