

FELICISIMO F. LAZARTE, JR., PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 180122. March 13, 2009*

Ponente: TINGA, J.

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This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolution[2] dated 2 March 2007 of the First Division of the Sandiganbayan in Criminal Case No. 26583 entitled, "People of the Philippines v. Robert P. Balao, et al.," which denied petitioner Felicisimo F. Lazarte, Jr.'s Motion to Quash. The Resolution[3] dated 18 October 2007 of said court denying petitioner's motion for reconsideration is likewise challenged in this petition.

The antecedents follow.

In June 1990, the National Housing Authority (NHA) awarded the original contract for the infrastructure works on the Pahanocoy Sites and Services Project, Phase 1 in Bacolod City to A.C. Cruz Construction. The project, with a contract cost of P7,666,507.55, was funded by the World Bank under the Project Loan Agreement forged on 10 June 1983 between the Philippine Government and the IBRD-World Bank.[4]

A.C. Cruz Construction commenced the infrastructure works on 1 August 1990.[5] In April 1991, the complainant Candido M. Fajutag, Jr.(Fajutag, Jr.) was designated Project Engineer of the project.

A Variation/Extra Work Order No. 1 was approved for the excavation of unsuitable materials and road filling works. As a consequence, Arceo Cruz of A.C. Cruz Construction submitted the fourth billing and Report of Physical Accomplishments on 6 May 1991. Fajutag, Jr., however, discovered certain deficiencies. As a result, he issued Work Instruction No. 1 requiring some supporting documents, such as: (1) copy of approved concrete pouring; (2) survey results of original ground and finished leaks; (3) volume calculation of earth fill actually rendered on site; (4) test results as to the quality of materials and compaction; and (5) copy of work instructions attesting to the demolished concrete structures.[6]

The contractor failed to comply with the work instruction. Upon Fajutag, Jr.'s further verification, it was established that there was no actual excavation and road filling works undertaken by A.C. Cruz Construction. Fajutag, Jr.'s findings are summarized as follows:

- No topographic map was appended, even if the same is necessary in land development works; a discarded drawing sheet: "Spot Elevations and Existing Gradelines" of the project site was found, but this contrasted significantly with the alleged joint-survey results in support of the Variation/Extra Work Order No. 1;
- No laboratory tests were conducted to ascertain unsuitability of materials, even if the same should have been required as essential basis thereof;
- There were no records of the excavation and disposal of unsuitable materials and of road filling works having been made by the previous engineers, Rodolfo de los Santos and Noel Lobrido at the time said activities were

allegedly executed;

- The excavation of unsuitable materials and road filling works were overestimated to the prejudice of the government:

- in a 10.00 meter right-of-way (ROW) road, the entire width of 10.00 meters was used in calculating the volume of cut of unsuitable materials when the undisturbed natural grounds on both sides of the road was only 6.00 meters;

- the mathematical calculation in determining the volume of cut of unsuitable materials are contrary to the contract's technical specifications which provides for cut measurements, i.e.,] by end-area method;

- in a 10.00 ROW road, an effective width of 8.70 meters was used in calculating the volume of road fill when the undisturbed natural grounds on both sides of the road was only 6.00 meters apart;

- the mathematical calculations in determining the volume of roadfill are contrary to the contract's technical specifications, specifically Section 3.11 thereof, i.e., by end-area method.

- No laboratory test was made to ascertain the quality of imported road fill materials.[7]

In a Memorandum dated 27 June 1991, the Project Office recommended the termination of the infrastructure contract with A.C. Construction.[8]

In its Report dated 12 August 1991, the Inventory and Acceptance Committee determined the total accomplishment of the contractor at 40.89%, representing P3,433,713.10 out of the total revised contract amount of P8,397,225.09 inclusive of Variation Order No. 1 in the amount of P710,717.54. Thereafter, said Committee recommended that the temporary project suspension imposed by the contractor, which incurred delays in the project completion, be referred to the Legal Department for appropriate action.[9]

On 19 August 1991, the Manager of the Legal Department issued a Memorandum addressed to the General Manager of NHA endorsing approval of the Regional Projects Department's (RPD's) recommendation. The NHA General Manager through a letter dated 29 August 1991 informed the contractor of the rescission of his contract for the development of the said project upon his receipt thereof without prejudice to NHA's enforcing its right under the contract in view of the contractor's unilateral and unauthorized suspension of the contract works amounting to abandonment of the project. Despite the rescission notice issued by the NHA per letter dated 29 August 1991, the contractor continued working intermittently with very minimal workforce until such time as the award of remaining infrastructure works is effected by NHA to another contractor.[10]

In March 1992, the NHA Board of Directors, per Resolution No. 2453, approved the mutual termination of the A.C. Cruz Construction contract and awarded the remaining work to Triad Construction and Development Corporation (Triad). The contract amount for the remaining work was P9,554,837.32.[11] Thereafter, representatives from A.C. Cruz Construction, Triad and NHA-Bacolod conducted a joint measurement at the site to determine the total accomplishment of A.C. Cruz Construction inclusive of accomplishments after NHA inventory.

The Project Office was subsequently informed by the Central Office that the accomplishments made by A.C. Cruz Construction after the NHA inventory would be paid directly to said contractor by Triad. As of 27 March 1992, Triad had issued checks in favor of A.C. Cruz Construction amounting to One Million Pesos (P1,000,000.00) which were received by Arceo M. Cruz per Official Receipt No. 3003.[12]

In its Memorandum dated 22 June 1992, the Regional Projects Department recommended to the General Manager that the fund settlement to A.C. Cruz Construction be effected.[13]

Thereafter, Triad discovered that certain work items that had been in under the inventory report as accomplished and acceptable were in fact non-existent. Fajutag, Jr. brought these irregularities to the attention of the Commission on Audit (COA).

After its special audit investigation, the COA uncovered some anomalies, among which, are ghost activities, specifically the excavation of unsuitable materials and road filling works and substandard, defective workmanship. Laboratory tests confirmed the irregularities.[14]

Further, according to the COA, while it is true that the fourth billing of A.C. Cruz Construction had not been paid its accomplishments after the August 1991 inventory found acceptable by NHA amounting to P896,177.08 were paid directly by Triad. Effectively, A.C. Cruz Construction had been overpaid by as much as P232,628.35, which amount is more than the net payment due per the computation of the unpaid fourth billing.[15]

Consequently, petitioner, as manager of the Regional Projects Department and Chairman of the Inventory and Acceptance Committee, and other NHA officials were charged in an Information[16] dated 5 March 2001, worded as follows:

INFORMATION

The undersigned Ombudsman Prosecutor II of the Office of the Ombudsman-Visayas, accuses ROBERT P. BALAO, FELICISIMO F. LAZARTE, JR., VIRGILIO V. DACALOS, JOSEPHINE O. ANGSIKO, JOSEPHINE T. ESPINOSA, NOEL H. LOBRIDO AND ARCEO C. CRUZ for VIOLATION OF SECTION 3 (e) of REPUBLIC ACT No. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

That in or about the month of March, 1992 at Bacolod City, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, above-named accused, ROBERT P. BALAO, JOSEPHINE C. ANGSIKO, VIRGILIO V. DACALOS, FELICISIMO F. LAZARTE, JR., JOSEPHINE T. ESPINOSA, and NOEL H. LOBRIDO, Public Officers, being the General Manager, Team Head, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with accused ARCEO C. CRUZ, a private individual and General Manager of A.C. Cruz Construction with address at 7486 Bagtikan Street, Makati City with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to A.C. Construction public funds in the amount of TWO HUNDRED THIRTY TWO THOUSAND SIX HUNDRED TWENTY EIGHT PESOS and THIRTY FIVE CENTAVOS (P232,628.35) PHILIPPINE CURRENCY, supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact no such works were undertaken by A.C. Construction as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to accused Arceo C. Cruz and A.C. Construction and themselves to the damage and prejudice of the government.

CONTRARY TO LAW.[17]

On 2 October 2006, petitioner filed a motion to quash the Information raising the following grounds: (1) the facts charged in the information do not constitute an offense; (2) the information does not conform substantially to the prescribed form; (3) the constitutional rights of the accused to be informed of the nature and cause of the accusations against them have been violated by the inadequacy of the information; and (4) the prosecution failed to determine the individual participation of all the accused in the information in disobedience with the Resolution dated 27 March 2005.[18]

On 2 March 2007, the Sandiganbayan issued the first assailed resolution denying petitioner's motion to quash. We quote the said resolution in part:

Among the accused-movants, the public officer whose participation in the alleged offense is specifically mentioned in the May 30, 2006 Memorandum is accused Felicisimo Lazarte, Jr., the Chairman of the Inventory and Acceptance Committee (IAC), which undertook the inventory and final quantification of the accomplishment of A.C. Cruz Construction. The allegations of Lazarte that the IAC, due to certain constraints, allegedly had to rely on the reports of the field engineers and/or the Project Office as to which materials were actually installed; and that he supposedly affixed his signature to the IAC Physical Inventory Report and Memoranda dated August 12, 1991 despite his not being able to attend the actual inspection because he allegedly saw that all the members of the Committee had already signed are matters of defense which he can address in the course of the trial. Hence, the quashal of the information with respect to accused Lazarte is denied for lack of merit.

WHEREFORE, in view of the foregoing, the Court hereby resolves as follows:

(1) Accused Robert Balao, Josephine Angsico and Virgilio Dacalos' Motion to Admit Motion to Quash dated October 4, 2006 is GRANTED; the Motion to Quash dated October 4, 2006 attached thereto, is GRANTED. Accordingly, the case is hereby DISMISSED insofar as the said accused-movants are concerned.

(2) The Motion to Quash dated October 2, 2006 of accused

Engr. Felicisimo F. Lazarte, Jr. is hereby DENIED for lack of merit. Let the arraignment of the accused proceed as scheduled on March 13, 2007.

SO ORDERED. [19]

Subsequently, the Sandiganbayan issued the second assailed resolution denying petitioner's motion for reconsideration. Pertinently, it held:

The Motion for Reconsideration of accused Lazarte, Jr. merely reiterated the grounds and arguments which had been duly considered and passed upon in the assailed Resolution. Nonetheless, after a careful review of the same, the Court still finds no cogent reason to disturb the finding of probable cause of the Office of the Ombudsman to indict accused Lazarte, Jr., Espinosa, Lobrido and Cruz of the offense charged. In its Memorandum dated July 27, 2004 and May 30, 2006, the prosecution was able to show with sufficient particularity the respective participation of the aforementioned accused in the commission of the offense charged. The rest of the factual issues by accused Lazarte, Jr. would require the presentation of evidence in the course of the trial of this case.

The Court also maintains the validity and sufficiency of the information against accused Lazarte, Jr., Espinosa, Lobrido and Cruz. The information has particularly alleged the ultimate facts constituting the essential elements of the offense charged which are as follows:

- that accused Lazarte, Jr., Espinosa, and Lobrido are public officers being the Department Manager, Project Management Officer A, and Supervising Engineer of the NHA during the time material in the criminal information; and

- that the said accused, in their respective official capacities and in conspiracy with accused Cruz, a private individual and the General manager of A.C. Cruz Construction, have acted with manifest partiality or evident bad faith and have given unwarranted benefits, preference, and advantage to Arceo C. Cruz and A.C. Cruz Construction or have caused damage and prejudice to the government, by "[causing] to be paid A.C. Cruz Construction public funds in the amount of Two Hundred Thirty Two Thousand Six Hundred Twenty Eight Pesos and Thirty Five Centavos (P232,628.35) supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by

A.C. Cruz Construction as revealed by the Special Audit conducted by the Commission on Audit."

The other factual details which accused Lazarte, Jr. cited are matters of evidence best threshed out in the course of the trial.[20]

Hence, the instant petition which is a reiteration of petitioner's submissions. Petitioner ascribes grave abuse of discretion amounting to lack or excess of jurisdiction to the Sandiganbayan in: (1) upholding the validity and sufficiency of the Information despite its failure to make out an offense and conform to the prescribed form; (2) denying his motion to quash considering that the remaining averments in the Information have been rendered unintelligible by the dismissal of the charges against some of his co-accused; and (3) using as bases the Prosecution's Memoranda dated 27 July 2004 and 30 May 2006 to supplement the inadequacies of the Information. In addition, petitioner avers that his constitutional right to be informed of the nature and cause of the accusation against him had been violated for failure of the Information to specify his participation in the commission of the offense. Petitioner also argues that the facts charged in the Information do not constitute an offense as no damage or injury had been made or caused to any party or to the government. Finally, petitioner maintains that the Sandiganbayan lost its jurisdiction over him upon the dismissal of the charges against his co-accused as the remaining accused are public officers whose salary grade is below 27.

In its Comment[21] dated 21 December 2007, the Office of the Ombudsman, through the Office of the Special Prosecutor, counters that separate allegations of individual acts perpetrated by the conspirators are not required in an Information and neither should they be covered by evidence submitted to establish the existence of probable cause. Allegations regarding the nature and extent of petitioner's participation and justification for his acts which constitute the offense charged are evidentiary matters which are more properly addressed during trial. The Ombudsman reiterates our ruling in *Ingco v. Sandiganbayan*[22] that the fundamental test in reflecting on the viability of a motion to quash is the sufficiency of the averments in the information that is, whether the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined by law. And relying on the case of *Domingo v. Sandiganbayan*,[23] the Ombudsman states that informations need only state the ultimate facts; the reasons therefor are to be proved during the trial.[24] The Ombudsman moreover maintains that the Sandiganbayan has jurisdiction over petitioner. The Ombudsman argues that it is of no moment that petitioner's position is classified as salary grade 26 as he is a manager within the legal contemplation of paragraph 1(g), Section 4(a) of Republic Act No. 8249.[25]

In his Reply[26] dated 9 October 2008, petitioner strongly asseverates that, according to the Constitution, in a conspiracy indictment the participation of each accused in the so-called conspiracy theory should be detailed in order to apprise the accused of the nature of the accusation against them in relation to the participation of the other accused. A general statement that all the accused conspired with each other without stating the participation of each runs afoul of the Constitution.[27] Petitioner adds that the ultimate facts intended by law refer to determinate facts and circumstances which should become the basis of the cause of action; statement of facts which would be in complete accord with the constitutional requirement of giving the accused sufficient information about the nature and the cause of the accusation against him.[28] Petitioner also avers that the Ombudsman's reliance on and citation of the cases of *Ingco v. Sandiganbayan*[29] and *Domingo v. Sandiganbayan*[30] is misplaced and misleading.

Petitioner's main argument is that the Information filed before the Sandiganbayan insufficiently averred the essential elements of the crime charged as it failed to specify the individual participation of all the accused.

The Court is not persuaded. The Court affirms the resolutions of the Sandiganbayan.

At the outset, it should be stressed that the denial of a motion to quash is not correctible by certiorari.

Well-established is the rule that when a motion to quash in a criminal case is denied, the remedy is not a petition for certiorari but for petitioners to go to trial without prejudice to reiterating the special defenses invoked in their motion to quash. Remedial measures as regards interlocutory orders, such as a motion to quash, are frowned upon and often dismissed. The evident reason for this rule is to avoid multiplicity of appeals in a single court.[31]

This general rule, however, is subject to certain exceptions. If the court, in denying the motion to dismiss or motion to quash acts without or in excess of jurisdiction or with grave abuse of discretion, then certiorari or prohibition lies.[32] And in the case at bar, the Court does not find the Sandiganbayan to have committed grave abuse of discretion.

The fundamental test in reflecting on the viability of a motion to quash on the ground that the facts charged do not constitute an offense is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in law.[33] Matters aliunde will not be considered.[34]

Corollarily, Section 6 of Rule 110 of the Rules of Court states that:

SEC. 6. Sufficiency of complaint or information.--A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the elements of the crime charged. What facts and circumstances are necessary to be included therein must be determined by reference to the definition and elements of the specific crimes.[35]

The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison d'être* of the rule is to enable the accused to suitably prepare his defense.[36] Another purpose is to enable accused, if found guilty, to plead his conviction in a subsequent prosecution for the same offense. The use of derivatives or synonyms or allegations of basic facts constituting the offense charged is sufficient.[37]

Pertinently, Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, reads:

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 to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.[38]

The essential elements for violation of Section 3(e) of R.A. No. 3019 are as follows:

- The accused is a public officer or private person charged in conspiracy with him;
- Said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position;
- He causes undue injury to any party, whether the government or private party;
- Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- The public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[39]

The Court finds that the Information in this case alleges the essential elements of violation of Section 3(e) of R.A. No. 3019. The Information specifically alleges that petitioner, Espinosa and Lobrido are public officers being then the Department Manager, Project Management Officer A and Supervising Engineer of the NHA respectively; in such capacity and committing the offense in relation to the office and while in the performance of their official functions, connived, confederated and mutually helped each other and with accused Arceo C. Cruz, with deliberate intent through manifest partiality and evident bad faith gave unwarranted benefits to the latter, A.C. Cruz Construction and to themselves, to the damage and prejudice of the government. The felonious act consisted of causing to be paid to A.C. Cruz Construction public funds in the amount of P232,628.35 supposedly for excavation and road filling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by said construction company as revealed by the Special Audit conducted by COA.

On the contention that the Information did not detail the individual participation of the accused in the allegation of conspiracy in the Information, the Court underscores the fact that under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition.[40]

When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. But when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar, there is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. The conspiracy is significant only because it changes the criminal liability of all the accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime. The liability of the conspirators is collective and each participant will be equally responsible for the acts of others, for the act of one is the act of all.[41]

Notably, in *People v. Quitlong*,[42] as pointed out by respondent, the Court ruled on how conspiracy as a mode of committing the offense should be alleged in the Information, viz:

x x x Where conspiracy exists and can rightly be appreciated, the individual acts done to perpetrate the felony becomes of secondary importance, the act of one being imputable to all the others. Verily, an accused must know from the information whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well.

A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may

plead his acquittal or conviction to a subsequent indictment based on the same facts. It is said, generally, that an indictment may be held sufficient "if it follows the words of the statute and reasonably informs the accused of the character of the offense he is charged with conspiring to commit, or, following the language of the statute, contains a sufficient statement of an overt act to effect the object of the conspiracy, or alleges both the conspiracy and the contemplated crime in the language of the respective statutes defining them (15A C.J.S. 842-844).

x x x Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words "conspired" or "confederated" or the phrase "acting in conspiracy," must aptly appear in the information in the form of definitive acts constituting conspiracy. In fine, the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as either by the use of the term "conspire" or its derivatives and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it. In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be inferred from shown acts and conduct of the accused.[43]

In addition, the allegation of conspiracy in the Information should not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of the evidence on the conspiracy is not necessary in the Information.[44]

The other details cited by petitioner, such as the absence of any damage or injury caused to any party or the government, likewise are matters of evidence best raised during trial.

As to the contention that the residual averments in the Information have been rendered unintelligible by the dismissal of the charges against some of his co-accused, the Court finds that the Information sufficiently makes out a case against petitioner and the remaining accused.

With regard to the alleged irregular use by the Sandiganbayan of the Prosecution's Memoranda dated 27 July 2004 and 30 May 2006 to supplement the inadequacies of the Information, the Court finds adequate its explanation in the first assailed resolution, to wit:

It may be recalled that a reinvestigation of the case was ordered by this Court because the prosecution failed to satisfactorily comply with an earlier directive of the former Chairperson and Members of the First Division, after noting the inadequacy of the information, to clarify the participation of each of the accused. In ordering the reinvestigation, the Court noted that the prosecution's July 27, 2004 Memorandum did not address the apprehensions of the former Chairperson and Members of the First Division as to the inadequacy of the allegations in the information.

This time, despite a reinvestigation, the prosecution's Memorandum dated May 30, 2006 still failed to specify the participation of accused-movants Balao, Angsico and Dacalos. The most recent findings of the prosecution still do not address the deficiency found by the Court in the information. The prosecution avers that pursuant to Section 3, Rule 117 of the Rules of Court, in determining the viability of a motion to quash based on the ground of "facts charged in the information do not constitute an offense," the test must be whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime as defined by law. The prosecution contends that matter aliunde should not be considered. However, in the instant case, the Court has found the information itself to be inadequate, as it does not satisfy the requirements of particularly

alleging the acts or omissions of the said accused-movants, which served as the basis of the allegation of conspiracy between the aforementioned accused-movants and the other accused, in the commission of the offense charged in the information.[45]

Finally, the Court sustains the Sandiganbayan's jurisdiction to hear the case. As correctly pointed out by the Sandiganbayan, it is of no moment that petitioner does not occupy a position with Salary Grade 27 as he was a department manager of the NHA, a government-owned or controlled corporation, at the time of the commission of the offense, which position falls within the ambit of its jurisdiction. Apropos, the Court held in the case of *Geduspan v. People*[46] which involved a regional Manager/Director of Region VI of the Philippine Health Insurance Corporation (Philhealth) with salary grade 26, to wit:

It is of no moment that the position of petitioner is merely classified as salary grade 26. While the first part of the above-quoted provision covers only officials of the executive branch with the salary grade 27 and higher, the second part thereof "specifically includes" other executive officials whose positions may not be of grade 27 and higher but who are by express provision of law placed under the jurisdiction of the said court.

Hence, respondent court is vested with jurisdiction over petitioner together with Farahmand, a private individual charged together with her.

The position of manager in a government-owned or controlled corporation, as in the case of Philhealth, is within the jurisdiction of respondent court. It is the position that petitioner holds, not her salary grade, that determines the jurisdiction of the Sandiganbayan.

This Court in *Lacson v. Executive Secretary, et al.* ruled:

A perusal of the aforequoted Section 4 of R.A. 8249 reveals that to fall under the exclusive jurisdiction of the Sandiganbayan, the following requisites must concur: (1) the offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act), (b) R.A. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, book II of the Revised Penal Code (the law on bribery), (d) Executive Order Nos. 1,2, 14 and 14-A, issued in 1986 (sequestration cases), or (e) other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of section 4; and (3) the offense committed is in relation to the office.

To recapitulate, petitioner is a public officer, being a department manager of Philhealth, a government-owned and controlled corporation. The position of manager is one of those mentioned in paragraph a, Section 4 of RA 8249 and the offense for which she was charged was committed in relation to her office as department manager of Philhealth. Accordingly, the Sandiganbayan has jurisdiction over her person as well as the subject matter of the case.[47]

WHEREFORE, premises considered, the instant petition is DISMISSED. The Resolutions dated 2 March 2007 and 18 October 2007 of the First Division of the Sandiganbayan are AFFIRMED.

SO ORDERED.

Quisumbing, Acting C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura and Brion, JJ., concur.

Puno, C.J., on official leave.

Leonardo-De Castro, and Peralta, JJ., no part:

[1] Rollo, pp. 3-50; Dated 5 November 2007.

[2] Id. at 51-57; Penned by Presiding Justice Teresita J. Leonardo-De Castro with the concurrence of Associate Justices Diosdado M. Peralta and Alexander G. Gesmundo.

[3] Id. at 58-62.

[4] Id. at 8.

[5] Id. at 111.

[6] Id. at 112, 232.

[7] Id. at 113-114.

[8] Id. at 233.

[9] Id.

[10] Id. at 233-234.

[11] Id. at 9.

[12] Id. at 235.

[13] Id.

[14] Id. at 236-237.

[15] Id. at 119.

[16] Id. at 63-64; Dated 5 March 1991.

[17] Id. at 63-64.

[18] Id. at 134-135.

[19] Id. at 56-57.

[20] Id. at 61-62.

[21] Id. at 229-250.

[22] 338 Phil. 1061 (1997).

[23] 379 Phil. 708 (2000).

[24] Id. at 1071.

[25] OTHERWISE KNOWN AS "AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE No. 1606, as amended" which pertinently states:

SEC. 4. Section 4 of the same decree is hereby further amended to read as follows:

SEC. 4. Jurisdiction.--The Sandiganbayan shall exercise original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense;

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 'Grade 27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x

(g) Presidents, directors or trustees, or managers of government-owned and controlled corporations, state universities or educational institutions or foundations.

[26] Id. at 253-272.

[27] Id. at 257.

[28] Id. at 259.

[29] Supra note 22.

[30] Supra note 24.

[31] Serana v. Sandiganbayan, G.R. No. 162059, 22 January 2008, 542 SCRA 224, 236.

[32] Id. citing Newsweek, Inc. v. IAC, G.R. No. L-63559, 30 May 1986, 142 SCRA 171.

[33] Cabrera v. Sandiganbayan, 484 Phil. 350, 359 (2004).

[34] People of the Philippines v. Hon. Teresita Dizon-Capulong, G.R. No. 106424, 18 June 1996, 257 SCRA 430, 445.

[35] Serapio v. Sandiganbayan (Third Division), 444 Phil. 499, 522 (2003).

[36] Miranda v. Hon. Sandiganbayan, G.R. No. 154098, 27 July 2005, 464 SCRA 165, 188-189.

[37] Serapio v. Sandiganbayan (Third Division), supra

[38] Republic Act No. 3019 (1960), Sec. 3(e).

[39] Cabrera v. Sandiganbayan, 484 Phil. 350, 360 (2004).

[40] Estrada v. Sandiganabayan, 427 Phil. 820, 853-854 (2002).

[41] Estrada v. Sandiganbayan, 427 Phil. 820, 860 (2002).

[42] 354 Phil. 372 (1998).

[43] Id. at 388-390.

[44] Estrada v. Sandiganbayan, 427 Phil. 820, 862 (2002)

[45] Rollo, p. 55.

[46] G.R. No. 158187, 11 February 2005, 451 SCRA 187.

[47] Id. at 192-193.

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