



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated July 6, 2022 which reads as follows:

“G.R. No. 250625: (ATTY. MARTY FRANZ F. TORALBA v. PMAJ FRANCIS MAGADIA, ATTY. GILBERT ALMARIO, and TEDDY C. MARIANO) — Whether the Office of the Ombudsman properly dismissed outright the criminal complaint is the core issue in this Petition for *Certiorari* assailing the Notice of Dismissal dated July 16, 2019 in IC-OP-19-0232A.

The facts follow.

On April 6, 2018, Atty. Marty Franz Toralba (Atty. Toralba) complained to the Commission on Elections (COMELEC) the removal of his campaign materials. Thereat, Atty. Toralba learned that his tarpaulins and wall paintings were taken down upon the COMELEC’s instruction. Enraged, Atty. Toralba asked in a loud voice who removed his campaign materials and if there is a legal basis for such action. Suddenly, Election Officer Teddy Mariano (Mariano) replied “*Ako, bakit?*” Atty. Toralba then slapped Mariano’s face. Thereafter, Mariano reported the incident to the police station. Atty. Toralba followed Mariano. The authorities asked Atty. Toralba to wait for Police Major Francis Magadia (PMAJ Magadia) and the Provincial Election Officer Atty. Gilbert Almario (Atty. Almario). Upon their arrival, PMAJ Magadia and Atty. Almario ordered Atty. Toralba’s warrantless arrest. The police charged Atty. Toralba with direct assault.

Aggrieved, Atty. Toralba filed a criminal complaint against Mariano, PMAJ Magadia, and Atty. Almario for arbitrary detention under Article 124 of the Revised Penal Code, violation of Section 266 of Batas Pambansa (BP) Blg. 881 or the Omnibus Election Code on arrest in connection with the election campaign, and violation of Republic Act (RA) No. 3019 or Anti-Graft and

Corrupt Practices Act before the Office of the Ombudsman docketed as IC-OP-19-0232A.¹

In a Notice of Dismissal dated July 16, 2019, the Ombudsman dismissed outright the criminal complaint for arbitrary detention and violation of RA No. 3019, explaining that Atty. Toralba failed to exhaust the remedies before the public prosecutor where he can assail the legality of his arrest. On the other hand, the Ombudsman referred to the COMELEC the case for violation of Section 266 of BP Blg. 881,² viz.:

This Office cannot take cognizance of the complaint for Arbitrary Detention and violation of R.A. 3019 because complainant has an adequate remedy other than the filing of the present complaint. The incident subject matter of this case is intimately related to the criminal case pending with the Office of the Provincial Prosecutor. **Thus, complainant can question his warrantless arrest on the ground of "hot pursuit" before the said office to prove his innocence of the crime charged.**

WHEREFORE, it is respectfully recommended that IC-OP-19-0232 be DISMISSED outright.

It is further recommended that **the case for violation of B.P. 881 (arrest in connection with the election campaign) be REFERRED to the COMELEC for appropriate action.** (Emphases supplied)

Atty. Toralba sought reconsideration but was denied.³ Hence, this petition for *certiorari* ascribing grave abuse of discretion on the part of the Ombudsman. Atty. Toralba claims that the Ombudsman grievously erred in dismissing the criminal complaint for arbitrary detention and violation of RA No. 3019 for non-exhaustion of remedies before the public prosecutor. Also, the COMELEC has no jurisdiction over the case for violation of Section 266 of BP Blg. 881 since it is not an election offense.⁴

The petition is meritorious.

The Ombudsman's determination of probable cause in criminal cases may only be assailed through a petition for *certiorari* before this Court on the ground of grave abuse of discretion. The petitioner must clearly show that the Ombudsman exercised its discretionary power in an arbitrary or despotic manner by reason of passion or personal hostility. 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 the duty enjoined or to act in contemplation of the law.⁵

¹ *Rollo*, pp. 42-53.

² *Id.* at 31.

³ *Id.* at 32.

⁴ *Id.* at 17-28.

⁵ *Gatchalian v. Office of the Ombudsman*, 838 Phil. 140 (2018), citing *Information Technology Foundation of the Philippines, et al. v. Commission on Elections*, 810 Phil. 400, 417-418 (2017).

Here, the Ombudsman's outright dismissal of the criminal complaint exhibits a whimsical exercise of judgment.

The Ombudsman's Rules of Procedure provides the manner of evaluating criminal complaints filed before it. Apropos is Section 2, Rule II of Administrative Order No. 07, to wit:

RULE II

Procedure in Criminal Cases

x x x x

SECTION 2. *Evaluation.* — Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

- a) **dismissed outright for want of palpable merit;**
- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which has jurisdiction over the case;
- d) forwarded to the appropriate office or official for fact-finding investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation. (Emphasis supplied)

Whereas, Section 4, Rule III of Administrative Order No. 07 in relation to Section 20 of RA No. 6770 or The Ombudsman Act of 1989 prescribed the procedure in evaluating administrative complaints, *viz.*:

RULE III

Procedure in Administrative Cases

x x x x

SECTION 4. *Evaluation.* — Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

- a) **dismissed outright for any of the grounds stated under Section 20 of RA 6770;**
- b) referred to other disciplinary authorities under paragraph 2, Section 23, RA 6770 for the taking of appropriate administrative proceedings;
- c) the subject of administrative adjudication by the Office of the Ombudsman.

[R.A. 6770]

SECTION 20. *Exceptions.* — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) **The complainant has an adequate remedy in another judicial or quasi-judicial body;**
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
- (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
- (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of. (Emphases supplied)

Verily, the rules permit the Ombudsman to dismiss outright a criminal case only “*for want of palpable merit*” and an administrative case based on reasons stated in Section 20 of RA No. 6770, which include a situation when “[*t*]he complainant has an adequate remedy in another judicial or quasi-judicial body.” Here, it is undisputed that Atty. Toralba filed a criminal complaint for arbitrary detention and violation of RA No. 3019. Yet, the Ombudsman dismissed outright the criminal case because Atty. Toralba had adequate remedies before the public prosecutor where he can assail the legality of his arrest. On this point, the Court finds grave abuse of discretion when the Ombudsman dismissed outright the criminal complaint on a ground that applies only to administrative cases. In *Espaldon v. Buban*,⁶ the Court clarified that the Ombudsman could only dismiss a criminal complaint when it is palpably devoid of merit, thus:

Jurisprudence has so far settled that dismissal based on the grounds provided under Section 20 is not mandatory and is discretionary on the part of the evaluating Ombudsman or Deputy Ombudsman evaluating the administrative complaint. Clearly, as the law, its implementing rules, and interpretative jurisprudence stand, the dismissal by the Ombudsman on grounds provided under Section 20 is applicable only to administrative complaints. Its invocation in the present criminal case is therefore misplaced.

Contrariwise, the procedure in criminal cases requires that the Ombudsman evaluate the complaint and after evaluation, to make its recommendations in accordance with Section 2, Rule II of the Admin[i]strative Order No. 07, as follows:

Section 2. Evaluation. — Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

- a) **dismissed outright for want of palpable merit;**

X X X X

⁶ *Jonnal D. Espaldon v. Richard E. Buban, et al.*, 830 Phil. 185 (2018).

Thus, the only instance when an outright dismissal of a criminal complaint is warranted is when such complaint is palpably devoid of merit. Nothing in the assailed Orders would show that the Ombudsman found the complaint to have suffered from utter lack of merit. In fact, the assailed Orders are empty except for the citation of Section 20 as basis for outright dismissal. It is thus inaccurate and misleading for the Ombudsman to profess that the criminal complaint was dismissed only after the conduct of a preliminary investigation, when the complaint never reached that stage to begin with. Clearly, the Ombudsman committed grave abuse of discretion when it evaluated and consequently dismissed a criminal complaint based on grounds peculiar to administrative cases and in an unexplained deviation from its own rules of procedure. (Emphases supplied)

In any event, the first paragraph of Section 20 of RA No. 6770 is explicit that the supposed adequate remedy of the complainant must be before another judicial or quasi-judicial body. Obviously, the public prosecutor in a preliminary investigation only determines the existence of probable cause. The task of the public prosecutor in making such determination is neither judicial nor quasi-judicial, thus:

In a preliminary investigation, the prosecutor does not determine the guilt or innocence of an accused. The prosecutor only determines “whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.” As such, the prosecutor does not perform quasi-judicial functions. In *Santos v. Go*:

[T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. **While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.**

Though some cases describe the public prosecutors power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point. A quasi-judicial body is as an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making. A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. **Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an**

information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the formers order or resolutions.⁷ (Emphases supplied)

Likewise, the Ombudsman committed grave abuse of discretion when it referred to the COMELEC the case for violation of Section 266 of BP Blg. 881 on arrest in connection with the election campaign. Section 2, Rule II of Administrative Order No. 07 authorizes the Ombudsman to indorse a criminal complaint “*to the proper government office or agency which has jurisdiction over the case.*” Corollarily, Section 265 of BP Blg. 881 exclusively empowers the COMELEC to conduct preliminary investigation and prosecute election offenses, thus:

SECTION 265. Prosecution. — The Commission shall, through its duly authorized legal officers, **have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same.** The Commission may avail of the assistance of other prosecuting arms of the government: *Provided, however,* That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. (Emphasis supplied)

Notably, Sections 261 and 262 of BP Blg. 881 specify the prohibited acts and other violations that constitute election offenses. However, Section 266 of BP Blg. 881, which prohibits the warrantless arrest or detention of a person in connection with the election campaign, is not included in the enumeration of election offenses. Moreover, the prescriptive period of election offenses under Section 267⁸ is inapplicable to the prosecution for violations of Section 266, to wit:

SECTION 266. Arrest in connection with the election campaign. — No person shall be arrested and/or detained at any time for any alleged offense committed during and in connection with any election through any act or language tending to support or oppose any candidate, political party or coalition of political parties under or pursuant to any order of whatever name or nature and by whomsoever issued except only upon a warrant of arrest issued by a competent judge after all the requirements of the Constitution shall have been strictly complied with.

If the offense charged is punishable under a presidential decree whether originally or by amendment of a previous law, the death penalty shall not be imposed upon the offender except where murder, rape or arson is involved. In all cases, the penalty shall not be higher than *reclusión perpetua* and the offender shall be entitled to reasonable bail upon sufficient sureties to be granted speedily by the competent

⁷ *Secretary Leila De Lima, et al. v. Mario Joel T. Reyes*, 776 Phil. 623, 636–637 (2016).

⁸ **SECTION 267. Prescription.** — Election offenses shall prescribe after five years from the date of their commission. If the discovery of the offense be made in an election contest proceedings, the period of prescription shall commence on the date on which the judgment in such proceedings becomes final and executory.

court. Moreover, loss of the right of citizenship and confiscation of property shall not be imposed.

Any officer or a person who shall violate any provision of this section shall be punished by imprisonment of not less than six (6) years and one (1) day nor more than twelve (12) years, with the accessory penalties for election offenses. **The provision of Section 267 of this Code shall not apply to prosecution under this section.**

In statutory construction, the express mention of one person, thing, or consequence implies the exclusion of all others. The rule is expressed in the maxim *expressio unius est exclusio alterius*.⁹ Indubitably, the COMELEC has no exclusive authority to determine probable cause for violation of Section 266, which is not among the enumerated election offenses. As such, the Ombudsman's referral of the case to the COMELEC is unjustified.

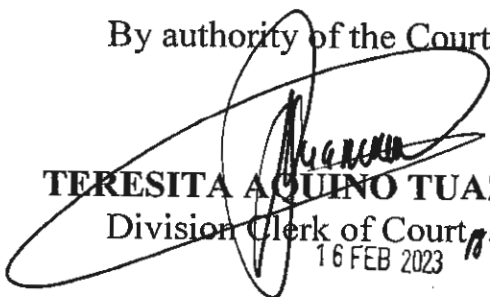
The Court reiterates that the Ombudsman is clothed with ample authority to pass upon criminal complaints involving public officials and employees. Yet, the Ombudsman's act is not immune from judicial scrutiny in case of grave abuse of discretion.

Lastly, it bears emphasis that the above disquisition is not conclusive as to whether the criminal complaint should be subjected to preliminary investigation. It is premature for the Court to decide whether probable cause exists against Mariano, PMAJ Magadia, and Atty. Almario. This matter is best left to the Ombudsman's appropriate action.

FOR THESE REASONS, the petition is **GRANTED**. The Office of the Ombudsman's Notice of Dismissal dated July 16, 2019 in IC-OP-19-0232A is **SET ASIDE** on the ground of grave abuse of discretion. The criminal case is **REMANDED** to the Office of the Ombudsman for evaluation.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
16 FEB 2023

⁹ *Sario Malinas v. COMELEC*, 439 Phil. 319 (2002).

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