



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 27, 2023 which reads as follows:

“G.R. No. 231970 (*Office of the Ombudsman v. P/Insp. Herculano P. Mago, Jr., SPO2 Disilito A. Custodio, PO2 Angelito G. Consigna, PO2 Julius B. Bacero, and PO1 Edwin C. Tan*). — For resolution of this Court is the Petition for Review on *Certiorari*¹ filed by petitioner Office of the Ombudsman (Ombudsman) assailing the Decision² dated February 3, 2017 and the Resolution³ dated May 19, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 143194.

Facts

The facts of the case, as lifted from the CA Decision, are as follows:

This case stemmed from a complaint filed by x x x Dominic Alfred R. Tan [Tan], charging [respondents who are police officers assigned at the Mandaluyong Police Station, namely: P./Insp. Herculano P. Mago, Jr., SPO2 Disilito A. Custodio, PO2 Angelito G. Consigna, PO2 Julius B. Bacero, and PO1 Edwin C. Tan (respondent police officers)] with robbery, unlawful arrest, arbitrary detention, violation of Republic Act No. 3019⁴ (Anti-Graft and Corrupt Practices Act) (RA 3019), and grave misconduct. [Tan] essentially alleged:

- (1) He was engaged in buying and selling second hand electronic gadgets through on-line transactions.
- (2) On February 24, 2014, he met with a prospective buyer of an *Iphone 5* in front of [the] 7-Eleven convenience store in Boni Avenue, Mandaluyong City. The buyer initially gave him PHP 1,500.00 and

¹ *Rollo*, pp. 9-27.

² *Id.* at 31-66. Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Pedro B. Corales.

³ *Id.* at 68. Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of the Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Pedro B. Corales.

⁴ Entitled “ANTI-GRAFT AND CORRUPT PRACTICES ACT.” Approved: August 17, 1960.

told him to wait because he [the buyer] would get the additional amount.

- (3) While he was waiting inside his vehicle, a group of armed men, who later turned out to be [respondent police officers], suddenly appeared and told him that the PHP 1,500.00 in his possession was “marked money.” [Respondent police officers] arrested him and confiscated his wallet containing PHP 77,000.00 and his other gadgets, *i.e.*, 5 units of Iphone 4, 1 unit of Iphone 5, and 1 unit of Ipad, with an aggregate value of PHP 128,500.00 [stolen items].
- (4) He was brought to the Mandaluyong City Police Station (MCPS) where he was informed that he violated the anti-fencing law. When he asked who the complainant was, [respondent police officers] simply told him there were several complainants, but they did not present any of them. [Respondent police officers] also took his personal phone and refused to let him contact his relatives.
- (5) He was then brought to the hospital for medical examination and [was] forced to make a written statement that he was neither harmed, nor coerced, and nothing was taken from him. He was also made to affix his thumbmark on a piece of paper in order to make it appear that criminal charges were filed against him.
- (6) Around 11 o'clock in the evening, he was released from police custody, without allowing him to confront the alleged complainants. [Respondent police officers] withheld from him the confiscated items which they claimed would be used to pay off the complainants. Frightened and eager to go home, he simply accepted [respondent police officers'] actions that night.”
- (7) The next day, on February 25, 2014, he reported the incident to the PNP Headquarters in Camp Crame. His case was referred to the National Capital Region Criminal Investigation and Detection Group (NCR-CIDG), which, in turn, endorsed the case to the Office of the Ombudsman. Hence, the corresponding criminal and administrative cases were filed against [respondent police officers].⁵

Respondent police officers alleged that Dominic Alfred R. Tan (Tan) was arrested pursuant to a legitimate police operation. They also invoked the presumption of regularity in the performance of their duties and further alleged they received reports and complaints from a certain George Daniel Mañibo Lopez (Lopez) and Arthur A. Agarem (Agarem) that Tan was engaged in buying and selling stolen gadgets.⁶

Thus, P/Insp. Herculano P. Mago, Jr., as Chief of Police, issued a Memorandum dated February 24, 2014, authorizing an entrapment operation. On the same day, Tan was apprehended where one unit of iPhone 4 was recovered from him. The investigation revealed that Tan was engaged in

⁵ *Rollo*, pp. 32-34.

⁶ *Id.* at 34.

selling stolen phones and gadgets. Accordingly, Tan was charged with Estafa and a Violation of the Anti-Fencing Law before the Mandaluyong City Prosecutor's Office.⁷

Respondent police officers also denied the existence of Tan's cash and gadgets purportedly stolen by them since they only recovered one phone which they turned over to the prosecutor.⁸ Respondents also contended that Tan was immediately released from police custody when complainants Lopez and Agarem failed to appear at the police station. Respondent police officers further averred that the cases for Estafa and a Violation of the Anti-Fencing Law against Tan were accordingly filed before the Regional Trial Court (RTC) of Mandaluyong City.⁹

Ruling of the Ombudsman

In a Joint Resolution¹⁰ dated July 7, 2015, the Ombudsman found probable cause to charge respondent police officers with Robbery and Arbitrary Detention.¹¹ The Ombudsman also found respondent police officers guilty of Grave Misconduct and imposed on them the penalty of dismissal from service.¹² The dispositive portion of the Ombudsman Joint Resolution provides:

WHEREFORE, it is respectfully recommended that respondents Pl Insp. Herculano P. Mago, Jr., SPO2 Disilito A. Custodio, PO2 Angelito G. Consigna, PO2 Julius B. Bacero and PO2 Edwin C. Tan be **INDICTED** with Robbery and Arbitrary Detention. Let the corresponding Informations be filed before the courts.

Respondents are also hereby found **GUILTY** of Grave Misconduct and are meted out the penalty of **DISMISSAL** from the service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service.

In the event that the penalty of Dismissal can no longer be enforced due to any of the respondent's separation from the service, the same shall be converted into a **FINE** in the amount equivalent to respondent's salary for **ONE (1) YEAR**, payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.

X X X X

SO ORDERED.¹³

⁷ Id. at 34-35.

⁸ Id. at 35 and 40.

⁹ Id. at 34-35.

¹⁰ CA *rollo*, pp. 24-30.

¹¹ Id. at 28.

¹² Id. at 29.

¹³ Id. at 28-29.

As to the finding of probable cause to charge respondents with Robbery, the Ombudsman found that respondent police officers, with force and intimidation, took the gadgets and cash belonging to Tan.¹⁴ The Ombudsman held that respondents' denial of the existence of the stolen items cannot prevail over the positive and consistent assertions of Tan.¹⁵ The Ombudsman also faulted respondent police officers for their failure to subject Tan to inquest proceedings and thus concluded that there was probable cause to charge respondent police officers with Arbitrary Detention.¹⁶

The Ombudsman also explained that the entrapment operation conducted by respondent police officers was marred with irregularities, which raised more serious doubts as to the legality of Tan's arrest.¹⁷ Finally, the Ombudsman found respondent police officers liable for grave misconduct due to the unlawful taking of Tan's belongings and arresting him without legal ground.¹⁸ The charge for violation of Republic Act No. 3019 was dismissed due to lack of material facts and sufficient evidence.¹⁹

Dismissal of robbery and arbitrary detention cases against respondent police officers

Meanwhile, the criminal cases against respondent police officers for Robbery and Arbitrary Detention were provisionally and permanently dismissed, respectively, due to Tan's failure to appear in court despite notices sent to him.²⁰

In its Order²¹ dated August 15, 2017, the RTC of Mandaluyong City, Branch 213 provisionally dismissed the case for Robbery upon motion of respondent police officers. This was due to Tan's failure to appear and testify before the lower court.²²

In its Order²³ dated September 11, 2017, the Metropolitan Trial Court of Mandaluyong City, Branch 98 permanently dismissed the case for Arbitrary Detention.²⁴

¹⁴ Id. at 27.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 28.

¹⁸ Id. at 27.

¹⁹ Id. at 28.

²⁰ *Rollo*, pp. 126-128.

²¹ Id. at 126. Penned by Presiding Judge Carlos A. Valenzuela.

²² Id.

²³ Id. at 127-128. Penned by Presiding Judge Eduardo Cruz Solangon, Jr.

²⁴ Id. at 127.

CA Decision

Claiming that there was an urgent necessity to resolve the case and that the filing of a motion for reconsideration would be useless under the circumstances, respondent police officers filed before the CA a Petition for *Certiorari* (with Prayer for Issuance of a Temporary Restraining Order).²⁵

In the proceedings before the CA, the Ombudsman argued that: (i) the appellate jurisdiction over decisions, orders, or resolutions issued by the Office of the Ombudsman in criminal cases belongs to the Supreme Court and not the CA; (ii) in any case, it was improper to file a petition for *certiorari* considering that the appeal to the CA shall be under Rule 43, hence, the petition was filed out of time; and (iii) the erroneous filing of the petition did not toll the running of the reglementary period, thus, the Joint Resolution of the Ombudsman was final and executory.²⁶

In a Decision²⁷ dated February 3, 2017, the CA granted the petition and dismissed the cases against respondent police officers for Robbery, Arbitrary Detention and Grave Misconduct. The CA brushed aside the procedural infirmities of the petition and gave due course to the petition in the higher interest of substantial justice considering that respondents' liberty and livelihood are at stake.²⁸

The CA held that the Ombudsman erroneously indicted respondent police officers for the crimes of Robbery and Arbitrary Detention, finding that the elements for both crimes were not present in the instant case.²⁹ The appellate court pointed out that aside from the bare assertions and allegation of Tan, no other piece of evidence was presented to show the existence of the stolen items and Tan's detention without legal ground.³⁰

For the finding of administrative liability for grave misconduct, the CA found that the Ombudsman's finding was merely predicated on the finding of probable cause to charge respondent police officers with the aforesaid crimes.³¹ The CA held that, similar to the criminal charges, the administrative charge against respondent police officers were not supported by substantial evidence and were merely based on bare allegations.³² Accordingly, the appellate court absolved respondent police officers for the administrative liability of grave misconduct.

²⁵ CA *rollo*, pp. 3-23.

²⁶ *Id.* at 136-137.

²⁷ *Rollo*, pp. 31-66.

²⁸ *Id.* at 47-51.

²⁹ *Id.* at 55-63.

³⁰ *Id.* at 56-57.

³¹ *Id.* at 63.

³² *Id.* at 64.

Finally, the CA also pointed out that Tan incessantly failed to pursue the cases against respondent police officers and despite the instructions of the appellate court, failed to file a comment in the proceedings therein.³³

The dispositive portion of the CA Decision reads:

ACCORDINGLY, the petition is **GRANTED**. The Joint Resolution dated July 7, 2015 is **SET ASIDE**, and a new one rendered, dismissing the cases against P/INSP Herculano P. Mago, Jr., SPO2 Disilito A. Custodio, PO2 Angelito G. Consigna, PO2 Julius B. Bacero and PO2 Edwin C. Tan in OMB-P-C-14-0217 (robbery and arbitrary detention) and OMB-P-A-14-0264 (grave misconduct).

SO ORDERED.³⁴

The Ombudsman moved for reconsideration, which was denied by the CA in its Resolution³⁵ dated May 19, 2017.

Hence, this Petition.

The Present Petition

Petitioner, through the Office of the Solicitor General (OSG), reiterated its arguments before the CA. Petitioner belabored on the improper remedy resorted to by respondent police officers which, in effect, resulted to the finality of the Ombudsman's Joint Resolution.³⁶

In their Comment,³⁷ respondent police officers justified the CA's relaxation of the rules considering that their liberty and employment were at stake. Respondent police officers also justified the CA's dismissal of the criminal cases against them and averred that the charges were merely filed to harass them, and injure their reputation and livelihood. Respondent police officers also cited Tan's apparent lack of interest in pursuing the cases as justification for the CA's dismissal of charges against them.³⁸

The Court's Ruling

The Petition is denied.

Case law is clear that decisions of the Ombudsman in administrative or non-criminal cases may be assailed before the CA.³⁹ Meanwhile, decisions of the Ombudsman in criminal cases may be assailed through a petition for

³³ Id.

³⁴ Id. at 65.

³⁵ Id. at 68.

³⁶ Id. at 16-21.

³⁷ Id. at 117-122.

³⁸ Id. at 118-121.

³⁹ *Yatco v. Office of the Deputy Ombudsman for Luzon*, G.R. No. 244775, July 6, 2020.

certiorari under Rule 65 of the Rules of Court before the Supreme Court.⁴⁰ The Court pronounced in *Yatco v. Office of the Deputy Ombudsman for Luzon*⁴¹ the long-recognized principle that the fact that the Ombudsman had rendered a consolidated ruling does not — as it should not — alter the nature of the prescribed remedy corresponding to the aspect of the Ombudsman ruling being assailed.⁴² Hence, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies, that is to **separately assail** the administrative and criminal components of the same.⁴³ Verily, in cases where the Ombudsman consolidates criminal and administrative aspects in one Joint Resolution because the charges involve common questions of fact or law, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same.⁴⁴

In the present case, the Ombudsman's Joint Resolution had two aspects, the criminal and administrative aspects wherein the Ombudsman found probable cause to charge respondent police officers with the crime of Robbery and Arbitrary Detention and, by reason thereof, also found them administratively liable for Grave Misconduct. Respondent police officers erroneously assailed both aspects of the Joint Resolution through a Rule 65 petition before the CA. In accordance with case law, respondent police officers should have assailed the two aspects of the Joint Resolution separately, that is by doing the following: (i) appealing the criminal aspect through a Rule 65 petition before this Court, and (ii) assailing the administrative aspect through a Rule 43 petition before the CA.⁴⁵ However, reasoning that it was respondent police officers' liberty and livelihood which were at stake, the CA gave due course to the petition in the interest of substantial justice.

Albeit the fact that the criminal indictment of respondent police officers was already dismissed at the time this petition was filed, which may render the discussion on the matter moot, We still find it apt to discuss it, if only to reiterate jurisprudence on the matter and to further guide the members of the Bar.

Time and again, the Court has sustained the dismissal of the criminal aspect of Ombudsman resolutions elevated to the CA, instead of this Court, for being the wrong remedy.⁴⁶

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *Tolosa v. Office of the Ombudsman*, G.R. No. 233234, September 14, 2020.

⁴³ *Yatco v. Office of the Deputy Ombudsman for Luzon*, *supra*.

⁴⁴ *Id.*

⁴⁵ See *Yatco v. Office of the Deputy Ombudsman for Luzon*, *supra*.

⁴⁶ See *Yatco v. Office of the Deputy Ombudsman for Luzon*, *supra* and *Ornales v. Office of the Deputy Ombudsman for Luzon*, 839 Phil. 882, 897-898 (2018).

Regrettably for respondent police officers, their exclusive resort to the CA was defective and fatal for the criminal aspect of their case. We are not convinced by the explanation of the CA that the interest of justice will be served by ruling on the criminal aspect, since the proper remedy is available to respondent police officers through a Rule 65 petition before this Court. Thus, the criminal aspect of the Joint Resolution finding probable cause to indict respondent police officers for Robbery and Arbitrary Detention is deemed to have attained finality.

Anent the administrative aspect of the Ombudsman's Joint Resolution, the CA correctly held that the proper mode to assail the administrative aspect is through a Rule 43 petition before the CA. However, respondent police officers filed a Rule 65 petition before the CA. Evidently, jurisprudence recognizes that the Court has allowed a recourse to a Rule 65 petition for *certiorari*, in certain exceptional cases, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.⁴⁷

In this case, the CA treated respondents' Rule 65 petition as a Rule 43 petition, citing the broader interest of justice and the fact that the livelihood of respondent police officers is at stake. Considering that the petition was filed before the proper court, We agree with the CA that the interest of justice will be served if the petition will be given due course rather than be outrightly denied due to procedural grounds.

In administrative proceedings, complainants carry the burden of proving their allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."⁴⁸ The requirement is satisfied when there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.⁴⁹

In *Office of the Ombudsman v. Rojas*,⁵⁰ We held:

Where the complaint charges grave misconduct, "[t]he standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."⁵¹

⁴⁷ *Toledo v. Office of the Ombudsman*, G.R. No. 249834, January 19, 2021.

⁴⁸ *Office of the Ombudsman v. Fetalvero, Jr.*, 836 Phil. 557, 560 (2018).

⁴⁹ *Office of the Ombudsman v. Mendoza*, G.R. No. 219772, July 17, 2019.

⁵⁰ G.R. No. 209274, July 24, 2019.

⁵¹ *Id.*

*Office of the Deputy Ombudsman for Luzon v. Dionisio*⁵² further discussed the concept of grave misconduct, to wit:

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. **To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling.** The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. **In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.**⁵³ (Emphases supplied)

Ordinarily, since the Court is not a trier of facts, in administrative cases brought before the Ombudsman, the latter's findings of facts are usually afforded great weight and respect, and, when supported by substantial evidence, are accepted as conclusive by the courts. This rule, however, is not absolute, especially in cases where the findings of the Ombudsman and the CA are conflicting.⁵⁴

In this case, the evidence on record is not sufficient to support a finding of administrative liability on the part of respondent police officers. We note that the Ombudsman's finding of administrative liability rested on the following purported acts of the respondent police officers, to wit: (i) unlawfully taking the items belonging to complainant; and (ii) arresting him without legal ground.⁵⁵

As aptly found by the CA, the allegation that items were supposedly stolen by respondent officers was not supported by any piece of evidence. Furthermore, the CA also pointed out that the finding of illegal arrest was merely predicated on the Ombudsman's speculation that respondents were probably guilty of arbitrary detention because they did not subject Tan to inquest proceedings after the latter got arrested *in flagrante delicto*.⁵⁶

Verily, the Ombudsman's sole basis for these findings are the allegations of the complainant and nothing more. The Ombudsman expressed that respondents' denial cannot prevail over the positive assertion of the complainant that the stolen items exist and that Tan was arbitrarily detained.⁵⁷

⁵² 813 Phil. 474 (2017).

⁵³ *Id.* at 487-488.

⁵⁴ *Office of the Ombudsman v. Rojas*, *supra*.

⁵⁵ CA rollo, p. 27.

⁵⁶ Rollo, p. 61.

⁵⁷ CA rollo, p. 27.

Even the instant petition failed to cite substantial evidence to support the finding of respondent police officers' administrative liability, and instead, expressed that it would be contrary to human experience that a person would accuse five police officers of Robbery if he was not telling the truth.⁵⁸


Again, the burden of proof is on the complainant to establish the allegations in the complaint. A finding of liability should come from the strength of complainant's evidence, not from the weakness of respondent's defense. Mere allegation is not equivalent to proof. Charges based on mere suspicion, speculation or conclusion cannot be given credence.⁵⁹

WHEREFORE, the petition is **DENIED**. The Decision dated February 3, 2017 and the Resolution dated May 19, 2017 of the Court of Appeals in CA-G.R. SP No. 143194 are **AFFIRMED** with **MODIFICATIONS**, to wit:

1. P/Insp. Herculano P. Mago, Jr., SPO2 Disilito A. Custodio, PO2 Angelito G. Consigna, PO2 Julius B. Bacero, and PO1 Edwin C. Tan are **ORDERED** to be reinstated to their previous positions without loss of seniority rights and with full payment of their salaries, backwages, and benefits from the time of their dismissal from service up to their reinstatement.
2. The finding of the Ombudsman holding that probable cause exists to charge P/Insp. Herculano P. Mago, Jr., SPO2 Disilito A. Custodio, PO2 Angelito G. Consigna, PO2 Julius B. Bacero, and PO1 Edwin C. Tan with Robbery and Arbitrary Detention is **AFFIRMED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *gfb 2/21*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁵⁸ *Rollo*, p. 23.

⁵⁹ *De Jesus v. Guerrero III*, 614 Phil. 520, 529 (2009).

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