

**EDUARDO P. PILAPIL, PETITIONER, VS. SANDIGANBAYAN, FRANCIS E. GARCHITORENA AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.***G.R. No. 101978. April 07, 1993*

Ponente: NOCON, J.

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In this petition for certiorari and mandamus, petitioner seeks to annul the resolutions of respondent Sandiganbayan in Criminal Case No. 16672, entitled "People of the Philippines vs. Eduardo P. Pilapil" dated June 27, 1991 denying his motion to quash the information for Violation of Section 3(e) of Republic Act No. 3019, as amended, as well as the resolution dated September 5, 1991 denying his motion for reconsideration. Petitioner predicated his motion to quash on the ground of lack of jurisdiction over his person because the same was filed without probable cause. In addition thereto, petitioner cites the fact that the information for violation of the Anti-Graft Law was filed although the complaint upon which the preliminary investigation was conducted is for malversation.

The antecedent facts of the case are as follows:

On October 16, 1987, the Philippine Charity Sweepstakes Office (PCSO) donated one ambulance (a Mitsubishi L-300) to the Municipality of Tigaon, Camarines Sur. Petitioner, who is the Congressman of the 3rd District of Camarines Sur, received the ambulance in behalf of the municipality. However, he did not deliver the ambulance to said municipality.

Unaware of the donation, the Sangguniang Bayan of the municipality passed a resolution (Resolution No. 16, Series of 1988) requesting PCSO for an ambulance. Said request was reiterated in their Resolution No. 117, Series of 1988. The mayor of the municipality, Eleanor P. Lelis, thereafter sought the intercession of Sandiganbayan Presiding Justice Francis Garchitorena, who is from the said municipality, regarding said request. Thereafter, Justice Garchitorena contacted the PCSO and learned about the ambulance previously donated by the latter to Tigaon through petitioner. He accordingly informed Mayor Lelis that the municipality's request cannot be favorably acted upon in view of the previous donation.

Mayor Lelis reiterated the municipality's request for an ambulance making reference to the certification of the municipal treasurer that no vehicle from the PCSO or from anyone has been received.

Upon verification of the whereabouts of the Mitsubishi L-300 by the PCSO from the petitioner, the latter indicated his willingness to return the ambulance. In a letter dated December 22, 1988, he requested that said vehicle be donated instead to the Municipality of Tinambac, same province. Finally, on December 26, 1988, he personally returned the ambulance, then already painted to cover the logo of the PCSO and the other markings thereon.

With the return of the Mitsubishi L-300 to the PCSO, the Municipality of Tigaon, through Mayor Lelis, finally

received a brand new Besta Kia Ambulance unit complete with all accessories.

On January 2, 1989, Justice Garchitorena wrote the then Chief Justice Marcelo B. Fernan relating to him the whole story of the ambulance.

On January 25, 1989, Justice Garchitorena also sent Deputy Ombudsman Jose C. Colayco a letter-complaint against petitioner regarding said ambulance. Said letter-complaint was referred by Ombudsman Conrado M. Vasquez to the Deputy Ombudsman for Luzon, Manuel C. Domingo, for appropriate action. Thereupon, Deputy Ombudsman Domingo required Justice Garchitorena to submit all relevant records and documents, as well as his affidavit and those of his witnesses. Failing in this regard, Justice Garchitorena was requested anew to comply. In his stead, Anthony D. Jamora, the Regional manager of the Special Projects Department of the PCSO and Mayor Lelis of Tigaon, Camarines Sur, submitted their respective affidavits.

On October 3, 1990, Deputy Ombudsman Domingo issued an order requiring petitioner to submit his counter-affidavit, affidavits of his witnesses and other controverting evidence. This order was captioned as Case No. OMB-1-89-0168 for "Malversation of Public Property under Article 217 of the Revised Penal Code."

On October 22, 1990, petitioner submitted his counter-affidavit denying the imputation of said offense claiming that the vehicle was not equipped with any medical attachments or facilities so he was constrained to request PAGCOR for assistance to finance its conversion into a medical ambulance which is evidenced by his letter dated November 15, 1987 to Mrs. Alice Reyes. He claimed that it was only on April 28, 1988 that PAGCOR acted on his request, but in lieu of financial assistance, said office donated accessories, which can be installed at an estimated cost of P5,000.00. Thus, he allegedly made personal representations with PAGCOR for the latter to shoulder the expenses of the installation. While awaiting for the financial assistance, petitioner claimed, in explanation why the logo of PCSO and the other markings on the vehicle were removed, that he acceded to the suggestion of his staff to include the name of PAGCOR on the sides of the ambulance in view of the substantial contribution of the latter.

On December 5, 1990, Ombudsman Investigator Isaac D. Tolentino issued a resolution finding no probable cause for malversation and recommended that the case be dismissed, which recommendation was approved by Deputy Ombudsman Domingo.

On January 5, 1991, Assistant Ombudsman Abelardo Aportadera, Jr. recommended the disapproval of the aforesaid resolution and instead, suggested the filing of criminal information for violation of Article 217 of the Revised Penal Code. This was followed by another resolution to the same effect by Special Prosecution Officer Wilfredo Orenacia dated February 14, 1991.

On April 1, 1991, Ombudsman Conrado Vasquez issued a resolution sustaining the finding of Ombudsman Investigator Tolentino that there is no malversation but found in the same resolution, a prima facie case for violation of Section 3(e) of Republic Act No. 3019, the dispositive part of which states:

"WHEREFORE, it is hereby directed that the information to be filed against the respondent should be for a violation of Section 3(e) of R.A. 3019."[1]

On April 3, 1991, an information for violation of Section 3(e) of Republic Act No. 3019, docketed as a Criminal Case No. 16672, against petitioner was filed, to wit:

"The undersigned Special Prosecution Officer III accuses EDUARDO P. PILAPIL of the crime for Violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

‘That on or about October 16, 1987 and subsequent thereto, in the Municipality of Tigaon, Province of Camarines Sur and within the jurisdiction of this Honorable Court, the accused is a public officer, he being the Congressman of the Third Congressional District of Camarines Sur, while in the discharge of his official functions and taking advantage of his public position, acted with manifest partiality and evident bad faith, did then and there willfully cause undue injury to the Municipality of Tigaon, Camarines Sur, when he failed to deliver the ambulance, Mitsubishi Van L-300, received by him on behalf of the said municipality in a Deed of Donation executed by the Philippine Charity Sweepstakes Office in its favor, to the prejudice and damage of the said municipal government.

CONTRARY TO LAW.”[2]

On April 12, 1991, a warrant of arrest was issued against petitioner. On April 18, 1991, he was allowed to deposit the sum of P15,000.00 in court to be considered as bail bond and the warrant of arrest was recalled.

On May 2, 1991, petitioner filed a motion to quash on the ground that respondent Sandiganbayan has no jurisdiction over his person because the information was filed without probable cause since there is absolutely no proof adduced in the preliminary investigation of any of the elements of the crime defined in Section 3(e) of Republic Act No. 3019. On June 27, 1991, respondent court denied the said motion to quash holding that the factual and legal issues and/or questions raised are evidentiary in nature and are matters of defense, the validity of which can be best passed upon after a full-blown trial on the merits. On September 5, 1991, respondent court denied petitioner's motion for reconsideration of the said resolution and set the arraignment of petitioner on October 21, 1991 at 8:30 a.m.

On October 12, 1991, petitioner filed the present petition and by reason of such filing, respondent court ordered that the arraignment be held in abeyance.

Petitioner enumerates the following as his reasons for filing the petition:

“I. THAT RESPONDENT COURT IS ACTING WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION TO QUASH.

II. THAT RESPONDENT COURT IS NEGLECTING A LEGAL DUTY IN NOT QUASHING THE INFORMATION OR DISMISSING THE CASE.

III. THAT PETITIONER HAS NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW EXCEPT THE PRESENT PETITION.”[3]

Stated otherwise, the issue in this case is whether or not the Sandiganbayan committed grave abuse of discretion in denying petitioner's motion to quash and motion for reconsideration.

Petitioner harps on the lack of preliminary investigation on the specific charge of violation of Sec. 3(e), Republic Act No. 3019, as amended, filed before the Sandiganbayan. He alleges that the preliminary investigation was conducted for the charge of malversation.

At the outset, this Court bears mention of the rudimentary rule that the absence of a preliminary investigation is not a ground to quash a complaint or information under Section 3, Rule 117 of the Rules of Court. The proper procedure in case of lack of preliminary investigation is to hold in abeyance the proceedings upon such information and the case remanded to the Office of the Provincial Fiscal or the Ombudsman, for that matter, for him or the Special Prosecutor to conduct a preliminary investigation.[4] Thus, We enunciated in *Sanciangco, Jr. vs. People*,[5] and reiterated in *Doromal vs. Sandiganbayan*,[6] that:

"The absence of preliminary investigation does not affect the court's jurisdiction over the case. Nor do they impair the validity of the information or otherwise render it defective, but, if there were no preliminary

investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, instead of dismissing the Information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted x x x."

Petitioner takes exception to the doctrine and urges this Court to take a second look arguing that lack of preliminary investigation affects the court's jurisdiction because it is violative of due process. He reasons out that jurisprudence abounds with the rule that denial of due process is grave jurisdictional defeat rendering the judgment void.

We are not persuaded. The lack of jurisdiction contemplated in Section 3(b), Rule 117 of the Revised Rules of Court refers to the lack of any law conferring upon the court the power to inquire into the facts, to apply the law and to declare the punishment for an offense in a regular course of judicial proceeding. When the court has jurisdiction, as in this case, any irregularity in the exercise of that power is not a ground for a motion to quash. Reason is not wanting for this view. Lack of jurisdiction is not waivable but absence of preliminary investigation is waivable. In fact, it is frequently waived.

We now come to the question of whether there was no preliminary investigation conducted in this case necessitating the suspension of the proceedings in the case until after the outcome of such preliminary investigation.

The facts on record show that in an order dated October 3, 1990, Deputy Ombudsman Domingo required petitioner to answer the charges against him as stated in the affidavits-complaints and supporting documents thereto. Petitioner fully complied with said order and filed his and his witnesses' affidavits. In other words, petitioner was properly apprised of the act complained of and given ample opportunity to rebut the same. Thus, petitioner could not validly raise violation of his right to due process because the bases for the information filed by the Ombudsman were all reflected in the complaint and the evidence supporting it. In *Cinco vs. Sandiganbayan*,<sup>[7]</sup> this Court held that preliminary investigation is nothing more than submission of the parties' respective affidavits, counter-affidavits and evidence to buttress their separate allegations.

Petitioner attaches significance to the fact that the preliminary investigation conducted by the Ombudsman against him was under the title of "malversation." According to him, this is not sufficient to justify the filing of the charge of violation of Anti-Graft and Corrupt Practices Law.

Petitioner loses sight of the fact that preliminary investigation is merely inquisitorial, and it is often the only means of discovering whether a person may be reasonably charged with a crime, to enable the prosecutor to prepare his complaint or information. The preliminary designation of the offense in the directive to file a counter-affidavit and affidavits of one's witnesses is not conclusive. Such designation is only a conclusion of law of Deputy Ombudsman Domingo. The Ombudsman is not bound by the said qualification of the crime. Rather, he is guided by the evidence presented in the course of a preliminary investigation and on the basis of which, he may formulate and designate the offense and direct the filing of the corresponding information. In fact, even the designation of the offense by the prosecutor in the information itself has been held inconclusive, to wit:

"x x x the real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information. x x x it is not the technical name given by the Fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the Information."<sup>[8]</sup>

Petitioner cites the case of *Luciano vs. Mariano*,<sup>[9]</sup> in support of its view that a new preliminary investigation is needed. In said case, however, the original charge for falsification was dismissed for being without any factual or

legal basis and the category of the offense was raised as the alleged violation of the Anti-Graft Law was a graver charge. In the case at bar, there is no dismissal to speak of because under the rules of procedure of the office of the Ombudsman, a complaint may be dismissed only upon the written authority or approval of the Ombudsman. Besides, even the petitioner admits that the violation of the Anti-Graft law did not raise the category of the offense of malversation.

The case of *Doromal vs. Sandiganbayan*,<sup>[10]</sup> also cited by petitioner as another authority, is likewise inapplicable as in said case, the information was annulled as the then incumbent Tanodbayan was without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders of the Ombudsman. With the annulment of the information, this Court held that a new preliminary investigation of the charge was in order not only because the first was a nullity but also because the accused demands it as his right. In the case at bar, there is no old or new information. Only one information was filed as a result of the preliminary investigation conducted by the office of the Ombudsman.

Even on the assumption that no preliminary investigation was conducted for the information filed, petitioner waived his right thereto for failure to ask the Sandiganbayan or the Ombudsman for a new preliminary investigation. On this score again, petitioner's case is different from the *Luciano* and *Doromal* cases where the attention of the lower court was called to the lack of a new preliminary investigation. Petitioner bewailed the absence of a new preliminary investigation only before this Court. It is noteworthy that his only basis for quashing the information is the alleged lack of jurisdiction of the court over his person because there is no probable cause for the filing of the information.

It is well-settled that the right to a preliminary investigation is not a fundamental right and may be waived expressly or by silence.<sup>[11]</sup> Failure of accused to invoke his right to a preliminary investigation constituted a waiver of such right and any irregularity that attended it.<sup>[12]</sup> The right may be forfeited by inaction and can no longer be invoked for the first time at the appellate level.<sup>[13]</sup>

Petitioner's argument that he could not have asked for a new preliminary investigation in the Office of the Ombudsman since he came to know about the charge only after the information was filed in the Sandiganbayan, is not tenable. Under the last paragraph of Section 7, Rule 112 of 1985 Rules on Criminal Procedure, the right to ask for preliminary investigation is recognized even after the case has already been filed, to wit:

"If the case has been filed in court without a preliminary Investigation having been first conducted, the accused may within five (5) days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence to his favor in the manner prescribed in this Rule."

Clearly, the alleged lack of a valid preliminary investigation came only as an afterthought to gain a reversal of the denial of the motion to quash. Sad to say, this last ditch effort came a bit late. His failure to invoke this right below constituted a waiver of such right.

As aforesaid, what was submitted for consideration below was the motion to quash of petitioner on the ground of want of jurisdiction by the trial court over his person because of the filing of an information without probable cause. There being no probable cause, according to petitioner, then there could be no basis to issue a warrant of arrest and hence, the respondent court had no jurisdiction over his person.

Contesting the findings of respondent court that probable cause exists in this case, petitioner insists that there is no competent proof that all the elements of Section 3(e) of the Anti-Graft law are present, namely: that an act was done (1) causing undue injury to the government, (2) with manifest partiality or evident bad faith, and (3) by a public officer in the discharge of his official duties.

Petitioner argues that the injury contemplated under the law is real or actual damage and since there is absolutely no proof of real or actual damages suffered by the municipality, the finding of undue injury by the Ombudsman has no factual basis. Concomitantly, he says that since there is no undue injury, then, there can be no bad faith, as bad faith is inseparable from undue injury for undue injury must be through bad faith. He claims that failure to inform the mayor of the donation, that he returned the vehicle after one year; that he kept the vehicle in storage; and that he caused the repainting to erase the words PCSO are not evidence of bad faith since they cannot manifest a deliberate intent to do wrong or cause damage.

Finally, petitioner claims that the element of “public office in the discharge of official duties” is also absent as his acceptance of the vehicle in question from PCSO and its non-delivery to the municipality of Tigaon was not done in the discharge of his duty as a congressman tasked with enacting laws. If at all, he admits, the act was done in his private capacity as political leader in his district.

We agree with respondent court that the presence or absence of the elements of the crime are evidentiary in nature and are matters of defense, the truth of which can best be passed upon after a full-blown trial on the merits.

Probable cause has been defined in the leading case of *Buchanan vs. Vda. de Esteban*[14] as 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 was prosecuted.

Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.[15] The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Whether an act was done causing undue injury to the government and whether the same was done with manifest partiality or evident bad faith can only be made out by proper and sufficient testimony. Necessarily, a conclusion can be arrived at when the case has already proceeded on sufficient proof.

At the moment, in passing on a motion to set aside an information on the ground that the accused has been charged without probable cause, the court should not be guided by the rule that accused must be shown to be guilty beyond a reasonable doubt, but rather whether there is sufficient evidence which inclines the mind to believe, without necessarily leaving room for doubt, that accused is guilty thereof.

Having thus found that respondent court has not acted in excess of jurisdiction nor with grave abuse of discretion in finding the existence of probable cause in the case at bar and consequently, in denying the motion to quash and motion for reconsideration, of petitioner, We dismiss as clearly unfounded the insinuations of petitioner that Presiding Justice Francis Garchitorena used the influence of his office in initiating the complaint against him. We agree with respondent court that the act of bringing to the attention of appropriate officials possible transgression of the law is as much an obligation of the highest official of the land as it is the responsibility of any private citizen.

WHEREFORE, the instant petition for certiorari and mandamus is hereby DISMISSED for lack of merit.

**SO ORDERED.**

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.

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[1] Rollo, p. 82.

[2] Ibid, p. 83.

[3] Ibid, p. 6.

[4] People vs. Casiano, G.R. No. L-15309, 1 SCRA 478 (1961); Luciano vs. Mariano, G.R. No. L-32950, July 30, 1971, 40 SCRA 187 (1971); Ilagan vs. Enrile, G.R. No. 70748, 139 SCRA 349 (1985); Paredes vs. Sandiganbayan, G.R. No. 89989, 193 SCRA 464 (1991); Paderanga vs. Drilon, G.R. No. 96080, 196 SCRA 86 (1991); and People vs. Umbrero, G.R. No. 93021, May 20, 1991.

[5] G.R. No. 72830, 149 SCRA 1 (1987).

[6] G.R. No. 85468, 177 SCRA 354 (1989).

[7] G.R. Nos. 92362-67, 202 SCRA 727 (1991).

[8] People vs. Mendoza, G.R. No. 67610, 175 SCRA 743 (1989).

[9] G.R. No. L-32950, 40 SCRA 187 (1971).

[10] G.R. No. 85468, 177 SCRA 354 (1989).

[11] People vs. Mabuyo, 63 Phil. 532 (1936).

[12] People vs. Umbrero, *supra*.

[13] People vs. Lazo, G.R. No. 75367, 198 SCRA 274 (1991); People vs. Maghanoy, G.R. No. 67170, 180 SCRA 111 (1989).

[14] 32 Phil. 365.

[15] Words and Phrases, Probable Cause, v. 34, p. 12.

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