

**JOSE U. ONG AND NELLY M. ONG, PETITIONERS, VS.
SANDIGANBAYAN (THIRD DIVISION) AND OFFICE OF THE
OMBUDSMAN, RESPONDENTS.**

G.R. NO. 126858. September 16, 2005

Ponente: TINGA, J.

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TINGA, J.

This Petition for Certiorari,[1] dated December 13, 1996 seeks the nullification of the Resolutions of the Sandiganbayan dated August 18, 1994[2] and October 22, 1996.[3] The first assailed Resolution denied petitioners' motion to dismiss the petition for forfeiture filed against them, while the second questioned Resolution denied their motion for reconsideration.

The antecedents are as follows:

Congressman Bonifacio H. Gillego executed a Complaint-Affidavit[4] on February 4, 1992, claiming that petitioner Jose U. Ong, then Commissioner of the Bureau of Internal Revenue (BIR), has amassed properties worth disproportionately more than his lawful income. The complaint pertinently states:

In his Statement of Assets and Liabilities as of December 31, 1989 (Annex "A"), Commissioner Jose U. Ong declared P750,000.00 as his cash on hand and in banks. Within a short period thereafter, he was able to acquire prime real estate properties mostly in the millionaires choice areas in Alabang, Muntinglupa, Metro Manila costing millions of pesos as follows:

- A house and lot in Alabang bought on October 9, 1990 for P5,500,000.00, now titled in the name of Jose U. Ong under Transfer Certificate of Title No. 172168, Registry of Deeds for Makati (Annexes "B" & "C");
- Another lot in Alabang bought for P5,700,000.00, now titled in the name of Jose U. Ong and Nelly M. Ong under Transfer Certificate of Title No. 173901. Registered on January 25, 1991 in the Registry of Deeds for Makati (Annex "D");
- Still another lot in Alabang bought for P4,675,000.00 on January 16, 1991, now titled in the name of spouses Jose U. Ong and Nelly Mercado Ong under Transfer Certificate of Title No. 173760 in the Registry of Deeds for Makati (Annexes "E" and "F");
- Again, another lot in Alabang bought on December 3, 1990 for P5,055,000.00, now titled in the name of the Children of Commissioner Ong and his son-in-law under transfer Certificate of Title No. 173386 in the Registry of Deeds for Makati (Annex "G" and "H");
- Again, a lot in Makati bought for P832,000.00 on July 1, 1990, now titled in the name of the Daughter of Commissioner Ong and his son-in-law under transfer certificate of title No. 171210 in the Registry of Deeds of Makati (Annex "I" & "J").

The above documented purchases of Commissioner Ong alone which are worth millions of pesos are obviously disproportionate to his income of just a little more than P200,000.00 per annum.[5]

Ong submitted an explanation and analysis of fund sourcing, reporting his net worth covering the calendar years 1989 to 1991 and showing his sources and uses of funds, the sources of the increase in his net worth and his net worth as of December 13, 1991.[6]

The Director[*] of the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman (Ombudsman) ordered the conduct of a pre-charge investigation on the matter. A Fact-Finding Report[7] was promptly submitted[*] with the following recommendation:

- Forfeiture Proceedings be instituted against the properties of Jose U. Ong which he illegitimately acquired in just a span of two (2) years as Commissioner of the Bureau of Internal Revenue. Such properties are briefly specified as follows:

a)

House and lot in Ayala Alabang bought on October 9, 1990 for P5.5 million under TCT No. 172168 of the Registry of Deeds for Makati, Metro Manila;

b)

Lot in Ayala Alabang bought on January 23, 1991 for P5.5 million under TCT No. 173901;

c)

Lot in Ayala Alabang bought on January 16, 1991 for P4,675,000.00 under TCT No. 173760;

d)

Lot in Ayala Alabang bought on December 3, 1990 for P5,055,000.00 under TCT No. 173386; and

e)

Condominium Unit 804, located at the eight floor of the Asian Mansion, bought for P744,585.00 under CCT No. 20735 of the Registry of Deeds for Makati, Metro Manila.[8]

Finding that a preliminary inquiry under Sec. 2 of Republic Act No. 1379 (RA 1379) should be conducted, Ong was directed to submit his counter-affidavit and other controverting evidence in the Order[9] dated November 18, 1992. For this purpose, Ong was furnished copies of Gillego's Complaint-Affidavit and the Fact-Finding Report, with annexes and supporting documents.

Ong filed a Counter-Affidavit[10] dated December 21, 1992, submitting his Statement of Assets and Liabilities for the years 1988-1990, income tax return for 1988, bank certificate showing that he obtained a loan from Allied Banking Corporation (Allied Bank), certificate from SGV & Co. (SGV) showing that he received retirement benefits from the latter, a document entitled Acknowledgement of Trust showing that he acquired one of the questioned assets for his brother-in-law, and other documents explaining the sources of funds with which he acquired the questioned assets.

In view of Ong's arguments, the Ombudsman issued another Order[11] dated February 11, 1993, the pertinent portions of which state:

Results of the subpoena duces tecum ad testificandum issued to Allied Banking Corporation, Sycip, Gorres, Velayo & Co., including the BIR insofar as it pertains to the production of the documents that respondents claimed in justification of the sources of his funding/income, proved negative since Allied Bank could not produce documents that would show availment of the loan, nor could SGV itemize the documents/vouchers that would, indeed signify the grant and receipt of the claimed retirement benefits, as well as the BIR insofar as it pertains on respondent's filed income tax returns for the years 1987, 1988, 1989, 1990 and 1991.

Such being the case, and in line with respondent's defense as claimed in his counter-affidavit that all his acquisitions were from legitimate and valid sources based from his (respondent's) salary and other sources of income, and he being the recipient thereof, copies of which he is entitled as a matter of right and party recipient on the claimed loan and retirement benefits, respondent Jose U. Ong, is hereby directed to submit in writing within a period of fifteen (15) days from receipt of this ORDER, the following, namely:--

- a) all documents in his possession relevant to the approval by the Allied Banking Corporation on the P6.5 million term loan including documents in availment of the loan such as the execution of promissory note/s, execution of real/chattel mortgage/s and the fact of its registration with the Register of Deeds, credit agreements, receipt of payment on amortization of the loan, if any, and such other pertinent documents that will show existence and availment of the loan granted;
- b) All documents in his possession that he was indeed granted by SGV and Co. P7.8 million as retirement benefits including such additional benefits as claimed as evidenced by vouchers, accounting records, computation of benefits, that would signify fact of receipt of the claimed retirement benefits;
- c) All documents showing the money market placements such as but not limited to the (a) confirmation sale on the placements and (b) confirmation of the purchase on the placements;
- d) Income tax returns as filed in the Bureau of Internal Revenue for the years, 1987, 1988, 1989, 1990 and 1991.

Failure of the respondent to comply with this ORDER within the period hereinabove prescribed shall be deemed a waiver on his part to submit the required controverting evidence and that he has no evidence on hand to show proof on the existence of the claimed defenses as above set forth and that this case shall be considered for resolution without further notice.[12]

Instead of complying with the Order, Ong filed a Motion,[13] dated February 17, 1993 for its recall, the voluntary inhibition of the handling investigators, and reassignment of the case. Ong objected to the proceedings taken thus far, claiming that he was not notified of the subpoenas issued to SGV and Allied Bank requiring them to substantiate Ong's claims. The Order allegedly violates his right to due process and to be presumed innocent because it requires him to produce evidence to exculpate himself.

A Resolution[14] dated May 31, 1993 was thereafter issued finding that Ong "miserably failed to substantiate his claim that the sources of financing his said acquisition came from his other lawful income, taking into account his annual salary of P200,000.00 more or less and his cash standing at the time, even without considering his normal expenses befitting his stature and position in the Government, as well as his acquisition of movable properties for the calendar year[s] 1989 to 1991, totaling P930,000.00," and concluding "that the properties acquired by him in a matter of ELEVEN (11) MONTHS from October, 1990 to September, 1991, during his incumbency as Commissioner of the Bureau of Internal Revenue, are manifestly and grossly disproportionate to his salary as a public official and his other lawful income." [15]

The Resolution directed the filing by the Ombudsman, in collaboration with the Office of the Solicitor General (OSG), of a petition for recovery of ill-gotten/unexplained wealth under RA 1379, in relation to RAs 3019 and 6770, against Ong and all other persons concerned.

The Resolution was reviewed by the Office of the Special Prosecutor (Special Prosecutor) which concurred with the findings and recommendation of the Ombudsman.[16]

A Petition[17] dated November 15, 1993 for forfeiture of unlawfully acquired property was accordingly filed before the Sandiganbayan by the Republic, through the Special Prosecutor and the Deputy Ombudsman for Luzon,[18] against Ong and his wife, petitioner Nelly Ong, and docketed as Civil Case No. 0160.

The Petition alleged that the total value of the questioned assets is P21,474,585.00 which is grossly disproportionate to Ong's lawful income from his public employment and other sources amounting to P1,060,412.50, considering that Nelly Ong has no visible means of income. This circumstance allegedly gave rise to the presumption under Sec. 2 of RA 1379 that the questioned properties were unlawfully acquired.

In its Order[19] dated November 17, 1993, the Sandiganbayan directed the issuance of a writ of preliminary attachment against the properties of petitioners. The writ, issued on November 18, 1993, was duly served and implemented as shown in the Sheriff's Return dated December 1, 1993.[20]

Petitioners Jose and Nelly Ong filed an Answer[21] dated January 27, 1994, denying that their lawful income is grossly disproportionate to the cost of the real properties they acquired during the incumbency of Ong as BIR Commissioner. According to them, the Special Prosecutor and the Ombudsman intentionally failed to consider the retirement and separation pay Ong received from SGV and other lawful sources of funds used in the acquisition of the questioned properties.

They presented several affirmative defenses, such as the alleged deprivation of their right to due process considering that no preliminary investigation was conducted as regards Nelly Ong, and the nullity of the proceedings before the Ombudsman because the latter, who acted both as investigator and adjudicator in the determination of the existence of probable cause for the filing of the case, will also prosecute the same. Moreover, the Petition also allegedly failed to state a cause of action because RA 1379 is unconstitutional as it is vague and does not sufficiently define ill-gotten wealth and how it can be determined in violation of the non-delegation of legislative power provision, and insofar as it disregards the presumption of innocence by requiring them to show cause why the properties in question should not be declared property of the state. They also objected to the fact that they were not notified of the Resolution directing the filing of the case and were thereby prevented from filing a motion for reconsideration.

A hearing of petitioners' affirmative defenses was conducted as in a motion to dismiss, after which the Sandiganbayan issued the assailed Resolution dated August 18, 1994. The Sandiganbayan ruled that a petition for forfeiture is an action in rem, civil in character. As such, the participation of Nelly Ong in the inquiry to determine whether the properties acquired by her husband are manifestly disproportionate to his salary and other lawful income is not a mandatory requirement. Neither is the conduct of a preliminary investigation as regards Nelly Ong required. Further, Nelly Ong was only impleaded in the petition as a formal party.

The court held that the power of the Ombudsman to investigate and prosecute unexplained wealth cases is founded on RAs 1379, 3019 and 6770. The Sandiganbayan, moreover, declared that the Petition sufficiently states a cause of action.

Petitioners filed a Motion for Reconsideration[22] dated September 11, 1994, averring that although a forfeiture proceeding is technically a civil action, it is in substance a criminal proceeding as forfeiture is deemed a penalty for the violation of RA 1379. Hence, Nelly Ong is entitled to a preliminary investigation. To proceed against her conjugal share of the questioned assets without giving her the opportunity to present her side in a preliminary investigation violates her right to due process.

Petitioners reiterated their argument that they were not notified of the Resolution directing the filing of the petition for forfeiture and were consequently deprived of their right to file a motion for reconsideration under RA 6770 and pertinent rules.

The Sandiganbayan issued the second assailed Resolution dated October 22, 1996, directing the Ombudsman to furnish petitioners with a copy of the Resolution to file the forfeiture case and giving them a period of five (5) days from receipt of the Resolution within which to file a motion for reconsideration. The Ombudsman was given a period of sixty (60) days to resolve the motion for reconsideration and to report to the court the action it has taken thereon.

Instead of awaiting the Ombudsman's compliance with the Resolution, petitioners filed the instant Petition for Certiorari contending that the Sandiganbayan gravely abused its discretion in ruling that Nelly Ong is not entitled to preliminary investigation; failing to annul the proceedings taken before the Ombudsman despite the alleged bias and prejudice exhibited by the latter and the disqualification of the Ombudsman from acting both as prosecutor and judge in the determination of probable cause against petitioners; and failing to declare RA 1379 unconstitutional.

The OSG filed a Comment[23] dated December 10, 1997, averring that the reason why Nelly Ong was not made a party to the proceedings before the Ombudsman is because her husband never mentioned any specific property acquired solely and exclusively by her. What he stated was that all the acquisitions were through his own efforts. Hence, the Sandiganbayan correctly held that Nelly Ong is a mere formal party.

Furthermore, the presumption of innocence clause of the Constitution refers to criminal prosecutions and not to forfeiture proceedings which are civil actions in rem. The Constitution is likewise not violated by RA 1379 because statutes which declare that as a matter of law a particular inference follows from the proof of a particular fact, one fact becoming prima facie evidence of another, are not necessarily invalid, the effect of the presumption being merely to shift the burden of proof upon the adverse party.

Neither is the constitutional authority of the Supreme Court to "promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts" violated by RA 1379 merely by authorizing the OSG to grant immunity from criminal prosecution to any person who testifies to the unlawful manner in which a respondent has acquired any property. There is no showing that the OSG or the Ombudsman is about to grant immunity to anybody under RA 1379. At any rate, the power to grant immunity in exchange for testimony has allegedly been upheld by the Court.

The OSG further argued that the Ombudsman did not exhibit any bias and partiality against Ong. It considered his claim that he received retirement benefits from SGV, obtained a loan from Allied Bank, and had high yielding money market placements, although it found that these claims were unsubstantiated based on its investigation. Moreover, the sending of subpoenas to SGV and Allied Bank was in accordance with the powers of the Ombudsman under RA 6770.

The OSG likewise alleged that RA 1379 is not vague as it defines legitimately acquired property and specifies that the acquisition of property out of proportion to the legitimate income of a public officer is proscribed.

Petitioners filed a Reply to Comment[24] dated April 1, 1998, reiterating their arguments.

In the Resolution[25] dated April 14, 1999, the Court gave due course to the petition and required the parties to submit their respective memoranda. Accordingly, petitioners filed their Memorandum[26] dated June 29, 1999, while the OSG submitted its Memorandum[27] dated September 27, 1999. The Special Prosecutor submitted its own Memorandum[28] dated June 20, 1999.

We deny the petition.

Petitioners contend that Nelly Ong was denied due process inasmuch as no separate notices or subpoena were sent to her during the preliminary investigation conducted by the Ombudsman. They aver that Nelly Ong is entitled to a preliminary investigation because a forfeiture proceeding is criminal in nature.

On the other hand, the OSG and the Ombudsman contend that Nelly Ong is not entitled to preliminary investigation, first, because forfeiture proceedings under RA 1379 are in the nature of civil actions in rem and preliminary investigation is not required; second, because even assuming that the proceeding is penal in character, the right to a preliminary investigation is a mere statutory privilege which may be, and was in this case, withheld by law; and third, because a preliminary investigation would serve no useful purpose considering that none of the questioned assets are claimed to have been acquired through Nelly Ong's funds.

In *Republic v. Sandiganbayan*,^[29] we ruled that forfeiture proceedings under RA 1379 are civil in nature and not penal or criminal in character, as they do not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the State. Moreover, the procedure outlined in the law is that provided for in a civil action, viz:

Sec. 3. The petition.—The petition shall contain the following information:

(a)

The name and address of the respondent.

(b)

The public office or employment he holds and such other public officer or employment which he has previously held.

(c)

The approximate amount of property he has acquired during his incumbency in his past and present offices and employments.

(d)

A description of said property, or such thereof as has been identified by the Solicitor General.

(e)

The total amount of his government salary and other proper earnings and incomes from legitimately acquired property, and

(f)

Such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency.

Sec. 4. Period for the answer.—The respondent shall have a period of fifteen days within which to present his answer.

Sec. 5. Hearing.—The court shall set a date for a hearing which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.

Sec. 6. Judgment.—If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State: Provided, that no judgment shall be rendered within six months before any general election or within three months before any special election. The court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both. [Emphasis supplied.]

Hence, unlike in a criminal proceeding, there is to be no reading of the information, arraignment, trial and reading of the judgment in the presence of the accused.[30]

In the earlier case of *Cabal v. Kapunan*,[31] however, we declared that forfeiture to the State of property of a public official or employee partakes of the nature of a penalty and proceedings for forfeiture of property, although technically civil in form, are deemed criminal or penal. We clarified therein that the doctrine laid down in *Almeda v. Perez*[32] that forfeiture proceedings are civil in nature applies purely to the procedural aspect of such proceedings and has no bearing on the substantial rights of the respondents therein. This ruling was reiterated in *Katigbak v. Solicitor General*,[33] where we held that the forfeiture of property provided for in RA 1379 is in the nature of a penalty.

It is in recognition of the fact that forfeiture partakes the nature of a penalty that RA 1379 affords the respondent therein the right to a previous inquiry similar to a preliminary investigation in criminal cases.

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. Although the right to a preliminary investigation is not a fundamental right guaranteed by the Constitution but a mere statutory privilege, it is nonetheless considered a component part of due process in criminal justice.[34]

It is argued, however, that even if RA 1379 is considered a criminal proceeding, Nelly Ong is still not entitled to a preliminary investigation because the law itself withholds such right from a respondent who is not himself or herself a public officer or employee, such as Nelly Ong.

RA 1379, entitled "An Act Declaring Forfeiture in Favor of the State of Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Procedure Therefor," expressly affords a respondent public officer or employee the right to a previous inquiry similar to preliminary investigation in criminal cases, but is silent as to whether the same right is enjoyed by a co-respondent who is not a public officer or employee. Sec. 2 thereof provides:

Sec. 2. Filing of petition.—Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof,

shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election;½.[Emphasis supplied.]

Is this silence to be construed to mean that the right to a preliminary investigation is withheld by RA 1379 from a co-respondent, such as Nelly Ong, who is not herself a public officer or employee?

The answer is no.

It is a significant fact in this case that the questioned assets are invariably registered under the names of both Jose and Nelly Ong owing to their conjugal partnership. Thus, even as RA 1379 appears to be directed only against the public officer or employee who has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and his other lawful income and the income from legitimately acquired property, the reality that the application of the law is such that the conjugal share of Nelly Ong stands to be subjected to the penalty of forfeiture grants her the right, in line with the due process clause of the Constitution, to a preliminary investigation.

There is in this case, however, another legal complexion which we have to deal with. As the OSG noted, there is nothing in the affidavits and pleadings filed by petitioners which attributes the acquisition of any of the questioned assets to Nelly Ong.

In his Counter-Affidavit, Ong explained that the questioned assets were purchased using his retirement benefits from SGV amounting to P7.8 Million, various money market placements, and loan from Allied Bank in the amount of P6.5 Million. He averred:

- To fully explain the valid and legal acquisition of the foregoing listed property pointing out the sources of funding, circumstances and details of acquisition, the following information is related:

- As to the acquisition of the lot covered by TCT No. 172168, located at Ayala Alabang, Muntinlupa, Metro Manila, for P5,500,000.00 on October 9, 1990.

Respondent's sources for the P5,500,000.00 were:

a. Interest from his money market placements up to September 30, 1990	
-----	P2,404,643
b. Partial liquidation of money market placements-----	P3,095,357
Total -----	P5,500,000

A brief historical narration of the money placements made by Respondent is included in the "Report on the Statement of Net Worth of Com. Jose U. Ong Calendar Year 1989 to 1991," submitted by him to the Office of the Ombudsman, on or about March 24, 1992.

After the acquisition of the above property, Respondent's money market placements were reduced to P4,365,834 (inclusive of interest which was not used to finance the above acquisition, and which remaining balance was rolled over as part of the placements.

- As to the acquisition of the lot covered by TCT No. 173386, located at Ayala Alabang, Muntinlupa, Metro Manila, on December 3, 1990, for P5,055,000.00.

Respondent was offered this lot, and finding the same to be a good investment, he obtained a loan from the Allied Banking Corporation for P6,500,000.00. P5,500,000 was used by him in the purchase of the above property. Respondent's credit worthiness is self evident from his Statement of Assets and Liabilities as of end

of December, 1989 where his net worth is duly reflected to be P10.9 Million.

Xerox copy of the Certification executed by the Corporate Secretary of Allied Banking Corporation attesting to the grant of a five (5) year Term Loan of P6.5 Million pesos to Respondent on October 24, 1990, is attached and incorporated as Annex "3".

- As to the acquisition of the lot covered by TCT No. 173760, located at Ayala Alabang, Muntinlupa, Metro Manila, on January 16, 1991, for P4,675,000.00.

After the acquisition of the property described in the next preceding sub-paragraph B, Respondent had available investible funds, money market placements, in the total sum of P5,894,815.00, the details of which are as follows:

Balance of Money Market placements after acquisition of the property covered by TCT No. 173386
-----4,365,834.00

Interest earned in the above money market placements up to December 31, 1990
----- 83,981.00

Unused portion of the loan of P6.5 Million ----.....P1,445,000.00

Total -----.....P5,894,815.00

From the foregoing balance of P5,894,815.00, came the P4,375,000.00 with which Respondent purchased the real property covered by TCT No. 173760. There remained a balance of P1,219,815.00.

- As to the acquisition in Respondent's name of the lot at Ayala Alabang, Muntinlupa, Metro Manila, covered by TCT No. 173901, on July 1, 1990.

This is an acquisition that had to be made in Respondent's name for the benefit of Hamplish D. Mercado (respondent's brother-in-law) and Florentina S. Mercado, Filipino/Americans, both residents of Persippany, New Jersey, U.S.A. The funding of this purchase came from Hamplish D. Mercado who previously left funds with Respondent for the purpose of acquiring suitable property where the Mercado spouses could stay when they return to the Philippines upon retirement. Due to circumstances prevailing at the time when the sale was executed, it was done in the name of Respondent and his wife. Respondent immediately thereafter executed an Acknowledgment of Trust stating the aforementioned fact, duly notarized under date of 5 February 1991. Respondent has likewise executed and signed a Deed of Absolute Sale, confirming the truth of all the foregoing. Xerox copy of the said Acknowledgment of Trust dated February 5, 1991, and the duly signed Deed of Absolute Sale still undated, are hereto attached as Annexes "4" and "4-A", respectively.

- As to the alleged acquisition of the lot at Makati, Metro Manila, covered by TCT No. 171210 on July 1, 1990 for P832,000.00.

Regarding the aforementioned alleged acquisition, there was even an acknowledgment of error in the very making of the charge. Suffice it just to say that the Fact-Finding Report itself stated, "Hence, the accusation that it was Com. Ong who provided funds for such acquisition is DEVOID of merit."

- As to the acquisition of Condominium Unit covered by CCT No. 20785.

Though not included in the Complaint-Affidavit, this was added by Investigator Soguilon, and who unilaterally and arbitrarily declared its acquisition by Respondent as coming from illegal means without affording Respondent his constitutional right to due process. Had respondent been afforded the opportunity to comment on the acquisition of subject Condominium Unit, he could have readily explained the purchase price of P744,585.00. Under No. 6-C of this statement, it appears that there still remained an unused balance of P1,219,815.60. Thus, even Respondent's remaining investible funds easily covered the purchase price.

He acknowledges the unintentional omission of the Condominium Unit in the listing of the same in his Statements of Assets and Liabilities. However, as explained in the preceding paragraph the acquisition cost of P744,585.00 is well within his readily available balance for investment after the acquisition of the property covered by TCT No. 173760, which is P1,219,815.60.[35]

Even as petitioners denied the allegation in the petition for forfeiture that Nelly Ong has no visible means of income with which she could have purchased the questioned assets, there is neither indication nor pretense that Nelly Ong had a hand in the acquisition of the properties. Jose Ong clearly declared that he purchased the properties with his retirement funds, money market placements, and proceeds from a bank loan. Whatever defenses which Nelly Ong could have raised relative to the sources of funds used in the purchase of the questioned assets are deemed waived owing to the fact that they are subsumed in the submissions of her husband. Hence, even if she is entitled to a preliminary investigation, such an inquiry would be an empty ceremony.

We now consider Ong's allegations of bias and prejudice exhibited by the Ombudsman during the preliminary investigation.

A perusal of the records reveals that the Graft Investigation Officer duly considered Ong's explanation as to the sources of funds with which he acquired the questioned assets. His averment that he received retirement benefits from the SGV was understandably disregarded because the only supporting document he presented then was the certification of the controller of SGV to the effect that he received such benefits. Ong was likewise unable to substantiate his claim that he had money market placements as he did not present any document evidencing such placements. Further, apart from a certification from the corporate secretary of Allied Bank to the effect that he obtained a loan from the said bank, no other document, e.g., loan application, credit investigation report, loan approval, schedule of loan releases, real estate mortgage document, promissory notes, cancelled checks, receipts for amortization payments, and statement of account, was presented to support the claim.

Ong was even given the opportunity to present the documents in his possession relevant to the approval of the Allied Bank loan, his receipt of retirement benefits from SGV, and money market placements which would have validated his assertion that all the questioned acquisitions were from legitimate sources.[36] Up to this point, therefore, we find that the Ombudsman did not make any unwarranted conclusions or proceed with arbitrariness in the conduct of the preliminary inquiry.

However, Ong calls the Court's attention to the fact that he was not notified of the subpoenas duces tecum ad testificandum apparently issued to SGV, Allied Bank and the BIR and the proceedings taken thereon. This objection was raised in his Motion[37] dated February 17, 1993, which was, unfortunately, perfunctorily denied.

The Rules of Procedure of the Office of the Ombudsman[38] provides that the "preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Court shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

...

(f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witness is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath."

Ong, therefore, should have been notified of the subpoenas duces tecum ad testificandum issued to SGV, Allied

Bank and the BIR. Although there is no indication on record that clarificatory hearings were conducted pursuant to the subpoenas, Ong is entitled to be notified of the proceedings and to be present thereat. The fact that he was not so notified is a denial of fundamental fairness which taints the preliminary investigation.

So, too, did the fact that Ong was not served a copy of the Resolution directing the filing of a petition for forfeiture deprive him of his statutory right to be furnished with a copy of the Resolution to file a petition for forfeiture and to file a motion for reconsideration therefrom with the Ombudsman within five (5) days from receipt of such Resolution pursuant to Sec. 27 of RA 6770. The law provides:

Sec. 27. Effectivity and Finality of Decisions.—(1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice

For these reasons, we find that the Sandiganbayan, in its second assailed Resolution, correctly ordered the Ombudsman to immediately furnish petitioners a copy of the Resolution to file the petition for forfeiture, and gave petitioners a period of five (5) days from receipt of such Resolution within which to file a motion for reconsideration. Although the second Sandiganbayan Resolution was only intended to remedy the Ombudsman's failure to give petitioners a copy of the Resolution to file the petition for forfeiture, it would also have served to cure the Ombudsman's failure to notify petitioners of the issuance of subpoenas duces tecum ad testificandum to SGV, Allied Bank and the BIR.

Instead of awaiting the Ombudsman's compliance with the Resolution and filing their motion for reconsideration therefrom, however, petitioners opted to go directly to this Court. With this maneuver, petitioners effectively deprived themselves of an avenue of redress with the Sandiganbayan. They are deemed to have waived their right to avail of the remedy afforded by the second Resolution.

The next question is whether we should direct the Ombudsman to rectify the errors committed during the preliminary investigation, i.e., the failure to give Ong notice of the subpoenas issued to SGV, Allied Bank and the BIR and notice of the Resolution directing the filing of the petition for forfeiture.

To so order the Ombudsman at this point would no longer serve any useful purpose and would only further delay the proceedings in this case. Verily, petitioners have been allowed to fully plead their arguments before this Court. After all has been said, this case should now be allowed to proceed in its course.

Nonetheless, we find this an opportune time to admonish the Ombudsman to be more circumspect in its conduct of preliminary investigation to the end that participants therein are accorded the full measure of their rights under the Constitution and our laws.

The other issues raised by petitioners concern the alleged disqualification of the Ombudsman to file a petition for forfeiture considering that it also conducted the preliminary investigation to determine probable cause. According to petitioners, the duality of the functions of the Ombudsman, as investigator and prosecutor, impairs its ability to act as a fair and impartial magistrate in the determination of probable cause.

Petitioners are the first to agree that the Ombudsman is vested with jurisdiction to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. They recognize that the Ombudsman has primary jurisdiction over cases, such as the present one, cognizable by the Sandiganbayan.

The problem with petitioners' contention is their assumption that the Ombudsman, a constitutionally-created body,

will not perform its functions faithfully. The duality of roles which the Ombudsman exercises does not necessarily warrant a conclusion that it will be given to making a finding of probable cause in every case.

At any rate, "[I]n the debates on this matter in the Constitutional Commission, it was stressed by the sponsors of the Office of the Ombudsman that, whereas the original Tanodbayan was supposed to be limited to the function of prosecution of cases against public functionaries, generally for graft and corruption, the former would be considered 'the champion of the citizen,' to entertain complaints addressed to him and to take all necessary action thereon." [39] This should leave no doubt as regards the constitutionality and propriety of the functions exercised by the Ombudsman in this case.

Verily, the Court in *Republic v. Sandiganbayan*, [40] reviewed the powers of the Ombudsman and held:

At present, the powers of the Ombudsman, as defined by Republic Act No. 6770 corollary to Section 13, Article XI of the 1987 Constitution, include, inter alia, the authority to: (1) investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases; and (2) investigate and initiate the proper action for the recovery of ill-gotten wealth and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved there. [41]

In the same case, we declared that the Ombudsman has the correlative powers to investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. There is therefore no merit in petitioners' contention that the absence of participation of the OSG taints the petition for forfeiture with nullity.

Finally, the attacks against the constitutionality of RA 1379 because it is vague, violates the presumption of innocence and the right against self incrimination, and breaches the authority and prerogative of the Supreme Court to promulgate rules concerning the protection and enforcement of constitutional rights, are unmeritorious.

The law is not vague as it defines with sufficient particularity unlawfully acquired property of a public officer or employee as that "which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property." It also provides a definition of what is legitimately acquired property. Based on these parameters, the public is given fair notice of what acts are proscribed. The law, therefore, does not offend the basic concept of fairness and the due process clause of the Constitution.

Neither is the presumption of innocence clause violated by Sec. 2 of RA 1379 which states that property acquired by a public officer or employee during his incumbency in an amount which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property shall be presumed *prima facie* to have been unlawfully acquired. As elaborated by Fr. Joaquin Bernas, under the principle of presumption of innocence, it is merely required of the State to establish a *prima facie* case, after which the burden of proof shifts to the accused. [42] In *People v. Alicante*, [43] the Court held:

No rule has been better established in criminal law than that every man is presumed to be innocent until his guilt is proved beyond a reasonable doubt. In a criminal prosecution, therefore, the burden is upon the State to prove every fact and circumstance constituting the crime charged, for the purpose of showing the guilt of the accused.

While that is the rule, many of the States have established a different rule and have provided that certain facts only shall constitute *prima facie* evidence, and that then the burden is put upon the defendant to show or to

explain that such facts or acts are not criminal.

It has been frequently decided, in case of statutory crimes, that no constitutional provision is violated by a statute providing that proof by the State of some material fact or facts shall constitute prima facie evidence of guilt, and that then the burden is shifted to the defendant for the purpose of showing that such act or acts are innocent and are committed without unlawful intention.

. . . The State having the right to declare what acts are criminal, within certain well defined limitations, has a right to specify what act or acts shall constitute a crime, as well as what proof shall constitute prima facie evidence of guilt, and then to put upon the defendant the burden of showing that such act or acts are innocent and are not committed with any criminal intent or intention.[44]

The constitutional assurance of the right against self incrimination likewise cannot be invoked by petitioners. The right is a prohibition against the use of physical or moral compulsion to extort communications from the accused. It is simply a prohibition against legal process to extract from the accused's own lips, against his will, admission of his guilt.[45] In this case, petitioners are not compelled to present themselves as witnesses in rebutting the presumption established by law. They may present documents evidencing the purported bank loans, money market placements and other fund sources in their defense.

As regards the alleged infringement of the Court's authority to promulgate rules concerning the protection and enforcement of constitutional rights, suffice it to state that there is no showing that the Ombudsman or the OSG is about to grant immunity to anyone under RA 1379. The question, therefore, is not ripe for adjudication.

WHEREFORE, the petition is hereby DISMISSED. Costs against petitioners.

SO ORDERED.

Puno (chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., Concur

[1] Rollo, pp. 9-36.

[2] Id. at 249-258; Penned by Associate Justice Sabino R. de Leon, Jr., (later Associate Justice of the Supreme Court) and concurred in by Associate Justices Cipriano A. del Rosario and Augusto M. Amores; Promulgated on August 22, 1994.

[3] Id. at 295-302; Promulgated on October 24, 1996.

[4] Id. at 38-41.

[5] Id. at 38.

[6] Id. at 42-51.

[*] Director Agapito B. Rosales

[7] Id. at 52-93.

[*] By Graft Investigation Officer II, Christopher S. Soguilon

[8] Id. at 91-92.

[9] Id. at 100-101.

[10] Id. at 103-111.

- [11] Id. at 121-123.
- [12] Id. at 122-123.
- [13] Id. at 124-135.
- [14] Id. at 136-150.
- [15] Id. at 149.
- [16] Id. at 152-156; Memorandum dated July 7, 1993.
- [17] Sandiganbayan Records, pp. 1-6. Rollo, pp. 157-162.
- [18] Ombudsman Conrado M. Vasquez inhibited himself in this case. Rollo, p. 162.
- [19] Sandiganbayan Records, pp. 39-40.
- [20] Id. at 51-52.
- [21] Id. at 76-96.
- [22] Id. at 201-221.
- [23] Rollo, pp. 365-389.
- [24] Id. at 397-408.
- [25] Id. at 414.
- [26] Id. at 427-449.
- [27] Id. at 476-500.
- [28] Id. at 450-470.
- [29] G.R. No. 152154, November 18, 2003, 416 SCRA 133.
- [30] Ibid.
- [31] 116 Phil. 1361 (1962).
- [32] 116 Phil. 120 (1962).
- [33] G.R. Nos. 19328 and 19329, December 22, 1989, 180 SCRA 540.
- [34] Villaflor v. Vivar, G.R. No. 134744, January 16, 2001, 349 SCRA 194.
- [35] Rollo, pp. 105-108.
- [36] Id. at 121-123.
- [37] Id. at 124-135.
- [38] Administrative Order No. 07, Series of 1990.
- [39] I. CRUZ, PHILIPPINE POLITICAL LAW, (2002) Ed., p. 366, citing Record of the Constitutional Commission, Vol. II, p. 270.
- [40] G.R. No. 90529, August 16, 1991, 200 SCRA 667.

[41] Id. at 679-680.

[42] *People v. Alicante*, G.R. Nos. 127026-27, May 31, 2000, 332 SCRA 440, citing THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY, (1996), p. 447.

[43] Ibid, citing *U.S. v. Luling*, 34 Phil. 725 (1916).

[44] Id. at 457-458.

[45] *People v. Malimit*, G.R. No. 109775, November 14, 1996, 264 SCRA 467, citing *Holt v. United States*, 218 U.S. 245.

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