

FIRST DIVISION

[G.R. No. 128466, May 31, 2001]

REMEGIO P. YU, MICHAEL S. COSUE AND JULIETA M. FERNANDEZ, PETITIONERS, VS. SANDIGANBAYAN, JUSTICES FRANCIS E. GARCHITORENA, MINITA V. CHICO-NAZARIO AND EDILBERTO G. SANDOVAL (SB 1ST DIVISION), HON. ANIANO DESIERTO, SPECIAL PROSECUTOR LEONARDO P. TAMAYO, DEPUTY SPECIAL PROSECUTOR ROBERT E. KALLOS, PROSECUTOR HENEDINA A. PULGAR, EDDIE PATAWARAN, SUSAN P. CASARENO, LEON LICUDO, JR. AND CRIS COLOMA, RESPONDENTS.

D E C I S I O N

PARDO, J.:

What is before the Court is a petition^[1] for *certiorari* with prohibition and an application for preliminary injunction and temporary restraining order.

Petitioners alleged that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that there was probable cause to indict them for violation of the Anti Graft and Corrupt Practices Act particularly Section 3 (e) thereof. And that the Sandiganbayan also committed grave abuse of discretion in sustaining such finding and persisting to try the case in SB Case No. 23454.^[2]

On March 23, 1994, the Deputy Ombudsman for Luzon received a Joint Affidavit and Criminal Complaint from the members of the Sangguniang Bayan, Rosales, Pangasinan namely, Eddie Patawaran, Leon Lucido, Susan P. Casareno and Cris Coloma charging Municipal Mayor Remegio P. Yu, Municipal Vice-Mayor Michael S Cosue and Municipal Treasurer Julieta M. Fernandez and Rodolfo Macabunga, the proprietor of Rosales Lumber and Hardware with violation of R. A. No. 3019, Section 3 (e).^[3]

Acting on the complaint, the Deputy Ombudsman for Luzon required the respondents to file their corresponding counter affidavits.

On May 23, 1994, complainants submitted an amended criminal complaint^[4] dropping Rodolfo Macabunga from the charge attaching the affidavit^[5] of Macabunga to the effect that he did not make any delivery of gravel and sand to the Rosales Public Market; that the delivery receipt was not signed by an employee of the Municipal Government of Rosales, Pangasinan, that he was not aware how the Municipal Government came into possession of a delivery receipt and the voucher amounting to P20,000.00 for the gravel and sand.

In time, respondents filed their counter affidavits and supporting evidences.^[6]

Petitioners Yu, Cosue and Fernandez claimed that there was indeed delivery of the subject materials by Rosales Lumber and Hardware which submitted the lowest bid price quotation through its representative Mr. Virgillo "Gil" Aguilar. It was also Mr. Aguilar who received the purchase order dated September 29, 1993, in behalf of Rosales Lumber and Hardware. The delivery was attested to by the affidavits of sixteen (16) market vendors of Rosales Public Market, plus the joint-affidavit of Municipal Engineers Camillo S. Olegario and Danilo E. Nacion, attesting to the complete delivery of the materials.^[7]

On March 18, 1996, OMB investigator Perfecto Lawrence D. Chua Cheng V after evaluation of the evidence for both parties recommended the dismissal of the case.^[8] However, the Ombudsman disapproved the recommendation for dismissal.^[9] And relying on the Memorandum of an OMB special assistant which gave credence to the affidavit of Rodolfo Macabunga, owner of the Rosales Lumber and Hardware, that he had not entered into any contract with the municipality of Rosales for the delivery of the subject materials, the Ombudsman proceeded to charge petitioners with violation of R. A. No. 3019, Section 3 (e).^[10]

Hence, on September 11, 1996, the Ombudsman filed with the Sandiganbayan an Information^[11] for violation of Republic Act No. 3019, Section 3 (e) against petitioners and one Rodolfo Macabunga, for acting in conspiracy and making it appear that 100 cu. m. of mixed gravel and sand valued at P20,000.00, for use in the gravelling of the Rosales Public Market was delivered by Rosales Lumber and Hardware on October 1, 1993, when in fact no delivery was ever made.

Upon previous leave of court, on November 11, 1996, petitioner Yu and Fernandez filed a Motion for Reconsideration^[12] of the indictment based on the following grounds:

"1. There was indeed delivery of the subject materials;

"2. The check in payment thereof was received and endorsed/encashed by Rodolfo Macabunga (proprietor of Rosales Lumber and Hardware); and that

"3. There was no damage or prejudice caused to the municipality of Rosales."

Previously, on November 4, 1996, accused Cosue filed a separate Motion for Reconsideration^[13] based on the same grounds that Yu and Fernandez raised. In a memorandum^[14] the Ombudsman denied the motion for reconsideration. In the same manner, the Sandiganbayan denied the motion for reconsideration petitioners filed.^[15]

Hence, this petition.^[16]

Petitioners raise the following issues:

1. Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that there was probable cause against petitioners;
2. Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in sustaining the finding of probable cause of the Ombudsman.^[17]

According to petitioners, there was an abundance of evidence showing that there was delivery of the gravel and sand for the public market of Rosales, such as the affidavits of sixteen market vendors some of whom physically helped in the spreading of the mixed gravel and sand; the affidavits of two of the Municipal Engineers, Camilo Olegario and Danilo Nacion, attesting to actually seeing the delivery and several business operators in the public market who personally helped either as hired labor or volunteers in the laying of the gravel and sand.^[18]

Also worthy of note is the recommendation for the dismissal of the case by OMB Investigator Perfecto Lawrence D. Chua Cheng V, concurred into by OMB Director Ernesto M. Marcos and recommended for approval by Ombudsman for Luzon Jesus F. Guerrero, to wit:

"The issues to be resolved in this case hinges on whether or not deliveries of the aggregates were actually made for the regravelling of the Rosales Public Market, and whether or not payment of P20,000.00 was received by Rodolfo Macabunga.

"The Answer to both questions it is respectfully submitted must be in the affirmative. While Mr. Macabunga denied that his hardware made a delivery of the ordered aggregates, the same cannot prevail over the positive testimonies of the respondents as well as their witnesses confirming the delivery of the mixed gravel and sand at the public market in the months of September and October 1993. This finding is all the more bolstered by the evidence of receipt of the Land Bank of the Philippines Check No. 6099256 in the amount of P19,400.00 by Virgillo "Gil" Aguilar whose signature appears on the claimants box of disbursement voucher No. 101-93-50-1479 as determined by the National Bureau of Investigation per Bureau's questioned document report no. 574-794-A dated August 8, 1994. Noteworthy mentioning at this point is the failure on the part of the complainants as well as their witness Rodolfo Macabunga to refute the respondent's claim that Virgillo "Gil" Aguilar is the latter's authorized representative respecting the subject transaction. Evidence on record belie Mr. Rodolfo Macabunga's claim of non-receipt of the above-mentioned check no. 6099256 which was either deposited or encashed at the Traders Royal Bank, carmen, Pangasinan Branch by its endorser whose signature appearing on the dorsal portion thereof was determined by the NBI to be that of Mr. Rodolfo Macabunga.