JOCELYN E. CABO, PETITIONER, VS. THE SANDIGANBAYAN, FOURTH DIVISION, THE SPECIAL PROSECUTOR OF THE OMBUDSMAN AND THE COMMISSION ON AUDIT, REGION XIII, RESPONDENTS.

G.R. NO. 169509. June 16, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a special civil action for certiorari filed by petitioner Jocelyn E. Cabo seeking to nullify the resolutions of the Sandiganbayan, Fourth Division, dated May 4 and July 20, 2005 in Criminal Case No. 27959.

The following are the antecedent facts:

On June 26, 2004, an information for violation of Section 3(b) of R.A. 3019 or the Anti-Graft and Corrupt Practices Act was filed against petitioner and her co-accused Bonifacio C. Balahay. The information alleged:

> That on or about 08 August 2000 in the Municipality of Barobo, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, BONIFACIO C. BALAHAY, then Mayor of the Municipality of Barobo, Surigao del Sur, a high ranking public official, with the use of his influence as such public official, committing the offense in relation to his office, together with JOCELYN CABO, did then and there, willfully, unlawfully and feloniously receive and accept the amount of ONE HUNDRED FOUR THOUSAND ONE HUNDRED SIXTY TWO PESOS AND 31/100 (P104,162.31) from said JOCELYN CABO, Business Manager of Orient Integrated Development Consultancy, Inc. (OIDCI), a consultancy group charged with conducting a feasibility study for the Community-Based Resource Management Project of the Municipality of Barobo, with accused Cabo giving and granting the said amount to accused Balahay in consideration of the said accused having officially intervened in the undertaking by the OIDCI of such contract for consultancy services with the Municipality of Barobo.
>
> CONTRARY TO LAW.[1]

Claiming that she was deprived of her right to a preliminary investigation as she never received any notice to submit a counter-affidavit or countervailing evidence to prove her innocence, petitioner filed a motion for reinvestigation[2] before the Fourth Division of the Sandiganbayan, where the case was raffled and docketed as Criminal Case No. 27959. The Sandiganbayan subsequently granted petitioner's motion on March 29, 2004 and directed the Office of the Special Prosecutor to conduct a reinvestigation insofar as petitioner is concerned.[3]

Meanwhile, petitioner filed a motion seeking the court's permission to travel abroad for a family vacation.[4] The Sandiganbayan granted the same in an order dated May 14, 2004 that reads:

> Acting on the Motion With Leave Of Court To Travel Abroad dated May 11, 2004 filed by accused Jocelyn E. Cabo through counsel, Atty. Tomas N. Prado, and considering the well-taken reason therein stated, the same is hereby GRANTED.
>
> However, considering that this case is still pending reinvestigation/review before the Office of the Special

> Prosecutor; considering further that the accused has not yet been arraigned by reason thereof; and considering finally that there is a need for the Court to preserve its authority to conduct trial in absentia should the accused fail to return to the Philippines, accused Jocelyn E. Cabo, with her express conformity, is hereby ordered arraigned conditionally. If upon such reinvestigation/review, it shall be found that there is no probable cause to proceed against said accused, the conditional arraignment this morning shall be with no force and effect. However, if it should be found that there is a need to amend the present indictment or to pave the way for the filing of some other indictment/s, then the accused shall waive her right to object under Section 14, Rule 110 of the 2000 Rules of Criminal Procedure and her constitutional right to be protected against double jeopardy.
>
> When arraigned, the Information having been read in a language known and familiar to her, accused Jocelyn E. Cabo, duly assisted by her counsel, Atty. Tomas N. Prado, pleaded not guilty to the offense charged in the Information.
>
> Accused Jocelyn E. Cabo, duly assisted by her counsel, shall affix her signature in the minutes of the proceedings to signify her conformity to her acceptance of the conditional arraignment and the legal consequences thereof as herein explained.
>
> SO ORDERED.[5]

Petitioner returned from abroad on May 24, 2004. Thereafter, the Special Prosecutor concluded its reinvestigation and found probable cause to charge her with violation of Section 3(b) of R.A. No. 3019.[6] Petitioner filed a motion for reconsideration but the same was denied.[7] Thus, the Sandiganbayan set anew the arraignment of petitioner and her co-accused on October 12, 2004.[8]

On the day before the scheduled arraignment, petitioner filed an Urgent Manifestation With Motion[9] praying that "she be allowed to [re]iterate on her previous plea of 'not guilty' x x x entered during her conditional arraignment held last May 14, 2004, so that she may be excused from attending the scheduled arraignment for October 12, 2004." It does not appear, however, that the Sandiganbayan acted upon the said motion.

The following day, petitioner's co-accused Balahay failed to appear for arraignment. This prompted the Sandiganbayan to order the arrest of Balahay as well the confiscation of his bail bond.[10] Upon motion for reconsideration of Balahay, however, the Sandiganbayan recalled the warrant for his arrest and reinstated the bail bond.[11] His arraignment was subsequently reset for November 30, 2004.[12]

On November 24, 2004, Balahay, through counsel, filed a motion to quash the information on the ground that the same does not charge any offense.[13] While Section 3(b) of R.A. No. 3019 penalizes the act of "(d)irectly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for another, from any person, in connection with any transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law," the information alleged only in general terms that Balahay "intervened in the undertaking by the OIDCI of such contract for consultancy services with the Municipality of Barobo." In other words, the information failed to allege that Balahay had to intervene in the said contract under the law, in his official capacity as municipal mayor.

On January 18, 2005, the Sandiganbayan issued a resolution[14] sustaining Balahay's contention that the facts charged in the information do not constitute the offense of violation of Section 3(b) of R.A. No. 3019. Apart from the failure to allege that Balahay had to officially intervene in the transaction pursuant to law, it also failed to allege that Balahay accepted and received the money "for himself or for another." The information was thus defective in that it failed to allege every single fact necessary to constitute all the elements of the offense charged.

The Sandiganbayan, however, did not order the immediate quashal of the information. It held that under Section 4, Rule 117 of the Rules of Court, "if the motion to quash is based on the ground that the facts charged in the

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information do not constitute an offense x x x the (c)ourt should not quash the information outright, but should instead direct the prosecution to correct the defect therein by proper amendment. It is only when the prosecution fails or refuses to undertake such amendment, or when despite such amendment the information still suffers from the same vice or defect,"[15] that the court would be finally justified in granting the motion to quash. The Sandiganbayan thus gave the prosecution a period of 15 days from notice within which to file an amended information that is sufficient as to both form and substance.

On February 7, 2005, the prosecution filed an amended information which incorporated all the essential elements of the crime charged, to wit:

> That on or about 08 August 2000, in the Municipality of Barobo, Surigao Del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused BONIFACIO C. BALAHAY, then Mayor of the Municipality of Barobo, Surigao Del Sur, a high ranking public official, in the performance of his official functions, taking advantage of his official position, with grave abuse of authority, and committing the offense in relation to his office, conspiring and confederating with JOCELYN CABO, did then and there, willfully, unlawfully and feloniously receive and accept the amount of ONE HUNDRED FOUR THOUSAND ONE HUNDRED SIXTY TWO PESOS AND 31/100 (P104,162.31) for his own benefit or use from said JOCELYN CABO, Business Manager of Orient Integrated Development Consultancy, Inc. (OIDC), a consultancy group charged with conducting a feasibility study for the Community-Based Resource Management Project of the Municipality of Barobo, with accused Cabo giving and granting said amount to accused Balahay in consideration of the contract for said feasibility study, which contract accused Balahay in his official capacity has to intervene under the law.
>
> CONTRARY TO LAW.[16]

Consequently, Balahay was sent a notice for his arraignment on the amended information. Petitioner was likewise notified of her re-arraignment which was set on April 14, 2005.[17] However, on April 11, 2005, petitioner filed a Motion to Cancel Second Arraignment[18] on the ground that the amended information pertained to Balahay alone. Petitioner claimed that she could no longer be re-arraigned on the amended information since substantial amendment of an information is not allowed after a plea had already been made thereon.

On May 4, 2005, the Sandiganbayan issued the first assailed resolution denying petitioner's motion for lack of merit, to wit:

> [T]he arraignment of accused Cabo on the original information was only conditional in nature and that the same was resorted to as a mere accommodation in her favor to enable her to travel abroad without this Court losing its ability to conduct trial in absentia in the event she decides to abscond. However, as clearly stated in the Court's Order of May 14, 2004, accused Cabo agreed with the condition that should there be a need to amend the information, she would thereby waive, not only her right to object to the amended information, but also her constitutional protection against double jeopardy. Now that the original information has been superseded by an amended information, which was specifically filed by the prosecution, and thereafter admitted by this Court, on the basis of Section 4, Rule 117 of the 2000 Rules of Criminal Procedure, accused Cabo is already estopped from raising any objection thereto.[19]

Petitioner filed a motion for reconsideration[20] from the foregoing resolution on the additional ground that double jeopardy had already set in. She asserted that her conditional arraignment under the original information had been validated or confirmed by her formal manifestation dated October 7, 2004, wherein she reiterated her plea of "not guilty." Thus, her arraignment on the original information was no longer conditional in nature such that double jeopardy would attach.

The Sandiganbayan denied petitioner's motion for reconsideration in the second assailed resolution dated July 20,

2005.[21] Consequently, petitioner filed the instant special civil action for certiorari under Rule 65 of the Rules of Court alleging that the Sandiganbayan gravely abused its discretion in holding that her arraignment on the original information was conditional in nature and that a re-arraignment on the amended information would not put her in double jeopardy.

The issue here boils down to whether double jeopardy would attach on the basis of the "not guilty" plea entered by petitioner on the original information. She argues that it would, considering that her arraignment, which was initially conditional in nature, was ratified when she confirmed her "not guilty" plea by means of a written manifestation. In other words, the trial court could no longer assert that she waived her right to the filing of an amended information under the terms of her conditional arraignment because she has, in effect, unconditionally affirmed the same.

Petitioner's assertions must fail.Initially, it must be pointed out that the Sandiganbayan's practice of "conditionally" arraigning the accused pending reinvestigation of the case by the Ombudsman is not specifically provided in the regular rules of procedure.[22] In People v. Espinosa,[23] however, the Court tangentially recognized the practice of "conditionally" arraigning the accused, provided that the alleged conditions attached thereto should be "unmistakable, express, informed and enlightened." The Court ventured further by requiring that said conditions be expressly stated in the order disposing of the arraignment. Otherwise, it was held that the arraignment should be deemed simple and unconditional.[24]

In the case at bar, the Sandiganbayan Order dated May 14, 2004 unequivocally set forth the conditions for petitioner's arraignment pending reinvestigation of the case as well as her travel abroad. Among the conditions specified in said order is "if it should be found that there is a need to amend the present indictment x x x, then the accused shall waive her right to object under Section 14, Rule 110 of the 2000 Rules of Criminal Procedure and her constitutional right to be protected against double jeopardy." Petitioner was duly assisted by counsel during the conditional arraignment and was presumably apprised of the legal consequences of such conditions. In fact, she signed the minutes of the proceedings which could only signify her informed acceptance of and conformity with the terms of the conditional arraignment.

Thus, petitioner cannot now be allowed to turn her back on such conditions on the pretext that she affirmed her conditional arraignment by means of a written manifestation. To begin with, there is no showing that the Sandiganbayan ruled on her written manifestation and motion that she be allowed to merely confirm her previous plea on the original information. It is likewise doubtful that petitioner may legally confirm her conditional arraignment by means of a mere written motion or manifestation. Section 1(b), Rule 116 of the Rules of Court explicitly requires that "(t)he accused must be present at the arraignment and must personally enter his plea."

At any rate, with or without a valid plea, still petitioner cannot rely upon the principle of double jeopardy to avoid arraignment on the amended information. It is elementary that for double jeopardy to attach, the case against the accused must have been dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid information sufficient in form and substance and the accused pleaded to the charge.[25] In the instant case, the original information to which petitioner entered a plea of "not guilty" was neither valid nor sufficient to sustain a conviction, and the criminal case was also neither dismissed nor terminated. Double jeopardy could not, therefore, attach even if petitioner is assumed to have been unconditionally arraigned on the original charge.

It should be noted that the previous information in Criminal Case No. 27959 failed to allege all the essential elements of violation of Section 3(b), R.A. No. 3019. It, in fact, did not charge any offense and was, to all intents and purposes, void and defective. A valid conviction cannot be sustained on the basis of such information.

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Petitioner was resultantly not placed in danger of being convicted when she entered her plea of "not guilty" to the insufficient indictment.

Moreover, there was no dismissal or termination of the case against petitioner. What the Sandiganbayan ordered was for the amendment of the information pursuant to the express provision of Section 4, Rule 117, which states:

> SEC. 4. Amendment of complaint or information.- If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment. (Emphasis supplied)

The Sandiganbayan correctly applied the foregoing provision when petitioner's co-accused filed a motion to quash the original information on the ground that the same does not charge an offense. Contrary to petitioner's submission, the original information can be cured by amendment even after she had pleaded thereto, since the amendments ordered by the court below were only as to matters of form and not of substance. The amendment ordered by the Sandiganbayan did not violate the first paragraph of Section 14, Rule 110, which provides:

> SEC. 14. Amendment or substitution. - A complaint or information may be amended, in form or in substance, without leave court, at any time before the accused enters his plea. After the plea and during the 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.
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> x x x x

In Poblete v. Sandoval,[26] the Court explained that an amendment is only in form when it merely adds specifications to eliminate vagueness in the information and does not introduce new and material facts. Amendment of an information after the accused has pleaded thereto is allowed, if the amended information 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.

In the case at bar, while certain elements of the crime charged were missing in the indictment, the amended information did not change the nature of the offense which is for violation of Section 3(b), R.A. No. 3019. The amended information merely clarified the factual averments in the accusatory portion of the previous information, in order to reflect with definiteness the essential elements of the crime charged.

An examination of the two informations in this case would justify the preceding observation. While the first information alleged that Balahay committed the offense "with the use of his influence as such public official" "together with" petitioner, the amended information stated that he did so "in the performance of his official functions, taking advantage of his official position, with grave abuse of authority" while "conspiring and confederating" with petitioner. Then too, while it was averred previously that Balahay received and accepted the money from petitioner, with the latter "giving and granting the said amount to accused Balahay in consideration of the said accused having officially intervened in the undertaking by the OIDCI of such contract for consultancy services", the amended information simply specified that Balahay received the money "for his own benefit or use" and that the contract mentioned in the first information was one that Balahay, "in his official capacity has to intervene under the law."

Consequently, even if we treat petitioner's arraignment on the original information as "unconditional," the same would not bar the amendment of the original information under Section 14, Rule 110. Re-arraignment on the

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amended information will not prejudice petitioner's rights since the alterations introduced therein did not change the nature of the crime. As held in People v. Casey:[27]

> The test as to whether a defendant is prejudiced by the amendment of an information 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 one 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 (now Section 14), Rule 110 of the Revised Rules of Court.

Likewise, it is not necessary, as petitioner suggests, to dismiss the original complaint under the last paragraph of Section 14, Rule 110, which states:

> x x x x
>
> If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 11, Rule 119, provided the accused would not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial.

The afore-cited rule is inapplicable to the case at bar for the simple reason that there was no mistake in charging the proper offense in the original information. As correctly observed by the Sandiganbayan:

> [I]t is hardly necessary for this Court to order the dismissal of the original information and then direct the filing of a new one "charging the proper offense". The reason for this is obvious. The prosecution did not commit a mistake in charging the proper offense; rather, it merely failed to file an information sufficient to charge the offense it intended to charge, namely, violation of Section 3(b) of R.A. No. 3019. Section 14, Rule 110 of the 2000 Rules of Criminal Procedure apparently relied upon by accused Cabo contemplates a situation where the accused will be charged with an offense different from or is otherwise not necessarily included in the offense charged in the information to be dismissed by the Court. In the case at bar, however, accused Cabo will not be charged with a different offense or with an offense that is not necessarily included in the offense charged in the original information, but with the very same offense that the prosecution intended to charge her in the first place, that is, violation of Section 3(b) of R.A. No. 3019.[28]

All told, the Sandiganbayan did not commit grave abuse of discretion when it ordered the re-arraignment of petitioner on the amended information. Double jeopardy did not attach by virtue of petitioner's "conditional arraignment" on the first information. It is well-settled that for a claim of double jeopardy to prosper, the following requisites must concur: (1) there is a complaint or information or other formal charge sufficient in form and substance to sustain a conviction; (2) the same is filed before a court of competent jurisdiction; (3) there is a valid arraignment or plea to the charges; and (4) the accused is convicted or acquitted or the case is otherwise dismissed or terminated without his express consent.[29] The first and fourth requisites are not present in the case at bar.

WHEREFORE, the petition is DISMISSED.

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SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

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[1] Rollo, p. 34.

[2] Records, Vol. I, pp. 71-74.

[3] Id. at 139.

[4] Id. at 169-170.

[5] Id. at 191. Penned by Associate Justices Gregory S. Ong, Jose R. Hernandez and Efren N. De la Cruz.

[6] Id. at 215-223.

[7] Id. at 278-281.

[8] Rollo, p. 36.

[9] Records, Vol. I, pp. 293-294.

[10] Id. at 296.

[11] Id. at 312.

[12] Id. at 314.

[13] Rollo, pp. 41-45.

[14] Id. at 46-56. Penned by Associate Justice Gregory S. Ong and concurred in by Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada.

[15] Id. at 55.

[16] Id. at 57-58.

[17] Records, Vol. I, pp. 402-404.

[18] Rollo, pp. 60-63.

[19] Id. at 18-19

[20] Records, Vol. I, pp. 439-444.

[21] Rollo, pp. 20-31.

[22] See People v. Espinosa, 456 Phil. 507, 515 (2003).

[23] Id.

[24] Id. at 519.

[25] RULES OF COURT, Rule 117, Sec. 7.

[26] G.R. No. 150610, March 25, 2004, 426 SCRA 346, 356.

[27] No. L-30146, February 24, 1981, 103 SCRA 21, 31-32.

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[28] Rollo, pp. 29-30.

[29] Alonto v. People, G.R. No. 140078, December 9, 2004, 445 SCRA 624, 641.

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