MAYOR CELIA T. LAYUS, M.D., PETITIONER, VS. SANDIGANBAYAN, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 134272. December 08, 1999

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

This case is a special civil action for certiorari and prohibition filed under Rule 65 of the Rules of Court. Petitioner asks us to finally settle the issue of jurisdiction of the Sandiganbayan in criminal cases against mayors of fifth class municipalities and nullify the assailed resolutions of the Sandiganbayan's Fifth Division.

Petitioner Celia T. Layus (hereafter LAYUS), the elected Mayor of the Municipality of Claveria, Province of Cagayan, was charged with estafa through falsification of public documents in an Information[1] iled on 19 February 1997 before public respondent Sandiganbayan and docketed therein as Criminal Case No. 23583.

The Information stemmed from a complaint for estafa through falsification of public documents and for violation of Section 3(e) and (h), and Section 4 of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, filed against LAYUS and Pedro V. Layus, Henjie C. Layus and Arnold V. Layus. After preliminary investigation, Graft Investigation Officer II Jose D. Carlos of the Office of the Deputy Ombudsman for Luzon, in a Joint Resolution dated 21 November 1996, recommended the filing of an information against LAYUS for the first charge and the dismissal of the charges against all of the original respondents for the second. The resolution had the concurrence of Director Ernesto Nocos and was approved by the Ombudsman.

LAYUS alleged that she received a copy of the Joint Resolution of 21 November 1996 on 21 February 1997, and filed a motion for reconsideration thereof on 7 March 1997, without knowledge of the filing of the Information on 17 February 1997, the date the joint resolution was released.

On 8 April 1997, a warrant of arrest was served on LAYUS. She filed a cash bond for her temporary liberty. She also filed a motion to lift the travel ban imposed on her, considering that she was scheduled to leave the country on 21 April and to be away up to 15 May 1997. Her arrest allegedly came at a time when she was preparing for her trip, thus, leaving her with no other alternative but to post bail and file the motion.

The motion to lift the travel ban was set for hearing on 18 April 1997. On that date, however, the Sandiganbayan required her to enter a plea before lifting the travel restriction. On account of her impending trip, she acceded and entered a plea of not guilty on condition that her plea not be deemed to be a waiver of her right to file a motion for reinvestigation and a motion to quash the information. She claimed that the Sandiganbayan recognized such right until the Ombudsman resolved her pending motion.

On 24 March 1997, the Office of the Deputy Ombudsman denied LAYUS' motion for reconsideration of the Joint Resolution of 21 November 1996.

On 6 August 1997, the first day set by the Sandiganbayan for the trial of the case, LAYUS informed the court of the prior filing of her motion for reinvestigation[2] ated 2 August 1997, which was allegedly sent by registered

mail, but the Sandiganbayan had not received any copy of it.

On 7 August 1997, LAYUS filed a motion to quash the Information.[3] In the meantime, with appropriate leave, LAYUS served and filed an Omnibus Motion dated 25 September 1997, reiterating her right to reinvestigation.[4] This was, however, denied by the Sandiganbayan in its resolution of 1 December 1997.[5] LAYUS' motion to reconsider the denial likewise failed.[6]

In its resolution of 9 October 1997, the Sandiganbayan denied LAYUS' motion to quash and ruled that the alleged irregularities in the preliminary investigation were not proper grounds for quashing the Information.[7]

On 19 November 1997,[8] the prosecution filed with the Sandiganbayan a Motion to Suspend Accused Pendente Lite, which LAYUS opposed on 26 November 1997.[9] The resolution of said motion was held in abeyance in light of the May 1998 elections and the prohibition under Section 261 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, as amended, which provides thus:

> (x) Suspension of elective provincial, city, municipal or barangay officer - the provisions of law to the contrary notwithstanding during the election period, any public official who suspends, without prior approval of the Commission, any elective provincial, city, municipal or barangay officer, unless said suspension will be for purposes of applying the "Anti-Graft and Corrupt Practices Act" in relation to the suspension and removal of elective officials; in which case the provisions of this section shall be inapplicable.

On 26 June 1998, the Sandiganbayan eventually granted the motion to suspend LAYUS.[10]

Hence, on 13 July 1998, LAYUS filed the instant petition contending that:

> A. THE SANDIGANBAYAN ERRED IN ASSUMING JURISDICTION OVER PETITIONER.
>
> B. THE SANDIGANBAYAN ERRED IN DENYING PETITIONER'S MOTION FOR REINVESTIGATION.
>
> C. THE 90-DAY SUSPENSION PENDENTE LITE IS AN ERROR.

In support of the first assigned error, LAYUS contends that at the time of the alleged commission of the offense, she was only receiving a basic monthly salary of P11,441 which is classified as Salary Grade (SG) 25 under Republic Act No. 6758, otherwise known as the Compensation and Position Classification Act of 1989. Because of this, she is not within the jurisdiction of the Sandiganbayan, which has jurisdiction over civil servants with SG 27 or over.

LAYUS further maintains that Section 444 (d) of the Local Government Code[11] oes not determine the jurisdiction of the Sandiganbayan. Said provision simply prescribes the minimum compensation of municipal mayors at SG 27, and does not ipso facto classify said position as SG 27, considering the financial restrictions provided under R. A. No. 6758. Since she in fact receives a compensation falling within SG 25, it would be absurd, unjust and be a complete violation of her constitutional right to equal protection of laws if she would be considered to be an SG 27 official.

As to the second assigned error, LAYUS alleges that the subject fund is confidential in nature and, therefore, governed by COA Circular No. 385. She relies on the exclusive authority of the Commission on Audit to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive and unconscionable expenditures or uses of government funds and properties. The Ombudsman allegedly failed to get a copy of the COA Report on the questioned transactions. She also points out that the documents presented during the preliminary investigation were not authenticated. Furthermore, she makes mention of the alleged breach of the agreement between her and the prosecution to stay the reglementary period for filing a motion for reinvestigation, as approved by the Sandiganbayan during the unscheduled

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arraignment held on 18 April 1997.

Finally, on the questioned 90-day suspension pendente lite, LAYUS cites the resolution in Rios v. Sandiganbayan (Second Division)[12] wherein this Court ruled that the Sandiganbayan erred in imposing a 90-day suspension upon the petitioner for the single case filed against him and reduced the same to 60 days.

After due deliberation, we find the petition to be without merit.

In Rodrigo, et al. v. Sandiganbayan (First Division),[13] we ruled that 5th class municipality mayors fall under the original and exclusive jurisdiction of the Sandiganbayan. The Court added that although municipal mayors are not included in the enumeration under Section 4.a. of Republic Act No. 7975,[14] Congress, nevertheless, provided a catchall proviso in paragraph (5) thereof, thus:

> (5) All other national and local officials classified as Grade 27 and higher under the Compensation and Position Classification Act of 1989.

Pursuant thereto, R.A. No. 6758[15] aid down the criteria and then authorized the Department of Budget and Management (DBM) to prepare the Index of Occupational Services, Position Titles and Salary Grades. Municipal mayors are assigned SG 27 in its two editions of 1989 and 1997.

We are not persuaded by petitioner's claim that at the time of the alleged commission of the crime, she was only receiving a monthly salary of P11,441, an amount equivalent to SG 25 under R.A. No. 6758; hence, she falls outside the original and exclusive jurisdiction of the Sandiganbayan.

The fact that LAYUS is getting an amount less than that prescribed for SG 27 is entirely irrelevant for purposes of determining the jurisdiction of the Sandiganbayan. Sections 10 and 19 (b) of R.A. No. 6758 refer to the rates of pay for SG 25,viz:

> Section 10. Local Government Units (LGUs).-- The rates of pay in LGUs shall be determined on the basis of the class and financial capability of each LGU: Provided, That such rates of pay shall not exceed the following percentages of the rates in the salary schedule prescribed under Section 7 hereof:
> "Sec. 7. Salary Schedule. -- The Department of Budget and Management is hereby directed to implement the Salary Schedule prescribed below:
>
> Salary Schedule
>
> Grade
>
> 1[st]
>
> 2[nd]
>
> 3[rd]
>
> 4[th]
>
> 5[th]
>
> 6[th]
>
> 7[th]
>
> 8[th]
>
> 25

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11,385

11,499

11,614

11,730

11,847

11,966

12,085

12,206

Section 19. Funding Source.-- The funding sources for the amounts necessary to implement this Act shall be as follows:

> (b) local government units, the amount shall be charged against their respective funds. Local government units which do not have adequate or sufficient funds shall only partially implement the established rates as may be approved by the Joint Commission under Sec.8 of Presidential Decree No.1188. Provided, That any partial implementation shall be uniform and proportionate for all positions in each local government unit: Provided further, That savings from National Assistance to Local Government Units (NALGU) funds may be used for this purpose.

That LAYUS is receiving a rate within SG 25 should not, however, be construed to mean that she falls within the classification of SG 25.

On the denial of petitioner's motion for reinvestigation, a perusal of the records reveals that, indeed, LAYUS was unable to file a motion for reconsideration before the Ombudsman. But it should be stressed that the very essence of due process lies in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense.[16] In this case, LAYUS was fully accorded her right to due process. She was represented by counsel and was heard, as may be gathered from the numerous pleadings she had filed.

Moreover, in Pecho v. Sandiganbayan,[17] we ruled that the failure to furnish the respondent with a copy of an adverse resolution pursuant to Section 6, Rule II of the Rules of Procedure of the Office of the Ombudsman, does not affect the validity of an information thereafter filed. The contention that the provision is mandatory in order to allow the respondent to avail of the 15-day period to file a motion for reconsideration or reinvestigation is not persuasive, for Section 7(b) of the same Rule states, inter alia, that:

> (b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed.

In this case, it should be noted that the Office of the Ombudsman even gave due course to LAYUS' motion.

The contention that a prior COA Report is necessary to determine LAYUS' culpability is without merit. Under R.A. No. 6770,[18] the Ombudsman has the power to investigate and prosecute individuals on matters and complaints referred to or filed before it. Such power is plenary.

We likewise disagree with LAYUS' reliance on the regularity of her COA Report. A COA approval of a government official's disbursement only relates to the administrative aspect of his accountability, but it does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which such official may be answerable. For, while the COA may regard a government official to have

substantially complied with it's accounting rules, this fact is not sufficient to dismiss the criminal case.[19]

LAYUS also puts in issue the lack of authentication of the document presented during the preliminary investigation. As held in Cruz, Jr. v. People,[20] the only purpose of a preliminary investigation is "to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof." We have maintained a consistent policy of non-interference in the determination by the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of it's discretion.[21] While it may be true that the documents were unauthenticated, this is a matter of defense best passed upon after a full-blown trial. As ruled in Webb v. De Leon,[22] "the validity and the merits of a party's defense or accusation as well as the admissibility of testimonies and evidences are better ventilated during the trial stage than in the preliminary investigation level."

Equally without merit is the alleged breach of agreement to stay the reglementary period. We find it incredible that the prosecution or the Sandiganbayan would agree to suspend the running of the prescriptive period. Settled is the rule that the right to preliminary investigation may be waived by the failure of the respondent to invoke the same prior to or at least at the time of the arraignment.[23] In the instant case, the motion was filed way out of time and after raising virtually the same issues, so it was properly denied by the Sandiganbayan.

Finally, on the questioned 90-day suspension pendente lite.

Having ruled that the information filed against LAYUS is valid, there can be no impediment to the application of Section 13 of R.A. No. 3019, which states:

> Sec. 13. Suspension and loss of benefits. -- Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property, whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. (Italics supplied)

This provision makes it mandatory for the Sandiganbayan to suspend any public officer who has been validly charged with a violation of R.A. No. 3019, as amended, or Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property. This is based on the presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both.[24]

The imposition of the suspension, however, is not automatic or self-operative. There must first be a valid information, determined at a pre-suspension hearing, where the court is furnished with the basis to suspend the accused and proceed with the trial on the merits of the case, or refuse suspension of the latter and dismiss the case, or correct any part of the proceedings which impairs its validity.

In the instant case, the records show that LAYUS was given adequate opportunity to challenge the validity of the criminal proceedings against her. Since the required pre-suspension hearing was complied with and the information was deemed valid, it then becomes the ministerial duty of the Sandiganbayan to forthwith issue the order of preventive suspension which, however, may not be for an indefinite duration or an unreasonable length of time. Thus, in Segovia v. Sandiganbayan,[25] we ruled that preventive suspension may not exceed 90 days in consonance with Presidential Decree No. 807 (the Civil Service Decree), now Section 52 of the Administrative Code of 1987.

Considering that the imposed 90-day suspension pendente lite of LAYUS does not exceed the maximum period thus fixed, the Sandiganbayan did not abuse its discretion in granting the prosecution's motion to suspend

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petitioner.

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

Costs against petitioner.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Annex "E," Rollo, 32-33.

[2] Annex "F," Id., 34-38.

[3] Annex "G," Id., 39-43.

[4] Annex "J," Id., 52-57.

[5] Annex "B," Id., 27.

[6] Annex "L," Id., 60-64.

[7] Annex "A," Id., 25-26.

[8] Annex "N," Id., 72-73.

[9] Annex "O," Id., 74-78.

[10] Annex "D," Id., 29-31.

[11] Republic Act No. 7160, as amended.

[12] 279 SCRA 581 [1997].

[13] G.R. No. 125498, 18 February 1999.

[14] An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as amended.

[15] R.A. No. 6758 took effect on 1 July 1989.

[16] Salonga v. Court of Appeals, 269 SCRA 534 [1997].

[17] 238 SCRA 116 [1994].

[18] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes.

[19] Aguinaldo v. Sandiganbayan, 265 SCRA 121 [1996].

[20] 233 SCRA 439 [1994].

[21] Tan, Jr. v. Sandiganbayan (Third Division), G.R. No. 128764, 10 July 1998; Knecht v. Desierto, G.R. No. 121916, 26 June 1998; Garcia-Rueda v. Pascasio, 278 SCRA 769 (1997).

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[22] 247 SCRA 652 [1995].

[23] People v. Lapura, 255 SCRA 85 [1996].

[24] Supra note 12.

[25] 288 SCRA 328 [1998].

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