

GREGORIO MA. ARANETA III, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (SECOND DIVISION) AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), RESPONDENTS.

G.R. No. 106718. March 20, 1995

Ponente: VITUG, J.

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VITUG, J.:

The principal issue posed in this petition is whether or not respondent Presidential Commission on Good Government ("PCGG") has the authority to conduct preliminary investigation specifically over the acts complained of by the Philippine National Bank ("PNB"), the National Investment and Development Corporation ("NIDC") and the Pantranco North Express, Inc. ("PNEI"), i.e., the sale of PNEI assets to North Express Transport, Inc. ("NETI"), and to file the corresponding information for violation of Republic Act ("R.A.") No. 3019, also known as the Anti-Graft and Corrupt Practices Act, against herein petitioner. The Sandiganbayan has held that the PCGG is sufficiently clothed with such authority. Maintaining the contrary, Gregorio Araneta III has lodged this petition for certiorari and prohibition, with a prayer for temporary restraining order, to set aside (a) the 11th June 1992 Resolution of the Sandiganbayan denying his omnibus motion to quash the amended information against him or to refer the case to the Ombudsman for re-investigation or preliminary investigation and (b) the 14th August 1992 Resolution rejecting a subsequent motion for reconsideration.

The antecedents of the case may be narrated thusly:

Upon receipt of a complaint by the PNB, the NIDC and the PNEI, the PCGG conducted a preliminary investigation on the supposed transfer of a major portion of the assets of PNEI to NETI, a newly organized corporation principally owned and controlled by Araneta III, a son-in-law of the late President Ferdinand E. Marcos, under certain terms and conditions that made it possible to permit PNEI assets, including those which were not included in a projected sale to NETI, to be prematurely delivered to the latter enabling it to operate said assets even before the execution of the purchase agreement. During the investigation, Araneta III, who was on "forced" exile abroad, appeared through counsel and moved for an extension of time to file his counter-affidavit and other evidence conditioned on his return. This motion was denied by the PCGG.

After wrapping up its preliminary investigation against averred close associates of the late President, that included, besides herein petitioner, Fernando Balatbat, Jr., Lorenzo Vergara, Ramon Aviado, Jr., Placido Mapa, Jr., Dominador Lopez, Jr., Fernando Maramag, Jr., and Jose Crisanto, Jr., the PCGG filed its information with the Sandiganbayan.

The amended^[1] information filed on 20 January 1987 and captioned, "Violation of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019, as amended)," read:

"That on or about and during the period from March 1985 and March 1986, in Metro Manila, Philippines, and within the jurisdiction of the Honorable Sandiganbayan, accused Placido L. Mapa, Jr., J. Lorenzo Vergara, Ramon F. Aviado, Jr., Dominador Lopez, Jr., Fernando Maramag, Jr., Jose C. Crisanto, Jr., acting in various

capacities as Management Officials of the Philippine National Bank (PNB), National Investment and Development Corporation (NIDC) and/or Pantranco North Express Inc. (PNEI), all government owned and controlled corporations, as well as Dolores Potenciano of BLTB, acting in concert in the performance of their duties, in utter neglect of their fiduciary responsibilities, and with intent to gain, conspiring and confederating with one another and with accused Gregorio Ma. Araneta III, son-in-law of former President Ferdinand E. Marcos and therefore related to the deposed President by affinity within the third degree, and Fernando Balatbat, did then and there, wilfully and unlawfully, with manifest partiality and evident bad faith without proper board resolution and in disregard of better offers, promote and facilitate the sale of a major portion of the public utility assets of the Pantranco North Express, Inc. for a consideration of SEVEN HUNDRED SEVENTY-FIVE MILLION (P775,000,000.00) PESOS, Philippine currency, to the North Express Transport Inc. (NETI), which the accused knew to be a newly organized paper corporation with a purported paid-up capital of only FIVE MILLION (P5,000,000.00) PESOS and owned and controlled by accused Gregorio Ma. Araneta III, by misleading, inducing and/or unduly influencing the Boards of Directors of PNB, NIDC and PNEI into approving a Memorandum of Agreement and later a Purchase Agreement with manifestly and grossly disadvantageous terms and conditions which made possible the premature delivery of said PNEI assets to NETI without any down payment, and which, inter alia, allowed NETI to operate PNEI's franchise and utilize, even before the execution of the said Purchase Agreement, not only the PNEI assets subject of the proposed sale, but also other utility buses and properties of PNEI not covered by the sale, thereby allowing NETI to derive an income from said operation between the period of actual delivery and the execution of the Purchase Agreement of the sum of EIGHTY FIVE MILLION SIX HUNDRED EIGHTY-NINE THOUSAND, ONE HUNDRED EIGHTY (P85,689,180.00) PESOS before actual payment of the agreed FIFTY-FIVE MILLION (P55,000,000.00) PESOS down payment, thereby giving accused Gregorio Ma. Araneta III unwarranted benefits, advantages and/or preferences and causing undue injury to the damage and prejudice of the Government in the amount of FOUR HUNDRED MILLION (P400,000,000.00) PESOS and such other amounts as may be awarded by the Court."[2]

Araneta III's co-accused, Fernando Balatbat, moved to quash the amended information on the ground that the PCGG had no authority to conduct the investigation and to file the information on the ground that the crime charged was merely an ordinary graft case and not one that relates to the recovery of ill-gotten wealth. Balatbat's motion was denied by the Sandiganbayan in its resolution of 11 February 1987. In a petition for certiorari before this Court, docketed G.R. No. 78314, Balatbat questioned Sandiganbayan's denial. In a resolution, dated 21 May 1987,[3] this Court dismissed the petition. This dismissal paved the way for all the accused, with the exception of Araneta III, to be arraigned before the Sandiganbayan. After the prosecution had submitted its evidence and had rested its case, the accused filed their respective demurrer to the evidence.

When the official ban against his return to the country was lifted, some time in the latter part of 1991, petitioner came back.[4] Forthwith, Araneta III posted bail for his provisional release. On 18 December 1991, prior to his arraignment, Araneta III filed an omnibus motion to quash the amended information or to refer the case to the Ombudsman for reinvestigation or preliminary investigation. He averred that the PCGG did not have the legal authority to file the information for alleged graft and corruption under Republic Act ("R.A.") 3019, as amended, citing the decisions of this Court in Cruz, Jr., vs. Sandiganbayan,[5] and Cojuangco, Jr., vs. PCGG.[6]

In its now challenged resolutions, dated 11 June and 14 August 1992, the Sandiganbayan denied petitioner's motion to quash the amended information or to refer the case to the Ombudsman for reinvestigation or preliminary investigation.

Petitioner, in the instant petition, submits the following issues:

"I. Whether or not the Sandiganbayan acted with grave abuse of discretion, amounting to lack of or in excess of jurisdiction, when

“(a) It ruled the PCGG has the power and authority to conduct the preliminary investigation of and file an ordinary graft case under R.A. 3019, contrary to and in violation of doctrines clearly enunciated in *Cojuangco, Jr. vs. PCGG*, 190 SCRA 226 and *Cruz, Jr. vs. Sandiganbayan*, 194 SCRA 474;

“(b) It ruled that an ordinary graft case captioned 'For violation of the Anti Graft & Corrupt Practices Act (R.A. 3019, as amended)' admitted in the allegations as Anti-Graft case and charging an unwarranted advantage and benefits as the crime committed, as synonymous to ill-gotten wealth as defined under E.O. Nos. 1 and 2, as amended;

“(c) It held that the *Cojuangco, Jr.* and *Cruz, Jr.* later decisions do not apply and what applies is the earlier *Balatbat Minute Resolution*;

“(d) It passed sub-silencio on petitioner's submission that his constitutional rights were violated by the PCGG in the conduct of preliminary investigation, acting as the law enforcer, prosecutor and judge thereby ousting the PCGG of jurisdiction to investigate and prosecute him;

“(e) It contradicted, ignored and disregarded the written judicial admissions of the PCGG in the Amended Information that the offense is for 'Violation of the Anti-Graft and Corrupt Practices Act, R.A. 3019, as amended.'

"II. Whether or not the Sandiganbayan on the basis of the invalid information acquired jurisdiction over the subject matter of the case."[7]

Invoking our rulings in *Cojuangco, Jr., vs. PCGG*[8] and *Cruz, Jr., vs. Sandiganbayan*,[9] petitioner claims that there being no allegation of any acquisition of ill-gotten wealth in the charge against him, the PCGG did not have the authority to conduct the preliminary investigation and to file the information (absent an express assignment to it by the President so as to enable it to take cognizance of the matter). The Solicitor-General contends otherwise.

Paraphrasing the threshold issue found in the opening paragraph of this decision, the controversy focuses on the determination of whether the information for violation of R.A. No. 3019 filed against petitioner involves alleged ill-gotten wealth to justify PCGG's assumption of jurisdiction over the investigation and prosecution of the case pursuant to Section 2(a) of Executive Order ("E.O.") No. 1 (there being nothing on record to indicate that the case has theretofore been assigned by the President to the PCGG for investigation and prosecution in accordance with Section 2(b) of E.O. No. 1).

In a resolution, dated 13 September 1994, the Court, treating the comment of the Solicitor-General to be public respondents' answer, gave due course to the petition, and required the parties to submit their respective memoranda.

In the meantime, on 28 July 1994, a decision was rendered by the Sandiganbayan in Criminal Case No. 11960. Two of petitioner's co-accused, namely, Fernando Balatbat, Jr., and Jose Crisanto, Jr., were found guilty of the crime charged and were each meted imprisonment terms while the rest of the accused were acquitted for insufficiency of evidence. The judgment of conviction would appear to be the subject of a motion for reconsideration still pending with the Sandiganbayan.

Back to the instant case, we find the petition to be devoid of merit.

This Court, in *Cruz, Jr., vs. Sandiganbayan*, 194 SCRA 474, reiterating its ruling in *Cojuangco, Jr., vs. PCGG*, 190 SCRA 226 (cited by petitioner himself), has said:[10]

"A careful reading of Sections 2(a) and 3, of Executive Order No. 1, in relation with Sections 1, 2 and 3 of Executive Order No. 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 Ferdinand E. 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, 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 violation 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 the same 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 as the provincial and city prosecutors, their assistants, the Chief State Prosecutor and his assistants, and the state prosecutors.

"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. (Emphasis supplied)

It does seem, indeed, that a mere allegation in an anti-graft complaint that the accused is a relative of then President Marcos will not suffice to enable the PCGG to take cognizance of the case. There must, in addition, be a showing that the accused has unlawfully accumulated wealth by virtue of such close relation with the former President. The question then at hand is whether these requirements have or have not been sufficiently alleged? The Sandiganbayan, in stating affirmatively and, accordingly, denying petitioner's motion to quash the amended information, explained:

"A perusal of the quoted information yields the three elements which, according to Cruz, must concur in order that an offense may come within the authority of the PCGG to investigate and prosecute:

"First. The wealth involved in the crime charged consists of: (a) a major portion of the public utility assets of Pantranco Express, Inc. (PNEI), subject of the sale in favor of North Express Transport, Inc. (NETI); (b) utility buses and properties of PNEI not covered by the sale; and (c) income from the operation of the public utility assets, buses and properties — included and not included in the sale — in the amount of P85,689,180.00. The 'ill-gotten' character of items (a) and (c) is shown by the manner by which they were acquired, to be discussed under the third element.

"Second. The wealth or Items (a) and (c) allegedly belong to NETI, which is a newly organized paper corporation with a purported paid-up capital of only P5,000,000.00 and which is owned and controlled by Araneta, son-in-law of the late President Marcos and therefore a member of his immediate family. In other words, Araneta is claimed to be the real purchaser and, consequently, the owner of items (a) and (c).

"Third. Araneta, through NETI, was able to purchase items (a) and (c) by conspiring with his co-accused who knew NETI to be newly organized, owned, and controlled paper corporation of Araneta with a purported paid-up capital of only P5,000,000.00 and who utterly neglected their fiduciary responsibilities as PNB, NIDC, and PNEI management officials, failed to require proper board resolutions, and disregarded better offers. In the conspiracy -- in which the act of a conspirator is in contemplation of law the act of his co-conspirators -- all the accused, namely, Araneta, son-in-law of the late President Marcos and the others as PNB, NIDC and PNEI

management officials, misled, induced, and/or unduly influenced

"the Boards of Directors of PNB, NIDC and PNEI (all government owned and controlled corporations) into approving a Memorandum of Agreement with manifestly and grossly disadvantageous terms and conditions which made possible the premature delivery of said PNEI assets to NETI without any down payment, and which, inter alia, allowed NETI to operate PNEI's franchise and utilize, even before the execution of the said Purchase Agreement, not only PNEI assets subject of the proposed sale, but also other utility buses and properties of PNEI not covered by the sale, thereby allowing NETI to derive an income from said operation between the period of actual delivery and the execution of the Purchase Agreement in the sum of EIGHTY FIVE MILLION SIX HUNDRED EIGHTY-NINE THOUSAND, ONE HUNDRED EIGHTY (P85,689,180.00) PESOS before actual payment of the agreed FIFTY-FIVE MILLION (P55,000,000.00) PESOS down payment, thereby giving Gregorio Ma. Araneta III unwarranted benefits, advantages and/or preferences and causing undue injury to the damage and prejudice of the Government in the amount of FOUR HUNDRED MILLION (P400,000,000.00) PESOS and such other amounts as may be awarded by the Court.'

"From these allegations, it is clear that Araneta used his power, influence, connections or relationship as son-in-law of the late President Marcos and that by reason of the manner by which the acquisition was effected, the wealth or items (a) and (c) are ill-gotten." [11]

We are persuaded by the above disquisition; at the very least, we discern no grave abuse of discretion on the part of the Sandiganbayan in refusing to dismiss the case. While the information may have used the exact terminologies of R.A. No. 3019, viz, "with manifest partiality and evident bad faith;" "with manifestly and grossly disadvantageous terms and conditions;" "unwarranted benefits, advantages and preferences;" and "causing undue injury to the damage and prejudice of the Government," it is, nevertheless, clear that the charge against petitioner (for violation of R.A. No. 3019) is in relation to E.O. No. 1, No. 2, No. 14 and No. 14-A, on the ultimate recovery of ill-gotten wealth. Any supposed ambiguity on the nature of the offense charged against Araneta III has been laid to rest in the aforementioned 21 May 1987 resolution of this Court which dismissed the petition for certiorari filed by Araneta III's co-accused, Fernando Balatbat, similarly seeking the annulment of the Sandiganbayan resolution, dated 11 February 1987, that has denied the quashal of the same amended information under which Araneta III is now also being indicted. We there have said:

"Petitioner maintains that because the complaint filed before the PCGG is for violation of the Anti-Graft and Corrupt Practices Act, and not for the recovery of ill-gotten wealth, the PCGG is without authority to investigate the complaint nor to file the Information before the Sandiganbayan, the jurisdiction to do so being vested in the Tanodbayan; and that pursuant to Section 2(b) of Executive Order No. 1, the cases of graft and corruption that the PCGG is empowered to investigate are limited to those that the President may assign.

"After deliberation on the allegations, issues and arguments, the Court Resolved to DISMISS the petition for lack of sufficient showing that respondent Sandiganbayan committed grave abuse of discretion in issuing its aforementioned Resolutions. There is no conflict in jurisdiction between the Tanodbayan and the PCGG. The Tanodbayan is vested with authority to investigate and prosecute ordinary anti-graft cases. On the other hand, the cases of graft and corruption that the PCGG has authority to investigate and prosecute are those related to the recovery of ill-gotten wealth accumulated by the persons mentioned in Section 2(a) of Executive Order No. 1, as in the present case. The President, however, may also assign to the PCGG from time to time the investigation of ordinary cases of graft and corruption x x x." (Underscoring found in the text)

This Court verily finds it hard to discard the fact that the totality of the allegations can only lead to an inevitable conclusion, on the basis of the information, that the relationship of petitioner to the late President played a pivotal role in the approval of the questioned Memorandum of Agreement and Purchase Agreement alleged to be the root of ill-gotten wealth. Unlike the Cruz case, where the indictment for the violation of R.A. No. 3019 has not been

found to be related to "ill-gotten wealth,"[12] in the case at bench, however, it is petitioner himself who is alleged to have gained, through an owned and controlled corporation (NETI), from the questioned deal. The subsequent amendment of the information has been made solely in order to add the phrase "x x x to the damage and prejudice of the Government in the amount of FOUR HUNDRED MILLION (P400,000,000.00) PESOS and such other amounts as may be awarded by the Court," an inclusion that the PCGG could do without apropos the issues sought to be resolved in this petition.

WHEREFORE, the Court is constrained to DISMISS the petition. No costs.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, Mendoza, and Francisco, JJ., concur.

[1] The underscored portions.

[2] Rollo, pp. 66-67.

[3] Rollo, p. 51.

[4] Rollo, p. 10.

[5] 194 SCRA 474.

[6] 190 SCRA 226.

[7] Rollo, pp. 190-191.

[8] Supra., note 6.

[9] Supra., note 5.

[10] On the PCGG's extent of authority.

[11] Rollo, pp. 47-49.

[12] The allegation in the information pointed to Corn-Asia to be the entity which gained or profited by the transaction, and not Cruz, despite the belated attempt to amend the information so as to indicate otherwise.

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