

KILOSBAYAN, INC., FERNANDO A. SANTIAGO, QUINTIN S. DOROMAL, EMILIO C. CAPULONG JR., RAFAEL G. FERNANDO, PETITIONERS, VS. COMMISSION ON ELECTIONS, SALVADOR ENRIQUEZ, FRANKLIN DRI...*G.R. No. 128054. October 16, 1997*

Ponente: HERMOSISIMA, JR., J.

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Special Provision No. 1 of the Countrywide Development Fund (CDF) under Republic Act No. 7180, otherwise known as the “General Appropriations Act (GAA) of 1992” allocates a specific amount of government funds for infrastructure and other priority projects and activities. In order to be valid, the use and release of said amount would have to proceed upon strict compliance with the following mandatory requirements: (1) approval by the President of the Philippines; (2) release of the amount directly to the appropriate implementing agency; and (3) list of projects and activities.

In a letter, dated March 17, 1992, respondent Cesar Sarino, the then Secretary of Interior and Local Government, requested for authority to negotiate, enter into and sign Memoranda of Agreements with accredited Non-Governmental Organizations (NGOs) in order to utilize them to projects of the CDF provided for under R.A. No. 7180.

Thereafter, in an undated letter[1], respondent Franlin Drilon, the then Executive Secretary, granted the above-mentioned request of Secretary Sarino. Such an authority was extended to all the Regional Directors of the Department of Interior and Local Government (DILG).

Pursuant to the above-described authority granted him as the then Regional Director of the DILG-NCR, respondent Tiburcio Relucio, on April 24, 1992, entered in the Memorandum of Agreement[2] with an accredited NGO known as “Philippine Youth Health and Sports Development Foundation, Inc.” (PYHSDFI).

The PYHSDFI was registered with the Securities and Exchange Commission (SEC) on October 25, 1985 as a non-stock, non-profit foundation with principal address at AFMC Building, Amorsolo Street, Makati City.[3] Its incorporators were private respondents Benito Catindig, President; Manuel Calupitan, Vice-president; Francisco Cancio, Treasurer; Melvin Mendoza, Secretary; and Ronaldo Puno, Chairman.[4]

The PYHSDFI was organized to promote among the youth, consciousness and greater involvement and participation in sports and cultural development activities through training camps and demonstration seminars conducted by qualified experts in the field.[5]

Not long after its incorporation, that is, in 1987, the PYHSDFI suspended its operations because of lack of fund donations and the migration to the United States of many of its members.[6] The foundation became active again in October, 1991.[7]

In order to be eligible for financial assistance, the PYHSDFI, on December 12, 1991, applied with DILG for accreditation as NGO in Accordance with the guidelines prescribed in Memorandum Circular No. 90-07, dated January 31, 1990.[8]

On March 23, 1992, the PYHSDFI approved Board Resolution No. 7, series of 1992, requesting for allocation from the government's CDF in order to implement its various sports, health, and cultural activities in specific areas in Metro Manila.[9] Hence, the Memorandum of Agreement dated April 24, 1992 was entered into by PYHSDFI President Catindig and DILG-NCR Regional Director Relucio. In compliance with accreditation requirements of the DILG, the PYHSDFI, on April 27, 1992, filed with SEC a new set of by-laws.[10]

Under the said Memorandum of Agreement, it was the express responsibility of the DILG to effect the release and transfer to PYHSDFI of the amount of Seventy Million Pesos (P70,000,000.00)[11] from the aggregate allocation of the CDF for complete implementation of the foundation's sports, health and cultural work program.

Respondent Salvador Enriquez, as Secretary of the Department of Budget and Management (DBM), signed April 22, 1992 and released on April 30, 1992, Advice of Allotment (AA) No. BC-8494-92-215 dated April 22, 1992, allocating the amount of Seventy Million Pesos from the CDF under object 200-10 to cover financial assistance for sports, health and cultural programs and other related activities in various barangays in the National Capital Region.[12]

The release of Seventy Million Pesos was made in several checks:[13]

Date	PNB Check No.	Amount
May 5, 1992	138051	P23,000,000.00
May 5, 1992	138052	P23,000,000.00
May 6, 1992	138060	P24,000,000.00

During the hearing of the Senate Committee on Finance on November 22, 1993, DILG Budget Officer Rafael Barata confirmed the above allotment as part of the amount of Three Hundred Thirty Million Pesos (P330,000,000.00) that was released by DBM from the 1992 CDF. The exact amount released to DILG-NCR was P76,099,393.00 while the amounts released to the other regions are as follows:

Region I - P14,192,834.00

Region II - 108,000.00

Region III - 19,115,000.00

Region IV - 74,131,150.00

Region V - 25,047,991.00

Region VI - 5,545,000.00

Region VII - 20,159,500.00

Region VIII - 23,006,600.00

Region IX - 19,900,900.00

Region X - 25,356,012.00

Region XII - 9,549,000.00

CAR - 10,300,000.00

The total amount disbursed under the CDF was P330,470,688.00.

On December 14, 1993, public respondent Commission on Election (Comelec) received from petitioner Kilosbayan a letter informing of “two x x x serious violations of election laws”[14], thus:

“1. The documented admission of Secretary of Budget Salvador Enriquez, in the October 5, 1993 hearing of the Commission on Appointments, that the amount of P70 million was released by his department, shortly before the elections of May 11, 1992, in favor of a private entity, the so-called ‘Philippine Youth, Health and Sports Development Foundation,’ headed by Mr. Rolando Puno, who had been repeatedly identified by columnist Teodoro Benigno as a key member of the Sulu Hotel Operation (SHO), which had reportedly engaged in dirty election tricks and practices in said election. x x x

2. The illegal diversion of P330 million by Malacañang from the Countryside Development Fund to Department of Interior and Local Government which disbursed this huge amount shortly before the May 11, 1992 election, as revealed by DILG Budget Officer Barata, in a hearing of Senate Finance Committee, chaired by Sen. Vicente Sotto III, held last November 22, 1993.”[15]

and “request[ing] that x x x these offenses and malpractices be investigated promptly, thoroughly, impartially, without fear or favor, so that public confidence in the integrity and purity of the electoral process may be immediately restored for the sake of our newly-regained democracy”[16]

On December 14, 1993, then Comelec Chairman Christian Monsod called a meeting of the Comelec En Banc which resolved to refer petitioner Kilosbayan’s letter-complaint to Law Department for comment and/or recommendation.[17] Said letter compliant was docketed as E.O. No. 93-193.

The evidence proffered by Kilosbayan in support of its letter-complaint consisted of the published writings of Teodoro Benigno[18] in his column in the Philippine Star newspaper imputing to the so-called Sulo Hotel Operation (SHO) headed by PYHSDFI’s chairman, Ronaldo Puno, the commission of illegal election activities during the May 11, 1992 elections, including the obtention of government funds for electioneering purposes; the transcripts of record of the testimony of Secretary Enriquez before the Commission on Appointments during the hearing on October 5, 1993 and of the testimony of DILG Budget Officer Rafael Barata before Senate Finance Committee during a hearing on November 22, 1993; and an Affidavit executed by Norberto Gonzales, a congressional candidate in the May 11, 1992 elections, who alleged therein that at Makati Headquarters of the Lakas-NUCD, in February, 1992, he overheard respondents Franklin Drilon and Leonora de Jesus discussing party plans to use the funds of various government offices to finance the party’s election campaign and that ten (10) days or so before May 11, 1992, he obtained his election propaganda materials, following instructions from the party’s National Headquarters, from the Sulo Hotel in Quezon City.

In Memorandum dated March 28, 1994, Comelec Commissioner Regalado Maambong informed Chairman Christian Monsod that petitioner Kilosbayan “[has already] presented their affidavits and supporting documents and [that] it is now time for the respondents to be subpoenaed and for them to present their counter-affidavits and supporting documents, if any, relative to the complaint of the Kilosbayan for illegal disbursement of public funds in the May 11, 1992 synchronized elections”[19]

On March 29, 1994, the Comelec En Banc, during its regular meeting, directed Atty Jose P. Balbuena, Director of Law Department, to issue the proper subpoenas and subpoena duces tecum in connection with the hearing of the Kilosbayan letter-complaint; to proceed in accordance with the Comelec Rules and Procedure relative to the investigation of cases involving election offenses; and submit a complete report within ten (10) days from the termination of the investigation.[20]

Director Balbuena issued a subpoena dated April 17, 1994[21] addressed to respondents Salvador Enriquez, Ronaldo Puno, Francisco Cancio, Vicente Carlos, Jimmy Durante, Melvin Mendoza and “Other John Does” requiring them to appear at the Office of the Director on April 28, 1994 and to submit their respective counter-affidavits and other supporting documents, if any, in connection with petitioner Kilosbayan’s letter-complaint against them.

On May 10, 1994, respondents Melvin Mendoza and Salvador Enriquez filed their respective counter-affidavits[22] specifically denying all the accusatory allegations in petitioner Kilosbayan’s letter-complaint.

On May 25, 1994, respondent Vicente Carlos submitted his counter-affidavit.[23]

For his part, respondent Francisco Cancio filed a Manifestation[24] dated May 24, 1994 that he cannot submit his counter-affidavit due to lack of material time.

Thereafter, petitioner Kilosbayan manifested that it will file a consolidated reply to Counter-Affidavits of respondents Mendoza, Enriquez and Carlos. In order to give petitioner Kilosbayan sufficient time to prepare its consolidated reply, the hearing was set on June 6, 1994.

When June 6, 1994 came, however, petitioner Kilosbayan filed, not a consolidated reply, but a pleading denominated as “Interrogatives”[25] dated May 20, 1994. Said pleading contained a list of questions sought to be propounded to respondents Enriquez, Carlos and Mendoza in an attempt to elicit from them confirmation regarding the questioned CDF allotment, specifically the cash allocation received by PYHSDFI, and the consumption thereof by PYHSDFI chairman Ronaldo Puno’s SHO for its reported illegal election campaign activities during the May 11, 1992 election.

Amidst opposition forged by respondents Enriquez and Mendoza, the Comelec Law Department, through Director Balbuena, scheduled the clarificatory questioning on July 9, 1994.[26]

Through a Motion for Reconsideration dated July 5, 1994, respondent Enriquez persisted to question the legality of the scheduled clarificatory questioning on the ground that the same is in violation of his constitutional right against self-incrimination. Said motion, however, was denied by the Comelec Law Department through Director Balbuena.

Thus, respondents Enriquez and Mendoza filed separate Petition for Certiorari [27] before the Comelec En Banc assailing the afore-mentioned orders of Director Balbuena.

The Comelec En Banc treated said petitions as motions for reconsideration or petitions for review, of the orders of Director Balbuena giving due course to petitioner Kilosbayan’s Interrogatories and scheduling the same for hearing. Ultimately, it ruled in favor of respondents Enriquez and Mendoza and held that the questions sought by petitioner Kilosbayan to be propounded by Director Balbuena to said respondents, are being raised in a preliminary investigation during which any person being accused of an offense, has the right to remain silent, among others.[28]

On February 9, 1995, the Comelec En Banc, during its regular meeting, promulgated Minute Resolution No. 95-0713 approving, with modification, the recommendations of Law Department, as follows:

- “1. To dismiss the complaint against Secretary Salvador Enriquez, Jr. for insufficiency of evidence to establish a probable cause;
2. To hold in abeyance the case against Ronaldo Puno, Vicente Carlos, Melvin Mendoza, Francisco Cancio and Jimmy Durante, and to direct the Commission on Audit (COA) to conduct further rigid and extensive

investigation on the alleged irregularities or anomalies stated in its report dated November 15, 1993 and to submit its report on such investigation including pertinent papers thereof, which shall be included in the re-evaluation of the existing documents pertaining to the PYHSDFI before the case of the above respondents be re-submitted to this Commission for resolution;

3. To order the Law Department to summon Atty. Tiburcio A. Relucio, former Regional NCR-DILG Director to shed light on the Kilosbayan complaint or the P70 million which were allotted by his office to the PYHSDFI shortly before the May 11, 1992 synchronized national and local elections:

4. To direct the Law Department to send a letter to former DILG Secretary Cesar Sarino to explain allotments and sub-allotments per evaluation report of the Law Department x x x; [and]

5. To direct the Kilosbayan to identify, under oath, the John Does in their complaint.”[29]

Dismissing the case against respondent Enriquez, whose evidence of strict compliance with the requirements of R.A. No. 7180 prior to the release of the Seventy Million Pesos to PYHSDFI, was significantly left unrebutted by petitioner Kilosbayan, the Comelec En Banc reserved the disposition of the case against Ronaldo Puno and other PYHSDFI officers until after submission by the COA of a more detailed report of the nature and extent of the anomalous practices of the PYHSDFI in the utilization of the CDF money allocated thereto. Easily understandable is the need for further investigation by the COA, considering that nothing on the Special Audit Report on PYHSDFI’s CDF allocation imputed the use thereof for electioneering activities.

In response, however, to the letter of the Comelec Law Department dated August 20, 1995 requesting the COA to conduct a more rigid and extensive investigation, COA Chairman Celso Gangan wrote Director Balbuena on September 12, 1995 that “the facts stated in our report dated November 15, 1993 are already complete; that the report does not make mention of irregularities or anomalies, rather deficiencies like lack of supporting documents to fully substantiate the disbursement x x x although the distribution of funds by the Foundation is supported by the a list x x x”[30]

On the same day, August 20, 1995, a letter was also sent to respondent Cesar Sarino, former DILG Secretary, requesting him to submit a verified explanation regarding the sub-allotments issued by his office on several dates in February and March, 1992, as well as some various sub-allotments issued by respondent Leonora de Jesus, then Undersecretary of the DILG.

In the meantime, in a letter dated August 18, 1995, Director Balbuena asked petitioner Kilosbayan to “identify, under oath, the John Does in their complaint” Responding through a letter,[31] petitioner Kilosbayan, through its Acting President, Cirilo A. Rigos, gave the following names:

Cesar Sarino Victor Sululong

Leonora de Jesus Dionisio de la Serna

Jose Almonte Gabriel Claudio

Franklin Drilon

The above-named respondents were duly subpoenaed. Thereafter, they filed their respective Comments and/or Answers.

On November 13, 1995, respondent Cesar Sarino Submitted his Sworn Explanation/Comment remonstrating that the questioned sub-allocations were approved only after a strict compliance with the proscribed time frame under the law which was March 27, 1992 until May 2, 1992 and prohibition against public work expenditures.

Respondent Gabriel Claudio filed his Comment/Answer on December 12, 1995 contending that he had not yet joined government at any time before the May 11, 1992 elections.

Respondents Franklin Drilon filed his Comment on January 29, 1996 denouncing as hearsay the sole evidence against him consisting of Teodoro Benigno's newspaper articles implicating him in the SHO.

Dionisio de la Serna, Victor Sumulong and Jose Almonte, who were additionally named as respondents by petitioner Kilosbayan, denied any knowledge or participation in the election offenses subject of the letter-complaint and objected thereto for failure to state, with particularity, the acts that they had supposedly committed in the violation of the Omnibus Election Code. Likewise, they pointed out that Teodoro Benigno newspaper articles constituted hearsay evidence bereft of any probative value.

Insofar as respondent, then DILG-NCR Regional Director, Tiburcio Relucio was concerned, the Law Department was unable to subpoena him because he was abroad.

No rebuttal evidence was tendered by petitioner Kilosbayan to dispute the counter-allegations of herein respondents. Notably, too, petitioner Kilosbayan did not offer any additional evidence, in the place of Teddy Benigno's published newspaper articles implicating PYHSDFI's Ronaldo Puno and the SHO's electioneering activities during the 1992 elections, in order to show even some semblance of a connection between the PYHSDFI's CDF allotment and SHO's electioneering activities.

On April 3, 1996, the Comelec Law Department issued the following finding and recommendations:

“SYNOPSIS OF CASE

[1] TITLE:

'KILOSBAYAN VS. SECRETARY SALVADOR ENRIQUEZ, JR., ET AL.

[2] DOCKET NUMBER:

E.O Case No. 93-193

[3] LAW ALLEGEDLY VIOLATED:

Section 261 (o), (v) and (w) of the Omnibus Election Code. (Use of public funds, money deposited trust, x x x, for an election campaign; Prohibition against release, disbursement or expenditure of public funds for any and all kinds of public works; and Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices).

[4] FINDINGS:

The Law Department finds that there is insufficient ground to engender a well-founded belief that respondents Ronaldo Puno, Secretary Vicente Carlos, Melvin Mendoza, Francisco Cancio, Jimmy Durante, Hon. Cesar N. Sarino, Leonora V. de Jesus, Jose Almonte, Dionisio de la Serna, Victor Sumulong, Franklin Drilon and Gabriel (Gabby) Claudio have committed the acts being complained of and probably guilty thereof and should be held for further proceedings (trial) considering that the allegations in the complaint are plain conjectures, speculations and based on hearsay evidence. The other set of evidence which was obtained through coercive processes of the Commission did not show that the acts as reflected therein come within the proscription of Section 261 (o), (v) and (w) of the Omnibus Election Code.

[5] RECOMMENDATION:

To dismiss the complaint of Kilosbayan against all the respondents.

x x x"[32]

The details of the investigation and a complete discussion of the evidence submitted by the contending parties are laid out in the 16-page Study[33] attached to the aforecited Synopsis of the Case. Essentially, the Law Department evaluated the evidence in this wise:

"The provision of the Omnibus Election Code that may have been possibly violated by the respondents in the KILOBAYAN complaint, are as follows:

'SEC. 261. Prohibited Acts – following shall be guilty of an election offense:

xxx xxx xxx

(o) Use of public funds, money deposited in trust, equipment, facilities owned or controlled by the government for an election campaign. – Any person who uses under any guise whatsoever, directly or indirectly, (1) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks, or agencies; x x x x for any election campaign or for any partisan political activity.'

(v) Prohibition against release, disbursement or expenditure of public funds – Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except the following:

xxx xxx xxx

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices – during the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds."

The Commission on Audit, thru its Chairman, pointed out, in its letter dated September 12, 1995, that the facts stated in their report dated November 15, 1993 are already complete and that the report does not make mention of irregularities or anomalies, rather deficiencies like lack of supporting documents to fully substantiate the disbursements, such that although the distribution of funds by the Foundation is supported by a list, this does not show the acknowledgment by supposed recipients.

Although the report of the COA dated November 15, 1993 mentioned that upon the start of the audit, it was disclosed that PYHSDFI did not keep book of accounts, wherein to record its transactions, which constitute(s) a basic requirement in the accounting for funds and 'all it had to evidence its disbursements are vouchers, many of which are not supported by receipts or other documents', it does not show that the public funds released to it by the DILG was used for any election campaign or for any partisan political activity. The report says:

'(2) The inadequate financial reports, book of accounts and other supporting documents rendered verification of total disbursement of P70M difficult,

This consist of the following:

- a) Meals./snacks P14,465,000
- b) Prof. fees/allowances
travel expenses P17,881,500
- c) Rental site/facilities P 3,441,480
- d) Purchases of supplies and materials P34,221,020

P70,000,000

This particular part of the report of the COA also clearly showed that the public funds in the hands of the PYHSDFI were not used for any and all kinds of public works.

Further it says:

“3.A In most of the transactions undertaken, cash payments [were] used in paying their obligations, since it would have been significantly expensive it in overhead cost to maintain a pool of administrative staff and besides no allocation of such expenses [was] programmed. Moreover, most [the] expenses were in the category of payrolls which [had] to be paid in cash. [L]ikewise suppliers asked for cash-on-delivery (COD) basis since the prices given were the lowest obtainable commercial rates.

This showed that not all obligations of the PYHSDFI were paid in cash, in other words, the other obligations were paid in forms which may be checks or any other device undertaking future delivery of money. However, no single piece of evidence was presented by Kilosbayan to prove its complaint to determine whether they (checks) have been issued within the prohibited period.

In the light of the foregoing, the Law Department reiterates its former findings in its Study for Agenda dated February 8, 1995 that ‘in the case of respondents Ronald Puno, Secretary Vicente Carlos, Melvin Mendoza, Francisco Cancio and Jimmy Durante, based on the existing documents appearing on the records, no probable cause exists against them for violation of the election law’. It is well-settled that the complainant must rely on the strength of his evidence and not on the weakness of the evidence of the respondent[s].

In the case of Hon. Cesar N. Sarino, he alleged that his approvals of the sub-allocations reflect a strict compliance with the law and do not violate Section 261 (v) of the Omnibus Election Code as their approval [was] not within the proscribed time frame as designated by the Commission on Elections, and Advice of Sub-allotment No. DILG-92-2-128 covers a type of expenditure which is not public works expenditure, hence, not violative of said provision of law.

xxx xxx xxx

x x x [A]n incisive, careful, meticulous and rigid review and re-evaluation of the above-listed sub-allotments revealed, that the nine (9) sub-allotments approved by former DILG Secretary Cesar Sarino which appeared to be for construction of public works are actually nine (9) pages of five (5) sub-allotments x x x and the one (1) sub-allotment issued by Undersecretary Leonora V. de Jesus which appeared to be for construction of public works is actually:

(b) Sub-allotment No. Date of Approval Page No.

1] 92-1-90 March 19, 1992 1

To be liable for violation of Section 261 (v), supra, four (4) essential elements must concur and they are:

1) A public official or employee releases, disburses, or expends any public funds;

- 2) The release, disbursement or expenditure of such public funds must be within forty-five days before regular election (March 27, 1992 until May 11, 1992, Section 1, Comelec Resolution No. 2332, Jan. 02, 1992);
- 3) The release, disbursement or expenditure of said public funds is for any and all kinds of public works; and
- 4) The release, disbursement or expenditure of the public funds should not cover any exceptions of Section 261 (v).

Except for Sub-allotment No. 92-1-94 and Sub-allotment No. 92-2-128 approved on March 27, 1992 and April 22, 1992, respectively, by former DILG Secretary Cesar Sarino, not one of the sub-allotments listed above does fall within the proscribed period. Sub-allotment No. 92-1-98 was approved to cover the improvement/rehabilitation of Cabucgayan Waterworks System of Cabucgayan, Leyte. This falls within exception (maintenance of existing and/or completed public works projects) of the proscription being merely a rehabilitation of an existing public works project. Sub-allotment No. 92-2-128 was not for any and all kinds of public works. It was approved to cover the purchase of reference and instructional materials for distribution to all local executives of the 2nd District of Surigao del Norte in support of the Educational Upliftment Program of the DILG, hence, it could not also fall within the proscription. The sub-allotment approved by undersecretary Leonora V. de Jesus, which appeared to be for the construction of public works, having been approved on March 19, 1992 does not fall within the proscriptive period, hence, it could not also fall within the proscription.

xxx xxx xxx

Prescinding from the foregoing documents appearing on [the] records, there exist no sufficient ground to engender a well-founded belief that former DILG Secretary Cesar Sarino and Undersecretary Leonora V. de Jesus have violated Section 261 (v) of the Omnibus Election Code.

The Law Department must stress here that the allegations appearing in the columns of Teodoro Benigno in the Philippine Star on several dates imputing dirty 'election tricks and practices' (as worded by Kilosbayan) against respondent Jose Almonte, Dionisio de la Serna, Victor Sumulong, Franklin Drilon and Gabriel (Gabby) Claudio cannot be admitted as gospel truth because they are purely speculative and conjectural. Suffice it to say, that, they are mere hearsay evidence. Well-settled is the rule that Newspaper clippings are hearsay and of no evidentiary value. (People vs. Jovito Aguel, et al., 97 SCRA 795).

Moreover, former Executive Secretary, now Senator, Franklin Drilon's undated letter, where he approved the request for authority dated March 17, 1992 of then former DILG Secretary Cesar N. Sarino to negotiate, enter into and sign Memoranda of Agreements with and to utilize the accredited Non-Governmental Organizations (NGOs), in accordance with the directive of then former President Corazon Aquino dated March 13, 1992, regarding the implementation of projects under the Countrywide Development Fund (CDF) provided under R.A. 7180, does not refer to any release, disbursement, or expenditure of public funds for construction of public works.

Consequently, there also exist no sufficient evidence to engender a well-grounded belief that respondents Jose Almonte, Dionisio de la Serna, Victor Sumulong, Franklin Drilon and Gabriel (Gabby) Claudio have violated Section 261 (o) and (v) of the Omnibus Election code.

It would not be amiss to state here in passing that well-enshrined is the rule that the complainant must submit evidence to prove his case. IN THE INSTANT CASE, COMPLAINANT KILOSBAYAN DID NOT SUBMIT EVIDENCE TO PROVE ITS CASE. IT POSTULATES THE THEORY THAT SINCE IT IS THE CONSTITUTIONAL POWER OF THE COMMISSION TO ENFORCE AND ADMINISTER ALL LAWS AND REGULATIONS RELATIVE TO THE CONDUCT OF ELECTION, IT IS INCUMBENT TO USE ITS CONSTITUTIONAL POWER TO SECURE THE NEEDED EVIDENCE. THIS POSITION OF THE

KILOSBOYAN IS PATENTLY ERRONEOUS AS IT IS NOT ONLY ITS LEGAL OBLIGATION BUT ALSO ITS MORAL DUTY TO SUBMIT ITS EVIDENCE TO PROVE ITS COMPLAINT. x x x”[34]

Adopting the foregoing findings and conclusions of the Law Department, the Comelec En Banc promulgated Minute Resolution No. 96-1037 dismissing the charges against the following: respondents Ronaldo Puno, Vicente Carlos, Melvin Mendoza, Francisco Cancio and Jimmy Durante for violation of Section 261 (o), (v) and (w) of the Omnibus Election Code; respondents Cesar Sarino and Leonora de Jesus for violation of Section 261 (v) of the Omnibus Election Code; and respondent Franklin Drilon and others also charged in petitioner’s complaint, namely, Jose Almonte, Dionisio de la Serna, Victor Sumulong and Gabriel Claudio, for violation of Section 261 (o) and (v) of the Omnibus Election Code, all on ground of insufficiency of evidence to establish probable cause.

Petitioner Kilosbayan, however brushed off responsibility for adducing evidence of herein respondents’ culpability, and adamantly demanded that the Comelec perform its constitutional duty of prosecuting election offenses upon any, even meager, information of alleged commission of election offenses.

Its complaint having been dismissed in the aforementioned Resolutions dated February 9, 1995 and April 11, 1996, respectively, petitioner filed a Motion for Reconsideration dated May 16, 1997 and a Supplemental Motion for Reconsideration dated June 7, 1996 seeking the nullification of the said Resolutions and praying for the filing of corresponding criminal complaints and/or informations against herein respondents.

Reiterating the dismissal of E.O. Case No. 93-193, however, the Comelec denied the motions in the Resolution dated October 30, 1996.[35]

The Comelec Resolution dated January 20, 1997 contained the detailed basis for the final dismissal of E.O. Case No. 93-193. Discussing point by point the arguments raised by petitioner in its Motion for Reconsideration and Supplemental Motion for Reconsideration, the Comelec En Banc unanimously held, thus:

“Movant complains:

The Law Department makes it appear that the KILOSBOYAN has greater responsibility in the enforcement of election laws than the COMELEC to make it its moral and legal duty to spend its time and private funds to gather evidence from public offices to convince the COMELEC that there is sufficient evidence to establish the guilt of the respondents.

x x x

It may do well to remember that the Constitution charged the COMELEC with the responsibility to x x x

x x x

(6) x x x where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.’ (emphasis theirs)

The Commission has no quarrel with Complainant that indeed the Constitution tasked this Body with the prosecution of election offenses. But the constitutional provision made it clear that prosecution should be made only where it is appropriate. It is appropriate when it is established in the preliminary investigation that probable cause exist to justify the filing of the necessary information against the accused.

Lest the Complainant forgets, it initiated the complaint. Thus, on it rests the burden of supporting its charges with affidavits and/any evidence, for it is upon the evidence thus adduced, that the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. This is so provided under the COMELEC Rules of Procedure x x x.

Nonetheless, even with Complainant's failure to submit substantial enough to justify findings of probable cause, the Commission, through its Law Department undertook an investigation of the case. The Law Department summoned the parties, took testimonies of witnesses, secured documents, and conducted hearings. The result of the preliminary investigation was certainly on the basis of the evidences adduced by complainant and the facts gathered by the Department on its own initiative.

x x x

No other evidence except Mr. Benigno's articles were submitted [by petitioner] to prove the existence of the so called Sulo-Hotel Operations. 'Newspaper clippings are hearsay and of no evidentiary value.' (People v. Aquel, et al., 97 SCRA 795). x x x

[Further] x x x [petitioner] wants the Commission to derive from [the Commission on Audit] report the conclusion that because there were discrepancies, to wit: 1. No books of account [were] maintained by the NGO [i.e., PHYSDFI]; and 2. Cash payments were made regardless of amount, then the allocation to PHYSDFI were made for electioneering purposes. Indeed, there could have been, as alleged by Complainant, irregularities in the allocation, but it must be shown by the quantum of evidence required to establish probable cause that such irregularities constituted election offense. This, Complainant's evidences failed to show.

x x x

It was established that the PHYSDFI received from DILG-NCR an allocation of P70 million. To Complainant 'the nature' of the allocation and the amount of the expenditures' made by PHYSDFI 'within a short period of time, i.e., immediately before the elections and in the light of the fact that it stopped all its operations shortly after the elections' established beyond reasonable doubt that the foundation was engaged in partisan political activity. Complainant further averred that the 'flight of the heads of the foundation (Puno and Catindig) and Regional Director Tiburcio A. Relucio who went into hiding after the series of exposes by columnist Teodoro Benigno... constitutes an implied admission of guilt.' x x x

It is the Law Department's findings and so is Ours, that the nature and amount of expenditure within a short period of time are not sufficient to meet the quantum proof required to establish that said contributions were made for partisan political activity. It must be emphasized that the burden is on Kilosbayan to prove its allegations. He who alleges must prove his allegation. Unfortunately for Complainant, it was not able to produce evidence showing that the contribution was used for partisan political activity.

x x x

Complainant posits the view that respondents are liable x x x because the sports and medical kits were unlawful election propaganda, having been purchased and distributed a few days before election and the stopped after the election. At most, this is speculative and presumptive. In the absence of proof amply showing that the purchase and distribution of gadgets and kits were made to advertise or to further the chances of victory of candidate or candidates, the Commission cannot justify the conclusion that probable cause exist to charge respondents x x x.

x x x

While it was established by documents thus presented x x x that there was a release of public funds by DILG/DILG-NCR, within the prohibited period, the same could not be considered as a violation x x x because one, the expenditure was not for public works; and two, the Department of Interior and Local Government can not be considered as an office of other ministries (departments) performing functions similar to the Ministry of Social Services and Development or Ministry of Human Settlements.

Kilosbayan's complaints were heard. They were investigated. Complainant was given full opportunity to argue its case and prove its charges. It presented arguments but not evidences. Its thesis is more on speculations,

conjectures and suspicious. It expects the Commission to find as circumstantial evidence the chain of circumstances which [it] presented, forgetting that:

‘The rule on circumstantial evidence necessarily requires that each circumstance must be positively established with the requisite quantum of evidence, in the same manner that the catena that binds the together and conduces to a conclusion of guilt must survive the test of reason and satisfy the required evidentiary weight.’ (People vs. Adofina, 239 SCRA 67)

Unfortunately, Complainant failed to substantiate with sufficient evidence the circumstances on which it based the liability of respondents for offenses charged by way of its Supplemental Motion for Reconsideration. x x x”[36]

Its Motion for Reconsideration and Supplemental Motion for Reconsideration having been finally denied by the Comelec En Banc, petitioner Kilosbayan has come before us ascribing grave abuse of discretion to public respondent Comelec for: (1) refusing and/or neglecting to gather more evidence of respondents’ culpability, pursuant to its constitutional duty to prosecute election offenses, through oral arguments upon petitioner’s Motion for Reconsideration and Supplemental Motion for Reconsideration as well as from respondents Rolando Puno and Tiburcio Relucio who, petitioner claims, have not gone abroad but are actually in the country; and (2) for issuing a blanket exoneration of all respondents despite the prima facie evidence already in the hands of Comelec.

The Comelec did not commit any act constituting grave abuse of discretion in dismissing petitioner Kilosbayan’s letter-complaint against herein respondents, the former having failed to prove its case against the latter. As such, this petition must be dismissed.

Section 2 (7) of Article IX-C of the 1987 Constitution provides that the Comelec shall exercise the power to “investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices”. Discerning the rationale for this grant of prosecutorial powers to the Comelec, we already had occasion to rule, thus:

“The grant to the COMELEC of the power, among others, to enforce and administer all laws relative to conduct of election and the concomitant authority to investigate and prosecute election offenses is not without compelling reason. The evident constitutional intendment in bestowing this power to the COMELEC is to insure the free, orderly and honest conduct of elections, failure of which would result in the frustration of the true will of the people and make a mere idle ceremony of the sacred right and duty of every qualified citizen to vote.”[37]

This constitutional grant of prosecutorial power in the Comelec finds statutory expression under Section 265 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, to wit:

“SEC. 265. Prosecution. – The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, That in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.”

Insofar as the prosecution of election offenses is concerned, therefore, the Comelec is the “public prosecutor with the exclusive authority to conduct the preliminary investigation and the prosecution of election offenses punishable under the [Omnibus Election] Code before the competent court.”[38] This constitutional and statutory mandate for Comelec to investigate and prosecute cases of violation of election law translates, in effect, to the exclusive power to conduct preliminary investigations in cases involving election offenses for the twin purpose of

filing an information in court and helping the Judge determine, in the course of preliminary inquiry, whether or not a warrant of arrest should be issued.[39]

For the effective investigation and prosecution of cases of election offenses and in the exercise by the Comelec of its quasi-legislative power under Section 6, Article IX of the 1987 Constitution, the Comelec Rules of Procedure were promulgated, providing, among others, the guidelines pertinent to election offenses. They are as follows:

“Rule 34 – Prosecution of Election Offenses

SECTION 1. Authority of the Commission to Prosecute Election Offenses. – The Commission shall have exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law.

SEC. 2. Continuing Delegation of Authority to Other Prosecution Arms of the Government. - The Chief State Prosecutor, all Provincial and City Fiscals, and/or their respective assistants are hereby given continuing authority, as deputies of the Commission, to conduct preliminary investigation of complaints involving election offenses under the election laws which may be filed directly with them, or which may be indorsed to them by the commission or its duly authorized representatives and to prosecute the same. Such authority may be revoked or withdrawn any time by the Commission whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Commission, promote the common good, or when it believes the successful prosecution of the case can be done by the Commission.

SEC. 3. Initiation of Complaint. – Initiation of complaint for election offenses may be done motu proprio by the Commission, or upon written complaint by any citizen of the Philippines, candidate, registered political party, coalition of political parties or organizations under the party-list system or any accredited citizen arms of the Commission.

SEC. 4. Form of Complaint and Where to File.- (a) When not initiated motu proprio by the Commission, the complaint must be verified and supported by affidavits and/or any other evidence. Motu proprio complaints may be signed by the Chairman of the Commission, or the Director of the Law Department upon direction of the chairman, and need not be verified.

(b) The complaint shall be filed with the Law Department of the Commission; or with the offices of the Election Registrars x x x

x x x x x x x x

SEC. 5. Referral for Preliminary Investigation. – If the complaint is initiated motu proprio by the Commission, or is filed with the Commission by any aggrieved party, it shall be referred to the Law Department for investigation. Upon direction of the Chairman of the Commission, the preliminary investigation may be delegated to any lawyer of said Department, or any of the Regional Election Directors or Provincial Election Supervisors, or any lawyer of the Commission.

SEC. 6. Conduct of Preliminary Investigation. – (a) If on the basis of the complaint, affidavits and the supporting evidence, the investigating officer finds no ground to continue with the inquiry, he shall recommend the dismissal of the complaint and shall follow the procedure prescribed in Section 8 (c) of this Rule. Otherwise, he shall issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents giving said respondent ten (10) days from receipt within which to submit counter-affidavits and other supporting documents. The respondent shall have the right to examine all other evidence submitted by the complainant.

(b) Such counter-affidavits and other supporting evidence submitted by the respondent shall be furnished by him to the complainant.

(c) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten-day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(d) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(e) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

SEC. 7 Presumption of Existence of Probable Cause. – A complaint initiated motu proprio by the Commission is presumed to be based on sufficient probable cause and the investigating officer must forthwith issue the subpoena mentioned in the immediately preceding section.

SEC. 8. Duty of Investigating Officer. - The preliminary investigation must be terminated within twenty (20) days after receipt of the counter-affidavits and other evidence of the respondents, and resolution thereof shall be made within five (5) days thereafter.

(a) If the investigating officer finds no cause to hold the respondent for trial, he shall recommend dismissal of the complaint.

(b) If the investigating officer finds cause to hold the respondent for trial, he shall prepare the resolution, and the corresponding information wherein he shall certify under oath that he has examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence.

(c) In either case, the investigating officer shall, within five(5) days from the rendition of his recommendation, forward the records of the case to

1) The director of the Law Department of the Commission in cases investigated by any of the Commission lawyers or field personnel and

2) The State Prosecutor, Provincial Fiscal or City Fiscal, as the case may be, pursuant to the continuing authority provided for in Section 2 of this Rule.

SEC. 9. Duty of the Law Department, State Prosecutor, Provincial or City Fiscal Upon Receipt of Records. -

(a) Within ten (10) days from receipt of the records stated in paragraph (c) of the immediately preceding section, the State Prosecutor, Provincial or City Fiscal shall take appropriate action thereon, immediately informing the parties of said action.

(b) In case investigated by the lawyers or the field personnel of the Commission, the director of the Law Department shall review and evaluate the recommendation of the said legal officer, prepare a report and make a recommendation to the Commission affirming, modifying or reversing the same which shall be included in the agenda of the succeeding meeting en banc of the Commission. If the Commission approves the filing of an information in court against the respondent/s, the Director of the Law Department shall prepare and sign the information for immediate filing with appropriate court.

(c) In all other cases, if the recommendation to dismiss or the resolution to file the case in court is approved by State Prosecutor, Provincial or City Fiscal, they shall likewise approve the Information prepared and immediately cause its filing with the proper court.

(d) If the recommendation to dismiss is reversed on the ground that a probable cause exists, the State Prosecutor, or the Provincial or City Fiscal, may, by himself prepare and file the corresponding information against the respondent or direct any of his assistants to do so without conducting another preliminary investigation.

x x x x x x x x” [Emphasis ours].

The Comelec, whenever any election offense charge is filed before it, must have first, before dismissing the same or filing the corresponding information, conducted the preliminary investigation proper of the case. At this initial stage of criminal prosecution, the primordial task of the Comelec is the determination of probable cause, i.e., whether or not there is reason to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial[40] or as the Comelec Rules of the Procedure phrase it, whether or not “there is reasonable ground to believe that a crime has been committed”[41]

The determination of probable cause in any criminal prosecution, is made indispensable by the Bill of Rights which enshrines every citizen’s right to due process, the presumption that he is presumed innocent, and the inadmissibility against him of any damaging evidence obtained in violation of his right against self-incrimination. As Justice Reynanto S. Puno has pointed out, probable cause is neither an “opaque concept in our jurisdiction”[42] or a “high level legal abstraction to be the subject of warring thoughts”[43] It constitutes those “facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed”[44] by the person sought to be judicially indicted. In determining probable cause, however, the public prosecutor must have been apprised by the complainant of his evidence in support of his accusatory allegations. In other words, determining probable cause is an intellectual activity premised on the prior physical presentation or submission of documentary or testimonial proofs either confirming, negating or qualifying the allegations in the complaint.

It follows, therefore, that in the instant case, petitioner Kilosbayan must have necessarily tendered evidence, independent of and in support of the allegations in its letter-complaint, of such quality as to engender belief in an ordinarily prudent and cautious man that the offense charged therein has been committed by herein respondents. Indeed 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[45], but it certainly demands more than “bare suspicion”[46] and can never be “left to presupposition, conjuncture, or even convincing logic”.[47] The effort of petitioner Kilosbayan, thus, in order to successfully lead to the judicial indictment of respondents, should have gone beyond a largely declamatory condemnation of respondents and diligently focused on its two-fold obligation of not only substantiating its charges against respondents but also proffering before the Comelec substantial evidence of respondents’ utilization, through conspiratorial, cooperative and/or interrelated acts, of Seventy Million Pesos from CDF for electioneering activities in violation of its pertinent provision on election offenses as enumerated in the Omnibus Election Code.

In the dispensation of this obligation, however Kilosbayan utterly failed. The encompassing narration of the pertinent facts and circumstances of this case in the early part of this ponencia indubitably shows the complacency, at the least, and the gross and deliberate negligence, at most, of petitioner Kilosbayan in presenting sufficient evidence in support of its letter-complaint.

To salvage its position, however, petitioner Kilosbayan denies the existence, under the 1987 Constitution, of any obligation on its part to present any evidence of its accusations against respondents in its letter-complaint. Petitioner Kilosbayan asserts that it is the obligation of the Comelec to search for the evidence needed to judicially indict respondents because it is the agency empowered to investigate and prosecute cases involving election offenses; that E.O. Case No. 93-193 should, at any rate, be deemed one filed by the Comelec motu

proprio, thus needing no evidence since probable cause is such a case is presumed, petitioner Kilosbayan having only “requested” for an investigation and the Comelec having proceeded to in fact hold the investigation, as “requested” by petitioner Kilosbayan; and that the Comelec should already be grateful to petitioner Kilosbayan for the latter’s private efforts at exposing respondents’ illegal election activities.

Kilosbayan’s position is not tenable.

Indeed, Kilosbayan truly deserves commendation for its continued vigilance against any and all forms of government corruption that cost this country not only the funds gravely needed to afford each Filipino a decent and honorable life, but also the moral resolve to unite with each other and resist and eradicate the growing culture of greed, abuse of power and blatant disregard for basic human dignity and social responsibility. But it must guard against arrogance in trumpeting its causes, if not recklessness in its advocacy.

The claim of petitioner Kilosbayan that it is merely the “informant” and not the private complainant with the burden to prove probable cause, borders on the ridiculous. Kilosbayan filed before the Comelec a letter-complaint dated December 14, 1993 in support of which documentary evidences like copies of Teodoro Benigno’s newspaper articles on the SHO’s use of PYHSDFI-obtained CDF, of respondent Enriquez’s testimony before the Commission on Appointments, of DILG Budget Officer Barata’s testimony before the Senate Finance Committee, and of Norberto Gonzales’ affidavit, were likewise submitted by petitioner. The letter-complaint not being verified, it is not disputed that petitioner Kilosbayan subsequently caused its verification; when later asked to give the names of the other John Does in its letter-complaint, petitioner Kilosbayan obliged with a list, under oath, of additional respondents. Petitioner Kilosbayan initiated the complaint against herein respondents, hence the docketing thereof as E.O. Case No. 93—193; it filed numerous pleadings before the Comelec as a private complainant in E.O. Case No. 93-193; its proceeded in the case in accordance with the Comelec Rules of Procedure pertinent to the prosecution of cases of election offenses. After all, the Kilosbayan should have presented evidence and not proceeded and relied on mere conjecture and hearsay evidence.

The contention of petitioner Kilosbayan – that it is the Comelec that is duty-bound to search for evidence to prove its letter-complaint – is downright erroneous. The task of the Comelec as investigator and prosecutor, acting upon any election offenses complaint, is not the physical searching and gathering of proof in support of a complaint for an alleged commission of an election offense. A complainant, who in effect accuses another person of having committed an act constituting an election offense, has the burden, as it is his responsibility, to follow through his accusation and prove his complaint. If the complainant fails to proffer the necessary evidence to show probable cause, notwithstanding the lack of denial or any evidence in controversion, of the accusation, the complaint must be dismissed, since any person accused of a crime is presumed innocent and does not at all have to make a response or reaction to charges against him.

The Comelec, is acting upon an election offense complaint in the course of preliminary investigation, initially facilitates the confrontation process between the complainant and the respondents by requiring the submission of and interfacing, their respective evidences. Ultimately, the Comelec passes upon the contending parties’ respective submissions and proof and weighs the fact and circumstances established therefrom. Contrary to the asseveration of petitioner Kilosbayan, the preliminary investigation is not an occasion for Comelec to, as a duty, spoonfeed the complainant with evidence needed to prove its case.

Finally, we cannot avoid the point out that no novel legal theory can distract even an ordinary layman from the plain dearth of evidence of respondents’ culpability on the record.

There is no proof of the electioneering activities alleged by petitioner Kilosbayan to have been perpetrated by PYHSDFI during the May 11, 1992 elections. Petitioner claims the PYHSDFI distributed medical kits and sports

equipment to several youth groups in certain Metro Manila barangays for purposes of influencing their vote during the May 11, 1992 elections. Petitioner, however, vaguely states the places where, the dates when, the particular candidate for whose cause, and the general description of the people for whose consumption, the distribution of election propaganda materials was undertaken. In fact, there is no proof that the medical kits and sports equipment were election propaganda materials. This is not surprising for there is the barest evidence that this distribution had taken place at all.

There is no proof that PYHSDFI used its cash allocations as an accredited non-governmental organization in order to undertake electioneering activities. Petitioner likewise did not present proof that said distribution of medical kits and sports equipment was for purposes of influencing the votes of certain groups of people during the May 11, 1992 elections. Brushing aside these fatal evidentiary lapses, petitioner insists that PYHSDFI is guilty of using public funds for electioneering purposes simply because it received its CDF allocation within a time frame suspiciously so near the May 11, 1992 elections. This CDF allocation, however, has been convincingly shown to be a legal disbursement of public funds. Significantly, PYHSDFI neither presented rebuttal evidence nor even attempted to argue against the presumption of regular performance of official duty on the part of respondents like Franklin Drilon, Cesar Sarino, and Salvador Enriquez who were then acting in their official capacity as heads of their respective departments.

It may even be conceded that petitioner tells a credible story, it being too much of coincidence for there to be, on the one hand, rumors of electioneering activities on the part of PYHSDFI and on the other, genuine cash allotments showing disbursement of public funds to the latter so coincidentally close to the May, 1992 elections. However, no matter how believable a story may be, no matter how possible it could really have been that PYHSDFI was financial conduit for criminal elements working for the interest of a particular candidate in the 1992 elections, criminal charges cannot ever be sanctioned by mere possibilities or coffee shop rumors.

In other words, said cash allocations appear to be evidence of perhaps, a thousand hypothetical, though, possible scenarios. But, they are evidence of only one fact: that a certain amount of public money was made available to PYHSDFI as it is rightfully entitled thereto as an accredited non-governmental organization at around the same time that the synchronized elections of 1992 were to be held. But this one fact is certainly no justification to indict herein respondents for election offenses imputed to them.

Lastly, there is no proof that respondents conspired to have PYHSDFI accredited as non-government organization in order to avail itself of public funds to spend for electioneering purposes. In order for there to be reasonable ground to believe that a conspiracy exists among (1) the government officials who set up the mechanism for the accrediting NGOs to implement the project under the CDF and to qualify the latter to receive CDF allocations; (2) the incorporators and officers of the PYHSDFI; and (3) the SHO implicated by Teodoro Benigno in his newspaper articles in alleged electioneering activities during the May 11, 1992 elections, there must be a semblance of evidence linking them to each other. There is none, however, except for hearsay evidence consisting of the aforementioned newspaper articles. Suffice it is say that although only a low quantum and quantity of evidence is needed to support a finding of probable cause^[48], the same cannot be justified upon hearsay evidence that is never given any evidentiary or probative value in this jurisdiction.

Incidentally, we note that although made party respondents in this case, Benito Catindig and Manuel Calupitan III were not officially made respondents in E.O. Case No. 93-193 and accordingly not served with subpoena at any time during the pendency of said case before the Comelec. There is no ground, therefore, to implead Benito Catindig and Manuel Calupitan III in the instant case.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is hereby DISMISSED, without any

pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, and Torres, JJ., concur.

Davide, Jr., J., in the result.

Regalado, and Francisco, JJ., on leave.

Romero, J., took no part due to personal reasons.

Puno, and Panganiban, JJ., took no part due to relationship to one of the parties.

[1] Reproduced in the Comment of respondent Franklin Drilon dated April 11, 1997. P. 3.

[2] Dated April 24, 1992; signed by Benito R. Catindig, President of PYHSDFI, and Tiburcio A. Relucio, Regional Director, DILG-NCR; acknowledged before Atty. Nestor Beltran. Notary Public; Rollo, pp. 139-142.

[3] Special Audit Report dated November 15, 1993, p. 4; Rollo, p. 170.

[4] Ibid.

[5] Special Audit Report dated November 15, 1993, p. 4; Rollo, P. 170.

[6] Id., p. 11; Rollo, p. 177.

[7] Id., p. 3; Rollo, p. 169.

[8] Id., p. 3; Rollo, p. 169

[9] Id., p. 5; Rollo, p. 171.

[10] Id., p. 12; Rollo, p. 178.

[11] Memorandum of Agreement dated April 24, 1992, p. 2; Rollo, p. 140.

[12] Alleged on p. 5 of the Counter –Affidavit of respondent Salvador Enriquez dated May 10, 1994, presented before Comelec.

[13] Special Audit Report dated November 15, 1993, p. 10; Rollo, p. 176.

[14] Letter Dated December 14, 1993, p. 1; Rollo, p.131

[15] Ibid.

[16] Letter, supra, p.2. Rollo, p.132.

[17] Minutes of the Meeting of the Comelec En Banc on December 14, 1993, Rollo, p. 133; Minute Resolution No. 94-0286 dated January 27, 1994.

[18] In a letter dated June 25, 1996 addressed to Jovito Salonga, President of Kilosbayan, Teodoro Benigno stated:

“I know you and Kilosbayan are engaged in a non-partisan crusade for clean and free election xxx. Xx I would like to help your crusade by telling the truth matter which are within my personal knowledge, particularly in connection with my own fight against the appointment of Mr. Ronnie Puno as head of Broadcast City. I may add that in my judgement, President Corazon C. Aquino had nothing to do with the Sulo Hotel Operation (SHO), which I exposed in my columns in the Philippine Star. x x x”; Rollo, p. 164.

[19] Excerpt from Minutes of the Regular Meeting of the Comelec En Banc on March 29, 1994; Rollo, p. 134.

[20] Ibid.

[21] Annex “1” of Comment of respondents Puno, Catindig, Cancio, Mendoza, Calupitan and Durante dated February 20, 1995.

[22] Annexes “2” and “3”, supra.

[23] Annex “A” of Comment of respondent Vicente Carlos dated April 15, 1997.

[24] Annex “3” of Comment of respondents Puno, Catindig, Cancio, Mendoza, Calupitan and Durante dated February 20, 1995.

[25] Annex “4”, supra.

[26] Order dated June 30, 1994, Annex “7” of the Comment of respondents Puno, Catindig, Cancio, Mendoza, Calupitan and Durante dated February 20, 1995.

[27] Annexes “9” and “10”, supra.

[28] Unanimous resolution of the Commission En Banc penned by Commissioner Maambong, dated October 18, 1994, Annex “14” of the Comment of respondents Puno, Catindig, Cancio, Mendoza, Calupitan and Durante dated February 20, 1995.

[29] Excerpt from Minutes of Regular En Banc Meeting of the Comelec held on February 9, 1995; Rollo, pp. 91 and 94.

[30] Letter dated September 12, 1995; Rollo, p. 145.

[31] Rollo, pp. 143-144.

[32] Synopsis of the Case prepared and submitted by Reny C. Ables of the Comelec Law Department: Rollo, p. 97.

[33] Dated April 3, 1996; Rollo, pp. 98-115.

[34] “In Re: E.O. Case No. 93-193” (Study) dated April 3, 1996, pp. 8-16; Rollo, pp. 105-118.

[35] Excerpt from the Minutes of the Regular En Banc Meeting of the Comelec; Rollo p. 114.

[36] Comelec Resolution dated January 20, 1997, pp. 2-14; Rollo, pp. 117-129.

[37] *Corpus v. Tanodbayan*, 149 SCRA 281, 283 (1987); *De Jesus v People*, 120 SCRA 760, 765-766 (1983).

[38] *People v. Delgado*, 189 SCRA 715, 721 (1990).

[39] *People v. Inting*, 187 SCRA 788, 794 (1990).

[40] *People v. Inting*, 187 SCRA 788, 793 (1990).

[41] Section 8 (b), Rule 34, Comelec Rules of Procedure.

[42] *Webb v. De Leon*, 247 SCRA 652, 668 (1995).

[43] Dissenting Opinion of Justice Reynanto S. Puno in *Roberts, Jr. v. Court of Appeals*. 254 SCRA 307, 353 (1996).

[44] Webb v. De Leon, *supra*.

[45] *Id.*, at 676.

[46] *Ibid.* [Cf: *Brinegar v. United States*, 338 US 160 (1949)]

[47] *Roberts Jr. v. Court of Appeals*, 254 SCRA 307, 341 (1996).

[48] *Webb v. De Leon*, 247 SCRA 653, 676 (1995).

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