



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**PRESIDENTIAL COMMISSION
 ON GOOD GOVERNMENT,**

Petitioner,

G.R. No. 194619

Present:

- versus -

DEL CASTILLO,* J.,
 PERLAS-BERNABE, *Acting Chairperson*,
 CAGUIOA,
 REYES, J. JR., and
 LAZARO-JAVIER, JJ.

**OFFICE OF THE OMBUDSMAN,
 ROBERTO S. BENEDICTO,
 ANTONIO M. DIAZ, ISMAEL M.
 REINOSO, SIMEON G.
 MIRANDA. RENATO D. TAYAG,
 JUAN F. TRIVINIO, CESAR
 VIRATA, JUAN PONCE ENRILE,
 JOSE MACARIO LAUREL IV,
 JOSE J. LEIDO, JR. (all former
 directors of PNB 304 El Hogar Fil.
 Bldg., 115 Juan Luna St., Binondo,
 Manila), RAFAEL G. PEREZ,
 FELICISIMO R. GONZALES**
 (both former Managers of PNB
 Dumaguete Branch, Dumaguete
 City), RAMON V. ESCAÑO,
 EVELINA TEVES, HERMINIO V.
 TEVES, LORENZO G. TEVES,
 CATALINO NOEL, and
 LAMBERTO MACIAS (all former
 Officers of Tolong Sugar Milling
 Company, Inc.),**

Respondents.

Promulgated:

20 MAR 2019

X ----- *DMCabalagayto* ----- X

** Also referred to as "Gonzalo" in some parts of the *rollo*.

* Designated additional member in lieu of Senior Associate Justice Antonio T. Carpio, who took no part due to prior action while Chief Presidential Legal Counsel, per Raffle dated March 13, 2019.

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DECISION

REYES, J. JR., J.:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks to set aside the Resolution¹ dated December 29, 2006, and the Order² dated April 21, 2009, of the respondent Office of the Ombudsman (Ombudsman) in OMB-C-C-03-0252-D, which, respectively, dismissed for lack of probable cause the criminal complaints against herein private respondents; and denied the motion for reconsideration thereon.

The Facts

On December 5, 2002, herein petitioner Presidential Commission on Good Government (PCGG), through its then Commissioner Victoria A. Avena, filed before the Ombudsman an Affidavit-Complaint for violation of Section 3(e) & (g) of Republic Act (R.A.) No. 3019.

In its complaint, the PCGG stated that it is in charge of the prosecution of civil and criminal cases arising from behest loans, as discovered by the Presidential Ad Hoc Fact-Finding Committee (hereinafter, the "Committee") created under Administrative Order No. 13, dated October 8, 1992.

The PCGG averred that one of the accounts investigated by the Committee's Technical Working Group (TWG) was the account of Tolong Sugar Milling Company, Inc. (TSMCI) with the Philippine National Bank (PNB). It explained that the TWG's examination disclosed that on March 20, 1968, PNB granted TSMCI a stand-by irrevocable unconfirmed letter of credit in the amount of US\$27,793,123.45 to cover importation of sugar machinery and equipment in connection with TSMCI's proposed sugar central at Sta. Catalina and Bayawan, Negros Oriental. The loan was granted under PNB Board Resolution No. 711, dated March 20, 1968, and was purportedly secured by (1) 51.2496 hectares of agricultural land covered by Tax Declaration (TD) Nos. 4718 and 10282; (2) Machinery and equipment, building and other improvements to be erected and/or installed in the company's milling site; (3) 3,000 hectares of central-owned and operated sugar plantation; and (4) Joint and solidary surety executed by TSMCI's

¹ *Rollo*, pp. 47-65.

² *Id.* at 85-90.

officers. The loan was also subjected to various conditions including the need to increase TSMCI's paid-up capital to at least ₱7,000,000.00.

The TWG discovered that at the time of its incorporation on May 10, 1967, TSMCI only had subscribed capital stock amounting to ₱2,000,000.00, of which only ₱500,000.00 was paid-up; that it only had capitalization in the amount of ₱10,000,000.00; that the lands covered by TD Nos. 4718 and 10282 were appraised by PNB Dumaguete Branch on October 21, 1967 at ₱22,350.00 only; and that the two parcels were not titled or registered in the name of TSMCI, but in the names of some other persons. Further, a re-inspection and re-appraisal by the PNB Credit Department on August 7-9, 1975 also disclosed that the value of all of the assets TSMCI pledged as security for the loan amounted only to a total of ₱69,631,500.00, which was substantially insufficient to cover the loan amount of US\$27,793,123.45 or ₱108,912,912.86 based on the prevailing exchange rate at that time (US\$1 = ₱3.9187). Lastly, no "Joint and Solidary Surety" undertaking by its officers could be found in the records pertaining to TSMCI's account, contrary to the conditions set by the PNB.

The PCGG claimed that the TWG's findings show that TSMCI's account was a behest loan as shown by the facts that: (1) TSMCI was under-capitalized; and (2) the loan was under-collateralized. Nevertheless, despite these glaring realities and the clear financial incapability of TSMCI, it still secured the subject loan with the PNB. Thus, the PCGG alleged that there are sufficient factual circumstances which would support a finding of probable cause for violation of Section 3(e) and (g) of R.A. No. 3019 against the officers/directors of TSMCI, namely: (1) Ramon V. Escaño; (2) Herminio V. Teves; (3) Evelina J. Teves; (4) Lorenzo G. Teves; (5) Catalino Noel; and (6) Lamberto Macias, as well as the PNB Managers who recommended the approval of the loan, and the members of the Board of Directors who approved the pertinent Board Resolution and who may later be identified during the investigation of the case.

The complaint was initially acted upon by the Ombudsman's Fact-Finding and Intelligence Bureau (FFIB) which obtained the list of the PNB Board of Directors and PNB-Dumaguete Branch Managers during the period when the loan was granted. Subsequently, Roberto S. Benedicto (Benedicto), Antonio M. Diaz (Diaz), Ismael M. Reinoso (Reinoso), Simeon G. Miranda (Miranda), Renato D. Tayag (Tayag), Juan F. Trivinio (Trivinio), Cesar Virata (Virata), Juan Ponce Enrile (Enrile), Jose Macario Laurel IV (Laurel), and Jose J. Leido, Jr. (Leido), all PNB Directors in 1968; and Rafael G. Perez (Perez) and Felicisimo R. Gonzalo (Gonzalo), both former PNB-Dumaguete Branch Managers, were impleaded as respondents.

Thereafter, the Ombudsman issued an Order directing the respondents to file their respective counter-affidavits.

However, pending the resolution of the case, Benedicto, Reinoso, Tayag, Trivinio, Leido, Evelina Teves, and Macias died. Further, among the remaining respondents, only Enrile, Virata, Laurel, and Herminio Teves filed their respective counter-affidavits or motions to dismiss. It would appear that copies of the Order were not properly served on Miranda, Perez, Gonzalo, Escaño, and Noel, directing them to file their respective counter-affidavits. Thus, copies of the Order were returned unserved. With regard to Diaz and Lorenzo Teves, although copies of the Order were served upon them, they did not comply with the Order.

For his part, Enrile moved for the dismissal of the complaint against him on the grounds that: (a) the complaint failed to ascribe any act or omission constituting an offense against him; (b) the PCGG, in effect, has no competent proof that the elements of the offense charged – particularly of actual injury – are present in this case; and (c) assuming that a crime has been committed, the same has long prescribed. Herminio Teves adopted the grounds and arguments interposed by Enrile stressing that their situations are similar.

On the other hand, in their respective counter-affidavits, Laurel and Virata, argued that they have no hand in the approval of the loan as they were absent from the meeting when the subject loan was supposedly approved. Laurel further claimed that assuming that he participated in the approval of the loan, the offense had already prescribed and that the elements of undue injury, manifest partiality, evident bad faith and/or gross inexcusable negligence, were lacking.

Ruling of the Ombudsman

In its assailed Resolution dated December 29, 2006, the Ombudsman dismissed the criminal complaints for violation of Section 3(e) and (g) of R.A. No. 3019 against the respondents for lack of probable cause.

The Ombudsman ratiocinated that other than the failure to properly serve them with copies of the Order, there was no reason to indict Perez and Gonzalo for the offenses charged. It noted that neither of them were the branch managers of PNB-Dumaguete during the period in question. It pointed out that the subject loan was granted by PNB to TSMCI on March 20, 1968. However, Perez served as PNB-Dumaguete Branch Manager only until August 30, 1966 or about two (2) years prior to the alleged anomalous transaction. On the other hand, Gonzalo served as PNB-Dumaguete Branch

Manager from May 19, 1969 to May 18, 1971, or more than a year after the approval of the subject loan. Further, no document was presented showing that either of the two former branch managers had any participation in the grant or release of the proceeds of the loan.

Similarly, the Ombudsman opined that there was dearth of evidence to charge Miranda for the alleged offense. It observed that Miranda's name appeared in only one document, that is, in the list of the PNB Board of Directors in 1968 which was submitted by PNB in compliance with the subpoena *duces tecum* issued by the Ombudsman. Hence, there was no evidence linking Miranda with the alleged undue approval of the subject loan.

The Ombudsman, also cleared Laurel and Virata from the criminal charges considering that they were absent when the PNB Board of Directors approved the alleged behest loan. As regards Laurel, the Ombudsman pointed out that the documents attached by the PCGG to its complaint-affidavit do not show any particular act by Laurel showing that he participated in the approval of the loan. In the same vein, there was no allegation that Virata participated in the grant of the loan or that he exerted prior influence leading to the approval of the loan. The Ombudsman dismissed the PCGG's contention that Laurel and Virata's presence were not necessary as they "could easily wield influence beyond the conference table."³ It ratiocinated that the argument lacks merit as it is a mere speculation.

As regards Escaño, Noel, Herminio V. Teves, and Lorenzo G. Teves, the Ombudsman noted that they were impleaded as respondents on account of their being officers/directors of TSMCI. The PCGG failed to present any evidence showing that they encouraged, persuaded, and influenced any member of the PNB Board of Directors to vote for the approval of the loan. Nevertheless, there was no allegation of specific acts committed by them such as encouraging, persuading, or influencing any member of the PNB Board of Directors to vote for the approval of the subject loan.

With respect to Enrile and Diaz, the Ombudsman stated that while the two were present when the PNB Board approved TSMCI's loan, PCGG's complaint-affidavit failed to point out circumstances that would indicate a criminal design or collusion between them and the other respondents to cause undue injury to the government by giving unwarranted benefits to TSMCI. Specifically, the evidence present was insufficient to accuse Enrile and Diaz of entering into a transaction grossly disadvantageous to the

³ Id. 57.

government; and that the PCGG failed to show the element of bad faith, manifest partiality or gross inexcusable negligence.

Finally, the Ombudsman was of the opinion that the PNB Board of Directors exercised proper caution to ensure the chances of payment and that the loan was not under-collateralized, contrary to the allegations by the PCGG. It perceived that the PNB Board even required TSMCI to increase its paid-up capital as one of the conditions for the grant of the loan. Also, it stressed that in October 1967, the PNB-Dumaguete Branch had appraised the real properties offered by TSMCI as security at ₱111,172,493.80,⁴ which is more than sufficient to cover the amount of the loan. It explained that the appraisal conducted by the PNB in 1975, or about seven (7) years from the initial appraisal in 1967, should be examined in the light of several factors, such as the non-inclusion of some of the mortgaged real properties after the PNB Credit Department deemed their ownership controversial.

The dispositive portion of the assailed resolution provides:

WHEREFORE, the instant criminal complaint for violation of Section 3(e) and (g) of Republic Act No. 3019, as amended, is hereby **DISMISSED** for lack of probable cause.

SO RESOLVED.⁵

PCGG moved for reconsideration, but the same was denied by the Ombudsman in its Order dated April 21, 2009.

Hence, this petition for *certiorari*.⁶

The Issue

WHETHER THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE CRIMINAL COMPLAINT AGAINST RESPONDENTS FOR LACK OF PROBABLE CAUSE.

The PCGG claims that there was no dispute that the respondents took part in the approval of the questioned loan. It continues that the alleged specific acts by the respondents and the specific details concerning their criminal design are matters of evidence on the motive of the offenders which

⁴ PNB-Dumaguete's initial appraisal on October 1967 as contained in the TWG's Fact Finding Sheet; id. at 174.

⁵ Id. at 64.

⁶ Id. at 9-46.

are not essential elements of the offenses charged, and therefore, matters that are best threshed out during a full blown trial.

The PCGG also disputes the Ombudsman's findings that the PNB Board of Directors took proper precautionary measures in approving the subject loan. It insists that the PNB Board should not have approved the loan stressing that the two tracts of land offered as security were not registered in the name of the borrower, thus, TSMCI could not have validly constituted a mortgage thereon; that one of the tracts of land, specifically, the 3,170 hectares of land covered by TD Nos. 04118, 04115, and 04129, has been verified to be within the unclassified public forest of Sta. Catalina, Negros Oriental; and that the mere fact that the loan was also secured by the very machinery and equipment purchased, and structures and other improvements to be erected and/or installed, using the proceeds of the loan, is violative of the legal requirement under Article 2085 of the Civil Code, that the pledger or mortgagor be the absolute owner of the thing pledged or mortgaged.

The Commission asserts that had the respondents-PNB Directors truly exercised proper caution to ensure repayment of the loan, they would have realized that the borrower was a newly formed corporation, undercapitalized, and offered unacceptable collaterals.

The Court's Ruling

As already stated, the PCGG imputes grave abuse of discretion on the part of the Ombudsman in dismissing the criminal complaints for violation of Section 3(e) and (g) of R.A. No. 3019 against the respondents.

Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. The reason is that the term "grave abuse of discretion" has a specific meaning. The term is not an amorphous concept that may easily be manipulated to suit one's purpose.⁷

In a plethora of cases,⁸ the Court has defined the term "grave abuse of discretion" as the capricious and whimsical exercise of judgment that is so patent and gross as to amount to an evasion of positive duty or a virtual

⁷ *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 515 (2013).

⁸ *Garcia v. The Executive Secretary*, 602 Phil. 64, 78 (2009); *Imperial v. Judge Armes*, 804 Phil. 439, 471 (2017); *Chua v. People of the Philippines*, G.R. No. 195248, November 22, 2017.

refusal to perform a duty enjoined by law, or to act at all in contemplation of law; as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

Corollary, the petitioner in a petition for *certiorari* is duty-bound to prove that the respondent court or tribunal not merely erred in its judgment but, most importantly, gravely abused its discretion in doing so. The petitioner must show that the respondent court or tribunal acted beyond the parameters of its jurisdiction when it issued the assailed order or resolution.

In this regard, it is well to point out that the Ombudsman's powers to investigate and prosecute crimes allegedly committed by public officers or employees are plenary and unqualified.⁹ This is clear from the applicable constitutional and statutory provisions, to wit:

Article XI, 1987 Constitution. – ACCOUNTABILITY OF PUBLIC OFFICERS

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

x x x x

R.A. No. 6770. – AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES

Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases[.]

x x x x

The full discretion to investigate and prosecute necessarily comes with it the discretion not to file a case as when the Ombudsman finds the complaint insufficient in form or in substance. In short, the filing or non-

⁹ *Office of the Ombudsman v. Atty. Valera*, 508 Phil. 672, 697 (2005); *Galario v. Office of the Ombudsman (Mindanao)*, 554 Phil. 86, 110 (2007); *Castro v. Hon. Deloria*, 597 Phil. 18, 23 (2009).

filing of the information is primarily lodged within the full discretion of the Ombudsman.¹⁰ Simply stated, the Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.¹¹ Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.¹² Similarly, the Court shall also respect a finding of the existence of probable cause.

There is no compelling reason to depart from the Court's long-standing policy of non-interference in the exercise by the Ombudsman of its plenary investigatory and prosecutorial powers.

The determination of the existence of probable cause lies within the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party. Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.¹³

To engender a well-founded belief that a crime has been committed, and to determine if the respondents are probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. 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.¹⁴

In this regard, Section 3(e) and (g) of R.A. No. 3019 provides:

Sec. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X X

¹⁰ *Cam v. Casimiro*, 762 Phil. 72, 85 (2015); *Vergara v. The Hon. Ombudsman*, 600 Phil. 26, 41 (2009).

¹¹ *Judge Angeles v. Ombudsman Gutierrez*, 685 Phil. 183, 194 (2012).

¹² *Presidential Commission on Good Government v. Hon. Desierto*, 563 Phil. 517, 526 (2007).

¹³ *Callo-Claridad v. Esteban*, 707 Phil. 172, 185 (2013).

¹⁴ *Gov. Garcia, Jr. v. Office of the Ombudsman*, 747 Phil. 445, 459 (2014).

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official[,] administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

For a charge under Section 3(e), the following elements must sufficiently be alleged in the complaint: (i) that the accused must be a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officers; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.¹⁵ On the other hand, the following elements must be shown in the complaint to support an accusation under Section 3(g), to wit: (i) that the accused is a public officer, or a private individual acting in conspiracy with such public officers; (ii) that he entered into a contract or transaction on behalf of the government; and (iii) that such contract or transaction is grossly and manifestly disadvantageous to the government.¹⁶

To establish probable cause for violation of Section 3(e) and (g) of R.A. No. 3019, the PCGG relied on their allegations which essentially state the following: (1) that the subject loan was a behest loan considering that the borrower was under-capitalized and the loan was under-collateralized; and (2) that the respondents were either officers or directors of the borrower, officers of the PNB branch which granted the loan, or members of the PNB Board of Directors which approved the loan. These allegations, however, are insufficient to support the charges for violation of Section 3(e) and (g) of R.A. No. 3019.

A careful review of the subject complaint-affidavit would reveal that the PCGG failed to sufficiently allege the elements of Section 3(e) and (g) of R.A. No. 3019. Although the PCGG exerted great effort in explaining how

¹⁵ *Fuentes v. People*, G.R. No. 186421, April 17, 2017.

¹⁶ *People v. Go*, 730 Phil. 362, 369 (2014).

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the subject loan bears the characteristics of a behest loan, they utterly failed to demonstrate or even allege that the respondents acted with manifest partiality, evident bad faith, or inexcusable negligence, causing undue injury or unwarranted benefit to any party. The PCGG merely highlighted the alleged scandalous disproportion of the assets and collateral offered by TSMCI with the amount of the loan without even stating the alleged acts committed by the respondents which constituted or exhibited manifest partiality, evident bad faith or inexcusable negligence.

Further, there was no allegation that the respondents-government officials and the officers of TSMCI conspired and colluded with each other to defraud the government. As pointed out by the Ombudsman, the complaint-affidavit is bereft of sufficient allegation and relevant documents to support the charges therein, thus:

Other than [the] failure to serve them with copies of the Order to file their respective counter-affidavits because of insufficient addresses, it appears that there is no ground to indict RAFAEL G. PEREZ and FELICISIMO R. GONZALO in the charged offenses because: 1) the US\$27,793,123.45 loan was granted by PNB to TSMCI on March 20, 1968 and neither RAFAEL G. PEREZ nor FELICISIMO R. GONZALO was the PNB Dumaguete Branch Manager during that time; and 2) there are no documents showing that RAFAEL G. PEREZ who served as PNB Dumaguete Branch Manager until August 30, 1966 or about two (2) years prior to the grant of the loan, and FELICISIMO R. GONZALO who served as PNB Dumaguete Branch Manager from May 19, 1969 to May 18, 1971, or more than a year after the loan approval, had a hand in the grant of the loan or the release of the proceeds of the loan.

There are also no documents to support the inclusion of SIMEON G. MIRANDA in this case. SIMEON G. MIRANDA's name appeared in only one document, that is, in the list of PNB Board of Directors in 1968 that was submitted by the PNB in compliance with the [*subpoena duces tecum*] issued by this Office. His name does not appear in the Minutes of the Meeting of the PNB Board of Directors, either as among those present or absent, when the subject loan was approved.

Assuming that the approval [*per se*] of the loan is unlawful, there is no basis to indict JOSE MACARIO L. LAUREL IV because he was absent when the Board Resolution granting the loan was approved. Moreover, the other documents attached to the complaint do not show any particular act of JOSE MACARIO L. LAUREL IV showing that he participated in any manner whatsoever to the grant of the said loan. Complainant's argument that "actual presence is not absolutely necessary nor is it a condition for securing an approval, especially for a high ranking officer who could easily wield influence beyond the conference table" lacks merit in as much as it is a mere innuendo or speculation.

Likewise, there is no basis to indict CESAR E.A. VIRATA. Aside from the fact that he was on official mission abroad when the grant of the loan was approved by the PNB Board of Directors, there is no allegation

[or] proof that prior to or after the grant of the loan, he had participated in any manner whatsoever on the loan.

RAMON V. ESCAÑO, CATALINO NOEL, HERMINIO V. TEVES and LORENZO G. TEVES were named as respondents on account of their being officers/directors of the borrower corporation. There is no allegation of specific acts committed by them such as encouraging, persuading or influencing any member of the [PNB] Board of Directors to vote for the approval of the loan. There is also no proof that any one of them encouraged, persuaded or influenced any member of the PNB Board of Directors to approve the loan. While the grant of the loan presupposes an application on the part of the borrower corporation, the individual acts or extent of participation of the officers/directors charged with criminal offenses must be specified to establish probable cause.

While JUAN PONCE ENRILE and ANTONIO M. DIAZ, Chairman and Member of the Board, respectively, were present when the Board approved the grant of US\$27,793,123.45 loan to TSMCI in 1968, the complaint failed to point out circumstances that would indicate the criminal design by them or a collusion between them and the other respondents to cause undue injury to the government by giving unwarranted benefits to TSMCI. No enough evidence to accuse them of entering into a transaction grossly disadvantageous to the government. So too, there is no specific details that would show the element of bad faith, manifest partiality or gross inexcusable negligence.¹⁷ (Underscoring supplied)

Even assuming, for the sake of argument, that the allegations contained in PCGG's complaint-affidavit are sufficient to support the charges for violation of Section 3(e) and (g) of R.A. No. 3019, the Court opines that the Ombudsman's dismissal of the same is not tainted by grave abuse of discretion.

As pointed out by the Ombudsman, the PNB-Dumaguete had appraised the properties offered by TSMCI as security at ₱111,172,493.80 in October 1967. This could be gleaned from the TWG's Fact-Finding Sheet which was attached to the complaint-affidavit as Annex "D."¹⁸ This appraisal negates PCGG's claim that the value of TSMCI's collateral is substantially insufficient to cover the amount of the loan. It is important to note that the PCGG never denied the validity of the initial appraisal in October 1967. They only argue that the PNB Credit Department's re-appraisal in August 1975, revealed that TSMCI's collateral was valued only at ₱69,632,000.00.

¹⁷ *Rollo*, pp. 58-60.

¹⁸ Attached to the present petition as Annex "L"; *id.* at 172-186.

And even if the initial appraisal should be claimed to be a ruse to defraud the government, the same would be insufficient to establish probable cause. As aptly stated by the Ombudsman:

Assuming that the appraisal conducted by the PNB-Dumaguete Branch was anomalous[, w]ithout proof of knowledge thereon, respondent Board of Directors could not be held liable unless there are circumstances present suggesting that by the exercise of requisite diligence such anomalous appraisal could be discovered by them.¹⁹

In any case, it is clear that PCGG's arguments are anchored on the Ombudsman's supposed failure to consider that the arguments and pieces of evidence it presented, duly establish probable cause against the respondents. In effect, the PCGG is questioning how the Ombudsman assessed the pieces of evidence it presented — an inquiry which could not be the proper subject of a petition for *certiorari*.

A petition for *certiorari* does not include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion.²⁰ To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.²¹

Simply stated, no grave abuse of discretion may be attributed to the Ombudsman merely because of its alleged misappreciation of facts and evidence. The petitioner in a *certiorari* proceeding must clearly demonstrate that the court or tribunal blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.²²

In this case, the PCGG failed to show that the Ombudsman gravely abused its discretion when it dismissed the criminal complaint against the respondents. Instead, the instant petition is bereft of any statement or allegation purportedly showing that the Ombudsman exercised its power in an arbitrary or despotic manner by reason of passion or hostility. Consequently, the instant petition must be dismissed.

¹⁹ Id. at 63.


²⁰ *Leonis Navigation Co., Inc. v. Villamater and/or The Heirs of the Late Catalino U. Villamater*, 628 Phil. 81, 92 (2010); *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, citing *Leonis Navigation Co., Inc. v. Villamater*, supra.

²¹ *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

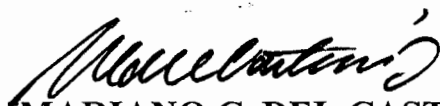
²² *People v. Court of Appeals (Fifteenth Div.)*, 545 Phil. 278, 294 (2007).

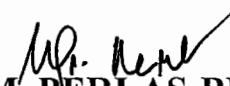
WHEREFORE, the present petition for *certiorari* is **DISMISSED** for lack of merit.

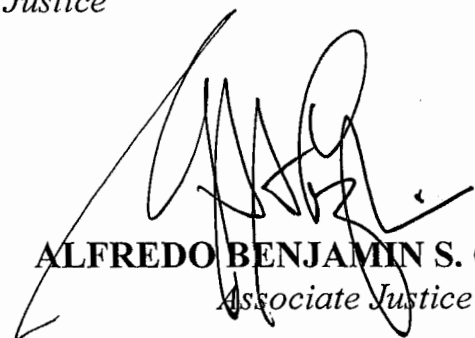
SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
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.



ESTELA M. PERLAS-BERNABE
Associate Justice
Acting Chairperson, Second Division

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.


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act
No. 296, The Judiciary Act
of 1948, as amended)

CERTIFIED TRUE COPY


MARIA LOURDES C. PERFECTO
Division Clerk of Court
Second Division