

FIRST DIVISION

[G. R. No. 135913, November 04, 1999]

VICTORIANO B. TIROL, JR., PETITIONER, VS. HON. SANDIGANBAYAN JUSTICES CIPRIANO A. DEL ROSARIO, NARCISO S. NARIO, AND ANACLETO D. BADOY (SB 3RD DIVISION), HON. SPECIAL PROSECUTOR LEONARDO P. TAMAYO, HON. PROSECUTOR PELAGIO S. APOSTOL, AND COMMISSION ON AUDIT (COA), REGION VIII, REPRESENTED BY ITS DIRECTOR, LEYTE GOVERNMENT CENTER, CANDAHUG, PALO, LEYTE, RESPONDENTS.

DECISION

PARDO, J.:

The case is a petition for certiorari with preliminary injunction or temporary restraining order, under Rule 65 of the 1997 Rules of Civil Procedure, assailing the following orders of the Sandiganbayan, to wit:

1. Order dated September 22, 1998 denying petitioner's motion to suspend trial in SB Criminal Case No. 23785;^[1] and
2. Order dated October 13, 1998 denying petitioner's motion for reconsideration of the said denial.^[2]

The antecedent facts are as follows:

In May 1993, based on a complaint filed by members of two groups, the Federated PTA Organization and the Teachers and Employees Union, the Commission on Audit (COA) conducted a general audit of the transactions of the Lalawigan National High School, Lalawigan, Borongan, Eastern Samar between January 1, 1990 and April 30, 1993. On October 19, 1993, the COA audit team reported that the acquisition of equipment costing P80,000.00 was made through negotiated contract, and not by public bidding in violation of COA Circular 85-55A, and resulted in overpricing amounting to P35,100.00. On December 1, 1994, COA Regional Director Santos M. Alquizalas recommended to Deputy Ombudsman (Visayas) Arturo C. Mojica the filing of criminal and administrative charges against the responsible personnel, namely: petitioner Victoriano B. Tirol, Jr., Conchita C. Devora and Maria A. Alvero.

The three accused participated in the transaction as follows: Conchita C. Devora, a Secondary School Principal I, approved the transaction, countersigned the check and requisitioned the items; Maria A. Alvero, as Bookkeeper, signed box no. 4 of the voucher; petitioner Tirol, as Director III, signed the checks and approved the Requisition and Issue Voucher (RIV).

After conducting preliminary investigation, on March 20, 1997, Graft Investigation

Officer III Virginia Palanca-Santiago, with the approval of Deputy Ombudsman Mojica and Ombudsman Aniano A. Desierto, found the existence of probable cause for the indictment of petitioner Tirol, now Regional Director, DECS V, Legaspi City, and his two co-accused for violation of Section 3 (g) of Republic Act No. 3019, as amended. On the same date, March 20, 1997, the Ombudsman filed with the Sandiganbayan an information for violation of Section 3 (g) of R. A. No. 3019 against the three accused.

Upon motion of petitioner Tirol for permission to travel abroad on official business, on September 17, 1997, the Sandiganbayan conditionally arraigned Tirol, without prejudice to the filing of a motion for reconsideration with the Ombudsman. Petitioner Tirol, assisted by counsel, pleaded not guilty.

On January 2, 1998, petitioner Tirol filed with the Sandiganbayan a motion for leave to seek reconsideration/reinvestigation by the Ombudsman. On January 5, 1998, the Sandiganbayan ordered all the accused to file with the Ombudsman, through the Office of the Special Prosecutor, their motion for reconsideration of the finding of probable cause, within ten (10) days therefrom. The court directed the prosecutor to re-evaluate his findings and conclusions within thirty (30) days from receipt of the motion.

On March 5, 1998, the Office of the Special Prosecutor recommended the denial of the motion for reconsideration. On May 22, 1998, the Ombudsman approved the recommendation.

On July 17, 1998, petitioner Tirol filed with the Supreme Court a petition for review on certiorari,^[3] pursuant to Section 27 of Republic Act No. 6770 (The Ombudsman Act of 1989). Petitioner averred that the Ombudsman gravely abused his discretion in concluding that the approval of the requisition and issue voucher (RIV) and signature in the check made petitioner liable for the overpricing.

Upon arraignment on August 24, 1998, accused Devora and Alvero pleaded not guilty to the information.

On September 2, 1998, petitioner Tirol filed with the Sandiganbayan a motion to reset trial and manifestation. He sought to reset the scheduled hearing on September 17 and 18, 1998, pending resolution of the petition for review on certiorari (G. R. No. 133954) filed with the Supreme Court.

On September 4, 1998, the Sandiganbayan in open court denied the motion to reset trial. On September 22, 1998, the Sandiganbayan reduced the ruling in writing by an *order nunc pro tunc*. The court ordered the pretrial conference to proceed as scheduled. The Sandiganbayan ruled that an appeal by certiorari to the Supreme Court under Section 27 of the Ombudsman Act, refers only to administrative cases decided by the Ombudsman, and not to judicial cases filed with the court.

On September 14, 1998, petitioner moved for reconsideration, which the court denied in an order dated October 13, 1998.

Hence, this petition.^[4]