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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 October 2019** which reads as follows:*

**G.R. No. 228368 – NORSALEM RAYMOND MORILLO MAMA-O
v. OMBUDSMAN CONCHITA CARPIO-
MORALES and the OFFICE OF THE
OMBUDSMAN**

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The Case

This petition for certiorari¹ assails the following dispositions of the Office of the Ombudsman (OMB) in OMB-C-C-13-0141:

1. Resolution dated April 14, 2016,² insofar as it found probable cause against petitioner Norsalem Raymond Morillo Mama-o for two (2) counts of violation of Section 8 of Republic Act No. 6713 (RA 6713), pertaining to his failure to file his Statement of Assets, Liabilities, and Networth (SALN) for 2005 and 2006; and
2. Order dated August 5, 2016,³ denying petitioner's motion for reconsideration.

Antecedents

On May 23, 2013, the Department of Finance – Revenue Integrity Protection Service filed before the OMB a complaint for violation of Section 7, Republic Act No. 3019 (RA 3019), Section 8 of Republic Act No. 6713 (RA 6713), and Articles 171 and 183 of the Revised Penal Code against petitioner Norsalem Raymond Morillo Mama-o, Customs Operations Officer III of the Bureau of Customs (BoC).⁴

Complainant's Position

Complainant essentially averred:

¹ Under Rule 65 of the Revised Rules of Court, *rollo*, pp. 3-13.
² Penned by Graft Investigation & Prosecution Officer II Charmaine C. Ruiz and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang, *rollo*, pp. 16- 29.
³ *Rollo*, pp. 30-32-A.
⁴ *Id.* at 33-45.

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On March 1, 1988, petitioner got employed at the BoC as Customs Policeman. On July 1, 1989, he was appointed as Special Agent I and on September 15, 1999, he got promoted as Customs Operations Officer III.⁵

Subsequently, it did a lifestyle check on petitioner and discovered that he did not file his Statement of Assets, Liabilities, and Networth (SALN) for the years 2000, 2001, 2003, 2004, 2005, and 2006. Too, he failed to declare certain properties in his SALNs for 2008 to 2011, including a Beretta Pistol. He also made misleading declarations in his SALNs, *i.e.*, he declared two (2) properties in Cavite when he actually has only one (1) property there; he declared a taxi business but per verification there was no record of any Certificate of Public Convenience or permit from the Land Transportation Franchising and Regulatory Board (LTFRB) under his name; and he declared "cars" when there was only one (1) car registered in his or his wife's name.⁶

*Petitioner's Position*⁷

In his defense, petitioner riposted:

His failure to file his SALNs was due to inadvertence. He was just an ordinary public servant who had no deep knowledge of the law. He did not know that SALNs should be filed annually. He thought that SALNs should only be filed when there was substantial change in one's assets and liabilities. Thus, he did not file any SALNs for 2003 to 2006 because his assets had remained the same from 2002 to 2006. He should have been informed of his omission and given the chance to rectify it.

Contrary to complainant's accusation, he accurately declared some of his properties which complainant claimed he did not. Too, he thought that the properties located in the same area should be considered as one and declared under one (1) entry. He only declared the taxi business in anticipation of a bank loan approval therefor. This, however, did not push through. As for the cars, he declared the same in its plural form because he and his wife had occasionally purchased brand new or second hand cars and later sold them. As for the .25 Beretta Pistol, he did not include it in his SALN because he acquired the same only in 2012, hence, could not have been declared it in any of his prior SALNs.

⁵ *Id.* at 34.

⁶ *Id.* at 35-40.

⁷ *Id.* at 90-105.

The OMB's Ruling

By its assailed Resolution dated April 14, 2016,⁸ the OMB found probable cause to indict petitioner for two (2) counts of violation of Section 8 of RA 6713 for failure to file his SALNs for the years 2005 and 2006, but dismissed the other charges against him, *viz*:

WHEREFORE, finding probable cause to indict respondent **NORSALEM RAYMOND MORILLO MAMA-O** for two (2) counts of violation of Section 8 of R.A. No. 6713 for failure to file his SALN for the years 2005 and 2006, let the corresponding Information be filed against him with the Metropolitan Trial Court of Manila.

The other charges are hereby **DISMISSED**.

SO ORDERED.⁹

The OMB's finding of probable cause was hinged on the civil law provision that ignorance of the law excuses no one from compliance therewith which the OMB applied against petitioner's claim that he did not file his SALNs for the years 2005 and 2006, among others, because he thought that the obligation to file arises only when there is a substantial change in his assets and liabilities.

As for the other charges, the OMB held that petitioner's failure to file SALNs for 2000, 2001, 2003, and 2004 could no longer be prosecuted on ground of prescription. Act No. 3326 provides that violations of special laws which carry a penalty of imprisonment of two (2) year or more, but less than six (6) years, prescribe in eight (8) years reckoned from violation of such law. Considering that the complaint was filed in 2013, the infractions committed in 2000, 2001, 2003, and 2004 had already prescribed.

Also, petitioner cannot be indicted under RA 3019 and RA 6713 simultaneously. He may only be prosecuted under the law which carries the heavier penalty, *i.e.*, RA 6713.

On petitioner's alleged failure to declare certain properties in his SALNs, he, in fact, was able to sufficiently explain this matter. Further, what is punished under the law is the "acquisition of unexplained wealth." *When the source of the undisclosed wealth can be properly accounted then it is "explained wealth" which the law does not penalize.*

The elements of wrongful intent to injure third person and willful assertion of falsehood required under Articles 171 and 183 of the Revised Penal Code were not sufficiently established.

⁸ Penned by Graft Investigation & Prosecution Officer II Charmaine C. Ruiz and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang, *rollo*, pp. 16-29.

⁹ *Id.* at 28.

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Through its assailed Order dated August 5, 2016,¹⁰ the OMB denied petitioner's motion for reconsideration insofar as his failure to file SALNs for 2005 and 2006 is concerned.¹¹

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the assailed OMB Resolution dated April 14, 2016 and Order dated August 5, 2016 be reversed and all charges against him dismissed.

*Petitioner's Arguments*¹²

He argues that: *first*, the OMB had exculpatory finding that he was not shown to have acted with malice or intent to hide ill-gotten wealth; *second*, his failure to file his SALN was solely due to his misunderstanding of the law; and *third*, under Section 10 of RA 6713 and the Civil Service Commission Memorandum Circular No. 10, series of 2006, he should have been directed by the department head concerned to file the SALNs which he failed to file. By depriving him of his right to correct his mistakes or omissions, he was deprived of his right to due process.

*The OMB's Counter-Argument*¹³

The OMB, through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Lucy L. Butler-Torres ripostes, in the main: petitioner failed to substantiate his charge of grave abuse of discretion relative to its finding of probable cause against him for two (2) counts of violation of Section 8 of RA 6713. Its alleged misappreciation of facts and evidence does not equate to grave abuse of discretion. In any case, petitioner's claim that he should have been informed first of his omission lacks merit. In *Presidential Anti-Graft Commission, et al. v. Salvador A. Pleto*, the Court clarified that RA 6713 does not require prior notification and correction before administrative charges may be filed.

Issue

Did the OMB commit reversible error when it found probable cause to indict petitioner for two (2) counts of violation of Section 8 of RA 6713 relative to his failure to file his SALNs for 2005 and 2006?

¹⁰ *Id.* at 30-32-A.

¹¹ *Id.* at 183-188.

¹² *Id.* at 3-13.

¹³ *Id.* at 198-213.

Ruling

The petition is devoid of merit.

Jurisprudence instructs that 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 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 and hostility." That an abuse, in itself, is "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.¹⁴ This petitioner failed to do.

The requirement of filing a SALN is enshrined in no less than our 1987 Constitution in order to promote transparency in the civil service and government officials bent on enriching themselves through unlawful means. By mandate of RA 6713, it behooves every government official or employee to accomplish and submit a sworn statement completely disclosing his or her assets, liabilities, net worth, and financial and business interests, including those of his/her spouse and unmarried children under eighteen (18) years of age living in their households, in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters.¹⁵

True, the OMB found that petitioner was not shown to have acted with malice or intent to hide ill-gotten wealth insofar as his failure to declare certain properties in his SALNs for 2002 and 2007 to 2011. But there was no such finding, nay, conclusion insofar as his failure to file his SALNs for 2005 and 2006 is concerned. For this violation does not require intent or malice. It is *malum prohibitum*. *Republic v. Sereno*¹⁶ is in point:

The SALN laws contemplate both the (1) physical act of filing her and her family's statement of assets, liabilities and net worth and (2) filing of true, genuine and accurate SALN. RA 6713 and RA 3019, being special laws that punish offenses, are *malum prohibitum* and not *malum in se*. Thus, it is the omission or commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. An act which is declared *malum prohibitum* renders malice or criminal intent completely immaterial. Thus, whether or not respondent accumulated unexplained wealth is not in issue at this point in time, but whether she, in the first place, complied with the mandatory requirement of filing of SALNs. Worse, to subscribe to respondent's view means that the Court

¹⁴ *Evelyn L. Miranda v. Sandiganbayan and the Ombudsman*, 815 Phil. 123, 140-141 (2017).

¹⁵ *Concepcion C. Daplas v. Department of Finance, et al.*, 808 Phil. 763, 771 (2017).

¹⁶ G.R. No. 237428, May 11, 2018.

would altogether be deprived of the opportunity to ascertain whether or not she accumulated unexplained wealth as the tools for doing so, that is, the filed SALNs and the representations contained therein, are lacking. (Emphasis supplied)

In any event, petitioner's defense that he honestly, nay, erroneously believed that SALNs should only be filed when one's networth has substantially changed or that he had a poor understanding of the law must fail. RA 6713 expressly commands that every government officer or employee should file his or her SALN upon his assumption of office *and* on or before April 30th thereafter, *viz*:

Section 8. Statements and Disclosure. - Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

x x x

x x x

x x x

The documents must be filed:

- (a) within thirty (30) days after assumption of office;
 - (b) **on or before April 30, of every year thereafter;** and
 - (c) within thirty (30) days after separation from the service.
- (Emphasis supplied)

Only three (3) categories of public officers and employees are exempt from the SALN requirement, namely: (a) those who serve in an honorary capacity; (b) laborers; and (c) casual or temporary workers. Those who claim to be ignorant of the SALN requirement, including its annual filing, such as petitioner, are not exempt. *Exclusio unius est inclusio alterius*. Besides, ignorance of the law excuses no one from compliance therewith. Most important, the Court reckon back with the nature of the SALN requirement violation of which is *malum prohibitum*.

Finally, petitioner invokes Section 10 of RA 6713 and Civil Service Commission Memorandum Circular No. 10, series of 2006, with which the Secretary of Finance, as department head, purportedly failed to comply, thereby negating his liability from his failure to file his SALNs for 2005 and 2006.

Section 10 of RA 6713 reads:

Section 10. Review and Compliance Procedure. –

- (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements which have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.
- (b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.
- The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.
- (c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department.

On the other hand, Civil Service Commission Memorandum Circular No. 10, series of 2006 decrees:

Section 2. Duties of the Chief/Head Personnel/Administrative Division or Unit/HRMO

Upon receiving the SALN forms, the Chief/Head Personnel/Administrative Division or Unit/HRMO shall evaluate the same to determine whether said statements have been properly accomplished. A SAN is deemed properly accomplished when all applicable information or details required therein are provided by the filer. Items not applicable to the filer should be marked N/A (not applicable).

The Chief/Head Personnel/Administrative Division or Unit/HRMO shall submit a list of employees in alphabetical order, who: a) filed their SALNs with complete data; b) filed their SALNs but with incomplete data; and c) did not file their SALNs to the head of office, copy furnished the CSC, on or before May 15 of every year.

Petitioner asserts that his department head's failure to inform him of his omission to file his SALNs for 2005 and 2006 has deprived him of his right to due process, thus, rendering his indictment void.

*Carabeo v. The Honorable Sandiganbayan*¹⁷ pointedly rejects this argument, thus:

Carabeo contends, however, that the head of office has a mandatory obligation to inform him of defects in his SALN and give him the chance to correct the same. Further, he cannot be subjected to any sanction until such obligation has been complied with. x x x

x x x

x x x

x x x

True, Section 10 of R.A. 6713 provides that when the head of office finds the SALN of a subordinate incomplete or not in the proper form such head of office must call the subordinate's attention to such omission and give him the chance to rectify the same. **But this procedure is an internal office matter. Whether or not the head of office has taken such step with respect to a particular subordinate cannot bar the Office of the Ombudsman from investigating the latter. Its power to investigate and prosecute erring government officials cannot be made dependent on the prior action of another office.** To hold otherwise would be to diminish its constitutionally guarded independence. (Emphasis supplied)

Lastly, the factual findings of the OMB are generally accorded great weight and respect, if not finality by the courts. They are conclusive when supported by substantial evidence, by reason of their special knowledge and expertise over matters falling under its jurisdiction.¹⁸ This is the rule on non-interference.

*Dichaves v. Office of the Ombudsman*¹⁹ explains:

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. **The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"**

An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on*

¹⁷ 659 Phil. 40, 46 (2011).

¹⁸ See *Edgardo M. Aguilar v. Elyra J. Benlot, et al.*, G.R. No. 232806, January 21, 2019.

¹⁹ 802 Phil. 564, 589-591 (2016).

the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:

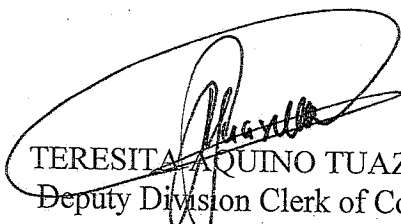
[T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint. (Emphasis supplied)

As shown, there is no cogent reason here to overturn the OMB's assailed dispositions.

WHEREFORE, the petition is **DENIED**. The Resolution dated April 14, 2016 and Order dated August 5, 2016 of the Office of the Ombudsman in OMB-C-C-13-0141 are **AFFIRMED**.

SO ORDERED."

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Urb. 11/21*
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