

JOHN JOSEPH LUMANLAW Y BULINAO, PETITIONER, VS. HON. EDUARDO B. PERALTA JR., IN HIS CAPACITY AS ACTING PRESIDING JUDGE, REGIONAL TRIAL COURT (BRANCH 13), MANILA, RESPONDENT.

G.R. NO. 164953. February 13, 2006

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PANGANIBAN, CJ:

Vexatious, oppressive, unjustified and capricious delays in the arraignment violates the constitutional right to speedy trial and speedy case disposition, particularly when the accused is detained. Under the circumstances of the present case, mandamus is a proper remedy for relief from prolonged detention. This Court safeguards liberty and will therefore always uphold the basic constitutional rights of the people, especially the weak and the marginalized.

The Case

Before us is a Petition for Mandamus[1] under Rule 65 of the Rules of Court, seeking (1) the dismissal of the Information filed against Petitioner John Joseph Lumanlaw y Bulinao; and (2) his release from the Manila City Jail.

The Facts

Culled from the parties' pleadings are the following undisputed facts.

Petitioner Lumanlaw was apprehended by the Western Police District near San Diego Street, Sampaloc, Manila, on the evening of November 26, 2002, for illegal possession of a dangerous drug. He was charged in an Information[2] filed with Branch 13 of the Regional Trial Court (RTC) of Manila, as follows:

“That on or about November 24, 2002, in the City of Manila, Philippines, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession, custody and control one (1) heat sealed transparent plastic sachet containing zero point zero one one (0.011) grams of white crystalline substance known as SHABU containing methamphetamine hydrochloride, a dangerous drug.[3]

A Commitment Order[4] was consequently issued by Presiding Judge Luis J. Arranz directing the detention of petitioner in the Manila City Jail and setting the latter's arraignment on January 8, 2003. On even date, petitioner's counsel manifested[5] his intention to file a motion for preliminary investigation. Because of the Manifestation, the arraignment was deferred to February 21, 2003. The aforesaid Motion[6] was filed together with a Petition to Reduce Bail[7] on January 17, 2003.

The resolution of these matters was overtaken by Judge Arranz's retirement from public service. Thus, the arraignment scheduled for February 21, 2003, had to be postponed. This Court designated herein respondent, Judge Eduardo B. Peralta, Jr., as acting presiding judge of Branch 13, Regional Trial Court, Manila, in

Administrative Order No. 27-2003 issued on February 18, 2003.[8]

On March 26, 2003, the newly designated acting presiding judge issued an Order[9] setting the arraignment of petitioner on April 23, 2003. On the latter date, the arraignment was reset to June 25, 2003, due to the public prosecutor's absence.[10]

On June 25, 2003, petitioner's counsel received the lower court's Order granting Lumanlaw's Petition to Reduce Bail and denying his Motion for Preliminary Investigation for having been filed beyond the reglementary period.[11] In the same Order, the trial court set petitioner's arraignment on August 6, 2003.

The arraignment was postponed again, this time due to the absence of petitioner's counsel. According to him, he requested the court to proceed with the arraignment, with the public defender assisting the accused, but that respondent judge denied the request on the ground that petitioner was already represented by a counsel de parte.[12] The trial court then re-scheduled the arraignment on September 24, 2003.[13]

In what was beginning to be a pattern of laxity, the September 24 arraignment was likewise postponed in view of the scheduled meeting of presiding judges with accredited newspaper publishers and was thus reset to October 1, 2003.[14]

On the latter date, respondent judge issued the following Order:[15]

"In view of the draft Order dated August 6, 2003 which impeded the Produce Order for the arraignment and pre-trial conference this afternoon of defendant John Joseph Lumanlaw in relation to Criminal Case No. 02-208426, the arraignment and pre-trial conference are hereby reset on December 10, 2003 at 2:00 o'clock in the afternoon, on the date amenable to Atty. Ernesto Delfin, as well as the defendant."

Again, the arraignment did not occur on December 10, 2003, because petitioner had not been brought to the court by the wardens of the Manila City Jail. According to the trial court's Order,[16] there was no proof of service on the Manila City Jail. The arraignment was thus reset to March 1, 2004.

Notably, a year had passed since the filing of the Information, yet Lumanlaw remained uninformed of the charges against him, while continuing to be in detention and despair all throughout that period of limbo. Owing to this insufferable state of affairs, petitioner's counsel manifested his intention to file a motion to dismiss on account of the violation of his client's right to a speedy trial.[17] Accordingly, an Urgent Motion to Dismiss[18] was filed on December 19, 2003. The Motion was heard on February 20, 2004, but was promptly denied by the trial court. The arraignment was reset yet again to March 17, 2004.[19]

The arraignment did not take place, however, because the accused was not produced in court by the jail wardens concerned. It turned out that the trial court had not issued a "produce order" to the Manila City Jail. Another resetting was ordered for April 16, 2004.[20]

Now frustrated with the repeated postponements, petitioner filed a Second Urgent Motion to Dismiss[21] on March 22, 2004. Relying on the provisions of the Revised Rules of Criminal Procedure, mandating that arraignment should be held within thirty (30) days from the date the court acquired jurisdiction over the accused, petitioner argued that the protracted delay of his arraignment violated his constitutional right to speedy trial.[22]

On April 16, 2004, the RTC could not proceed with the arraignment. What transpired on that date is evident from its Order:[23]

"Inasmuch as the Trial Prosecutor has just furnished a copy of her Comment dated April 12, 2004 to the defense counsel, as prayed for by Atty. Ernesto Delfin, counsel for accused John Joseph Lumanlaw in Criminal Case No. 02-208426, he is GRANTED five (5) days from today to submit his Reply. After which, the pending

Second Urgent Motion to Dismiss dated March 21, 2004 filed on March 22, 2004 (page 33, Record in Criminal Case No. 02-208426) will be deemed submitted for resolution.

“Meanwhile, without prejudice to the resolution of the pending motion, the arraignment and pre-trial conference of John Joseph Lumanlaw are hereby tentatively scheduled on May 26, 2004 at 2:00 o’clock in the afternoon.”

On May 26, 2004, the arraignment could not be conducted, again because of the Manila City Jail’s failure to bring petitioner to the court despite notice.[24] On the same day, his counsel received[25]the trial court’s Order[26] dated May 3, 2004, denying his Second Urgent Motion to Dismiss. The arraignment was reset to June 16, 2004.[27]

On this date, it was respondent judge’s absence that caused the postponement of the arraignment, which was reset to July 21, 2004.[28] But on that date, no hearing was conducted in Branch 13 because of the ongoing semestral inventory of cases in respondent judge’s regular sala, Branch 17.[29]

Hence, the present Petition.[30]

The Issues

Petitioner raises the following issues for our consideration:

“Whether or not the failure of public respondent to conduct the arraignment of the petitioner despite the delay of one (1) year, nine (9) months and four (4) days constitute undue and unjustifiable delay in violation of his constitutional right to speedy trial.

“Whether or not such undue and unjustifiable delay would warrant the dismissal of the Information filed against the petitioner.

“That should the decision by the Honorable Supreme Court be one finding merit in this Petition, whether or not the said decision is binding upon the newly appointed presiding judge of Regional Trial Court, Branch 13, Manila, as successor of public respondent.”[31]

On the other hand, respondent asks whether the Petition for Mandamus should be given due course. [32]

On the whole, the issues may be reduced to the following: 1) whether there was a violation of the right to speedy trial, warranting a quashal of the Information against petitioner; and 2) whether mandamus is the proper remedy.

The Court’s Ruling

The Petition is meritorious.

Main Issue:Right to Speedy Trial

Arraignment is a vital stage in criminal proceedings in which the accused are formally informed of the charges against them.[33] The proper conduct of the arraignment is provided in Rule 116 of the Revised Rules on Criminal Procedure. A perusal of the provision shows that arraignment is not a mere formality, but an integral part of due process.[34]Particularly, it implements the constitutional right of the accused to be informed of the nature and cause of the accusation against them and their right to speedy trial.

On this point, petitioner argues that, by respondent’s failure to act expeditiously on his arraignment, his right to speedy trial was violated. He points out the fourteen postponements that resulted in his intolerable detention for almost two years. Moreover, he cites Section 2 of Supreme Court Circular No. 38-98 (implementing Republic Act No. 8493, otherwise known as “The Speedy Trial Act of 1998”), which provides that arraignment shall be held

within thirty days from the date the court acquired jurisdiction over the accused.

On the other hand, respondent counters that there were no capricious and oppressive delays that would justify a dismissal of the Information. The Office of the Solicitor General points to the participation of petitioner himself in the protracted proceedings, such as his filing of a Motion for Preliminary Investigation and his counsel's absence from one of the scheduled hearings.[35]

Speedy Trial Construed

The thirty-day period invoked by petitioner was construed in *Solar Team Entertainment, Inc. v. How*.[36] It was held in that case that the period was not absolute. Certain delays were allowed by law and excluded from the computation of the time within which trial must commence. The Court ruled that those exclusions should "reflect the fundamentally recognized principle that the concept of 'speedy trial' is a 'relative term and must necessarily be a flexible concept.'"[37] It held further that courts must strive to maintain a delicate balance between the demands of due process and the strictures of speedy trial, on the one hand; and, on the other, the right of the State to prosecute crimes and rid society of criminals.

Indeed, judicial proceedings do not exist in a vacuum. They must contend with the realities of everyday life. Thus, a sensible assessment of their conduct must consider several factors, rather than a mere mathematical calculation of periods that have elapsed between stages. Jurisprudence has set forth the following guidelines:

"x x x. [T]he 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."[38]

Reasonable Postponements

It should be stressed that petitioner never acquiesced to the seemingly endless postponements of the arraignment. He asserted his right to speedy trial twice, but was denied by respondent in both instances. Considering that petitioner has been under detention since December 2002, we need not belabor the prejudice, distress, and anxiety he suffered as a result of the delayed arraignment.

We concede that the bases for some of the delays were completely sound, such as the retirement of Judge Arranz[39] and the manifestation of petitioner that the latter would be filing a Motion for Preliminary Investigation.[40] Those matters were manifestly not intended to delay the proceedings in Criminal Case No. 02-208426.

The delay caused by Judge Arranz's retirement may be deemed a normal part of the ordinary conduct of court business and was not necessarily unreasonable. The second ground was the right of the accused accorded by Section 7 of Rule 112 of the Revised Rules on Criminal Procedure.[41] Verily, petitioner's request for a preliminary investigation before arraignment was well-advised, in view of the rule that failure to do so would constitute a waiver of the right.[42] Thus, it has been held that though the conduct of a preliminary investigation may hold back the progress of a case, such investigation is necessary so that the defendant's right will not be compromised or sacrificed at the altar of expediency.[43]

Unjustified Delay

This Court reviewed the other reasons for the postponements in this case, but finds them far from being reasonable. There were fourteen postponements in all. Going over the causes for the delays, we see the lack of earnest effort on the part of respondent to conduct the arraignment as soon as the court calendar would allow. Most of the postponements could have easily been avoided if he had been more keen on respecting and upholding petitioner's constitutional right to speedy trial and speedy disposition.

Given the length and the unreasonableness of the majority of the delays, a violation of the right of petitioner to speedy trial becomes manifest. Almost two years^[44] elapsed from the filing of the Information against him until the filing of this Petition; incredibly, he has not been arraigned. An arraignment takes, at most, ten minutes of the court's business and does not normally entail legal gymnastics. It consists simply of reading to the accused the charges leveled against them, ensuring their understanding of those charges, and obtaining their plea to the charges. A prudent and resolute judge can conduct an arraignment as soon as the accused are presented before the court.

In fact, by fixing a period of only thirty days from the filing of the information to the conduct of an arraignment, RA 8493 recognizes that this fundamental right should and can be done with minimal delay. For this reason alone, we are astonished that the court a quo could not complete such a simple but fundamental stage in the proceedings. The protracted delay became all the more oppressive and vexatious when viewed from the perspective that the liberty of the accused was being curtailed for the entire duration.

Postponement Due to Absence of Counsel

It will be recalled that the arraignment set for August 6, 2003, was postponed by the trial court due to the absence of the counsel of petitioner. ^[45] The latter sought to proceed with the arraignment by requesting the assistance of the public defender as counsel de oficio, but the request was denied on the flimsy ground that the accused already had a counsel de parte. We find no legal basis for the trial court's action.

The appointment of a counsel de oficio in the absence of the defendant's counsel de parte is not prohibited,^[46] not even by the Constitution,^[47] especially when the accused themselves request that appointment. In fact, the court has a mandatory duty to appoint a counsel de oficio when the accused have no counsel of choice at the time of their arraignment.^[48] *People v. Serzo*^[49] held thus:

“x x x [A]n accused may exercise his right to counsel by electing to be represented either by a court-appointed lawyer or by one of his own choice. While his right to be represented by counsel is immutable, his option to secure the services of counsel de parte, however, is not absolute. The court is obliged to balance the privilege to retain a counsel of choice against the state's and the offended party's equally important right to speedy and adequate justice. Thus, the court may restrict the accused's option to retain a counsel de parte if the accused insists on an attorney he cannot afford, or the chosen counsel is not a member of the bar, or the attorney declines to represent the accused for a valid reason, e.g. conflict of interest and the like.”^[50]

Like other personal rights, the right to a counsel de parte is waivable, so long as 1) the waiver is not contrary to law, public order, public policy, morals or good customs; or prejudicial to a third person with a right recognized by law; and 2) the waiver is unequivocally, knowingly and intelligently made.^[51]

Applying these principles, it would have been more prudent for respondent judge to have appointed a counsel de oficio for purposes of arraignment only. This course of action became more compelling in the instant case when petitioner himself requested the appointment.^[52] To be sure, he would not have been prejudiced by that action, provided there was a proper observance of Rule 116 of the Revised Rules of Criminal Procedure. Under Section 8 of this rule, before proceeding with the arraignment, the court is mandated to give the appointed counsel de oficio reasonable time to consult with the accused as to the latter's plea.^[53]

Clearly, respondent judge's postponement of the arraignment on August 6, 2003, had no substantial basis. Thus, the postponement, initially caused by the absence of petitioner's counsel, became unreasonable and ultimately attributable to respondent's inflexibility as regards contingencies.

Responsibility of Judges in Minimizing Delay

The foremost cause for the lengthy delay in this case was the repeated failure of the jail wardens to bring the accused to court. No less than four court settings,[54] spanning seven months, were postponed on this ground alone. To be sure, this recurring circumstance was caused, in different instances, by the failure of the court personnel to issue the produce order on time and by the dereliction of the jail wardens. Remarkably, although respondent judge was justified in deferring the arraignment until the accused was presented,[55] the problem could have been easily averted by efficient court management.

In his role as administrator, respondent should have supervised his clerk of court to ensure a timely service of the produce order on the wardens of the Manila City Jail. Judges must keep a watchful eye on the level of performance and conduct of the court personnel under their immediate supervision, who are primarily employed to aid in the administration of justice. Judges who set the pace for greater efficiency, diligence and dedication, could prompt their personnel to be more diligent and efficient in the performance of official duties. For certain, leniency in the administrative supervision of court personnel must be avoided.[56]

We stress the need to remind judges to exhibit more diligence and efficiency in the performance of their judicial duties to avoid loss of faith and confidence in the administration of justice. Rule 3.09 of Canon 3 of the Code of Judicial Conduct requires them to "organize and supervise the court personnel to ensure the prompt and efficient dispatch of business x x x." Additionally, Section 5(d) of Rule 135 confers upon every court the power to control the conduct of its ministerial officers and of all other persons who in any manner are connected with a case before it.

Respondent did not exercise his prerogatives in administering speedy justice. Instead, he was content with issuing reminders[57] that miserably failed to resolve the problem expeditiously. We can only conclude from the distinct circumstances of the case that he failed to assert actively his authority to expedite the proceedings.

Instead of being proactive and steering the course of the proceedings with deliberate dispatch, respondent tended to be passive and reactive by allowing the pace of the proceedings to be dictated by the listlessness of the parties, his staff, and the jail wardens. Judges should be more deliberate in their actions and, within the bounds of law, make full use of their authority to expedite proceedings while continuing to respect the rights of parties to ventilate their respective causes fully.

Indeed, judges are required to dispose of the court's business expeditiously, in accordance with Rule 3.05 of Canon 3 of the Code of Judicial Conduct, which we quote:

"A judge shall dispose of the court's business promptly and decide cases within the required period."

This Court has constantly impressed upon judges the need to act promptly on their cases. Delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards, and brings it into disrepute.[58]

In the light of the numerous and unreasonable delays in the arraignment of petitioner, the sought for dismissal of the Information filed against him is in order.

Second Issue: Propriety of a Petition for Mandamus

Respondent maintains that mandamus is not the proper remedy, because he did not neglect his duties. Considering

the above findings of inordinate delay, respondent's contention evidently has no leg to stand on.

It is established that a writ of mandamus may be issued to control the exercise of discretion^[59] when, in the performance of duty, there is undue delay that can be characterized as a grave abuse of discretion resulting in manifest injustice.^[60] In view of our finding of unwarranted delays in the conduct of the arraignment of petitioner, he has indeed the right to demand -- through a writ of mandamus -- expeditious action from all officials tasked with the administration of justice. Thus, he may not only demand that his arraignment be held but, ultimately, that the information against him be dismissed on the ground of the violation of his right to speedy trial.

Mandamus is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution.^[61] Besides, it has long been established in this jurisdiction that the writ of mandamus is available to the accused to compel a dismissal of the case.^[62]

Respondent argues for the dismissal of the instant Petition on the ground that petitioner did not move for a reconsideration of the trial court's Order dated May 3, 2004. Respondent insists that a motion for reconsideration is a prerequisite to a mandamus petition, because the former remedy is plain, speedy, and adequate in the ordinary course of law.^[63] Indeed, his contention expresses the general rule, but is not impervious to exceptions.

In the face of extraordinary and compelling reasons, it has been held that the availability of another remedy does not preclude a resort to a special civil action under Rule 65 of the Rules of Court. These reasons arise when, among others, the assailed order issued with grave abuse of discretion is null,^[64] when the available remedy will not afford expeditious relief,^[65] and when a motion for reconsideration will be useless.^[66]

The instant case falls under these exceptional cases. To begin with, the numerous and unreasonable postponements displayed an abusive exercise of discretion. The delays were ordered in total disregard of the constitutional right of petitioner. In fact, the Orders denying his motions to dismiss did not even bother to explain the reasonableness of the bases for the postponements. The Order dated February 20, 2004, contains only this general statement:

"Pending resolution of certain incidents as chronicled by the Court in open court, and given the Trial Prosecutor's objections thereto lifted from the record as to why the arraignment and pre-trial conference of the [petitioner] John Joseph Lumanlaw y Bolinao were not scheduled forthwith (sic) as expected by counsel for the defense, the Court opted to DENY the 'Urgent Motion to Dismiss' dated December 17, 2003 in Criminal Case No. 02-208426."^[67]

After enumerating all the causes for the postponements, the Second Urgent Motion to Dismiss was denied by respondent in the Order dated May 3, 2004, in words that were just as vague, as shown below:

"Based on the foregoing chronological backdrop, there were causes that justified the suspension of the arraignment that shall be excluded in computing the period for arraignment per Section 1 (g), Rule 116 of the 2000 Revised Rules on Criminal Procedure, thusly:

'Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.'

"Accordingly, the Second Urgent Motion to Dismiss dated March 21, 2004 from defense counsel in Criminal Case No. 02-208426 must be and is hereby DENIED. x x x."^[68]

The Orders did not even discuss why the postponements were justified, or which of them could be excluded from

the computation of the prescribed period. Absent any discussion of these matters, baseless was the court a quo's conclusion that there was no violation of petitioner's right to speedy trial. A veritable display of capriciousness cannot be countenanced when weighed against an immutable right protected by the Constitution.

As further aggravation, respondent did not exert any effort to expedite the arraignment even after petitioner had filed two urgent motions to dismiss. Indeed, there was basis for the latter's belief that filing a motion for reconsideration would have been only an exercise in futility.[69]

Respondent also contends that the instant Petition should be dismissed for disregarding the hierarchy of courts. This Court has full discretionary power to take cognizance of a petition filed directly with it.[70] In the interest of speedy justice, the Court deemed it best to take cognizance of the present Petition, notwithstanding the hierarchy of courts. Remanding the legal issues to the Court of Appeals would have only exacerbated the violation of petitioner's rights.

It is the policy of this Court not to deny a writ of mandamus on purely technical matters, if a party would be deprived of substantive rights. Procedural rules should not be strictly enforced when their enforcement would result in a miscarriage of justice. This principle holds, especially when a petition is meritorious and the trial judge clearly violated petitioner's constitutional right. The protection of our people's civil liberties overwhelms all rules of procedure. These rules are mere tools for facilitating the attainment of justice. As explicitly provided in the Rules of Court itself, they "shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding." [71]

Let it be known that this Court will not shirk from the responsibility -- nay, the duty -- to set aside all obstacles to the fortification of every citizen's constitutionally enshrined rights. We will not condone or give our imprimatur to the sluggish pace of the proceedings below. The Court has the duty to safeguard liberty; hence, it will always uphold the basic constitutional rights of our people, especially the weak and the marginalized.

WHEREFORE, the Petition is GRANTED. Criminal Case No. 02-208425-26 pending before Branch 13 of the Manila Regional Trial Court is DISMISSED. Petitioner is hereby ordered RELEASED from the Manila City Jail, where he is currently detained, unless he is being held for any other lawful cause.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.
Callejo, Sr., J., on leave.

[1] Rollo, pp. 3-27.

[2] Id., p. 29.

[3] Bold types in original.

[4] Rollo, p. 31.

[5] Petition, p. 5; rollo, p. 7.

[6] Rollo, pp. 32-33.

[7] Id., pp. 34-35.

[8] Petition, p. 6; rollo, p. 8.

[9] Rollo, pp. 43-44.

[10] Id., p. 45.

[11] Id., pp. 46-47.

[12] Petition, p. 8; rollo, p. 10.

[13] Rollo, p. 48.

[14] Id., p. 49.

[15] Id., p. 50.

[16] Id., p. 51.

[17] Petitioner's Memorandum, p. 5; rollo, p. 134.

[18] Rollo, pp. 52-56.

[19] Id., p. 59.

[20] Id., p. 60.

[21] Id., pp. 61-66.

[22] Id., pp. 63-64.

[23] Id., p. 67.

[24] Id., p. 78.

[25] Petitioner's Memorandum, p. 6; rollo, p. 135.

[26] Rollo, pp. 75-77.

[27] Id., p. 78.

[28] Id., p. 79.

[29] Id., p. 80.

[30] This case was deemed submitted for resolution on August 18, 2005, upon the Court's receipt of Petitioner's Memorandum signed by Atty. Ernesto L. Delfin. Respondent's Memorandum, signed by Assistant Solicitor General Antonio L. Villamor and Associate Solicitor Sarah Mae S. Cruz, was filed on July 27, 2005.

[31] Petitioner's Memorandum, p. 8; rollo, p. 137. Original in uppercase.

[32] Respondent's Memorandum, p. 5; rollo, p. 120.

[33] Agpalo, Handbook on Criminal Procedure (2001), p. 331.

[34] See *People v. Estomaca*, 326 Phil 429, April 22, 1996.

[35] Respondent's Memorandum, p. 6; rollo, p. 121.

[36] 338 SCRA 511, August 22, 2000.

[37] Id., 520, per Gonzaga-Reyes, J. (citing Bernas, *The Constitution of the Republic of the Philippines*, A Commentary, Vol. 1, 1987), p. 421.

[38] *Gonzales v. Sandiganbayan*, 199 SCRA 298, 307, July 16, 1991, per Regalado, J. Emphasis supplied.

[39] Judge Arranz' retirement resulted in the postponement of the arraignment scheduled for February 21, 2003.

[40] This manifestation caused the postponement of the arraignment scheduled on January 8, 2002.

[41] "SEC. 7. When accused lawfully arrested without warrant. -- x x x

x x x x x x x x x

"After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule."

[42] *People v. Cubcubin*, 413 Phil 249, July 10, 2001; *Yusop v. Sandiganbayan*, 352 SCRA 587, February 22, 2001 (citing *Go v. CA*, 206 SCRA 138, February 11, 1992).

[43] *Matalam v. Second Division Sandiganbayan*, G.R. No. 165751, April 12, 2005.

[44] The Information against petitioner was filed before the court a quo on December 2, 2002. The instant Petition was filed on September 7, 2004.

[45] Petitioner's Memorandum, p. 4; rollo, p. 133.

[46] See *Eballa v. Paas*, 362 SCRA 389, August 9, 2001.

[47] See *People v. Larrañaga*, 421 SCRA 530, February 3, 2004.

[48] *Sayson v. People*, 166 SCRA 680, October 28, 1988.

[49] 274 SCRA 553, June 20, 1997.

[50] *Id.*, p. 566, per Panganiban, J. (now CJ). Emphasis supplied.

[51] *Ibid.*

[52] In *Eballa v. Paas*, supra at note 46, we upheld the judge's decision to appoint a counsel de oficio to represent the defendant during her arraignment despite vehement objections from the defendant. We ruled that the judge's action did not violate the defendant's right to have counsel of her own choice.

[53] §8 of Rule 116 of the Revised Rules on Criminal Procedure.

[54] The accused was not brought before the court on October 1, 2003 (rollo, p. 50), December 10, 2003 (rollo, p. 51), March 17, 2004 (rollo, p. 60) or May 26, 2004 (rollo, p. 78).

[55] §1(b) of Rule 116 of the Revised Rules on Criminal Procedure.

[56] *Shan Jr. v. Aguinaldo*, 117 SCRA 32, September 30, 1982.

[57] Rollo, pp. 45, 50, and 60.

[58] *Atty. Ng v. Judge Ulibari*, 355 Phil 76, July 30, 1998.

[59] *Kant Kwong v. Presidential Commission on Good Government*, 156 SCRA 222, December 7, 1987.

[60] See *Licaros v. Sandiganbayan*, 370 SCRA 394, November 22, 2001.

[61] *Ibid.*

[62] See *Himagan v. People*, 237 SCRA 538, October 7, 1994; *Acebedo v. Hon. Sarmiento*, 146 Phil 820, December 16, 1970; *Esguerra v. De la Costa*, 66 Phil 134, August 30, 1938.

[63] Respondent's Memorandum, pp. 7-8; rollo, pp. 122-123.

[64] *National Electrification Administration*, 211 Phil. 551, December 29, 1983; *Marcelo v. Hon. de Guzman*, 200 Phil. 137, June 29, 1982; *Pineda & Ampil Manufacturing Co., v. Bartolome*, 95 Phil 930, September 30, 1954.

[65] *Marcelo v. Hon. de Guzman*, *ibid.*

[66] See *National Electrification Administration*, supra at note 64.

[67] Rollo, p. 59.

[68] *Id.*, p. 77.

[69] Petitioner's Reply, p. 11; rollo, p. 111.

[70] See *Ark Travel Express, Inc. v. Abrogar*, 410 SCRA 148, August 29, 2003; *Nala v. Judge Barroso Jr.*, 455 Phil 999, August 7, 2003; *Del Mar v. Philippine Amusement and Gaming Corporation*, 346 SCRA 485,

November 29, 2000.

[71] §6 of Rule 1 of the Revised Rules of Court.

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