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WHEREFORE, the instant petition is hereby *GRANTED* and the resolutions of the Court of Appeals affirming the Orders of the Regional Trial Court in Civil Case No. R-3111 dated 23 January 2004 and 17 February 2004 are *REVERSED*. No costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 169098. October 12, 2006]

MANUEL BAVIERA, *petitioner, vs.* **ROLANDO B. ZOLETA, in his capacity as Graft Investigation and Prosecution Officer II; MARY SUSAN S. GUILLERMO, in her capacity as Director, Preliminary Investigation and Administrative Adjudication Bureau-B; PELAGIO S. APOSTOL, in his capacity as Assistant Ombudsman, PAMO; ORLANDO C. CASIMIRO, in his capacity as Assistant Ombudsman for the Military and Other Law Enforcement Offices; and MA. MERCEDITAS N. GUTIERREZ (Then) Undersecretary, Department of Justice,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SUPREME COURT; PROPER FORUM TO FILE PETITION FOR *CERTIORARI* UNDER RULE 65, ASSAILING RESOLUTION OF THE OFFICE OF OMBUDSMAN FINDING NO PROBABLE CAUSE FOR VIOLATION OF R.A. No. 3019.** — Respondent Gutierrez contends that the proper remedy of petitioner to assail the Resolutions of the Ombudsman finding no probable cause for violation of R.A. No. 3019, Section 3(a), (e) and (j) was to

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file a petition for *certiorari* with this Court, not with the CA. In 1999, this Court ruled in *Tirol, Jr. v. Del Rosario* that the remedy of the aggrieved party from a resolution of the Office of the Ombudsman finding the presence or absence of probable cause in criminal cases was to file a petition for *certiorari* under Rule 65 *in this Court.* The Court reiterated its ruling in *Kuizon v. Desierto* and *Tirol, Jr. v. Del Rosario.* And on February 22, 2006, in *Pontejos v. Office of the Ombudsman,* the Court ruled that the remedy to challenge the Resolution of the Ombudsman at the conclusion of a preliminary investigation was to file a petition for *certiorari* in this Court under Rule 65. In *Estrada v. Desierto*, this Court rejected the contention of petitioner therein that petition for *certiorari* under Rule 65 assailing the Order/Resolution of the OMB in criminal cases should be filed in the CA, conformably with the principle of hierarchy of courts. In that case, the Court explained: Petitioner contends that *certiorari* under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction. Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in *Kuizon v. Ombudsman* where we decreed — In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto.* The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary cases* should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court. Kuizon and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal

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cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of *lack* of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman.* As this Court had already resolved said issue of jurisdiction in the above-cited cases, it is a salutary and necessary judicial practice to apply the rulings therein to the subject petition. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. Undaunted, petitioner now harps on the validity of Section 14 of Rep. Act No. 6770 claiming it to be unconstitutional. The Court of Appeals, it must be recalled, relied quite heavily on Section 14 of Rep. Act No. 6770 in relation to *Fabian v. Desierto* in ruling that it had no jurisdiction to entertain the petition filed thereat.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT ESTABLISHED IN CASE AT BAR.** — On the merits of the petition, the Court finds that petitioner failed to establish that the respondent officials committed grave abuse of discretion amounting to excess or lack of jurisdiction. 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 positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The Court has reviewed the assailed resolutions of the Office of the Ombudsman, and finds that petitioner likewise failed to establish probable cause for violation of Sections 3(a), (e) and (j) of RA No. 3019. Indeed, in the absence of a clear case of abuse of discretion, this Court will not interfere with the exercise of the Ombudsman's discretion, who, based on his own findings and deliberate consideration of the case, either dismisses a complaint or proceeds with it.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.

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DECISION

CALLEJO, SR., *J.*:

Before the Court is a petition for review on *certiorari* of the Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 87472 dismissing the petition for *certiorari* filed by Manuel V. Baviera, assailing the resolution of the Office of the Ombudsman in OMB-C-C-03-0612-J, and the resolution of the CA denying the motion for reconsideration.

The Antecedents

Manuel V. Baviera filed several complaints[2] against officers or directors of the Standard Chartered Bank (SCB), Philippine Branch, including Sridhar Raman, an Indian national who was the Chief Finance Officer of the bank, as respondents with the Securities and Exchange Commission (SEC), *Bangko Sentral ng Pilipinas* (BSP), Anti-Money Laundering Council (AMLC), National Labor Relations Commission (NLRC), and the Department of Justice (DOJ), to wit:

	CASE FILED	DOCKET NUMBER	LAW AND/OR RULES VIOLATED
BANGKO SENTRAL NG PILIPINAS	Administrative	Received by Supervision and Examination Sector, SED Dept. II	Violations of General Banking Law of 2000, The New Central Bank Act, various BSP-Circular letters and BSP Manual Regulations
SECURITIES AND EXCHANGE COMMISSION	Administrative	CED Case No. 03-2763	Securities Regulation Code, Corporation Code of the Philippines, and/or Various Rules and Regulations of the SEC

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Danilo B. Pine and Japar B. Dimaampao, concurring; *rollo*, pp. 45-47.

[2] *Rollo*, p. 90.

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ANTI-MONEY LAUNDERING COUNCIL	Money Laundering	Received by Office of the Executive Director	Violation of Anti-Money Laundering Act as Amended
NATIONAL LABOR RELATIONS COMMISSION	Illegal Dismissal	NLRC-NCR Case No. 006-06 -07434-2003	Labor Code of the Philippines
DEPARTMENT OF JUSTICE	Syndicated Estafa	I.S. No. 2003-1059	P.D. 1689 in connection with Article 315 of the Revised Penal Code
BUREAU OF INTERNAL REVENUE	Tax Fraud and Non-declaration of Income	Received by Commissioner's Office	National Internal Revenue Code

Baviera claimed that he was a former employee of the bank, and at the same time, an investor who was victimized by the officers or directors of SCB, all of whom conspired with one another in defrauding him as well as the investing public by soliciting funds in unregistered and unauthorized foreign stocks and securities.

On September 18, 2003, Baviera, through counsel, requested the Secretary of Justice for the issuance of a Hold Departure Order (HDO) against some of the officers and directors of SCB, including Raman.[3]

On September 26, 2003, then Secretary of Justice Simeon Datumanong issued an Order[4] granting the request of Baviera. He issued HDO No. 0193. A copy of the order was served on the Bureau of Immigration (BI) for implementation. On the same day, the BI issued an Order[5] implementing that of the Secretary of Justice.

Meanwhile, Secretary Datumanong went to Vienna, Austria, to attend a conference. Undersecretary Merceditas

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[3] *Id.* at 88-89.

[4] *Id.* at 93.

[5] *Id.* at 70.

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Navarro-Gutierrez was designated as Acting Secretary of the DOJ.[6]

On September 28, 2003, a Sunday, Raman arrived at the Ninoy Aquino International Airport (NAIA) for his trip to Singapore but was apprehended by BI agents and NAIA officials based on the HDO of the Secretary of Justice. However, the next day, September 29, 2003, Raman was able to leave the country via Singapore Airlines-SQ-71 at an 8:15 a.m. flight. He was to attend a conference in Singapore and to return to the Philippines on October 2, 2003.

It turned out that Acting Secretary of Justice Merceditas N. Gutierrez had verbally allowed the departure of Raman. On the same day, Raman, through counsel, wrote Secretary Datumanong for the lifting of the HDO insofar as his client was concerned.[7] Acting Secretary Gutierrez issued an Order[8] allowing Raman to leave the country. In said Order, she stated that the Chief State Prosecutor had indicated that he interposed no objection to the travel of Raman to Singapore.

On October 3, 2003, Baviera filed a Complaint-Affidavit with the Office of the Ombudsman charging Undersecretary Ma. Merceditas N. Gutierrez for violation of Section 3(a), (e), and (j) of Republic Act (RA) No. 3019, as amended.

The complainant alleged, *inter alia,* in his complaint that upon verbal instruction of respondent Gutierrez to the BI agents and NAIA officials, Raman was allowed to leave the country despite the HDO issued by Secretary Simeon Datumanong. He averred that the actuations of respondent Gutierrez were illegal, highly irregular and questionable for the following reasons:

a) DOJ Sec. Datumanong issued a Hold Departure Order (HDO) against three foreign nationals, including Raman, on September 26, 2003;

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[6] *Id.* at 104.

[7] *Id.* at 95-96.

[8] *Id.* at 106-107.

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b) Also on September 26, 2003, BID Commissioner Danilo Cueto issued the necessary order and notification to all airports, seaports and exit points for the implementation of the aforesaid HDO;

c) Raman went to the NAIA for departure out of the Philippines on Sunday, September 28, 2003;

d) Raman was stopped by Immigration officials from leaving the country on Sunday on the strength of the HDO;

e) Usec. Gutierrez admitted having interceded on behalf of the Indian national, thus allowing him to leave the country for Singapore at about 8:15 a.m. of Monday, September 29, 2003;

f) Obviously, the appeal of Raman to be allowed to leave the country was made verbally either by him or thru counsel;

g) There is no written application for temporary stay of the HDO in respect to Raman's departure;

h) There is likewise no written order by Usec. Gutierrez allowing Raman to leave;

i) Usec. Gutierrez claims that she cleared the matter with DOJ Sec. Datumanong who was in Vienna, Austria;

j) If she did so, then she could have made the consultation only either by telephone or e-mail

   i) If she consulted Sec. Datumanong by telephone, then she must have gone out of her way to go to the Department of Justice on a Sunday to use the DOJ telephone;

   ii) If she did not go to the DOJ on a Sunday, then she must have used her own telephone and shouldered the expense to call Sec. Datumanong on behalf of her beloved Indian national or the latter's counsel;

   iii) If she cleared the matter with Sec.Datumanong by e-mail, then the burden is on her to prove that she did so by that means;

k) It is obvious that Usec. Gutierrez went out of her way to accommodate an Indian national or the latter's lawyer on a Sunday (verbally, secretly, and when nobody was looking)

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to allow the Indian national to leave the country — despite an existing HDO- thus giving the Indian national unwarranted, undue preference, benefit and advantage, to the damage and prejudice of complainant.

l) There are indications that Usec. Gutierrez will also allow the other Indian national (Ajay Kanwal) to leave for permanent posting outside the Philippines despite the existing HDO. But that's another story. Surely, another criminal charge.[9]

Baviera further alleged that the verbal special permission granted to Raman by respondent Gutierrez was illegal as there is no specific law or DOJ rule allowing the grant of special permission or exception to an HDO. Worse, the complainant alleged, respondent Gutierrez made her verbal order on a weekend, on the basis of allegedly strong representations made by Raman. Respondent Gutierrez thus displayed arrogance of power and insolence of office, thereby extending unwarranted preference, benefits and advantage to Raman.

In her Counter-Affidavit, respondent Gutierrez denied the allegations against her. She averred that she did not violate any law or rule, in allowing Raman to leave the country. She merely upheld his rights to travel as guaranteed under the Constitution. Moreover, the DOJ may allow persons covered by HDOs to travel abroad, for a specific purpose and for a specific period of time. She further averred that:

11. I allowed Mr. Raman to leave the Philippines on September 29, 2003 in my capacity as Acting Secretary, not as Undersecretary as alleged in the Complaint-Affidavit. An Acting Secretary has the power and authority to perform all official acts that a Department Secretary, if personally present, could lawfully do and to exercise sound discretion under certain circumstances. In the case of an Acting Secretary of Justice, the authority extends to allowing the travel of a person subject of an HDO, like Mr. Raman, whose attendance in an official business abroad was urgent and necessary. Although I could have lifted the HDO on the ground that there was no ground for its continued enforcement, I did not do so in deference to the Secretary who issued it but, instead, allowed Mr. Raman to travel

[9] *Id.* at 65-66.

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for a specific purpose and period. Secretary Datumanong eventually lifted the HDO and, therefore, ratified my act.

12. An individual subject of an HDO issued by the Department may be allowed to travel abroad. Even the court that issued an HDO may authorize the subject person to travel for a specific purpose and for a certain period. If the person already charged in court may be authorized to travel, there is more reason to allow the person, like Mr. Raman, who was still subject of a preliminary investigation by a prosecutor, to travel abroad. He continues to enjoy the constitutional presumption of innocence. Thus, his rights under the law should not be unreasonably curtailed.

13. I allowed Mr. Raman to travel to Singapore because he, as Chief Finance Officer of Standard Chartered Bank (an international bank with good reputation), was invited and required to attend the Wholesale Bank International Accounting Standards Conference from September 29 to October 2, 2003. The travel was not meant to have him transferred to another branch of the bank abroad and frustrate the results of the investigations, which were the cited reasons for the HDO application. Indeed, he returned to the Philippines on October 2, 2003.

14. Allowing Mr. Raman to travel abroad under the circumstances would send a positive message to foreigners engaged in banking and business activities in the Philippines that the Government consistently upholds the rule of law and respects human rights, thereby boosting investors' confidence in the Philippines.

15. In allowing Mr. Raman to travel abroad, I relied on my oath as a lawyer and as a government official to support and defend the Constitution. I also relied on the first Whereas Clause of the above-mentioned Department Circular No. 17 dated March 19, 1998, which cites Section 6, Article III of the present Constitution that, in part, reads: "x x x Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law." Relevantly, in *Kant Kwong v. Presidential Commission on Good Government,* the Supreme Court *En Banc* held:

> x x x. The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Rights to which the Philippines is a signatory. **The right extends to all residents regardless**

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of nationality. And "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law." (Emphasis ours)[10]

Respondent Gutierrez requested the Office of the Ombudsman to dismiss the complaint against her, thus:

(a) There is no basis for the complaint for violation of Section 3(a) of RA No. 3019, as amended, because I never persuaded, induced nor influence any public officer to violate the rules and regulations duly promulgated by competent authority. When I allowed Mr. Raman to travel, I relied on Department Circular No. 17 (1998), particularly the first Whereas Clause thereof, recognizing every person's right to travel, absent the grounds for impairment of the right under the Constitution.

(b) The complaint for violation of Section 3(e) of RA No. 3019 is baseless. The complainant has not sustained any injury by reason of the travel order, as Mr. Raman immediately returned to the Philippines after his official business. I authorized Mr. Raman to travel in recognition of his right thereto under the Constitution and existing international human rights law instruments. In so doing, I did not give him unwarranted benefit, advantage or preference in the discharge of my official functions through manifest partiality, evident bad faith or gross inexcusable negligence. Indeed, had I denied him the right, I would be held liable under such provision, in addition to other liabilities under the Civil Code.

(c) Neither is there any basis for the complaint for violation of Section 3(j) of RA No. 3019, as amended. I permitted Mr. Raman to leave the country on September 29, 2003 because he had an important official business abroad and he was legally entitled to the right to travel and the grounds mentioned in the Constitution for the impairment of the right did not exist.

17. The propriety of the travel authority has become moot and academic with the return of Mr. Raman to the Philippines on October 2, 2003 and the issuance of the Order dated October 17, 2003 by Justice Secretary Datumanong, lifting the HDO on the ground that "there is no ground for the continued enforcement of the HDO."

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[10] *Id.* at 78-79.

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18. I am executing this Counter-Affidavit to attest to the truth of the foregoing facts and to belie the incriminating allegations against me in the Complaint-Affidavit.[11]

In his Reply-Affidavit, Baviera alleged that:

2. Although it is admitted that the Constitution guarantees the right to travel of any individual and the DOJ has wide and discretionary powers in allowing individuals subject of an HDO to travel on certain occasions, still this does not in any way help in her defense. The main issue against her is NOT an individual's constitutional right to travel nor the wide discretionary powers of the DOJ to grant special permits to travel to individuals subject of HDO BUT her abuse of such discretionary powers.

3. When she allowed the Indian National to leave the country on a mere verbal plea by Raman or his well-connected lawyer on a Sunday and without a proper Motion for Reconsideration yet being filed by Raman or his lawyer, she undoubtedly gave the latter unwarranted benefit, advantage or preference in the discharge of her official duty as Acting Secretary. The undisputable fact, which respondent herself admitted proudly, was both plea and the Order were done verbally.

4. It was only much later that her Order dated 29 September 2003 was belatedly released long after Raman had left the country on an early morning flight to Singapore. It is unmistakable then that her decision to allow Raman to travel was verbally transacted with Raman's well-connected lawyer on a Sunday, 28 September 2003 when Raman was supposed to leave for Singapore but was denied by Immigration and NAIA officials due to the standing HDO against him. In short, respondent went out of her way to accommodate a foreign national by hurriedly allowing the latter to leave without going through proper procedures. Paragraph V of DOJ Circular No. 17 provides the following procedure in appealing or lifting an HDO, to wit:

> "A copy of the HDO implemented by the Commissioner shall be sent to the person subject of the order, if his postal address is known, so that he may, if he so desires, file a MOTION FOR RECONSIDERATION with the Secretary. (Underscoring supplied).

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[11] *Id.* at 80.

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5. The Rules cited by respondent herself provide proper procedures and avenues for the lifting, temporary or otherwise, of an HDO. Obviously, by swiftly allowing Raman to leave the country on a mere verbal appeal by his well-connected counsel, respondent disregarded proper procedures and betrayed her intentions of giving special treatment to the Indian national.

6. Respondent tried to justify her indiscretion by attaching as Annex "4" of her Counter-Affidavit a letter from Raman's lawyer dated 29 September 2003 requesting that Raman be allowed to travel. Conspicuously, the letter was stamped received by respondent's office and allegedly signed and received by her staff on Monday, 29 September 2003 at 6:15 a.m. Obviously, respondent is trying to cover up her actions, albeit to no avail. Who could possibly believe that respondent's office would be open at 6:15 in the morning of a Monday when the normal office hours is at 8 a.m.? Worse, assuming *arguendo* that the letter-request was received at 6 a.m., how come Raman was able to board Singapore Airlines Flight No. SQ-71 which left at about 8:15 a.m. or barely two (2) hours upon the receipt of the request?

7. *Res Ipsa Loquitor.* It is either respondent Gutierrez, Secretary Datumanong or the Chief State Prosecutor (whom she claimed to have consulted before giving the order) reports to their offices at 6 a.m. and buckle down to work immediately or that respondent Gutierrez's allegations in her defense are all concocted lies. *"For evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances." (Cosep vs. People, 290 SCRA 378).*

8. The belated documentation of respondent's action was further proven by records showing that the Motion for Reconsideration and the Supplement thereof were dated 5 October and 7 October 2003, respectively, or six (6) days after Raman was allowed by respondent to leave the country.

9. Even absent any evidence of belated documentation, still, respondent cannot deny the fact that she admitted in a hurriedly-called press conference later on 29 September 2003 before the DOJ press that she was the one who verbally gave instructions to immigration and NAIA officials to allow Raman to leave the country. In her own words, she proudly admitted that she based her order on "strong representations" made by Raman's counsel. By such

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admission, respondent unwittingly admitted having violated the provisions of the Anti-Graft and Corrupt Practices Act.

10. By persuading or influencing Immigration Officials to allow Raman to leave the country without any motion for reconsideration or any written motion to that effect as required by DOJ Circular No. 17, respondent committed Section 3 (a) of RA 3019. And further by doing such act, respondent acted with manifest partiality, evident bad faith or gross inexcusable negligence in giving Raman unwarranted benefit, advantage or preference in the discharge of her official function as Acting Secretary of the DOJ in violation of Section 3 (e) of RA 3019.

11. Even her claims that she has not benefited from her actions cannot be made as a defense because the provisions of the Anti-Graft law charged against her do not require as a pre-condition that the public officer receive (sic) any gift, present, or benefit.

12. Her decision to grant special permission to Raman (which she proudly admits) is irregular and illegal because there is no specific law or rules of the DOJ granting special permission or exception to the HDO.[12]

On October 5, 2003, the officers and officials of SCB, including Raman, through counsel, filed a motion for the reconsideration of HDO No. 0193 and filed a Supplemental to the said motion dated October 5, 2003 praying that the HDO be lifted. On October 17, 2003, Justice Secretary Simeon Datumanong issued an Order lifting the HDO and ordered the BI to delete the names of the officials of the bank, including Raman, from its Watchlist.[13]

On June 22, 2004, Graft Investigation and Prosecutor Officer Rolando Zoleta signed a Resolution recommending that the criminal complaint against respondent Gutierrez for violation of RA No. 3019 be dismissed for insufficiency of evidence. Zoleta's findings are as follows:

After a careful evaluation of the facts and pieces of evidence on record, this Office resolves that:

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[12] *Id.* at 118-120.

[13] *Id.* at 108-109.

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a) With respect to the charge of violation of Section 3(a) of Republic Act 3019, there is no evidence, documentary or testimonial, to show that respondent GUTIERREZ has received material remuneration as a consideration for her alleged use of influence on her decision to allow Mr. RAMAN to travel abroad.

It is worthy to note the following Senate deliberations on the aforementioned provision of Republic Act 3019, to wit:

"Senate deliberations (July 13, 1960)

Senator MARCOS. I see. Now, I come to the second most important point. Is it true as charged that this bill does not punish influence peddling which does not result in remuneration, or rather in which remuneration cannot be proved? I refer to Section 3, subsection (a), lines 10 to 13 on page 2 of the bill. It is to be noted that this section reads, as the first corrupt practice or act of a public official:

x x x x x x x x x

Now, suppose the influence that is extended to influence another public official is for the performance of an act that is not a crime like the issuance of license by the Monetary Board (p. 226)

Senator TOLENTINO. I see. (p. 226)

Senator MARCOS. It is claimed and charged by observers that this bill is deliberately watered down in order to save influence peddlers who peddle their influence in the Monetary Board, in the Reparations Commission, in government banks and the like. I would like the author to explain the situation. (p. 226)

Senator TELENTINO (SIC). In the first place, I cannot conceive of an influence peddler who acts gratis. The very term "influence peddler" implies that there is something being sold, that is, the influence. So that when we say influence peddler who does not receive any advantage, that is inconsistency in terms because that would apply to any congressman, for instance, and precisely it was made clear during the debates that if a congressman or senator tries to use influence in the act of another by, let us say, trying to obtain a license for his constituent, if he does not get paid for that he does not use any influence. (p. 226)

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x x x x x x x x x

Senator MARCOS. So, it is admitted by the author that the lending or utilization of influence x x x provided that there is no proof that he has been given material remuneration is not punished by this Act. (pp. 226-227)

Senator TOLENTINO. No, the mere fact of having used one's influence so long as it is not to induce the commission of a criminal act would not be punished if there is no consideration. It would not be graft. (p. 227)

Senator MARCOS. There is no proof of consideration because that is one thing difficult to prove. (p. 227)

Senator TOLENTINO. If you say there is no proof of consideration, as far as the bill is concerned, there is no offense. So, so long as there is no proof of the consideration in the use of the influence, the offense is not committed under the bill because that would not be graft.

Senator MARCOS. But we all admit that it is an immoral act for a public official like the President, the Vice-President, members of the Senate to unduly influence the members of the Monetary Board even without remuneration and say, "You better approve this license, this application of a million dollars of my good friend and compadre Mr. Cheng Cheng Po" or whatever he may be. But he does not receive any reward, payment or remuneration for it. Under the bill, he can get away with this act.

Senator TOLENTINO. If Your Honor considers it in that light, I don't think that would constitute graft and I don't think that would be included.

Senator MARCOS. But it is immoral.

Senator TOLENTINO. It may be so, but it depends on the circumstances. But our idea, the main idea of the bill is to punish graft and corrupt practices. Not every act maybe, that is improper would fall under the provision of the bill. (p. 227)

Henceforth, following the logic and intention of the sponsor (Senator TOLENTINO) of the aforecited provision, respondent GUTIERREZ did not commit a violation of the same as there is no proof that she received consideration in exchange for her decision to allow Mr. Raman to travel abroad.

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b) As to the charge of violation of Section 3(e) of Republic Act 3019, no actual or real damage was suffered by any party, including the government as Mr. Raman immediately returned to the Philippines, the truth of which was not rebutted by the herein complainant in his Reply-Affidavit. Thus, the herein complainant also did not suffer undue injury as an element required by the law. By the same token, the essential ingredient of manifest partiality, evident bad faith or gross inexcusable negligence required for the commission of such offense has not been proven in the instant case. The respondent has satisfactorily explicated that as Acting Secretary of Justice, she has the power and authority to perform such act. In fact, she could have even lifted the Hold Departure Order since there is no ground for its continued enforcement but did not do so in deference to Secretary DATUMANONG who consequently lifted such order. As correctly pointed out by the respondent, it was as if the Secretary ratified her act of allowing Mr. RAMAN to travel abroad despite the Hold Departure Order against the latter and there is no question that she can do or perform such act being the Acting Secretary at that time.

At any rate, it can not be denied that even the court (or the Sandiganbayan in the case of IMELDA MARCOS) that requested or issued a Hold Departure Order on a person already charged in court allows under certain conditions the accused to travel for a specific purpose and for a certain period. There is no reason why Mr. RAMAN, who is just a subject of a preliminary investigation by a prosecutor, should not be granted the same benefit as he continues to enjoy not only the constitutional presumption of innocence but the constitutional right to travel or liberty of abode; and,

c) With regard to the charge of Violation of Section 3(j) of Republic Act 3019, as above discussed, the respondent, as Acting Secretary of Justice, is authorized or empowered not only to allow the travel abroad of Mr. RAMAN under specific conditions but also to order the lifting of such Hold Departure Order. In the same way, respondent GUTIERREZ has not granted any privilege or benefit in favor of any person (or Mr. RAMAN for that matter) not qualified or not legally entitled to such privilege or benefit when she allowed

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the former to travel abroad under specific condition and for certain period of time as Mr. RAMAN still enjoys the constitutionally guaranteed right to travel or liberty of abode even if a preliminary investigation involving him is still pending at the office of the concerned DOJ Prosecutor.[14]

The Assistant Ombudsman recommended that the resolution be approved. The Deputy Ombudsman for the Military, Orlando C. Casimiro, who was authorized by the Ombudsman to act on the recommendation, approved the same.[15]

Baviera received a copy of the Resolution on July 26, 2004 and filed a motion for reconsideration of the resolution on August 2, 2004 (July 31, 2004 was a Saturday).[16] Acting on the motion, Zoleta issued a Resolution on August 10, 2003, recommending its denial for lack of merit. Deputy Ombudsman Orlando Casimiro again approved the recommendation.[17] Baviera received a copy of the resolution on September 14, 2004.

On November 16, 2004, Baviera filed a petition for *certiorari* under Rule 65 of the Rules of Civil Procedure in the CA, assailing the resolutions of the Ombudsman. He relied on the following arguments:

i

THE OFFICE OF THE OMBUDSMAN CLEARLY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT GUTIERREZ CANNOT BE HELD LIABLE UNDER SECTION 3(a) OF RA 3019 ALLEGEDLY BECAUSE THERE WAS NO EVIDENCE, DOCUMENTARY OR TESTIMONIAL, TO SHOW THAT SHE HAS RECEIVED MATERIAL REMUNERATION AS A CONSIDERATION FOR HER USE OF INFLUENCE ON HER DECISION TO ALLOW MR. RAMAN TO TRAVEL ABROAD.

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[14] *Id.* at 141-146.

[15] *Id.* at 147.

[16] *Id.* at 149-163.

[17] *Id.* at 164-167.

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ii

THE OFFICE OF THE OMBUDSMAN CLEARLY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT GUTIERREZ CANNOT BE HELD LIABLE UNDER SECTIONS 3(e) AND 3(j) OF RA 3019 ALLEGEDLY BECAUSE THERE WAS NO ACTUAL OR REAL DAMAGE SUFFERED BY ANY PARTY INCLUDING THE GOVERNMENT AND THAT RESPONDENT DID NOT GRANT ANY PRIVILEGE OR BENEFIT IN FAVOR OF ANY PERSON.

iii

THE OFFICE OF THE OMBUDSMAN CLEARLY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE INSTANT CRIMINAL COMPLAINT FOR VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019) ALLEGEDLY ON THE GROUND OF INSUFFICIENCY OF EVIDENCE.[18]

However, on January 7, 2005, the CA issued a Resolution dismissing the petition on the ground that the proper remedy was to file a petition for *certiorari* with the Supreme Court under Rule 65 of the Rules of Court, conformably with the ruling of this Court in *Enemecio v. Office of the Ombudsman.*[19] Petitioner filed a motion for reconsideration, insisting that his petition for *certiorari* in the CA under Rule 65 was in accordance with the ruling in *Fabian v. Desierto.*[20] He insisted that the Office of the Ombudsman is a quasi-judicial agency of the government, and under *Batas Pambansa Bilang* 129, the CA has concurrent jurisdiction with the Supreme Court over a petition for *certiorari* under Rule 65 of the Rules of Court. He asserted that the filing of his petition for *certiorari* with the CA conformed to the established judicial policy of hierarchy of courts as explained by this Court in *People v. Cuaresma.*[21]

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[18] *Id.* at 179.

[19] G.R. No. 146731, January 13, 2004, 419 SCRA 82, 91.

[20] G.R. No. 129742, September 16, 1998, 295 SCRA 470, 479.

[21] G.R. No. 67787, April 18, 1989, 172 SCRA 415, 424.

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On July 20, 2005, CA issued a Resolution denying the motion, holding that the ruling in *Fabian v. Desierto*[22] is not applicable, as it applies only in appeals from resolutions of the Ombudsman in administrative disciplinary cases. The remedy of the aggrieved party from resolutions of the Ombudsman in criminal cases is to file a petition for *certiorari* in this Court, and not in the CA. The applicable rule is that enunciated in *Enemecio v. Ombudsman,*[23] later reiterated in *Perez v. Office of the Ombudsman*[24] and *Estrada v. Desierto.*[25]

On August 18, 2005, Baviera filed with this Court the instant petition for review on *certiorari* under Rule 45, assailing the CA resolutions on the following grounds:

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN REFUSING TO TAKE COGNIZANCE OF THE INSTANT PETITION FOR *CERTIORARI* DESPITE THE CLEAR RULING OF THE SUPREME COURT IN THE CASE OF *FABIAN VS. DESIERTO, 295 SCRA 470 (SEPTEMBER 16, 1998).*

II.

THE COURT OF APPEALS SERIOUSLY ERRED IN REFUSING TO RESOLVE THE INSTANT PETITION ON THE MERITS AND TO FIND THE OFFICE OF THE OMBUDSMAN TO HAVE GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT GUTIERREZ CAN NOT BE HELD LIABLE UNDER SECTION 3(a) OF RA 3019 ALLEGEDLY BECAUSE THERE WAS NO EVIDENCE, DOCUMENTARY OR TESTIMONIAL, TO SHOW THAT SHE HAS RECEIVED MATERIAL REMUNERATION AS A CONSIDERATION FOR HER USE OF INFLUENCE ON HER DECISION TO ALLOW MR. RAMAN TO TRAVEL.

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[22] *Supra* note 20.

[23] *Supra* note 19.

[24] G.R. No. 131445, May 27, 2004, 429 SCRA 357, 360.

[25] G.R. No. 156160, December 9, 2004, 445 SCRA 655, 665.

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III.

THE COURT OF APPEALS SERIOUSLY ERRED IN REFUSING TO RESOLVE THE INSTANT PETITION ON THE MERITS AND TO FIND THE OFFICE OF THE OMBUDSMAN TO HAVE GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT RESPONDENT GUTIERREZ CANNOT BE HELD LIABLE UNDER SECTIONS 3(e) AND 3(j) OF RA 3019 ALLEGEDLY BECAUSE THERE WAS NO ACTUAL OR REAL DAMAGE SUFFERED BY ANY PARTY INCLUDING THE GOVERNMENT AND THAT RESPONDENT DID NOT GRANT ANY PRIVILEGE OR BENEFIT IN FAVOR OF ANY PERSON.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN REFUSING TO RESOLVE THE INSTANT PETITION ON THE MERITS AND TO FIND THE OFFICE OF THE OMBUDSMAN TO HAVE GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE CRIMINAL COMPLAINT FOR VIOLATION OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019) ALLEGEDLY ON THE GROUND OF INSUFFICIENCY OF EVIDENCE.[26]

Petitioner insists that his petition for *certiorari* in the CA assailing the resolutions of the Ombudsman under Rule 65 of the Rules of Court is proper, in the light of *Fabian v. Desierto.*[27] Under B.P. No. 129, the CA and the Supreme Court have concurrent jurisdiction to issue writs of *certiorari* under from resolutions of the Ombudsman in his investigation of criminal cases.

In her comment on the petition, respondent Gutierrez maintained that instead of filing his petition in the CA, petitioner should have filed his petition for *certiorari* under Rule 65 with this Court alleging grave abuse of discretion amounting to lack of jurisdiction committed by the respondents Office of the Ombudsman officials.

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[26] *Rollo*, pp. 15-16.

[27] *Supra* note 20.

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The other respondents, for their part, insist that the ruling of this Court in *Fabian* applies only to resolutions of the Office of the Ombudsman in administrative cases and not in criminal cases.

The threshold issues in this case are (1) whether the petition for *certiorari* filed by petitioner in the CA was the proper remedy to assail the resolution of the Office of the Ombudsman; and (2) whether respondent officials committed grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing the criminal complaint of petitioner against respondent Acting Secretary of Justice Gutierrez for lack of probable cause.

On the first issue, respondent Gutierrez contends that the proper remedy of petitioner to assail the Resolutions of the Ombudsman finding no probable cause for violation of R.A. No. 3019, Section 3(a), (e) and (j) was to file a petition for *certiorari* with this Court, not with the CA. In 1999, this Court ruled in *Tirol, Jr. v. Del Rosario*[28] that the remedy of the aggrieved party from a resolution of the Office of the Ombudsman finding the presence or absence of probable cause in criminal cases was to file a petition for *certiorari* under Rule 65 **in this Court**. The Court reiterated its ruling in *Kuizon v. Desierto*[29] and *Tirol, Jr. v. Del Rosario.*[30] And on February 22, 2006, in *Pontejos v. Office of the Ombudsman,*[31] the Court ruled that the remedy to challenge the Resolution of the Ombudsman at the conclusion of a preliminary investigation was to file a petition for *certiorari* in this Court under Rule 65.

In *Estrada v. Desierto,*[32] this Court rejected the contention of petitioner therein that petition for *certiorari* under Rule 65 assailing the Order/Resolution of the OMB in criminal cases should be filed in the CA, conformably with the principle of hierarchy of courts. In that case, the Court explained:

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[28] 376 Phil. 115, 121 (1999).

[29] G.R. Nos. 140619-24, March 9, 2001, 354 SCRA 158, 172.

[30] *Supra* note 27.

[31] G.R. Nos. 158613-14, February 22, 2006, 483 SCRA 83, 94.

[32] *Supra* note 24, at 665.

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Petitioner contends that *certiorari* under Rule 65 should first be filed with the Court of Appeals as the doctrine of hierarchy of courts precludes the immediate invocation of this Court's jurisdiction. Unfortunately for petitioner, he is flogging a dead horse as this argument has already been shot down in *Kuizon v. Ombudsman* where we decreed —

> In dismissing petitioners' petition for lack of jurisdiction, the Court of Appeals cited the case of *Fabian vs. Desierto.* The appellate court correctly ruled that its jurisdiction extends only to decisions of the Office of the Ombudsman in administrative cases. In the *Fabian* case, we ruled that appeals from decisions of the Office of the Ombudsman in *administrative disciplinary cases* should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure. It bears stressing that when we declared Section 27 of Republic Act No. 6770 as unconstitutional, we categorically stated that said provision is involved only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. It cannot be taken into account where an original action for *certiorari* under Rule 65 is resorted to as a remedy for judicial review, such as from an incident in a criminal action. In fine, we hold that the present petition should have been filed with this Court.

Kuizon and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of *lack* of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman.*

As this Court had already resolved said issue of jurisdiction in the above-cited cases, it is a salutary and necessary judicial practice to apply the rulings therein to the subject petition. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. Undaunted, petitioner now harps on the validity of Section 14 of Rep. Act No. 6770 claiming it to be unconstitutional. The Court

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of Appeals, it must be recalled, relied quite heavily on Section 14 of Rep. Act No. 6770 in relation to *Fabian v. Desierto* in ruling that it had no jurisdiction to entertain the petition filed thereat.[33]

On the merits of the petition, the Court finds that petitioner failed to establish that the respondent officials committed grave abuse of discretion amounting to excess or lack of jurisdiction. 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 positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[34]

The Court has reviewed the assailed resolutions of the Office of the Ombudsman, and finds that petitioner likewise failed to establish probable cause for violation of Sections 3(a), (e) and (j) of RA No. 3019. Indeed, in the absence of a clear case of abuse of discretion, this Court will not interfere with the exercise of the Ombudsman's discretion, who, based on his own findings and deliberate consideration of the case, either dismisses a complaint or proceeds with it.[35]

WHEREFORE, premises considered, the instant petition is hereby *DENIED* for lack of merit. The assailed Resolutions of the Court of Appeals are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.,* concur.

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[33] *Id.* at 664-666.

[34] *Pontejos v. Office of the Ombudsman, supra* note 30, at 94, citing *Soria v. Desierto,* 450 SCRA 339, 345 (2005) and *Perez v. Office of the Ombudsman, supra* note 24, at 361-362.

[35] *Estrada v. Desierto, supra* note 25, at 673.