

BENJAMIN (KOKOY) ROMUALDEZ, PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION) AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), RESPONDENTS.

G.R. No. 105248. May 16, 1995

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Petitioner Benjamin Romualdez began his career in the government service spanning more than two decades as a technical consultant in the Department of Foreign Affairs. At the time of the institution of the proceeding at bench in 1989, he was holding at least two (2) offices simultaneously: that of Philippine ambassador to the United States of America and of governor of his home province of Leyte.

The proceeding concerns the mandatory duty imposed on every person in the government service by Section 7 of the Anti-Graft and Corrupt Practices Act,[1] i.e., the annual filing of statements of assets and liabilities. Upon the theory that Romualdez had failed to comply with said requirement for twenty-four (24) years, i.e., from 1962 to 1985, and after conducting a preliminary investigation[2] and finding *prima facie* that there had indeed been such culpable omissions, the Presidential Commission on Good Government (PCGG) filed on February 22, 1989 twenty-four (24) identically worded informations against Romualdez for transgression of said Section 7 of the Anti-Graft and Corrupt Practices Act -- differing in text only as to the years corresponding to the violation, and as regards the nature of Romualdez's public office in a given year, whether that of Foreign Affairs officer or Provincial Governor of Leyte. The essential accusation against him was that as a public official, and during the years specified, he did "wilfully and unlawfully neglect or refuse or fail, without any justifiable cause, to execute and file with the Department of Local Government, or with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year as provided by law." The informations were docketed as Criminal Cases Nos. 13406 to 13429 and raffled to the First Division of the Sandiganbayan.

In due course, the Sandiganbayan issued warrants for the arrest of Romualdez; but these could not be executed since the latter was out of the country. On October 21, 1991, Romualdez filed, through counsel, a "Motion to Recall Warrants of Arrest." He prayed that the informations against him be nullified, no valid preliminary investigation having been conducted as predicate for said indictments.[3] Citing *Cojuangco, Jr. v. PCGG*,[4] he argued that the power of the PCGG to conduct preliminary investigations is limited to cases involving ill-gotten wealth only, investigation of all others involving government officials being within the competence of the Ombudsman and other duly authorized investigating agencies.[5]

That motion was shortly followed by another, dated November 3, 1991, entitled "Urgent Ex-Parte Motion to Hold in Abeyance Implementation of Warrants of Arrest and/or to Recall the Same." [6] In this motion, Romualdez informed the Sandiganbayan that he intended "to come to Manila to be in the company of his widowed sister, the

former First Lady," but expressed fear that he would be arrested upon arrival at the airport; and that to avoid that possibility, petitioner proposed to post "a cash deposit ** equivalent to the recommended bail bonds in these cases," to assure his voluntary surrender to the jurisdiction of the court and serve as cash bond for his provisional liberty should his first motion (for recall of warrants of arrest) be denied. He was careful to point out that his motion was without prejudice to his contention, earlier expressed, "that the informations ** (are) null and void as well as the preliminary investigation conducted by the PCGG upon which these informations were based."

The Sandiganbayan promulgated a resolution dated November 4, 1991 granting this second motion upon the following specific conditions, viz.:

"(1)

That the cash deposit equivalent to the aggregate amount of the bond shall serve as a provisional cash bond for the accused's temporary liberty upon his personal appearance to the court;

(2)

That the cash deposit shall be made within five (5) days from receipt hereof by movant's counsel, said act of deposit representing the conformity of the accused to the conditions hereof;

(3)

That the accused himself shall arrive in the Philippines within thirty (30) days from counsel's receipt hereof;

(4)

That accused shall personally present himself to this Court on the next succeeding working day after his arrival for completion of the bail process.

Should the accused not comply with conditions No. 3 and No. 4 above, then the aforesaid cash deposit herein considered as provisional cash bond shall be deemed automatically forfeited in favor of the government."

On November 7, 1991, and pursuant to this resolution of November 4, 1991, petitioner posted the "cash deposit/provisional cash bond" in the prescribed amount.[7]

About a week later, however, or on November 15, 1991, Romualdez filed an "Urgent Ex-Parte Motion for Partial Reconsideration," praying that the resolution of November 4, 1991 be partially modified as regards condition No. 3, "because accused may not be able to arrive within the thirty-day period ** (on account of) important family matters ** which would need his personal attention." [8] He gave the assurance, however, that he "will faithfully comply with the other conditions referred to in the Resolution dated November 4, 1991, especially that which requires him to personally present himself at the next working day after his arrival before this Honorable Court." [9] On December 16, 1991 Romualdez filed another motion, again seeking modification of the period fixed for his return. [10] In two resolutions, the Sandiganbayan granted Romualdez an additional extension of sixty (60) days, or until February 5, 1992, to present himself before it. [11]

Once more petitioner sought a change in the period set for his return, through a "Second Manifestation and Motion" dated January 17, 1992, this time pleading that no definite period be fixed but reiterating his willingness to comply with the other conditions set forth in the Resolution of November 4, 1991. [12] The PCGG objected, in a "Counter-Manifestation and Motion to Confiscate Cash Bond" filed by Cesario L. del Rosario, 2nd Assistant City Prosecutor of Manila, acting as "PCGG Investigating Prosecutor and Deputized Special Attorney, Office of the Solicitor General." [13]

Prosecutor del Rosario alleged inter alia that the Cojuangco ruling was inapplicable, the juridical situation therein

being different from that in the Romualdez cases; that it was in fact he (del Rosario) who had "conducted the preliminary investigation of I.S. No. 12, under which the instant criminal cases were filed;"[14] that the "provisions of Rule 112 of the 1985 Rules on Criminal Procedure were followed;" that his "resolution was reviewed by a review committee and thereafter, it was submitted for the consideration of the Commission en banc which eventually approved the recommendation that appropriate informations be filed in the Sandiganbayan."

By Resolution dated February 5, 1992, the Sandiganbayan conceded to Romualdez "an inextendible period of 30 days from February 24, 1992 within which to return to the Philippines and present himself for bail proceedings, under the terms and conditions in the Resolution" of November 4, 1991.[15]

At about this time, too, the Sandiganbayan acted on Romualdez's aforesaid Motion to Recall Warrants of Arrest.[16] It denied the motion by Resolution dated January 29, 1992.[17] It declared the Cojuangco ruling inapplicable, pointing out that the rationale therefor was the PCGG's inability to conduct the preliminary investigation of the criminal complaints therein involved "with the 'cold neutrality of an impartial judge,'" in view of its demonstrated pre-judgment of the cases in question, shown by its having earlier filed, after gathering evidence, a civil complaint "alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints," and of its having also earlier issued sequestration and freeze orders on substantially the same basis: that the properties and assets were "ill-gotten and/or acquired in relation to the illegal disposition of coconut levy funds." It postulated that the case of Romualdez was different, for as to it no such pre-judgment existed. The Romualdez cases did not refer to acquisition of wealth under a crony status, but "solely ** (to) his bare physical non-compliance with his mechanical duty to file his statement of assets and liabilities over a period of twenty-four (24) years **;" and the omissions have no bearing on Civil Case No. 0035 against Romualdez involving transactions in which he "allegedly took advantage of his relationship with the spouses Ferdinand and Imelda Marcos."

Romualdez moved for reconsideration under date of February 11, 1992.[18] An opposition thereto was filed on February 28, 1992 by the PCGG.[19] A reply was presented by Romualdez,[20] in which he also asked for the deletion of the condition relative to the forfeiture of his cash deposit.[21] A rejoinder to the reply was then submitted by the PCGG.[22] By Resolution dated April 24, 1992, the Sandiganbayan denied Romualdez's motion for reconsideration for lack of merit, and ordered the confiscation and forfeiture of his cash bond "in the total amount of P360,000.00 in all the 24 cases." [23]

It is these Resolutions of the Sandiganbayan denying his motions (1) to recall the warrants of arrest against him, (2) to make indefinite the period of his return to this country, and (3) to set aside the confiscation of his cash bond, that Romualdez would have this Court nullify through the petition at bar, filed with this Court on May 22, 1992.

The Court will deal first with a procedural aberration, patent on the record. Romualdez's petition is, as described by his own counsel, one "filed in accordance with Section 1 of Rule 45 of the Rules of Court ** ." It is a petition for review on certiorari, a mode of appeal limited to questions of law. This is clear error in the choice of remedy. It is elementary that Rule 45 governs appeals from judgments or final orders. The resolutions or rulings of the Sandiganbayan sought to be reviewed and set aside are not in any sense judgments or final orders; they are interlocutory resolutions from which no appeal lies. They are determinations of mere incidental matters, not touching on the merits of the cases; they do not put an end to the proceedings for obviously, much more is left to be done by the Sandiganbayan by way of resolving the cases on their merits.[24] On this ground, the petition may be dismissed.

The Court will nonetheless deal with the merits of the case to remove the possibility of any misunderstanding as to the course which it wishes petitioner's cases in the Sandiganbayan to take. After all, the petition contains

averments and arguments that the PCGG and the Sandiganbayan have acted "without jurisdiction and/or with grave abuse of discretion:" the former in conducting a preliminary investigation of cases not within its competence; and the latter, in taking cognizance of the cases thereafter filed by the PCGG, issuing warrants of arrest, fixing bail, and confiscating petitioner's cash bond, despite the absence of a valid preliminary investigation. These averments are, of course, proper in an initiatory petition for the special action of certiorari under Rule 65 of the Rules of Court, which is really the appropriate remedy for review of interlocutory orders such as those here involved.

Now, to the merits. As just intimated, the petition seeks to make the following points:

(a) That the PCGG had no authority to conduct the preliminary investigation of the charges against Romualdez of violations of Section 7 of the Anti-Graft and Corrupt Practices Act, conformably with *Cojuangco v. PCGG*, 190 SCRA 226, and *Cruz v. Sandiganbayan*, 194 SCRA 474; hence the investigation conducted through its authorized deputy, Fiscal Cesareo del Rosario, was invalid because beyond its jurisdiction;[25] and

(b) as a necessary consequence, the Sandiganbayan "acted without jurisdiction and/or with grave abuse of discretion ** in taking cognizance of the twenty-four cases ** filed by PCGG against petitioner based on ** (such) preliminary investigation," it appearing on "the face of the informations themselves ** that the party filing the information does not have the authority to file the same." [26]

Additionally, the petition contends that the Sandiganbayan erred or acted capriciously and whimsically : (a) "in ruling that the issue of the validity of the informations against petitioner cannot be entertained unless the latter had physically submitted himself to respondent court;" and (b) "in ordering the confiscation of the cash deposit ** ."

The Office of the Solicitor General, in its comment dated November 6, 1992, maintains that the petition should be dismissed upon the following premises:

1. Without "physically submitting himself to ** (the Sandiganbayan's) jurisdiction," petitioner has no personality to "raise any alleged defect in the preliminary and judicial proceedings." Prescinding therefrom, absence of or defects in, a preliminary investigation have no effect on the jurisdiction of the courts.[27]
2. The PCGG has authority to conduct preliminary investigations in ill-gotten wealth cases,[28] including the "non-filing of statements of assets and liabilities ** (as) a means of concealing one's assets and frustrating the efforts of the Government to determine the actual value or extent of a public officer's wealth." [29]
3. The posting of the cash deposit was an acceptance of the conditions set out in the Resolution of November 4, 1991, and estops petitioner "from assailing any of them."

Undoubtedly, the PCGG has the power, under Section 2(a) of Executive Order No. 1, to investigate and prosecute "offenses committed in the acquisition of ** ill-gotten wealth" amassed before or after February 25, 1986.[30] It does not seem, however, that this power extends to other acts or omissions not involving "ill-gotten wealth" penalized by the Anti-Graft and Corrupt Practices Act. So did this Court hold in *Cruz v. Sandiganbayan*,[31] viz.:

"A close reading of Sections 2(a) and 3, of Executive Order No. 1, in relation (to) Sections 1, 2, and 3 of Executive Order 14, show that what the authority of the respondent PCGG to investigate and prosecute covers are:

(a) The investigation and prosecution of the civil action for the recovery of ill-gotten wealth under Republic Act No. 1379, accumulated by former President Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through his nominees, by taking undue advantage of their public office and/or using their powers, authority and influence, connections or

relationship; and

(b) The investigation and prosecution of such offenses committed in the acquisition of said ill-gotten wealth as contemplated under Section 2(a) of Executive Order No. 1.

"However, other violations of the Anti-Graft and Corrupt Practices Act not otherwise falling under the foregoing categories, require a previous authority of the President for the respondent PCGG to investigate and prosecute in accordance with Section 2 (b) of Executive Order No. 1. Otherwise, jurisdiction over such cases is vested in the Ombudsman and other duly authorized investigating /agencies * *.

"Thus for a penal violation to fall under the jurisdiction of the respondent PCGG under Section 2(a) of Executive Order No. 1, the following elements must concur:

(1)

It must relate to alleged ill-gotten wealth;

(2)

Of the late President Marcos, his immediate family, relatives, subordinates and close associates;

(3)

Who took undue advantage of their public office and/or used their power, authority, influence, connections or relationship."

Now, the crimes ascribed to Romualdez (failure to file his annual statements of assets and liabilities) do not "relate to alleged ill-gotten wealth" amassed by him. No such relation may be perceived in the indictments themselves, which in fact merely state that there was no justifiable cause for Romualdez's refusal or failure to file his annual statements. Moreover, the Sandiganbayan itself made the finding that the cases against Romualdez did not refer to acquisition of wealth under a crony status, but "solely ** (to) his bare physical non-compliance with his mechanical duty to file his statement of assets and liabilities over a period of twenty-four (24) years **;" and that the omissions have no bearing on Civil Case No. 0035 against Romualdez involving transactions in which he "allegedly took advantage of his relationship with the spouses Ferdinand and Imelda Marcos." These considerations also call for rejection of the Solicitor General's theory that Romualdez's "non-filing of statements of assets and liabilities ** (was) a means of concealing ** (his) assets and frustrating the efforts of the Government to determine the actual value or extent of ** (his) wealth." [32]

The Court therefore declares invalid the preliminary investigation conducted by the PCGG over the 24 offenses ascribed to Romualdez (of failure to file annual statements of assets and liabilities), for lack of jurisdiction of said offenses.

To be sure, the right to a preliminary investigation or to object to attendant defects, may be waived. No such waiver, express or implied, may however be discerned in petitioner's conduct in this case. His filing of motions to recall the warrants of arrest, and to post bond, could not be deemed a waiver of his objections to the preliminary investigation since, as above stated, in said motions he was careful to stress that they were without prejudice to his explicit objection "that the informations ** (are) null and void as well as the preliminary investigation conducted by the PCGG upon which these informations were based." [33] So did this Court rule, for instance, in the fairly recent case of *Go v. Court of Appeals*. [34]

"We believe and so hold that petitioner did not waive his right to a preliminary investigation. While that right is statutory rather than constitutional in its fundament, since it has in fact been established by statute, it is a

component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. ** To deny petitioner's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.

*** "The rule is that the right to a preliminary investigation is waived when the accused fails to invoke it before or at the time of entering a plea at arraignment. In the instant case, petitioner Go had vigorously insisted on his right to preliminary investigation before his arraignment. * * *

"Again, in the circumstances of this case, we do not believe that by posting bail, petitioner had waived his right to preliminary investigation. In *People v. Selfaison*, we did hold that the appellants there had waived their right to preliminary investigation because immediately after their arrest, they filed bail and proceeded to trial 'without previously claiming that they did not have the benefit of a preliminary investigation.' In the instant case, petitioner Go asked for release on recognizance or on bail and for preliminary investigation in one omnibus motion. He had thus claimed his right to preliminary investigation before respondent Judge approved the cash bond posted by petitioner * *. Accordingly, we cannot reasonably imply waiver of preliminary investigation on the part of petitioner. ** (citations omitted)."

The invalidity or absence of a preliminary investigation does not however affect the jurisdiction of the Trial Court which may have taken cognizance of the information. The controlling principles are set out by a well known authority now sitting in the Court, in his work entitled "Remedial Law Compendium,[35] as follows:

" *. Any objection to lack of preliminary investigation must be made before entry of the plea (*People vs. Monteverde*, G.R. No. 60962, July 11, 1986) and the court, instead of dismissing the information, must remand the case for preliminary investigation (*People vs. Casiano*, L-15309, Feb. 16, 1961; *People vs. Figueroa*, L-24273, April 30, 1960; *Zacarias vs. Cruz*, L--25899, Nov. 29, 1969; *People vs. Abejuela*, L-29715, Mar. 31, 1971; *Sanciangco, et al. vs. People*, G.R. No. 12830, Mar. 24, 1987). The refusal of the court to remand the case for preliminary investigation can be controlled by certiorari and prohibition to prevent trial (*Bandiala vs. CFI*, L-24652, Sept. 30, 1970). **."

As regards proceedings in the Sandiganbayan, particularly, another author[36] observes that

"Since absence of preliminary investigation is not a ground to quash the complaint or information (Sec. 3, Rule 117, Rules of Court), proceedings upon such information in the Sandiganbayan should be held in abeyance and the case remanded to the Ombudsman, for him or the Special Prosecutor to conduct a preliminary investigation (*Luciano vs. Mariano*, 40 SCRA 187, 201; *Ilagan vs. Enrile*, 139 SCRA 349; *Sanciangco, Jr. vs. People*, 149 SCRA 1, 3-4).

The principle was applied despite the fact that trial on the merits had begun and the prosecution had already presented four witnesses. The trial was ordered suspended pending the preliminary investigation (*Go vs. Court of Appeals*, G.R. No. 101837, February 11, 1992)."

Considering that the invalidity of the preliminary investigation "did not impair the validity of the informations or otherwise render it defective, ** (m)uch less did it affect the jurisdiction of the Court **," the only effect, to repeat, being the imposition on the latter of the obligation to suspend the proceedings and require the holding of a proper preliminary investigation,"[37] it follows that all acts done by the Court prior thereto must be accorded validity and effect, subject to the outcome of the preliminary investigation yet to be conducted. The dispositions thus made by respondent Sandiganbayan, i.e., its refusal to recall and quash the warrants of arrest or to modify the conditions laid down by it for petitioner's cash bond; and its confiscation of the cash deposit of petitioner for violation by the latter of the conditions thereof, cannot be regarded as having been made without or in excess of jurisdiction, or so whimsical, capricious or oppressive or so utterly without foundation as to amount to grave abuse of discretion.

WHEREFORE, the petition is DENIED and the challenged Resolutions of January 24, 1992 and April 24, 1992 are AFFIRMED; but the respondent Sandiganbayan is DIRECTED to order the Office of the Ombudsman to forthwith conduct a proper preliminary investigation of the charges embodied in the informations filed against petitioner; to suspend the proceedings pending termination thereof; and thereafter to take such action on petitioner's cases as may be warranted by the results of said preliminary investigation.

IT IS SO ORDERED.

Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, and Mendoza, JJ., concur.
Quiason and Francisco, JJ., on leave.
Kapunan, J., no part.

[1] R. A. 3019, approved on August 17, 1960.

[2] Through Cesario L. del Rosario, 2nd Assistant City Prosecutor of Manila, acting as "PCGG Investigating Prosecutor and Deputized Special Attorney, Office of the Solicitor General;" SEE footnotes 13 and 14, *infra*.

[3] Annex "G" of Petition, Rollo at p. 117.

[4] 190 SCRA 226.

[5] Annex "G" of Petition, Rollo at 118-9.

[6] Annex "H" of Petition, Rollo at p. 122.

[7] See Official Receipt No. 4292995 of Sandiganbayan in the amount of P360,000.00, representing P 15,000.00 for each case, Annex "I" of Petition, Rollo at pp. 125, 235.

[8] Annex "J" of Petition, Rollo at p. 126, *et seq.*

[9] Rollo, p. 128

[10] Annex "L" of Petition, Rollo at 131.

[11] SEE Resolutions of December 3, 1991 and January 2, 1992, Annex "K" and "M," respectively, of Petition, Rollo at pp. 130 and 135.

[12] Labeled as Annex "N" of Petition, a copy of which, however, was not appended to the original Petition in the Rollo.

[13] Dated January 27, 1992, Annex "O" Petition, Rollo, p. 136; SEE footnote 2, *supra*.

[14] The certification in each of the 24 informations -- to the effect that a preliminary investigation was conducted in accordance with law; that the accused was informed of the complaint and the evidence submitted against him; that on the basis of the sworn statements and other evidence submitted, there is reasonable ground to believe that a violation of R.A. 3019, as amended, has been committed and that the accused is probably guilty thereof -- is signed for the PCGG by Officer-in-Charge Augusto E. Villarin.

[15] Annex "P" of Petition, Rollo at p. 153.

[16] SEE footnotes 2-4 and related text, *supra*.

[17] Annex "A" of Petition, Rollo at pp. 48 *et seq.*

[18] Rollo, pp. 60-64

[19] Annex "Q" of Petition, Rollo at p. 154.

[20] Filed on February 12, 1992; Annex "D" of Petition, Rollo at p. 60.

[21] Filed on March 13, 1992; Annex "R" of Petition, Rollo at p. 165.

[22] Annex "S" of Petition, Rollo at p. 181.

[23] Rollo, p. 16

[24] SEE Denso (Phils.) Inc. v. IAC, 148 SCRA 280(1987); Dizon v. Court of Appeals, 210 SCRA 107 (1992); Peo. v. Court of Appeals.

[25] Rollo, pp. 19-29

[26] Rollo, pp. 30-32

[27] Invoking Peo. v. Umbrero, 196 SCRA 821; Paderanga v. Drilon, 196 SCRA 86; Peo. v. Lazo, 198 SCRA 274.

[28] Citing Panlilio v. Sandiganbayan, G.R. No. 92276, June 26, 1992.

[29] Rollo, pp. 241 et seq., with invocation of Ex. Orders Nos. 2 and 11

[30] The date refers, of course, to the time when the 1987 Constitution went into effect; SEE Cojuangco, supra at note 19 and Zaldivar v. Sandiganbayan, 160 SCRA 843.

[31] G.R. No. 94595, February 26, 1991, 194 SCRA 474; italics and emphasis supplied.

[32] Rollo, pp. 241 et seq., with invocation of Ex. Orders Nos. 2 and 11.

[33] SEE footnote 6 and related text, supra.

[34] G.R. No. 101837, 206 SCRA 138, February 11, 1992; see also related cases cited in connection with the reproduced text.

[35] Regalado, Remedial Law Compendium, 6th Rev. Ed., Vol. 2, 246-247; SEE also Francisco. R.J., Criminal Procedure, 1993 ed., p. 162-163; Moran, Comments on the Rules of Court, 1980 ed., Vol. 4, 111, 113; SEE, too, Torralba v. Sandiganbayan, 230 SCRA 34; Go v. Court of Appeals, 206 SCRA 138; Doromal v. Sandiganbayan, 177 SCRA 354; Paderanga v. Drilon, 196 SCRA 86, 92 (1991); Peo. v. Escobar, 157 SCRA 541, 565 (1988)

[36] Herrera. O., Remedial Law, 1992 ed., Vol. IV, pp. 168-169; SEE also, Jacinto. G., Commentaries & Jurisprudence on the Revised Rules of Court (Criminal Procedure), 1994 ed., p. 148:

[37] Peo. v. Escobar, 157 SCRA 541, 565 (1988), citing People vs. Casiano, 1 SCRA 478 (1961)

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