



Republic of the Philippines

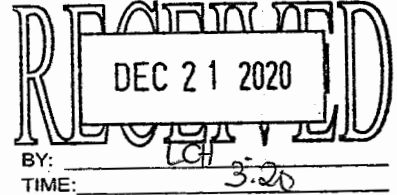
Supreme Court

Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated July 27, 2020, which reads as follows:

“G.R. No. 199607 (SPO3 Saul Eleazar, SPO2 Renato M. Badajos, SPO1 Rosauro O. Rodillo, PO2 Daniel DJ. Fernandez, and PO2 Ferdinand J. Aquino v. Hon. Orlando C. Casimiro, in his capacity as the Overall Deputy Ombudsman of the Hon. Office of the Ombudsman of the Republic of the Philippines, Mary Antonette P. Yalao, in her capacity as Director IV, Preliminary Investigation, Administrative Adjudication and Review Bureau [PARB], Francis Euston R. Acero, in his capacity as Graft Investigation Officer I, and Badarjarman L. Gonzales). – This Petition for Review on *Certiorari*¹ under Rule 65 with a prayer for the issuance of temporary restraining order and/or preliminary injunction assails the Order² of the Office of the Overall Deputy Ombudsman in OMB-P-C-10-0197-B, through the Preliminary Investigation Administrative Adjudication and Review Bureau finding probable cause to indict petitioners for violation of Section 29 of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” which penalizes the planting of dangerous drugs to implicate a person for violation of the provisions of R.A. 9165.

Facts of the Case

A complaint³ for violation of Sections 27 and 29 of R.A. 9165 and violation of R.A. 7610 was filed by Badarjaman L. Gonzales (Gonzales) before the Office of the City Prosecutor (OCP) of Puerto Princesa, Palawan against Rosemarie Mentoy (Mentoy), SPO3 Saul Eleazar (SPO3 Eleazar), SPO2 Renato Badajos (SPO2 Badajos), SPO2 Rosauro Rodillo (SPO2 Rodillo), PO2 Daniel Fernandez (PO2 Fernandez), and PO2 Ferdinand Aquino (PO2 Aquino; collectively, petitioners).⁴

¹ *Rollo*, pp. 3-44

² *Id.* at 55-65.

³ *Id.* at 66.

⁴ *Id.* at 55.

According to Gonzales, on November 5, 2006, at about 6:30 a.m., he was with his then three-year old stepdaughter, Maureen Justine Palcon (Palcon) at the Dunkin Donuts outlet in Rizal Avenue. Mentoy allegedly saw him and invited him to go to the Sikad Sikad Pension House where a wedding reception is being held. Gonzales agreed, having known Mentoy to be the girlfriend of his mechanic. However, upon his arrival at the reception, he was not able to locate Mentoy.⁵

He noticed a maroon van parked under a bougainvillea tree. As he and Palcon were about to leave, men from the van, whom he later identified as PO2 Fernandez and PO2 Aquino, got off with their guns drawn. PO2 Fernandez hit him in his face. More men got off the van whom he recognized as SPO3 Eleazar, SPO2 Badajos, and SPO2 Rodillo. They circled and beat Gonzales while being forcibly restrained. Petitioners also attempted to place an item wrapped in white paper in his hands but he refused. All of these were done in front of Palcon who was allegedly traumatized by the event.⁶

Petitioners were able to put handcuffs on Gonzales, who was already weak from the beatings he suffered. SPO2 Badajos took his wallet containing ₱48,000.00 and a mobile phone. Of this amount, Gonzales claims that the ₱30,000.00 came from his winnings in the cockfight on November 4, 2006 while the ₱18,000.00 was from his sister for the construction of their house. There were bystanders who saw what happened and offered assistance but petitioners pointed their guns at them. From the Sikad Sikad Pension House, Gonzales was brought to the police station in Barangay San Pedro and it was there where he saw the four sachets containing *shabu* and what appeared to be the marked money. He insists that it was impossible for him to be selling illegal drugs at the time of his arrest considering that he was with his stepdaughter who was only three years old then.⁷

In support of his allegations, Gonzales also submitted the affidavits of two eyewitnesses who saw petitioners beat Gonzales and how they confiscated his wallet and mobile phone. He also filed an affidavit⁸ of Palcon concurring with what he said. He likewise submitted a medico-legal certificate⁹ containing the abrasions and wounds he sustained from the beatings he suffered under the hands of petitioners.¹⁰

For their part, petitioners aver that on November 5, 2006, they arranged to purchase *shabu* from Gonzales in the amount of ₱2,000.00 at Room 7-2 of Sikad Sikad Pension House. Mentoy allegedly called Gonzales and told him that a businessman wants to purchase *shabu* from him in the amount of ₱2,000.00. Petitioners hastily prepared the marked money with ultraviolet powder. Soon thereafter, Gonzales arrived with a child. SPO2 Rodillo handed

⁵ Id. at 56.

⁶ Id. at 56-57.

⁷ Id. at 57.

⁸ Id. at 71-73.

⁹ Id. at 96.

¹⁰ Id. at 57-58.

over the marked money to Gonzales who gave him four plastic sachets of *shabu*. It is at this point that SPO2 Rodillo and SPO2 Badajos identified themselves as policemen. However, Gonzales ran out of the room but was apprehended by other members of the team who were waiting in a van parked outside Sikad Sikad Pension House.¹¹

Petitioners also submitted a statement¹² by the eyewitnesses of Gonzales recanting their earlier testimonies.¹³

On June 4, 2007, the City Prosecutor Office (CPO) of Puerto Princesa, Palawan issued a proposed Resolution¹⁴ dismissing the complaint for insufficiency of evidence. However, the CPO forwarded the records of the case to the Office of the Deputy Ombudsman for Military and Other Law Enforcement Officers (OMB-MOLEO) for appropriate review and approval pursuant to Memorandum Circular No. 14, series of 1995, which states that deputized city or provincial prosecutors shall continue with the preliminary investigation of cases filed before them but shall forward their recommendations to the OMB-MOLEO for proper action on the same, and OMB – Department of Justice (DOJ) Joint Circular No. 95-001, which provides for the concurrent jurisdiction of the prosecutor or the Ombudsman to conduct preliminary investigation of offenses committed by public officers in relation to their office, but the prosecutor shall be under the control and supervision of the Ombudsman.¹⁵

Simultaneous with the filing of the criminal complaint before the CPO of Puerto Princesa, Palawan, Gonzales also filed a complaint for grave misconduct arising from the same incident against petitioners before the OMB-MOLEO. However, instead of ruling on the grave misconduct charge alone, the OMB-MOLEO issued a Joint Resolution¹⁶ for the criminal and administrative charges. Hence, on January 8, 2010, the Deputy Ombudsman for MOLEO issued the Joint Resolution¹⁷ dismissing both the criminal and administrative charges.

Despite the dismissal of the joint criminal and administrative charges by the OMB-MOLEO, the earlier Resolution¹⁸ of the CPO forwarding the case to the Ombudsman was referred to the Office of the Overall Deputy Ombudsman, through the Preliminary Investigation Administrative Adjudication and Review Board (PARB), which has the authority to review the resolutions and orders in cases initiated or originally filed with the CPO and are submitted to the Ombudsman for approval pursuant to Office Order

11 Id. at 59
12 Id. at 91, 131.
13 Id. at 59.
14 Id. at 322.
15 Id. at 325.
16 Id. at 177-180.
17 Id.
18 Id. at 322-325.

No. 2, series of 2009.¹⁹ Hence, upon review and in a Resolution²⁰ dated June 22, 2010, the PARB modified the recommendation of the CPO and found probable cause to indict petitioners for violation of Section 29 of R.A. 9165.²¹

According to the PARB, contrary to the ruling of the CPO, they found sufficient evidence to sustain a finding that petitioners either maliciously or surreptitiously recorded that they recovered four sachets of *shabu* from Gonzales in order to impute upon him the crime of violation of Section 5 of R.A. 9165 through the conduct of a fictitious buy-bust operation.²² The PARB also gave credence to the affidavit of Palcon, who, as a minor, requires no corroborating evidence for her statements to be used as a basis for a finding of fact. Moreover, the PARB noted the absence of the insulating witnesses from the DOJ, member of the media and an elected official as required by R.A. 9165 during the alleged buy-bust operation and in the inventory of the seized drugs. The PARB found it strange that petitioners offered no explanation for the numerous injuries sustained by Gonzales at the time of his arrest. Lastly, the PARB observed that the Pre-Operation Report dated October 30, 2006 did not name the target of the buy-bust operation or the place thereof. Hence, the same authorization could have been used against anybody.²³ The PARB, however, ruled that there was no probable cause to indict petitioners of Section 27 of R.A. 9165, which penalizes those who misappropriate, misapply or fail to account for confiscated, seized or surrendered dangerous drugs, for lack of sufficient basis.²⁴

Petitioners moved for reconsideration²⁵ but the same was denied in an Order²⁶ dated August 23, 2011.

Aggrieved, petitioners filed this Petition for *Certiorari*²⁷ under Rule 65 with prayer for issuance of temporary restraining order and/or preliminary injunction on December 26, 2011 ascribing to the PARB grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to indict petitioners of planting evidence under Section 29 of R.A. No. 9165. According to petitioners, Gonzales was guilty of forum shopping when he successively filed before the CPO of Puerto Princesa, Palawan and the OMB-MOLEO the same case for violation of Section 29 of R.A. 9165 involving the same parties and arising from the same incident.²⁸ This forum shopping allegedly brought conflicting decisions –the dismissal of the case filed before the CPO which was overturned by the PARB and the dismissal by the OMB-MOLEO of both the criminal and administrative cases against

¹⁹ Id. at 294.

²⁰ Id. at 295.

²¹ Id.

²² Id. at 61.

²³ Id. at 62.

²⁴ Id. at 63.

²⁵ Id. at 154-162.

²⁶ Id. at 50-54.

²⁷ Supra note 1.

²⁸ *Rollo*, pp. 22-23.

petitioners.²⁹

Petitioners also insist that there was no sufficient evidence to indict them for planting of evidence and that their right to speedy disposition of cases has been violated because of the inordinate delay in the conduct and resolution of the preliminary investigation.³⁰

Gonzales filed his Comment³¹ on March 12, 2012 where he explained that he filed a criminal complaint for planting of evidence under Section 29 of R.A. 9165 before the CPO of Puerto Princesa, Palawan. Thereafter, he also filed before the OMB-MOLEO an administrative case for grave misconduct against petitioners.³² The criminal case before the CPO was dismissed but the records were forwarded to the Ombudsman for review which was referred to the PARB. Be that as it may, the investigators handling the administrative case for grave misconduct surprisingly held a joint investigation for both criminal and administrative aspects of the case even if the CPO resolution was already under review by the PARB.³³ Gonzales avers that the PARB properly acquired jurisdiction of the case and its resolution stands on better footing than that of the OMB-MOLEO because it was the former which first took cognizance of the case when it reviewed the finding of the CPO. Gonzales cites the rule that the body or agency that first takes cognizance of the complaint shall exercise jurisdiction to the exclusion of the others.³⁴

The Ombudsman filed its Comment³⁵ on March 23, 2012. The Ombudsman avers that there was no grave abuse of discretion on PARB for reviewing the resolution of the CPO dismissing the criminal case filed against petitioners. The Ombudsman noted that the criminal case filed by Gonzales before the CPO is different from the administrative case for grave misconduct filed before the OMB-MOLEO. The joint resolution of the OMB-MOLEO was the result of the twin docketing of cases. However, the Ombudsman argues that the OMB-MOLEO did not discuss the merits of the criminal aspect and merely referred to the fact that the CPO had already dismissed the same. Hence, the OMB-MOLEO refrained from deciding the merits of the criminal aspect of the case in view of the proposed resolution of the OCP dismissing it which was already under review by the PARB.³⁶

According to the Ombudsman, their different offices recognized their respective duties and functions. Hence, there was no contradiction made in the cases before it. The PARB was not bound by the dismissal of the criminal and administrative aspects of the case by the OMB-MOLEO.³⁷ The

²⁹ Id. at 24-26.

³⁰ Id. at 33-34.

³¹ Id. at 266-269.

³² Id. at 266.

³³ Id. at 267.

³⁴ Id. at 267-268.

³⁵ Id. at 289-317.

³⁶ Id. at 303-304.

³⁷ Id. at 304.

Ombudsman also argued that it is not precluded from ordering another review of a complaint for he may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office.³⁸ The Ombudsman insists that the PARB correctly found probable cause to indict petitioners of planting of evidence.³⁹

Petitioners filed their Consolidated Reply⁴⁰ on December 6, 2012 reiterating their arguments in their Petition for *Certiorari*.

Ruling of the Court

After a perusal of the records of the case, this Court resolves to dismiss the Petition for *Certiorari* for failure of petitioners to show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause against petitioners for violation of Section 29 of R.A. 9165 or the planting of dangerous drugs to implicate Gonzales for illegal sale of *shabu*.

We rule that contrary to the allegation of petitioners, Gonzales did not commit forum shopping. The criminal cases for violation of Sections 27 and 29 of R.A. 9165 and violation of R.A. 7610 filed by Gonzales before the CPO of Puerto Princesa, Palawan were different from the administrative case for grave misconduct he filed before the OMB-MOLEO. We also find that there was no contradiction in the dismissal of the OMB-MOLEO of the joint criminal and administrative cases and the overturn and subsequent finding of probable cause by the PARB upon review of the draft resolution of the CPO dismissing the criminal cases.

Based on Office Order No. 2, series of 2009, the Office of the Overall Deputy Ombudsman, through the PARB was delegated the authority to review recommendations of the CPO regarding criminal cases against public officers filed before it. Hence, the PARB properly took cognizance to review the CPO's recommendation to dismiss the criminal cases for violation of Sections 27 and 29 of R.A. 9165 and violation of R.A. 7610. On the other hand, upon examination of the joint resolution issued by the OMB-MOLEO, which twin docketed the administrative case for grave misconduct as well as the criminal aspect of the case, shows the OMB-MOLEO did not rule on the merits of the criminal case and, instead, only noted that the CPO has previously dismissed the criminal charges against petitioners. What the OMB-MOLEO comprehensively discussed was the administrative case for grave misconduct. Hence, We agree with the Ombudsman that the PARB was not bound by the joint dismissal by the OMB-MOLEO of the criminal and administrative aspects of the case.

Probable cause, for the purpose of filing a criminal information, has

³⁸ Id. at 305.

³⁹ Id. at 307-312.

⁴⁰ Id. at 438-446.

been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.⁴¹

In this case, planting of evidence appears to be present as found by the Overall Deputy Ombudsman through the PARB. As emphasized by the PARB, petitioners were not able to explain the presence of bruises and injuries sustained by Gonzales during the alleged buy-bust operation. Also, the fact that the Pre-Operation Report dated October 30, 2006 did not name the target of the buy-bust operation or the place thereof is questionable and irregular. It is also worthy to note that Gonzales was acquitted of the charge for illegal sale of dangerous drugs.

Besides, a finding of probable cause is a finding of fact which is generally not reviewable by this Court. We made a pronouncement in *Galario v. Office of the Ombudsman*,⁴² that:

It is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether or not to file information against an accused. As cited in a long line of cases, this Court has pronounced that it cannot pass upon the sufficiency or insufficiency of evidence to determine the existence of probable cause. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. If it were otherwise, this Court will be clogged with an innumerable list of cases assailing investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, to determine if there is probable cause.⁴³

Lastly, the arguments of petitioners are matters of defense best presented during the trial.

WHEREFORE, the petition is **DISMISSED**. The Review dated June 22, 2010 and the Order dated August 23, 2011 of Office of the Overall Deputy Ombudsman in OMB-P-C-10-0197-B, finding probable cause to indict petitioners for planting of evidence under Section 29 of Republic Act No. 9165, are **AFFIRMED**.

⁴¹ *Fenequito v. Vergara, Jr.*, 691 Phil. 335, 345 (2012).

⁴² 554 Phil. 86 (2007).

⁴³ *Id.* at 103.

**SO ORDERED.” (Leonen, J., on leave; Gesmundo, J., acting as
Chairperson of the Third Division)**

By authority of the Court:

Misael D C Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

JB 12/2/20

Atty. Johnson Valin Padre
Counsel for Petitioners
2/F Unit 201-B, Peterson Building
Escolta cor. T. Pinpin Sts., Binondo
1006 Manila

Office of Legal Affairs
OFFICE OF THE OMBUDSMAN
4/F Ombudsman Building, Agham Road
Government Center, North Triangle
Diliman, 1101 Quezon City

Mr. Badarjaman L. Gonzales
Private Respondent
Caabay Boarding House, Fundador Road
Brgy. San Miguel, Puerto Princesa City
5300 Palawan

Central Records Division
OFFICE OF THE OMBUDSMAN
4/F Ombudsman Building, Agham Road
Government Center, North Triangle
Diliman, 1101 Quezon City

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