

BELEN A. SALVACION, PETITIONER, VS. SANDIGANBAYAN (FIFTH DIVISION) AND LEO H. MANLAPAS, RESPONDENTS.*G.R. No. 175006. November 27, 2008*

Ponente: CHICO-NAZARIO, J.

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In this Petition for Certiorari[1] under Rule 65 of the Revised Rules of Court, petitioner Belen A. Salvacion (Salvacion) urges us to annul and set aside the 23 February 2006[2] and 4 August 2006[3] Resolutions[4] of the Sandiganbayan, Fifth Division, reversing its 11 November 2005 Resolution[5] which affirmed (a) the 7 February 2005 Resolution[6] and 12 May 2005 Order,[7] both of the Deputy Ombudsman for Luzon, finding reasonable ground to charge respondent Leo H. Manlapas (Manlapas), then Municipal Mayor of Baleno, Masbate, with violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended; and (b) the Information thereafter filed before respondent Sandiganbayan, docketed as Criminal Case No. 28111. Consequently, petitioner Salvacion also seeks in the present Petition the reinstatement of Criminal Case No. 28111 before the Sandiganbayan, Fifth Division.

The antecedents are not complicated.

In preparation for her impending retirement on 31 December 2002, petitioner Salvacion, Bookkeeper of the Municipality of Baleno, Masbate, prepared all the pertinent documents and clearance for her permanent separation from government service. One such document was an application[8] for the payment of her retirement benefits and terminal leave pay filed on 10 December 2002. Said application was duly acted upon and approved by respondent Manlapas as the Municipal Mayor of Baleno, Masbate, and the authorized official to act upon it.

On 18 March 2003, petitioner Salvacion submitted to the Office of the Municipal Mayor, for payment, a Disbursement Voucher[9] duly signed and approved for payment by respondent Manlapas, and accompanied by supporting documents, in the amount of P162,291.46 representing her Terminal Leave Pay for 815.226 unused leave credits.

In the intervening time, according to petitioner Salvacion, she made numerous follow-ups for the disbursement of her Terminal Leave Pay; to no avail.

On 10 September 2003, a few days short of six months from the day she submitted the afore-mentioned Disbursement Voucher and its supporting documents to the Office of the Municipal Mayor, petitioner Salvacion sent, via registered mail, a letter requesting "the release of fund for payment of my terminal leave pay x x x I will be going to Manila for medical check-up, so that I'm in dire need of money." [10] No response was made by respondent Manlapas.

On 17 February 2004, petitioner Salvacion filed a sworn Complaint[11] before the Office of the Provincial Prosecutor, Masbate, charging respondent Manlapas with violation of Section 3, paragraphs (e) and (f), of Republic Act No. 3019, as amended, which state that:

SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared unlawful:

x x x x

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

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

The Complaint was docketed as I.S. No. 04-17546 (DF).

In his Counter-Affidavit,[12] respondent Manlapas denied the charges against him. He averred that "complainant had been following up the payment of her terminal leave pay as alleged x x x, however, I did not make any promise 'to release the payment after a weeks (sic) time,' the truth of the matter being that I really refused immediately (not negligently) to order payment of her Terminal Leave Pay with legal, factual and sufficient justification because upon inquiry from the OIC Municipal Treasurer and contrary to the Certification issued by the previous OIC Municipal Treasurer, Mr. Ismael C. Adoptante in cohort with the complainant, Mrs. Belen A. Salvacion she 'is not free from money and/or property responsibilities,' x x x."

On 19 April 2004, the 4[th] Assistant Provincial Prosecutor of Masbate, Richard R. Rivala, resolved[13] to dismiss the Complaint. The fiscal chose to believe the account of respondent Manlapas that his failure to release petitioner Salvacion's retirement benefits was due to the latter's supposed failure to remit the amount of P7,564.38 to the Municipal Government of Baleno.

Aggrieved, petitioner Salvacion filed a Petition for Review before the Office of the Deputy Ombudsman for Luzon, where it was docketed as Case No. OMB-L-C-04-1034-K.

In a Review Resolution[14] dated 7 February 2005, issued after due proceedings, the Office of the Deputy Ombudsman for Luzon recommended the reversal of the finding of the Provincial Prosecutor, and thereby declared that there was probable cause to hold respondent Manlapas liable for the violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019. The pertinent portion of said Resolution reads:

Records of this case show that complainant had retired from government service on December 31, 2002 and was subsequently issued all the pertinent documents and clearances appurtenant to her claim for payment of her terminal leave amounting to P162,291.46, with the corresponding certification from the OIC Municipal Treasurer, Esmal C. Adoptante that sufficient funds exist to cover for the payment of the same. Ironically and without valid reason, respondent denied payment of the same alleging among others, that complainant had failed to remit some of her collections amounting to P7,564.38 as contained in a new certification issued by the new acting Municipal Treasurer, MR. CEFERINO D. CORTES, JR. on February 23, 2004, a year and two months after complainant's severance from service. The averment by the respondent that he immediately ordered the non-payment of the terminal leave pay of the complainant despite her repeated demands based on an alleged cash shortage as certified to by the new OIC Municipal Treasurer only on February 23, 2004 is a flimsy excuse to cover up for his baseless and malicious act. After all, it was only on February 23, 2004 that an alleged shortage was found out. Hence, it was only on even date that he would have had a valid ground to

refuse payment of the same. As the Local Chief Executive, herein respondent should have pursued the legal means to collect the alleged cash shortage allegedly owed by the complainant from the municipality. He could have substantiated his claim by filing a case against the complainant and not place the complainant in a stalemate position as regards the payment of the terminal leave pay of which she is entitled to receive, to her damage and prejudice. The more than a year's delay in the payment of what one had lawfully earned and is rightfully due seem to be a punishment and not a reward for more than two (2) decades of government service, as in this case. Respondent himself admitted that follow-ups on her claim were made by the complainant.

Respondent Manlapas moved for the reconsideration of the aforequoted Review Resolution. He argued that his refusal to release petitioner Salvacion's Terminal Leave Pay was essentially prompted by good faith, i.e., to protect the interest of the people of Baleno, Masbate, from being defrauded by petitioner Salvacion. He narrated that on the 7[th] and 8[th] of January 2003, petitioner Salvacion usurped the functions of revenue collectors by collecting tax payments from tax payers at Baleno, Masbate, amounting to P7,564.38, and issuing the corresponding Official Receipts, but failing to remit the same to the Office of the Municipal Treasurer. In support of his defense, respondent Manlapas submitted, as newly discovered evidence, photocopies of several Official Receipts dated 7 and 8 January 2003. Further, respondent Manlapas pointed out that the certification issued by the officer-in-charge (OIC) Municipal Treasurer Ismael C. Adoptante (Adoptante) that petitioner Salvacion had no more accountabilities with the Municipality of Baleno, Masbate, was invalid, considering that the same was issued at the time when Adoptante had already been relieved of his duties as OIC Municipal Treasurer by virtue of Bureau of Local Government Finance (BLGF) Regional Special Personnel Order No. 1-2002 dated 2 December 2002.

Despite the aforementioned arguments, in an Order^[15] dated 12 May 2005, the Office of the Deputy Ombudsman for Luzon resolved respondent Manlapas' prayer for reconsideration in the negative. The dispositive portion of said order reads:

WHEREFORE, in view of the foregoing, it is hereby recommended that the instant Motion for Reconsideration filed by respondent be denied for lack of merit. Accordingly, the Review Resolution dated 07 February 2005 which recommended that an Information for violation of Sec. 3(f) of RA 3019 be filed against the latter stands.

In affirming the Review Resolution, the Office of the Deputy Ombudsman for Luzon reasoned that:

It could not have possibly escaped respondent's attention that complainant has sought the payment of her terminal leave pay considering that he signed the corresponding disbursement voucher certifying that the same is necessary and lawful and even approved its payment amounting to P162,291.46 x x x. Having presented said document for his signature, it should have prompted him to verify first if there is no impediment in the payment of such claim of complainant. And it appears that indeed there was none, otherwise he could not have signed the same. But now, he is now justifying his refusal of not giving complainant her terminal leave pay because the amount of P7,564.38 of her collection is missing. To this, we are not convinced because, aside from the fact that the same is uncorroborated, the purported acts of complainant of usurping the functions of the revenue collectors and misappropriating the amount of P7,564.38 transpired immediately on the month after complainant has retired. If the same is factual, immediate action thereon could have been taken and that it should have been relayed at once to complainant and not after a year. With respect to the supposed newly discovered evidence submitted by respondent, we find that the photocopied receipts issued by the municipality only confirms the fact that certain amounts were collected but not to the fact that it was complainant who collected the same and not remit it to the coffers of the municipality. Finally, with respect to the alleged invalidity of the certification made by Adoptante, it was as early as December 2002 that respondent was apprised of the latter's relief as OIC Municipal Treasurer. As such, he should have called complainant's attention of such fact right away and not raised it at this point in time had he be (sic) sincere in acting on the

claim of complainant.

On 29 April 2005, bearing the approval of Dennis M. Villa-Ignacio, Special Prosecutor, Office of the Ombudsman, an Information^[16] was filed with the Sandiganbayan, and raffled to its Fifth Division, charging respondent Manlapas with having violated Section 3, paragraph (f) of Republic Act No. 3019, as amended, with the accusatory portion of the same reading as follows:

That on December 31, 2002, and for sometime prior or subsequent thereto, in the Municipality of Baleno, Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LEO H. MANLAPAS, a high ranking public officer, being then the Mayor of Baleno, Masbate, while in the performance of his official administrative functions and acting in relation thereto, with grave abuse of authority, did then and there willfully, unlawfully and criminally fails and refuses without sufficient justification, to order and cause within a reasonable period of time, the payment of the terminal leave pay benefits in the amount of ONE HUNDRED SIXTY TWO THOUSAND TWO HUNDRED NINETY ONE PESOS AND FORTY SIX CENTAVOS (P162,291.46) of BELEN A. SALVACION, a retired municipal employee, after several follow-ups and due demand, the last of which was in September 2003 and requests and thereby discriminating against said BELEN A. SALVACION, to the prejudice of the latter.

The Information was docketed as Criminal Case No. 28111 before the Sandiganbayan, Fifth Division. A Hold Departure Order was issued by the Sandiganbayan, Fifth Division, directing the Bureau of Immigration to hold the departure of respondent Manlapas and include him in the Bureau's Hold Departure List.^[17] Likewise, an Order of Arrest was issued by the same division commanding the arrest of respondent Manlapas.^[18]

Respondent Manlapas subsequently filed the sufficient bail bond^[19] for his provisional liberty which was duly approved by the Executive Judge of the Regional Trial Court (RTC), City of Masbate, on 1 June 2005.^[20]

The arraignment of the accused, respondent Manlapas, was set on 29 July 2005. Before said date, however, respondent Manlapas filed an Omnibus Motion [(1) For Determination and/or Review of Finding of Probable Cause and/or Reinvestigation; and (2) To Defer/Suspend Arraignment] on the ground that "new and material evidence has been discovered which the accused could not, with reasonable diligence, have discovered and produced during the preliminary investigation and which, if produced and submitted during the preliminary investigation, would have certainly established the lack of probable cause and, therefore, would have changed the conclusions and findings of the investigating prosecutors."^[21] He claimed that he was recently informed that as early as 1 September 2003, petitioner Salvacion had already withdrawn her terminal leave application and its supporting documents. In view of said development, petitioner Salvacion's terminal leave pay was not included in the budget appropriation for Calendar Year 2003-2004. He explained that "[h]aving withdrawn her application for terminal leave benefits as early as 01 September 2003, or MORE THAN five (5) months BEFORE the filing of the complaint-affidavit, complainant had no right to demand for the approval of her terminal leave application from herein accused. In other words, complainant had no cause of action against herein accused at the time of the filing of her complaint for the simple reason that it would have been PHYSICALLY IMPOSSIBLE for herein accused to approve or even act upon a NON-EXISTENT application for terminal leave benefits."^[22] He then concluded that "[t]hus, complainant Belen A. Salvacion could not have suffered damage or injury by reason of the non-payment of her terminal leave benefits; and herein accused could not have committed a crime for not approving the payment of said benefits in the absence of any application therefor."^[23]

Petitioner Salvacion opposed the omnibus motion, denying the imputation that she withdrew her Terminal Leave Application. She declared that it was only on 27 January 2004 that she took home her disbursement voucher, after she went to see respondent Manlapas at his office to again plead for the release of her Terminal Leave Pay, and after being told by the Municipal Mayor then that "since [petitioner Salvacion's] family could not support

[respondent Manlapas] in the forthcoming May, 2004 election, [petitioner Salvacion's] request (for payment) could not be granted." [24] Further, petitioner Salvacion claimed that the "accused Leo H. Manlapas further told private complainant that she should just keep her documents and wait for a new mayor to be elected because her Terminal Leave will definitely not be (sic) paid by him." [25] Hence, she had no choice but to bring home her voucher "for fear that it might get lost in the Office of the Mayor." [26]

The Sandiganbayan subsequently promulgated a Resolution on 11 November 2005 denying for lack of merit respondent Manlapas' Omnibus Motion. The graft court found correct the position of the prosecution that respondent Manlapas was basically asking the Sandiganbayan "to assess the evidence presented by the parties, and on the basis thereof, make a conclusion as to whether or not there is probable cause to indict the accused for the offense charged x x x. However, as pointed out by the Supreme Court x x x this is not a function which the Court must be called upon to perform as this function pertains exclusively to the public prosecutor. Moreover, the prosecutor's finding of probable cause is entitled to highest respect." [27] The fallo of said Resolution provides:

WHEREFORE, premises considered, the instant `Omnibus Motion 1) For Determination and/or Review of Finding of Probable Cause and/or Reinvestigation; and 2) to Defer/Suspend Arraignment' is hereby denied for lack of merit. Arraignment of the accused will proceed as previously scheduled on November 11, 2005. [28]

Respondent Manlapas moved for the reconsideration of the foregoing Resolution maintaining that "[s]ince the [petitioner Salvacion] had no right to apply for terminal leave benefits, the accused was under no obligation to process or approve her application." [29]

On 23 February 2006, the Sandiganbayan reversed itself, thereby dismissing the case against respondent Manlapas. The graft court ruled that:

WHEREFORE, finding no probable cause to sustain the present indictment, the present Motion for Reconsideration filed by the accused LEO H. MANLAPAS is hereby granted. The Resolution of this Court promulgated on November 11, 2005 is hereby set aside and the instant case against him is hereby ordered dismissed.

The cash bond posted by the accused to obtain his provisional liberty is hereby ordered returned to him subject to the usual auditing and accounting procedures. The Hold Departure Order issued by this Court against the person of the accused on May 10, 2005 is hereby cancelled. [30]

The finding that there was no probable cause to hold respondent Manlapas liable to stand trial for the violation of Section 3, paragraph (f) of Republic Act No. 3019 was based on the ratiocination that:

In the present case, the prosecution committed grave abuse of discretion in finding that there is probable cause against the accused. There is no sufficient evidence adduced before the Office of the Ombudsman that a violation of Section 3(f) of Republic Act No. 3019 was committed by the accused x x x.
x x x x

Admittedly, the elements of the offense are that:

- a) The offender is a public officer;
- b) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;
- c) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and
- d) Such failure to so act is `for the purpose of obtaining, directly or indirectly, from any person interested in the

matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another' x x x.

x x x x

The second element is absent. There is sufficient justification for the accused in refusing to release the monetary benefits in favor of the private complainant after due demand by the latter. It has been established and even the reviewing prosecutors has (sic) recognized that when Ismael C. Adoptante issued the Certification on December 31, 2002, certifying that Ms. Salvacion is free from money and/or property responsibility, he was no longer authorized to do so. The accused knew this fact at the time of the alleged commission of the crime x x x. In BLGF Regional Special Personnel Order No. 1-2002 dated December 2, 2002, Atty. Veronica Bombase King, Regional Director of the Bureau of Local Government Finance, immediately designated Ceferino D. Cortes as OIC Municipal Treasurer of Baleno, Masbate, before Mr. Adoptante issued his certification on December 31, 2002, that the private complainant had then no money accountability. Therefore, knowing the lack of authority of Mr. Adoptante to issue the said clearance in favor of private complainant Belen A. Salvacion, accused mayor was justified in refusing to pay the terminal leave pay benefits of Ms. Salvacion.[31]

Thus, the Sandiganbayan concluded that:

The absence of an essential element of the crime being imputed against the accused cannot sustain a finding of guilt of the accused. Hence, this Court has no option but to desist from inflicting upon the accused mayor the trauma of going through a trial and to dismiss the instant case.[32]

Petitioner Salvacion and the People of the Philippines, through the Public Prosecutor, separately moved for the reconsideration of the latest ruling of the Sandiganbayan, but both motions were denied by the said court in a Resolution dated 4 August 2006 which was received by petitioner Salvacion on 22 August 2006.

On 14 March 2006, or within the reglementary period of 15 days within which to file a motion for reconsideration, Petitioner Salvacion filed the same but it was denied in another Resolution dated 3 August 2006 and received by her on 22 August 2006.

Hence, this Petition for Certiorari of petitioner Salvacion filed under Rule 65 of the Revised Rules of Court and anchored on the following arguments:

I.

PUBLIC RESPONDENT SANDIGANBAYAN (FIFTH DIVISION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS IN (SIC) JURISDICTION IN HOLDING THAT ISMAEL ADOPTANTE IS NOT AUTHORIZED AS MUNICIPAL TREASURER AT THE TIME THE MONEY/PROPERTY CLEARANCE OF PRIVATE COMPLAINANT WAS SIGNED BY MERELY BASING ON BLGF REGIONAL SPECIAL PERSONNEL ORDER NO. 1-2002 DATED DECEMBER 2, 2002;

II.

SAME PUBLIC RESPONDENT GROSSLY LOST SIGHT OF THE CONTINUING REFUSAL OF PRIVATE RESPONDENT TO PAY THE COMPLAINANT OF (SIC) HER TERMINAL LEAVE BENEFITS WHICH AMOUNTED TO GRAVE ABUSE OF DISCRETION; AND

III.

SAME PUBLIC RESPONDENT HAD UNJUSTIFIABLY AND UNDULY INTERFERED WITH THE FINDINGS OF PROBABLE CAUSE MADE BY THE OFFICE OF THE DEPUTY OMBUDSMAN FOR

LUZON.[33]

Petitioner Salvacion maintains that "[t]he reliance of Honorable Sandiganbayan (Fifth Division) on BLGF Regional Special Personnel Order [N]o. 1-2002 dated December 2, 2002 to justify the act of the accused constitute therefore as grave abuse of discretion amounting to lack or excess in jurisdiction." [34] Moreover, she insists that "the demand to pay the said terminal benefits is a continuing one," [35] such that "from the time the approved disbursement voucher was submitted (to the) respondent Mayor to the time the written demand was given to respondent Mayor and until thereafter, respondent Mayor is, in effect, continuously refusing, without justifiable reason, to release the money claims of petitioner x x x" [36]; and this fact, according to petitioner Salvacion, "had escaped the attention of the Honorable Sandiganbayan." [37] In conclusion, petitioner Salvacion declares that "the Honorable Sandiganbayan (Fifth Division) had unjustifiably and unduly interfered with the findings of probable cause made by the Office of the Deputy Ombudsman for Luzon." [38]

Without cause to go into the merits of the case at bar, we hereby dismiss this petition.

As a consequence of filing this special civil action for certiorari in place of an ordinary appeal under Rule 45 of the Revised Rules of Court, petitioner Salvacion went against the fundamental precepts of procedural law.

The Revised Rules of Court specifically provides that an appeal by certiorari from a judgment or final order or resolution of the Sandiganbayan is by verified petition for review on certiorari and shall raise only questions of law. Specifically, Section 1, Rule 45 of the Rules of Court dictates that:

SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Note that what is being assailed in this original action are the Resolutions of the Sandiganbayan dated 23 February 2006 and 4 August 2006 reversing the Ombudsman's finding of probable cause to hold respondent Manlapas liable to stand trial for violation of Section 3, paragraph (f) of Republic Act No. 3019, as amended, and ordering the dismissal of Criminal Case No. 28111. There is no question that these Resolutions already constitute a final disposition of Criminal Case No. 28111, for after ordering the dismissal of said case, there is nothing more for the graft court to do therein. These Resolutions, therefore, are fit to be subjects of an appeal to this Court via a Petition for Review on Certiorari under Rule 45.

However, the present Petition is one for certiorari under Rule 65 of the Revised Rules of Court. Under Rule 65, a party may only avail himself of the special remedy of certiorari under the following circumstances:

SECTION 1. Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. It cannot be legally used for any other purpose. Its function is only to keep the inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in the petition and established: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of

jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Excess of jurisdiction as distinguished from absence of jurisdiction, means that an act, though within the general power of a tribunal, a board or an officer is not authorized, and is invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. "Without jurisdiction" means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[39]

Contrasting the two remedies, a petition for review is a mode of appeal, while a special civil action for certiorari is an extraordinary process for the correction of errors of jurisdiction. It is basic remedial law that the two remedies are distinct, mutually exclusive, and antithetical. The extraordinary remedy of certiorari is proper if the tribunal, board, or officer exercising judicial or quasi-judicial functions acted without or in grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal or any plain, speedy, and adequate remedy in law. A petition for review, on the other hand, seeks to correct errors of judgment committed by the court, tribunal, or officer. When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising from the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for certiorari. For if every error committed by the trial court or quasi-judicial agency were to be the proper subject of review by certiorari, then trial would never end and the dockets of appellate courts would be clogged beyond measure.[40]

Although petitioner Salvacion made general allegations in her Petition for Certiorari that the Sandiganbayan, Fifth Division, committed grave abuse of discretion amounting to lack or excess of jurisdiction, a closer scrutiny of her arguments would reveal that she is actually challenging the Resolutions dated 23 February 2006 and 4 August 2006 based on purported errors of judgment, and not jurisdiction. It is irrefragable that the Sandiganbayan, Fifth Division, had jurisdiction over the subject matter and the parties in Criminal Case No. 28111. Petitioner Salvacion utterly failed to convince this Court that the graft court abused its discretion in issuing the assailed Resolutions - grave enough to have ousted it of jurisdiction over Criminal Case No. 28111 for which she may avail herself of the special remedy of certiorari.

It is equally elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for certiorari. A writ of certiorari will not issue where the remedy of appeal is available to an aggrieved party. By its nature, a petition for certiorari lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law." [41] A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioners from the injurious effects of the judgment and the acts of the lower court or agency.[42] In this case, appeal was not only available but also a speedy and adequate remedy.[43] The availability to petitioner Salvacion of the remedy of a petition for review on certiorari under Rule 45 from the resolutions of the Sandiganbayan effectively foreclosed her right to resort to a petition for certiorari.

And while it is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice,[44] we have, before,[45] treated a petition for certiorari as a petition for review on certiorari, but only when the former was filed within the reglementary period for filing the latter. Regrettably, this exception is not applicable to the present factual milieu. The present Petition for Certiorari was filed well beyond the reglementary period for filing a petition for review, and without any reason being offered therefor.

Pursuant to Sec. 2, Rule 45 of the Revised Rules of Court:

SEC. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the

judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x.

A party litigant wishing to file a petition for review on certiorari must do so within 15 days from receipt of the judgment, final order or resolution sought to be appealed. In this case, the resolution of the Sandiganbayan dated 23 February 2006, denying the motions for reconsideration of both petitioner Salvacion and the People, was received by petitioner Salvacion on 22 August 2006.[46] The instant Petition was filed only on 17 October 2006; thus, at the time of the filing of this Petition, 56 days had already elapsed, way beyond the 15-day period within which to file a petition for review under Rule 45 of the Revised Rules of Procedure; and even beyond an extended period of 30 days, the maximum period to be granted by this Court had one been actually sought by petitioner Salvacion. As the facts stand, petitioner Salvacion has already lost the right to appeal via Rule 45.

Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.[47] Herein, petitioner Salvacion's recourse to this Court is bereft of any explanation, meritorious or otherwise, as to why she failed to properly observe the rules of procedure.

Allowing appeals, although filed late in some rare cases, may not be applied to petitioner Salvacion for this rule is, again, qualified by the requirement that there must be exceptional circumstances to justify the relaxation of the rules.[48] We cannot find any such exceptional circumstances in this case and neither has petitioner Salvacion endeavored to allude to the existence of any. This being so, another fundamental rule of procedure applies, and that is the doctrine that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional, so that failure to do so renders the questioned decision final and executory and deprives the appellate court of jurisdiction to alter the final judgment, more so, to entertain the appeal.[49]

WHEREFORE, in light of the foregoing, the Petition for Certiorari is DISMISSED. No cost.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 4-22.

[2] Annex "G" of the Petition; id. at 52-58.

[3] Annex "L" of the Petition; id. at 87-88.

[4] Penned by Sandiganbayan Associate Justice Ma. Cristina G. Cortez-Estrada with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring.

[5] Annex "F" of the Petition; id. at 47-51.

[6] Annex "D" of the Petition; id. at 41-44.

[7] Annex "E" of the Petition; id. at 45-46.

[8] Id. at 26.

[9] Id. at 24.

[10] Id. at 34.

[11] Annex "A" of the Petition; id. at 23.

- [12] Annex "B" of the Petition; id. at 35-36.
- [13] Annex "C" of the Petition; id. at 38-40.
- [14] Annex "D" of the Petition; id. at 41-44.
- [15] Annex "E" of the Petition; id. at 45-46.
- [16] Sandiganbayan rollo, pp. 1-3.
- [17] Id. at 20.
- [18] Id. at 21.
- [19] Id. at 37-39.
- [20] Id. at 31.
- [21] Omnibus Motion, p. 1; id. at 90.
- [22] Omnibus Motion, p. 4; id. at 93.
- [23] Id.
- [24] Comment/Opposition to the Omnibus Motion by petitioner Salvacion, p. 1; id. at 146.
- [25] Id.
- [26] Id.
- [27] Sandiganbayan Resolution dated 11 November 2005, p. 4; id. at 189.
- [28] In an Order dated 11 November 2005, however, the Sandiganbayan, Fifth Division, reset to 13 January 2006 the arraignment of the respondent Manlapas; id. at 192.
- [29] Undated Motion for Reconsideration of respondent Manlapas filed on 29 November 2005, p. 10; id. at 208.
- [30] Id. at 250.
- [31] Sandiganbayan Resolution dated 23 February 2006, pp. 4-6; rollo, pp. 55-57.
- [32] Id. at 57.
- [33] Id. at 11.
- [34] Id. at 16.
- [35] Id. at 18.
- [36] Id.
- [37] Id. at 19.
- [38] Id. at 20-21.
- [39] Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755, 784-785 (2003).
- [40] Sebastian v. Hon. Morales, 445 Phil. 595, 608 (2003).
- [41] Nippon Paint Employees Union-Olalia v. Court of Appeals, G.R. No. 159010, 19 November 2004, 443

SCRA 286, 291.

[42] Chua v. Santos, G.R. No. 132467, 18 October 2004, 440 SCRA 365, 374.

[43] National Irrigation Administration v. Court of Appeals, 376 Phil. 362, 372 (1999).

[44] Oaminal v. Castillo, 459 Phil. 542, 556 (2003).

[45] Id.

[46] Rollo, p. 5.

[47] Banco Filipino Savings and Mortgage Bank v. Court of Appeals, 389 Phil. 644, 656 (2000).

[48] Bank of America, NT & SA v. Gerochi, Jr., G.R. No. 73210, 10 February 1994, 230 SCRA 9, 15 citing Alto Sales Corp. v. Hon. Intermediate Appellate Court, 274 Phil. 914, 925-926 (1991).

[49] Philippine Commercial International Bank v. Court of Appeals, 452 Phil. 542, 551 (2003).

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