



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

EDWIN GRANADA REYES,  
Petitioner,

G.R. No. 208243

Present:

-versus-

CARPIO, J., Chairperson,  
PERALTA,  
MENDOZA,\*  
LEONEN, and  
MARTIRES,\*\* JJ.

THE OFFICE OF THE  
OMBUDSMAN, OF THE  
SANDIGANBAYAN, and THE  
JOCSON ARCHES, and PAUL  
Respondents.

Promulgated:

05 JUN 2017

X-----X

DECISION

LEONEN, J.:

This resolves a Petition for Certiorari<sup>1</sup> under Rule 65 of the Rules of Court, filed by petitioner Edwin Granada Reyes (Reyes), together with Rita Potestas Domingo (Domingo) and Solomon Anore de Castilla (de Castilla).<sup>2</sup> This Petition assails the Office of the Ombudsman's March 20, 2013 Resolution<sup>3</sup> in Case No. OMB-M-C-11-0005-A and the June 26, 2013

\* On official leave.

\*\* On official leave.

<sup>1</sup> *Rollo*, pp. 3–28.

<sup>2</sup> Pursuant to Rita Potestas Domingo and Solomon Anore de Castilla's motion to withdraw from being parties to the Petition (*rollo*, pp. 226–231), this Court dropped them as petitioners in a Resolution dated September 16, 2013 (*rollo*, p. 249-A).

<sup>3</sup> *Rollo*, pp. 29–40. The Resolution was penned by Assistant Special Prosecutor III Anna Isabel G. Aurellano and approved by the Ombudsman Conchita Carpio Morales.

Memorandum<sup>4</sup> denying their motion for reconsideration. The assailed March 20, 2013 Resolution found probable cause to indict petitioner Reyes, Domingo, de Castilla, and Gil C. Andres (Andres) for violation of Section 3(e) of Republic Act No. 3019 and directed that an information against them be filed before the Sandiganbayan.<sup>5</sup>

On November 21, 2005, the Sangguniang Bayan of Bansalan, Davao del Sur passed Municipal Ordinance No. 357, prohibiting the “storing, displaying, selling, and blowing up (‘pagpabuto’) of those pyrotechnics products allowed by law, commonly called ‘firecrackers’ or ‘pabuto’ within the premises of buildings 1 and 2 of the Bansalan Public Market.”<sup>6</sup> On December 14, 2009, then Bansalan Mayor Reyes approved a permit allowing vendors to sell firecrackers at the Bansalan Public Market from December 21, 2009 to January 1, 2010.<sup>7</sup>

On December 27, 2009, a fire befell the Bansalan Public Market. It caused extensive damage and destroyed fire hydrants of the Bansalan Water District. Subsequently, private respondent Paul Jocson Arches (Arches) filed a complaint dated December 20, 2010 against Reyes before the Office of the Ombudsman, Mindanao (Ombudsman-Mindanao). Arches questioned the approval and issuance of a mayor’s permit agreeing to sell firecrackers, in violation of Municipal Ordinance No. 357. He claimed that this permit caused the fire the previous year.<sup>8</sup>

By order of the Ombudsman-Mindanao, Chief of Police de Castilla, Fire Marshall Andres,<sup>9</sup> and Permits and Licensing Officer Designate Domingo were made respondents in the case, considering that they recommended the approval of the mayor’s permit’s.<sup>10</sup>

The respondents *a quo* filed their respective counter-affidavits. Reyes alleged that Andres filed two (2) different counter-affidavits, and Reyes was not furnished a copy of the second counter-affidavit (Andres’ affidavit).<sup>11</sup>

After concluding the preliminary investigation, the Ombudsman issued the assailed Resolution<sup>12</sup> dated March 20, 2013 and found that probable cause existed to charge Reyes and his co-respondents *a quo* with

<sup>4</sup> Id. at 120–130. The Memorandum: Resolution on the Motion for Reconsideration, docketed as Criminal Case No. SB-13-CRM-0596, was penned by Assistant Special Prosecutor II Joseph F. Capistrano, with recommending approval of Acting Director Lalaine D. Benitez and approved by The Ombudsman Conchita Carpio Morales.

<sup>5</sup> Id. at 39.

<sup>6</sup> Id. at 262–263, Comment to the Petition for Certiorari.

<sup>7</sup> Id. at 262.

<sup>8</sup> Id. at 29–30.

<sup>9</sup> Id. at 5.

<sup>10</sup> Id. at 29–30.

<sup>11</sup> Id. at 21.

<sup>12</sup> Id. at 29–40.

violation of Section 3(e) of Republic Act No. 3019. The Ombudsman held that Reyes and his co-respondents *a quo* were public officers during the questioned acts.<sup>13</sup> Both the government and private stall owners suffered undue injury due to the fire at the Bansalan Public Market.<sup>14</sup> While the mayor's permit was not the proximate cause of the fire, it nonetheless, "gave unwarranted benefit and advantage to the fire cracker vendors . . . [to sell] firecrackers in the public market despite existing prohibition."<sup>15</sup> The issuance of the mayor's permit was "patently tainted with bad faith and partiality or, at the very least, gross inexcusable negligence."<sup>16</sup> The Ombudsman appreciated the evidence presented and found that Reyes and his co-respondents *a quo* were aware of Municipal Ordinance No. 357.<sup>17</sup> Despite this, Reyes approved and issued a mayor's permit stating, "Permit is hereby granted to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur."<sup>18</sup> The assailed Resolution read:

WHEREFORE, this Office finds probable cause to indict respondents Edwin G. Reyes, Solomon A. De Castilla, Gil C. Andres, and Rita P. Domingo for violation of Section 3 (e) of Republic Act No. 3019, as amended (Anti-Graft and Corrupt Practices Act). Let an Information for violation of Section 3 (e) of Republic Act No. 3019 be filed against the respondents before the Sandiganbayan.

The other charges against the respondents are dismissed.<sup>19</sup>

Thus, an Information<sup>20</sup> was filed against Reyes, together with his co-respondents *a quo* Domingo, de Castilla, and Andres for violating Section 3(e) of Republic Act No. 3019. It read:

On December 14, 2009, or sometime prior or subsequent thereto, in the Municipality of Bansalan, Davao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, EDWIN GRANADA REYES, RITA POTESTAS DOMINGO, SOLOMON ANORE DE CASTILLA, GIL CURAMENG ANDRES, public officers being then the Mayor, Permits and Licensing Officer Designate, Chief of Police, and Fire Marshall, respectively, of the Municipality of Bansalan, while in the discharge of their official functions, conspiring and confederating with one another, with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefit to a group of firecracker vendors by approving and issuing them a mayor's permit "to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur" despite fully knowing the existence of a municipal ordinance expressly prohibiting the storing,

---

<sup>13</sup> Id. at 34.

<sup>14</sup> Id.

<sup>15</sup> Id. at 35.

<sup>16</sup> Id. at 36.

<sup>17</sup> Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at 39.

<sup>20</sup> Id. at 66-68.

displaying, selling and blowing-up of firecrackers at the Bansalan Public Market and the non-issuance of the requisite Fire Safety Inspection Certificate (FSIC) to the firecracker vendors, thereby giving the said firecracker vendors the unwarranted benefit and advantage of holding the business of selling firecrackers at the Bansalan Public Market.

CONTRARY TO LAW.<sup>21</sup>

The Ombudsman denied a motion for reconsideration of its March 20, 2013 Resolution.<sup>22</sup>

Thus, petitioner filed this petition, arguing that public respondent Ombudsman gravely abused its discretion considering there was no legal basis to support the finding of probable cause against petitioner.<sup>23</sup>

Petitioner argues that there was no probable cause, insisting that there was not enough basis for the finding of bad faith, manifest partiality, or gross inexcusable negligence in this case.<sup>24</sup> There was no unwarranted advantage or preference given to the firecracker vendors because the mayor's permit was granted based on a long-standing practice to allow them to sell their wares during the Christmas season.<sup>25</sup> All firecracker vendors received similar treatment and were allowed to sell their wares, provided they submitted the requirements.<sup>26</sup> Acts done in a public official's performance of official duty are presumed to have been done in good faith, and mistakes committed are not actionable unless malice or gross negligence amounting to bad faith is shown.<sup>27</sup>

Petitioner insists that public respondent Ombudsman committed grave abuse of discretion when it relied solely on Andres' affidavit, which was not furnished to petitioner, to indict him.<sup>28</sup> Petitioner did not know of Andres' affidavit, which contained accusations against petitioner, until he received the assailed Resolution.<sup>29</sup> Thus, petitioner's right to due process was violated. Petitioner imputes bad faith in the filing of the complaint against him.<sup>30</sup>

In support of his prayer for injunctive relief, petitioner claims that he and his family will suffer financial, emotional, and psychological hardship.

---

<sup>21</sup> Id. at 66-67.

<sup>22</sup> Id. at 130.

<sup>23</sup> Id. at 11.

<sup>24</sup> Id. at 13.

<sup>25</sup> Id. at 19.

<sup>26</sup> Id.

<sup>27</sup> Id. at 20.

<sup>28</sup> Id.

<sup>29</sup> Id. at 22.

<sup>30</sup> Id. at 23.

The issuance of injunctive relief is necessary because the Sandiganbayan has already set the arraignment date of petitioner.<sup>31</sup>

In his Comment,<sup>32</sup> private respondent Arches argues that there was probable cause,<sup>33</sup> that none of the grounds for enjoining a criminal prosecution exists,<sup>34</sup> and that the assailed Resolution was not based solely on Andres' affidavit.<sup>35</sup>

The Office of the Ombudsman argues in its Comment<sup>36</sup> that petitioner failed to show any grave abuse of discretion on the part of the Ombudsman. There were sufficient bases to indict petitioner for violation of Section 3(e) of Republic Act No. 3019. The findings of the Ombudsman were based on the evidence presented.<sup>37</sup> In the absence of grave abuse of discretion, this Court has consistently refrained from interfering with the Ombudsman's exercise of its mandate.<sup>38</sup> The Ombudsman opposes petitioner's prayer for injunctive relief, as no invasion of any clear or legal right has been established by the petitioner.<sup>39</sup>

In his Reply,<sup>40</sup> petitioner Reyes argues that conspiracy could not be present, considering that the respondents did not even agree with one another, as shown by Andres' affidavit.<sup>41</sup> Further, it was not shown that petitioner intentionally disregarded the Fire Safety Inspection Certificate requirement as mandated by law. Without this, only administrative liability would attach. The Ombudsman also did not show that the vendors enjoyed any undue benefit or that the government suffered any undue disadvantage.<sup>42</sup> Lastly, there was no showing of manifest partiality, evident bad faith, or gross inexcusable neglect without which petitioner cannot be held criminally liable.<sup>43</sup>

Petitioner avers that during the preliminary investigation, he was not clearly informed of the nature of the charge against him, in violation of his constitutional right to due process.<sup>44</sup> The findings of the Ombudsman were confusing,<sup>45</sup> and petitioner was not provided a copy of co-respondent *a quo*

---

<sup>31</sup> Id. at 24.

<sup>32</sup> Id. at 262–273, Comment to the Petition for Certiorari.

<sup>33</sup> Id. at 264.

<sup>34</sup> Id.

<sup>35</sup> Id. at 265.

<sup>36</sup> Id. at 477–495.

<sup>37</sup> Id. at 484.

<sup>38</sup> Id. at 487.

<sup>39</sup> Id. at 490.

<sup>40</sup> Id. at 499–527, Reply to the Comment to the Petition for Certiorari, Prohibition with Prayer for Injunction and Temporary Restraining Order.

<sup>41</sup> Id. at 508.

<sup>42</sup> Id. at 509.

<sup>43</sup> Id.

<sup>44</sup> Id. at 512.

<sup>45</sup> Id. at 512–513.

8

Andres' affidavit, upon which the Ombudsman relied in its finding of probable cause against petitioner.<sup>46</sup>

Petitioner insists that this Court can interfere with the findings of the investigatory powers of the Ombudsman in this case, considering that "this is a case of persecution, [not] prosecution."<sup>47</sup> Private respondent Arches was compelled by vengeance in filing the complaint.<sup>48</sup>

The sole issue for resolution of this Court is whether the Ombudsman committed grave abuse of discretion in determining that probable cause against petitioner exists.

We dismiss the Petition.

## I

This Court generally does not interfere with the Ombudsman's findings of probable cause. In *Dichaves v. Office of the Ombudsman*.<sup>49</sup>

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 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

---

<sup>46</sup> Id. at 514.

<sup>47</sup> Id. at 520.

<sup>48</sup> Id.

<sup>49</sup> G.R. Nos. 206310-11, December 7, 2016  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf>> [Per J. Leonen, Second Division].

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 complainant.<sup>50</sup> (Emphasis in the original, citations omitted)

Despite this well-established principle, petitioner would have this Court interfere with the Ombudsman's assessment on the basis of grave abuse of discretion. However, disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion. It is settled:

An act of a court or tribunal may constitute *grave abuse of discretion* when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.<sup>51</sup> (Emphasis in the original, citations omitted)

Thus, for this Petition to prosper, petitioner would have to show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law. Petitioner has failed to do this. "A preliminary investigation is only for the determination of probable cause."<sup>52</sup> Further, probable cause is:

[T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.<sup>53</sup> (Citations omitted)

<sup>50</sup> Id. at 16–17.

<sup>51</sup> *Angeles v. Secretary of Justice*, 503 Phil 93, 100 (2005) [Per J. Carpio, First Division].

<sup>52</sup> *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 863 (2015) [Per J. Carpio, En Banc].

<sup>53</sup> *Chan y Lim v. Secretary of Justice*, 572 Phil 118, 132 (2008) [Per J. Nachura, Third Division].

Here, the Ombudsman properly performed its duty to determine probable cause as to whether petitioner and his co-respondents *a quo* violated Section 3(e) of Republic Act No. 3019. Section 3(e) provides:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Based on opinion, reasonable belief, and the evidence on record, the Ombudsman found that the elements of the crime punishable under Section 3(e) of Republic Act No. 3019 existed.<sup>54</sup> Petitioner and his co-respondents *a quo* did not deny that they were public officers when the alleged acts were committed.<sup>55</sup> There was “unwarranted benefit and advantage [given] to the firecracker vendors.”<sup>56</sup> The issuance of the mayor’s permit was “tainted with bad faith” or gross inexcusable negligence.<sup>57</sup>

Petitioner claims that the Ombudsman failed to show the undue benefit given to the vendors,<sup>58</sup> but the Resolution sufficiently explained:

Nevertheless, respondents’ approval and issuance of the subject mayor’s permit gave unwarranted benefit and advantage to the [firecracker] vendors. “Unwarranted” means lacking adequate or official support; unjustified, unauthorized; or without justification or adequate reasons; while “advantage” is defined as “a more favorable or improved position or condition; benefit or gain of any kind.” The approval and issuance of the mayor’s permit was clearly without basis as it was, in fact, in violation of a municipal ordinance and the Fire Code of the Philippines. It gave a group of vendors the benefit and advantage of holding the business of selling firecrackers in the public market despite existing prohibition.<sup>59</sup> (Citations omitted)

---

<sup>54</sup> *Rollo*, pp. 34–37.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 35.

<sup>57</sup> *Id.* at 36.

<sup>58</sup> *Id.* at 509.

<sup>59</sup> *Id.* at 35.

l

Petitioner's claim that the Ombudsman did not explain the evident bad faith or gross inexcusable neglect<sup>60</sup> also cannot be countenanced. The Ombudsman likewise sufficiently explained the finding of bad faith:

. . . Respondents' action was patently tainted with bad faith and partiality or, at the very least, gross inexcusable negligence. "Bad faith" refers to a conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; "partiality" is synonymous with "bias" which excites a disposition to see and report matters as they are wished for rather than as they are; while "gross negligence" is negligence characterized by the want of even slight care with a conscious indifference to consequences as far as other persons are concerned.

Based on their respective counter-affidavits, respondents were well aware of Municipal Ordinance No. 357 which expressly prohibits "the storing, displaying, selling and blowing up ("pagbubuto") of those pyrotechnics products allowed by law, commonly called as "firecrackers" or "pabuto" within the premises of buildings 1 and 2 of Bansalan Public Market." In clear violation of this ordinance, respondents approved and issued a mayor's permit stating[,] "Permit is hereby granted to sell firecrackers on December 21, 2009 to January 1, 2010 at Public Market, Bansalan, Davao del Sur." Furthermore, as respondent Andres narrated in his counter-affidavit, the firecracker vendors were not issued a Fire Safety Inspection Certificate (FSIC) because they did not comply with fire safety requirements. The issuance of a FSIC by the Bureau of Fire [Protection] is a prerequisite to the grant of permits by local governments. According to Andres, he expressly informed respondent Reyes of the lack of the safety requirements and objected to the issuance of the mayor's permit because of the fire risk involved in such sale of firecrackers. Nevertheless, despite the absence of the required FSIC, respondents Domingo, Castilla, and Andres himself recommended for approval the application for the subject mayor's permit. Respondent mayor, for his part, cannot claim that he merely relied on the other respondents' recommendation for approval since he knew of an existing ordinance prohibiting such sale of firecrackers and was apprised of the fact that the firecracker vendors were not given a FSIC.<sup>61</sup> (Citations omitted)

Petitioner may insist on his innocence and the absence of bad faith, but the presence or absence of bad faith is a matter of evidence, best threshed out during trial. In any case, petitioner has failed to show how the Ombudsman's determinations constituted grave abuse of discretion.

## II

Petitioner avers that his right to due process was violated. Petitioner points out that the initial complaint against him and his co-respondents *a quo* did not mention giving unwarranted benefit to the firecracker vendors. Yet, he was charged with violating Section 3(e) of Republic Act No. 3019 for

---

<sup>60</sup> Id. at 510.

<sup>61</sup> Id. at 36-37.

giving unwarranted benefit to the firecracker vendors. Petitioner states that this charge was based on co-respondent *a quo* Andres' affidavit, which he was not given. Because he had no opportunity to respond to Andres' affidavit, he asserts that he was deprived of due process.<sup>62</sup> This argument is untenable.

Preliminary investigation is not part of trial and is conducted only to establish whether probable cause exists. Consequently, it is not subject to the same due process requirements that must be present during trial. In *Webb v. De Leon*:<sup>63</sup>

Considering the low quantum and quality of evidence needed to support a finding of probable cause, we also hold that the DOJ Panel did not gravely abuse its discretion in refusing to call the NBI witnesses for clarificatory questions. The decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator and the investigator alone. If the evidence on hand already yields a probable cause, the investigator need not hold a clarificatory hearing. To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. In the case at bar, the DOJ Panel correctly adjudged that enough evidence had been adduced to establish probable cause and clarificatory hearing was unnecessary.<sup>64</sup>

A person's rights during preliminary investigation are limited to those provided by procedural law.<sup>65</sup> Rule 112, Section 3 of the Rules of Court provides:

Section 3. *Procedure.* – The preliminary investigation shall be conducted in the following manner:

....

(b) ...

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

....

<sup>62</sup> Id. at 22.

<sup>63</sup> 317 Phil. 758 (1995) [Per J. Puno, Second Division].

<sup>64</sup> Id. at 789.

<sup>65</sup> *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf>> 18 [Per J. Leonen, Second Division].

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

Under procedural law, a respondent under preliminary investigation has the right to examine the evidence submitted by the complainant,<sup>66</sup> but he does not have a similar right over the evidence submitted by his or her co-respondents.

This issue is not novel. This Court has held that during preliminary investigation, the Ombudsman is not required to furnish a respondent with the counter-affidavits of his co-respondents. In *Estrada v. Office of the Ombudsman*.<sup>67</sup>

*First.* There is no law or rule which requires the Ombudsman to furnish a respondent with copies of the counter-affidavits of his co-respondents.

.....

Sen. Estrada claims that the denial of his Request for the counter-affidavits of his co-respondents violates his constitutional right to due process. **Sen. Estrada, however, fails to specify a law or rule which states that it is a compulsory requirement of due process in a preliminary investigation that the Ombudsman furnish a respondent with the counter-affidavits of his co-respondents.** Neither Section 3 (b), Rule 112 of the Revised Rules of Criminal Procedure nor Section 4 (c), Rule II of the Rules of Procedure of the Office of the Ombudsman supports Sen. Estrada's claim.

What the Rules of Procedure of the Office of the Ombudsman require is for the Ombudsman to furnish the respondent with a copy of the complaint and the supporting affidavits and documents **at the time the order to submit the counter-affidavit is issued to the respondent.** This is clear from Section 4 (b), Rule II of the Rules of Procedure of the Office of the Ombudsman when it states, “[a]fter such affidavits [of the complainant and his witnesses] have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits . . . .” At this point, there is still no counter-affidavit submitted by any respondent. **Clearly, what Section 4 (b) refers to are affidavits of the complainant and his witnesses, not the affidavits of the co-respondents.** Obviously, the counter-affidavits of the co-respondents are not part of the supporting affidavits of the complainant. No grave abuse of discretion can thus be

<sup>66</sup> RULES OF COURT, Rule 112, sec. 3.

<sup>67</sup> 751 Phil. 821 (2015) [Per J. Carpio, En Banc].

attributed to the Ombudsman for the issuance of the 27 March 2014 Order which denied Sen. Estrada's Request.

Although Section 4 (c), Rule II of the Rules of Procedure of the Office of the Ombudsman provides that a respondent "**shall have access to the evidence on record**," this provision should be construed in relation to Section 4 (a) and (b) **of the same Rule**, as well as to the Rules of Criminal Procedure. *First*, Section 4 (a) states that "the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaint." The "supporting witnesses" are the witnesses of the complainant, and do not refer to the co-respondents.

*Second*, Section 4 (b) states that "the investigating officer shall issue an order attaching thereto a copy of the affidavits and all other supporting documents, directing the respondent" to submit his counter-affidavit. The affidavits referred to in Section 4 (b) are the affidavits mentioned in Section 4 (a). Clearly, the affidavits to be furnished to the respondent are the affidavits of the complainant and his supporting witnesses. The provision in the immediately succeeding Section 4 (c) of the same Rule II that a respondent shall have "access to the evidence on record" does not stand alone, but should be read in relation to the provisions of Section 4 (a and b) of the same Rule II requiring the investigating officer to furnish the respondent with the "affidavits and other supporting documents" submitted by "the complainant or **supporting witnesses**." Thus, a respondent's "access to evidence on record" in Section 4 (c), Rule II of the Ombudsman's Rules of Procedure refers to the affidavits and supporting documents of "the complainant or **supporting witnesses**" in Section 4 (a) of the same Rule II.

*Third*, Section 3 (b), Rule 112 of the Revised Rules of Criminal Procedure provides that "[t]he respondent shall have **the right to examine the evidence submitted by the complainant** which he may not have been furnished and to copy them at his expense." A respondent's right to examine refers only to "**the evidence submitted by the complainant**."

Thus, whether under Rule 112 of the Revised Rules of Criminal Procedure or under Rule II of the Ombudsman's Rules of Procedure, there is no requirement whatsoever that the affidavits executed by the co-respondents should be furnished to a respondent.<sup>68</sup> (Emphasis in the original, citations omitted)

Thus, petitioner's non-receipt of Andres' affidavit did not violate his procedural rights during preliminary investigation.

Moreover, petitioner was fully accorded due process in the preliminary investigation proceedings.

In *Resurreccion v. People*:<sup>69</sup>

---

<sup>68</sup> Id. at 855-861.

<sup>69</sup> 738 Phil. 704, 720 (2014) [Per J. Brion, Second Division].

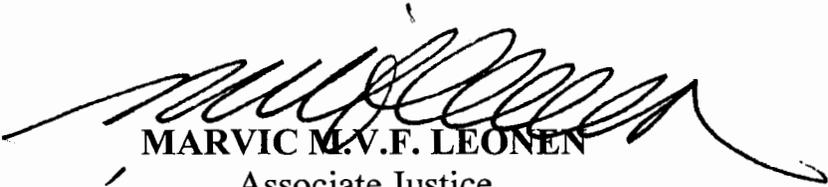
*R*

We have consistently held that the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of. For as long as the parties are given the opportunity to present their cause of defense, their interest in due course as in this case, it cannot be said that there was denial of due process.

Here, petitioner was able to file a counter-affidavit to explain his side and to respond to the complaint filed against him. He was not denied due process.

**WHEREFORE**, the Petition for Certiorari is **DISMISSED**. The Office of the Ombudsman's March 20, 2013 Resolution in Case No. OMB-M-C-11-0005-A and its June 26, 2013 Memorandum: Resolution on the Motion for Reconsideration<sup>70</sup> in relation to Criminal Case No. SB-13-CRM-0596 are **AFFIRMED**.

**SO ORDERED.**



**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice

On official leave  
**JOSE CATRAL MENDOZA**  
Associate Justice

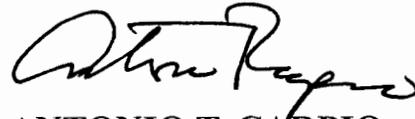
On official leave  
**SAMUEL R. MARTIRES**  
Associate Justice

---

<sup>70</sup> *Rollo*, p. 120.

**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.

**ANTONIO T. CARPIO**

Associate Justice  
Chairperson, Second Division

**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.

**MARIA LOURDES P. A. SERENO**

Chief Justice