

SECOND DIVISION

[G.R. No. 144784, September 03, 2002]

PEDRO G. SISTOZA, PETITIONER, VS. ANIANO DESIERTO IN HIS CAPACITY AS OMBUDSMAN, AND ELISEO CO, RESPONDENTS.

DECISION

BELLOSILLO, J.:

There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates. It is worth noting that while no charges of violation of Sec. 3, par. (e), of RA 3019 otherwise known as the *Anti-Graft and Corrupt Practices Act*, as amended, were filed against the responsible officials of the Department of Justice and officers of other government agencies who similarly approved the procurement subject of the instant petition and authorized the disbursement of funds to pay for it, all the blame unfortunately fell upon petitioner Pedro G. Sistoza as then Director of the Bureau of Corrections who merely acted pursuant to representations made by three (3) office divisions thereof, in the same manner that the other officials who were not charged but who nonetheless authorized the transaction in their respective capacities, relied upon the assurance of regularity made by their individual subordinates.

In truth, it is sheer speculation to perceive and ascribe corrupt intent and conspiracy of wrongdoing for violation of Sec. 3, par. (e), of the *Anti-Graft and Corrupt Practices Act*, as amended, solely from a mere signature on a purchase order, although coupled with repeated endorsements of its approval to the proper authority, without more, where supporting documents along with transactions reflected therein passed the unanimous approval of equally accountable public officers and appeared regular and customary on their face.

Stated otherwise, in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, no definite nor certain defects or when the public officer's trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error. As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy.

Furthermore, even if the conspiracy were one of silence and inaction arising from *gross inexcusable negligence*, it is nonetheless essential to prove that the breach of duty borders on malice and is characterized by flagrant, palpable and willful indifference to consequences insofar as other persons may be affected. Anything less is insufferably deficient to establish probable cause. Thus, when at the outset the evidence offered at preliminary investigation proves nothing more than the signature of a public officer and his statements verifying the regularity of prior procedure on the basis of documents apparently reliable, the prosecution is duty-bound to dismiss the affidavit-complaint as a matter of law and spare the system meant to restore and propagate integrity in public service from the embarrassment of a careless accusation of crime as well as the unnecessary expense of a useless and expensive criminal trial.

This petition for certiorari and prohibition stemmed from a routine purchase of tomato paste to be used as ingredient in the austere diet of the inmates of the New Bilibid Prison. On 10 August 1999 the *Pre-Qualification, Bid and Awards Committee* (PBAC) of the Bureau of Corrections offered for public bidding the supply of tomato paste in addition to other food items for consumption in the month of September. Among the bidders were RBJJ, PMS Trading Enterprises, Filcrafts Industries, Inc., and Elias General Merchandising. The specification for tomato paste appearing in the bid announcement and the bid tender form where it appeared as item 55 was 48/170 tins-grams to one (1) case.^[1]

The offers of the respective bidders were embodied in their individual bid tender forms securely placed inside sealed envelopes. Elias General Merchandising offered a bid of P1,350.00 for 100/170 tins-grams to one (1) case while RBJJ and PMS Trading Enterprises tendered their respective bids for the same quantity at the higher prices of P1,380.10 and P1,380.05 per case.^[2] On the other hand, Filcrafts Industries, Inc., proffered P539.00 for the quantity of 48/198 tins-grams to one (1) case. It appears that the bid tender form executed by Elias General Merchandising and submitted to PBAC already indicated a change in the quantity specification from 48/170 tins-grams to 100/170 tins-grams which PBAC approved as shown by the initials of the chairman and members thereof.^[3] In the same breadth, PBAC rejected the bid of Filcrafts Industries, Inc., for offering a non-registered brand of tomato paste in the Philippines and its failure to specify in the bid tender form the country of origin of the tomato paste it would supply.^[4]

Based on the abstract of bidding, Elias General Merchandising won the bidding with its offer of P1,350.00 for 100/170 tins-grams to one (1) case.^[5] On 13 August 1999 the Supply Division of the Bureau of Corrections thus prepared the purchase order (PO No. C-99-0140) for the one (1)-month supply of tomato paste in favor of Elias General Merchandising.^[6] It reflected the supplier's winning offer of P1,350.00 for 100/170 tins-grams to one (1) case and no longer the initial specification of 48/170

tins-grams.^[7] The Management Division of the Bureau of Corrections passed upon the purchase order and confirmed the regularity of the procedures previously undertaken, while the Accounting Division authorized the funding of the purchase order.^[8] Petitioner Sistoza received the purchase order and its supporting documents, cursorily read them and thereafter affixed his signature on the purchase order.^[9] On 2 September 1999 PBAC issued a resolution noting that Elias General Merchandising "in all angles x x x greatly complied with the specifications provided" thereby confirming its winning bid for the month-long supply of tomato paste.

Petitioner Sistoza endorsed the winning bid of Elias General Merchandising to the Department of Justice which initially disapproved the same.^[10] The Justice Department observed that the award to the supplier with only the second lowest bid was not adequately justified in the 2 September 1999 resolution of the PBAC. The purchase order was thus returned to the Supply Division which then informed Elias General Merchandising of the development. The winning bidder replied to the Supply Division and expressed its willingness to "meet the price of the lowest bidder for item No. 55, tomato paste which is more or less P1,120.00/box for 100 cans/170 grams." The Supply Division proposed in return the price of P964.12/box of 100 cans/170 grams supposedly matching the lowest bid of Filcrafts Industries Inc.^[11] Elias General Merchandising rejected the counter-offer and pegged its price offer at P1,120.00 for 100 cans/170 grams.

On 29 October 1999 petitioner endorsed to the Department of Justice the purchase order in favor of Elias General Merchandising and conveyed the supplier's discounted offer of P1,120.00 for 100 cans/170 grams. He also alluded to the fact that the tomato paste had been delivered to the New Bilibid Prison and already consumed by its inmates. For the second time, the Justice Department disapproved the endorsement notwithstanding the reduced price since Elias General Merchandising allegedly remained to be only the second lowest bidder.^[12]

On 29 November 1999 Sistoza endorsed for the third time the purchase order of tomato paste in favor Elias General Merchandising to the Department of Justice. He said -

The Pre-Qualification, Bid and Awards Committee in its resolution dated 2 September 1999 states that Item No. 55 (tomato paste) was awarded to Elias General Merchandise in spite of being the 2nd lowest bidder due to the fact that the offer of Filcrafts Industries, Inc. does not conform [to] the specification provided for in the purchase orders. The lowest bidder makes a counter-offer while Elias General Merchandise complied with all the requirements and specifications set forth [in the] said item. Copy of the said resolution is attached for your reference. The dealer on its part, since it is questioned for being awarded to the second lowest bidder, offered to reduce [its] price from P1,350.00/box (100 tins per box of 170 grams per tin to P1,120.00/box) x x x x

He again appealed for the approval of the purchase order emphasizing that the tomato paste had been used for the subsistence of the inmates of the New Bilibid Prison for the month of September.

On 8 December 1999 Undersecretary of Justice Ramon J. Liwag finally approved the purchase order for the tomato paste in favor of Elias General Merchandising at the

reduced price of P1,120.00 per case for two hundred fifteen (215) cases or a total of P240,800.00. Consequently, Disbursement Voucher No. 99100393 was prepared by the Bureau of Corrections for the obligation of P240,800.00 and Land Bank Check No. 082195-QQ dated 17 December 1999 was paid to Elias General Merchandising.

On 22 September 1999 while efforts to secure the approval of the purchase order were being undertaken, respondent Eliseo Co, a perennial bidder for supply of food items of the New Bilibid Prison, filed an affidavit-complaint with the Office of the Ombudsman alleging criminal and administrative charges for violation of Sec. 3, par. (e), RA 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*, against petitioner Pedro G. Sistoza as Director of the Bureau of Corrections and officers and members of its Supply Division and PBAC.^[13] He claimed that Sistoza and his staff conspired with each other to cause undue injury to the government and the inmates of the New Bilibid Prison by giving undue advantage to Elias General Merchandise although its bid was higher in price and lower in quantity than that offered by Filcrafts Industries, Inc.

On 7 July 2000 the Office of the Ombudsman dismissed the administrative proceedings, docketed as OMB-ADM-0-99-1130, against petitioner Sistoza and some of his co-respondents therein on the ground that their actions in awarding the supply of tomato paste to Elias General Merchandising, although its bid was not the lowest, were merely recommendatory and that they were effectively scrutinized and validated when the award was eventually approved by the Department of Justice.

On 29 November 1999, after counter-affidavits and supporting documents had been filed in the criminal proceedings, docketed as OMB-Case No. 0-99-1985, the Evaluation and Preliminary Investigation Bureau (EPIB), Office of the Ombudsman, issued a resolution recommending the prosecution of petitioner Sistoza and his co-respondents therein with the exception of the Chief of the Supply Division for violation of Sec. 3, par. (e), RA 3019. The EPIB asserted that a failure of bidding should have been decreed since Elias General Merchandising did not comply with the original specification of 48/170 tins-grams when it submitted a bid of 100/170 tins-grams in the same manner that Filcrafts Industries, Inc., did not abide by several provisions of the bid announcement and that the offer of Elias General Merchandising should have been rejected since it tendered a price higher than the bid of Filcrafts Industries, Inc. The EPIB concluded that these anomalies were fairly obvious from supporting documents showing why and how the supply of tomato paste was awarded to Elias General Merchandising and that Sistoza with no greater effort than to look casually at these documents would have discovered the irregularity of the award.

On 29 March 2000 the Office of the Special Prosecutor (OSP), Office of the Ombudsman, rendered a memorandum concurring with the findings of the EPIB in its *Resolution* of 29 November 1999. It stressed the deviation of the offer of the supposed winning bidder from the specification of 48/170 tins-grams and the seemingly irregular preparation of the purchase order ahead of the 2 September 1999 PBAC *Resolution* formally awarding the supply of tomato paste to Elias General Merchandising. The OSP also claimed that petitioner Sistoza failed to disclose in any of his endorsements of the bidding to the Department of Justice that the discounted offer of Elias General Merchandising at P1,120.00 for 100 cans/170 grams was still higher than the price quoted by Filcrafts Industries, Inc., a fact which petitioner could have easily found out and conveyed from the counter-proposal made by the

Supply Division to Elias General Merchandising at P964.12/box of 100 cans/170 grams purportedly to match the lowest bid of Filcrafts Industries, Inc.

On 8 May 2000 the Office of the Chief Legal Counsel, Office of the Ombudsman, recommended approval of the 29 March 2000 OSP Memorandum. On 7 June 2000 the Ombudsman authorized the filing of the appropriate Information against Sistoza and his alleged co-conspirators. On 14 June 2000 the Information was filed with the Sandiganbayan, docketed as Crim. Case No. 26072, accusing Sistoza of the following acts -

That on or about August 10, 1999 or immediately prior or subsequent thereto, in Muntinlupa City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, accused x x x together with accused Director PEDRO SISTOZA and Supply Division Chief x x x conspiring and confederating with one another, while in the performance of their official duties, did then and there willfully, unlawfully and criminally, with manifest partiality and evident bad faith made it possible for Elias General Merchandising to qualify and be the winning bidder in the supply of tomato paste for the subsistence of prisoners for the month of September 1999 x x x accused PEDRO SISTOZA, knowing fully well that Elias General Merchandise was only the second lowest bidder and that the subsequent offer by the said supplier of the reduced price of P1,120.00 for 100/170 grams per case was still higher than the offer of Filcrafts Industries, Inc. at P964.12 for 100/170 grams per case as computed by accused [Supply Division Chief], still recommended the approval of Purchase Order No. 0-99-140 to the Department of Justice and subsequently resulted in the approval thereof, hence Disbursement Voucher No. 9910093 in the amount of P240,800.00 was approved by accused PEDRO SISTOZA, and Land Bank Check No. 082195-QQ was issued to Elias General Merchandising, thereby giving said supplier unwarranted benefit, advantage and preference of the Government in the amount of P46,381.95 x x x x

On 22 June 2000 Sistoza filed with the Sandiganbayan a motion for reinvestigation and suspension of proceedings therein. The court a quo granted reinvestigation and referred the matter to the Ombudsman but denied the prayer for suspension of the proceedings. Accordingly, on 11 July 2000 Sistoza filed an amplified motion for reconsideration with the Office of the Special Prosecutor but this was also denied on 8 August 2000. On 25 August 2000 the Ombudsman affirmed the denial. Hence, this petition.

On 18 October 2000 this Court issued a temporary restraining order enjoining the Sandiganbayan from conducting further proceedings in Crim. Case No. 26072 against petitioner Sistoza in order not to render the instant petition academic and futile.

Petitioner Sistoza argues that he had no active participation in the award of the supply of tomato paste to Elias General Merchandising and that his involvement was limited to signing the purchase order for this food item. He claims that upon receipt of the purchase order, he cursorily perused the document and readily affixed his signature on it since the purchase order had already passed the scrutiny of three (3) office divisions of the Bureau of Corrections, namely, the Supply Division, Management Division and Accounting Division. He concludes that as a matter of law