

## SECOND DIVISION

[ G.R. Nos. 157419-20, December 13, 2004 ]

**LIBRADO M. CABRERA, FE M. CABRERA AND LUTHER LEONOR, PETITIONERS, VS. HON. SIMEON V. MARCELO, IN HIS CAPACITY AS OMBUDSMAN, THE HON. SANDIGANBAYAN (FOURTH DIVISION) AND FRANCO P. CASANOVA, RESPONDENTS.**

### DECISION

**TINGA, J.:**

Through the present *Petition for Certiorari*, elected local officials of the Municipality of Taal, Batangas attempt to nip in the bud criminal prosecutions lodged against them by the Ombudsman before the Sandiganbayan. They fail.

The antecedents follow.

Before the Ombudsman, complaints were filed by private respondent Franco P. Casanova against incumbent Taal, Batangas mayor Librado M. Cabrera, his wife, former Mayor Fe M. Cabrera, and Taal Municipal Councilor Luther Leonor, for violation of Article 217 in relation to Articles 171 and 48 of the Revised Penal Code (*i.e.*, the complex crime of Malversation of Public Funds thru Falsification of Public Documents), and Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. The cases pertained to the allegedly unauthorized travels of the spouses Cabrera, and the allegedly anomalous purchase of medicines involving Leonor and the Cabreras.

The complaint pertaining to the alleged unauthorized travel, docketed as OMB-1-01-0873-J, alleges that during his previous term, Librado Cabrera had, on 13 March 1998 and 22 June 1998, collected and received from the Municipal Government of Taal, reimbursement of alleged travel expenses incurred outside of the Province of Batangas in the respective amounts of Thirteen Thousand Six Hundred Seventy Pesos and Twenty-Nine Centavos (P13,670.29) and Thirteen Thousand Nine Hundred Eighty- One Pesos and Fifty Four Centavos (P13,981.54). Likewise, Fe Cabrera, during her own term, obtained reimbursement for alleged travel expenses incurred outside the province of Batangas in the total amount of One Hundred Seventy Thousand Nine Hundred Eighty-Seven Pesos and Sixty-Six Centavos (P170,987.66).

[1] The Cabreras, prior to undertaking the questioned trips, did not secure formal approval from the Provincial Governor of Batangas as required under the Local Government Code. It is also alleged that the Cabreras forged the signature of then Governor Hermilando I. Mandanas in a purported Certification dated 14 December 2000, which appeared to approve the travel orders and expenses incurred by the Cabreras.[2]

The complaint regarding the alleged unauthorized purchases of medicine was docketed as OMB-1-01-0874-J. It is alleged therein that on several occasions in

1998 and 1999, during the respective incumbencies of Librado and Fe Cabrera, they caused the procurement of certain medical supplies/medicines from a sole supplier, Diamond Laboratories, Inc. ("DLI"), in the total amount of One Million Five Hundred Thirteen Thousand Five Hundred Thirteen Pesos and Two Centavos (P1,513,513.02).

[3] These procurements were purportedly irregular, as they were made without the benefit of a public bidding; in certain cases, payments were actually made prior to the delivery and acceptance of the medical supplies; the checks issued in payment were made payable to DLI or Luther Leonor, who thereafter encashed the same; and per General Information Sheet of DLI with the Securities and Exchange Commission, the members of the Board of Directors at the time of the transactions were relatives of Librado within the fourth civil degree of consanguinity, namely: Roberto V. Cabrera, Jr., Profetiza P. Cabrera, Edrich P. Cabrera, Roberto V. Cabrera III, and Jason Paul P. Cabrera.[4]

The Cabrerias and Leonor filed their respective counter-affidavits. They noted that the allegations were based on an audit report in the form of a memorandum dated 11 June 2001 submitted by State Auditors Ely G. Valdez and Ruben Jobil to the Director, COA Regional Office No. IV, Quezon City. They also argued that the complaints were premature, as they timely requested for reconsideration of the audit findings and therefore, the audit report had not yet attained finality and could not be the basis of the instant complaints.

In his reply, Casanova averred that on 20 January 2002, he received a copy of a letter from COA Regional Office No. IV Director Tito Nabua, advising Librado Cabrera that the latter's request for reconsideration had been denied.[5] On 13 May 2002, the petitioners appealed the denial of their request for reconsideration with the COA Head Office.[6]

In a *Joint Resolution* dated 22 March 2002, the Office of the Deputy Ombudsman for Luzon dismissed the charge of Malversation of Public Funds Thru Falsification of Public Documents, holding that there was no sufficient showing to hold the Cabrerias liable for the charge.[7] However, on the same *Joint Resolution* said Deputy Ombudsman found sufficient basis to hold the Cabrerias and Leonor liable for Section 3(e) of the Anti-Graft and Corrupt Practices Act, which penalizes "causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith, or gross inexcusable negligence."

The *Joint Resolution* declared improper the reimbursement of the travel expenses of the Cabrerias since there was no valid travel order issued by the proper authorities when the Cabrerias left their station, in contravention of Section 96(b) of the Local Government Code. Even assuming that the Certification dated 14 December 2000 is valid, the *Joint Resolution* countered, such could not cure the illegality of the travel and the subsequent reimbursement of the unauthorized travel expenses, as it was issued long after the trips were made, and even after the COA audit.[8]

It was also found in the *Joint Resolution* that the subject procurement of medicines was highly irregular, as it was made without public bidding and the medicines were obtained from only one company which is owned by the relatives of Librado Cabrera.

[9] It cited Section 356 of the Local Government Code, which lays the general rule that acquisition of supplies by a local government unit shall be through competitive public bidding. Also noted were that a total payment of Three Hundred Thousand Nine Hundred Thirty-Three Pesos and Fifty-Two Centavos (P300,933.52) was made even prior to the delivery and acceptance of the purchased medicines, and that the name Leonor, an incumbent Municipal Councilor, appeared on the canvass sheets, purchase orders, sales invoices, official receipts, disbursement vouchers and checks, with Leonor himself actually and personally encashing the checks. [10]

Thus, the *Joint Resolution* recommended the filing before the Sandiganbayan of informations for violations of Section 3(e) of the Anti-Graft and Corrupt Practices Act against petitioners. On 12 July 2002, then Ombudsman Aniano A. Desierto approved the recommendation. [11]

On 23 July 2002, two related informations were filed with the Sandiganbayan against petitioners. [12] Thereafter, petitioners filed two Joint Motions for Reinvestigation with the Sandiganbayan, which it granted on 29 August 2002. [13] The arraignment of the petitioners was deferred pending reinvestigation.

In compliance with the order for reinvestigation, a *Memorandum* dated 30 October 2002 was prepared by Special Prosecution Officers Franco T. Falcon and Jaime C. Blancaflor of the Office of the Ombudsman. [14] They wholly agreed with the earlier recommendation to charge petitioners with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. They further recommended that the petitioners be indicted also for malversation under Article 217 of the Revised Penal Code. [15] However, on 16 January 2003, Ombudsman Simeon V. Marcelo approved only the maintenance of the original charges against the petitioners, and disapproved the filing of four counts of malversation cases against petitioners. [16]

Hence, the present *Petition for Certiorari*. Petitioners claim that the Ombudsman acted without or in excess of his jurisdiction or with grave abuse of discretion in approving the 22 March 2002 Resolution and the 30 October 2002 *Memorandum*. They allege that there is no sufficient basis in fact or in law to charge petitioners with violations of Section 3(e) of the Anti-Graft and Corrupt Practices Act. [17] They also question the reliance made by the Ombudsman on the COA *Audit Report*, which they point out had not yet become final it being the subject of a pending appeal with the COA head office. [18] They also note that the Ombudsman previously dismissed an administrative complaint lodged by Casanova with the Office of the Ombudsman, involving the same matters. [19]

Anent the charge pertaining to the purchases of medicines, they assert that there was no need for public bidding since, under the Implementing Rules of the Local Government Code, procurement of supplies may be made directly from a duly licensed manufacturer, [20] that there was no duty on their part to canvass prices offered by other manufacturers or dealers of medicine as the canvass should have been conducted by the COA, which failed to do so; [21] that there was no showing of undue injury which resulted from the purchases of medicine; [22] that the participation of Leonor in the purchases was in accommodation of the request of DLI; [23] and that the payments totaling P300,933.52 were actually made after, not

prior to, the delivery of medicines.<sup>[24]</sup>

Petitioners likewise challenge the findings of the Ombudsman regarding the reimbursement of travel expenses. They assert that the Governor of Batangas had authorized their travels, albeit belatedly;<sup>[25]</sup> and that the rates of reimbursed expenses were in conformity with Executive Order No. 248, which allows reimbursement of actual travel expenses in excess of Three Hundred Pesos (P300.00) if supported by official receipts and accompanied by a certification that the same were necessary in the performance of official duty.<sup>[26]</sup>

As a general rule, the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause.<sup>[27]</sup> 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 would 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.<sup>[28]</sup>

However, this principle of non-interference does not apply when there is a grave abuse of discretion which would authorize the aggrieved person to file a petition for certiorari and prohibition, such as when the Ombudsman does not take essential facts into consideration in the determination of probable cause, among others.<sup>[29]</sup>

A careful evaluation of the present petition warrants the conclusion that it presents another instance which calls for application of the general rule of non-interference.

Petitioners cannot fault the Ombudsman for relying on the *COA Audit Report*, notwithstanding that it had not yet attained finality. The initial basis for the Ombudsman's investigation was not the *COA Audit Report*, but the complaints filed by Casanova. While the allegations in the complaint happened to be similar with those contained in the *COA Audit Report*, the Ombudsman could very well conduct an independent investigation based on the complaints for the purpose of whether criminal charges should be filed against the petitioners. The Ombudsman is reposed with broad investigatory powers in the pursuit and of its constitutional mandate as protector of the people and investigator of complaints filed against public officials.<sup>[30]</sup> It is even empowered to request from any government agency such as the COA, the information necessary in the discharge of its responsibilities and to examine, if necessary, pertinent records and documents.<sup>[31]</sup>

It should be borne in mind that the interest of the COA is solely administrative, and that its investigation does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which a public official is answerable.<sup>[32]</sup> In *Ramos v. Aquino*, the Court ruled that the fact that petitioners' accounts and vouchers had passed in audit is not a ground for enjoining the provincial fiscal from conducting a preliminary investigation for the purpose of determining the criminal liability of petitioners for malversation.<sup>[33]</sup> Clearly then, a finding of probable cause does not derive its veracity from the findings of the COA,

but from the independent determination of the Ombudsman.

Petitioners, invoking the previous dismissal by the Ombudsman of the administrative complaint against them on the same charges, assert that if the Ombudsman could not find petitioners administratively liable on the standard of substantial evidence, there is no basis to proceed with the criminal charges considering that the quantum of proof would not be proof beyond reasonable doubt.

An examination though of the *Orders* of the Ombudsman dismissing the administrative complaint reveal that the dismissal was warranted not because the charges had no merit. In disposing of the administrative complaint, the Office of the Ombudsman noted that since Fe Cabrera was no longer the Mayor of Taal, the administrative complaint against her should be dismissed because the Ombudsman could no longer acquire jurisdiction over her person.<sup>[34]</sup> In the cases of Librado Cabrera and Luther Leonor, it was observed that since both were subsequently reelected to their incumbent positions in 2001, their reelection, concordant to *Aguinaldo v. Santos*,<sup>[35]</sup> operates as a condonation of whatever administrative infraction or misconduct they may have committed during their previous terms.<sup>[36]</sup> Clearly then, these complaints were dismissed not because the charges were unfounded, but because of prevailing doctrines peculiar to administrative complaints. Besides, it is well settled that condonation of an officer's fault or misconduct during a previous expired term by virtue of his reelection to office for a new term can be deemed to apply only to his administrative and not to his criminal guilt.<sup>[37]</sup>

Admittedly, it was noted in the *Order* dated 18 January 2002 dismissing the administrative complaint that the preliminary records did not show that the evidence of guilt on the charge of illegal travel expense reimbursements against the Cabrerias was not strong.<sup>[38]</sup> However, the remark though was made in the context of the discussion on whether the elements to justify preventive suspension of the Cabrerias were met. Under Section 24(a) of the Ombudsman Act,<sup>[39]</sup> the Ombudsman may issue a preventive suspension order only if the evidence of guilt against respondent is strong. Similarly, under Section 63 of the Local Government Code, local government officials may be preventively suspended if the evidence of guilt is strong. However, the standard of strong evidence of guilt, which is sufficient to deny bail to an accused in a criminal case, is markedly higher than the standard of probable cause sufficient to initiate criminal cases against defendants. A conclusion that evidence against the Cabrerias is not strong does not equate to a finding of lack of probable cause against them, as the former requires a higher degree of proof than the latter.

Moreover, such comment was made in the disposition of the administrative case, which is a separate proceeding from the investigation on the criminal liability of the Cabrerias. The same *Order* also contained an explicit caveat that the dismissal of the administrative complaint was "without prejudice to the outcome of the criminal cases filed against them arising from the same acts complained of."<sup>[40]</sup>

At the same time, the Office of the Ombudsman should exercise caution when it utilizes findings of the COA in support of its determination of probable cause as the prelude to the filing of a criminal complaint against a public official. The COA is not