

EIGHTEENTH DIVISION

[CA-G.R. SP. NO. 06253, January 30, 2015]

SPO4 REYNALDO ALCALA MATILLANO, PETITIONER, VS. ATTY. MEDARDO G. DE LEMOS, REGIONAL DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, CENTRAL VISAYAS REGIONAL OFFICE, AND RONNIE BACUS HERNANI, RESPONDENTS.

D E C I S I O N

INGLES, G. T., J.:

THE CASE

This is a petition filed under Rule 43 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices rendered on 16 December 2009, and its Order denying reconsideration dated 18 April 2011.

THE ANTECEDENTS

This controversy has its roots from a complaint-affidavit^[2] executed on March 17, 2008 by Pinky Hernani y Nacion (Pinky Hernani hereinafter) against PNP-CIDG operatives headed by SPO4 Reynaldo Matillano. In her complaint sworn before Atty. Bernardo A. Dela Cruz, Pinky Hernani alleged in the main that SPO4 Matillano and the two other police officers, namely: Balaba, Perea and Tumakay, Jr. demanded money from her and her husband, Ronio Hernani y Bacus, in exchange for non-filing of case for illegal possession of firearm against the latter. Pinky Hernani continued that the said police officers also demanded money in the amount of P20,000.00 to pay off the prosecutor in-charge so that no Information would be filed against her husband. All in all, she was only able to produce P70,000.00 for the police officers, which she personally handed to Police Officer Peria. and P15,000.00 for the fiscal, which she handed to SPO4 Matillano. Despite, however, the money she gave to the said police officers, which was against her will, these police officers still filed a case against his husband; and a corresponding Information was also filed. That, she posted bail for the temporary release^[3] of her husband on 11 March 2008, but the police officers released him on the following day only.

On the basis of the complaint^[4] dated March 14, 2008 and affidavit filed by Ronnie Hernani, Agents/Special Investigators of the National Bureau of Investigation, Central Visayas, Regional Office (NBI-CEVRO)^[5] conducted an entrapment operation against SPO4 Matillano at one of the fastfood chains situated in North Reclamation Area in Mandaue City. During the entrapment operation, SPO4 Matillano was caught redhanded receiving money in the amount of P15,000.00 (including the three P100.00^[6] bills dusted with fluorescent powder) from Ronnie Hernani. Recovered from SPO4 Matillano was the pay-off money and a .45 caliber pistol with serial No.

9842001 including three magazines containing five live ammunition and one (1) magazine of an M16 rifle. Thereafter, SPO4 Matillano was brought to the NBI-CEVRO where he was examined for the presence of fluorescent powder, which tested positive;^[7] then, he was booked,^[8] fingerprinted^[9] and photographed.^[10]

By its Order^[11] dated 25 April 2008, Director Eulogio S. Cecilio of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, directed SPO4 Matillano, PI Elmer Roberto Balaba, SPO4 Rodrigo Perez, SPO2 Pedro Tan and PO3 Artemio Tumakay, Jr. to file their respective counter-affidavit and those of their witnesses, if any, and such other controverting evidence, within ten (10) days from notice. Failing which, shall be deemed a waiver on their part, and consequently, the case shall be considered submitted for resolution without further notice.

SPO4 Matillano filed his Counter-Affidavit,^[12] averring, primarily, that he is neither criminally nor administratively liable and the administrative case filed against him be dismissed on the following grounds: (1) That, the criminal case against him was prematurely filed. That, in order to preclude any contradiction to whatever findings may be rendered by the trial court in the criminal case filed against him for the same acts charged in the administrative case, the latter case should be dismissed. (2) That, he violated no law, rule or regulation as he was only exercising his duties as police officer. (3) That, the administrative case is not supported by substantial evidence. Attached to this counter-affidavit are the following: (1) Letter^[13] dated May 8, 2008 to City Prosecutor Nicolas Sellon – manifesting intent to file a case for perjury against Ronnie B. Hernani; (2) Affidavit^[14] of SPO4 Reynaldo Matillano; (3) Affidavit^[15] of Ma. Janeta T. Matillano; (4) Affidavit^[16] of Elfred Ricabo y Pasquil; (5) Affidavit^[17] of Vicente Mañalac; (6) Entry No. 5303^[18] showing that on 09 March at 140_H, a team led by PI Elmer Roberto Balaba returned to the station with Ronnie Bacus Hernani, who was arrested for violation of RA 8294; (7) Statement of Account^[19] dated March 18, 2008 issued by ^[20]Leslie B. Salva showing the charges, payment made, and remaining balance; (8) Sales Invoice;^[21] (9) makro serial No. 443482;^[22] and (10) undated Joint-Affidavit^[23] executed by PI Elmer Roberto S. Balaba, SPO4 Reynaldo A. Matillano, SPO4 Rodrigo C. Perez, SPO2 Edgar O. Perea, SPO2 Pedro E. Tan and PO Artemio B. Tumakay, Jr., attesting in the main that Ronnie Hernani failed to present pertinent documents to possess or carry firearms outside of his residence.

THE DECISION^[24] OF THE OMBUDSMAN

The *fallo* of the decision reads, to wit:

“WHEREFORE, premises considered, it is respectfully recommended that the instant administrative case against respondents Police Inspector Elmer Roberto Sabandal Balaba, SPO4 Rodrigo Cruz Perez, SPO2 Pedro Eder Tan and PO3 Artemio B. Tumakay, Jr. be DISMISSED.

However, finding substantial evidence, respondents SPO4 Reynaldo Alcala Matillano and SPO2 Edgar Olaer Perea are hereby found guilty of Grave Misconduct and are meted out the penalty of Dismissal from the service.

The Secretary, Department of Interior and Local Government, and the

Chief, Philippine National Police, are hereby directed to implement this Decision in accordance with law and to promptly inform this Office of the compliance therewith.”^[25]

The Office of the Ombudsman ratiocinated in its decision, that,

“The entrapment procedure conducted on March 14, 2008 by the NBI against respondent SPO4 Matillano produced credible evidence against him. The three pieces Three Hundred Peso bills, part of the Fifteen Thousand Pesos, used were previously marked '2008-P-2503, NBI, CEVRO, RDP, 3-14-2008' with invisible ink and dusted with fluorescent powder and his hands tested positive with this chemicals. He was caught *in flagrante delicto* and the documentary evidence cannot lie.

As a result, a criminal case for Direct Bribery against him has been filed by the Office of the Ombudsman for Visayas in the RTC of Cebu City and docketed as Criminal Case No. CBU-82706.

X X X X

On the other hand, aside from being part of the team which arrested complainant Hernani on March 9, 2008, we found no evidence against respondents PINSP. Balaba, SPO4 Perez, SPO2 Tan and PO3 Tumakay, Jr. linking them with the separate extortions made by respondents SPO4 Matillano and SPO2 Perea. In our mind, the complaint failed to establish conspiracy between and among the respondents.”^[26]

Not satisfied, SPO4 Matillano moved for the reconsideration^[27] of the decision. By its Order^[28] dated 18 April 2011, the Ombudsman denied SPO4 Matillano's motion in this wise,

'WHEREFORE, premises considered, it is respectfully recommended that Motion for Reconsideration dated 13 September 2010 and the Motion to Recall the Implementation of the Decision dated 28 October 2010, filed by respondent SPO4 Reynaldo A. Matillano as well as the Motion for Reconsideration dated 29 October 2010 filed by SPO2 Edgar O. Perea are hereby DENIED for lack of merit. The Decision dated 16 December 2009 is hereby AFFIRMED.

SO ORDERED.”^[29]

Hence, this petition ascribing the following errors to the Office of the Ombudsman, viz -

“I.

The Deputy Ombudsman gravely erred in finding SPO4 Matillano administratively liable for Misconduct and in ordering his dismissal from service because –

- a. The alleged demand and the charge of misconduct was not proven by substantial evidence;

- b. The Deputy Ombudsman failed to recognize that the administrative charge against SPO4 Matillano is clearly intended as leverage for Hernani's own criminal case for illegal possession of firearms; and
- c. SPO4 Matillano's act of heeding the incessant pleas for help of Hernani does not constitute grave misconduct as to justify his dismissal from service.

II.

The Deputy Ombudsman gravely erred in proceeding with the resolution of the administrative case notwithstanding that the criminal case for bribery based on the same incident, the same act, and on the same allegations is pending with the regular courts and may lead to a different finding altogether; and

III.

The Deputy Ombudsman committed a serious error in denying SPO4 Matillano's motion to recall implementation of decision dated 16 December 2009 because his motion for reconsideration was still pending at the time of the implementation of the decision."

ARGUMENTS

Petitioner's

Considering the nature of the administrative charge of misconduct based on extortion and bribery filed against him, the quantum of proof required should be more than substantial. Reliance on the entrapment procedure conducted on him is not enough basis for finding him guilty of misconduct. Save for the private respondent's allegations, no evidence was adduced regarding his supposed demand for P15,000.00 which was allegedly intended to secure a license, not even of the text messages he allegedly sent to the private respondent of such demand.

That, in the individual affidavit of Pinky Hernani and Alexon Loon, nothing was mentioned about the alleged demand. Too, the NBI agents who arrested him did not have any personal knowledge of the alleged demand because as can be gleaned from their Joint Affidavit of Arrest dated March 14, 2008, they merely relied on the private respondent's allegations thereon. What should have been considered, too, is the fact that the private respondent has an axe to grind against him and his fellow arresting officers.

What is more, evidence to be believed must not only come from a credible source but must also be credible in itself. In this instance, the private respondent's allegations are contrary to human nature and experience. In private respondent's March 14, 2008 affidavit, the private respondent alleged that he refused to receive the amount of P15,000.00, which was supposedly to cover the legal fees of Atty. Leslie Salva, in public. Yet, in the private respondent's supplemental affidavit executed on the same date, the private respondent alleged that he demanded the

payment of Php15,000.00 at the Jollibee outlet in Makro Cebu Department Store, Mandaue City. That, granting without admitting that he, indeed, demanded the amount of P15,000.00 from the private respondent this was for the payment of securing a gun license and not for any illegal purpose.

That, in *Boyboy v. Yabut*, Adm. Case No. 5225, April 29, 2003, it was held that -

"x x x. In the case before us, it is enough for respondent to deny complicity in the alleged blackmail or extortion, without more, for he is not under obligation to prove his negative averment, much less to disprove what has not been proved by complainants. Thus, we have consistently held that if the complainant/plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent/defendant is under no obligation to prove his exception or defense."

That, the administrative case filed against him is clearly intended as leverage for the private respondent's own criminal case for "Illegal Possession of Firearms". In fact, the private respondent did not deny his arrest on March 9, 2009 by him and some other police officers, and which arrest led to the filing of the criminal case before the Regional Trial Court, Branch 56 in Mandaue City.

That, he only tried to help the private respondent secure a firearm license. Yet, the Deputy Ombudsman considered this as not only unethical but in conflict with his interest and that of the institution he represents. What is more, to warrant one's removal, the act complained of must have a direct relation to and be connected with the performance of official duties amounting to, either, mis-administration or willful, intentional neglect and failure to discharge the duties of the office. In this case, his office has no relation, function or duty at all about the procurement of licenses for firearms. Hence, the complaint filed against him is neither related or connected with his official functions to make him liable for misconduct.

That, the criminal case pending before the RTC is based on the same incident, same act and same allegations as the administrative case. That is why, to avoid contradictory findings, any administrative disciplinary proceedings for the same act must await the outcome of the criminal case. It is settled rule that "pre-emption of the regular courts by an administrative case is a worrisome spectacle."

Moreover, the Ombudsman committed serious error when it denied his motion to recall the implementation of the December 16, 2009 decision because his motion for reconsideration of the said decision is still pending therewith. Such denial is contrary to the provision of its own Administrative Order No. 17-03, specifically Sections 7 and 8 thereof. To stress, the purpose of a motion for reconsideration is to request the court or quasi-judicial body to take a second look at its judgment and to correct any errors it may have committed therein. If the intent of the Ombudsman is to make final and executory its decision despite the filing of a timely motion for reconsideration then Adm. Order No. 17-03 should have so stated in clear and unmistakable terms. Indeed, where the law is clear and categorical, there is no room for any other interpretation, and what is left to be done is only to apply it. The rule is well entrenched that "an administrative agency tasked to implement a statute may not construe it by expanding its meaning where the provisions are clear and