



CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division

MAY 17 2019

Republic of the Philippines  
 Supreme Court  
 Manila

THIRD DIVISION

CARLOS L. REYNES,  
 Petitioner,

G.R. No. 223405

Present:

-versus-

PERALTA, *J.*, Chairperson,  
 LEONEN,  
 REYES, A., JR.,  
 HERNANDO, and  
 CARANDANG,\* *JJ.*

OFFICE OF THE OMBUDSMAN  
 (VISAYAS), LUCRESIA M.  
 AMORES, and MARIBEL  
 HONTIVEROS,  
 Respondents.

Promulgated:  
 February 20, 2019

X-----*Wilfredo V. Lapitan*-----X

DECISION

LEONEN, *J.*:

Determining probable cause for the filing of a criminal information is an executive function. Resolutions made by public prosecutors in the exercise of this function shall generally not be disturbed by courts.<sup>1</sup> However, determinations that arbitrarily disregard the jurisprudential parameters for determining probable cause are tainted with grave abuse of discretion.<sup>2</sup> Such iniquitous determinations are correctible by certiorari.<sup>3</sup> A public prosecutor who does not merely disregard, but even grossly misinterprets to the point of distorting evidence and the Revised Penal Code's standards for liability, turning a blind eye to palpable indicators of criminal liability, commits grave abuse of discretion.

\* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

<sup>1</sup> See *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 795 Phil. 226 (2016) [Per J. Peralta, Third Division].

<sup>2</sup> *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [Per Curiam, Second Division].

<sup>3</sup> See *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 795 Phil. 226 (2016) [Per J. Peralta, Third Division].

This resolves a Petition for Certiorari<sup>4</sup> under Rule 65 of the 1997 Rules of Civil Procedure praying that the assailed February 20, 2015 Resolution<sup>5</sup> and September 29, 2015 Order<sup>6</sup> in OMB-V-C-14-0510 of public respondent Office of the Ombudsman (Visayas), through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr. (Atty. Mernado), be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its assailed Resolution, the Office of the Ombudsman (Visayas) dismissed the Complaint for Illegal Exactions, penalized under Article 213(2)<sup>7</sup> of the Revised Penal Code, and violation of Section 48 of Republic Act No. 9003 (otherwise known as the Ecological Solid Waste Management Act of 2000)<sup>8</sup> filed by petitioner Carlos L. Reynes (Reynes), manager of Blue Reef Beach Resort Cottages and Hotel (the resort) located in Barangay

<sup>4</sup> *Rollo*, pp. 3–24.

<sup>5</sup> *Id.* at 25–30.

<sup>6</sup> *Id.* at 31–32.

<sup>7</sup> REV. PEN. CODE, art. 213(2) provides:

ARTICLE 213. *Frauds against the public treasury and similar offenses.* — The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

....

2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:
  - (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.
  - (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.
  - (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise things or objects of a nature different from that provided by law.

<sup>8</sup> Rep. Act No. 9003 (2001), sec. 48 provides:

SECTION 48. Prohibited Acts. — The following acts are prohibited:

- (1) Littering, throwing, dumping of waste matters in public places, such as roads, sidewalks, canals, esteros or parks, and establishment, or causing or permitting the same;
- (2) Undertaking activities or operating, collecting or transporting equipment in violation of sanitation operation and other requirements or permits set forth in or established pursuant to this Act;
- (3) The open burning of solid waste;
- (4) Causing or permitting the collection of non-segregated or unsorted waste;
- (5) Squatting in open dumps and landfills;
- (6) Open dumping, burying of biodegradable or non-biodegradable materials in flood-prone areas;
- (7) Unauthorized removal of recyclable material intended for collection by authorized persons;
- (8) The mixing of source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal;
- (9) Establishment or operation of open dumps as enjoined in this Act, or closure of said dumps in violation of Sec. 37;
- (10) The manufacture, distribution or use of non-environmentally acceptable packaging materials;
- (11) Importation of consumer products packaged in non-environmentally acceptable materials;
- (12) Importation of toxic wastes misrepresented as “recyclable” or “with recyclable content”;
- (13) Transport and dumping in bulk of collected domestic, industrial, commercial and institutional wastes in areas other than centers or facilities prescribed under this Act;
- (14) Site preparation, construction, expansion or operation of waste management facilities without an Environmental Compliance Certificate required pursuant to Presidential Decree No. 1586 and this Act and not conforming with the land use plan of the LGU;
- (15) The construction of any establishment within two hundred (200) meters from open dumps or controlled dumps, or sanitary landfills; and
- (16) The construction or operation of landfills or any waste disposal facility on any aquifer, groundwater reservoir or watershed area and or any portions thereof.

Marigondon, Lapu-Lapu City, Cebu, against private respondents Lucrecia M. Amores (Barangay Captain Amores), punong barangay of Barangay Marigondon (the Barangay), and Maribel Hontiveros (Kagawad Hontiveros), a member of the Sangguniang Barangay.<sup>9</sup> In its assailed Order,<sup>10</sup> the Office of the Ombudsman (Visayas) denied Reynes' Motion for Reconsideration.

In an Affidavit-Complaint,<sup>11</sup> Reynes alleged that Barangay Captain Amores collected increased monthly garbage collection fees amounting to ₱2,000.00, even without any ordinance or statute, or any other regulation authorizing its collection, and despite the City of Lapu-Lapu already collecting its own garbage fees.<sup>12</sup>

Reynes explained that, prior to the material incidents in this case, the Barangay had been collecting ₱1,000.00 monthly as garbage collection fee.<sup>13</sup> In his subsequent Reply to Barangay Captain Amores and Kagawad Hontiveros' Joint Counter-Affidavit, Reynes annexed a copy of Official Receipt No. 2827422, dated January 31, 2011, acknowledging a total of ₱3,000.00 collected as "garbage collection fee for the month (*sic*) of Jan to March 2011."<sup>14</sup> He noted in his Complaint that the resort's garbage was segregated and deposited on Tongo Road, outside the resort's premises, and there collected twice a week.<sup>15</sup>

When Barangay Captain Amores ordered that the fee be increased to ₱2,000.00, while reducing the frequency of garbage collection to once a week,<sup>16</sup> Reynes questioned the increase. He pointed out that no ordinance, statute, or regulation authorized it. However, Barangay Captain Amores never gave an explanation in response; instead, on July 27, 2011, she ordered the cessation of the collection of the resort's garbage.<sup>17</sup>

On August 8, 2011, Reynes wrote to Barangay Captain Amores<sup>18</sup> questioning her authority to levy garbage collection fees, considering that the same fees were already being paid to the City of Lapu-Lapu alongside business taxes and fees for licenses, and considering that no public hearing was ever conducted. Copies of this letter were furnished to the offices of the City Mayor, Vice Mayor, City Attorney, and City Secretary.<sup>19</sup> It stated in part:

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<sup>9</sup> *Rollo*, p. 4.

<sup>10</sup> *Id.* at 31–32.

<sup>11</sup> *Id.* at 35–44.

<sup>12</sup> *Id.* at 5 and 36.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 79.

<sup>15</sup> *Id.* at 5 and 36.

<sup>16</sup> *Id.* at 36.

<sup>17</sup> *Id.* at 5 and 36.

<sup>18</sup> *Id.* at 45–47.

<sup>19</sup> *Id.* at 47.

On August 5, 2011 at 8:30 AM, my wife Dra. Reynes went to the Barangay Office to see you personally. It was also confirmed that you really demanded for an increase of garbage collection fee from P1,000.00 to P2,000.00 without giving her any document to show as basis for the exaction of garbage collection fee or any ordinance to show that you are authorized to demand such increase. I could not also remember of a public hearing being conducted relative to your imposition of garbage collection fee pursuant to the Local Government Code. There was also no ordinance passed upon by the barangay relative to imposition of garbage collection fee which is to be reviewed and approved by the Lapu-Lapu City Council pursuant to the said law.

For the information of the Honorable Barangay Chairman, Blue Reef Resort has paid business taxes and licenses to the City of Lapu-Lapu government for the year 2011 in the amount of P67,752.34 for the cottage. Inclusive of this amount is garbage collection fee of Php1,764.38.<sup>20</sup>

Barangay Captain Amores still offered no explanation and, in a meeting, merely told Reynes' wife, Dr. Sonia Beth Reynes<sup>21</sup> (Dr. Reynes), that the collection of P2,000.00 was "final and unalterable[.]"<sup>22</sup> Left with no alternative, lest the resort's garbage be left uncollected, Reynes relented to paying P2,000.00 monthly.<sup>23</sup>

Evidencing his subsequent payments, Reynes adduced copies of:

1. Official Receipt No. 3058061, dated August 16, 2011, acknowledging a total of P4,000.00 collected as "donation – garbage";<sup>24</sup>
2. Official Receipt No. 3058539, dated September 28, 2011, acknowledging a total of P4,000.00 collected as "donation for garbage collection Oct [and] Nov";<sup>25</sup>
3. Official Receipt No. 3088196, dated December 14, 2011, acknowledging a total of P4,000.00 collected as "donation to [the Barangay,]"<sup>26</sup> which was backed by a petty cash voucher for the disbursement of P4,000.00 for "Garbage collection fee for the month[s] of Dec 2011 Jan 2012";<sup>27</sup>
4. Official Receipt No. 3261377, dated March 19, 2012, acknowledging a total of P6,000.00 collected as "donation for garbage collection Feb, March, April 2012";<sup>28</sup>
5. Official Receipt No. 3341848, dated May 22, 2012, acknowledging a total of P4,000.00 collected as "donation for

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<sup>20</sup> Id. at 45.

<sup>21</sup> Id. at 7.

<sup>22</sup> Id. at 38.

<sup>23</sup> Id.

<sup>24</sup> Id. at 81.

<sup>25</sup> Id. at 82.

<sup>26</sup> Id. at 83.

<sup>27</sup> Id.

<sup>28</sup> Id. at 50.

- garbage collection May [and] June 2012”;<sup>29</sup>
6. Official Receipt No. 3591932, dated November 26, 2012, acknowledging a total of ₱4,000.00 collected as “donation for garbage collection[,]” which was backed by a petty cash voucher for the disbursement of ₱4,000.00 for “garbage collection month of November to December 2012”;<sup>30</sup>
  7. Official Receipt No. 3627148, dated January 14, 2013, acknowledging a total of ₱4,000.00 collected as “donation for garbage collection[,]” which was backed by a petty cash voucher for the disbursement of ₱4,000.00 for “Payment/Donation for Garbage Collection. Jan.–Feb. 2013”;<sup>31</sup> and
  8. Official Receipt No. 3794645, dated April 12, 2013, acknowledging a total of ₱8,000.00 collected as “donation for garbage collection[,]” which was backed by a petty cash voucher for the disbursement of ₱8,000.00 for “garbage collection March to June 2013[.]”<sup>32</sup>

Such was the state of affairs when, on June 3, 2014, the Barangay stopped collecting the resort’s garbage. Reynes recounted Fredo Amores, the Barangay’s garbage truck driver, informing both the resort’s supervisor and checker that Barangay Captain Amores ordered the cessation of garbage collection. This was allegedly upon Kagawad Hontiveros’ instigation, as she was offended by an incident from two (2) days prior. Referring to an Incident Report prepared by the resort’s staff, Reynes recalled that on June 1, 2014, Kagawad Hontiveros, along with some companions, tried to enter the resort but was not immediately allowed to enter. Instead, she was asked to present an identification card per the resort’s standard procedure.<sup>33</sup>

On June 6, 2014, Dr. Reynes sought an audience with Barangay Captain Amores to settle the matter. In a meeting held on June 11, 2014, Barangay Captain Amores maintained that her decision to stop collecting the resort’s garbage was final. She supposedly justified this by saying that the resort’s garbage was “bulky.” She added that her decision was merely in keeping with a July 18, 2007 Memorandum issued by the Lapu-Lapu City Administrator.<sup>34</sup>

In their Joint Counter-Affidavit,<sup>35</sup> Barangay Captain Amores and Kagawad Hontiveros maintained that the Barangay was not in a position to collect the resort’s garbage in view of a July 18, 2007 Memorandum issued

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<sup>29</sup> Id. at 51.

<sup>30</sup> Id. at 52.

<sup>31</sup> Id. at 84.

<sup>32</sup> Id. at 53.

<sup>33</sup> Id. at 7 and 38.

<sup>34</sup> Id. at 7.

<sup>35</sup> Id. at 58–67.

by the Office of the City Administrator.<sup>36</sup> The Memorandum stipulated that while “barangay authorities are responsible for garbage collection in their respective jurisdictions[,] barangay garbage trucks/collectors shall not encroach or enter into private properties such as subdivisions, resorts[,] and residences,”<sup>37</sup> and that “garbage trucks/collectors shall only collect garbage from garbage stations and/or dumps along barangay roads.”<sup>38</sup> It also stated that “unsegregated garbage shall not be collected.”<sup>39</sup>

Barangay Captain Amores and Kagawad Hontiveros claimed that the resort neither segregated its garbage nor used a garbage depository situated along a public road. Still, Reynes wished to still have the Barangay collect the resort’s garbage. Beseeking the Barangay’s accommodation, Reynes supposedly offered to pay ₱2,000.00 monthly to defray the costs of garbage collection.<sup>40</sup>

Barangay Captain Amores and Kagawad Hontiveros faulted the resort for failing, allegedly unlike other resorts, to obtain the services of private concessionaires.<sup>41</sup> Bewailing the resort’s continuing reliance on the Barangay, they justified the cessation of the resort’s garbage collection on its continuing inability to segregate and process its own garbage.<sup>42</sup>

In his Reply,<sup>43</sup> Reynes refuted Barangay Captain Amores and Kagawad Hontiveros’ claims. He explained the resort’s waste processing system and facilities, noting its use of a waste storage area with two (2) compartments—one (1) for biodegradable waste and another for non-biodegradable waste—both of which were secured by locks. There were also two (2) composting units for used oil and other biodegradable wastes. He maintained that the resort complied with the prescribed plastic bag color coding scheme for segregating waste.<sup>44</sup>

In its assailed February 20, 2015 Resolution,<sup>45</sup> the Office of the Ombudsman (Visayas), through Atty. Mernado, dismissed Reynes’ Complaint.

In dismissing the charge of violating Section 48 of the Ecological Solid Waste Management Act, Atty. Mernado noted that the allegations against Barangay Captain Amores and Kagawad Hontiveros do not fall

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<sup>36</sup> Id. at 62–63.

<sup>37</sup> Id. at 48.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Id. at 63–65.

<sup>41</sup> Id. at 66.

<sup>42</sup> Id. at 67.

<sup>43</sup> Id. at 70–78.

<sup>44</sup> Id. at 76–77.

<sup>45</sup> Id. at 25–30.

under the 16 prohibited acts in Section 48.<sup>46</sup>

In dismissing the charge of illegal exactions as penalized under Article 213(2) of the Revised Penal Code, Atty. Mernado gave a one (1)-paragraph explanation:

Complainant failed to present the Ordinance on garbage fees. Thus, there is lack of evidence that respondent Amores demanded payment of sums different from or larger than that authorized by law. The payment complainant made to Barangay Marigondon appeared to be a donation as reflected in the Official Receipt issued. Complainant did not bother to question why the payments he made were reflected in the Official Receipt as donations. Also, complainant failed to show any proof that the donation he gave to the barangay is prohibited by law.<sup>47</sup>

In its assailed September 29, 2015 Order,<sup>48</sup> the Office of the Ombudsman (Visayas), still through Atty. Mernado, denied Reynes' Motion for Reconsideration.

Thereafter, Reynes filed this Petition for Certiorari.<sup>49</sup> While he no longer makes averments concerning private respondents Barangay Captain Amores' and Kagawad Hontiveros' liability for violating Section 48 of the Ecological Solid Waste Management Act, he insists that both of them must still stand trial for the offense of illegal exactions.<sup>50</sup>

On September 26, 2016, public respondent Office of the Ombudsman (Visayas) filed its Comment.<sup>51</sup> Private respondents filed their Compliance (Explanation) with Comments<sup>52</sup> on April 18, 2017, only after being required to show cause<sup>53</sup> why they should not be cited in contempt for failing to timely file their Comment. On March 7, 2018, Reynes filed a Consolidated Reply<sup>54</sup> to both comments.

The issue for this Court's resolution is whether or not public respondent Office of the Ombudsman (Visayas), acting through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr., committed grave abuse of discretion amounting to lack or excess of jurisdiction in not finding probable cause to file criminal charges against private respondents Lucrecia M. Amores and Maribel Hontiveros, and in dismissing petitioner Carlos L. Reynes' Complaint against them.

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<sup>46</sup> Id. at 28–29.

<sup>47</sup> Id. at 29.

<sup>48</sup> Id. at 31–32.

<sup>49</sup> Id. at 3–24.

<sup>50</sup> Id. at 10–20.

<sup>51</sup> Id. at 97–106.

<sup>52</sup> Id. at 111–116.

<sup>53</sup> Id. at 108–109.

<sup>54</sup> Id. at 125–132.

This Court partly grants the Petition. It was grave abuse of discretion for Atty. Mernado to dismiss the Complaint with respect to private respondent Amores. She must stand trial for violating Article 213(2) of the Revised Penal Code.

## I

Jurisprudence has settled that probable cause for the filing of an information is “a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on ‘clear and convincing evidence[.]’”<sup>55</sup> In *Reyes v. Pearlbank Securities, Inc.*:<sup>56</sup>

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean “actual and positive cause” nor does it import absolute certainty. *It is merely based on opinion and reasonable belief.* Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. *It is enough that it is believed that the act or omission complained of constitutes the offense charged.*

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. ***It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.*** In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. *He relies on common sense.* What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.<sup>57</sup> (Emphasis supplied, citations omitted)

Determining whether probable cause exists for the filing of an information is an executive function. It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors. This is due to the basic principle of separation of powers. Nonetheless, “grave abuse of discretion taints a public prosecutor’s resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause.”<sup>58</sup> As such, in keeping with the principle of checks and balances, a writ of certiorari may issue and undo the prosecutor’s iniquitous determination. In *Lim v. Office of the Deputy Ombudsman for the Military*

<sup>55</sup> *Marasigan v. Fuentes*, 776 Phil. 574, 584 (2016) [Per J. Leonen, Second Division].

<sup>56</sup> 582 Phil. 505 (2008) [Per J. Chico-Nazario, Third Division].

<sup>57</sup> *Id.* at 518–519.

<sup>58</sup> *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [Per Curiam, Second Division].



*and Other Law Enforcement Offices:*<sup>59</sup>

As a general rule, a public prosecutor's determination of probable cause — that is, one made for the purpose of filing an Information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of certiorari. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. *While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law.* To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.<sup>60</sup> (Emphasis supplied, citation omitted)

Acting on the basis of the evidence presented to them, public prosecutors are vested “with a wide range of discretion, the discretion of whether, what and whom to charge[.]”<sup>61</sup> Thus, “[t]he prosecuting attorney cannot be compelled to file a particular criminal information.”<sup>62</sup>

In accordance with judicial non-interference, “not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case.”<sup>63</sup> In *People v. Pineda*,<sup>64</sup> this Court sustained the public prosecutor and issued a writ of certiorari against Court of First Instance Judge Hernando Pineda's orders for the prosecutor to abandon four (4) out of the five (5) cases that the prosecutor previously filed because, according to Judge Pineda, “the acts

<sup>59</sup> 795 Phil. 226 (2016) [Per J. Peralta, Third Division].

<sup>60</sup> Id. at 241.

<sup>61</sup> *Gonzalez v. Hongkong and Shanghai Banking Corporation*, 562 Phil. 841, 855 (2007) [Per J. Chico-Nazario, Third Division].

<sup>62</sup> *Uy v. People*, 586 Phil. 473, 492 (2008) [Per J. Chico-Nazario, Third Division] citing *People v. Pineda*, 127 Phil. 950 (1967) [Per J. Sanchez, En Banc].

<sup>63</sup> *Chua v. Padillo*, 550 Phil. 241, 249 (2007) [Per J. Sandoval-Gutierrez, First Division] citing *Sanchez v. Demetriou*, 298 Phil. 421 (1993) [Per J. Cruz, En Banc].

<sup>64</sup> 127 Phil. 150 (1967) [Per J. Sanchez, En Banc].

complained of ‘stemmed out of a series of continuing acts on the part of the accused, not by different and separate sets of shots, moved by one impulse and should therefore be treated as one crime [to] the series of shots killed more than one victim[.]’<sup>65</sup> This Court explained:

3. The impact of respondent Judge’s orders is that his judgment is to be substituted for that of the prosecutor’s on the matter of what crime is to be filed in court. The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal’s should normally prevail. In this regard, he cannot ordinarily be subject to dictation. We are not to be understood as saying that criminal prosecution may not be blocked in exceptional cases. A relief in equity “may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional or was ‘held invalid.’” Nothing in the record would as much as intimate that the present case fits into any of the situations just recited.

And at this distance and in the absence of any compelling fact or circumstance, we are loathe to tag the City Fiscal of Iligan City with abuse of discretion in filing separate cases for murder and frustrated murder, instead of a single case for the complex crime of robbery with homicide and frustrated homicide under the provisions of Article 294 (1) of the Revised Penal Code or, for that matter, for multiple murder and frustrated murder. We state that, here, the Fiscal’s discretion should not be controlled.<sup>66</sup> (Citation omitted)

However, in cases of “unmistakable showing of grave abuse of discretion on the part of the prosecutor”<sup>67</sup> in refusing to prosecute specific persons for specific offenses, writs of certiorari have been issued to set aside the prosecutor’s initial determination.<sup>68</sup>

*Chua v. Padillo*<sup>69</sup> illustrates one (1) such instance. There, this Court sustained the Court of Appeals in granting the respondents’ Petition for Certiorari and in ordering the inclusion of the petitioners-siblings Wilson and Renita Chua as accused, along with Wilson’s wife, Marissa Padillo-Chua, in a case of estafa through falsification of commercial documents.

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<sup>65</sup> Id. at 152.

<sup>66</sup> Id. at 157–158.

<sup>67</sup> *Chua v. Padillo*, 550 Phil. 241, 249 (2007) [Per J. Sandoval-Gutierrez, First Division] citing *Sanchez v. Demetriou*, 298 Phil. 421 (1993) [Per J. Cruz, En Banc].

<sup>68</sup> Id.

<sup>69</sup> 550 Phil. 241 (2007) [Per J. Sandoval-Gutierrez, First Division].

*Marasigan v. Fuentes*<sup>70</sup> saw this Court reverse the Court of Appeals' dismissal of the private complainant's Petition for Certiorari. It found that it was "grave abuse of discretion for [Department of Justice] Secretary [Agnes VST] Devanadera to conclude that respondent [Robert] Calilan may only be prosecuted for the crime of less serious physical injuries while his co-respondents, [Reginald] Fuentes and [Alain Delon] Lindo, may not be prosecuted at all."<sup>71</sup> Thus, the previous Resolution issued by Undersecretary Linda Malenab-Hornilla, which "ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo[.]"<sup>72</sup> was reinstated.

## II

A determination of probable cause must be made in reference to the elements of the crime charged. "This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense."<sup>73</sup>

Any inquiry into whether probable cause exists to prosecute for illegal exactions as penalized under Article 213(2) of the Revised Penal Code must begin with the text of Article 213(2). It provides:

Article 213. Frauds against the public treasury and similar offenses. — The penalty of prision correccional in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

....

2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:
  - (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.
  - (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.
  - (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

From this, liability under Article 213(2) ensues when the following elements are demonstrated:

<sup>70</sup> 776 Phil. 574 (2016) [Per J. Leonen, Second Division].

<sup>71</sup> Id. at 583–584.

<sup>72</sup> Id. at 580.

<sup>73</sup> *Aguilar v. Department of Justice*, 717 Phil. 789, 800 (2013) [Per Curiam, Second Division] citing *Ang-Abaya v. Ang*, 593 Phil. 530 (2008) [Per J. Ynares-Santiago, Third Division].

First, that the offender is a public officer who is “entrusted with the collection of taxes, licenses, fees and other imposts.”

Second, that he or she engages in any of the three (3) specified acts or omissions under Article 213(2): “[d]emanding, directly or indirectly, the payment of sums different from or larger than those authorized by law[; f]ailing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially[; or c]ollecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.”

### III

As punong barangay, private respondent Amores was chief executive of a local government unit.<sup>74</sup> She was head of Barangay Marigondon, administered it, and oversaw the discharge of all its functions. She was tasked with “[e]nforc[ing] all laws and ordinances which are applicable within the barangay[;] [m]aintain[ing] public order[;] [and] [p]romot[ing]

<sup>74</sup> LOCAL GOVT. CODE, sec. 389 provides:

SECTION 389. Chief Executive: Powers, Duties, and Functions. — (a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

- (b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:
- (1) Enforce all laws and ordinances which are applicable within the barangay;
  - (2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the sangguniang barangay;
  - (3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;
  - (4) Call and preside over the sessions of the sangguniang barangay and the barangay assembly, and vote only to break a tie;
  - (5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials;
  - (6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the barangay;
  - (7) In coordination with the barangay development council, prepare the annual executive and supplemental budgets of the barangay;
  - (8) Approve vouchers relating to the disbursement of barangay funds;
  - (9) Enforce laws and regulations relating to pollution control and protection of the environment;
  - (10) Administer the operation of the katarungang pambarangay in accordance with the provisions of this Code;
  - (11) Exercise general supervision over the activities of the sangguniang kabataan;
  - (12) Ensure the delivery of basic services as mandated under Section 17 of this Code;
  - (13) Conduct an annual palarong barangay which shall feature traditional sports and disciplines included in national and international games, in coordination with the Department of Education, Culture and Sports;
  - (14) Promote the general welfare of the barangay; and
  - (15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.
- (c) In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

the general welfare of the barangay[.]”<sup>75</sup> More on point, it was her duty to “[e]nforce laws and regulations relating to pollution control and protection of the environment[,] [and] [e]nsure the delivery of basic services as mandated under Section 17 of [the Local Government] Code.”<sup>76</sup> Among these basic services are “[s]ervices and facilities related to general hygiene and sanitation, beautification, and *solid waste collection*[.]”<sup>77</sup>

Private respondent Amores’ engagement with solid waste management was official, direct, and unequivocal. This involvement spanned all dimensions of solid waste management, including the marshaling of resources, financial or otherwise. Her functions were sufficiently broad as to encompass facilitating the levying of charges for services rendered by the Barangay.<sup>78</sup> It is then not difficult to see, precisely as petitioner asserts, how private respondent Amores could have used her office as an artifice for “[d]emanding . . . the payment of sums different from or larger than those authorized by law.”<sup>79</sup>

One might indulge private respondent Amores’ seemingly inevitable exoneration by pointing to Section 395(e) of the Local Government Code and noting how the barangay treasurer is tasked with “[c]ollect[ing] and issu[ing] official receipts for taxes, fees, contributions, monies, materials, and all other resources accruing to the barangay[.]”<sup>80</sup> However, it is improper to conveniently negate her possible culpability by the veneer of detachment just because she held a position different from, or superior to, that of a barangay treasurer. Private respondent Amores cannot evade liability by feigning incidental, ancillary, or tangential involvement, and pointing to subalterns as the persons who actually effected the assailed

<sup>75</sup> LOCAL GOVT. CODE, sec. 389(b)(1), (3), and (14).

<sup>76</sup> LOCAL GOVT. CODE, sec. 389(b)(9) and (12).

<sup>77</sup> LOCAL GOVT. CODE, sec. 17(b)(1)(iii).

<sup>78</sup> Book II, Title I, Chapter II, Article V, Section 153 of the Local Government Code, which provides for revenue-raising powers common to all local government units, states that barangays can “impose and collect such reasonable fees and charges for services rendered.”

<sup>79</sup> REV. PEN. CODE, art. 213(2)(a).

<sup>80</sup> LOCAL GOVT. CODE, sec. 395 provides:

SECTION 395. Barangay Treasurer: Appointment, Qualification, Powers and Duties. — . . .

. . . .

(e) The barangay treasurer shall:

- (1) Keep custody of barangay funds and properties;
- (2) *Collect and issue official receipts for taxes, fees, contributions, monies, materials, and all other resources accruing to the barangay treasury and deposit the same in the account of the barangay as provided under Title Five, Book II of this Code;*
- (3) Disburse funds in accordance with the financial procedures provided in this Code;
- (4) Submit to the punong barangay a statement covering the actual and estimates of income and expenditures for the preceding and ensuing calendar years, respectively, subject to the provisions of Title Five, Book II of this Code.
- (5) Render a written accounting report of all barangay funds and property under his custody at the end of each calendar year, and ensure that such report shall be made available to the members of the barangay assembly and other government agencies concerned;
- (6) Certify as to the availability of funds whenever necessary;
- (7) Plan and attend to the rural postal circuit within his jurisdiction; and
- (8) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance. (Emphasis supplied)

collections.

This is not the first case where this Court has considered the situation of a treasurer obviously acting as the surrogate of a local chief executive who may have insisted on inordinate collections. In *Ongsuco v. Malones*,<sup>81</sup> this Court noted that such a treasurer acts as a local chief executive's mere "alter ego."<sup>82</sup>

This is also not the first instance that this Court has considered the potential liability for illegal exactions of a public officer, whose functions do not explicitly include the collection of fees and charges. *Young v. Mapayo*<sup>83</sup> concerned a Regional Trial Court judge who was accused of "demanding and receiving [P10,000.00] for the solemnization of [a] marriage."<sup>84</sup> Fully aware that the actual collection of fees was not a function performed by a judge, this Court, nevertheless, stated that "[t]he first charge, if proven, would constitute illegal exaction."<sup>85</sup>

#### IV

Contrary to Atty. Mernado's conclusion, the evidence sustains a "reasonable belief"<sup>86</sup> that private respondent Amores "[d]emand[ed] . . . the payment of sums different from or larger than those authorized by law."<sup>87</sup>

Atty. Mernado began his assailed Resolution's one (1)-paragraph *ratio decidendi* by saying that petitioner "failed to present the Ordinance on garbage fees."<sup>88</sup> From this singular premise, he proceeded to state that "there is lack of evidence that [private] respondent Amores demanded payment of sums different from or larger than that authorized by law."<sup>89</sup>

Atty. Mernado's reasoning is an error that is as grievous as it is mind-boggling.

Petitioner's position is precisely that there was no ordinance or any other regulation that enabled the levying of garbage collection fees. To demand that he produce one (1) such ordinance was a farcically futile exercise. Atty. Mernado would have had him go on a fool's errand. Lest

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<sup>81</sup> 619 Phil. 492 (2009) [Per J. Chico-Nazario, Third Division].

<sup>82</sup> Id. at 509.

<sup>83</sup> 388 Phil. 78 (2000) [Per J. Pardo, First Division].

<sup>84</sup> Id. at 84.

<sup>85</sup> Id.

<sup>86</sup> *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518–519 (2008) [Per J. Chico-Nazario, Third Division].

<sup>87</sup> REV. PEN. CODE, art. 213(2)(a).

<sup>88</sup> *Rollo*, p. 29.

<sup>89</sup> Id.

petitioner reveal himself to be untruthful and admit that there was indeed an enabling ordinance, there was no other reasonable outcome than for him to be unable to present such an ordinance.

Atty. Mernado failed to realize that Article 213(2)'s injunction against the "payment of sums *different from or larger* than those authorized by law" and against "receiving . . . objects of a nature *different from* that provided by law" admits of situations when no payment is ever permitted, or no collection of any object is ever allowed. These situations may arise through an explicitly stated legal prohibition, or through a law's mere silence. In the latter case, the law plainly declines to name any authorized manner of payment or collection. By its reticence, it signals that there is no permissible payment or collection. When the law enables no form whatsoever of payment or collection, a public officer's demand for payment of *any* sum, or insistence on collecting *any* object, is a legal breach. It is a punishable violation of Article 213(2).

Such was petitioner's exact contention: that private respondent Amores violated Article 213(2) by her mere act of demanding payment—regardless of the amount—because she was, to begin with, not allowed to demand anything. Petitioner's entire cause was anchored on the assertion that because no ordinance, law, or regulation has ever permitted private respondent Amores to receive anything, yet she collected something, she violated Article 213(2).

Atty. Mernado's fixation on petitioner's burden to "present the Ordinance on garbage fees"<sup>90</sup> may have revealed that he did not quite grasp petitioner's position. Worse, it could betray a deliberate distortion or design to prevent petitioner from successfully pursuing his case. Regardless, by his insistence, Atty. Mernado engaged in a "whimsical exercise of judgment."<sup>91</sup> His demand for petitioner to discharge a vacuous, even foolish, burden amounts to an evasion of his positive and legally-ordained duty to appraise cases within "the jurisprudential parameters of probable cause."<sup>92</sup> It is grave abuse of discretion.

Atty. Mernado further justified dismissing the Complaint by suggesting that the amounts delivered to the Barangay must have been donations because the official receipts issued by the Barangay said so.<sup>93</sup> This is an error that is again as grievous as it is baffling.

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<sup>90</sup> Id. at 29.

<sup>91</sup> *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 795 Phil. 226 (2016) [Per J. Peralta, Third Division] citing *Aguilar v. Department of Justice*, 717 Phil. 789 (2013) [Per Curiam, Second Division].

<sup>92</sup> *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [Per Curiam, Second Division].

<sup>93</sup> *Rollo*, p. 29.

Petitioner's entire case centered on the claim that the collections were unlawful. If they were indeed unlawful, one could not expect the person receiving and acknowledging receipt to voluntarily admit it in writing. It was, thus, likely that some artificial designation—a facade—for the payments had to be devised. Rather than weaken petitioner's cause, the official receipts' reference to supposed "donations" could actually be helpful, as they could point to an attempt to legitimize inordinate collections. Atty. Mernado failed to consider that the reference to "donations" could very well have been self-serving pretenses.


To be clear, this Court takes caution not to make a definitive finding of guilt. What is in issue, at this juncture, is the propriety of Atty. Mernado's disposition. It is here that we find grave error. While statements in documents are generally to be taken as regular, Atty. Mernado needed to appreciate the official receipts in view of the many nuances of this case. He cursorily concluded that donations were made, taking at face value the same receipts that may very well have been the offender's own artifice.

## V

Private respondent Amores admitted Reynes' intermittent delivery of sums in multiples of ₱2,000.00.<sup>94</sup> She, however, claimed that the delivered sums do not correspond to compulsory charges, but to voluntary contributions.<sup>95</sup> Her admission is notable not only since it concedes that petitioner delivered the money, but also since it concedes that petitioner's delivery and the Barangay's concomitant receipt were not on account of an enabling ordinance or regulation. These concessions leave the matters of her supposed demand and petitioner's supposed voluntary offer as the last, remaining points of contention.

This Court finds it more reasonable to opine that petitioner made deliveries to comply with the demands from private respondent Amores.

Private respondent Amores' position hinged on the truth of her premise: that the resort has not been able to comply with the Office of the City Administrator's July 18, 2007 Memorandum in that it cannot segregate and process its garbage, and has been using a depository that was confined inside its premises.

Private respondent Amores offered nothing but bare allegations in asserting the resort's inability to segregate and process waste. Petitioner refuted these bare allegations in his Reply by laying the intricacies of the 

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<sup>94</sup> Id. at 64–66.

<sup>95</sup> Id.



resort's waste processing system and facilities.<sup>96</sup> Even ahead of private respondent Amores' allegation in her Joint Counter-Affidavit with private respondent Hontiveros, petitioner had already attached to his original Complaint pictures of the resort's waste processing facilities.<sup>97</sup>

Private respondent Amores sought to substantiate her claim that the resort used a depositary that was confined inside its premises, rather than one that was along a public road, by attaching to her Joint Counter-Affidavit a copy of the Transfer Certificate of Title over the lot encompassing the resort. This, however, fails to impress. As petitioner emphasized, private respondents merely attached a copy of the Transfer Certificate of Title, but never discussed the lot's features, or how its metes and bounds revealed the depositary's confinement:

[Private respondents] only presented a copy of TCT No. 72326 in the name of Beth Sonia Go Reynes married to Carlos Reynes as proof that petitioner's garbage was deposited on a private road. They did not however explain where on the face of the title does it say that the road where petitioner's garbage is deposited is part of the latter's property.<sup>98</sup>

Apart from the inadequacies of private respondent Amores' evidence, the circumstances surrounding petitioner's August 8, 2011 letter to private respondent Amores are revealing. This letter did not just state the bases of petitioner's objection to paying garbage collection fees: (1) that no law, ordinance, or regulation authorized the levy; (2) that no public hearing was ever conducted; and (3) that the city government was already collecting the garbage fees. Petitioner also went to the extent of furnishing copies of his letter to the offices of the City Mayor, Vice Mayor, City Attorney, and City Secretary. Each of these four (4) offices stamped acknowledgments of their receipt of the letter.<sup>99</sup>

The letter did not mince words in imputing unlawful conduct against private respondent Amores. Petitioner pointedly said, "I believe that this refusal to collect our garbage was the unlawful demand by you to increase your exaction of garbage fee (*sic*)."<sup>100</sup> Worse for private respondent Amores, this imputation was brought to the attention of the City Mayor, Vice Mayor, City Attorney, and City Secretary.

The situation engendered by the August 8, 2011 letter calls to mind the Revised Rules of Evidence's provision on admission by silence.<sup>101</sup> To be

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<sup>96</sup> Id. at 76-77.

<sup>97</sup> Id. at 49.

<sup>98</sup> Id. at 8.

<sup>99</sup> Id. at 45 and 47.

<sup>100</sup> Id. at 45.

<sup>101</sup> RULES OF COURT, Rule 130, sec. 32 provides:

SECTION 32. Admission by silence. — An act or declaration made in the presence and within the

clear, the Revised Rules on Evidence did not govern the proceedings before public respondent, “except by analogy or in a suppletory character and whenever practicable and convenient.”<sup>102</sup> Moreover, the provision on admission by silence refers to any “act or declaration made in the presence and within the hearing [of another],” not to a declaration made in written correspondences. Nonetheless, the basic wisdom underlying the provision on admission by silence is obvious and commonsensical. The application of that underlying wisdom, if not of the actual rule, is readily appreciable here.

The grave imputations that were communicated not only to private respondent Amores, but even to the highest officials of the Lapu-Lapu City Government, demanded a denial, a refutation, or some manner of response from private respondent Amores. Yet, the record is bereft of proof of any such response. Private respondent Amores herself does not even allege any such response. By all counts, she never lifted a finger. Her next encounter with petitioner or persons representing him came only after petitioner’s wife sought an audience with her.<sup>103</sup>

That she appears to have never bothered to address a damning situation raises grave questions that can only militate against her cause. If her actions were legitimately motivated by the Office of the City Administrator’s July 18, 2007 Memorandum, she could have just as easily said so. Instead, it appears she did not refer to this Memorandum until three (3) years after petitioner’s damning letter, and only when another confrontation arose following the resort’s averred conflict with private respondent Hontiveros.

This is not yet an adjudication on the merits made after the rigors of a full-blown trial. The parties remain free to expound on their claims and to adduce their evidence. Private respondent Amores may very well have an explanation that accounts for her silence, or she may even have actual proof

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hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

<sup>102</sup> RULES OF COURT, Rule 1, secs. 2–4 provides:

SECTION 2. In What Courts Applicable. — These Rules shall apply in all the courts, except as otherwise provided by the Supreme Court.

SECTION 3. Cases Governed. — These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law.

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.

SECTION 4. In What Cases Not Applicable. — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

<sup>103</sup> *Rollo*, p. 38.

that she responded. However, even as this Court makes no definitive findings on guilt or innocence in this Decision, it is tasked with weighing the evidence adduced thus far and appraise the propriety of Atty. Mernado's conclusions. The allegations and proof available for this Court's perusal weigh more heavily in petitioner's favor. With this state of affairs, this Court is constrained to maintain a well-founded belief that the crime of illegal exactions has been committed, and that private respondent Amores is probably guilty of it and should be held for trial.

## VI

Unlike private respondent Amores, this Court finds no probable cause to indict private respondent Hontiveros for illegal exactions.

By petitioner's own allegations, private respondent Hontiveros' involvement arose only after the June 1, 2014 incident when the resort was supposed to have allowed her entry only after presenting an identification card. The charge that she induced private respondent Amores to order ceasing the collection of the resort's garbage, if true, is by no means righteous conduct that this Court condones. However, insofar as the charge of illegal exactions is concerned, it does not appear that private respondent Hontiveros herself acted in concert with private respondent Amores in demanding and facilitating inordinate collections. It also does not appear that she, by herself or through someone acting on her instruction, collected or received the amounts delivered by petitioner.

That said, this Court underscores that the Affidavit-Complaint,<sup>104</sup> which petitioner filed before public respondent, was not exclusively a criminal complaint. It was at the same time an administrative complaint for gross misconduct.<sup>105</sup> The charge of gross misconduct embraces the imputations against private respondent Hontiveros that she abused her position and influence to induce the cessation of the garbage collection services to the resort.

This Petition specifically prayed for this Court to hold that private respondents must be indicted for the offense of illegal exactions under Article 213(2) of the Revised Penal Code.<sup>106</sup> However, the records available lack any averment on how public respondent disposed of the administrative aspect of petitioner's Complaint. This Court is not aware of any matter to affirm or reverse in this respect. The records also do not indicate a claim or an explanation of how public respondent may have erred in its handling of such administrative aspect. Thus, this Court is in no position to make

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<sup>104</sup> Id. at 35-43.

<sup>105</sup> Id. at 35.

<sup>106</sup> Id. at 19-20.

conclusions on the administrative aspect of petitioner's claims.


To be clear, the affirmation of the dismissal of the Criminal Complaint against private respondent Hontiveros is without prejudice to the proper disposition of the administrative aspect of the Complaint against her.

**WHEREFORE**, the Petition is **PARTLY GRANTED**. The assailed February 20, 2015 Resolution and September 29, 2015 Order issued in OMB-V-C-14-0510 by public respondent Office of the Ombudsman (Visayas), through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr., are **SET ASIDE** insofar as they dismissed the charge against private respondent Lucrecia M. Amores for violating Article 213(2) of the Revised Penal Code.

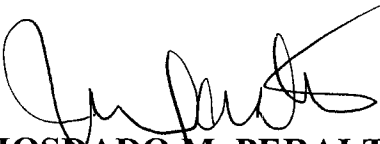
Public respondent Office of the Ombudsman (Visayas) is directed to file before the proper court the necessary information for violation of Article 213(2) of the Revised Penal Code against private respondent Lucrecia M. Amores.

This is without prejudice to the proper disposition of the administrative aspect of the Complaint against both private respondents Lucrecia M. Amores and Maribel Hontiveros.

**SO ORDERED.**


  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
 Associate Justice  
 Chairperson

  
**ANDRES B. REYES, JR.**  
 Associate Justice

  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

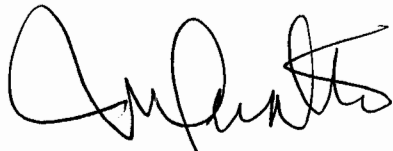


**ROSMARI D. CARANDANG**

Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

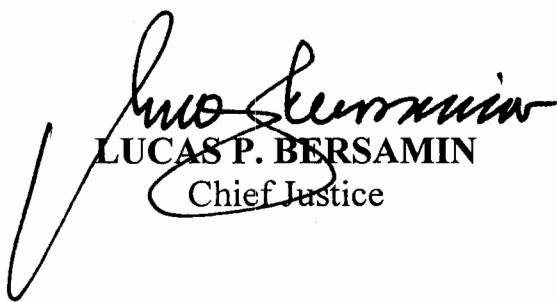


**DIOSDADO M. PERALTA**

Associate Justice  
Chairperson

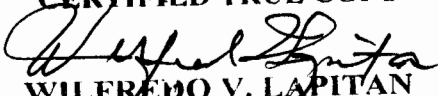
**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**LUCAS P. BERSAMIN**  
Chief Justice

**CERTIFIED TRUE COPY**



**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

MAY 17 2019