345 Phil. 597

EN BANC

[G.R. No. 106632, October 09, 1997]

DORIS TERESA HO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES (REPRESENTED BY THE OFFICE OF THE SPECIAL PROSECUTOR OF THE OMBUDSMAN) AND THE SANDIGANBAYAN (SECOND DIVISION), RESPONDENTS.

[G.R. NO. 106678. OCTOBER 9, 1997]

ROLANDO S. NARCISO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES (REPRESENTED BY THE OFFICE OF THE SPECIAL PROSECUTOR OF THE OMBUDSMAN) AND THE SANDIGANBAYAN (SECOND DIVISION), RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

May a judge issue a warrant of arrest solely on the basis of the report and recommendation of the investigating prosecutor, without personally determining probable cause by independently examining sufficient evidence submitted by the parties during the preliminary investigation?

The Case

This is the main question raised in these two consolidated petitions for certiorari under Rule 65 of the Rules of Court challenging the Sandiganbayan's August 25, 1992 Resolution[1] which answered the said query in the affirmative.

The Facts

Both petitions have the same factual backdrop. On August 8, 1991, the Anti-Graft League of the Philippines, represented by its chief prosecutor and investigator, Atty. Reynaldo L. Bagatsing, filed with the Office of the Ombudsman a complaint[2] against Doris Teresa Ho, Rolando S. Narciso (petitioners in G.R. Nos. 106632 and 106678, respectively), Anthony Marden, Arsenio Benjamin Santos and Leonardo Odoño. The complaint was for alleged violation of Section 3 (g) of Republic Act 3019[3] prohibiting a public officer from entering into any contract or transaction on behalf of the government if it is manifestly and grossly disadvantageous to the latter, whether or not the public officer profited or will profit thereby. After due notice, all respondents therein filed their respective counter-affidavits with supporting documents. On January 8, 1992, Graft Investigation Officer Titus P. Labrador (hereafter, "GIO Labrador") submitted his resolution[4] with the following recommendations:

"WHEREFORE, all premises considered, it is respectfully recommended that an information for violation of Section 3 (g) of R.A. 3019 as amended be filed against respondent Rolando S. Narciso before the Sandiganbayan.

It is likewise recommending that the case against the other respondents be DISMISSED for insufficiency of evidence."

However, after a review of the above resolution, Special Prosecution Officer Leonardo P. Tamayo (hereafter, "SPO Tamayo") recommended that both Rolando Narciso and Doris Teresa Ho be charged with violation of Section 3 (e) of R.A. 3019. The resolution of GIO Labrador, as modified by the memorandum[5] of SPO Tamayo, was approved by Ombudsman Conrado M. Vasquez on May 5, 1992. Thus, herein petitioners were charged accordingly before the Sandiganbayan in an information[6] filed on May 18, 1992. Attached to the information were the resolution of GIO Labrador and the memorandum of SPO Tamayo. The said information reads:

"The undersigned Special Prosecution Officer III, Office of the Special Prosecutor, hereby accuses ROLANDO NARCISO and DORIS TERESA HO, President of National Marine Corporation, of violation of Section 3(e) of RA 3019, as amended, committed as follows:

That on or about April 4, 1989, and for sometime prior and/or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ROLANDO NARCISO, a public officer, being then the Vice-President of the National Steel Corporation (NSC), a government-owned or controlled corporation organized and operating under the Philippine laws, and DORIS TERESA HO, a private individual and then the President of National Marine Corporation (NMC), a private corporation organized and operating under our Corporation law, conspiring and confederating with one another, did then and there wilfully, unlawfully and criminally, with evident bad faith and through manifest partiality, cause undue injury to the National Steel Corporation (NSC), by entering without legal justification into a negotiated contract of affreightment disadvantageous to the NSC for the haulage of its products at the rate of P129.50/MT, from Iligan City to Manila, despite their full knowledge that the rate they have agreed upon was much higher than those offered by the Loadstar Shipping Company, Inc. (LSCI) and Premier Shipping Lines, Inc. (PSLI), in the amounts of P109.56 and P123.00 per Metric Ton, respectively, in the public bidding held on June 30, 1988, thereby giving unwarranted benefits to the National Marine Corporation, in the total sum of One Million One Hundred Sixteen Thousand Fifty Two Pesos and Seventy Five Centavos (P1,116,052.75), Philippine Currency, to the pecuniary damage and prejudice of the NSC in the aforestated sum. The said offense was committed by Rolando S. Narciso in the performance of his official functions as Vice-President of the National Steel Corporation.

CONTRARY TO LAW."

Acting on the foregoing information, the Sandiganbayan issued the now questioned warrant of arrest against Petitioners Ho and Narciso. Petitioner Ho initially questioned the issuance thereof in an "Urgent Motion to Recall Warrant of Arrest/Motion for Reconsideration" which was adopted by Petitioner Narciso. They alleged that the Sandiganbayan, in determining probable cause for the issuance of the warrant for their arrest, merely relied on the information and the resolution attached thereto, filed by the Ombudsman without other supporting evidence, in violation of the requirements of Section 2, Article III of the Constitution, and settled jurisprudence. Respondent Sandiganbayan denied said motion in the challenged Resolution. It ratiocinated in this wise:

> "Considering, therefore, that this Court did not rely solely on the certification appearing in the information in this case in the determination of whether probable cause exists to justify the issuance of the warrant of arrest but also on the basis predominantly shown by the facts and evidence appearing in the resolution/memorandum of responsible investigators/ prosecutors, then the recall of the warrant of arrest, or the reconsideration sought for, cannot be granted. More so, when the information, as filed, clearly shows that it is sufficient in form and substance based on the facts and evidence adduced by both parties during the preliminary investigation. To require this Court to have the entire record of the preliminary investigation to be produced before it, including the evidence submitted by the complainant and the accused-respondents, would appear to be an exercise in futility."

Thus, these petitions.

The Issue

Petitioner Ho raises this sole issue:

> "May a judge determine probable cause and issue [a] warrant of arrest solely on the basis of the resolution of the prosecutor (in the instant case, the Office of the Special Prosecutor of the Ombudsman) who conducted the preliminary investigation, without having before him any of the evidence (such as complainant's affidavit, respondent's counter-affidavit, exhibits, etc.) which may have been submitted at the preliminary investigation?"[7]

In his separate petition, Rolando S. Narciso adopts the foregoing and raises no other distinct issue.

Petitioners Ho and Narciso similarly contend that a judge, in personally determining the existence of probable cause, must have before him sufficient evidence submitted by the parties, other than the information filed by the investigating prosecutor, to support his conclusion and justify the issuance of an arrest warrant. Such evidence should not be "merely described in a prosecutor's resolution." Citing People vs.

Inting,[8] petitioners insist that the judge "must have before him 'the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents which are material in assisting the judge to make his determination.'"

The Court's Ruling

The petitions are meritorious.

The pertinent provision of the Constitution reads:

> "Section 2 [, Article III]. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized." (Underscoring supplied.)

In explaining the object and import of the aforequoted constitutional mandate, particularly the power and the authority of judges to issue warrants of arrest, the Court elucidated in Soliven vs. Makasiar[9]:

> "What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause."[10] [underscoring supplied]

We should stress that the 1987 Constitution requires the judge to determine probable cause "personally." The word "personally" does not appear in the corresponding provisions of our previous Constitutions. This emphasis shows the present Constitution's intent to place a greater degree of responsibility upon trial judges than that imposed under the previous Charters.

While affirming Soliven, People vs. Inting[11] elaborated on what "determination of probable cause" entails, differentiating the judge's object or goal from that of the

prosecutor's.

> "First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor for the Election Supervisor to ascertain. Only the Judge and the Judge alone makes this determination.
>
> "Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.
>
> "And third, Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper -- whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial -- is the function of the Prosecutor."[12]

And clarifying the statement in People vs. Delgado[13] -- that the "trial court may rely on the resolution of the COMELEC to file the information, by the same token that it may rely on the certification made by the prosecutor who conducted the preliminary investigation, in the issuance of the warrant of arrest" -- this Court underscored in Lim Sr. vs. Felix[14] that "[r]eliance on the COMELEC resolution or the Prosecutor's certification presupposes that the records of either the COMELEC or the Prosecutor have been submitted to the Judge and he relies on the certification or resolution because the records of the investigation sustain the recommendation." We added, "The warrant issues not on the strength of the certification standing alone but because of the records which sustain it." Summing up, the Court said:

> "We reiterate the ruling in Soliven vs. Makasiar that the Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.
>
> "The extent of the Judge's personal examination of the report and its