

FEDERICO A. POBLETE, BIENVENIDO C. POBRE, JUANITO GALANG, RICARDO FLORES, SALVADOR OLAES, LEO V. PADILLA AND PEDRO PATERNO, PETITIONER, VS. HONORABLE JUSTICES EDILBERTO G. SANDO...

G.R. No. 150610. March 25, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via petition for certiorari are the Sandiganbayan October 10, 2001 Resolution[1] denying petitioners' Motion to Quash the first amended information filed against them, and November 8, 2001 Resolution[2] granting the prosecution's Motion to Admit the second amended information.

The antecedents of the case are as follows:

On September 27, 1999, the officers of Samahan ng Lahing Mandaragat ng Pulborista, Inc., a non-stock, non-profit, non-government organization based in Barangay Pulborista, Binakayan, Kawit, Cavite, filed a complaint[3] before the Office of the Ombudsman against the following municipal officials of Kawit for 1995 to 2001: Mayor Federico Poblete, Vice-Mayor Rodrigo Caimol, and Sangguniang Bayan (SB) Members Bienvenido C. Pobre, Juanito Galang, Ricardo Flores, Pedro Paterno, Salvador Olaes, Cherry Rosario Nolasco, Doe Padilla (who was later identified as Leo Padilla), and Peter Doe (who was later identified as Hernan Jamir).

The complaint alleged that the officials caused the registration of foreshore land located in Barangay Binakayan, Kawit in the name of the Municipality of Kawit and subsequently sold the same to a corporation, FJI Property Developers, Inc., notwithstanding that under Commonwealth Act No. 141, specifically, Title III, Chapter [8], Section 59[4] in relation to Section 61,[5] the land is inalienable and cannot be disposed by any mode or transfer, except by lease.

The complaint further averred that the sale of the land caused undue prejudice and injury to poor people, especially the indigent families who claimed it as communal fishing grounds since time immemorial, and gave private parties unwarranted benefits, the contract or transaction being manifestly and grossly disadvantageous to the government and the public.

The respondents to the complaint jointly filed a Counter-affidavit[6] and a Memorandum[7] contending that the land was legally and validly reclaimed; that the certificate of title was obtained in accordance with existing laws and regulations; that the sale and transfer were approved by the Commission on Audit; that there is no communal fishing ground in Kawit; and that Commonwealth Act No 141 is inapplicable to the case.

In a related move, the Senate Committees on Accountability of Public Officers and Investigations and on Environment and Natural Resources conducted on February 7 and 14, 2000 an inquiry in aid of legislation following a September 27, 1999 privilege speech of Senator Ramon B. Revilla entitled "Cavite Land Scam" bearing on the questioned sale of the land. [8]

The Senate subsequently approved the above-said Committees' Report No. 227[9] disclosing that the questioned lot is foreshore, and that bad faith attended its registration and titling with the use of falsified documents, and thus recommending the prosecution of the municipal officials.

By Order[10] of March 30, 2000, the Ombudsman directed the filing of an information against the mayor and members of the Sangguniang Bayan of Kawit for violation of Section 3(e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act).

The necessary information[11] was thus filed against said officials including herein petitioners, which was raffled to herein public respondent, 2[nd] Division, Sandiganbayan.

All the accused filed a Motion for Reinvestigation[12] which the Sandiganbayan denied by Order[13] of April 28, 2000 on the ground that it had not yet acquired jurisdiction over their persons as they had not yet posted bonds nor surrendered.

Except for Hernan Jamir, the rest of the accused filed anew a Motion for Reinvestigation,[14] averring that they voluntarily surrendered on May 2, 2000 before the Regional Trial Court of Imus, Cavite and posted cash bonds of twenty thousand each[15].

The Ombudsman Prosecutor, by Comment/Opposition[16] to the Motion for Reinvestigation, contended that the motion was filed out of time and the grounds relied thereon are evidentiary in nature which could be resolved during trial. To this Comment, the accused filed their Reply.[17]

In an Ex-parte Motion to Admit Amended Information[18] to which the accused filed their Comment[19], the Ombudsman Prosecutor sought to amend the information by inserting the number of the lot under controversy, Lot 4431, and the amount of P123,123,123.00 representing the price paid by FJI Property Developers Inc. for it.

By Resolution[20] of October 17, 2000, the Sandiganbayan admitted the Amended Information on the ground that the Motion to Admit it was presented before arraignment and the amendments were mere matters of form. In the same resolution, the Sandiganbayan denied the Motion for Reinvestigation on the ground that it was filed out of time, and the matters raised therein could hardly be considered as newly discovered evidence and would be better ventilated during the trial of the case as defense evidence.

All the accused, except Hernan Jamir and Rosario "Cherry" Nolasco, filed an Omnibus Motion[21] (for reconsideration of the Resolution dated October 17, 2000 and/or to Quash the Amended Information), to which the prosecution filed its Comment and Opposition.[22] Thereafter, the accused filed their Reply[23] to the Prosecution's Comment and Opposition.

By Resolution of July 6, 2001, the Sandiganbayan denied the accused's Omnibus Motion.[24]

In the meantime or on July 12, 2001, the accused-herein petitioner Bienvenido C. Pobre was arraigned and pleaded "not guilty."[25]

On July 23, 2001, the accused filed a Motion to Quash[26] the Amended Information on the grounds that the facts charged do not constitute an offense, and the information contained averments which, if true, would constitute a legal excuse or justification.

As the Ombudsman approved on August 31, 2001 a Memorandum[27] recommending further amendments to the information, the prosecution filed on September 14, 2001 a Motion to Admit Amended Information[28] (second Amended Information).

For lack of merit, the Sandiganbayan, by Resolution[29] of October 10, 2001, denied the Motion to Quash the

first amended information.

By a subsequent Resolution[30] issued on November 8, 2001, the Sandiganbayan granted the Motion to Admit the second Amended Information.

Hence, the present petition for certiorari.

In determining whether the Sandiganbayan committed grave abuse of discretion in issuing the Resolution of October 10, 2001, it is necessary to re-examine the grounds invoked by petitioners in their Motion to Quash the first Amended Information.

Petitioners' Motion to Quash is anchored on Sections 3(a) and 3(h) of Rule 117 of the Rules of Court which provides:

Rule 117, Section 3. Grounds. - The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

xxx

(h) That it contains averments which, if true, would constitute a legal excuse or justification;

The test for the correctness of the ground under Section 3(a) of Rule 117 is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law[31] without considering matters aliunde.

The information sought to be quashed is hereinbelow quoted verbatim:

The undersigned Ombudsman Prosecutor, Office of the Special Prosecutor, hereby accuses Federico Poblete, Rodrigo Caimol, Bienvenido Pobre, Juanito Galang, Ricardo Flores, Pedro Paterno, Salvador Olaes, Rosario Nolasco, Leo Padilla and Hernan Jamir, of Violation of Sec. 3 (e) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about 28 January 1995 to 28 November 1997 or prior or subsequent thereto, in the Municipality of Kawit, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, FEDERICO POBLETE, then Municipal Mayor, in conspiracy with then Vice Mayor, RODRIGO CAIMOL and SB Members BIENVENIDO POBRE, JUANITO GALANG, RICARDO FLORES, PEDRO PATERNO, SALVADOR OLAES, ROSARIO "CHERRY" NOLASCO, LEO PADILLA and HERNAN JAMIR, taking advantage of their official positions, with evident bad faith, and manifest partiality to FJI Property Developers, Inc., did then and there willfully, unlawfully and criminally give unwarranted benefits to FJI Property Developers, Inc. and cause undue injury to the local fishermen and the government sold a foreshore land, Lot 4431 through the passage of SB Resolution No. 3-97, Series of 1997 authorizing the sale of the land situated in Binakayan, Kawit, Cavite in favor of FJI Property Developers, Inc. in the amount of ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TWENTY THREE THOUSAND ONE HUNDRED TWENTY THREE PESOS (P123,123,123.00) with the Municipality of Kawit, Cavite, represented by then mayor FEDERICO POBLETE as vendor, despite full knowledge, and in complete disregard, of the legal prohibition under Sections 159 and 61, Commonwealth Act No. 141, against the disposition through sale of foreshore, and notwithstanding the warning of the Department of Environment and Natural Resources (DENR) on the prohibition against the lease of foreshore lands along Manila Bay towards Cavite and Bataan.[32] (Underscoring supplied).

The information thus charges petitioners with violation of Section 3 (e) of R.A. 3019, to wit:

Sec. 3. Corrupt practices by public officers. – In addition to acts or omissions of public officers already

penalized by existing law, the following shall constitute corrupt practice of any public officer and are hereby declared to be unlawful:

x x x

(e) causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

Under settled jurisprudence, the following elements need to be proven in order to constitute a violation of Section 3(e) of Republic Act 3019, viz:

- The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
- The public officer committed the prohibited act during the performance of his official duty in relation to his public position;
- The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- His action caused undue injury to the government or any private party, or gave any party unwarranted benefit, advantage or reference to such parties.[33]

Contrary to petitioners' position, the information need not state the manner by which the injury to the local fisherfolk or the government came about or the extent by which they exhibited partiality, bad faith or negligence in the enactment of SB Resolution 3-97[34] authorizing the sale of foreshore land, it being sufficient that the information alleges that petitioners acted with manifest partiality, evident bad faith, and took advantage of their public positions by passing SB Resolution No. 3-97 despite the legal prohibition provided under the law, thereby causing undue injury to the local fishermen and the government.

Anent the second ground of the Motion to Quash, it is erroneous for petitioners to argue that the payment of the amount of P123,123,123.00 by FJI Property Developers, Inc. for the lot in question, which enriched the coffers of the government,[35] was a legal excuse and justification to free them from criminal liability. For if the elements of the offense — violation of Section 3(e) of Republic Act 3019 — are proven, the proffered excuse is immaterial.

The grounds – bases of petitioners in the Motion to Quash the first Amended Information being unwarranted, the Sandiganbayan did not commit grave abuse of discretion in issuing the Resolution of October 10, 2001 denying the same.

Contending that the Sandiganbayan also committed grave abuse of discretion in issuing its Resolution of November 8, 2001, petitioners argue that it failed to consider Section 14, Rule 110 of the Rules of Court which provides:

Sec. 14. Amendment or substitution. – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused,

their co-accused co-petitioner Bienvenido C. Pobre having already been arraigned[36] under the first Amended Information and cannot thus be made to re-plead to the second Amended Information without his constitutional right to double jeopardy being violated. Petitioners moreover argue that they and their co-accused having been

charged of acting in concert, they cannot be convicted on the basis of different informations.

The crux of the issue therefore hinges on whether the amendments in the second Amended Information are mere matters of form which do not prejudice the rights of the accused.

The second Amended Information is hereinbelow quoted verbatim:

That on or about 28 January 1995 to 28 November 1997 or sometime prior or subsequent thereto, in the Municipality of Kawit, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officials, Federico Poblete, then Municipal Mayor, Rodrigo Caimol, then Vice Mayor and Bienvenido Pobre, Juanito Galang, Ricardo Flores, Pedro Paterno, Salvador Olaes, Rosario “Cherry” Nolasco, Leo Padilla and Hernan Jamir, then Sangguniang Bayan Members, all of the Municipality of Kawit, Cavite, while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with each other, did then and there willfully, unlawfully and criminally, with evident bad faith and manifest partiality, cause undue injury to the Government and local fishermen of the Municipality of Kawit, Cavite in the following manner: the said accused public officials maliciously sold a foreshore land described as Lot 4431 through the passage of Sangguniang Bayan Resolution No. 3-97, Series of 1997 authorizing the sale said land situated in Binakayan, Kawit, Cavite in favor of FJI Property Developers, Inc. in the amount of ONE HUNDRED TWENTY THREE MILLION ONE HUNDRED TWENTY THREE THOUSAND ONE HUNDRED TWENTY THREE PESOS (P123,123,123.00) Philippine Currency, despite their full knowledge, and in complete disregard, of the legal prohibition under Sections 159 in relation to Section 61, Commonwealth Act No. 141, prohibiting the disposition through sale of foreshore land thereby giving unwarranted benefits to FJI Property Developers, Inc. to the damage and injury to the Government in the aforementioned amount. (Underscoring in the original)

While petitioners cite *People v. Casey*[37] which laid down the test in determining whether an amendment is a matter of form or substance, to wit:

The test as to whether a defendant is prejudiced by an amendment has been said to be whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the new form as in the other. A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance – not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 (now Section 14) of the Revised Rules of Court,

they fail to show how or why the amendments may be considered as matters of substance which will prejudice their rights as accused.

An objective appraisal, however, of the second Amended Information shows that the amendments are merely formal for they do not touch upon the recital of facts constituting the offense charged nor on the determination of the jurisdiction of the court. Instead, the amendments merely involve deletions, transpositions and re-phrasings, thereby raising the same issue and the same operative facts already found in the first Amended Information.

As laid down by this Court, an amendment is only in form when it merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts[38], and merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction for the crime charged.[39]

The second Amended Information, while adding the word “public officers,” does not introduce a new and

material fact as the accused in the first Amended Information were referred to as either the Mayor, Vice-Mayor or Members of the Sangguniang Bayan.

Likewise, in the second Amended Information, the phrase “while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with each other” is but a clearer restatement of the phrase “in conspiracy and taking advantage of their official positions” found in the first Amended Information.

Section 14, Rule 110 moreover provides that in allowing formal amendments in cases where the accused have already pleaded, it is necessary that the amendments do not prejudice the rights of the accused.

The test on whether the rights of an accused are prejudiced by the amendment of a complaint or information is whether a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have would be inapplicable to the complaint or information.[40]

The mere re-arrangement of the words and phrases in the second Amended Information which are also alleged in the first Amended Information does not change the basic theory of the prosecution, thus creating no material change or modification in the defenses of the accused.

Contrary to petitioners’ position, it having been established that the questioned amendments are merely formal, there is no longer any need for accused Bienvenido Pobre to be re-arraigned on the second Amended Information.[41]

Petitioners additionally argue that the Sandiganbayan failed to consider the irregularity in the preliminary investigation which they have been harping upon, the particulars of which were stated in their Motion for Reinvestigation — that Lot No. 4431 covered by Original Certificate of Title No. 0-3115 was no longer foreshore as it had already evolved into a landmass and was ripe for titling, and that a portion of OCT No. 0-3115 was alienated in accordance with law.

Clearly, petitioners’ allegations are factual and evidentiary in nature which may best be considered as matters of defense to be ventilated in a full-blown trial. Lack of probable cause during the preliminary investigation is not one of the grounds for a motion to quash. A motion to quash should be based on a defect in the information, which is evident on its face. The guilt or innocence of the accused, and their degree of participation, which should be appreciated, are properly the subject of trial on the merits rather than on a motion to quash.[42]

As for the propriety or impropriety of the filing of the information by the Ombudsman, this Court may not pass. Neither may it independently make a factual finding of whether there was indeed irregularity in the conduct of the preliminary investigation. For petitioners are not, in the present petition, assailing the denial by the Sandiganbayan of their Motion for Reinvestigation.

Petitioners having failed to substantiate the grounds they invoked in their Motion to Quash the first Amended Information, and it having been established that the amendments introduced in the second Amended Information are mere matters of form, the Sandiganbayan did not commit grave abuse of discretion in issuing its Resolutions of October 10, 2001 and November 8, 2001.

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

SO ORDERED.

Sandoval-Gutierrez (Acting Chairman) and Corona, JJ., concur.
Vitug, J., (Chairman), on official leave.

[1] Rollo at 36-37.

[2] Id. at 38.

[3] Id. at 57-60.

[4] Commonwealth Act 141, Title III, Section 59. - The lands disposable under this title shall be classified as follows:

(a)

Lands reclaimed by the Government by dredging, filing and other means;

(b)

Foreshore;

(c)

Marshy lands or lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

(d)

Lands not included in any of the foregoing classes.

[5] Commonwealth Act 141, Title III, Section 61. – The lands comprised in classes (a), (b) and (c) of Section fifty-nine shall be disposed of to private parties by leases only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agriculture, shall declare that the same are not necessary for the public service and are open to disposition under this chapter. The lands included in class (d) may be disposed of by sale or lease under the provision of this Act.

[6] Rollo at 61-71.

[7] Id. at 72-93.

[8] Id. at 162.

[9] Id. at 160-176.

[10] Id. at 105-107.

[11] Id. at 120-122.

[12] Id. at 123-125.

[13] Id. at 126.

[14] Id. at 127-130.

[15] Id. at 128.

- [16] Id. at 131-136.
- [17] Id. at 137-142.
- [18] Id. at 143-144.
- [19] Id. at 148-152.
- [20] Id. at 177-178.
- [21] Id. at 179-187.
- [22] Id. at 188-191.
- [23] Id. at 192-197.
- [24] Id. at 12.
- [25] Id. at 53.
- [26] Id. at 198-202.
- [27] Id. at 39-40.
- [28] Id. at 42-47.
- [29] Id. at 36-37.
- [30] Id. at 38.
- [31] Cruz v. Court of Appeals, 194 SCRA 145, 150 (1991).
- [32] Rollo at 146.
- [33] Quibal v. Sandiganbayan, 244 SCRA 224, 231 (1995).
- [34] Rollo at 199.
- [35] Id. at 201.
- [36] Id. at 53.

[37] 103 SCRA 21 (1981).

- [38] Caparas v. Gonzales and Lindayag, 117 Phil. 201, 206 (1963).
- [39] People v. Montenegro, 159 SCRA 236, 241 (1988).
- [40] People v. Montenegro, 159 SCRA 236, 241 (1998).
- [41] Teehankee v. Madayag, 207 SCRA 134, 140 (1992).
- [42] People v. Tac-an, 300 SCRA 265, 277 (1998).

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