

FIRST DIVISION

[G.R. No. 129939, September 09, 1999]

**AMOR D. DELOSO, IRENEO B. ONIA, AND NELSON A. QUEJADA,
PETITIONERS, VS. HON. ANIANO A. DESIERTO, IN HIS
CAPACITY AS OMBUDSMAN, HON. LEONARDO P. TAMAYO, IN HIS
CAPACITY AS SPECIAL PROSECUTOR, HON. ROBERT E. KALLOS,
IN HIS CAPACITY AS DEPUTY SPECIAL PROSECUTOR, AND
PACITA T. GONZALES, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The case is a petition for certiorari and injunction with prayer for a writ of preliminary injunction or a temporary restraining order to enjoin public respondents from prosecuting petitioners in Criminal Cases Nos. 23292 and 23295, filed with the Sandiganbayan.

Petitioners, Amor D. Deloso, Ireneo B. Onia, and Nelson A. Quejada, were then Governor, Provincial Treasurer, and Provincial Chief Accountant, respectively, of the province of Zambales.

In 1989, a Commission on Audit (COA) team, composed of auditors and examiners, audited the financial transactions and operations of Zambales province, for the calendar years 1988 and 1989. On October 5, 1989, the COA audit team submitted Special Audit Office (SAO) Report No. 89-86, finding that:

"1. Equipment, specifically road graders and water trucks, not needed in the prosecution of nine projects was (sic) included in the program of work, as pay items. The province of Zambales unnecessarily paid rentals, cost of fuel and wages of operators for the unutilized equipment, totaling P194,647.00.

"2. There were double payments of burial expenses to Funeraria Iba, amounting to P4,700.00. The payment was in connection with the province's monetary grant for burial and funeral expenses to the family of deceased persons, considered to be resident indigents of the province.

In connection with the findings of the COA audit team, on February 25, 1991, Congresswoman Pacita T. Gonzales^[1] wrote then Ombudsman Conrado M. Vasquez, and requested the investigation of petitioners Amor D. Deloso, Ireneo B. Onia, and Nelson A. Quejada, in their official capacities, and all other persons involved in the anomaly.

In time, petitioners filed their respective counter-affidavits with the Office of the Ombudsman. On November 7, 1995, the Ombudsman, through the Special Prosecutor, filed with the Sandiganbayan four (4) separate informations for

malversation of public funds thru falsification of public documents and for violation of Section 3 (e), R. A. No. 3019 (Anti-Graft and Corrupt Practices Act) against petitioners, along with other public officials.^[2]

Two of these were docketed as Criminal Cases Nos. 23292 and 23295.^[3]

In Criminal Case No. 23292, the prosecution alleged:

"That for the period of January 1988 up to December 1989, and for sometime prior or subsequent thereto, in the Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, above-named accused public officers, namely: AMOR D. DELOSO, then Governor of Zambales; Provincial Treasurer IRENEO B. ONIA, Provincial Auditor RANULFO P. VERIAN, and Chief Accountant NELSON QUEJADA, all of the Provincial Government of Zambales, all public officials, all while in the performance of their respective official functions, taking advantage of their official positions and committing the offense in relation to their respective official functions, in conspiracy and in connivance with each other, did then and there, wilfully (sic), unlawfully and feloniously prepare, issue and release Disbursement Voucher No. 302 in the amount of P4,700.00 in favor of Funeraria Iba as payment of the funeral and burial expenses of deceased Zambales indigents namely Lourdes Pailas, Juan Dologan and Gonzalo de Guzman knowing fully well that said same funeral and burial expenses have already been fully settled under Disbursement Voucher No. 217 in the same amount of P4,700.00; and that after the issuance of said DV No. 302, above-named provincial public officials encashed the same which cash equivalent and proceeds thereof all the accused wilfully (sic), unlawfully and feloniously appropriated for their personal use and benefit, thereby defrauding the government in the said amount of P4,700.00.

"CONTRARY TO LAW."^[4]

In Criminal Case No. 23295, the prosecution alleged:

"That for the period 1988 up 1989, and for sometime prior or subsequent thereto, in the Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, above-named accused public officers, namely: AMOR D. DELOSO, then Governor of Zambales; Provincial Engineer TEOFILO MINAS, JR., Provincial Treasurer IRENEO B. ONIA, Provincial Auditor RANULFO P. VERIAN, Asst. Prov'l Engr. CECILIO PANALIGAN, JR., and Chief Accountant NELSON QUEJADA, all of the Provincial Government of Zambales, all public officials, all while in the performance of their respective official functions, taking advantage of their official positions and committing the offense in relation to their respective official functions, acting with gross inexcusable negligence, conspiring and conniving with each other, did then and there wilfully (sic), unlawfully and criminally cause undue injury to the government, particularly the Provincial Government of Zambales by then and there allowing/permitting the inclusion in the Program of Work of several equipment not needed in the prosecution of several projects of the Provincial Engineering Office (PEO) as pay items, as follows: three (3)

water trucks and two road graders; that the rentals, cost of fuel used and the wages of operators of said equipment were not utilized totalled (sic) to P194,647.00 but which were all paid by the Provincial Government of Zambales, thus increasing the projects in said same amount; to the damage and injury of the government and to the public interest in the said amount of P194,647.00.

“CONTRARY TO LAW.”^[5]

On March 23, 1996, petitioners filed with the Sandiganbayan, an Urgent Motion to Defer Arraignment and for Leave to File a Motion for Reinvestigation with the Ombudsman. On April 26, 1996, Sandiganbayan deferred the arraignment, without ruling on the motion for reinvestigation.

On May 9, 1996, petitioners filed with the Ombudsman a motion for reinvestigation. On June 18, 1996, Special Prosecution Officer Raymundo A. Olaguer recommended the withdrawal of the two informations in Criminal Cases Nos. 23292 and 23295. On June 28, 1996, Deputy Special Prosecutor (DSP) Robert E. Kallos, concurred in by Special Prosecutor (SP) Leonardo P. Tamayo and Ombudsman Aniano A. Desierto, disapproved Olaguer’s recommendation. On October 14, 1996, petitioners moved for reconsideration.

On February 24, 1997, prosecutor Olaguer again recommended the withdrawal of the two informations and dismissal of Criminal Cases Nos. 23292 and 23295. DSP Kallos, SP Tamayo and Ombudsman Desierto approved the dismissal of the cases against co-accused Ranulfo Verian, Teofilo Minas, Jr., and Cecilio C. Panaligan, Jr., on the ground of good faith in relying upon the reports and recommendations of their subordinates. However, in the same marginal note, they denied the dismissal of the cases against petitioners.^[6]

On May 30, 1997, petitioners filed with the Ombudsman their third motion for reconsideration of the disapproval, but it was denied in an order dated June 6, 1997.^[7]

Hence, this petition.

Petitioners are aware of the rule that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. However, they contend that the Office of the Ombudsman acted without or in excess of jurisdiction or with grave abuse of discretion, amounting to lack or excess of jurisdiction, in denying petitioners’ motion to withdraw the two informations, or to dismiss Criminal Cases Nos. 23292 and 23295. In *Brocka v. Enrile*,^[8] we ruled that there are exceptions^[9] to the rule that criminal prosecution may not be restrained or stayed by injunction, preliminary or final. Petitioners submit that the acts of the Ombudsman were without or in excess of authority, thereby falling within the exceptions.

Petitioners assert that there is no sufficient ground to engender a well-founded belief that the crime charged has been committed by petitioners, or that they are probably guilty thereof. As regards Criminal Case No. 23292 for malversation of public funds thru falsification of public documents, petitioners stress that the double payment made to Funeraria Iba, amounting to P4,700.00, was an honest mistake,