

HILARIO P. SORIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS (BSP), PHILIPPINE DEPOSIT INSURANCE AND CORPORATION (PDIC), PUBLIC PROSECUTOR ANTONIO ...

G.R. No. 162336. February 01, 2010

Ponente: DEL CASTILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-162336/>

DEL CASTILLO, J.:

A bank officer violates the DOSRI[2] law when he acquires bank funds for his personal benefit, even if such acquisition was facilitated by a fraudulent loan application. Directors, officers, stockholders, and their related interests cannot be allowed to interpose the fraudulent nature of the loan as a defense to escape culpability for their circumvention of Section 83 of Republic Act (RA) No. 337.[3]

Before us is a Petition for Review on Certiorari[4] under Rule 45 of the Rules of Court, assailing the September 26, 2003 Decision[5] and the February 5, 2004 Resolution[6] of the Court of Appeals (CA) in CA-G.R. SP No. 67657. The challenged Decision disposed as follows:

WHEREFORE, premises considered, the instant petition for certiorari is hereby DENIED.[7]

Factual Antecedents

Sometime in 2000, the Office of Special Investigation (OSI) of the Bangko Sentral ng Pilipinas (BSP), through its officers,[8] transmitted a letter[9] dated March 27, 2000 to Jovencito Zuño, Chief State Prosecutor of the Department of Justice (DOJ). The letter attached as annexes five affidavits,[10] which would allegedly serve as bases for filing criminal charges for Estafa thru Falsification of Commercial Documents, in relation to Presidential Decree (PD) No. 1689,[11] and for Violation of Section 83 of RA 337, as amended by PD 1795,[12] against, inter alia, petitioner herein Hilario P. Soriano. These five affidavits, along with other documents, stated that spouses Enrico and Amalia Carlos appeared to have an outstanding loan of P8 million with the Rural Bank of San Miguel (Bulacan), Inc. (RBSM), but had never applied for nor received such loan; that it was petitioner, who was then president of RBSM, who had ordered, facilitated, and received the proceeds of the loan; and that the P8 million loan had never been authorized by RBSM's Board of Directors and no report thereof had ever been submitted to the Department of Rural Banks, Supervision and Examination Sector of the BSP. The letter of the OSI, which was not subscribed under oath, ended with a request that a preliminary investigation be conducted and the corresponding criminal charges be filed against petitioner at his last known address.

Acting on the letter-request and its annexes, State Prosecutor Albert R. Fonacier proceeded with the preliminary investigation. He issued a subpoena with the witnesses' affidavits and supporting documents attached, and required petitioner to file his counter-affidavit. In due course, the investigating officer issued a Resolution finding probable cause and correspondingly filed two separate informations against petitioner before the Regional Trial Court (RTC) of Malolos, Bulacan.[13]

The first Information,[14] dated November 14, 2000 and docketed as Criminal Case No. 237-M-2001, was for estafa through falsification of commercial documents, under Article 315, paragraph 1(b), of the Revised Penal Code (RPC), in relation to Article 172 of the RPC and PD 1689. It basically alleged that petitioner and his co-accused, in abuse of the confidence reposed in them as RBSM officers, caused the falsification of a number of loan documents, making it appear that one Enrico Carlos filled up the same, and thereby succeeded in securing a loan and converting the loan proceeds for their personal gain and benefit.[15] The information reads:

That in or about the month of April, 1997, and thereafter, in San Miguel, Bulacan, and within the jurisdiction of this Honorable Court, the said accused HILARIO P. SORIANO and ROSALINDA ILAGAN, as principals by direct participation, with unfaithfulness or abuse of confidence and taking advantage of their position as President of the Rural Bank of San Miguel (Bulacan), Inc. and Branch Manager of the Rural Bank of San Miguel - San Miguel Branch [sic], a duly organized banking institution under Philippine Laws, conspiring, confederating and mutually helping one another, did then and there, willfully and feloniously falsify loan documents consisting of undated loan application/information sheet, credit proposal dated April 14, 1997, credit proposal dated April 22, 1997, credit investigation report dated April 15, 1997, promissory note dated April 23, 1997, disclosure statement on loan/credit transaction dated April 23, 1997, and other related documents, by making it appear that one Enrico Carlos filled up the application/information sheet and filed the aforementioned loan documents when in truth and in fact Enrico Carlos did not participate in the execution of said loan documents and that by virtue of said falsification and with deceit and intent to cause damage, the accused succeeded in securing a loan in the amount of eight million pesos (PhP8,000,000.00) from the Rural Bank of San Miguel - San Ildefonso branch in the name of Enrico Carlos which amount of PhP8 million representing the loan proceeds the accused thereafter converted the same amount to their own personal gain and benefit, to the damage and prejudice of the Rural Bank of San Miguel - San Ildefonso branch, its creditors, the Bangko Sentral ng Pilipinas, and the Philippine Deposit Insurance Corporation.

CONTRARY TO LAW.[16]

The other Information[17] dated November 10, 2000 and docketed as Criminal Case No. 238-M-2001, was for violation of Section 83 of RA 337, as amended by PD 1795. The said provision refers to the prohibition against the so-called DOSRI loans. The information alleged that, in his capacity as President of RBSM, petitioner indirectly secured an P8 million loan with RBSM, for his personal use and benefit, without the written consent and approval of the bank's Board of Directors, without entering the said transaction in the bank's records, and without transmitting a copy of the transaction to the supervising department of the bank. His ruse was facilitated by placing the loan in the name of an unsuspecting RBSM depositor, one Enrico Carlos.[18] The information reads:

That in or about the month of April, 1997, and thereafter, and within the jurisdiction of this Honorable Court, the said accused, in his capacity as President of the Rural Bank of San Miguel (Bulacan), Inc., did then and there, willfully and feloniously indirectly borrow or secure a loan with the Rural Bank of San Miguel - San Ildefonso branch, a domestic rural banking institution created, organized and existing under Philippine laws, amounting to eight million pesos (PhP8,000,000.00), knowing fully well that the same has been done by him without the written consent and approval of the majority of the board of directors of the said bank, and which consent and approval the said accused deliberately failed to obtain and enter the same upon the records of said banking institution and to transmit a copy thereof to the supervising department of the said bank, as required by the General Banking Act, by using the name of one depositor Enrico Carlos of San Miguel, Bulacan, the latter having no knowledge of the said loan, and one in possession of the said amount of eight million pesos (PhP8,000,000.00), accused converted the same to his own personal use and benefit, in flagrant violation of the said law.

CONTRARY TO LAW.[19]

Both cases were raffled to Branch 79 of the RTC of Malolos, Bulacan.[20]

On June 8, 2001, petitioner moved to quash[21] these informations on two grounds: that the court had no jurisdiction over the offense charged, and that the facts charged do not constitute an offense.

On the first ground, petitioner argued that the letter transmitted by the BSP to the DOJ constituted the complaint and hence was defective for failure to comply with the mandatory requirements of Section 3(a), Rule 112 of the Rules of Court, such as the statement of address of petitioner and oath and subscription.[22] Moreover, petitioner argued that the officers of OSI, who were the signatories to the "letter-complaint," were not authorized by the BSP Governor, much less by the Monetary Board, to file the complaint. According to petitioner, this alleged fatal oversight violated Section 18, pars. (c) and (d) of the New Central Bank Act (RA 7653).

On the second ground, petitioner contended that the commission of estafa under paragraph 1(b) of Article 315 of the RPC is inherently incompatible with the violation of DOSRI law (as set out in Section 83[23] of RA 337, as amended by PD 1795),[24] hence a person cannot be charged for both offenses. He argued that a violation of DOSRI law requires the offender to obtain a loan from his bank, without complying with procedural, reportorial, or ceiling requirements. On the other hand, estafa under par. 1(b), Article 315 of the RPC requires the offender to misappropriate or convert something that he holds in trust, or on commission, or for administration, or under any other obligation involving the duty to return the same.[25]

Essentially, the petitioner theorized that the characterization of possession is different in the two offenses. If petitioner acquired the loan as DOSRI, he owned the loaned money and therefore, cannot misappropriate or convert it as contemplated in the offense of estafa. Conversely, if petitioner committed estafa, then he merely held the money in trust for someone else and therefore, did not acquire a loan in violation of DOSRI rules.

Ruling of the Regional Trial Court

In an Order[26] dated August 8, 2001, the trial court denied petitioner's Motion to Quash for lack of merit. The lower court agreed with the prosecution that the assailed OSI letter was not the complaint-affidavit itself; thus, it need not comply with the requirements under the Rules of Court. The trial court held that the affidavits, which were attached to the OSI letter, comprised the complaint-affidavit in the case. Since these affidavits were duly subscribed and sworn to before a notary public, there was adequate compliance with the Rules. The trial court further held that the two offenses were separate and distinct violations, hence the prosecution of one did not pose a bar to the other.[27]

Petitioner's Motion for Reconsideration was likewise denied in an Order dated September 5, 2001.[28]

Aggrieved, petitioner filed a Petition for Certiorari[29] with the CA, reiterating his arguments before the trial court.

Ruling of the Court of Appeals

The CA denied the petition on both issues presented by petitioner.

On the first issue, the CA determined that the BSP letter, which petitioner characterized to be a fatally infirm complaint, was not actually a complaint, but a transmittal or cover letter only. This transmittal letter merely contained a summary of the affidavits which were attached to it. It did not contain any averment of personal knowledge of the events and transactions that constitute the elements of the offenses charged. Being a mere transmittal letter, it need not comply with the requirements of Section 3(a) of Rule 112 of the Rules of Court.[30]

The CA further determined that the five affidavits attached to the transmittal letter should be considered as the complaint-affidavits that charged petitioner with violation of Section 83 of RA 337 and for Estafa thru

Falsification of Commercial Documents. These complaint-affidavits complied with the mandatory requirements set out in the Rules of Court - they were subscribed and sworn to before a notary public and subsequently certified by State Prosecutor Fonacier, who personally examined the affiants and was convinced that the affiants fully understood their sworn statements.[31]

Anent the second ground, the CA found no merit in petitioner's argument that the violation of the DOSRI law and the commission of estafa thru falsification of commercial documents are inherently inconsistent with each other. It explained that the test in considering a motion to quash on the ground that the facts charged do not constitute an offense, is whether the facts alleged, when hypothetically admitted, constitute the elements of the offense charged. The appellate court held that this test was sufficiently met because the allegations in the assailed informations, when hypothetically admitted, clearly constitute the elements of Estafa thru Falsification of Commercial Documents and Violation of DOSRI law.[32]

Petitioner's Motion for Reconsideration[33] was likewise denied for lack of merit.

Hence, this petition.

Issues

Restated, petitioner raises the following issues[34] for our consideration:

I

Whether the complaint complied with the mandatory requirements provided under Section 3(a), Rule 112 of the Rules of Court and Section 18, paragraphs (c) and (d) of RA 7653.

II

Whether a loan transaction within the ambit of the DOSRI law (violation of Section 83 of RA 337, as amended) could also be the subject of Estafa under Article 315 (1) (b) of the Revised Penal Code.

III

Is a petition for certiorari under Rule 65 the proper remedy against an Order denying a Motion to Quash?

IV

Whether petitioner is entitled to a writ of injunction.

Our Ruling

The petition lacks merit.

First Issue:

Whether the complaint complied with the mandatory requirements provided under Section 3(a), Rule 112 of the Rules of Court and Section 18, paragraphs (c) and (d) of Republic Act No. 7653

Petitioner moved to withdraw the first issue from the instant petition

On March 5, 2007, the Court noted[35] petitioner's Manifestation and Motion for Partial Withdrawal of the Petition[36] dated February 7, 2007. In the said motion, petitioner informed the Court of the promulgation of a Decision entitled Soriano v. Hon. Casanova,[37] which also involved petitioner and similar BSP letters to the DOJ. According to petitioner, the said Decision allegedly ruled squarely on the nature of the BSP letters and the validity of the sworn affidavits attached thereto. For this reason, petitioner moved for the partial withdrawal of the instant petition insofar as it involved the issue of "whether or not a court can legally acquire jurisdiction over a

complaint which failed to comply with the mandatory requirements provided under Section 3(a), Rule 112 of the Rules of Court and Section 18, paragraphs (c) and (d) of RA 7653".[38]

Given that the case had already been submitted for resolution of the Court when petitioner filed his latest motion, and that all respondents had presented their positions and arguments on the first issue, the Court deems it proper to rule on the same.

In *Soriano v. Hon. Casanova*, the Court held that the affidavits attached to the BSP transmittal letter complied with the mandatory requirements under the Rules of Court.

To be sure, the BSP letters involved in *Soriano v. Hon. Casanova*[39] are not the same as the BSP letter involved in the instant case. However, the BSP letters in *Soriano v. Hon. Casanova* and the BSP letter subject of this case are similar in the sense that they are all signed by the OSI officers of the BSP, they were not sworn to by the said officers, they all contained summaries of their attached affidavits, and they all requested the conduct of a preliminary investigation and the filing of corresponding criminal charges against petitioner Soriano. Thus, the principle of *stare decisis* dictates that the ruling in *Soriano v. Hon. Casanova* be applied in the instant case - once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[40]

We held in *Soriano v. Hon. Casanova*, after a close scrutiny of the letters transmitted by the BSP to the DOJ, that these were not intended to be the complaint, as envisioned under the Rules. They did not contain averments of personal knowledge of the events and transactions constitutive of any offense. The letters merely transmitted for preliminary investigation the affidavits of people who had personal knowledge of the acts of petitioner. We ruled that these affidavits, not the letters transmitting them, initiated the preliminary investigation. Since these affidavits were subscribed under oath by the witnesses who executed them before a notary public, then there was substantial compliance with Section 3(a), Rule 112 of the Rules of Court.

Anent the contention that there was no authority from the BSP Governor or the Monetary Board to file a criminal case against Soriano, we held that the requirements of Section 18, paragraphs (c) and (d) of RA 7653 did not apply because the BSP did not institute the complaint but merely transmitted the affidavits of the complainants to the DOJ.

We further held that since the offenses for which Soriano was charged were public crimes, authority holds that it can be initiated by "any competent person" with personal knowledge of the acts committed by the offender. Thus, the witnesses who executed the affidavits clearly fell within the purview of "any competent person" who may institute the complaint for a public crime.

The ruling in *Soriano v. Hon. Casanova* has been adopted and elaborated upon in the recent case of *Santos-Concio v. Department of Justice*. [41] Instead of a transmittal letter from the BSP, the Court in *Santos-Concio* was faced with an NBI-NCR Report, likewise with affidavits of witnesses as attachments. Ruling on the validity of the witnesses' sworn affidavits as bases for a preliminary investigation, we held:

The Court is not unaware of the practice of incorporating all allegations in one document denominated as "complaint-affidavit." It does not pronounce strict adherence to only one approach, however, for there are cases where the extent of one's personal knowledge may not cover the entire gamut of details material to the alleged offense. The private offended party or relative of the deceased may not even have witnessed the fatality, in which case the peace officer or law enforcer has to rely chiefly on affidavits of witnesses. The Rules do not in fact preclude the attachment of a referral or transmittal letter similar to that of the NBI-NCR. Thus, in

Soriano v. Casanova, the Court held:

A close scrutiny of the letters transmitted by the BSP and PDIC to the DOJ shows that these were not intended to be the complaint envisioned under the Rules. It may be clearly inferred from the tenor of the letters that the officers merely intended to transmit the affidavits of the bank employees to the DOJ. Nowhere in the transmittal letters is there any averment on the part of the BSP and PDIC officers of personal knowledge of the events and transactions constitutive of the criminal violations alleged to have been made by the accused. In fact, the letters clearly stated that what the OSI of the BSP and the LIS of the PDIC did was to respectfully transmit to the DOJ for preliminary investigation the affidavits and personal knowledge of the acts of the petitioner. These affidavits were subscribed under oath by the witnesses who executed them before a notary public. Since the affidavits, not the letters transmitting them, were intended to initiate the preliminary investigation, we hold that Section 3(a), Rule 112 of the Rules of Court was substantially complied with.

Citing the ruling of this Court in *Ebarle v. Sucaldito*, the Court of Appeals correctly held that a complaint for purposes of preliminary investigation by the fiscal need not be filed by the offended party. The rule has been that, unless the offense subject thereof is one that cannot be prosecuted de officio, the same may be filed, for preliminary investigation purposes, by any competent person. The crime of estafa is a public crime which can be initiated by "any competent person." The witnesses who executed the affidavits based on their personal knowledge of the acts committed by the petitioner fall within the purview of "any competent person" who may institute the complaint for a public crime. x x x (Emphasis and italics supplied)

A preliminary investigation can thus validly proceed on the basis of an affidavit of any competent person, without the referral document, like the NBI-NCR Report, having been sworn to by the law enforcer as the nominal complainant. To require otherwise is a needless exercise. The cited case of *Oporto, Jr. v. Judge Monserate* does not appear to dent this proposition. After all, what is required is to reduce the evidence into affidavits, for while reports and even raw information may justify the initiation of an investigation, the preliminary investigation stage can be held only after sufficient evidence has been gathered and evaluated which may warrant the eventual prosecution of the case in court.[42]

Following the foregoing rulings in *Soriano v. Hon. Casanova* and *Santos-Concio v. Department of Justice*, we hold that the BSP letter, taken together with the affidavits attached thereto, comply with the requirements provided under Section 3(a), Rule 112 of the Rules of Court and Section 18, paragraphs (c) and (d) of RA 7653.

Second Issue:

Whether a loan transaction within the ambit of the DOSRI law (violation of Section 83 of RA 337, as amended) could be the subject of Estafa under Article 315 (1) (b) of the Revised Penal Code

The second issue was raised by petitioner in the context of his Motion to Quash Information on the ground that the facts charged do not constitute an offense.[43] It is settled that in considering a motion to quash on such ground, the test is "whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts that constitute the defense of the petitioner[s] against the charge under the information must be proved by [him] during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense". [44]

We have examined the two informations against petitioner and we find that they contain allegations which, if hypothetically admitted, would establish the essential elements of the crime of DOSRI violation and estafa thru falsification of commercial documents.

In Criminal Case No. 238-M-2001 for violation of DOSRI rules, the information alleged that petitioner Soriano was the president of RBSM; that he was able to indirectly obtain a loan from RBSM by putting the loan in the name of depositor Enrico Carlos; and that he did this without complying with the requisite board approval, reportorial, and ceiling requirements.

In Criminal Case No. 237-M-2001 for estafa thru falsification of commercial documents, the information alleged that petitioner, by taking advantage of his position as president of RBSM, falsified various loan documents to make it appear that an Enrico Carlos secured a loan of P8 million from RBSM; that petitioner succeeded in obtaining the loan proceeds; that he later converted the loan proceeds to his own personal gain and benefit; and that his action caused damage and prejudice to RBSM, its creditors, the BSP, and the PDIC.

Significantly, this is not the first occasion that we adjudge the sufficiency of similarly worded informations. In *Soriano v. People*,^[45] involving the same petitioner in this case (but different transactions), we also reviewed the sufficiency of informations for DOSRI violation and estafa thru falsification of commercial documents, which were almost identical, *mutatis mutandis*, with the subject informations herein. We held in *Soriano v. People* that there is no basis for the quashal of the informations as "they contain material allegations charging Soriano with violation of DOSRI rules and estafa thru falsification of commercial documents".

Petitioner raises the theory that he could not possibly be held liable for estafa in concurrence with the charge for DOSRI violation. According to him, the DOSRI charge presupposes that he acquired a loan, which would make the loan proceeds his own money and which he could neither possibly misappropriate nor convert to the prejudice of another, as required by the statutory definition of estafa.^[46] On the other hand, if petitioner did not acquire any loan, there can be no DOSRI violation to speak of. Thus, petitioner posits that the two offenses cannot co-exist. This theory does not persuade us.

Petitioner's theory is based on the false premises that the loan was extended to him by the bank in his own name, and that he became the owner of the loan proceeds. Both premises are wrong.

The bank money (amounting to P8 million) which came to the possession of petitioner was money held in trust or administration by him for the bank, in his

fiduciary capacity as the President of said bank.^[47] It is not accurate to say that petitioner became the owner of the P8 million because it was the proceeds of a loan. That would have been correct if the bank knowingly extended the loan to petitioner himself. But that is not the case here. According to the information for estafa, the loan was supposed to be for another person, a certain "Enrico Carlos"; petitioner, through falsification, made it appear that said "Enrico Carlos" applied for the loan when in fact he ("Enrico Carlos") did not. Through such fraudulent device, petitioner obtained the loan proceeds and converted the same. Under these circumstances, it cannot be said that petitioner became the legal owner of the P8 million. Thus, petitioner remained the bank's fiduciary with respect to that money, which makes it capable of misappropriation or conversion in his hands.

The next question is whether there can also be, at the same time, a charge for DOSRI violation in such a situation wherein the accused bank officer did not secure a loan in his own name, but was alleged to have used the name of another person in order to indirectly secure a loan from the bank. We answer this in the affirmative. Section 83 of RA 337 reads:

Section 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of others, borrow any of the deposits or funds of such bank, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for moneys borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation

and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos. x x x

The prohibition in Section 83 is broad enough to cover various modes of borrowing.[48] It covers loans by a bank director or officer (like herein petitioner) which are made either: (1) directly, (2) indirectly, (3) for himself, (4) or as the representative or agent of others. It applies even if the director or officer is a mere guarantor, indorser or surety for someone else's loan or is in any manner an obligor for money borrowed from the bank or loaned by it. The covered transactions are prohibited unless the approval, reportorial and ceiling requirements under Section 83 are complied with. The prohibition is intended to protect the public, especially the depositors,[49] from the overborrowing of bank funds by bank officers, directors, stockholders and related interests, as such overborrowing may lead to bank failures.[50] It has been said that "banking institutions are not created for the benefit of the directors [or officers]. While directors have great powers as directors, they have no special privileges as individuals. They cannot use the assets of the bank for their own benefit except as permitted by law. Stringent restrictions are placed about them so that when acting both for the bank and for one of themselves at the same time, they must keep within certain prescribed lines regarded by the legislature as essential to safety in the banking business".[51] A direct borrowing is obviously one that is made in the name of the DOSRI himself or where the DOSRI is a named party, while an indirect borrowing includes one that is made by a third party, but the DOSRI has a stake in the transaction.[52] The latter type - indirect borrowing - applies here. The information in Criminal Case 238-M-2001 alleges that petitioner "in his capacity as President of Rural Bank of San Miguel - San Ildefonso branch x x x indirectly borrow[ed] or secure[d] a loan with [RBSM] x x x knowing fully well that the same has been done by him without the written consent and approval of the majority of the board of directors x x x, and which consent and approval the said accused deliberately failed to obtain and enter the same upon the records of said banking institution and to transmit a copy thereof to the supervising department of the said bank x x x by using the name of one depositor Enrico Carlos x x x, the latter having no knowledge of the said loan, and once in possession of the said amount of eight million pesos (P8 million), [petitioner] converted the same to his own personal use and benefit".[53]

The foregoing information describes the manner of securing the loan as indirect; names petitioner as the benefactor of the indirect loan; and states that the requirements of the law were not complied with. It contains all the required elements[54] for a violation of Section 83, even if petitioner did not secure the loan in his own name.

The broad interpretation of the prohibition in Section 83 is justified by the fact that it even expressly covers loans to third parties where the third parties are aware of the transaction (such as principals represented by the DOSRI), and where the DOSRI's interest does not appear to be beneficial but even burdensome (such as in cases when the DOSRI acts as a mere guarantor or surety). If the law finds it necessary to protect the bank and the banking system in such situations, it will surely be illogical for it to exclude a case like this where the DOSRI acted for his own benefit, using the name of an unsuspecting person. A contrary interpretation will effectively allow a DOSRI to use dummies to circumvent the requirements of the law.

In sum, the informations filed against petitioner do not negate each other.

Third Issue:

Is a Rule 65 petition for certiorari the proper remedy against an Order denying a Motion to Quash?

This issue may be speedily resolved by adopting our ruling in Soriano v. People,[55] where we held:

In fine, the Court has consistently held that a special civil action for certiorari is not the proper remedy to assail the denial of a motion to quash an information. The proper procedure in such a case is for the accused to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion to quash and if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. Thus, petitioners should not have forthwith filed a special civil action for certiorari with the CA and instead, they should have gone to trial and reiterated the special defenses contained in their motion to quash. There are no special or exceptional circumstances in the present case that would justify immediate resort to a filing of a petition for certiorari. Clearly, the CA did not commit any reversible error, much less, grave abuse of discretion in dismissing the petition.[56]

Fourth Issue:

Whether petitioner is entitled to a writ of injunction

The requisites to justify an injunctive relief are: (1) the right of the complainant is clear and unmistakable; (2) the invasion of the right sought to be protected is material and substantial; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. A clear legal right means one clearly founded in or granted by law or is "enforceable as a matter of law." Absent any clear and unquestioned legal right, the issuance of an injunctive writ would constitute grave abuse of discretion.[57] Caution and prudence must, at all times, attend the issuance of an injunctive writ because it effectively disposes of the main case without trial and/or due process.[58] In *Olalia v. Hizon*,[59] the Court held as follows:

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the [complainant] and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.

Given this Court's findings in the earlier issues of the instant case, we find no compelling reason to grant the injunctive relief sought by petitioner.

WHEREFORE, the petition is DENIED. The assailed September 26, 2003 Decision as well as the February 5, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 67657 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio, (Chairperson), Corona[*], Brion, and Perez, JJ., concur.

[*] In lieu of Associate Justice Roberto A. Abad who is on leave per Special Order No. 812 dated January 4, 2010.

[1] The Petition for Review on Certiorari under Rule 45 filed before the Court erroneously included Judge Arturo G. Tayag among its public respondents. We have deleted his name in the case title in accordance with Section 4 (a), Rule 45 of the Rules of Court, which reads:

Sec. 4 Contents of petition. -- The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; x x x (Emphasis supplied)

[2] Director, Officer, Stockholder and Related Interest.

[3] The General Banking Act.

[4] Rollo, pp. 10-23.

[5] Id. at 25-36; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes.

[6] Id. at 38-39.

[7] Id. at 36.

[8] Bank Attorney III Jose R. Fajardo, Deputy Director Alfonso C. Peñaco IV, and Director Vicente S. Aquino. CA rollo, p. 36.

[9] Id. at 34-36.

[10] Id. at 288-328.

[11] Increasing the Penalty for Certain Forms of Swindling or Estafa.

[12] Amending Further Republic Act No. 337, As Amended, Otherwise Known as the "General Banking Act".

[13] CA rollo, pp. 38-39.

[14] Id. at 21-23.

[15] Id.

[16] Id. at 21-22.

[17] Id. at 24-26.

[18] Id.

[19] Id. at 24-25.

[20] Presided by Hon. Arturo G. Tayag but subsequently raffled off to Branch 17, Regional Trial Court, Malolos, Bulacan, presided by Judge Ma. Theresa V. Mendoza- Arcega, rollo, p. 838.

[21] CA rollo, pp. 27-33.

[22] Id. at 28-29.

[23] Sec. 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of others, borrow any of the deposits of funds of such bank, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for moneys borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of noman> CA rollo, pp. 30-31.

[26] Id. at 17-19.

[27] Id. at 18-19.

[28] Id. at 20.

[29] Id. at 2-16.

[30] Rollo, pp. 30-31.

[31] Id. at 31-32.

[32] Id. at 35.

[33] CA rollo, pp. 363-372.

[34] Rollo, p. 855.

[35] Id. at 887.

[36] Id. at 880-886.

[37] G.R. No. 163400, March 31, 2006, 486 SCRA 431.

[38] Rollo, pp. 881-883.

[39] Supra note 36.

[40] Ting v. Velez-Ting, G.R. No. 166562, March 31, 2009, 582 SCRA 694.

[41] G.R. No. 175057, January 29, 2008, 543 SCRA 70.

[42] Id. at 84-85.

[43] CA rollo, pp. 30-31.

[44] Soriano v. People, G.R. Nos. 159517-18, June 30, 2009, 591 SCRA 244, 257-258, citing Caballero v. Sandiganbayan, G.R. Nos. 137355-58, September 25, 2007, 534 SCRA 30, 43 and Torres v. Hon. Garchitorena, 442 Phil. 765, 777 (2002).

[45] Id. at 257.

[46] Rollo, p. 864.

[47] FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS §838 (perm. ed., 1986 rev. vol.) states that:

"At common law, and by the modern current of authority in this country, and in England, the directors of a private corporation, while not regarded as trustees in the strict, technical sense, are considered in equity as bearing a fiduciary relation to the corporation and its stockholders. In other words, it is universally recognized that courts of equity treat the relationship of director and stockholders as a trusteeship, in order to determine the rights, duties and liabilities of the directors; x x x Moreover, these rules should be applied even more stringently to an officer and director of a bank who should be concerned with the welfare of depositors as well as that of customers and stockholders. The law demands the fullest disclosure and fair dealing by a director or officer in his relations with a bank. Thus, in the discharge of his high trust the law holds a bank president to 'standards of probity and fidelity more lofty than those of the `market place.' These high standards this court is not disposed to whittle down". (Citations omitted and emphasis added)

[48] Go v. Bangko Sentral ng Pilipinas, G.R. No. 178429, October 23, 2009.

[49] Id.

[50] 10 Am Jur 2d, Banks, Section 239.

[51] People v. Knapp, 206 NY 373, a case cited in Go v. Bangko Sentral ng Pilipinas, supra.

[52] People v. Concepcion, 44 Phil. 126 (1922).

[53] CA rollo, pp. 24-25.

[54] In Go v. Bangko Sentral ng Pilipinas, supra note 47, the elements of a DOSRI law violation were enumerated:

- "1. the offender is a director or officer of any banking institution;
2. the offender, either directly or indirectly, for himself or as representative or agent of another, performs any of the following acts:
 - he borrows any of the deposits or funds of such bank; or
 - he becomes a guarantor, indorser, or surety for loans from such bank to others, or
 - he becomes in any manner an obligor for money borrowed from bank or loaned by it;
3. the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned".

[55] Supra note 43.

[56] Id. at 261.

[57] Boncodin v. National Power Corporation Employees Consolidated Union (NECU), G.R. No. 162716, September 27, 2006, 503 SCRA 611, 622-623.

[58] F. REGALADO, REMEDIAL LAW COMPENDIUM, Vol. I, p. 639 (7th revised ed., 1999).

[59] 274 Phil. 66, 75-76 (1991).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.