



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROMEO A. BELTRAN and G.R. No. 201117
DANILO G. SARMIENTO,
Petitioners,

Present:

-versus-

LEONEN, *J.*, Chairperson,
GISMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, *JJ.*

SANDIGANBAYAN (Second
Division), OFFICE OF THE
OMBUDSMAN, ASST. SPECIAL
PROSECUTOR III JENNIFER
AGUSTIN-SE, OFFICE OF THE
SPECIAL PROSECUTOR,
OFFICE OF THE DEPUTY
OMBUDSMAN FOR LUZON, and
COMMISSION ON AUDIT
represented by Danilo Sison,
Romeo de Guzman, and Luis
Dimoloy (COA Regional Office No.
02 Tuguegarao City, Cagayan),
Respondents.

Promulgated:
January 22, 2020

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DECISION

LEONEN, *J.*:

The Ombudsman's and his or her Deputies' power of determining

probable cause to charge an accused is an executive function. They must be given a wide latitude in performing this duty. Absent any showing of grave abuse of discretion, this Court will not disturb their determination of probable cause.

This Court resolves a Petition for Certiorari¹ challenging the Decision² of the Office of the Deputy Ombudsman for Luzon (Office of the Deputy Ombudsman) and the Office of the Special Prosecutor's Order³ that allegedly upholds it. The Office of the Deputy Ombudsman found Romeo A. Beltran (Beltran) guilty of serious dishonesty and ordered his dismissal from government service, and recommended that criminal charges be filed against him and Danilo G. Sarmiento (Sarmiento).

This case arose from a Complaint that the Commission on Audit filed before the Office of the Deputy Ombudsman against the following: (1) Alfredo M. Castillo, Jr. (Mayor Castillo), then mayor of Alfonso Castañeda, Nueva Vizcaya; (2) Beltran, then its municipal engineer; and (3) KAICO 25 Realty and Development Corporation (KAICO), owned by Sonny L. Salba and represented by Sarmiento.

The Commission on Audit alleged that Mayor Castillo had entered into a ₱10,000,000.00-worth Contract Agreement with KAICO for the construction of the Bato-Abuyo Farm-to-Market Road in Alfonso Castañeda.⁴

Auditors from the Commission on Audit later observed that only 3.78% of the project was accomplished despite the entire ₱10,000,000.00 being disbursed and paid to KAICO.⁵ A breakdown of the project's deficiencies was revealed in a January 2, 2003 Inspection Report prepared by Danilo N. Sison (Sison), a technical audit specialist at the Commission on Audit.⁶

On November 3, 2003, Sison and the other auditors executed a Joint Affidavit, confirming that the project was certified by Beltran as 100% and was fully paid on July 31, 2002,⁷ when only 3.78% was accomplished. They recommended that the appropriate cases be filed against Mayor Castillo,

¹ *Rollo*, pp. 3–35.

² *Id.* at 36–47. The January 21, 2010 Decision was penned by Graft Investigation and Prosecution Officer I Maria Melinda S. Mananghaya and concurred in by Evaluation and Investigation Office-Bureau A Acting Director Joaquin F. Salazar. It was approved by Deputy Ombudsman for Luzon Mark E. Jalandoni, as recommended by Deputy Ombudsman for Luzon Victor C. Fernandez.

³ *Id.* at 48–65. The February 1, 2011 Order was signed by Assistant Special Prosecutor III Jennifer A. Agustin-Se.

⁴ *Id.* at 37.

⁵ *Id.*

⁶ *Id.* at 37–38.

⁷ *Id.* at 277.

Beltran, and KAICO's officers.⁸ Sison later submitted a Position Paper, reiterating the need to file criminal and administrative charges against them.⁹

For his part, Beltran insisted that he was not a disbursing officer and that he had never handled the project's funds. He added that he signed the Project Acceptance, which certifies that the project is 100% complete, based on what he saw and reported. He invoked the presumption of regularity in the discharge of official duties.¹⁰

To bolster his claim, Beltran pointed to the Findings and Observations of the Department of the Interior and Local Government Provincial Fact-Finding Team (Fact-Finding Team), indicating the project's progress.¹¹ He also relied on the Certifications of Barangay Captains Rosie Sanchez (Barangay Captain Sanchez) of Barangay Batu and Milton P. Suaking (Barangay Captain Suaking) of Barangay Abuyo, dated November 6, 2003 and August 1, 2005, respectively.¹² Both of them stated that the Batu-Abuyo Road was fully built and was being used by farmers as an alternative road.¹³

On January 21, 2010, the Office of the Deputy Ombudsman rendered the assailed Decision,¹⁴ ruling that Beltran should be held administratively liable for certifying that the project was 100% complete when only 3.78% was accomplished at the time he signed the Project Acceptance.¹⁵

The Office of the Deputy Ombudsman found that Beltran's reliance on the barangay captains' Certifications was misplaced because they were issued much later than the Commission on Audit's Inspection Report. Barangay Captain Suaking's Certification only came 10 months after the inspection, and Sanchez's Certification two (2) years and seven (7) months after. To the Office of the Deputy Ombudsman, these documents may not accurately reflect the condition of the project when the inspection was conducted.¹⁶

Moreover, the Office of the Deputy Ombudsman found that the Certifications only contained general descriptions of the road, as compared to the Inspection Report, which contained more technical descriptions of the project's deficiencies.¹⁷

⁸ Id. at 38.

⁹ Id. at 39.

¹⁰ Id. at 40.

¹¹ Id.

¹² Id. at 43.

¹³ Id. at 41.

¹⁴ Id. at 36-47.

¹⁵ Id. at 43.

¹⁶ Id. at 43-44.

¹⁷ Id. at 44.

As to the Findings and Observations of the Fact-Finding Team, the Office of the Deputy Ombudsman found that it did not indicate the percentage of the actual accomplished work as compared to the Inspection Report. It also noted that the Fact-Finding Team reported that “the road is already covered with vegetative growth for *non-use* and only few have the courage to pass through it.”¹⁸

Hence, for Beltran’s failure to refute the claim that his certification in the Project Acceptance was false,¹⁹ the Office of the Deputy Ombudsman held that he committed fraud or falsification that caused undue injury or serious damage to Alfonso Castañeda worth ₱9,622,000.00. This amount represented the unaccomplished portion of the project.²⁰

Accordingly, the Office of the Deputy Ombudsman found Beltran guilty of serious dishonesty and dismissed him from government service. It also recommended that criminal charges for violations of Section 3(e) of Republic Act No. 3019 and falsification of public document under Article 171(4) of the Revised Penal Code be filed against Beltran and Sarmiento. However, the administrative charges against Sarmiento and Mayor Castillo were dismissed.²¹

Only Beltran moved for reconsideration.²²

Upon the Office of the Deputy Ombudsman’s Decision, two (2) Informations for the recommended violations were filed before the Sandiganbayan on July 28, 2011.²³ Beltran and Sarmiento later received a Notice from the Sandiganbayan setting their arraignment. However, they manifested that a Motion for Reconsideration was pending before the Office of the Deputy Ombudsman and prayed that the arraignment be postponed.²⁴

Thus, the Sandiganbayan reset the arraignment and instructed the Office of the Special Prosecutor to comment on Beltran’s Motion for Reconsideration.²⁵

On February 1, 2011, the Office of the Special Prosecutor issued the assailed Order.²⁶ It declared that the Office of the Deputy Ombudsman did not err when it gave credence to the Commission on Audit’s Inspection

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 44–45.

²¹ Id. at 253 and 271.

²² Id. at 93–105.

²³ Id. at 272.

²⁴ Id. at 254.

²⁵ Id. at 273.

²⁶ Id. at 48–65.

Report over the Findings and Observations of the Fact-Finding Team and the barangay captains' Certifications.²⁷

However, this Order did not contain a dispositive portion. Instead, it contained a prayer at the end, which read:

WHEREFORE, premises considered, there being no merit for the Motion For Reconsideration filed by Respondent Beltran, the Prosecution respectfully prays that the same be *DENIED*.

Other just and equitable relief under the law are likewise prayed for.²⁸ (Emphasis in the original)

Thinking that this Order was a denial of Beltran's Motion for Reconsideration, Beltran and Sarmiento filed before the Office of the Special Prosecutor a Manifestation and Motion²⁹ praying that the Informations filed in the Sandiganbayan be withdrawn. They claimed that the filing of the Informations was premature as they still had available remedies under the Rules of Procedure of the Office of the Ombudsman to question the finding of probable cause.³⁰ Beltran and Sarmiento furnished the Sandiganbayan with a copy of this Manifestation and Motion.³¹ In view of this, the Sandiganbayan again deferred the arraignment.³²

Later realizing that the Order did not contain a dispositive portion but a prayer, Beltran and Sarmiento filed a Motion to Defer Arraignment.³³ They argued that the Motion for Reconsideration remained pending as the Office of the Special Prosecutor's Order was, in essence, a comment on the Motion for Reconsideration.³⁴

In its Comment/Opposition,³⁵ the Office of the Special Prosecutor argued that its assailed Order was actually a denial of the Motion for Reconsideration and not a mere comment.³⁶ It insisted that as the Office of the Ombudsman's prosecuting arm, it "takes over whatever pending incident that may arise relative to the case already filed with the court."³⁷ This was why it acted on the Motion for Reconsideration once it was forwarded by the Office of the Deputy Ombudsman.³⁸

²⁷ Id. at 55.

²⁸ Id. at 64.

²⁹ Id. at 109–112.

³⁰ Id. at 111.

³¹ Id. at 112.

³² Id. at 113.

³³ Id. at 114–118.

³⁴ Id. at 254–255.

³⁵ Id. at 151–155.

³⁶ Id. at 152–153.

³⁷ Id. at 153.

³⁸ Id.

The Office of the Special Prosecutor further argued that in manifesting their intention to pursue other legal remedies to question the finding of probable cause, Beltran and Sarmiento clearly showed that they treated the Order as a denial of the Motion for Reconsideration.³⁹

On April 10, 2012, petitioners Beltran and Sarmiento filed this Petition for Certiorari,⁴⁰ praying, among others, that the Decision of the Office of the Deputy Ombudsman and the Order of the Office of the Special Prosecutor be nullified.⁴¹

With this case still pending, the Office of the Special Prosecutor rendered a May 9, 2012 Order⁴² expressly denying petitioner Beltran's Motion for Reconsideration for lack of merit. Its dispositive portion read:

WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby **DENIED** for lack of merit.⁴³ (Emphasis in the original)

The Order was approved by then Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) on June 26, 2012, as shown on the last page of the ruling where her signature appears.⁴⁴

On August 22, 2012, respondents Office of the Ombudsman and Office of the Special Prosecutor filed their Comment,⁴⁵ to which petitioners filed their Reply on December 11, 2012.⁴⁶

On March 6, 2013, this Court gave due course to the Petition and required the parties to submit their respective memoranda.⁴⁷

On May 24, 2013, petitioners filed their Memorandum.⁴⁸ Respondents likewise filed their Memorandum⁴⁹ on May 29, 2013.

For their part, petitioners mainly accuse both respondents Office of the Special Prosecutor and Office of the Deputy Ombudsman of committing

³⁹ Id.

⁴⁰ Id. at 3–35.

⁴¹ Id. at 30.

⁴² Id. at 217–223.

⁴³ Id. at 223.

⁴⁴ Id.

⁴⁵ Id. at 196–216.

⁴⁶ Id. at 228–239.

⁴⁷ Id. at 243–244.

⁴⁸ Id. at 251–270.

⁴⁹ Id. at 271–283.



grave abuse of discretion in their rulings.

Petitioners argue that respondent Office of the Special Prosecutor gravely abused its discretion in initially insisting that its Order was a denial of the Motion for Reconsideration, when it had no power to do so. They first point out that the assailed Order contains not a dispositive portion, but a mere statement praying that Beltran's Motion be denied.⁵⁰ Neither was the Order approved by the Ombudsman, but was just "noted" by the Prosecution Bureau Director. Petitioners also claim that the Order, despite being titled so, served as a comment or opposition that essentially contained a discussion and refutation of their assignment of errors.⁵¹

Moreover, petitioners point out that Section 11(4) of Republic Act No. 6770, which enumerates the Office of the Special Prosecutor's powers, does not provide that it can deny a motion for reconsideration.⁵² Under the same provision, they point out, the office is a mere component of the Office of the Ombudsman, which in turn exercises supervision and control over it.⁵³

Thus, petitioners claim that when Assistant Special Prosecutor Jennifer Agustin-Se, the officer tasked with handling the prosecution of their cases, also reviewed and supposedly denied the Motion for Reconsideration, there was a denial of due process because she acted both as prosecutor and the reviewing body of the Informations against petitioners.⁵⁴

Petitioners also claim that respondents changed their position after this Petition for Certiorari had been filed. They argue that in respondents' Comment, they admitted that it was only on June 26, 2012 that the Ombudsman approved a new Order dated May 9, 2012 recommending the Motion for Reconsideration's denial. To petitioners, this goes against respondents' earlier contention that the February 1, 2011 Order was already the denial of the Motion. Just the same, petitioners insist that the Ombudsman's approval was belated, and could not change the fact that respondent Office of the Special Prosecutor had committed grave abuse of discretion.⁵⁵

In any case, petitioners claim that respondent Office of the Deputy Ombudsman gravely abused its discretion when it completely disregarded their evidence, showing that the project had been completed, and instead found probable cause to file the criminal charges.⁵⁶

⁵⁰ Id. at 258-259.

⁵¹ Id. at 259.

⁵² Id.

⁵³ Id. at 259-260.

⁵⁴ Id. at 260.

⁵⁵ Id. at 260-261.

⁵⁶ Id. at 261.



Petitioners maintain that the barangay captains' Certifications should have been given probative value as they were in a better position to state whether the project was accomplished, being in the locality where the project was built.⁵⁷ They also claim that the Certifications' late issuance does not detract from their contents' veracity—"that the road was actually completed and being used."⁵⁸

Petitioners also argue that respondent Office of the Deputy Ombudsman improperly dismissed the Fact-Finding Team's Findings and Observations for not indicating the percentage of actual work accomplished. They claim that respondent Office of the Deputy Ombudsman only quoted select portions of the Findings and Observations, which, when read in full, would negate the Commission on Audit's Inspection Report.⁵⁹

Petitioners further fault respondent Office of the Deputy Ombudsman for completely relying on the Inspection Report, which they claim should not be given credence for being highly questionable.⁶⁰ They claim that the Commission on Audit did not have the original plans and specifications of the project when it conducted the inspection, which makes its evaluation baseless.⁶¹ It likewise did not coordinate with the relevant authorities from the municipality, who would have provided them with the project's specifics, witnessed the inspection, and explained their side, petitioners point out.⁶²

Thus, petitioners pray that the assailed Decision and Order issued by respondents be set aside, and the Complaint against them be dismissed for lack of merit.⁶³

On the other hand, respondents argue that the issue raised by petitioners on the Office of the Special Prosecutor's power to issue a denial has become moot as the assailed Order has been replaced by the May 9, 2012 Order approved by Ombudsman Carpio Morales, which flatly denied the Motion for Reconsideration. They also emphasize that only petitioner Beltran filed the Motion; petitioner Sarmiento did not join him.⁶⁴

Moreover, respondents submit that respondent Office of the Deputy Ombudsman did not commit grave abuse of discretion in finding probable

⁵⁷ Id. at 262.

⁵⁸ Id. at 263.

⁵⁹ Id. at 264.

⁶⁰ Id. at 265.

⁶¹ Id.

⁶² Id.

⁶³ Id. at 269.

⁶⁴ Id. at 275.



cause to criminally charge petitioners before the Sandiganbayan.⁶⁵ They argue that it did not capriciously and arbitrarily exercise its discretion or violate petitioners' right to due process.⁶⁶

Respondents claim that the finding of probable cause was established based on the appreciation of the facts and evidence presented by both parties during preliminary investigation.⁶⁷ From this, respondent Office of the Deputy Ombudsman concluded that when petitioner Beltran signed the Project Acceptance, he falsely certified that the project was 100% accomplished when only 3.78% of the project was done.⁶⁸

According to respondents, the findings of respondent Office of the Deputy Ombudsman—that the barangay captains' Certifications and the Findings and Observations deserved no consideration—should not be disturbed by this Court.⁶⁹

Citing *Esquivel v. Ombudsman*,⁷⁰ respondents raise the rule on non-interference and assert that this Court has no reason to disturb the finding of probable cause without any showing of grave abuse of discretion. In any case, they assert that petitioners dwell on issues not within the province of the extraordinary remedy of certiorari. They point out that any error committed in the evaluation of evidence is a mere error of judgment that cannot be remedied by certiorari.⁷¹

Thus, respondents reiterate their claim that this Court should give deference to the determinations of probable cause by the Office of the Ombudsman, absent any showing of arbitrariness. Otherwise, they argue, courts will be unduly hampered by numerous petitions seeking review of Office of the Ombudsman's exercise of discretion whenever they find probable cause.⁷²

As to the question of whether the facts established during the preliminary investigation are enough to sustain a conviction, respondents assert that these can only be determined by the Sandiganbayan after trial. Accordingly, respondents pray that the Petition for Certiorari be "denied for lack of merit."⁷³

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id. at 277.

⁷⁰ 437 Phil 702 (2002) [Per J. Quisumbing, Second Division].

⁷¹ *Rollo*, p. 279.

⁷² Id. at 280.

⁷³ Id. at 281.

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For this Court's resolution are the following issues:

First, whether or not respondent Office of the Special Prosecutor committed grave abuse of discretion when it issued the February 1, 2011 Order; and

Second, whether or not respondent Office of the Deputy Ombudsman committed grave abuse of discretion when it found probable cause against petitioners Romeo A. Beltran and Danilo G. Sarmiento for violating Section 3(e) of Republic Act No. 3019 and Article 171(4) of the Revised Penal Code.

The Petition is dismissed.

I

The concept of a complaint-handling agency in the Philippines originated from several past offices with similar—but not identical—functions, created by previous administrations in their attempt to rid the government of graft and corrupt practices.⁷⁴

In 1950, then President Elpidio Quirino created an Integrity Board to receive complaints against public officials for acts of corruption, dereliction of duty, and irregularities in office. It was also empowered to investigate and make recommendations to the President.⁷⁵

During President Ramon Magsaysay's term, he created a Presidential Complaints and Action Commission "to encourage public participation in making government service more responsive to the needs of the people."⁷⁶ Still a component of the Office of the President, it likewise had the power to conduct fact-finding investigations and to make recommendations to the President. The Commission was later on changed to Complaints and Action Committee, with the same but more detailed powers.⁷⁷

When President Carlos P. Garcia came into office, he created the Presidential Committee on Administration Performance Efficiency with the goal of achieving "higher efficiency and competence in the administration of

⁷⁴ Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL. L.J. 1, 5-7 (1982).

⁷⁵ Executive Order No. 318 (1950). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL. L.J. 1 (1982).

⁷⁶ Executive Order No. 1 (1953). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL. L.J. 1 (1982).

⁷⁷ Executive Order No. 1 (1953). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL. L.J. 1 (1982).

government[.]”⁷⁸ Its duties included receiving, processing, and evaluating complaints on public officers in the executive branch, which it would then endorse to the office or agency concerned for action. Still directly under the Office of the President, it informed the President on the status of the complaints it received.⁷⁹

For his part, President Diosdado Macapagal created an investigating agency called the Presidential Anti-Graft Committee, which had the power to inquire into and take measures to prevent graft and corruption. Thus, this Committee was vested with investigatory powers, and its findings were then forwarded to the President.⁸⁰

President Ferdinand Marcos (President Marcos) then created the Presidential Agency on Reforms and Government Operations directly under the Office of the President, which acted as a “central clearing house” through which the public may lodge their complaints. It also had the power to investigate graft and corruption, and other activities which are prejudicial to the government and the public interest.⁸¹

Common to these agencies was that they were all created by presidential issuances, directly under and responsible to the President, and merely exercised fact-finding and recommendatory functions. As such, these agencies were not independent and served at the pleasure of the appointing power.⁸²

Around this time, in an attempt to make a more permanent grievance agency, Congress enacted Republic Act No. 6028, or the Citizen’s Counselor Act of 1969.⁸³ The law aimed to safeguard the constitutional right to petition the government for redress of their grievances and to promote higher standards of efficiency in government business and the administration of justice.⁸⁴

Republic Act No. 6028 established the Office of the Citizen’s Counselor, which was relatively more independent than the presidential commissions and committees earlier established. For one, the appointment of the Citizen’s Counselor, despite coming from the President, needed the

⁷⁸ Executive Order No. 306 (1958). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

⁷⁹ Executive Order No. 306 (1958). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

⁸⁰ Executive Order No. 4 (1962). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

⁸¹ Executive Order No. 4 (1966). See Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1 (1982).

⁸² Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 6 (1982).

⁸³ *Id.* at 7.

⁸⁴ Republic Act No. 6028 (1969), sec. 2.

consent of the Commission on Appointments.⁸⁵ Nonetheless, the office's powers remained limited to investigation, upon complaint by a person or *motu proprio*,⁸⁶ with the findings and recommendations to be referred to the relevant government offices.⁸⁷

However, the Office of the Citizen's Counselor was never operationalized as no funds were allocated to it. The Presidential Agency on Reforms and Government Operations was continued instead.⁸⁸

When the 1973 Constitution took effect, it mandated the creation of an Office of the Ombudsman called the Tanodbayan. President Marcos, invoking his legislative powers under Presidential Decree No. 1081, issued Presidential Decree No. 1487 in 1978 to implement this constitutional provision.⁸⁹ Just the same, the Tanodbayan's powers were confined to investigation and recommendation.⁹⁰

Around this time, the Office of the Chief Special Prosecutor was also created under Presidential Decree No. 1486. Then, passed shortly after was Presidential Decree No. 1607, which amended Presidential Decree No. 1487. The new decree transferred the Office of the Chief Special Prosecutor to the Tanodbayan, effectively transforming the Tanodbayan from merely an investigatory body to a prosecutorial one.⁹¹

Serving as the prosecution arm of the Tanodbayan,⁹² the Office of the Chief Special Prosecutor had the exclusive authority to conduct preliminary investigation in all cases cognizable by the Sandiganbayan, to file informations, and to direct and control the prosecution of these cases.⁹³

After this transfer, a further amendatory law⁹⁴ granted the Tanodbayan itself the power to conduct preliminary investigations and to prosecute civil, administrative and criminal cases in the Sandiganbayan or in any proper court. This gave both the Tanodbayan and the Office of the Chief Special Prosecutor power to prosecute cases.

⁸⁵ Republic Act No. 6028 (1969), sec. 3.

⁸⁶ Republic Act No. 6028 (1969), sec. 12.

⁸⁷ Republic Act No. 6028 (1969), sec. 14.

⁸⁸ Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 7 (1982).

⁸⁹ *Id.* at 8.

⁹⁰ Presidential Decree No. 1487 (1978), sec. 14.

⁹¹ Presidential Decree No. 1607 (1978), sec. 17. See Presidential Decree No. 1486 (1978), sec. 12; Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 9 (1982).

⁹² Presidential Decree No. 1607 (1978), secs. 17 and 19. See Presidential Decree No. 1486 (1978), sec. 12; Irene R. Cortés, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL L.J. 1, 9 (1982).

⁹³ Presidential Decree No. 1607 (1978), sec. 17.

⁹⁴ Presidential Decree No. 1630 (1979), secs. 10(e) to (f) and 18.

With the ratification of the 1987 Constitution, a new Office of the Ombudsman was created. Its powers, functions, and duties are now constitutionally provided under Article XI, Sections 12 and 13, which state:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

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.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

The Constitution does not expressly provide the Office of the Ombudsman the power to prosecute cases in courts. Instead, it converted



the Tanodbayan, which had prosecutorial powers, to the Office of the Special Prosecutor.⁹⁵

A couple of years later, Republic Act No. 6770 or the Ombudsman Act of 1989 was passed, providing the functional and structural organization of the Office of the Ombudsman. Through it, the office's powers were expanded to include not only the power to investigate, but also to prosecute cases against government officers and employees:

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 this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases[.] (Emphasis supplied)

At the same time, the Office of the Special Prosecutor retained its power to conduct preliminary investigation and prosecute criminal cases.

Nonetheless, Republic Act No. 6770 effectively placed the Office of the Special Prosecutor under the auspices of the Office of the Ombudsman. The relationship between these offices has been defined more under Section 11(3) and (4) of the Ombudsman Act, which provide:

SECTION 11. *Structural Organization.* — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

....

- (3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his [or her] prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.
- (4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

⁹⁵ CONST., art. XI, sec. 7. See Executive Order No. 243 (1987) and Executive Order No. 244 (1987).

- (a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;
- (b) To enter into plea bargaining agreements; and
- (c) To perform such other duties assigned to it by the Ombudsman.

Thus, in its current form, the Office of the Special Prosecutor is a component of the Office of the Ombudsman, with both concurrently exercising prosecutorial powers. However, in exercising its functions, the Office of the Special Prosecutor shall be under the supervision and control of the Office of the Ombudsman and can only act upon its authority.⁹⁶

The Office of the Special Prosecutor is but a mere component of the Office of the Ombudsman. It does not possess an independent power to act on behalf of the Ombudsman. Only upon the Ombudsman's authority can it decide on matters with finality. Therefore, except upon the Ombudsman's orders, the Office of the Special Prosecutor has no power to direct the filing of an information in court.

Such is the case here. Petitioners are correct to point out that the assailed February 1, 2011 Order could not have been the denial of petitioner Beltran's Motion for Reconsideration. Respondent Office of the Special Prosecutor had no power to do so; the Order was merely noted by Director Rodrigo V. Coquia of the Prosecution Bureau II. Its findings, therefore, bear no imprimatur from the Ombudsman.

Without the Office of the Ombudsman's approval, the Office of the Special Prosecutor's February 1, 2011 Order cannot be considered a final denial of the Motion for Reconsideration.

Nevertheless, respondents point out that this defect has been cured by the issuance of the May 9, 2012 Order denying the Motion for Reconsideration—this time, with then Ombudsman Carpio Morales' express approval given on June 26, 2012.

In *Dumangcas, Jr. v. Marcelo*,⁹⁷ this Court held that even a one-line marginal note by the Ombudsman is sufficient to approve or disapprove the Office of the Special Prosecutor's recommendations:

It may appear that the Ombudsman's one-line note lacks any factual or evidentiary grounds as it did not set forth the same. The state of affairs, however, is that the Ombudsman's note stems from his [or her] review of the

⁹⁶ *Zaldivar v. Sandiganbayan*, 243 Phil 988, 992 (1988) [Per Curiam, En Banc].

⁹⁷ 518 Phil. 464 (2006) [Per J. Chico-Nazario, First Division].

findings of fact reached by the investigating prosecutor. The Ombudsman, contrary to the investigating prosecutor's conclusion, was of the conviction that petitioners are probably guilty of the offense charged, and for this, he [or she] is not required to conduct an investigation anew. He [or she] is merely determining the propriety and correctness of the recommendation by the investigating prosecutor, *i.e.*, whether probable cause actually exists or not, on the basis of the findings of fact of the latter. He [or she] may agree, fully or partly, or disagree completely with the investigating prosecutor. Whatever course of action that the Ombudsman may take, whether to approve or to disapprove the recommendation of the investigating prosecutor, is but an exercise of his [or her] discretionary powers based upon constitutional mandate.⁹⁸

What is important is the Ombudsman's action on the investigating officer's recommendations. Here, Ombudsman Carpio Morales' approval of the May 9, 2012 Order is shown through her signature appearing on the last page of the Order. This is a discretionary act on her part, to which this Court accords respect.

Thus, respondents are correct. Through the May 9, 2012 Order, petitioner Beltran's Motion for Reconsideration was finally denied. That the Order came out during the pendency of this Petition neither weakens its value nor makes the final denial invalid. In fact, with this issuance, the argument that there was no denial of petitioner Beltran's Motion for reconsideration has become moot.

II

Petitioners also question the finding of probable cause against them. They argue that respondent Office of the Deputy Ombudsman gravely abused its discretion in relying on the Commission on Audit's Inspection Report and not on the barangay captains' Certifications and the Fact-Finding Team's Findings and Observations.

"Mere 'disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion.'"⁹⁹ The Office of the Ombudsman has both the constitutional and statutory mandate to act on criminal complaints against erring public officials and employees.¹⁰⁰ As an independent constitutional body, the Office of the Ombudsman is given a wide latitude to conduct investigations and to prosecute cases to fulfill its role "as the

⁹⁸ Id. at 476-477 citing *Gallardo v. People*, 496 Phil. 381 (2005) [Per J. Chico-Nazario, Second Division].

⁹⁹ *Binay v. Ombudsman*, G.R. No. 213957-58, August 7, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552>> [Per J. Leonen, Third Division].

¹⁰⁰ *Dichaves v. Ombudsman*, 802 Phil 564, 589 (2016) [Per J. Leonen, Second Division].

champion of the people” and “preserver of the integrity of the public service.”¹⁰¹

Under the principle of non-interference, this Court is called to exercise restraint in reviewing the Office of the Ombudsman’s finding of probable cause.¹⁰² As this Court is not a trier of facts, it generally defers to the sound judgment of the Office of the Ombudsman, which is in the better position to assess the facts and circumstances necessary to find probable cause.¹⁰³ Moreover, the finding of probable cause for holding an accused for trial and for filing the necessary information before the courts is an executive function.¹⁰⁴ This Court will not interfere with this function, unless there is a showing of grave abuse of discretion.¹⁰⁵

To constitute grave abuse of discretion, the Office of the Ombudsman must be shown to have conducted the preliminary investigation in a manner that amounts to a “virtual refusal to perform a duty under the law.”¹⁰⁶

Here, when respondent Office of the Deputy Ombudsman issued the assailed January 21, 2010 Decision, it relied on the Inspection Report by the Commission on Audit as weighed against the different documentary evidence submitted by petitioners. It considered the barangay captains’ Certifications and the Fact-Finding Team’s Findings and Observations, all submitted by petitioners. In fact, it even concluded that these documents were insufficient to dispute the Commission on Audit’s findings:

The reliance of respondent Beltran on the certifications issued by Rosie Sanches (*sic*) and Milton Suaking, and the Findings and Observations of the DILG Provincial Fact-Finding Team, is misplaced. It should be noted that the Inspection Report of the COA Audit Team was dated 02 January 2003. On the other hand, the certifications issued by Sanches (*sic*) and Luaking (*sic*) were dated 06 November 2003 and 01 August 2005. Thus, the statements of the said individuals may not accurately reflect the condition of the road at the time the inspection was conducted. Further, the declaration of Sanchez and Luaking (*sic*) merely constitute general descriptions of the road. The said certifications are not sufficient to dispute the Inspection Report of the COA Audit Team, which possesses the expertise and authority to determine the technical specifications of construction projects.

Anent the findings of the DILG Provincial Fact-Finding Team, the same did not indicate the percentage of the actual accomplished work as compared to what was reported by the COA. As a matter of fact, contrary

¹⁰¹ Id. at 589–590.

¹⁰² Id. at 589.

¹⁰³ Id. at 590.

¹⁰⁴ Id. at 591.

¹⁰⁵ *Binay v. Ombudsman*, G.R. No. 213957–58, August 7, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552>> [Per J. Leonen, Third Division].

¹⁰⁶ Id. citing *Reyes v. Ombudsman*, 810 Phil 106 (2017) [Per J. Leonen, Second Division].

to the claim of the respondents that the road is being used by the locality, the Fact-Finding Team reported that “the road is already covered with vegetative growth for non-use and only few have the courage to pass through it”.

Hence, respondent Beltran failed to rebut that his certification that the construction is 100% complete is false. Such fraud or falsification employed by said respondent caused undue injury or serious damage to the Municipality of Alfonso Castañeda in the amount of Nine Million Six Hundred Twenty Two Thousand Pesos (Php9,622,000.00), representing the amount paid for the unaccomplished portion of the project.¹⁰⁷ (Citations omitted)

This Court does not find grave abuse of discretion in the determination of probable cause against petitioners. It is within the Office of the Ombudsman’s mandate and discretion to weigh the different pieces of evidence presented before it during preliminary investigation. That is precisely what happened here: respondent Office of the Deputy Ombudsman considered all the relevant pieces of information before arriving at the conclusion that probable cause against petitioners exists. Petitioners failed to show any grave abuse of discretion on its part. This Court must, therefore, respect its findings.

Finally, it is worth noting that the two (2) Informations against petitioners have already been filed before the Sandiganbayan on July 28, 2011. Petitioners thereafter received notices setting their arraignment.

In *De Lima v. Reyes*,¹⁰⁸ this Court held that “[o]nce the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused’s guilt or innocence rests within the sound discretion of the court.”¹⁰⁹ The filing of the information initiates the criminal action before the court, and the preliminary investigation by the prosecution is terminated.¹¹⁰ In *De Lima*:

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

....

¹⁰⁷ *Rollo*, pp. 43–45.

¹⁰⁸ 776 Phil 623 (2016) [Per J. Leonen, Second Division].

¹⁰⁹ *Id.* at 649.

¹¹⁰ *Id.* at 650 citing *Crespo v. Mogul*, 235 Phil 465, 474–476 (1987) [J. Gancayco, En Banc].

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.¹¹¹

In this case, the criminal action has already commenced. Jurisdiction over the case had been transferred to the Sandiganbayan upon the filing of the Informations. Petitioners received notices of arraignment, and after several deferments, the Sandiganbayan proceeded to arraign them on January 21, 2013 considering the absence of any injunctive relief enjoining the arraignment.¹¹²

It is clear that the Sandiganbayan has already independently determined the existence of probable cause. Petitioners' arraignment has rendered moot any question on the results of respondent Office of the Deputy Ombudsman's preliminary investigation.¹¹³

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Associate Justice

¹¹¹ Id. at 650-651.

¹¹² Rollo, pp. 271-272.

¹¹³ See *De Lima v. Reyes*, 776 Phil 623, 652-653 (2016) [Per J. Leonen, Second Division].



ROSMARID. CARANDANG
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
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.



MARVIC M.V.F. LEONEN
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.



DIOSDADO M. PERALTA
Chief Justice