



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CESAR J. DELA CRUZ,
Petitioner,

G.R. No. 256337

Present:

GESMUNDO, C.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO,* and
MARQUEZ, JJ.

- versus -

THE OFFICE OF THE
OMBUDSMAN,
Respondent.

Promulgated:

FEB 13 2023

X-----X

DECISION

HERNANDO, J.:

Assailed in this Petition for *Certiorari*¹ under Rule 65 of the Rules of Court is the February 13, 2020 Order² of the Office of the Ombudsman (Ombudsman) finding probable cause to indict petitioner Cesar J. Dela Cruz (Dela Cruz) for three counts of violation of Section 7(d)³ of Republic Act No.

* On official leave.

¹ *Rollo*, pp. 3-12.

² Id. at 13-17. Penned by Graft Investigation and Prosecution Officer III Lauren Gail D. Divino-Sudweste.

³ Section 7 (d) –Section 7. *Prohibited Acts and Transactions*. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful: (a) Financial and material interest. — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office. x x x.

(RA) 6713⁴ or the Code of Conduct and Ethical Standards for Public Officials and Employees.

The Ombudsman issued a Resolution⁵ dated July 26, 2018 finding probable cause to indict Dela Cruz for three counts of violation of Sec. 7(d), in relation Sec. 11(a) last paragraph, of RA 6713. In the same Resolution, the Ombudsman dismissed the charges for violation of Sec. 3(e) and 3(h)⁶ of RA 3019⁷ or the Anti-Graft and Corrupt Practices Act.

In an Order dated November 27, 2019,⁸ the Ombudsman granted the Motion for Reconsideration filed by Dela Cruz and reversed and set aside its July 26, 2018 Resolution thereby dismissing all charges against Dela Cruz. However, the Ombudsman subsequently issued the assailed Order dated February 13, 2020⁹ reversing its November 27, 2019 Order and reinstating its July 26, 2018 Resolution finding probable cause to indict Dela Cruz for three counts of violation of Sec. 7(d), in relation Sec. 11(a) last paragraph, of RA 6713.

The Facts

On May 19, 2014, Dela Cruz was assigned to conduct the inquest investigation of a Homicide case filed against the following children in conflict with the law (CICL): AAA,¹⁰ BBB, CCC, DDD, and EEE.¹¹ The case involved the death of 14-year-old Manny Abequibel, son of Lilia M. Abequibel (Abequibel), and was docketed as NPS No. XV-16-INV-14E-00309.¹²

⁴ Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES." Approved: February 20, 1989.

⁵ *Rollo*, pp. 139-148. Penned by Graft Investigation and Prosecution Officer II Jinky Y. Anarna.

⁶ Section 7 (d) –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: x x x (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. x x x (h) Director or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest. x x x.

⁷ Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT." Approved: August 17, 1960.

⁸ *Rollo*, pp. 174-179. Penned by Graft Investigation and Prosecution Officer III Lauren Gail D. Divino-Sudweste.

⁹ *Id.* at 13-17.

¹⁰ Real identity of the Child in Conflict with the Law (CICL) is withheld in accordance with Republic Act No. 9344, or the Juvenile Justice and Welfare Act of 2006, as amended, and A.M. No. 02-1-18-SC, or the Revised Rule on Children in Conflict with the Law.

¹¹ *Rollo*, p. 63 (Disposition), 74-75 (Resolution dated May 30, 2014), 84-85 (Resolution dated October 17, 2014).

¹² *Id.*

On May 27, 2014, the parties entered into an amicable settlement providing that, upon payment of the respective settlement debts stated in the Agreement (Agreement), Abequibel will no longer pursue the criminal case against the accused.¹³

In a Resolution dated May 30, 2014, Dela Cruz recommended the dismissal of the case against AAA and CCC¹⁴ because the guardians of the latter paid to Abequibel their respective monetary obligations¹⁵ and Abequibel executed an Affidavit of Desistance in favor of AAA and CCC on the same date.¹⁶ Thereafter, the guardians of DDD and EEE paid their respective monetary liabilities to Abequibel.¹⁷ Consequently, Abequibel executed an Affidavit of Desistance in favor of DDD and EEE on July 10, 2014.¹⁸ Thus, Dela Cruz issued a Resolution dated October 17, 2014 dismissing the case against DDD and EEE.¹⁹ In the October 17, 2014 Resolution, Dela Cruz notes that one of the accused therein, BBB, did not participate in any amicable settlement with Abequibel,²⁰ despite the signature of his guardian appearing in the Agreement.²¹ However, since BBB was found to have “Acted Without Discernment” by Social Welfare Officer IV Jurita P. Olvido (Olvido) of the Taguig City Social Welfare and Development Office, the case against BBB was dismissed.²²

In a Complaint notarized on October 30, 2014, Abequibel alleged that Dela Cruz received the amounts of PHP 35,000.00 and PHP 25,000.00 paid by the guardians of AAA and CCC, respectively, and also took PHP 10,000.00 from each amount.²³ Thus, Abequibel only received the remaining PHP 25,000.00 and PHP 15,000.00.²⁴ Abequibel also stated that she went to the office of Dela Cruz to inform him of the receipt of the amounts of PHP 25,000.00 each from the guardians of EEE and DDD, pursuant to their Agreement.²⁵ Abequibel narrated that Dela Cruz asked for his share of such payments but Abequibel told Dela Cruz that she only had PHP 2,000.00 left.²⁶ Dela Cruz nonetheless asked to be paid PHP 1,500.00.²⁷ The amounts paid by the guardians of the accused minors to Abequibel pursuant to their Agreement and the amounts allegedly taken by Dela Cruz as his share of the same are summarized in the table below.²⁸

¹³ Id. at 71 (Agreement between Guardians of the Co-Accused and Abequibel).

¹⁴ Id. at 75.

¹⁵ Id. at 72 (Receipts – Respective Payments of Justiniane and Agad).

¹⁶ Id. at 73 (*Salaysay ng Pag-uurong* dated May 30, 2014).

¹⁷ Id. at 78 (Receipt – Respective Payments of Bermin and Grande before Abequibel and Barangay Officials).

¹⁸ Id. at 82 (*Salaysay ng Pag-uurong* dated July 10, 2014).

¹⁹ Id. at 85.

²⁰ Id.

²¹ Id. at 71 (Agreement between Guardians of the Co-Accused and Abequibel).

²² Id.

²³ Id. at 34.

²⁴ Id.

²⁵ Id. at 37-38 (Sinumpaang Salaysay of Abequibel notarized on May 4, 2017).

²⁶ Id.

²⁷ Id.

²⁸ Id. at 23, 33-34, and 139-140.

W

Payor	Amount Paid	Amount Allegedly Taken by Dela Cruz
CCC	PHP 25,000.00	PHP 10,000.00
AAA	PHP 35,000.00	PHP 10,000.00
EEE	PHP 25,000.00	PHP 1,500.00
DDD	PHP 25,000.00	
Total Amount Allegedly Taken by Dela Cruz.		PHP 21,500.00

The National Bureau of Investigation (NBI) received a Memorandum issued by then Department of Justice (DOJ) Undersecretary Jose F. Justiniano ordering the NBI to conduct an investigation and submit a final report on the complaint filed by Abequibel against Dela Cruz. Acting on the aforementioned complaint, the NBI issued a Memorandum dated June 5, 2015, stating therein its finding that Dela Cruz intervened in the amicable settlement between Abequibel and the parents of the accused CCC, AAA, DDD, and EEE.²⁹

In an Indorsement letter dated September 3, 2015, former DOJ Secretary Leila M. De Lima referred to former Ombudsman Conchita Carpio-Morales the findings of the NBI for appropriate action.³⁰

On October 19, 2015, the Field Investigation Office (FIO) of the Ombudsman, as nominal complainant, filed a criminal complaint for violation of Sec. 3(e) and (h) of RA 3019 and Sec. 7 (d) of RA 6713, as well as an administrative complaint for Grave Misconduct under the Revised Rules on Administrative Cases in Civil Service against Dela Cruz.³¹ The FIO, through Graft Investigation and Prosecution Officer II Ma. Jennifer Otilano-Lacea, recommended that Dela Cruz be held criminally liable for violation of Sec. 3(e) and (h) of RA 3019 and Sec. 7(d) of RA 6713, and administratively liable for Grave Misconduct, to wit:

[Dela Cruz's] intervention and collection of a portion of the amicable settlement for himself, of which he had no right to do as a public officer or even as a private individual, are indicative of corruption and violative of RAs 3019 and 6713, and therefore, constitute the offense of grave misconduct. Also, [Dela Cruz] used his position as prosecutor to obtain money out of the amicable settlement. He also took advantage of the vulnerability and naivete of Abequibel knowing that the latter is not in a position to question his acts considering her level of education

²⁹ Id. at 33-35. During the fact-finding investigation of the NBI, the guardians of the five (5) co-accused minors were interviewed and their statements corroborated the following statements of Abequibel: (a) Mr. Armando Agad paid the amount of PhP25,000.00 to Abequibel on May 28, 2014 in the presence of Petitioner in his office at the Hall of Justice, Taguig City; (b) Mr. Bartolome Justiniane paid the amount of PhP35,000.00 to Abequibel on May 29, 2014 in the presence of Petitioner in his office at the Hall of Justice, Taguig City; (c) Mr. Jerry Belmin paid the amount of PhP25,000.00 to Abequibel on July 15, 2014 in the presence of VAWC Desk Chief Luzviminda Tabon, PO1 Nalisa Bullirse, and PO1 Delilah Amaba at the Barangay Office of Ibayo, Tipas, Taguig City; and (d) Mrs. Norma Grande paid the amount of PhP25,000.00 to Abequibel on June 30, 2014 in the presence of VAWC Desk Chief Luzviminda Tabon, Chief Tanod Marino Z. Blas, and Barangay Chairman Erwin Mindiol at the Barangay Office of Ibayo, Tipas, Taguig City.

³⁰ Id. at 29.

³¹ Id. at 21.

and status in life. Abequibel only finished first year high school and works as a yakult vendor.”³²

Dela Cruz, in his Counter-Affidavit, denied the accusations in the Complaint-Affidavit of the FIO and claimed that all the payments made by the guardians of the accused minors to Abequibel were made in the presence of Abequibel and other parties such as the parents of the minors, barangay authorities, and Olvido, a representative of the Social Welfare and Development Office of Taguig City.³³ Dela Cruz further asserted that, in the interest of protecting the parties, he issued receipts stating the full amounts received by Abequibel and which were signed by the respective parties.³⁴ Dela Cruz even furnished copies of the receipts to the parties.³⁵ With particular regard to the allegation that Dela Cruz demanded the payment of PHP 1,500.00 from the payments made by the guardians of DDD and EEE, Dela Cruz denies such allegation and claims that Abequibel was not clear as to when and where such amount was allegedly given to him.³⁶ Dela Cruz averred that Abequibel has ill motive in filing the complaint against him was because Dela Cruz dismissed the case against BBB despite the latter’s non-payment of the amount agreed upon in the Agreement.³⁷

In a Resolution dated July 26, 2018,³⁸ the Ombudsman found probable cause to indict Dela Cruz for three counts of violation of Sec. 7 (d), in relation to Sec. 11(a) last paragraph, of RA 6713.³⁹ Such finding was based on the following: (1) as investigating prosecutor of the inquest case, Dela Cruz conducted hearings in his official capacity; (2) as narrated by Abequibel in her *Sinumpaang Salaysay*, Dela Cruz allegedly solicited the amount of PHP 21,500.00 in three separate instances; (3) the guardians of AAA and CCC paid Abequibel in the office and in the presence of Dela Cruz who issued his own handwritten receipts; (4) AAA’s guardian, in his handwritten statement, unequivocally stated that Dela Cruz told him to leave the room upon giving the money; and (5) Dela Cruz dismissed the case against the accused after payment of the settlement debt even though AAA acted with discernment. The Ombudsman further emphasized that the prohibition in Sec. 7(d) of RA 6713 is *malum prohibitum* and Dela Cruz’s defenses, being evidentiary in nature, would be best presented during trial proper.

However, the charges for violation of Sec. 3(e) and (h) of RA 3019 were dismissed.⁴⁰ The Ombudsman found no probable cause for Sec. 3(e) of RA 3019 because “the elements of causing undue injury and acting with manifest

³² Id. at 25-26.

³³ Id. at 52-54.

³⁴ Id. at 53.

³⁵ Id.

³⁶ Id. at 54.

³⁷ Id. at 55.

³⁸ Id. at 139-148. Penned by Graft Investigation and Prosecution Officer II Jinky Y. Anarna.

³⁹ Id. at 146.

⁴⁰ Id.

W

partiality, evident bad faith or gross inexcusable negligence are not supported by sufficient evidence.”⁴¹ And, considering that an inquest proceeding is not a business, contract, or transaction in which Dela Cruz can have a financial or pecuniary interest, the Ombudsman also found no probable cause for violation of Sec. 3(h) of RA 3019.⁴²

On October 15, 2018, Dela Cruz filed his Motion for Reconsideration⁴³ of the July 26, 2018 Resolution of the Ombudsman. Dela Cruz addressed each of the grounds cited by the Ombudsman in the July 26, 2018 Resolution in finding probable cause to indict Dela Cruz for three counts of violation of Sec. 7(d), in relation to Sec. 11(a) last paragraph, of RA 6713, as follows:

First, Dela Cruz maintains that he was assigned to the inquest case docketed as NPS No. XV-16-INQ-14E-00309 as part of his duty as Assistant City Prosecutor, which is evidently neither by Dela Cruz’s design nor desire.⁴⁴ *Second*, Dela Cruz reiterated his claims in his Counter-Affidavit that Abequibel voluntarily and unconditionally signed receipts covering the amounts she received in the presence of parents of the accused minors, barangay authorities, and Olvido.⁴⁵ *Third*, as the handling prosecutor, Dela Cruz merely witnessed and formalized the amicable settlement independently reached by the parties with the preparation of the two (2) receipts to document the payments made by the guardians of AAA and CCC to Abequibel.⁴⁶ *Fourth*, even assuming but without admitting that Dela Cruz did ask the guardian of AAA to leave the room, the other guardians of the co-accused were still present in the room.⁴⁷ *Finally*, the dismissal of AAA is a logical consequence of the Agreement entered into by the parties and Affidavit of Desistance executed by Abequibel.⁴⁸ In the Supplemental Motion for Reconsideration, Dela Cruz emphasized that Olvido, a Social Worker of the Taguig City Social Welfare and Development Office, was personally present during the preliminary investigation on May 28, 2014 and Olvido narrated in her *Salaysay* that the parents of the other accused minors witnessed the receipt of Abequibel of the amount of PHP 25,000.00 from CCC.⁴⁹

In an Order dated November 27, 2019,⁵⁰ the Ombudsman granted the Motion for Reconsideration filed by Dela Cruz and reversed and set aside its July 26, 2018 Resolution. The Ombudsman found that “aside from Abequibel’s statement that [Dela Cruz] asked her for his share in the amicable

⁴¹ Id.

⁴² Id.

⁴³ Id. at 149-155.

⁴⁴ Id. at 151.

⁴⁵ Id.

⁴⁶ Id. at 153.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 160.

⁵⁰ Id. at 174-179.

settlement, no single piece of evidence points to [Dela Cruz's] solicitation."⁵¹ The Ombudsman emphasized that mere allegation is not evidence and is not equivalent to proof.⁵² Hence, when the complainant relies on mere conjectures and suppositions, and fails to substantiate his or her allegations, the complaint must be dismissed for lack of merit.⁵³

However, on March 29, 2021, Dela Cruz received the assailed Order dated February 13, 2020.⁵⁴ Relying on Abequibel's claims in her *Sinumpaang Salaysay* and the handwritten statement of the guardian of AAA narrating that Dela Cruz told him to leave the office upon payment of the settlement amount, the Ombudsman found that there is probable cause to indict Dela Cruz for three counts of violation of Sec. 7(d), in relation Sec. 11 (a) of RA 6713.⁵⁵ The Ombudsman also noted that Dela Cruz failed to show any ill motive or odious intent on the part of Abequibel "to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person,"⁵⁶ and the validity and merits of Dela Cruz's defense would be better ventilated in a full-blown trial on the merits than at the preliminary investigation level.⁵⁷

Hence, the instant petition.⁵⁸ Dela Cruz claims that the Ombudsman committed grave abuse of discretion amounting to lack or in excess of jurisdiction in *motu proprio* reversing itself more than two months after it issued its previous Order dismissing the criminal complaint against Dela Cruz. Dela Cruz claims that the provisions on finality and execution of decision under Rule III, Procedure in Administrative Cases, of Administrative Order No. 07 or the "Rules of Procedure of the Office of the Ombudsman" (Ombudsman Rules) should also apply to criminal cases. As such, the dismissal of the criminal complaint against Dela Cruz necessarily becomes final after the lapse of the reglementary period provided under Secs. 7 and 8, Rule III of the Ombudsman Rules. Invoking the doctrine of finality of judgment or immutability of judgment, Dela Cruz claims that the Order dated November 27, 2019 must take precedence over the subsequent Order dated February 13, 2020 as the former had already reached finality by operation of law.

The Ombudsman filed a Comment⁵⁹ dated February 2, 2022 and claimed that *res judicata* and double jeopardy do not apply in preliminary investigation. The Ombudsman further emphasized that it is not precluded from ordering another review of the case and that the courts must uphold the policy of non-interference considering the Ombudsman's constitutionally mandated investigatory and prosecutorial powers. Finally, the Ombudsman maintains that

⁵¹ Id. at 177.

⁵² Id.

⁵³ Id., citing *De Jesus v. Guerrero III*, 614 Phil. 520 (2009).

⁵⁴ Id. at 13-17.

⁵⁵ Id. at 15.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id. at 3-12.

⁵⁹ Id. at 209-220.

Dela Cruz's claims are matters of defense and are, thus, best ventilated during a full-blown trial.

Issue

Whether the Ombudsman erred in issuing the assailed February 13, 2020 Order reversing its November 27, 2019 Order granting the Motion for Reconsideration filed by Dela Cruz.

Our Ruling

The Petition is bereft of merit.

The Constitution and RA 6770⁶⁰ or The Ombudsman Act of 1989 (Ombudsman Act) provide that the Office of the Ombudsman has wide latitude to investigate and prosecute, *motu proprio* or on complaint of any person, any act or omission of any public officer or employee, office, or agency when such act or omission appears to be illegal, unjust, improper, or inefficient.⁶¹

This Court has consistently adopted a policy of non-interference in the Ombudsman's exercise of its constitutionally mandated powers. However, this Court may review the acts of the Ombudsman if a party invoking Rule 65 of the Rules of Court substantiates, not merely alleges, that there was grave abuse of discretion in the exercise of the powers of the Ombudsman. As stated in the case of *Casing v. Hon. Ombudsman*,⁶² "grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction," to wit:

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.⁶³

The Court has recognized the following instances where the Court may interfere with the Ombudsman's investigatory powers:

- (a) To afford protection to the constitutional rights of the accused;
- (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- (c) When there is a prejudicial question which is *sub judice*;
- (d) When the acts of the officer are without or in excess of authority;

⁶⁰ Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES." Approved: November 17, 1989.

⁶¹ CONSTITUTION, Article XI, 13 (1); REPUBLIC ACT NO. 6770, Section 15(1).

⁶² 687 Phil. 468 (2012)

⁶³ Id. at 476.

- (e) Where the prosecution is under an invalid law, ordinance or regulation;
- (f) When double jeopardy is clearly apparent;
- (g) Where the court has no jurisdiction over the offense;
- (h) Where it is a case of persecution rather than prosecution;
- (i) Where the charges are manifestly false and motivated by the lust for vengeance.⁶⁴

The conflicting Orders of the Ombudsman in the present case resolve the Motion for Reconsideration filed by Dela Cruz assailing the former's July 26, 2018 Resolution finding probable cause to indict Dela Cruz for three counts of violation of Sec. 7 (d) of RA 6713. The determination of whether probable cause exists is a function that belongs to the Ombudsman.⁶⁵ In line with the policy of non-interference, courts shall not interfere in the Ombudsman's exercise of discretion in determining probable cause.⁶⁶ The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect if there is no showing of grave abuse of discretion.⁶⁷

In *Dichaves v. Office of the Ombudsman*,⁶⁸ this Court has held that the executive determination of probable cause is a highly factual matter and, as the Court is not a trier of facts, We shall defer to the findings of the Ombudsman absent any showing of grave abuse of discretion, to wit:

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 cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.⁶⁹

The records show that the present matter was subjected to separate investigations of the NBI and Ombudsman, both finding that Dela Cruz intervened in the amicable settlement between the parties, and ultimately recommending the filing of the appropriate criminal charges against Dela Cruz. The assailed February 13, 2020 Order affirms the July 26, 2018 Resolution

⁶⁴ *Vergara v. Ombudsman*, 600 Phil. 26, 42 (2009), citing *Redulla v. Sandiganbayan*, 545 Phil. 711, 721 (2007)

⁶⁵ *Casing v. Ombudsman*, supra at 475, citing *Esquivel v. Hon. Ombudsman*, 437 Phil. 702, 712 (2002).

⁶⁶ *Vergara v. Ombudsman*, supra.

⁶⁷ *Id.*

⁶⁸ 802 Phil. 564 (2016).

⁶⁹ *Id.* at 589-590. Emphasis supplied; citations omitted.

W

which are in line with the findings of NBI and FIO. Absent any grave abuse of discretion attending the issuance of the assailed Order, this Court will not disturb the findings of the Ombudsman and shall defer to its sound judgment.

Notwithstanding the foregoing, the instant petition does not directly call for the review of the Ombudsman's findings on the existence of probable cause but claims that the Ombudsman committed reversible error when it issued the assailed Order dated February 13, 2020 denying Dela Cruz's Motion for Reconsideration more than two months after the same Motion for Reconsideration was already granted in its November 27, 2019 Order. Dela Cruz thus invokes the doctrine of finality of judgment and claims that, applying the provisions on the finality and execution of decisions in administrative cases under Sec. 7, Rule III of the Ombudsman Rules to criminal cases, the November 27, 2019 Order of the Ombudsman has already attained finality and may no longer be disturbed by its succeeding February 13, 2020 Order.

The provision cited by Dela Cruz, Sec. 7, Rule III of the Ombudsman Rules, particularly refers to procedures in administrative cases and provides when an administrative case shall be considered final and executory or unappealable as well as when the decision of the Ombudsman may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court:

Section 7. Finality and execution of decision.- Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration. An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.⁷⁰

The Ombudsman Rules does not provide for a similar provision in criminal cases. In criminal cases before the Ombudsman, upon evaluation of the complaint, the investigating officer shall recommend any of the following: (a) dismiss the case outright for want of palpable merit; (b) refer the complaint to respondent for comment; (c) indorse the complaint to the proper government

⁷⁰ ADMINISTRATIVE ORDER NO. 07 (Rules of Procedure of the Office of the Ombudsman), as amended, Rule III, Sec. 7.

office or agency which has jurisdiction over the case; (d) forward the complaint to the appropriate office or official for fact-finding investigation; (e) refer the case for administrative adjudication; or (f) subject the case to a preliminary investigation.⁷¹

It is settled that the remedy of an aggrieved party from a resolution of the Ombudsman finding the presence or absence of probable cause is to file a petition for certiorari under Rule 65 of the Rules of Court before the Supreme Court.⁷² In *Yatco v. Office of the Deputy Ombudsman for Luzon*,⁷³ this Court discussed the clear distinction between assailing the rulings of the Ombudsman in administrative and criminal cases which are also already settled in the Ombudsman Act, Ombudsman Rules, and jurisprudence:

The corresponding remedies to assail Ombudsman rulings with respect to administrative and criminal charges are already well-settled in jurisprudence.

With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant to Section 27 of the Ombudsman Act, any order, directive or decision of the Ombudsman 'imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month's salary shall be final and unappealable.' Case law has explained that Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, also considered final and unappealable. In these instances, the Court has ruled that even though such rulings are final and unappealable, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable, and the proper remedy is to file an appeal under Rule 43 of the Rules of Court before the Court of Appeals. x x x

x x x x

Meanwhile, with respect to criminal charges, the Court has settled that the remedy of an aggrieved party from a resolution of the Ombudsman finding the presence or absence of probable cause is to file a petition for certiorari under Rule 65 of the Rules of Court and the petition should be filed not before the CA, but before the Supreme Court. x x x⁷⁴

It is thus apparent from the distinctions clearly outlined in the Ombudsman Act and the Ombudsman Rules, as amended, as well as the aforementioned jurisprudence, that the provision pertaining to the finality and execution of a

⁷¹ ADMINISTRATIVE ORDER NO. 07 (Rules of Procedure of the Office of the Ombudsman), as amended, Rule II, Sec. 2.

⁷² *Yatco v. Office of the Deputy Ombudsman for Luzon*, G.R. No. 244775, July 6, 2020.

⁷³ *Id.*

⁷⁴ *Id.* Emphasis and citations omitted.

decision of the Ombudsman and the appropriate remedies available to aggrieved parties in administrative charges do not apply to criminal cases.

Nonetheless, Dela Cruz insists that the assailed Order must be abandoned because the November 27, 2019 Order has reached finality by operation of law and may no longer be altered following the doctrine of finality of judgment. In order to apply the doctrine of finality of judgment or immutability of judgment invoked by Dela Cruz, it is first necessary to determine if there is indeed a final judgment. As discussed by this Court in the case of *FGU Insurance Corp. v. Regional Trial Court of Makati City, Branch 66*,⁷⁵ under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.⁷⁶ However, the rule admits exceptions such as the following: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.⁷⁷

In *Imingan v. The Office of the Honorable Ombudsman*,⁷⁸ the Court emphasized that the results of preliminary investigations cannot be considered a valid and final judgment:

Jurisprudence has long settled that preliminary investigation does not form part of trial. Investigation for the purpose of determining whether an actual charge shall subsequently be filed against the person subject of the investigation is a purely administrative, rather than a judicial or quasi-judicial, function. It is not an exercise in adjudication: no ruling is made on the rights and obligations of the parties, but merely evidentiary appraisal to determine if it is worth going into actual adjudication.

The dismissal of a complaint on preliminary investigation by a prosecutor **'cannot be considered a valid and final judgment.'** As there is no former final judgment or order on the merits rendered by the court having jurisdiction over both the subject matter and the parties, there could not have been *res judicata* x x x.⁷⁹

Considering that both the November 27, 2019 and the February 13, 2020 Orders were issued to resolve a Motion for Reconsideration assailing the July 26, 2018 Resolution finding probable cause to indict Dela Cruz for three counts of violation of Sec. 7 (d) of RA 67143, the Orders pertain to the results of preliminary investigations and, as such, cannot be considered as valid and final

⁷⁵ 659 Phil. 117 (2011).

⁷⁶ *Id.* at 123.

⁷⁷ *Id.*

⁷⁸ G.R. No. 226420, March 4, 2020, citing *Pavlow v. Mendenilla*, 809 Phil. 24, 49 (2017).

⁷⁹ *Id.* Emphasis supplied.

W

judgment. Hence, the doctrine of finality of judgment or immutability of judgment cannot be applied to the present case.

The two conflicting Orders of the Office of the Ombudsman were notably prepared and signed by the same officer, Graft Investigation and Prosecution Officer III Lauren Gail D. Divino-Sudweste. From a perusal of the assailed Order, it appears as if the Motion for Reconsideration was being resolved for the first time, with no reference to the earlier Order already dismissing the criminal case against Dela Cruz for lack of a probable cause. Nonetheless, this Court respects the power of the Ombudsman to reinvestigate and reconsider its earlier rulings. In the case of *Binay v. Office of the Ombudsman*,⁸⁰ citing the cases of *Alvarez v. People*,⁸¹ *Roxas v. Hon. Vasquez*,⁸² and *Abdula v. Giuani*,⁸³ this Court has recognized the Ombudsman's power to revoke or alter the ruling of its predecessor as well as order another review of a complaint, to wit:

[S]ettled is the rule that a sitting Ombudsman has the power to revoke or alter the rulings of a predecessor within the bounds of law. In *Alvarez v. People*, this Court decreed:

The Ombudsman is not precluded from ordering another review of a complaint, for he or she may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office. And *Roxas v. Hon. Vasquez* teaches that new matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted. (Emphasis in the original, citations omitted)

Similarly, in *Roxas v. Hon. Vasquez*:

In criminal prosecutions, a reinvestigation, like an appeal, renders the entire case open for review. It matters not that the complainants did not seek a reinvestigation or reconsideration of the dismissal of the charges against petitioners. *Consistent with its independence as protector of the people and as prosecutor to ensure accountability of public officers, the Ombudsman is not and should not be limited in its review by the action or inaction of complainants.* On the other hand, it is clear from Section 15 of R.A. 6770 that the Ombudsman may *motu proprio* conduct a reinvestigation to assure that the guilty do not go unpunished.

Likewise, petitioners' insistence that the Ombudsman and the Sandiganbayan had lost jurisdiction over them after the initial dismissal of the charges against them is untenable. In the case of *Abdula v. Guiani*, this Court held:

With respect to the allegation that the respondent had no legal authority to order a reinvestigation of the criminal charge considering that the said charge had been previously dismissed as

⁸⁰ G.R. No. 213957-58, August 7, 2019.

⁸¹ 668 Phil. 216 (2011).

⁸² 411 Phil. 276 (2001).

⁸³ 382 Phil. 757 (2000).

against them, we hold that respondent did not abuse his discretion in doing so.

It is not material either that no new matter or evidence was presented during the reinvestigation of the case. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. New matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted.⁸⁴ (Emphasis supplied, citations omitted)

Sec. 7, Rule II of the Ombudsman Rules provides that an aggrieved party may file one motion for reconsideration or reinvestigation of the adverse order or resolution. However, as clearly stated above, the Ombudsman may *motu proprio* conduct a reinvestigation as the same is **“consistent with its independence as protector of the people and as prosecutor to ensure accountability of public officers, the Ombudsman is not and should not be limited in its review by the action or inaction of complainants.”**⁸⁵ Even if the criminal charge against Dela Cruz was previously dismissed, the Ombudsman did not abuse its discretion in reconsidering its earlier findings. The Ombudsman is also not required to base its findings on new matters or evidence because, as stated in the case of *Abdula v. Guiani*,⁸⁶ new matters or new evidence need not be presented because “new matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted.”⁸⁷

The case of *Redulla v. Sandiganbayan*⁸⁸ (*Redulla*) also involves the reversal of the previous findings of the Ombudsman and serves as an example of a case when the Ombudsman’s act of reinvestigating cases and reconsidering its earlier rulings is within its power. In *Redulla*, the Ombudsman filed an Information before the Sandiganbayan thereby indicting petitioner therein, Teotimo M. Redulla (Teotimo), for violation of RA 3019, Sec. 3(e). Aggrieved, Teotimo filed before the Office of the Special Prosecutor (OSP) an Expanded Motion for Reinvestigation praying for the findings of Prosecutor Florita S. Linco, which triggered the filing of the Information for violation of Sec. 3(e) of RA 3019, be reversed and set aside. Teotimo’s motion was granted and a reinvestigation was conducted. Ombudsman Aniano Desierto thereafter approved the OSP’s finding that there was no probable cause to indict Teotimo of the crime charged and accordingly approved the recommendation to withdraw the Information. The Ombudsman thus filed a Manifestation with Motion to Withdraw Information with the Sandiganbayan which was granted by the latter in an Order dated May 20, 2002. However, in June 2003, Ombudsman Simeon V. Marcelo (Ombudsman Marcelo) ordered the

⁸⁴ *Binay v. Office of the Ombudsman*, supra. Citations omitted.

⁸⁵ *Roxas v. Hon. Vasquez*, supra at 286.

⁸⁶ Supra.

⁸⁷ *Roxas v. Hon. Vasquez*, supra at 287.

⁸⁸ 545 Phil. 711 (2007).

review of the original complaints against Teotimo, *et al.*, which the Commission on Audit filed with his Office. Acting on Ombudsman Marcelo's order, Prosecutor Jovito A. Coresis, Jr. reviewed the complaints and found sufficient evidence to conclude that a crime for violation of RA 3019, Sec. 3(e), as amended, had been committed, and Teotimo and his co-accused are probably guilty thereof. The Ombudsman then filed an Information with the Sandiganbayan.

The *Redulla* case involved an Information already filed before the Sandiganbayan while the present case involves a Motion for Reconsideration of a Resolution finding probable cause to indict dela Cruz for the crimes charged. If the Ombudsman can freely exercise its power to reinvestigate cases and even file another Information after the same was already withdrawn, the Ombudsman can also reinvestigate a case during the preliminary investigation stage and reconsider or revisit its earlier ruling.

Considering that the present case does not fall under any of the exceptions recognized under jurisprudence when courts may interfere with the investigatory powers of the Ombudsman, the Court upholds the policy of non-interference in the Ombudsman's exercise of its constitutionally mandated powers including its power to *motu proprio* initiate a reinvestigation or reconsideration of a case within its jurisdiction.⁸⁹ The Court indeed recognizes the right of the Ombudsman to reinvestigate cases or reconsider its earlier rulings but such power, as with all constitutionally mandated powers, must be wielded cautiously as to not frustrate the ends of justice. Absent any clear showing of grave abuse of discretion in the determination of the existence of probable cause and the issuance of a subsequent Order affirming its earlier findings that there is indeed probable cause to indict Dela Cruz of the crimes charged, the instant Petition for *Certiorari* must be dismissed and the Court respects the findings of the Ombudsman in the assailed Decision. A party invoking Rule 65 of the Rules of Court must substantiate, not merely allege, that there was grave abuse of discretion in the exercise of the powers of the Ombudsman.

WHEREFORE, the Petition is **DISMISSED**. The Order dated February 13, 2020 of the Office of the Ombudsman in the criminal case docketed as OMB-C-C-17-0387 is **AFFIRMED**.

⁸⁹ *Id.* at 721. Thus, the courts may interfere with the investigatory powers of the Ombudsman —

- a) To afford protection to the constitutional rights of the accused;
- b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c) When there is a prejudicial question which is *sub judice*;
- d) When the acts of the officer are without or in excess of authority;
- e) Where the prosecution is under an invalid law, ordinance or regulation;
- f) When double jeopardy is clearly apparent;
- g) Where the court has no jurisdiction over the offense;
- h) Where it is a case of persecution rather than prosecution;
- i) Where the charges are manifestly false and motivated by the lust for vengeance.

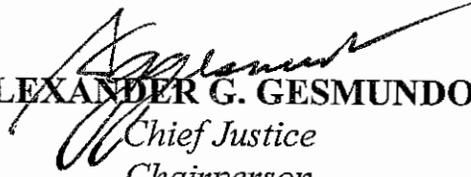
W

SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice
Chairperson



RODIL V. ZALAMEDA
Associate Justice

On official leave
RICARDO R. ROSARIO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



ALEXANDER G. GESMUNDO
Chief Justice

