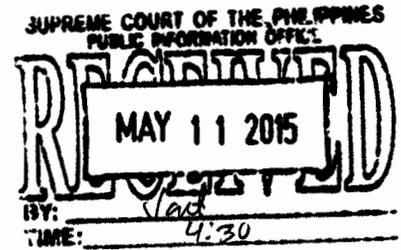




Republic of the Philippines  
Supreme Court  
Manila  
FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 11, 2015** which reads as follows:*

**“G.R. No. 216103** (Rodrigo D. Ariar, *petitioner*, v. Office of the Ombudsman (Mindanao) and Parley U. Buyan, *respondents*). -

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the Resolution<sup>1</sup> dated 24 June 2014 and Order<sup>2</sup> dated 1 September 2014 both issued by the respondent Office of the Ombudsman (OMB) in Case No. OMB-M-C-09-0398-I finding probable cause to indict petitioner for violation of Article 336 of the Revised Penal Code (Acts of Lasciviousness).

The undisputed facts of the case are as follows:

On 9 September 2009, a Complaint-Affidavit<sup>3</sup> was filed against petitioner for violation of Republic Act (RA) No. 7877, and Articles 245 and 336 of the Revised Penal Code (RPC). Petitioner filed his Comment thereto, adopting his Answer to the charge of Grave Misconduct in ADM Case No. 2009-003-Caraga also filed against petitioner by same private respondent before the Philippine Health Insurance Corporation (Philhealth). Consequently, in its Order<sup>4</sup> dated 3 December 2009, respondent OMB dismissed the administrative case docketed as OMB-M-

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<sup>1</sup> Rollo, pp. 27-36.  
<sup>2</sup> Id. at 70-73.  
<sup>3</sup> Id. at 92-99.  
<sup>4</sup> Id. at 149-152.

A-09-404-I against petitioner considering that a similar administrative case allegedly based on the same set of facts contained in private respondent's complaint-affidavit had already been filed before Philhealth; while the preliminary investigation in the criminal aspect of the case proceeded independently.

In a Letter-Memorandum<sup>5</sup> dated 21 September 2011, the President and CEO of Philhealth, acting on the recommendation of the Ad Hoc Committee, issued a Decision finding petitioner not guilty of the administrative charge of Grave Misconduct for insufficiency of evidence.

On 24 June 2014, respondent OMB issued the assailed Resolution finding probable cause against petitioner for the crime of Acts of Lasciviousness under Article 336 of the RPC.

Subsequently, in the assailed Order dated 1 September 2014, respondent OMB denied for lack of merit petitioner's Motion for Reconsideration.

Dissatisfied, petitioner filed the instant petition and presented the issue of whether or not respondent OMB committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution dated 24 June 2014 and Order dated 1 September 2014 finding probable cause against petitioner for violation of Article 336 of the RPC.

At the outset, jurisprudence holds that where the findings of the Ombudsman *on the existence of probable cause in criminal cases* is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for certiorari with the Supreme Court under Rule 65.<sup>6</sup> Thus, since petitioner correctly filed the instant petition before us, this Court shall now determine whether or not the respondent OMB indeed acted with patent grave abuse of discretion in finding probable cause against petitioner for violation of Article 336 of the RPC.

A perusal of the assailed Resolution and Order both issued by the respondent OMB in the present case reveals that there was no grave abuse of discretion in the Ombudsman's finding of probable cause against petitioner that would constitute such kind of abuse of discretion.

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<sup>5</sup> Id. at 165.

<sup>6</sup> *Baylon v. Ombudsman*, 423 Phil. 705, 719-720 (2001); *Nava v. Commission on Audit*, 419 Phil. 544, 553 (2001); and *Tirol, Jr. v. Del Rosario*, 376 Phil. 115, 122 (1999).

Worthy to mention that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.<sup>7</sup>

In the present case, there were affidavits issued by various witnesses considered by respondent OMB, among others, which support a probable cause finding against petitioner. On the other hand, petitioner miserably failed to establish any evidence showing that respondent OMB in finding probable cause (*a prima facie case*) against him exercised her power arbitrarily and acted grossly which amounted to an evasion of her positive duty enjoined by law, or to act at all in contemplation of law. Clearly from the foregoing, respondent OMB acted within the scope of her authority and in accordance with the provisions of Republic Act No. 6770,<sup>8</sup> otherwise known as "The Ombudsman Act of 1989." Besides, it is this Court's view that petitioner's arguments are merely matters of defense which should definitely be ventilated appropriately during a full-blown proceeding before the Sandiganbayan who will have jurisdiction over the instant case.

Let it be emphasized that judicial review under Rule 65 is strictly confined to the determination of the propriety of the trial court's (the Office of the Ombudsman in this case) jurisdiction – whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction. In other words, only errors of jurisdiction are addressed in a Rule 65 petition.<sup>9</sup> As consistently held, grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.<sup>10</sup>

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<sup>7</sup> *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 519 (2008). (Underlining ours)

<sup>8</sup> AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES.

<sup>9</sup> *Ysidoro v. Leonardo-De Castro*, G.R. Nos. 171513 and 190963, 6 February 2012, 665 SCRA 1, 14.

<sup>10</sup> *De Vera v. De Vera*, 602 Phil. 877, 886 (2009) citing *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

Moreover, we have consistently refrained from interfering with the OMB's exercise of discretion in determining the existence or absence of probable cause unless there are compelling reasons. The policy is based on constitutional, statutory and practical considerations. The only ground upon which this Court may entertain a review of the OMB's findings is when there is grave abuse of discretion. Unfortunately, petitioner failed to establish the same herein.

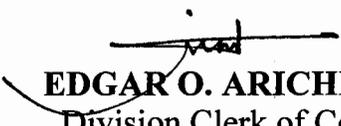
Accordingly, the subject Resolution and Order having been issued in accordance with law and existing jurisprudence, no grave abuse of discretion could be ascribed to the OMB. In other words, since there is no clear showing that the OMB gravely abused her discretion, we resolve to dismiss the instant petition for certiorari.

**WHEREFORE**, premises considered, the petition is hereby **DISMISSED**.

The Cash Collection and Disbursement Division is **DIRECTED** to **RETURN** to the petitioner the excess amount of ₱270.00 paid for filing fees under O.R. No. 0108055-SC-EP dated February 3, 2015.

**SO ORDERED."**

Very truly yours,

  
**EDGAR O. ARICHETA**

Division Clerk of Court <sup>m 4/6</sup>  
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SR

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