



Republic of the Philippines
Supreme Court
Manila

SPECIAL THIRD DIVISION

Mis-DC Batt
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Third Division

SUPREME COURT OF THE PHILIPPINES
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**PSUPT. HENRY YLARDE
DUQUE,**

Petitioner,

G.R. Nos. 224648 & 224806-07

-versus-

**HON. OMBUDSMAN and FACT-
FINDING INVESTIGATION
BUREAU, DEPUTY
OMBUDSMAN FOR THE
MILITARY AND OTHER LAW
ENFORCEMENT OFFICES,
PSSUPT. JOB F. MARASIGAN,
and PSSUPT. JOEL NAPOLEON
CORONEL,**

Respondents.

X ----- X
**PSSUPT. ASHER A. DOLINA,
PSSUPT. FERDINAND P.
YUZON, PSSUPT. THOMAS U.
ABELLAR, PSSUPT. CORNELIO
R. SALINAS, PSSUPT.
NEPUMOCENO MAGNO M.
CORPUS, JR., PSSUPT. RICO P.
PAYONGA, and PSUPT.
MICHAEL AMOR FILART,**

Petitioners,

-versus-

**OFFICE OF THE OMBUDSMAN
(represented by Hon. CONCHITA
CARPIO-MORALES), OMB-
MOLEO (represented by AGIO III
DON A. ESQUIVEL, AGIO III**

G.R. Nos. 225188 & 225277

Present:

**BERSAMIN, Chief Justice,
JARDELEZA,
*REYES, A., JR.,
**REYES, J., JR., and
***INTING, JJ.**

Promulgated:

August 28, 2019

Mis-DC Batt

* Vice Associate Justice Bienvenido L. Reyes per Special Order dated July 14, 2017.
** Vice Associate Justice Presbitero J. Velasco, Jr. per Special Order dated August 14, 2018.
*** Vice Associate Justice Noel G. Tijam per Special Order dated May 29, 2019.

**ANATOLIO A.
ALEJANDRINO, LA II ED
ROWLAND A. SOLIDON, and
JOB F. MARASIGAN,**
Respondents.

X-----X

RESOLUTION

BERSAMIN, C.J.:

We hereby consider and resolve the motions for reconsideration filed by: (1) petitioner PSupt. Henry Ylarde Duque in G.R. No. 224648 and G.R. No. 224806-07;¹ and (2) petitioners PSSupt. Asher A. Dolina, PSSupt. Ferdinand P. Yuzon, PSSupt. Thomas U. Abellar, PSSupt. Cornelio R. Salinas, PSSupt. Nepomuceno Magno M. Corpus, Jr., PSSupt. Rico P. Payonga, and PSupt. Michael Amor Filart in G.R. No. 225188 and G.R. No. 225277.²

Antecedents

On July 9, 2019, the Philippine National Police National Headquarters Bids and Awards Committee (PNP-NHQ BAC) adopted Resolution No. 2009-37 in order to allocate to the PNP Maritime Group (MG) 20 units of police coastal craft (PCCs) for the unit price of ₱250,000.00, or a total of ₱5,000,000.00 as the approved budget for the contract (ABC). However, PCSupt. Villamor A. Bumanglag, the MG Director, requested an increase of the unit price of the PCCs from ₱250,000.00 to ₱312,000.00 to reflect the prevailing market price, thereby reducing the quantity to be procured from 20 to 16 PCCs.

On September 1, 2009, PNP-NHQ BAC, through Resolution No. 2009-53,³ approved the requested adjustment in price upon noting that the MG, as the end user, was in the best position to determine the kind and number of equipment that it deemed suitable for the function to be performed, and that the revision would not require the infusion of additional funds because the same ABC of ₱5,000,000.00 allocated to the MG would suffice to procure the 16 PCCs.

¹ *Rollo* (G.R. Nos. 224648 and 224806-07), pp. 318-335 and 338-375.

² *Rollo* (G.R. Nos. 225188 and 225277), pp. 521-560.

³ *Id.* at 117-118.

In a subsequent resolution, PNP-NHQ BAC recommended the delegation of the procurement to the PNP-MG Bids and Awards Committee (MG BAC).⁴ Thus, PNP-NHQ BAC issued Resolution No. 2009-54 recommending to PNP Chief Jesus A. Versoza that the public bidding for the procurement of the 16 PCCs be delegated to the MG BAC subject to existing accounting and auditing rules and regulations in order to enable the MG BAC to gain experience in implementing procurement activities, and upon considering that the MG could ensure the acquisition of equipment that would be most appropriate for its use given the special nature of its mandated mission and functions. PNP Chief Versoza approved both recommendations.

It is noted that in accordance with Resolution No. 2009-54 the equipment would be delivered to and accepted by the Inspection and Acceptance Committee (IAC) created for the purpose, or as determined by the PNP-NHQ BAC as a matter of procedure in order to ensure compliance with the specifications of the National Police Commission (NAPOLCOM).

In September and October 2009, tropical storm *Ondoy* and typhoon *Pepeng* brought heavy rainfall and caused extensive flooding and massive displacement of the populations in the country. President Gloria Macapagal-Arroyo declared a state of national calamity through Proclamation No. 1898 dated October 2, 2009.⁵ In November 2009, strong tropical cyclones *Quedan*, *Ramil*, *Santi*, *Tino*, *Urduja* and *Vinta* came in the wake of *Ondoy* and *Pepeng*.

Although the existing conditions in the country indicated that time was of the essence, and would have warranted the resort to a negotiated procurement, the MG BAC still exerted effort to obtain the best possible deal by inviting interested parties to tender proposals pursuant to Section 54.2(b) of the Implementing Rules and Regulations of R.A. No. 9184, as amended (IRR). The invitation only resulted in having two interested parties appear before the MG BAC, namely: Four Petals Trading (Four Petals), and business partners Dante Samadan and Antonio Martinez. During the proceedings, the MG BAC noted that NAPOLCOM had not yet issued specifications relating to the procurement, however the NAPOLCOM representative at the proceedings, suggested that the MG BAC use the existing NAPOLCOM specifications on motorized *banca* for the purpose.

⁴ Id. at 119-120.

⁵ Id. at 121.

As it turned out, the business partners were disqualified during the proceedings because their business partnership had not been registered and thus had no personality to participate in the procurement. On the other hand, the MG BAC found Four Petals qualified. In support of its qualification as a bidder, Four Petals had submitted the following required documents, namely: (1) its registration with the Department of Trade and Industry (DTI); (2) its verified information sheet dated January 26, 2009; (3) the verified letter of its proprietress, Ms. Ma. Pacita H. Umali; (4) the certification of its personnel; (5) the location map of its office address; (6) its business permits for the years 2009 and 2010 issued by Parañaque City; (7) its certificate of registration with the Bureau of Internal Revenue (BIR); (8) its BIR tax clearance for 2008 and 2010; (9) its certificate of registration dated August 12, 2009 issued by the Procurement Service of the Department of Budget and Management (DBM); (10) its license to engage in afloat ship repair dated April 4, 2007 issued by the Maritime Industry Authority (MARINA); and (11) various certificates of good standing issued by the PNP MG, PNP Traffic Management Group, PNP Office of the Legal Service, and PNP Police Community Relations Group.

Four Petals tendered its bid of ₱4,799,984.00 for the 16 PCCs, which was well within the ABC of ₱5,000,000.00.

Cognizant of the widespread and massive damage brought about by *Ondoy* and *Pepeng*, and in view of the announcement from the Department of National Defense (DND) and the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) that more typhoons were still to be expected, the PNP-MG BAC issued Resolution No. 2009-10 to consider the purchase of the PCCs as extremely urgent and to recommend their emergency purchase.⁶ MG Director PCSupt. Bumanglag, as the head of the procuring entity, approved the resolution.

In the interest of transparency, the actual conduct of the negotiated procurement was duly recorded. Several documents attested to the steps taken to preserve transparency, including the minutes of negotiation, the attendance sheet for the November 20, 2009 proceedings, the video capture of the proceedings, and the affidavit of Ms. Antolin Abra to the effect that she had been the one who took the recording. The MG BAC caused the taking of several screen shots of the proceedings to document that the proceedings had actually taken place.

In addition, Director Conrado L. Sumanga of the NAPOLCOM executed an affidavit attesting: (1) that he had been invited to be present during the bidding; (2) that attendees during the bidding included representatives of the NAPOLCOM and the Commission on Audit (COA);

⁶ Id. at 150-152.

and (3) that NAPOLCOM Resolution No. 98-151 dated June 2, 1998, as amended by NAPOLCOM Resolution No. 2005-64 dated February 2, 2005, had prescribed the standard specifications for motorized *banca* for the procurement.

After the conclusion of the negotiations, the supply contract was awarded in favor of Four Petals based on the specifications for motorized *banca* as stipulated in NAPOLCOM Resolution No. 98-151, as amended by NAPOLCOM Resolution No. 2005-064.

Subsequently, the MG and Four Petals executed a purchase contract worth ₱4,799,984.00 signed by PSSupt. Dolina and Pacita F. Umali, the latter acting in behalf of Four Petals.⁷ After PCSupt. Bumanglag approved the purchase contract, the PNP Logistics Support Services (PNP-LSS) issued Purchase Order No. 0(M) 291209-069 on December 29, 2009.⁸

On January 26, 2010, the NAPOLCOM, through Resolution No. 2010-065, adopted the specifications for police coastal seacraft.⁹

On March 22, 2010, Four Petals delivered 16 PCCs to the MG. PSupt. Ervin Glenn U. Provideo signed the delivery receipt but made a marginal note thereon saying “*lacking requirements as per DRD report are to be complied by proponent.*” Four Petals issued its sales invoice, which was purportedly signed by Eulito T. Fuentes to the effect that he had “*received the abovementioned goods in good condition.*”¹⁰

PO3 Avenusue Dy executed an inspection report form dated March 22, 2010 wherein he declared that he, along with the members of the PNP-LSS IAC, namely: PSupt. Job F. Marasigan, PCInsp. Juanito G. Estrebor and PCInsp. Renelfa L. Saculles, had inspected and found all the 16 PCCs to be in good order and condition.¹¹

On March 26, 2010, the PNP-LSS IAC (composed of PSupt. Marasigan, PCInsp. Estrebor, PCInsp. Saculles and PSupt. Leodegario B. Visaya) issued Resolution No. 2010-46 stating that the 16 PCCs had conformed with the approved NAPOLCOM specifications and passed the acceptance criteria as stated in the certificate of the end-user.¹² To be noted is that Antonio P. Retrato of PNP-LSS, then Chief of the Accounting Division, certified as to the completeness of the supporting documents and

⁷ Id. at 153-159.

⁸ Id. at 76.

⁹ Id. at 160-162.

¹⁰ Id. at 76.

¹¹ Id. at 77.

¹² Id. at 77, 163.

to the availability of funds; PCSupt. Reynaldo S. Rafal, then Director of PNP-LSS, approved the voucher previously audited by Jaime Sañares; and Lyndon G. Zorilla of the PNP-COA authenticated the documents based on the originals.

The PNP thereafter processed Disbursement Voucher No. 0(M)-12 dated July 12, 2010 for the payment of the 16 PCCs worth ₱4,542,842.00.¹³ On August 27, 2010, Four Petals received the payment for the PCCs through a Land Bank check.¹⁴

Meanwhile, on August 12, 2010, the MG Logistics Office headed by PSupt. Provideo conducted an inspection of the PCCs in the presence of representatives from the COA and the Directorate for Research and Development (DRD), and found several defects in the PCCs.¹⁵ Based on such findings, PSupt. Provideo formally required Four Petals to rectify the defects, but the latter did not respond.¹⁶ After his second letter to Four Petals was ignored, PSupt. Provideo sent the notice of termination of the contract, and required Four Petals to submit a position paper within seven days to explain why the contract should not be terminated.¹⁷

Subsequently, PSupt. Marasigan filed a complaint-affidavit with the Office of the Ombudsman against the petitioners in G.R. No. 225188 and G.R. No. 225277 as members of the MG BAC, as well as against PSupt. Provideo, PSupt. Duque, P03 Dy, Retrato, and Zorilla.¹⁸

While the complaint-affidavit of PSupt. Marasigan was undergoing investigation, the PNP, through the Criminal Investigation and Detection Group (PNP-CIDG), concluded its own investigation and found basis to charge PSupt. Duque, P03 Dy, and the members of the PNP-LSS IAC, specifically: PSupt. Marasigan, PSupt. Visaya, PCInsp. Estrebor and PCInsp. Saculles¹⁹ for violations of Section 3(e) of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*) and R.A. No. 6713, and for usurpation of authority on the part of the members of the PNP-LSS IAC for conducting the inspection and acceptance of the 16 PCCs without proper authority. The PNP-CIDG endorsed the findings to the Office of the Ombudsman.²⁰

In turn, the Office of the Deputy Ombudsman for the Military and Other Enforcement Officers-Field Investigation Unit (MOLEO-FIU) lodged

¹³ Id. at 77, 164.

¹⁴ Id. at 77.

¹⁵ Id. at 77-78.

¹⁶ Id. at 78.

¹⁷ Id. at 166.

¹⁸ Id. at 167-179; also charged were PCSupt. Bumanglag and PCSupt. George Piano, Chief of Logistics of the PNP.

¹⁹ Id. at 264-271.

²⁰ Id.

a complaint for violation of R.A. No. 3019 and R.A. No. 9814, among others, against the officers involved in the procurement of the PCCs.²¹

On June 2, 2015, the Office of the Ombudsman rendered a consolidated resolution in OMB-P-C-11-0762-I and OMB-P-C-12-0190-C finding probable cause to charge, among others, the petitioners in G.R. No. 225188 and G.R. No. 225277, along with others, with the violation of Section 3(e) of R.A. No. 3019, and PSupt. Duque also for falsification of public document.

The petitioners filed their respective motions for reconsideration but the Office of the Ombudsman denied the same on March 28, 2016.²²

The petitioners separately assailed the adverse resolutions in this Court by petitions for *certiorari*, which were consolidated in due course. However, the Court dismissed the petitions for *certiorari* through the assailed resolution dated March 29, 2017 based mainly on the judicial policy of non-interference with the discretion of the Office of the Ombudsman regarding the determination of probable cause.²³

The petitioners have seasonably filed their respective motions for reconsideration, and the respondents, through the Office of the Solicitor General (OSG), have submitted a consolidated opposition.²⁴

Issues

In G.R. No. 224648 and G.R. Nos. 224806-07, petitioner PSupt. Duque maintains that probable cause did not exist to charge him with the violation of Section 3(e) of R.A. No. 3019 and falsification of public document for his part in the procurement of the 16 PCCs; that resorting to the negotiated procurement had been justified by the declaration of the national emergency by the State; that because of the procurement being negotiated, Four Petals as the supplier was no longer required to submit further documents; that he did not forge the signatures in the ARE, RIS, and the supply availability inquiry (SAI); and that the ARE, RIS, and SAI had been routed to the various offices of the PNP for the documentation of the procurement activities.

The petitioners in G.R. No. 225188 and G.R. No. 225277 argue that the Office of the Ombudsman did not prove the elements of the violation of

²¹ Id. at 274-295.

²² Id. at 104-114.

²³ Id. at 511-520.

²⁴ Id. at 591-620; also, *rollo* (G.R. Nos. 224648 and 224806-07), pp. 418-448.

Secondly, the Office of the Ombudsman concluded that Four Petals had lacked the technical, legal and financial capability to supply the PCCs.⁴¹ It observed that because-

[Four Petals] is not a technically, legally and financially capable supplier. First, its address is a residential address. Second, it has no company website. Third, it is not a supplier known for coastal crafts or a company known for coastal craft-building. It is simply a trading company. An internet search of [Four Petals] reveals nothing about the company, except its involvement in the current controversy.

the petitioners in G.R. No. 225188 and G.R. No. 225277 as members of the MG BAC afforded Four Petals unwarranted benefits, advantage, or preference through manifest partiality, evident bad faith or gross inexcusable negligence.

The conclusion by the Office of the Ombudsman is unreasonable and unwarranted.

The records plainly show that Four Petals turned out to be the only supplier following the disqualification of the other supposed supplier on the basis of its being an unregistered partnership; and that the MG BAC considered Four Petals as a qualified supplier for purposes of the procurement based on its submission of the several required documents for the qualification process. As earlier mentioned, the documents included Four Petals' registration with the DTI; its verified information sheet dated January 26, 2009; the certification of its personnel; the location map of its office address; its business permits for the years 2009 and 2010 issued by Parañaque City; its certificate of registration with the BIR; its BIR tax clearances for 2008 and 2010; its certificate of registration dated August 12, 2009 issued by the Procurement Service of the DBM; its license to engage in afloat ship repair dated April 4, 2007 issued by the MARINA; and various certificates of good standing issued by the MG, PNP Traffic Management Group, PNP Office of the Legal Service, and PNP Police Community Relations Group.

The MG BAC was the body legally tasked to vet such qualifications. The Office of the Ombudsman should not supplant the determination of Four Petals' qualifications with its hindsight finding that Four Petals was "not a technically, legally and financially capable supplier" based only on the grounds that the address given was a residential address, and that Four Petals had no company website; or that Four Petals was not a "supplier known for coastal crafts or a company known for coastal craft-building;" or that Four

⁴¹ *Rollo* (G.R. Nos. 225188 & 225277), p. 85.

Petals was “simply a trading company;” or that the internet search revealed nothing about Four Petals except its involvement in the “current controversy.” For one, it was not shown that there were standing *prior* criteria requiring the address of the potential supplier not to be residential, or for the potential supplier to maintain a company website, or to have internet presence, or not to be a mere trading company, or to be “known for coastal crafts or [to be] a company known for coastal craft-building.”

It rather seems that the standards by which the Office of the Ombudsman sought to prosecute the petitioners in G.R. No. 225188 and G.R. No. 225277 as members of the MG BAC for the violation of Section 3(e) of R.A. No. 3019 were open-ended and arbitrarily set *post facto*. The Office of the Ombudsman ignored the extreme and destructive weather conditions that obtained at the time when the petitioners acted to determine the qualifications of Four Petals as a supplier of the PCCs. The records also established that during the period of the negotiations on the procurement the MG BAC found that Four Petals had been a previous supplier, contractor or consultant *in good standing*, a status that boosted the qualifications of Four Petals for the procurement of the PCCs.

In this connection, Section 54.2 of the Amended IRR-A of R.A. No. 9184 provides:

Section 54. Terms and Conditions for the Use of Alternative Methods. —

x x x x

54.2. In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Sections 48 to 53 of this IRR-A, the following shall also apply:

x x x x

d) For item (b) of Section 53 of the Act and this IRR-A, the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred. The award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.

x x x x

Branding Four Petals as a mere trading company was not entirely fair. Based on its having been licensed by the MARINA since April 4, 2007 to engage in “afloat ship repair,” Four Petals had apparently been engaged in a business activity connected with the procurement of the PCCs.

Thirdly, the Office of the Ombudsman made much of the failure of the MG BAC to follow and comply with the specifications of the NAPOLCOM for police coastal seacraft in the procurement. However, the Office of the Ombudsman was thereby whimsical and capricious, and the reason why were too obvious to be missed.

The failure to comply with the specification laid down by the NAPOLCOM should not be a factor for determining the potential liability of the petitioners in G.R. No. 225188 and G.R. No. 225277. To recall, the PNP NHQ BAC had delegated the procurement of the PCCs to the MG to give the latter experience in procurement, but the delegation did not expressly require the MG to await the specifications for the PCCs that were yet to be issued by the NAPOLCOM. At the start of the procurement process, when the absence of specifications from the NAPOLCOM was noticed, a representative of the NAPOLCOM assured the MG BAC that the existing specifications for motorized *banca* as stated in NAPOLCOM Resolution No. 98-151 could still apply. Thus, the MG BAC applied the specifications for motorized *banca* to the procurement of the 16 PCCs.

As stated earlier, Director Sumanga of the NAPOLCOM certified in his affidavit, among others, that NAPOLCOM Resolution No. 98-151 dated June 2, 1998, as amended by NAPOLCOM Resolution No. 2005-64 dated February 2, 2005, had prescribed the standard specifications for motorized *banca* as basis for the procurement during the public bidding.

By the time the NAPOLCOM adopted the new specifications on January 26, 2010 through Resolution No. 2010-065, the MG BAC had already completed the negotiated procurement with Four Petals. Plainly enough, subjecting the petitioners in G.R. No. 225188 and G.R. No. 225277 to liability for not applying the non-existent specifications was unfair.

It is relevant to point out, moreover, that Resolution No. 2010-065 laid down the specifications for the use by the various PNP units, not only for the use of the MG in procuring the 16 PCCs.

Fourthly, the petitioners in G.R. No. 225188 and G.R. No. 225277 should not be held liable for the acceptance of the substandard or defective PCCs delivered to the PNP. Their participation as members of the MG BAC was limited to the bidding process and later on to the negotiated procurement. They did not anymore participate in the stage of the inspection and acceptance of the supplied PCCs because such participation was not part of their official responsibility. As to them, therefore, the delivery of the PCCs was a future event over which they had no control; hence, to impute criminal motives to them based on an event beyond their control was totally unreasonable and unfair.

It is relevant to observe, too, that inasmuch as conspiracy was not shown to exist between the petitioners in G.R. No. 225188 and G.R. No. 225277 as members of the MG BAC, on the one hand, and the other officials involved with the inspection and acceptance of the PCCs, on the other, issues arising from the delivery and acceptance of the defective PCCs should not implicate the former. The applicable legal rule to follow is the principle of *res inter alios acta* embodied in Section 28, Rule 130 of the *Rules of Court*, under which the rights of a party cannot be prejudiced by an act, declaration, or omission of another.⁴² To be underscored is that knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy without showing him to have committed an overt act in furtherance of the common design and purpose.⁴³ To be considered co-conspirators, therefore, each of those taking part in the process of procurement and acceptance of the subject of the procurement must be shown to have performed an overt act in pursuance or furtherance of the conspiracy, for unless shown to do so they will not be deemed co-conspirators, and each may only be held responsible for the results of his own acts.⁴⁴

And, lastly, it was evident that the petitioners in G.R. No. 225188 and G.R. No. 225277 adopted measures during the negotiated procurement for the sake of ensuring the transparency of the procurement. They caused the negotiations to be duly recorded, and in that regard they submitted documents like the minutes of the negotiation, the attendance sheet of the November 20, 2009 proceedings, the affidavit of Ms. Abra as the recording person, and the video capture of the proceedings to prove that the proceedings actually took place. Their adoption of the measures evinced a sincere desire to prevent the process of procurement from being tainted with suspicion and irregularity.

On the whole, therefore, the Office of the Ombudsman lacked factual bases to find and hold that the petitioners had acted with partiality or bias in awarding the contract to Four Petals. It serves well to note that Four Petals turned out to be the sole supplier that remained. Even assuming that there was a degree of partiality towards Four Petals, it was not manifest. Neither should bad faith be imputed to them in the absence of the clear showing of the dishonest purpose or conscious doing of a wrong on their part. The Office of the Ombudsman likewise did not demonstrate how they could have been guilty of gross inexcusable negligence. The record rather showed that they had dutifully carried out their functions as members of the MG BAC, including ascertaining the propriety and advisability of resorting to the negotiated procurement. In fine, the Office of the Ombudsman indulged in

⁴² See *Pamplona v. Cueto*, G.R. No. 204735, February 19, 2018, 856 SCRA 33, 51.

⁴³ *People v. Escobal*, G.R. No. 206292, October 11, 2017, 842 SCRA 432, 459.

⁴⁴ *Macapagal-Arroyo v. People*, G.R. No. 220598, July 19, 2016, 797 SCRA 241, 312-313.

speculative, capricious and whimsical assumptions, and thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

III

Although PSupt. Duque was not liable for the violation of Section 3(e) of R.A. No. 3019 relative to the processing of the purchase order, probable cause for the violation existed as to him with respect to his acceptance of the defective PCCs

The Office of the Ombudsman found probable cause to charge PSupt. Duque with the violation of Section 3(e) of R.A. No. 3019 for having processed the purchase order dated December 29, 2009 in favor of Four Petals despite the apparent infirmities of the purchase contract. It opined thusly:

Despite the apparent infirmities of the Purchase Contract, it was still relied upon by respondents Piano, Retrato and Duque in processing the Purchase Order dated 29 December 2009 in favor of FPT. Significantly, the Purchase Order was signed by Umali only on 12 January 2010. Hence, there is probable cause to indict respondents Piano, Retrato, Duque, and Umali for Violation of Sec. 3(e), RA 3019 for giving FPT, through Umali, unwarranted benefits through manifest partiality, evident bad faith and/or gross inexcusable negligence.⁴⁵

In the view of the Court, the Office of the Ombudsman also gravely abused its discretion in finding probable cause to charge PSupt. Duque on the basis of his participation in the processing of the purchase order. The Court notes that the Office of the Ombudsman did not specify *how* and *if* PSupt. Duque committed manifest partiality, or evident bad faith, or gross inexcusable negligence; or *how* he might have thereby extended unwarranted benefits, preference or advantage in favor of Four Petals. Such specificity was demanded by due process; otherwise, the findings of fact would amount only to conclusions of law. To be emphasized is that PSupt. Duque was not a party to the purchase contract; hence, he had nothing to do with the supposed infirmities. Also, his participation in the processing of the purchase order occurred only after the MG BAC had already awarded the contract to Four Petals through negotiated procurement and after the contract in relation thereto had been executed. As such, he could not have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence in the processing of the purchase order.

However, the finding of probable cause by the Office of the Ombudsman to charge PSupt. Duque with the violation of Section 3(e) of R.A. No. 3019 based on the acceptance of the defective PCCs and the issuance of the reportorial documents related thereto should be upheld.

⁴⁵ *Rollo* (G.R. Nos. 225188 & 225277), p. 87.

The Office of the Ombudsman's finding on the delivery of the defective PCCs was upon evidence showing PSupt. Duque's signing of the report indicating that the PCCs had been inspected and found to be in good order or condition. He thus had an active participation in the acceptance of the PCCs. As it turned out, the PCCs were defective, a condition that he ought to have been aware of if only he had taken due care. His claim that the report had been made in good faith because he had relied on P03 Dy for that purpose could not be accepted at this point. It was not disputed that his signing of the report was in conjunction with the discharge of his official responsibility as the officer-in-charge of the Management Division of the Office of the Directorate for Comptrollership, and such official capacity required him not to sign the report unquestioningly. In short, he was expected to have become aware of the defective condition of the PCCs if he had been alert and cautious as demanded by his position. His reliance on the regularity of his subordinate's discharge of responsibility could not be favorably appreciated because patent irregularities tainted the report itself. Surely, the Government thereby suffered injury because Four Petals received unwarranted benefits from the acceptance of its delivery of the PCCs despite their defects.

IV

There was also probable cause to charge PSupt. Duque with falsification of public document

The Office of the Ombudsman further found probable cause to indict PSupt. Duque for falsification of public document based on its finding that he had falsified the signature of Fuentes in the SAI.

We uphold the finding of probable cause against PSupt. Duque.

Fuentes, then the Chief of the Supply, Accounting and Monitoring Division, denied his purported signature on the SAI, and insisted that the forms in question (ARE, SAI and RIS) were not the official forms used by his office. To buttress his denial, he submitted samples of his genuine signature as well as of the official forms used by his office. His denial and the forms later on became the bases for the Office of the Ombudsman to conclude that the signature purporting to be his had been forged, and to consequently absolve him. Verily, there was probable cause to prosecute PSupt. Duque for the falsification.

The elements of falsification of public document by a public officer as defined and punished under Article 171 of the *Revised Penal Code* are, namely: (1) the offender is a public officer or employee or notary public; (2) the offender takes advantage of his official position; and (3) he falsifies a

document by committing any of the acts mentioned in Article 171 of the *Revised Penal Code*.⁴⁶

It is clear that the Office of the Ombudsman correctly concluded that the elements of the felony concurred as to PSupt. Duque. The ARE, SAI and RIS had passed through him in his capacity as the officer-in-charge of the Management Division of the Office of the Directorate for Comptrollership. He ought to have rejected the falsified documents, but he did not. He thus should stand trial thereon.

IV Final Word

Mere participation by a public officer in an imperfect procurement process does not automatically serve as basis for his criminal indictment for the violation of Section 3(e) of R.A. No. 3019. The finding of probable cause for the offense of giving unwarranted benefits, advantage or preference in favor of a private party, or causing undue injury to any party, including the Government, through manifest partiality, or evident bad faith, or gross inexcusable negligence must still rest on established facts showing that the public officer committed some act or omission directly causing the defective procurement. Without such established facts, the charge should be dismissed in order to uphold the objective of preliminary investigation to secure the innocent against hasty, malicious and oppressive prosecution, and spare the innocent from the trouble, expense and anxiety of a public trial. Indeed, the Court must not sanction the contravention of such objective.

WHEREFORE, the Court:

(1) **GRANTS** the motion for reconsideration filed in G.R. No. 225188 and G.R. No. 225277 by petitioners **PSSUPT. ASHER A. DOLINA, PSSUPT. FERDINAND P. YUZON, PSSUPT. THOMAS U. ABELLAR, PSSUPT. CORNELIO R. SALINAS, PSSUPT. NEPUMOCENO MAGNO M. CORPUS, JR., PSSUPT. RICO P. PAYONGA, and PSUPT. MICHAEL AMOR FILART**; and, accordingly, **DISMISSES** the criminal complaints filed against them in OMB-P-C-11-0762-I and OMB-P-C-12-0190-C; and

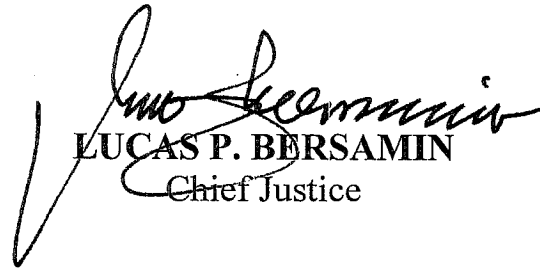
(2) **PARTIALLY GRANTS** the motion for reconsideration filed in G.R. No. 224648 and G.R. Nos. 224806-07 by petitioner **PSUPT. HENRY YLARDE DUQUE**; and, accordingly, **ANNULS** and **SETS ASIDE** the resolution dated June 2, 2015 and the order dated March 28, 2016 issued by the **OFFICE OF THE OMBUDSMAN** only insofar as charging petitioner

⁴⁶ *Garong v. People*, G.R. No. 172539, November 16, 2016, 809 SCRA 88, 96.


PSUPT. HENRY YLARDE DUQUE with the violation of Section 3(e) of Republic Act No. 3019 for processing the purchase order was concerned. The resolution dated June 2, 2015 and the order dated March 28, 2016 of the **OFFICE OF THE OMBUDSMAN** are upheld in all other respects.

No pronouncement on costs of suit.

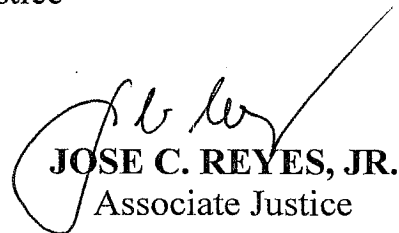
SO ORDERED.



LUCAS P. BERSAMIN
Chief Justice

WE CONCUR:


FRANCIS H. JARDELEZA
Associate Justice

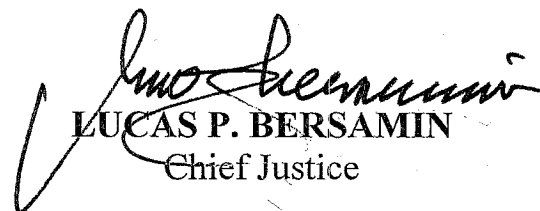

ANDRES B. REYES, JR.
Associate Justice


JOSE C. REYES, JR.
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

Mis-DCB-tt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

FEB 12 2020