

EDUARDO M. COJUANGCO, JR., PETITIONER VS. SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 134307. December 21, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for prohibition under Section 2 of Rule 65 of the Rules of Court seeks to dismiss Criminal Case No. 22018 entitled "People of the Philippines vs. Eduardo M. Cojuangco, Jr., et al.", now pending before respondent Sandiganbayan (First Division), and to prohibit said court from further proceeding with the case. Petitioner invokes his constitutional right to due process, a speedy trial, and a speedy determination of his cases before all judicial, quasi-judicial and administrative bodies. Further, he prays for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction enjoining respondent Sandiganbayan (First Division) from further enforcing and/or implementing its order dated February 20, 1995 which bans petitioner from leaving the country except upon prior approval by said court.[1]

Criminal Case No. 22018 is an offshoot of a complaint filed on January 12, 1990, by the Office of the Solicitor General before the Presidential Commission on Good Government (PCGG), docketed as I.S. No. 74, against the former Administrator of the Philippine Coconut Authority (PCA) and the former members of the PCA Governing Board, petitioner among them, for violation of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, as amended. In said complaint, the respondents were charged "for having conspired and confederated together and taking undue advantage of their public positions and/or using their powers, authority, influence, connections or relationship with the former President Ferdinand E. Marcos and former First Lady, Imelda Romualdez-Marcos without authority granted a donation in the amount of Two Million Pesos (P2,000,000.00) to the Philippine Coconut Producers Federation (COCOFED), a private entity, using PCA special fund, thereby giving COCOFED unwarranted benefits, advantage and preference through manifest partiality, evident bad faith and gross inexcusable negligence to the grave (sic) and prejudice of the Filipino people and to the Republic of the Philippines." [2]

Subsequently, however, this Court ruled that all proceedings in the preliminary investigation conducted by the PCGG were null and void and the PCGG was directed to transmit the complaints and records of the case to the Office of the Ombudsman for appropriate action.[3]

In a Resolution dated June 2, 1992, the panel of investigators recommended the filing of an Information for violation of Section 3(e) of R.A. No. 3019, as amended, against herein petitioner and five other respondents.

As set out in the Memorandum of the Office of the Special Prosecutor, subsequently, the following relevant incidents took place:

"The above Resolution dated June 2, 1992 was referred by Assistant Ombudsman Abelardo L. Aportadera, Jr. to the Office of the Special Prosecutor for review and if warranted, for the preparation of the criminal information.

In a Memorandum dated July 15, 1992 the Office of the Special Prosecutor affirmed the recommendation as contained in the Resolution dated June 2, 1992.

However, on August 19, 1992 then Ombudsman Conrado M. Vasquez ordered the panel of investigators to discuss the merits of the prejudicial question posed by respondent Lobregat.

In a Memorandum dated November 18, 1992, the panel of investigators found that Civil Case No. 0033 does not pose a prejudicial question which will warrant the suspension of the filing of the criminal case.

The aforesaid Memorandum was received by Assistant Ombudsman Abelardo L. Aportadera on December 1, 1992 who submitted his comment thereto on December 16, 1992 to then Ombudsman Vasquez.

On December 23, 1992, then Ombudsman Vasquez ordered the panel of investigators to go to the specifics and not the general averments on issue of prejudicial question.

In a Memorandum dated December 1, 1993 the panel of investigators recommended that the motion to suspend proceedings be granted.

On December 3, 1993 then Ombudsman Vasquez referred for comment to the Office of the Special Prosecutor the Memorandum dated December 1, 1993 of the panel of investigators on the issue of the existence of prejudicial question.

In a Memorandum dated January 16, 1995, Special Prosecution Officer Daniel B. Jovacon, Jr. resolved that no prejudicial question exists to warrant the suspension of the criminal proceedings which recommendation was approved by then Ombudsman Vasquez on January 26, 1995. The Information, together with the case record of OMB-0-90-2806, was forwarded to the Office of the Ombudsman on February 10, 1995.

On February 16, 1995 Criminal Case No. 22018 was filed with the Sandiganbayan and thereafter raffled to the First Division.

On February 17, 1995, an order for the arrest of petitioner was issued by the respondent Sandiganbayan.

On February 19, 1995 petitioner filed with respondent court an Opposition to Issuance of Warrant of Arrest with Motion For Leave To File Motion For Reconsideration of Ombudsman Resolutions. In his Opposition, petitioner alleged that since the only documents attached to the Information and submitted to respondent Sandiganbayan were the Resolution dated June 2, 1992 of the panel of investigators and the Memorandum dated January 16, 1995 of the Office of the Special Prosecutor, the same were not adequate for the determination of probable cause for the issuance of a warrant of arrest by respondent Sandiganbayan. Hence, petitioner claims the respondent Sandiganbayan should recall the warrant of arrest already issued or desist from issuing a warrant of arrest. Petitioner, avers, furthermore that the filing of the Information was premature considering that he was not furnished a copy of the Ombudsman's Resolution in violation of Section 27 of R.A. No. 6770 and prays that he be given leave to file a motion for reconsideration of the Ombudsman's Resolution dated June 2, 1992 and the Office of the Special Prosecutor's Memorandum dated January 16, 1995.

On February 22, 1995, petitioner posted bail. On the same day he likewise filed, through counsel, a Manifestation stating that he was posting bail without prejudice to the Opposition To Issuance of Warrant of Arrest with Motion For Leave To File a Motion For Reconsideration of the Ombudsman's Resolution which he filed.

In a Resolution dated February 20, 1995, the respondent Sandiganbayan barred petitioner from leaving the country except upon approval of the court.

In an Order dated February 22, 1995, the respondent Sandiganbayan gave petitioner and the other accused twenty (20) days to file their respective motions for reconsideration of the Ombudsman's Resolution with the

Office of the Ombudsman. PCGG was likewise given a similar period within which to file its comment to the motions for reconsideration. Furthermore, the respondent Sandiganbayan ordered petitioner to supplement or amplify his existing motion on the issue of the propriety of the issuance of an Order of Arrest based merely on the resolution of the Ombudsman in support of the filing of the Information, among others.

On March 9, 1995, petitioner filed a Memorandum in Amplification of Opposition To Issuance of Warrant of Arrest.

In a Resolution dated March 14, 1995, petitioner was granted additional fifteen (15) days or until March 29, 1995 within which to file his motion for reconsideration with the Office of the Ombudsman.

Petitioner filed his motion for reconsideration on March 28, 1995.

In a Resolution dated April 3, 1995, the respondent Sandiganbayan denied petitioner's motion seeking the recall of the issuance of the warrant for his arrest.

On April 7, 1995, petitioner filed a motion for reconsideration of the Resolution dated April 3, 1995 of the respondent Sandiganbayan.

On May 25, 1995, petitioner was conditionally arraigned pleading not guilty to the Information. The arraignment was undertaken solely to accommodate the petitioner in his request to travel pending the determination of probable cause against him at the reinvestigation stage. The conditional arraignment is subject to the condition that if petitioner is exonerated at the preliminary investigation, the arraignment is set aside. On the other hand, should there be cause against the petitioner either as already charged or a separate charge which might be related to the case pending, the arraignment will not serve as basis for the invocation of the right against double jeopardy.

In the meantime, in a Memorandum dated October 22, 1995, Special Prosecution Officer Victorio U. Tabangil found no probable cause to warrant the filing against petitioner and the other accused in Criminal Case No. 22018 and recommended the dismissal of the case. The recommendation for dismissal was approved by the Honorable Ombudsman on November 15, 1996.

On December 6, 1996, Special Prosecutor Officer Victorio U. Tabangil filed a Manifestation attaching a copy of the Memorandum dated October 22, 1995 with the respondent Sandiganbayan for its consideration.

On December 13, 1996 petitioner filed an Urgent Motion To Dismiss alleging that with the reversal of the earlier findings of the Ombudsman of probable cause, there was therefore nothing on record before the respondent Sandiganbayan which would warrant the issuance of a warrant of arrest and the assumption of jurisdiction over the instant case.

On December 23, 1996 the Office of the Solicitor General, in representation of the PCGG, filed with the Office of the Special Prosecutor a motion for reconsideration of the Memorandum dated October 22, 1996 recommending the dismissal of the case against petitioner and the other accused in Criminal Case No. 22018.

In an Order dated January 6, 1997, Special Prosecution Officer Victorio U. Tabangil merely noted the motion for reconsideration dated December 23, 1996 of the Office of the Solicitor General.

On January 13, 1997, petitioner filed a Motion To Strike Out Alternatively, Opposition To Complainant's Motion For Reconsideration dated December 23, 1996 alleging that the motion was filed out of time.

In an Order dated January 9, 1997, the respondent Sandiganbayan ordered the prosecution to justify the relationship that may be established with respect to the COCOFED on one hand and the Philippine Coconut Authority on the other, as a basis for justifying the position of the prosecution in this case. Furthermore, upon information provided by Prosecutor Tabangil that the Office of the Solicitor General has sought a reconsideration on the desire of the prosecution to withdraw the information, the Office of the Solicitor

General was given fifteen (15) days to submit its comment to the Motion to Withdraw Information. The petitioner and the other accused were given the same period to reply to the comment if they so desire. After which the matter will be deemed submitted for resolution.

On January 17, 1997, the prosecution filed its compliance to the Order dated January 9, 1997. On the other hand, the Office of the Solicitor General filed its comment on January 24, 1997.

In an Order dated February 4, 1997, the respondent Sandiganbayan ordered the PCGG lawyers to 'present themselves before the respondent court and respond to the claim of the OSG that the exhibits necessary are with the PCGG so that the Republic might effectively substantiate its position that probable cause exists. Furthermore, it is as much the function of the court to determine the existence of probable cause and the propriety of the withdrawal of the Information to be assured that the evidence for the complainant has been properly presented or the accused is properly protected at preliminary investigation.'

In an Order dated February 17, 1997, the respondent Sandiganbayan, with the agreement of the parties, gave the Office of the Solicitor General ten (10) days within which to submit some form of cataloging and explanation of the documents on record to the prosecution. On the other hand, the prosecution was given fifteen (15) days from receipt of the submission within which to review the matter once more and to respond thereat.

On June 13, 1997, the PCGG filed its Entry of Appearance dated June 3, 1997.

On June 19, 1997, petitioner filed a Second Motion To Resolve the Urgent Motion To Dismiss dated December 12, 1996.

On July 3, 1997, petitioner filed a Motion to Strike Out (Re: PCGG's Entry of Appearance) dated June 30, 1997.

On July 16, 1997, the PCGG filed an Opposition to the Motion To Strike Out (Re: PCGG's Entry of Appearance).

On July 18, 1997, petitioner filed a Reply to the Opposition to Strike Out.

On July 31, 1997, the PCGG filed a Rejoinder to the Reply of petitioner.

On January 23, 1998, petitioner filed a Third Motion To Resolve the Urgent Motion To Dismiss dated December 12, 1996.

In an Order dated January 26, 1998, respondent Sandiganbayan duly noted petitioner's Motion to Dismiss."
[4]

Hence, the present petition.

On July 22, 1998, the Court issued a resolution requiring respondents to file their respective comments to the petition.[5]

On August 5, 1998, petitioner filed a motion reiterating his application for temporary restraining order and/or writ of preliminary injunction with urgent motion for hearing thereon[6] citing the urgency of lifting the travel restriction on him in view of the various problems involving the investments of San Miguel Corporation (SMC) abroad which must be immediately attended to by petitioner as duly elected Chairman and Chief Executive Officer of SMC. Petitioner asserts that quite often, it becomes necessary for him to attend meetings and conferences abroad where attendance must be confirmed promptly. Considering that he must first secure the permission of respondent Sandiganbayan before he can travel abroad and abide by the conditions imposed by said court upon the grant of such permission, petitioner contends that it becomes impossible for him to immediately

attend to the aforecited tasks.

On September 2, 1998, the Court noted the respective comments to the petition filed by the Office of the Special Prosecutor and the Solicitor General and required petitioner to file a consolidated reply within ten (10) days from notice.[7]

On September 3, 1998, petitioner filed a Second Motion Reiterating Application for Temporary Restraining Order and/or Writ of Preliminary Injunction with Urgent Motion for Hearing,[8] arguing among others that the continued maintenance of the hold-departure order against him has deleterious consequence not only on him personally but also on San Miguel Corporation, a publicly listed stock company, of which he is now Chairman and Executive Officer.[9]

On September 7, 1998, the Court resolved to defer action on the aforementioned second motion reiterating the application for the issuance of a temporary restraining order and/or a writ of preliminary injunction until the filing of petitioner's Consolidated Reply and required the Sandiganbayan to file its own Comment on the petition in view of the Comment filed by the Office of the Special Prosecutor divergent from the position taken by respondent Sandiganbayan.[10]

On September 10, 1998, petitioner filed a Consolidated Reply[11] and prayed that his Second Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction with Urgent Motion for hearing dated September 2, 1998 be now acted upon.

On September 17, 1998, respondent Sandiganbayan filed a motion for extension of time to file its comment to the petition. Subsequently, petitioner filed his Third Motion Reiterating Application for Temporary Restraining Order and/or Writ of Preliminary Injunction with Urgent Motion for Hearing[12] in view of the urgency of lifting the ban on foreign travel imposed on him by respondent Sandiganbayan.

After respondent Sandiganbayan filed its comment on October 5, 1998, the Court in its Resolution dated October 7, 1998, noted the aforesaid comment and resolved to set the case for oral argument on October 21, 1998.[13]

During the oral argument, the Court suggested that the parties take up in their arguments the following issues:

"(1) whether the warrant of arrest issued by respondent Sandiganbayan is null and void, or should now be lifted if initially valid;

(2) whether petitioner's basic rights to due process, speedy trial and speedy disposition of the case have been violated as to warrant dismissal of Criminal Case No. 22018; and

(3) whether the ban on foreign travel imposed on petitioner per Order of February 20, 1995 should be vacated to enable petitioner to go abroad without prior permission of, and other restrictions imposed by, the respondent Sandiganbayan." [14]

After hearing the arguments of the parties, the Court resolved to require them to submit their respective memoranda on the related issues taken up on the hearing including the merits of the case within twenty (20) days. The motion of counsel for petitioner that the issue of lifting the ban on foreign travel imposed on petitioner be resolved first, was held under advisement.[15]

On November 6, 1998, petitioner filed another Motion to Resolve Petitioner's "Motion for Issuance of a Temporary Restraining Order or Writ of Preliminary Injunction" Enjoining Enforcement of Respondent Sandiganbayan's Order dated February 20, 1995 (Hold Departure Order) with an alternative prayer to travel abroad within a period of six (6) months.[16]

In its Resolution dated November 9, 1998, the Court noted the aforesaid motion and directed petitioner that in the meanwhile, he may address his request for permission to travel abroad to the Sandiganbayan.[17]

On November 12, 1998, petitioner filed a Motion for Reconsideration of the Court's resolution dated November 9, 1998 and argued that:

"x x x x x x x x

(6) While the petitioner may indeed obtain some relief by addressing his 'prayer for permission to travel abroad to the Sandiganbayan', to a large extent, this defeats the purpose of the petition because petitioner has precisely come to the Supreme Court to obtain relief from an oppressive regime of authorization to travel abroad that the Order of the Sandiganbayan of February 20, 1995 (Annex 'E', Petition) has imposed. Significantly, not any of the respondents have opposed petitioner's application for the issuance of temporary restraining order and/or writ of preliminary injunction or for permission to travel abroad." [18]

On November 20, 1998, petitioner filed a Manifestation[19] in support of his motion for reconsideration, setting forth the urgency of lifting the ban on foreign travel imposed on him in view of the need to oversee the critical stages in the international operations of SMC as its Chairman and Chief Executive Officer.

On November 20, 1998, the Office of the Solicitor General filed a Manifestation indicating that it is not interposing any objection to petitioner's prayer that he be allowed to travel abroad.

With the submission of the parties' respective memoranda, the Court now proceeds to resolve the petition.

As postulated during the oral argument, three main issues confront us in this petition, to wit:

- "(1) whether the warrant of arrest issued by respondent Sandiganbayan is null and void, or should now be lifted if initially valid;
- (2) whether petitioner's basic rights to due process, speedy trial and speedy disposition of the case have been violated as to warrant dismissal of Criminal Case No. 22018; and
- (3) whether the ban on foreign travel imposed on petitioner per Order of February 20, 1995 should be vacated to enable petitioner to go abroad without prior permission of, and other restrictions imposed by, the respondent Sandiganbayan." [20]

On the first issue, petitioner and the Office of the Special Prosecutor both argue that the warrant of arrest issued by respondent Sandiganbayan is null and void for lack of sufficient basis upon which it could have "personally" determined the existence of probable cause to issue the warrant of arrest against him. They contend that there was a violation of Section 2, Article III of the Constitution because the Information in Criminal Case No. 22018 was accompanied only by the Resolution dated June 2, 1992 of the Panel of Graft Investigators of the Office of the Ombudsman recommending the filing of the information and the Memorandum dated January 16, 1995 of the Office of the Special Prosecutor denying the existence of a prejudicial question which will warrant the suspension of the filing of the criminal case. Their argument is principally anchored on the pronouncements made in the case of *Ho vs. People*[21] that reliance on the prosecutor's report alone is not sufficient in determining whether there is probable cause for the issuance of a warrant of arrest. Consequent to the nullity of the warrant of arrest, petitioner further argues that the Sandiganbayan has not acquired jurisdiction over him and is without power to exercise the same.

However, the Office of the Special Prosecutor and the Office of the Solicitor General maintain that any infirmity that may have attended the issuance of the warrant of arrest was cured by petitioner's voluntary submission to the jurisdiction of the respondent Sandiganbayan when petitioner posted bail and subsequently invoked the

jurisdiction of the Sandiganbayan by filing numerous motions wherein he sought affirmative reliefs.

Now, pertinent to the issue at hand is the second clause of Section 2, Article III of the 1987 Constitution, which provides that:

"Sec. 2. x x x no search warrant or warrant of arrest shall issue except upon a probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized" (Emphasis supplied)

In *Ho vs. People*,^[22] the Court had the opportunity to elucidate on the matter of determining of probable cause to merit the issuance of a warrant of arrest:

"First, x x x the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e., whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of a probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer."^[23]

As alleged by petitioner, in the case at bar, the Sandiganbayan had two pieces of documents to consider when it resolved to issue the warrant of arrest against the accused: (1) the Resolution dated June 2, 1992 of the Panel of Investigators of the Office of the Ombudsman recommending the filing of the Information and (2) the Memorandum dated June 16, 1995 of the Office of the Special Prosecutor denying the existence of a prejudicial question which will warrant the suspension of the criminal case. The Sandiganbayan had nothing more to support its resolution.

In *Roberts vs. Court of Appeals*, [24] we struck down as invalid an order for the issuance of a warrant of arrest which were based only on "the information, amended information and Joint Resolution", without the benefit of the records or evidence supporting the prosecutor's finding of probable cause. And in *Ho vs. People*, [25] we declared that respondent "palpably committed grave abuse of discretion in ipso facto issuing the challenged warrant of arrest on the sole basis of the prosecutor's findings and recommendation, and without determining on its own the issue of probable cause based on evidence other than such bare findings and recommendation." [26]

Similarly, we are now constrained to rule that herein respondent court failed to abide by the constitutional mandate of personally determining the existence of probable cause before issuing a warrant of arrest. For the two cited documents were the product of somebody else's determination, insufficient to support a finding of probable cause by the Sandiganbayan. Hence, the warrant of arrest issued by respondent court on February 17, 1995 against herein petitioner is palpably invalid.

Consequent to the nullity of the warrant of arrest, the crucial issue now posed is whether or not respondent Sandiganbayan could still exercise jurisdiction over the petitioner and proceed with the trial of the case.

As already adverted to, the Office of the Special Prosecutor and the Office of the Solicitor General are in agreement, that whatever infirmity might have attended the issuance of the warrant of arrest against petitioner, it was cured by petitioner's subsequent act of voluntarily submitting to respondent court's jurisdiction by posting his bail and filing the following pleadings which sought affirmative relief, to wit: (1) Opposition to Issuance of Warrant of Arrest with Motion for Leave to File Motion for Reconsideration; (2) Motion for extension of time to file Motion for Reconsideration; (3) seven Motions to Travel Abroad and two Motions for Extension of time to stay abroad. [27] Hence, they contend that respondent court's jurisdiction over petitioner has remained in effect.

Petitioner objects to this contention, and asserts that "since the warrant of arrest issued by respondent Sandiganbayan is null and void, it never acquired jurisdiction over the person of the petitioner; as a consequence, it never acquired jurisdiction to take of the offense charged and to issue any order adverse to the rights of petitioner, including an Order restricting his right to travel." [28] According to petitioner, the submission of both the Office of the Special Prosecutor and the Office of the Solicitor General is not only absurd but also oppressive and offensive to the Bill of Rights since it would mean that to preserve his right against the issuance of a warrant of arrest without probable cause determined in accordance with Sec. 2, Article III of the Constitution, petitioner should have allowed himself to be incarcerated or imprisoned from the time the warrant of arrest was issued on February 20, 1995 up to the present, or for more than three (3) years now, and continue to be imprisoned until the Supreme Court decides to declare the arrest void. [29]

On this score, the rule is well-settled that the giving or posting of bail by the accused is tantamount to submission of his person to the jurisdiction of the court. [30] Thus, it has been held that:

"When a defendant in a criminal case is brought before a competent court by virtue of a warrant of arrest or otherwise, in order to avoid the submission of his body to the jurisdiction of the court he must raise the question of the court's jurisdiction over his person at the very earliest opportunity. If he gives bail, demurs to the complaint or files any dilatory plea or pleads to the merits, he thereby gives the court jurisdiction over his person. (*State ex rel. John Brown vs. Fitzgerald*, 51 Minn., 534)"

x x x x x x x x

"Conceding again that the warrant issued in this case was void for the reason that no probable cause was found by the court before issuing it, the defendant waived all his rights to object to the same by appearing and giving bond." [31]

By posting bail, herein petitioner cannot claim exemption from the effect of being subject to the jurisdiction of

respondent court. While petitioner has exerted efforts to continue disputing the validity of the issuance of the warrant of arrest despite his posting bail, his claim has been negated when he himself invoked the jurisdiction of respondent court through the filing of various motions that sought other affirmative reliefs.

As ruled in *La Naval Drug vs. CA*[32]:

"[L]ack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction."

Moreover, "[w]here the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to said jurisdiction. If the appearance is for any other purpose, the defendant is deemed to have submitted himself to the jurisdiction of the court. Such an appearance gives the court jurisdiction over the person."[33]

Verily, petitioner's participation in the proceedings before the Sandiganbayan was not confined to his opposition to the issuance of a warrant of arrest but also covered other matters which called for respondent court's exercise of its jurisdiction. Petitioner may not be heard now to deny said court's jurisdiction over him. Nor can we ignore the long line of precedents declaring that where the accused had posted bail, as required, to obtain his provisional liberty, "it becomes futile to assail the validity of the issuance of the warrants of arrest."[34]

As to petitioner's contention that he should have just allowed himself to stay in jail pending the resolution of his opposition to the issuance of the warrant of arrest against him, if only to avoid waiving his right to question the jurisdiction of respondent court, the Office of the Special Prosecutor has pointed out that petitioner is not without a remedy. Petitioner could have filed a petition for certiorari and prohibition with prayer for the issuance of a temporary restraining order, rather than actively participate in the proceedings before the Sandiganbayan. And as exemplified by the case of *Allado vs. Diokno*,[35] this remedy has already proved to be effective.

Against the continued exercise of jurisdiction by respondent Sandiganbayan in Criminal Case No. 22018, petitioner also invokes the Memorandum of the Office of the Special Prosecutor dated October 22, 1995 recommending the dismissal of the case against him due to the absence of probable cause, which was later on approved by the Ombudsman on November 15, 1996. Citing the case of *Torralba vs. Sandiganbayan*,[36] petitioner argues that this Memorandum is an integral part of the preliminary investigation and should take precedence notwithstanding the fact that the same was made after the filing of the Information before the Sandiganbayan, for to deny any efficacy to the finding of the Office of the Special Prosecutor would negate the right of the petitioner to a preliminary investigation.

The well-entrenched rule however, as laid down by the case of *Crespo vs. Mogul*[37] is that:

"x x x once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation."

Nevertheless, petitioner claims exception to this rule by making this distinction:

"b. The preliminary investigation in *Crespo vs. Mogul*, supra, was conducted by the Office of the Provincial

Fiscal and, following established procedure with respect to such preliminary investigations, the preliminary investigation conducted by the fiscal, in the language of Crespo, is 'terminated upon the filing of the information in the proper court' (at p. 470). On the other hand, the instant case involves a preliminary investigation conducted by the Office of the Special Prosecutor pursuant to Sec. 11[4](a), and under Sec. 27 of R.A. No. 6770. In preliminary investigations conducted by the Office of the Special Prosecutor, the respondent has the right to file a motion for reconsideration of any resolution within five (5) days from receipt of written notice, and pursuant to Sec. 7, Rule II of Administrative Order No. 7 (Rules of Procedure of the Ombudsman), the respondent has the right to file a motion for reconsideration within fifteen (15) days from notice of the Resolution of the Ombudsman. Until the motion for reconsideration is resolved, preliminary investigation is not terminated notwithstanding filing of information in court. In the instant case, no copy of the Resolution of the Office of the Special Prosecutor which brought about the filing of the Information, was served on the petitioner; consequently, when the Information was filed, the preliminary investigation had not yet been terminated. It follows that the Resolution of the Office of the Special Prosecutor (approved by the Ombudsman) resolving in petitioner's favor the 'Motion for Reconsideration' he had filed, now finding no probable cause, was an integral part of the preliminary investigation, not subject to review by the Sandiganbayan (see *Torralba vs. Sandiganbayan*, 230 SCRA 33 [1994])."[38]

Petitioner's reliance on *Torralba vs. Sandiganbayan* is not, in our view, persuasive. In that case the petitioners were not given any chance at all to seek reconsideration from the Ombudsman's final resolution because they were not furnished with a copy of the final resolution of the Ombudsman that could have enabled them to file a motion for reconsideration. As a result, the Court declared that "petitioners were not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman's final resolution but also deprived of their right to a full preliminary investigation preparatory to the filing of the information against them".[39]

In the case at bar, however, notwithstanding the filing of the Information before the Sandiganbayan, petitioner was able to file a motion for reconsideration of the Ombudsman's Resolution with leave of court, and in fact his two motions for extensions to file the same were granted by the respondent court.[40] This eventually paved the way for the filing of subsequent Memorandum of the Office of the Special Prosecutor, which was later on approved by the Ombudsman, recommending the dismissal of the case against him. However, since the Information has already been filed before the Sandiganbayan, the resolution of the aforesaid recommendation now lies within the jurisdiction and discretion of respondent court. Parenthetically, in the *Torralba* case, we did not altogether deprive the Sandiganbayan of its jurisdiction to proceed with the case, despite the defect in the conduct of the preliminary investigation, since we declared that:

"The incomplete preliminary investigation in this case, however, does not warrant the quashal of the information, nor should it obliterate the proceedings already had. Neither is the court's jurisdiction nor validity of an information adversely affected by deficiencies in the preliminary investigation. Instead, the Sandiganbayan is to hold in abeyance any further proceedings therein and to remand the case to the Office of the Ombudsman for the completion of the preliminary investigation, the outcome of which shall then be indorsed to Sandiganbayan for its appropriate action."[41] (Underscoring supplied)

Clearly, consistent with the rule in *Crespo vs. Mogul*, after the filing of the information in court, "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."[42]

Proceeding now to the second issue, petitioner maintains that the long delay that characterized the proceedings in Criminal Case No. 22018 before respondent Sandiganbayan has resulted in the violation of his Constitutional right to a speedy trial and a speedy determination of his case. Thus, petitioner submits that:

"4.09. It has been more than three (3) years since the Information in Criminal Case No. 22018 was filed with

respondent Sandiganbayan. More than one and a half (1/2) years have elapsed since the Office of the Special Prosecutor filed its Manifestation seeking the dismissal of the case. Based on the Office of the Special Prosecutor's finding of the absence of probable cause, petitioner filed on December 13, 1996, an 'Urgent Motion To Dismiss'. Three times, on March 24, 1997, June 18, 1997 and January 23, 1998, petitioner has sought resolution of his 'Urgent Motion To Dismiss'. These notwithstanding, the dismissal of the information as to petitioner remains pending and petitioner continues to be under criminal indictment -- constrained to suffer without justification in law and the Constitution, the humiliation, the restraints to liberty and the tormenting anxieties of an accused." [43]

Respondents concede that there has indeed been some delay but deny that it amounted to a violation of petitioner's right of speedy disposition of his case. They cite as justification the reorganization of the Sandiganbayan on September 23, 1997 wherein it was reconstituted into five (5) Divisions; [44] (2) the filing of motions by petitioner seeking affirmative reliefs from the Sandiganbayan; (3) the failure of petitioner himself to invoke his right to speedy resolution of his pending motions prior to the filing of this petition; [45] (4) the heavy caseload of respondent court. [46]

The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays. [47] It should be emphasized that the factors that must be taken into account in determining whether this constitutional rights has been violated are as follows: (1) the length of delay, (2) the reason for such delay and (3) the assertion or failure to assert such right by the accused, and the prejudice caused by the delay. [48]

As in previous occasions, the Court takes judicial cognizance of the fact that structural reorganizations [49] and the ever increasing case load of courts have adversely affected the speedy disposition of the cases pending before them.

In the instant case, however, the Court finds that delay concerns the resolution of petitioner's "Urgent Motion to Dismiss", which is an offshoot of the Memorandum of the Office of the Special Prosecutor recommending the dismissal of the case. Such delay is now far from excusable. Petitioner's Motion to Dismiss has been filed as early as December 13, 1996 and, on three occasions, petitioner has moved for the urgent resolution of this motion. [50] What further militates against further delay in resolving this case is the fact that the government prosecutors themselves concede that this case is of paramount importance, involving as it does "the recovery of the ill-gotten wealth or government funds, unlawfully used or misused by persons close or perceived to be close to the Marcoses". [51] Respondent court declared in its Order dated February 17, 1997 that the matter would be deemed submitted for resolution upon compliance with the Office of the Special Prosecutor as to whether there is indeed no probable cause against petitioner, [52] which compliance was submitted by the Office of the Special Prosecutor on March 17, 1997. [53] Under these circumstances, the Court does find the period of more than one year that elapsed for resolving petitioner's motion to dismiss quite long, considering that all pertinent pleadings required by the Sandiganbayan were already submitted.

Even if petitioner himself might have contributed to said delay, as contended by respondents, in our view it is best that the case be resolved on the merits by the Sandiganbayan with due regard to petitioner's right to due process, speedy trial and speedy disposition of the case against him and his co-accused.

Finally, with respect to the issue of whether or not the ban on foreign travel should be continued, as imposed on petitioner by respondent Sandiganbayan per its Order dated February 20, 1995 with accompanying restrictions in effect, we resolve to rule in the negative. The travel ban should be lifted, considering all the circumstances now prevailing.

The rule laid down by this Court is that a person facing a criminal indictment and provisionally released on bail

does not have an unrestricted right to travel, the reason being that a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice.[54] But, significantly, the Office of the Solicitor General in its Manifestation dated November 20, 1998 indicated that it is not interposing any objection to petitioner's prayer that he be allowed to travel abroad based on the following considerations:

"x x x (1) that it is well within the power of this Court to suspend its own rules, including the second paragraph, Section 23, Rule 114 of the Rules of Court; (2) that it has been shown in the past that the petitioner has always returned to the Philippines after the expiration of the period of his allowed travel; and (3) that petitioner, now Chairman of the Board of San Miguel Corporation, may be constrained to leave the country for business purposes, more often than he had done in the past, x x x." [55]

It however recommended that the period of travel should be reduced to three (3) months instead of six (6) months as requested by petitioner and that the latter should be required to post an additional cash bond equivalent to the present cash bond posted by him.[56]

Moreover, prescinding from our initial declaration that the issuance of warrant of arrest against petitioner by respondent court is invalid, it now becomes necessary that there be strong and compelling reasons to justify the continued restriction on petitioner's right to travel abroad. Admittedly, all of petitioner's previous requests to travel abroad has been granted and that, as confirmed by the Office of the Solicitor General, that petitioner has always returned to the Philippines and complied with the restrictions imposed on him. The necessity of further denying petitioner's right to travel abroad, with attendant restrictions, appears less than clear. The risk of flight is further diminished in view of petitioner's recent reinstatement as Chairman and Chief Executive Officer of San Miguel Corporation, though he has now more justification to travel so as to oversee the entire operations of that company. In this regard, it has to be conceded that his assumption of such vital post has come at a time when the current economic crisis has adversely affected the international operations of many companies, including San Miguel. The need to travel abroad frequently on the part of petitioner, to formulate and implement the necessary corporate strategies and decisions, could not be forestalled. These considerations affecting the petitioner's duties to a publicly held company, militate against imposing further restrictions on petitioner's right to travel abroad.

WHEREFORE, the Court hereby resolves to DISMISS the petition insofar as the dismissal of Criminal Case No. 22018 against the petitioner is concerned. Respondent Sandiganbayan (First Division) is hereby ordered to proceed with the resolution of the pending motions and incidents in Criminal Case No. 22018 with utmost dispatch. Meanwhile, the Resolution of the Sandiganbayan (First Division), dated February 20, 1995, imposing a ban on petitioner's travel abroad without its prior approval pending the resolution of Criminal Case No. 22018 is, for the reasons heretofore advanced, hereby LIFTED for a period of three (3) months counted from the finality of this decision. Any similar request during the pendency of said case before the Sandiganbayan shall be addressed to that court.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), concur.

Melo, J., No part. Did not take part in the deliberation.

Vitug, J., Please see separate (concurring) opinion.

Panganiban, J., Please see concurring and dissenting opinion.

[1] Rollo, p. 30, Petition p. 28.

[2] Annex A, Petition, Rollo, pp. 34-35.

[3] G.R. No. 92319-20, Cojuangco, Jr. vs. PCGG, October 2, 1990.

[4] Memorandum of the Office of the Special Prosecutor, pp. 3-9; Rollo, pp. 364-370.

[5] Rollo, p. 157.

[6] Rollo, p. 163.

[7] Rollo, p. 245.

[8] Rollo, p. 246.

[9] Rollo, p. 248.

[10] Rollo, p. 252.

[11] Rollo, p. 253.

[12] Rollo, p. 272.

[13] Rollo, p. 289.

[14] Rollo, p. 292.

[15] Rollo, pp. 293-294.

[16] Rollo, p. 301.

[17] Rollo, p. 307.

[18] Rollo, p. 496.

[19] Rollo, p. 499.

[20] Rollo, p. 292.

[21] 280 SCRA 365 (1997).

[22] 280 SCRA 365 (1997).

[23] Ibid., pp. 380-382.

[24] 254 SCRA 307 (1996).

[25] Supra, note 22.

[26] 280 SCRA 365, 383 (1997).

[27] TSN, October 21, 1998, Oral Argument, p. 35.

[28] Petitioner's Memorandum, p. 10, Rollo, p. 389.

[29] Ibid., p. 6; Rollo, p. 385.

[30] Velasco vs. Court of Appeals, 245 SCRA 677, 686 (1995).

[31] Ibid., p. 687 citing Carrington vs. Peterson, 4 Phil. 134, 137-138 (195) and United States vs. Grant, 18 Phil.

122, 147 (1910); Doce vs. Court of First Instance of Quezon, 22 SCRA 1028, 1031 (1968); Zacarias vs. Cruz, 30 SCRA 728, 730 (1969); Bermejo vs. Barrios, 31 SCRA 764, 777 (1970); Callanta vs. Villanueva, 77 SCRA 377, 379 (1977); Bagacal vs. Villaraza, 120 SCRA 525, 527 (1983).

[32] 236 SCRA 78, 86 (1994).

[33] Palma vs. CA, 232 SCRA 714, 720 (1994) citing Flores vs. Zurbito, 33 Phil. 746 (1982).

[34] Callanta vs. Villanueva, 77 SCRA 377 at p. 379; see People vs. Timon, 281 SCRA 577, at p. 597 and cases cited therein.

[35] 232 SCRA 192 (1994).

[36] 230 SCRA 33 (1994).

[37] 151 SCRA 462, at p. 471.

[38] Petitioner's Memorandum, pp. 13-14; Rollo, pp. 392-393.

[39] 230 SCRA 33, 40.

[40] Memorandum of the Office of the Special Prosecutor, pp. 5-6; Rollo, pp. 366-367.

[41] 230 SCRA 33, at p. 41.

[42] Supra, note 37, at p. 471.

[43] Petition, pp. 25-26; Rollo, pp. 27-28.

[44] Pursuant to R.A. No. 8249 amending R.A. 7975 and Admin. Order No. 265-97, September 23, 1997 of PJ Garchitorena; Rollo p. 375; Memorandum of Office of the Special Prosecutor, p. 14.

[45] Memo of OSG, p. 26; Rollo, p. 442.

[46] Ibid., p. 443.

[47] De la Rosa vs. Court of Appeals, 253 SCRA 499.

[48] Alvizo vs. Sandiganbayan, 220 SCRA 55, 63-65 (1993) citing Barker vs. Wingo, 407 U.S. 514 (1972).

[49] Alvizo vs. Sandiganbayan, supra, p. 64.

[50] March 22, 1997, June 18, 1997 and January 23, 1998.

[51] Memorandum for OSG, p. 27; Rollo, p. 443.

[52] Memorandum of Petitioner, p. 23; Rollo, p. 402.

[53] Memorandum of Petitioner, p. 24; Rollo, p. 403.

[54] Manotoc, Jr. vs. Court of Appeals, 142 SCRA 149 (1986); Silverio vs. Court of Appeals, 195 SCRA 760 (1991); Marcos vs. Sandiganbayan, 247 SCRA 127 (1995).

[55] Manifestation dated November 20, 1998.

[56] Ibid.

CONCURRING AND DISSENTING OPINION

PANGANIBAN, J.:

I concur with the well-written ponencia of Mr. Justice Leonardo A. Quisumbing insofar as it declares null and void the Sandiganbayan's warrant of arrest against Petitioner Cojuangco, but beg to disagree with the majority view that despite the nullity of the arrest order, the graft court still acquired jurisdiction over petitioner. I respectfully submit that all proceedings and orders issued by the Sandiganbayan, especially its Resolution dated February 20, 1995, barring petitioner from leaving the country without its prior approval, are likewise void for want of jurisdiction. hence, the case should be remanded to Sandiganbayan for a proper determination of whether a warrant of arrest could be issued pursuant to the Constitution and upon satisfaction of the requisites therefor as laid down in *Ho v. People*.^[1]

Nullity of the Warrant of Arrest

With an analysis of case law as backdrop, the Court en banc indeed categorically declared in *Ho* that a judge cannot issue a warrant of arrest with only the prosecutor's findings and recommendation as bases for determining probable cause. No less than the Constitution mandates in no uncertain terms that "no x x x warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce xxx."^[2] This clause unequivocally means that the judge must make his own determination -- independent of that of the prosecutor -- of whether there is probable cause to issue a warrant of arrest, based on the complainant's and his witnesses' accounts, if any.

In the instant case, it is undisputed that Respondent Sandiganbayan had considered only two documents in determining whether an order of arrest should be issued against the petitioner. These documents were (a) the June 2, 1992 Resolution of the panel of investigators of the Office of the Ombudsman, recommending the filing of an information and (b) the June 16, 1995 Memorandum of the Office of the Special Prosecutor, finding that no prejudicial question existed for the suspension of the criminal case.

Pursuant to our ruling in *Ho*, these documents do not suffice as basis for the judge or court to make a personal and independent determination of the existence of probable cause. Supporting evidence other than the report and recommendation of the investigators and the special prosecutor should have been examined by the respondent court. In view of this lapse, the warrant issued for the arrest of Petitioner Cojuangco is null and void.

Sandiganbayan Without Jurisdiction over Petitioner

As a consequence of the nullity of the warrant of arrest, the Sandiganbayan did not acquire jurisdiction over the petitioner.

The posting of a bail bond by the petitioner despite the nullity or irregularity of the issuance of the warrant for his arrest should not be equated with "voluntary appearance" as to cloak the respondent court with jurisdiction over his person. Truly, his "appearance" in court was not "voluntary." It should be noted that immediately upon learning of the Information and the issuance of the warrant, petitioner filed an "Opposition to [the] Issuance of [a] Warrant of Arrest with Motion for Leave to File Motion for Reconsideration of [the] Ombudsman[s] Resolutions." Said Opposition was based on the inadequacy of the respondent court's basis for determining probable cause. It was essentially an express and continuing objection to the court's jurisdiction over his person.

When petitioner posted his bail bond, he expressly manifested at the same time that such was "without prejudice" to his Opposition.^[3] Subsequent thereto, he also filed a Memorandum in Amplification of said Opposition. When the graft court refused to recall the warrant,^[4] petitioner moved for a reconsideration. And following the filing by the Office of the Ombudsman, after reinvestigation, of a manifestation that there was no probable cause to charge

petitioner, he moved for the dismissal of the case on the ground that "with the reversal of the earlier findings of the Ombudsman of probable cause, there was therefore nothing on record before the respondent Sandiganbayan which would warrant the issuance of a warrant of arrest and the assumption of jurisdiction over the instant case." Petitioner's actions more than conveyed his persistent objection to his arrest and, consequently, to the court's authority over his person.

Furthermore, when he was arraigned, it was solely for the purpose of accommodating his request to travel, in view of the Sandiganbayan order barring him from leaving the country without its prior approval. His "conditional arraignment," in the words of the Sandiganbayan itself, was "subject to the condition that if petitioner is exonerated at the preliminary investigation, the arraignment mis set aside." Moreover, it was "being undertaken solely to accommodate the accused in his request to travel pending determination of probable cause against him at reinvestigation." [5]

Clearly, therefore, in posting for bail and seeking permission to travel abroad, the petitioner merely made special appearances in order to obtain immediate urgent reliefs, without necessarily waiving the graft court's want of jurisdiction. [6] He merely wanted to avoid incarceration, as he hardly had any choice but to secure the court's consent whenever he left the country to attend to his personal and business concerns. Otherwise, petitioner would have been effectively rendered immobile and worthless until the Sandiganbayan chose to resolve his case. And, as borne by the records, for three years said court practically sat on his case (reconsideration of the denial of his Opposition). Under the circumstances, petitioner's actions should not be construed as a waiver of his right to object to the nullity of his arrest. With all due respect, I submit that to rule otherwise as the majority did is most unfair and unjust, because an accused could be indefinitely detained as a result of the trial court's expedient of merely sitting on the objection to the issuance of the warrant.

I submit that the case should be remanded to the Sandiganbayan. The respondent court may require the prosecutor to submit evidence on file sufficient for the former to determine probable cause for the issuance of an arrest warrant; or the latter himself may voluntarily submit such evidence gathered during his investigation.

This procedure may appear cumbersome and unduly harsh on the prosecution, but the Constitution commands it. The Court, as the guardian of the basic law, is thus left with no choice but to enforce the provision.

WHEREFORE, I vote to GRANT the petition to DECLARE the Sandiganbayan to be without jurisdiction over Petitioner Cojuangco in Criminal Case No. 22018 and to REMAND the case to said court for a proper determination of whether a warrant of arrest should be issued, pursuant to the Constitution and the requisites laid down in *Ho v. People*.

[1] 280 SCRA 365, October 9, 1997. The cases discussed included *Soliven v. Makasiar* (167 SCRA 394, November 14, 1988), *People v. Inting* (187 SCRA 788, July 25, 1990), *Lim Sr. v. Felix* (194 SCRA 292, February 19, 1991), *Allado v. Diokno* (232 SCRA 192, May 5, 1994) and *Roberts Jr. v. Court of Appeals* (254 SCRA 307, March 5, 1996). The pertinent ruling in *Ho* is as follows:

"First, x x x the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e. whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding

probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer."

[2] § Art. III.(Italics supplied.)

[3] Manifestation dated February 22, 1995.

[4] Sandiganbayan Resolution dated April 3, 1995.

[5] Sandiganbayan Order dated May 25, 1995. (Emphasis supplied.)

[6] See *BAC manufacturing and Sals Corp. v. Court of Appeals*, 200 SCRA 130, August 2, 1991.

CONCURRING OPINION

VITUG, J.:

The pivotal issue proffered in the Petition for Prohibition - seeking (a) the dismissal of Criminal Case No. 22018 against petitioner pending with the Sandiganbayan and (b) to prevent the latter from further proceeding with case - is the claim made by petitioner of an impairment of his constitutional right to the speedy disposition of his case. I share the view reached by Mr. Justice Leonardo A. Quisumbing that the petition should be denied. A breach of the right of an accused to the speedy disposition of his case may truly have consequential effects but it is not enough that there be some procrastination in the proceedings. In order to justify the dismissal of the criminal case, foreclosing thereby even a rectification of its handling, it must be established that the proceedings unquestionably have been marred by vexatious, capricious and oppressive delays.[1] Hence, this Court has stressed in one case:

"It must be here emphasized that the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing

test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered." [2]

Petitioner additionally scores on the fact that respondent Sandiganbayan issued the warrant for his arrest based solely on the 2nd June 1992 Resolution of the Office of the Ombudsman and the 16th January 1995 Memorandum of the Office of the Special Prosecutor. He has a point. The issuance of a warrant of arrest is one of grave responsibility on the part of the issuing judge. While the judge need not himself examine the complainant and his witnesses, he, however, must personally evaluate the report and supporting documents submitted by the prosecutor regarding the existence of probable cause and, only on the basis thereof can he validly and correspondingly issue a warrant of arrest. The judge may, if he finds it needful, require the submission of additional affidavits of witnesses or papers to aid him in arriving at a conclusion on the existence or absence of probable cause. [3] In *Ho vs. People*, [4] the Court, positing that the issuing judge must have sufficient supporting documents, besides the bare report of the prosecutor, upon which to make an independent judgment, has said:

"x x x (T)he judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest."

"Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer."

The foregoing dictum would, however, be inconsequential in a case when the person on whom the warrant is served has, in some other way, effectively submitted himself to the jurisdiction of the court. One such case is by the posting of bail. [5] The fact that the issuance of the warrant of arrest is assailed for its procedural flaws before the posting of bail is of little moment since the arrest relates merely to the jurisdiction of the court which posting would, of course, only be feasible if the court allowing it would have first acquired lawful jurisdiction over person at the time. [6]

In *Callanta vs. Villanueva*[7] the Court had occasion to state:

" With the express admission by petitioner that she had posted the required bail to obtain her provisional liberty, it becomes futile to assail the validity of the issuance of the warrants of arrest. This excerpt from the opinion of Justice Sanchez in *Zacarias vs. Cruz* [30 SCRA 728] finds pertinence: 'Posting of a bail bond constitutes waiver of any irregularity attending the arrest of a person, estops him from discussing the validity of his arrest. In the recent case of *Luna vs. Plaza** * *, our ruling is that where petitioner has filed an application for bail and waived the preliminary investigation proper, 'he waived his objection to whatever defect, if any, in the preliminary examination conducted * * * prior to the issuance of the warrant of arrest. '[26 SCRA 310] As a matter of fact, such a doctrine goes back to *People vs. Olandag* [92 Phil. 286], the opinion being rendered by former Chief Justice Paras. After *Zacarias*, mention may be made of three other decisions, *Bermejo vs. Barrios* [31 SCRA 764; *People vs. La Caste* [37 SCRA 767], and *Manzano vs. Villa* [46 SCRA 711]. The latest case in point is *People vs. Obngayan* [55 SCRA 465] where this Court, through Justice Antonio, after referring to *Luna vs. Plaza*, again reiterated the ruling 'that where the accused has filed bail and waived the preliminary investigation proper, he has waived whatever defect, if any, in the preliminary examination conducted prior to the issuance of the warrant of arrest [Ibid., 471]."

[1] *Gonzales vs. Sandiganbayan*, 199 SCRA 298; *Dela Rosa vs. Court of Appeals*, 253 SCRA 499; *Socrates vs. Sandiganbayan*, 253 SCRA 773, 788.

[2] *Gonzales vs. Sandiganbayan*, 199 SCRA 298, 307.

[3] *Cruz, Jr. vs. People*, 233 SCRA 439. 455.

[4] 280 SCRA 365, 380-381.

[5] See *Callanta vs. Villanueva*, 77 SCRA 377; *Bagcal vs. Villaraza*, 120 SCRA 525; *People vs. Macam*, 238 SCRA 309, 315; *People vs. Abapo*, 239 SCRA 373, 384; *People vs. Lopez, Jr.*, 245 SCRA 95, 105; *People vs. Rivera*, 245 SCRA 421, 430; *People vs. Lapura*, 255 SCRA 85; *People vs. Nazareno*, 260 SCRA 256, 263; *Padilla vs. Court of Appeals*, 269 SCRA 402; *People vs. Timon*, Gr. No. 97841-42, 12 November 1997.

[6] *People vs. Aruta*, G.R. No. 120915, 03 April 1998.

[7] *Supra*.

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