

**DR. TERESITA G. DOMALANTA AND DR. AGRIPINA B. FRANCISCO,  
PETITIONERS, VS. THE COMMISSION ON ELECTIONS, AQUILINO Q.  
PIMENTEL, JR. AND THE OFFICE OF THE STATE PROSECUTOR,  
DEPARTME...**

*G.R. No. 125586. June 29, 2000*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

Challenged in this petition for certiorari and prohibition is COMELEC En Banc Resolution No. 96-1616 dated May 28, 1996[1] which -

RESOLVED:

1. to file an Information against PES Vitaliano Fabros, Provincial Prosecutor Pacifico Paas, and Division Schools Superintendent Olympia Marquez, Chairman, Vice-Chairman, and Member-Secretary, respectively of the provincial Board of Canvassers, Isabela together with its staff members, namely : Dr. Teresita Domalanta, Agripina Francisco, Dante Limon, Eduardo Tamang and George Noriega, before the Regional Trial Court of Isabela for violation of Section 27 (b) of Republic Act No. 6646, the prosecution of which shall be handled by the Chief State Prosecutor Zenon de Guia, with the duty to submit periodic report[s] thereon after every hearing of the case; and
2. to file an administrative complaint against said respondents for grave misconduct, gross dishonesty, and conduct unbecoming public officials to the prejudice of the best interest of the public service;
3. to preventively suspend the respondents for a period of ninety (90) days reckoned from receipt of this resolution.

From the record, it appears that on August 4, 1995, then senatorial candidate Aquilino Pimentel, Jr. filed a complaint-affidavit[2] charging Provincial Election Supervisor (PES) Vitaliano Fabros, Provincial Prosecutor Pacifico Paas and Division Superintendent of Schools Dr. Olympia Marquez, Chairman, Vice-Chairman and Member-Secretary, respectively, of the Provincial Board of Canvassers of Isabela with alleged violation of Section 27 (b) of Republic Act No. 6646, otherwise known as the Guingona Electoral Reform Law of 1987.

The case, docketed as E.O. Case No. 95-408 entitled "Aquilino Pimentel, Jr. v. PBC of Isabela" for alleged violation of the Omnibus Election Code was thereafter referred to the Law Department of the Commission of Elections (COMELEC) for evaluation and report. The COMELEC's Law Department summarized the facts of the controversy in its evaluation report dated May 20, 1996,[3] thus:

The instant case stemmed from the alleged irregularity committed by the Provincial Board of Canvassers of Isabela in crediting unauthorized additional votes, thus: (a) Twenty seven thousand seven hundred fifty five (27,755) to Juan Ponce Enrile, (b) Seven thousand (7,000) to Ramon Mitra, and (c) Ten thousand (10,000) to Gregorio Honasan.

After the submission of the counter-affidavits of the respondents, Pimentel filed on September 1, 1995 an amended complaint impleading the members of the staff of the Board namely: Dr. Teresita Domalanta, Agripina Francisco, Dante Limon, Eduardo Tamang and George Noriega, as additional respondents.

Aquilino Pimentel alleged that the unauthorized additional number of votes were included in the total votes for senatorial candidates Enrile, Mitra and Honasan in the Provincial Certificate of Canvass duly signed and thumbmarked by the members of the PBC of Isabela and which same was submitted to the Comelec as National Board of Canvassers which was included in the canvass on which the proclamation was based. In order to prove his charge, complainant submitted in evidence the Certificate of Canvass supported by Statement of Votes per precinct of Santiago City, Municipalities of Angadanan, Cauayan, Cordon, Delfin Albano, Echague, San Mariano, San Pablo, Ilagan and San Mateo. A comparison of the votes indicated in the Statement of Votes by city/municipality and that of the municipal/city Certificate of Canvass was submitted by the complainant which is hereunder reproduced:

Municipality Votes as indicated in the Municipality/City Certificate of Canvass Votes as indicated in the Statement of Votes by Municipality/City prepared by the Provincial Board of Canvassers of Isabela  
Discrepancy

Santiago City

Enrile 15,454 16,454 +1,000

Angadanan

Enrile 5,996 7,996 +2,000

Mitra 3,888 4,888 +1,000

Cauayan

Enrile 13,710 19,710 +6,000

Honasan 11,205 21,205 +10,000

Cordon

Enrile 6,794 9,794 3,000

Delfin Albano

Enrile 3,972 4,972 +1,000

Echague

Enrile 10,552 15,552 +5,000

San Mariano

Enrile 5,683 8,253 +2,570

San Pablo

Enrile 2,418 3,438 +1,020

Ilagan

Mitra 14,457 20,457 +6,000

San Mateo

Enrile 9,424 15,589 +6,165

In their defense, Provincial Election Supervisor Vitaliano Fabros, Provincial Prosecutor Pacifico Paas and Division Superintendent of Schools Dr. Olympia Marquez, Chairman, Vice-Chairman and Member-Secretary, respectively, of the Provincial Board of Canvassers of Isabela were in unison in vehemently denying the charges imputed against them and declared that they faithfully performed their poll duties assigned to them.

PES Vitaliano Fabros, in his counter-affidavit, asserted that it could not have been possible not to read the actual figures reflected in the municipality/city Certificate of Canvass considering the presence of counsels and watchers of candidates and political parties and if ever there are discrepancies between the city/municipal Certificate of Canvass and that of the Provincial Certificate of Canvass the same may be attributable to human fatigue.

Respondent Pacifico Paas declared that he assumed the opening of the envelopes containing the election returns by municipality and broke the corresponding paper seals and handed the same to the Chairman who in turn assumed the reading of votes through a microphone with the tabulators and recorders reflecting the figures in the Statement of Votes and further declared that he had no direct view over the votes read by Chairman Fabros nor had he interfered save for one or two election returns in the reading. He even vigorously denied any privy (sic) to the discrepancy of the figures indicated in the "Statement of Votes by Municipality" and "Provincial Certificate of Canvass" because he honestly believed that these are the true and faithful reproduction of the figures indicated in the Provincial Board of Canvasser's copy of the election returns provided them which were used in the canvass.

Respondent Dr. Olympia Marquez stated that it was Chairman Fabros who read the votes obtained by the candidates through an amplifier sound system and correspondingly the recorders tabulated the figures as read into the Statement of Votes by municipality; that she did not so much interfere in the opening of the envelopes and the election returns, nor in the reading of the votes in the duration of the canvassing and that she conveniently sat side by side with the recorders and periodically see to it that votes correspondingly read and announced were faithfully reflected in the Statement of Votes.

Respondents Dr. Teresita Domalanta and Agripina Francisco, in their joint counter-affidavit, categorically denied the charges, and declared that they faithfully recorded the votes obtained by the candidates as read and announced by the Chairman of the Provincial Board of Canvassers and during the recording Dr. Olympia Marquez periodically checked the correctness of the entries in the Tally Sheet for the Statement of Votes; that they recorded the votes obtained by local candidates in some municipalities including senatorial candidates whose surname begins with letter "T" and that they did not participate in the preparation of the Provincial Certificate of Canvass.

Respondents Dante Limon and Eduardo Tamang, in their joint-affidavit, vehemently denied the charges. They claimed that their assigned duty is only to record the names of candidates and their corresponding number of votes obtained as announced by PBC Chairman, Atty. Vitaliano Fabros because they have no access to the votes written in the Municipal Certificate of Canvass.

Respondent George Noriega, in his counter-affidavit likewise denied the charges and averred that he had no direct knowledge in the preparation of the alleged falsified Provincial Certificate of Canvass, and as Tabulator, he only added what was recorded in the Statement of Votes prepared by other persons and denied any participation in the alleged falsification of the Statement of Votes.

On the basis of the foregoing factual findings, the COMELEC's Law Department recommended that:

1. an information be filed against Provincial Election Supervisor Vitaliano Fabros, Provincial Prosecutor Pacifico Paas, and Division Superintendent of Schools Dr. Olympia Marquez, Chairman, Vice-Chairman and

Member-Secretary, respectively of the Board of Canvassers of Isabela before the Regional Trial Court Isabela for violation of Section 27 (b) of Republic Act No. 6646 , the prosecution of which shall be handled by Regional Election Director Samuel Barangan of Region II, with the duty to submit periodic progress report[s] after every hearing of the case;

2. an administrative complaint against said respondent for grave misconduct, gross dishonesty, and conduct unbecoming public officials to the prejudice of the best interest of the service; and

3. the cases against Dr. Teresita Domalanta, Agripina Francisco, Dante Limon, Edwardo Tamang and George Noriega be dismissed for insufficiency of evidence to establish a probable cause.

In justifying its stand, the COMELEC Law Department reasoned as follows:

Respondents stand charged with alleged violation of Section 27 (b) of Republic Act No. 6646 which provides: Section 27. Election offenses. - In addition to the prohibited acts and election offenses enumerated in Section 261 and 262 of Batas Pambansa Blg. 881, as amended, the following shall be guilty of an election offense.

x x x x x x x x

(b) Any member of the board of election inspectors or board of canvassers who tampers with, increases or decreases votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing, to credit the correct votes or deduct such tampered votes. (Underscoring ours)

There is no question there was indeed an increase in the number of votes obtained by senatorial candidates Enrile, Mitra and Honasan which the complainant called it [a] glaring discrepancy. An examination of the Municipal Certificate of Canvass with its Statement of votes per precinct in relation to the Provincial Certificate of Canvass as supported by the Statement of Votes by City/Municipality would show that the votes of the aforementioned candidates were illegally increased in Santiago City and in the nine (9) municipalities of Isabela.

The crucial and pivotal issue for determination in the case at bar is whether or not the respondent's alleged act of increasing the number of votes garnered by senatorial candidates Enrile, Mitra and Honasan constitutes a violation of Section 27 (b) of Republic Act No. 7168.

By a general overview, in order to have judicious evaluation of the case, it is imperatively necessary to define MISTAKE, NEGLIGENCE and GROSS NEGLIGENCE which may aid in arriving [at] an intelligent findings (sic).

Mistakes, concededly committed by public officers are not actionable without any clear showing that they were motivated by malice or gross negligence amounting to bad faith.[4]

Negligence is the omission to do something which a reasonable man guided by those consideration[s] which ordinarily regulate the conduct of human affairs would do, or the doing of something which a prudent and reasonable man would not do[5] or the failure to observe for the protection of the interest of another person, that degree of precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury.[6]

Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is [a] duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[7]

It cannot be disputed that the Certificate of Canvass for senatorial candidates and its supporting statements of votes by municipality and city, are sensitive election documents where the entries therein shall be highly scrutinized.

From the foregoing guidepost, we find the contention of respondents members of the Provincial Board of Canvassers that the erroneous crediting of additional votes to senatorial candidates Enrile, Mitra and Honasan was an honest mistake due to human fatigue, patently not tenable. This is so because there appears to be a pattern as shown in the comparison between the Statement of Votes by Precinct of each of the nine (9) municipalities and one (1) city and the Statement of Votes by Municipality prepared by the Provincial Board of Canvassers, thus, in Santiago City senatorial candidate, Enrile obtained fifteen thousand four hundred fifty four (15,454) as per City Certificate of Canvass while in the Statement of Votes by City prepared by the Provincial Board of Canvassers was sixteen thousand four hundred fifty four (16,454); in the Municipality of Angadanan, senatorial candidates Enrile and Mitra were credited with five thousand nine hundred ninety six (5,996) votes and three thousand eight hundred eight (3,888), respectively, as indicated in Municipal Certificate of Canvass but in the Statement of Votes by Municipality of Cauayan, Enrile and Honasan were credited thirteen thousand seven hundred ten (13,710) and eleven thousand two hundred five (11,205), respectively, while the Statement of Votes by Municipality would show that Enrile got thirteen thousand seven hundred ten (13,710) and Honasan, twenty one thousand two hundred five (21,205); in the Municipality of Cordon, Enrile obtained six thousand seven hundred ninety four (6,794) but in the Statement of Votes by Municipality the number of votes for Enrile was nine thousand seven hundred ninety four (9,794); in the municipality of Delfin Albano, per Municipal Certificate of Canvass Enrile garnered three thousand nine hundred seventy two (3,972) votes while in the Statement of Votes by Municipality Enrile was credited with four thousand nine hundred seventy two (4,972); in the municipality of Echague, Enrile obtained ten thousand five hundred fifty two (10,552) votes as reflected in the Votes by Municipality he was credited with fifteen thousand five hundred fifty two (15,552) votes; and in the Municipality of Ilagan, Mitra was credited with fourteen thousand four hundred fifty seven (14,457) votes but in the Statement of Votes by Municipality, Mitra's vote was twenty thousand four hundred fifty seven (20,457).

As can be gleaned from the figures shown, save in the municipalities of San Mariano, San Pablo and San Mateo, the last three digits of the number of votes in the Municipal Certificate of Canvass of the other municipalities were retained in the padded votes which will give rise to the presumption that the act was done intentionally and deliberately.

The position proffered by the respondent board members that they cannot be held liable even if the votes reflected in the assailed certificate of canvass do not tally with the figures on the other copies of the Municipal Certificate of Canvass because the copies in the possession of the complainant and any other copies thereof were never used in the provincial canvass, is patently without merit. Neither is the assertion by respondent board members that the offense imputed against them is not *mala prohibita* but *mala in se* where criminal intent is material by invoking the ruling of the Court of Appeals in the case of *People vs. Sunico, et. al.*, a valid argument at all.

Based on the facts obtaining in this case, there appears a malice on the part of the members of the board to increase the votes of the three (3) senatorial candidates taking into account the pattern of the distribution of the increase of votes as clearly illustrated above. This illegal act will jibe with the position of the respondents that violation of Section 27 (b) of Rep. Act No. 6646, is *mala in se*. Besides, what we are proving here is the existence of a *prima facie* case only, and not a proof beyond reasonable doubt.

IT MUST BE POINTED OUT CLEARLY THAT THE ALLEGED FALSIFIED PROVINCIAL CERTIFICATE OF CANVASS OF ISABELA WAS SEASONABLY RETABULATED OR CORRECTED BY THE COMELEC EN BANC SITTING AS THE NATIONAL BOARD OF CANVASSERS WHICH ABSOLUTELY BELIE THE GRATUITOUS ALLEGATION OF PIMENTEL THAT THE INCREASE OF VOTES WERE INCLUDED IN THE CANVASS AND MADE AS ONE OF THE BASIS IN THE PROCLAMATION OF THE WINNING SENATORIAL CANDIDATES [Capitalization ours]

But notwithstanding that the illegal increase of the votes of Enrile, Mitra and Honasan were retabulated or corrected, the members of the Provincial Board of Canvassers of Isabela are criminally liable to the alleged act committed.

More importantly, A CAREFUL READING OF THE COUNTER-AFFIDAVITS OF OTHER RESPONDENTS ATTY. PACIFICO PAAS, DR. OLYMPIA MARQUEZ INCLUDING THE MEMBERS OF THE STAFF WOULD POINT TO THE CHAIRMAN OF THE BOARD, ATTY. FABROS AS THE SOURCE OF THE DATA RECORDED AND TABULATED. SUCH BEING THE CASE, ABSENT A CLEAR AND CONVINCING PROOF OF CONSPIRACY OR COLLUSION BETWEEN THE RESPONDENTS MEMBERS OF THE PROVINCIAL BOARD AND ITS RESPONDENT STAFFS, THE LATTER CANNOT BE FAULTED ON THE ALLEGED WRONG DOING. The Chairman and the Member Secretary may be indicted for the offense charged as earlier indicated, and the fact that they certified that the entries reflected in the Provincial Certificate of Canvass and Statement of Votes By Municipality were true and correct. However, the exoneration of the tabulators and recorders was further strengthened by the corroborating statement of Member-Secretary Dr. Olympia Marquez when she stated, in her counter-affidavit, that she sat beside the tabulators and recorders in order to see to it that the correct figures are reflected in the Statement of Votes By Municipality.

Based on the foregoing findings, the Law Department recommended that the cases against both petitioners be dismissed. However, the COMELEC en banc still issued the assailed Resolution which petitioners challenge on the grounds that:

1. Minute Resolution No. 96-1616 Finding Conspiracy Among The Members Of The Provincial Board Of Canvassers and the Herein Petitioners Has No Factual Basis and Runs Counter To The Study and Report, Annex "C", Upon Which The Questioned Minute Resolution Was Based.

Hence, Its Issuance Was Attended By Grave Abuse Of Discretion Amounting To Lack Or Excess Of Jurisdiction.

2. Findings of the Law Department Refers to Members Of The PBOC Only And Does Not Include Petitioners.

3. Findings Of Conspiracy Not Supported By any Evidence.

4. The Continuous Media Blitzkrieg On "Dagdag-Bawas" And The Attack On The Inside Workings Of The Comelec Terrified Or Terrorized COMELEC Into Including Petitioners In The Charge.

5. Participation Of Petitioners Limited To Canvass Of Local Officials And Two Senators Starting With The Letter "T" And Does Not Cover Scope Of Instant Complaint Of Atty. Pimentel.

6. The Three (3) Important Documents Upon Which Complaint Was Based Does Not Carry The Signatures Of Movants.

7. Respondent Pimentel, When Informed About The Innocence Of Movants That They Did Not Tally Votes For Enrile, Honasan and Mitra Commented "that is a good point" An Admission Rendering The Case Against Petitioners Dismissible.

8. Overzealousness In The Prosecution Of Election Offenses Must Be Tempered With The Yardstick That The Innocent Must Not Be Victims Of Injustice.

9. A Serious Review Is an Imperative Necessity To Protect Movants From The Onslaught Of A Public Trial That Carries The Stigma Of Perpetual Embarrassment.

10. Petitioners Are Awardees Of COMELEC Hope I And II And Committing An Anomaly Repugnant To What They Have Taught Is Beyond Their Wildest Dreams.

11. Petitioner Dr. Domalanta Is A Career Official Of The DECS And Has An Irreproachable Character To Protect And Would Not Do An Act That Will Forever Destroy Her Good Reputation.

12. The Same is True With Petitioner Dr. Francsico Who Has Just Retired From Public Service As Assistant Division Superintendent.

The primordial issue to be resolved is whether or not the COMELEC gravely abused its discretion in directing the filing of criminal and administrative complaints against the petitioners.

In sum, petitioners insist on their innocence in any wrongdoing in the preparation of the Statement of Votes per Municipality, arguing that there is no evidence on record to show a hint of probable cause against them for the commission of an election offense under Section 27 of R.A. No. 6646 with regard to the padding of votes during the May 8, 1995 elections.

The argument is tenuous.

It needs be stressed that for the May 8, 1995 elections, petitioners were part of the support or technical staff of the Provincial Board of Canvassers (PBC) of the Province of Isabela that was tasked with the canvassing of the Municipal/City Certificates of Canvass (CoC), the preparation of the Provincial Certificates of Canvass and the supporting Statement of Votes (SoV) per Municipality/City which entries in said documents were certified to as correct by the PBC. It is upon a comparison between the Municipal/City CoC submitted to the PBC and the SoV per Municipality/City as prepared by the members of the PBC and their support staff, including herein petitioners, that one would readily see the neatly padded vote totals for the three (3) senatorial candidates, namely, Enrile, Honasan and Mitra, viz:

Municipality/

City Candidate Votes appearing in Municipal/City Certificates Votes canvassed by COMELEC based on PBC's Discrepancy

Santiago City

Enrile 15,454 16,454 1,000

Angadanan

Enrile 5,996 7,996 2,000

Mitra 3,888 4,888 1,000

Cauayan

Enrile 13,710 19,710 6,000

Honasan 11,205 21,205 10,000

Cordon

Enrile 6,794 9,794 3,000

Delfin Albano

Enrile 3,972 4,972 1,000

Echague

Enrile 10,552 15,552 5,000

San Mariano

Enrile 5,683 8,253 2,570

San Pablo

Enrile 2,418 3,438 1,020

Ilagan

Mitra 14,457 20,457 6,000

San Mateo

Enrile 9,424 15,589 6,165

TOTAL 103,553 148,308 44,755

Candidate Unauthorized Additional Votes

ENRILE 27,755

HONASAN 10,000

MITRA 7,000

It can be clearly seen from the list above that the discrepancies are too substantial and rounded off to be categorized as a mere 'computation error' or a result of fatigue. There is a limit to what can be construed as an honest mistake or oversight in the performance of official duty. Suffice it to state that the magnitude of the error as reflected in the discrepancies itemized above renders unacceptable the defense of 'computer error' or honest mistake.

In the separate counter-affidavits[8] submitted by members of the PBC of Isabela, all three of them asserted their lack of knowledge of any irregularity committed despite the glaring discrepancies detailed above. However, paragraph 2 of the Joint Counter-Affidavit[9] of petitioner Domalanta and Dr. Olympia G. Marquez, acting as Member-Secretary of the PBC, avers that in recording the vote totals of the senatorial candidates appearing in the Municipal CoCs in the SoV per Municipality/City, the Board was assisted by the petitioners, two (2) clerks also from the DECS, Messrs. Dante Limon and Edward Tamang as well as Mr. George Noriega, a representative of the Provincial Accountant's Office. Implicit in the averment of paragraph 2 of said Joint Counter-Affidavit is the insinuation that the anomalies or the tampering of the results of the senatorial canvass in Isabela could only have been done by their staff.

It was indeed highly unlikely that the padded vote totals were entered in the SoV per Municipality/City without the knowledge of petitioners, if they were faithfully and regularly performing their assigned tasks. A reasonably prudent man on the other hand would readily come to the conclusion that there exists a probable cause to believe that the petitioners are culpable together with the other members of the support staff as well as the PBC members in the padding of the vote totals of the said senatorial candidates. It can not be denied that the members of the PBC and their support staff, including herein petitioners, were the only ones in control and in possession of said documents during its preparation. It need not be overemphasized, given this fact, that the padding of the vote totals could only have been done by all of them acting in concert with one another.

It bears stressing in this regard that all that is required in the preliminary investigation is the determination of probable cause so as to justify the holding of petitioners for trial. Probable cause is defined -

... 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.[10] This definition is still relevant today as we continue to cite it in recent cases.[11] xxx *Pilapil v. Sandiganbayan*[12] sets the standard for determining probable cause. xxx There we said:

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. The term does not mean "actual or 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.[13]

... Probable cause to warrant arrest is not an opaque concept in our jurisdiction. Continuing accretions of case law reiterate that they are facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.[14] Other jurisdictions utilize the term man of reasonable caution[15] or the term ordinarily prudent and cautious man.[16] The terms are legally synonymous and their reference is not to a person with training in the law such as a prosecutor or a judge but to the average man on the street.[17] It ought to be emphasized that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance.

xxx xxx xxx

... A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt. As well put in *Brinegar v. United States*,[18] while probable cause requires more than "bare suspicion", it requires "less than evidence which would justify xxx conviction." A finding of probable cause is not a pronouncement of guilt.[19]

The peculiar factual circumstances prevailing in this case hardly paints a picture of manifest human error or fatigue in the tabulation of the votes of the senatorial candidates in Isabela. It, in fact, discloses a pernicious scheme which would not have been successfully perpetrated without the indispensable cooperation of all members of the PBC and their support staff which included herein petitioners. The latter's protestations in the counter-affidavits that they only tabulated the vote totals of senatorial candidates Tillah and Tolentino are at best convenient and self-serving explanations to justify their exculpation from any wrong-doing. Their claims are, moreover, not substantiated by any of the PBC members. Indeed, as this Court pointedly observed in *Velayo v. COMELEC*[20] the "self-serving nature of said Affidavits cannot be discounted. As this Court has pronounced, reliance should not be placed on mere affidavits."

Be that as it may, petitioners' claims are a matter of defense and as pointed out by the Court recently in *Pimentel, Jr. v. COMELEC* [21] -

... the merit of defenses such as honest mistake, simple error, good faith, and the mere performance of ministerial duties, as interposed by persons charged with the election offense of tampering, increasing or decreasing votes received by a candidate in any election, are best ventilated in the trial proper than at the

preliminary investigation.

Second. Section 27 (b) of R.A. No. 6646 which reads, viz:

`xxx [T]he following shall be guilty of an election offense:

xxx xxx xxx

(b)....Any member of the board of election inspectors or board of canvassers who tampers, increases or decreases the votes received by a candidate in any election or any member of the board who refuses, after proper verification and hearing to credit the correct votes or deduct such tampered votes.

penalizes two (2) acts: first the tampering, increasing or decreasing of votes received by a candidate in any election; and second, the refusal, after proper verification and hearing to credit the correct votes or deduct such tampered votes. The first obtains in this case.

Petitioner categorically charged private respondents xxx with `illegal acts of padding the votes of the senatorial candidates' amounting to `violations of the Omnibus Election Code, as amended, and Section 27 of R.A. 6646.' They never denied that the total number of votes of the senatorial candidate xxx as appearing in the CoCs and SoVs is significantly and considerably higher xxx than that appearing in the election returns. xxx

These circumstances in themselves, constitute probable cause that justifies the belief that more likely than not, the election offense was committed and was committed by private respondents xxx. Probable cause is based neither on clear and convincing evidence of guilt nor evidence establishing absolute certainty of guilt.[22] It is merely based on opinion and reasonable belief, and so it is enough that there exists such state of facts as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so.[23] Considering that private respondents xxx in invoking the defenses of honest mistake, oversight due to fatigue and performance of ministerial duties virtually admitted the existence of the discrepancies in the total number of votes garnered by petitioner and other senatorial candidates, which discrepancies by no stretch of imagination could be dismissed as negligible or inconsequential, there is not merely a strong suspicion that they actually committed the election offense which they are charged. The burden of proof appears to have shifted to them to prove that the said discrepancies cannot be considered illegal and criminal.

The instant petition for certiorari and prohibition, therefore, must be dismissed. It is grounded on alleged grave abuse of discretion amounting to lack or excess of jurisdiction. Only recently in *Sadikul Sahali v. COMELEC*,[24] the Court, citing *Garcia, et al. v. HRET*,[25] said:

Certiorari as a special civil action can be availed of only if there is a concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and (b) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding. There must be a capricious, arbitrary and whimsical exercise of power for it to prosper.

To question the jurisdiction of the lower court or the agency exercising judicial or quasi-judicial functions, the remedy is a special civil action for certiorari under Rule 65 of the Rules of Court. The petitioner in such cases must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion defies exact definition but generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

It has been held, however, that no grave abuse of discretion may be attributed to a court simply because of its alleged misappreciation of facts and evidence. A writ of certiorari may not be used to correct a lower tribunal's

evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.

In fine, certiorari will only issue to correct errors of jurisdiction not errors of procedure or mistakes in the findings or conclusions of the lower court. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by special civil action for certiorari.[26]

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, and De Leon, Jr., concur.

Pardo, J., no part.

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[1] Rollo, pp. 67-68.

[2] Later amended to include herein petitioners as well as Dante Limon, Eduard Tamang and George Noriega; see Rollo, pp. 34-37.

[3] Rollo, pp. 57-61.

[4] Citing Farolan v. Salmac Marketing Corp., 195 SCRA 168 (1991)

[5] Citing McKee v. IAC, 211 SCRA 517 (1992)

[6] Ibid.

[7] Citing Fernando v. Sandiganbayan, 212 SCRA 680 (1992)

[8] Rollo, pp. 108-114.

[9] Rollo, p. 55.

[10] Buchanan v. Vda. De Esteban, 32 Phil. 33 (1915)

[11] Citing Que v. IAC, 169 SCRA 137 (1989); Ponce v. Legaspi, 208 SCRA 377 (1992); Albenson v. CA, 217 SCRA 16 (1993)

**[12] 221 SCRA 349 (1993)**

[13] Allado v. Diokno, 232 SCRA 192 (1994)

[14] Bernas, The Constitution of the Republic of the Philippines, A Commentary, Vol. I, 1987 ed., pp. 86-87.

[15] Brinegar v. U.S., 338 U.S. 160 (1949)

[16] Del Carmen, Criminal Procedure, Law and Practice, 3rd ed., p. 86.

[17] Ibid.

**[18] 338 US 160 (1949)**

[19] Webb v. De Leon, 247 SCRA 652 (1995)

[20] G.R. No. 135613, 9 March 2000, p. 28, citing Casimiro v. COMELEC, 171 SCRA 468 (1989)

[21] G.R. No. 133509, 9 February 2000, p. 10, citing Pimentel, Jr. v. COMELEC, 289 SCRA 586 (1998)

[22] Pimentel, Jr. v. COMELEC, supra.

[23] Olivarez v. Sandiganbayan, 248 SCRA 700 (1995); Pilapil v. Sandiganbayan, supra.

[24] G.R. No. 134169, 2 February 2000, p. 10.

[25] G.R. No. 134792, 12 August 1999.

[26] Citing People v. CA, G.R. No. 128986, 21 June 1999.

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