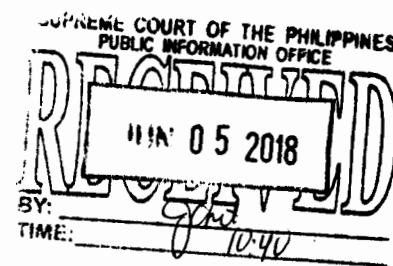




Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION



JONNEL D. ESPALDON,
 Petitioner,

G.R. No. 202784

Present:

SERENO, C.J.,*
Chairperson,
LEONARDO-DE CASTRO,**
DEL CASTILLO,
JARDELEZA, and
TIJAM, JJ.

- versus -

RICHARD E. BUBAN in his
 capacity as **Graft Investigation and
 Prosecution Officer II, MEDWIN
 S. DIZON** in his capacity as
 Director, **PIAB-A, ALEU A.
 AMANTE** in his capacity as
 Assistant Ombudsman, **PAMO I,
 and CONCHITA CARPIO-
 MORALES** in her capacity as
**OMBUDSMAN OF THE
 REPUBLIC OF THE
 PHILIPPINES, PETER L.
 CALIMAG,** Assistant Secretary,
 Revenue Affairs and Legal Affairs
 Group, Department of Finance,
**RENATO M. GARBO III, MA.
 LETICIA MALMALATEO,
 MARLON K. TAULI, FRAYN M.
 BANAWA, and JOHNNY
 CAGUIAT,** all NBI Agents,
 National Bureau of Investigation,
**ROGELIO M. SABADO, and
 PRUDENCIO S. DAR, JR.,**
 Railway Police, Philippine

* On leave.

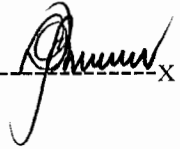
** Designated as Acting Chairperson pursuant to Special Order No. 2540 dated February 28, 2018.

**National Railways, ANTONIO
MARIANO ALMEDA, IRENEO
C. QUIZON, ARIEL
SARMIENTO, DOMINGO
BEGUERAS, JOHN DOES/JANE
DOES, NBI and/or PNR,**
Respondents.

Promulgated:

APR 18 2018

X-----


DECISION**TIJAM, J.:**

Through this petition for *certiorari* and *mandamus*¹ under Rule 65 of the Rules of Court, petitioner Jonnel D. Espaldon (Espaldon) seeks to nullify the Order² dated January 16, 2012 and Joint Order³ dated March 12, 2012 of respondent Office of the Ombudsman (Ombudsman) in the criminal complaint docketed as OMB-C-C-11-0034-A, and thereafter, to compel the Ombudsman to take cognizance of Espaldon's complaint against respondents.

The Antecedents

Atty. Renato M. Garbo III (Atty. Garbo) of the National Bureau of Investigation (NBI) and detailed at the Revenue Operations and Legal Affairs Group of the Department of Finance (DOF), received information⁴ that Ferrotech Steel Corporation and/or its President, Benito Keh (Keh) employed schemes to evade payment of taxes by failing to issue sales invoices and falsifying sales invoices, in violation of Section 264⁵ in relation to Section 254⁶ of the National Internal Revenue Code (NIRC). Upon

¹ *Rollo*, pp. 3-36.

² *Id.* at 39-42.

³ *Id.* at 87-90.

⁴ *Id.* at 124-135.

⁵ **Sec. 264. Failure or refusal to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations. -**

(a) Any person who, being required under Section 237 to issue receipts or sales or commercial invoices, fails or refuses to issue such receipts or invoices, issues receipts or invoices that do not truly reflect and/or contain all the information required to be shown therein, or uses multiple or double receipts or invoices, shall, upon conviction for each act or omission, be punished by a fine of not less than One thousand pesos (P1,000) but not more than Fifty thousand pesos (P50,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

(b) Any person who commits any of the acts enumerated hereunder shall be penalized in the same manner and to the same extent as provided for in this Section:

(1) Printing of receipts or sales or commercial invoices without authority from the Bureau of Internal Revenue; or
(2) Printing of double or multiple sets of invoices or receipts; or
(3) Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, Taxpayer Identification Number, and business address of the person or entity.

⁶ **Sec. 254. Attempt to Evade or Defeat Tax. -** Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other



verification of said information and by virtue of a Letter of Authority⁷ dated December 7, 2010 issued by Secretary Cesar V. Purisima (Secretary Purisima) of the DOF, Atty. Garbo applied⁸ for the issuance of search warrants to search the premises occupied and/or used by Ferrotech Steel Corporation and/or Keh before the regional trial court (RTC).⁹

On December 17, 2010, Search Warrant Nos. 10-17070 to 17073¹⁰ were issued by the RTC of Manila, Branch 47 for the different offices and warehouses of Ferrotech Steel Corporation and/or Keh located in Valenzuela City and Makati City. Secretary Purisima likewise issued OSEC Mission Order No. 10-001,¹¹ directing the NBI to search the offices and warehouses of Metalex International Inc., and Metal Trade Sales Co. On even date, these search warrants were served by NBI agents, Philippine National Railways (PNR) personnel and private individuals, who are the respondents in this case.

Espaldon, the Corporate Secretary of Metal Exponents, Inc., and the counsel of Ferrotech Steel Corporation and Metalex International Inc., alleged that several irregularities attended the implementation of the search warrants, *i.e.*, heavily armed NBI agents were present; the non-NBI agents were not authorized in writing to participate in the search; private individuals orchestrated the search and pointed the items to be seized; documents and items belonging to Metalex International, Inc., Metal Exponents, Inc., and other companies not mentioned in the search warrants were also seized;¹² and the employees were illegally detained, prohibited from using their phones and leaving the office, and threatened with bodily harm.¹³

Consequently, Espaldon filed a complaint-affidavit¹⁴ before the Ombudsman against respondents for violations of the Revised Penal Code (RPC), Republic Act (R.A) No. 3019 or the Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, NIRC, Tariff and Customs Code of the Philippines, Electronic Commerce Act of 2000 and the Code of Professional Responsibility. A supplemental complaint-affidavit praying for the preventive suspension of respondents was subsequently filed. The administrative aspect of the said complaint was subsequently docketed as OMB-C-A-11-0036-A for "Misconduct", while the criminal aspect was docketed as OMB-C-C-11-

penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (P30,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

⁷ Id. at 123.

⁸ Id. at 118-122.

⁹ Raffled to Branch 47 of the City of Manila.

¹⁰ Issued by Presiding Judge Paulino Q. Gallegos; *rollo*, pp. 140-155.

¹¹ Id. at 156.

¹² Id. at 9.

¹³ Id. at 13.

¹⁴ Id. at 91-117.

0034-A for "Violation of Articles 129 and 286 of the RPC and Section 3(e) of R.A. No. 3019."

The Ruling of the Ombudsman

The administrative complaint¹⁵ and the criminal complaint were dismissed by the Ombudsman in separate but similarly-worded Orders¹⁶ dated January 16, 2012. The dismissal of both the administrative and the criminal complaints were grounded on Section 20(1) of R.A. No. 6770,¹⁷ which provides:

Sec. 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 a[n] adequate remedy in another judicial or quasi-judicial body.

x x x x

In dismissing the administrative and the criminal complaints, the Ombudsman continued with identical ratiocination and disposed, as follows:

As the complaint essentially involves the application and interpretation of the Tariff and Customs Code, raising the matter with the Commissioner of Customs and/or the Department of Finance and/or the Court of Tax Appeals could provide adequate remedy.

It need not be underscored that the actions taken by these tribunals would have a bearing on an investigation of the respondents' possible criminal liability. It is on this account that this Office resolves to dismiss the complaint.

WHEREFORE, the criminal complaint is hereby **DISMISSED**.

SO ORDERED.¹⁸

Espaldon's motion for reconsideration¹⁹ met similar denial from the Ombudsman through its Joint Order²⁰ dated March 12, 2012 on the ground that said motion for reconsideration was neither based on new evidence nor on errors of law or commission of irregularities prejudicial to the interest of the movant as provided under Section 27 of R.A. No. 6770.

¹⁵ Id. at 22.

¹⁶ Id. at 39-42 and 56-59.

¹⁷ AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES.

¹⁸ *Rollo*, pp. 40-41 and 57-58.

¹⁹ Id. at 43-55.

²⁰ Id. at 87-90.

The dismissal of the administrative complaint and the criminal complaint respectively spurred Espaldon's petition for review²¹ under Rule 43 before the Court of Appeals (CA) and the instant petition for *certiorari* and *mandamus* under Rule 65.

In their respective comments, respondents²² and the Ombudsman²³ implore the Court's policy of non-interference with the Ombudsman's exercise of its investigatory powers.

The Issue

At its core, the present petition raises the issue of whether or not the Ombudsman gravely abused its discretion in refusing to conduct an investigation on the criminal act complained of on the basis of Section 20(1) of R.A. No. 6770.

The Ruling of the Court

There is merit in the petition.

Section 19 of R.A. No. 6770 enumerates the acts or omissions that could be the subject of *administrative complaints*, thus:

Sec. 19. *Administrative Complaints*. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

Going further, the full text of Section 20 of R.A. No. 6770, reads:

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;

²¹ Id. at 322-354.

²² Id. at 373-383.

²³ Id. at 406-423.

(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 year from the occurrence of the act or omission complained of. (Emphasis ours)

Section 20 has been clarified²⁴ by Administrative Order No. 17,²⁵ amending Administrative Order No. 07.²⁶ As thus amended, Section 4, Rule III on the *procedure in administrative cases* presently provides:

Sec. 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 Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;**
- b) treated as a **grievance/request for assistance** which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;
- c) referred to other **disciplinary authorities** under paragraph 2, Section 23, R.A. 6770 for the taking of **appropriate administrative proceedings;**
- d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or
- e) **docketed as an administrative case** for the purpose of **administrative adjudication** by the Office of the Ombudsman. (Emphasis ours)

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*.²⁷ Clearly, as the law, its implementing rules, and interpretative jurisprudence²⁸ 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 Administrative Order No. 07, as follows:

²⁴ See *Office of the Ombudsman v. Court of Appeals, et al.*, 576 Phil. 784 (2008).

²⁵ Amendment of Rule III, Administrative Order No. 07, signed by Ombudsman Simeon V. Marcelo on September 15, 2003.

²⁶ Rules of Procedure of the Office of the Ombudsman.

²⁷ *Bueno, et al. v. Office of the Ombudsman, et al.*, 743 Phil. 313, 330 (2014).

²⁸ See *Casing v. Hon. Ombudsman, et al.*, 687 Phil. 468 (2012).

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 ours)

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,²⁹ 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.

Accordingly, in this case, the exercise of judicial restraint in view of the Ombudsman's awesome powers to investigate and prosecute is ill-judged. While the Ombudsman is clothed with ample authority to pass upon criminal complaints involving public officials and employees, the Ombudsman's act is not immune from judicial scrutiny in the Court's discharge of its own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.³⁰

Invariably, grave abuse of discretion connotes a capricious and whimsical exercise of judgment as amounting to lack of jurisdiction. Necessarily then, to justify the issuance of the prerogative writ of *certiorari* to correct grave abuse of discretion, the Ombudsman's exercise of power 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.³¹ The Ombudsman's failure to abide by its duty to evaluate a criminal complaint in accordance with Section 2, Rule II of its own procedural rules constitutes grave abuse of discretion.

²⁹ *Rollo*, p. 411.

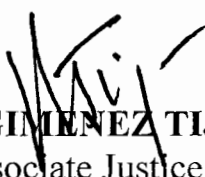
³⁰ 1987 CONSTITUTION, Article VIII, Section 1.

³¹ *Eijansantos v. Special Presidential Task Force 156*, 734 Phil. 748, 760 (2014).

Nevertheless, the Court, at this stage, cannot preempt whatever action will be had by the Ombudsman after evaluation of the criminal complaint. It is not for the Court to pronounce whether the criminal complaint should be subjected to preliminary investigation. All the more, it will be premature for the Court to decide in this present petition whether or not there exists probable cause for the filing of the criminal information against respondents. These matters, not being proper subjects of the instant petition are best left to the Ombudsman's appropriate action.

WHEREFORE, the petition is **GRANTED**. The Order dated January 16, 2012 and Joint Order dated March 12, 2012 of the Office of the Ombudsman insofar as it dismissed outright the criminal complaint docketed as OMB-C-C-11-0034-A are **REVERSED** and **SET ASIDE**. The Office of the Ombudsman is forthwith **DIRECTED** to take cognizance of the criminal complaint and evaluate the same in accordance with Section 2, Rule II of the Rules of Procedure of the Office of the Ombudsman.

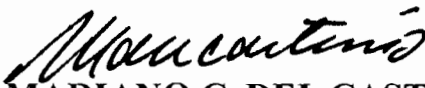
SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

(On leave)
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Acting Chairperson, First Division


MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. CARDELEZA
Associate Justice

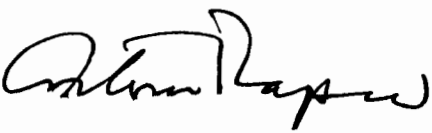
ATTESTATION

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.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

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


ANTONIO T. CARPIO
Acting Chief Justice