

JOSE “JINGGOY” P. EJERCITO ESTRADA AND MA. PRESENTACION VITUG EJERCITO, PETITIONERS, VS. SANDIGANBAYAN (FIFTH DIVISION); ANTI-MONEY LAUNDERING COUNCIL, REPRESENTED BY ITS EXECUT...

G.R. No. 217682. July 17, 2018

Ponente: BERSAMIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-217682/>

BERSAMIN, J.:

By petition for certiorari, prohibition and mandamus, the petitioners seek to annul and set aside the resolution promulgated on February 2, 2015,[1] whereby the Sandiganbayan denied their Urgent Motion to Suppress/Exclude (The Inquiry Report on the Bank Transactions Related to the Alleged Involvement of Senator Jose P. "Jinggoy" Ejercito Estrada in the PDAF Scam, and the Testimony of Witness Atty. Orlando C. Negradas, Jr. Thereon) (motion to suppress) filed in Criminal Case No. SB-14-CRM-0239, a prosecution for plunder.[2]

Antecedents

On September 11, 2013, Benhur K. Luy, Merlina P. Sunas, Gertrudes K. Luy, Nova Kay Batal-Macalintal, Elena S. Abundo and Avelina C. Lingo (whistleblowers) executed their Pinagsamang Sinumpaang Salaysay in which they revealed the details of the Pork Barrel Scam that involved the misuse or illegal diversion by certain legislators of their allocations from the Priority Development Assistance Fund (PDAF) in connivance with Janet Lim Napoles (Napoles), the whistleblowers' former employer.[3]

The National Bureau of Investigation (NBI) conducted its investigation, and on September 16, 2013 resolved to file in the Office of the Ombudsman verified criminal complaints for plunder, malversation, direct bribery, and graft and corrupt practices against the persons involved in the Pork Barrel Scam, including petitioner Senator Jose "Jinggoy" P. Ejercito Estrada (Estrada).

Acting on the criminal complaints, the Office of the Ombudsman requested the Anti-Money Laundering Council (AMLC) on October 11, 2013 to conduct a financial investigation of the bank accounts of the petitioners and others.[4]

On March 28, 2014, the Office of the Ombudsman issued a joint resolution finding probable cause to indict Estrada and other persons for plunder and for violation of Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).[5]

Meanwhile, the AMLC, determining that Estrada's accounts were probably related to the charge of plunder and the violation of R.A. No. 3019 charged against him and others, authorized its secretariat to file in the Court of Appeals (CA) an ex parte application for bank inquiry pursuant to R.A. No. 9160, as amended (The Anti-Money Laundering Act).

In the resolution promulgated on May 28, 2014, the CA granted the ex parte application.[6]

In the information dated June 5, 2014 filed in the Sandiganbayan, the Office of the Ombudsman charged Estrada and others with plunder, the accusatory portion of which was as follows:

In 2004 to 2012, or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused JOSE P. EJERCITO ESTRADA, then a Philippine Senator, and PAULINE THERESE MARY C. LABAYEN, then Deputy Chief of Staff of Sen. Estrada's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED NINETY THREE THOUSAND SEVEN HUNDRED FIFTY PESOS (Php183,793,750.00) through a combination or series of overt criminal acts, as follows:

a)

by repeatedly receiving from NAPOLES and/or her representative DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ESTRADA and/or LABAYEN received, a percentage of the cost of a project to be funded from ESTRADA'S Priority Development Assistance Fund (PDAF), in consideration of ESTRADA'S endorsement, directly or through LABAYEN, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of ESTRADA'S PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

b)

by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.[7]

In the process of inquiring into Estrada's accounts, the AMLC discovered that Estrada had transferred substantial sums of money to the accounts of his wife, co-petitioner Ma. Presentacion Vitug Ejercito (Ejercito), on the dates relevant to the Pork Barrel Scam. Considering that the transfers lacked apparent legal or economic justifications, the AMLC concluded that the accounts were linked to a predicate crime of plunder. Hence, the AMLC filed in the CA a supplemental ex parte application for the bank inquiry to be conducted on Ejercito's accounts, among others.

On August 15, 2014, the CA granted the supplemental ex parte application.[8]

The results of the AMLC's bank inquiry into Estrada's accounts were contained in the so-called Inquiry Report on the Bank Transactions Related to the Alleged Involvement of Senator Jose "Jinggoy" P. Ejercito Estrada in the PDAF Scam (Inquiry Report). On December 19, 2014, the AMLC furnished the Office of the Ombudsman a copy of the Inquiry Report. During Estrada's bail hearings in the Sandiganbayan, the Prosecution presented Atty. Orlando C. Negradas, Jr., an AMLC financial investigator, who testified on the Inquiry Report.[9]

On January 23, 2015, Estrada filed the motion to suppress.[10]

On February 2, 2015, the Sandiganbayan issued the assailed resolution denying the motion to suppress.

Estrada moved for reconsideration, but the Sandiganbayan denied his motion on March 2, 2015.[11]

Hence, the petitioners have come to the Court by petition for certiorari, prohibition and mandamus, submitting that:

THE RESPONDENT TRIBUNAL COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICITON IN RULING THAT:

- IN THIS CONTEXT, THE CONSTITUTIONAL RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AND ARREST AND THE RIGHT TO PRIVACY OF COMMUNICATION AND CORRESPONDENCE SHOULD ONLY YIELD TO THE MANDATE OF THE AMLC, SINCE SUCH ACTION OPENED THE GATE TO THE INTRODUCTION OF EVIDENCE OBTAINED BY A 'FISHING EXPEDITION' PROHIBITED BY THE CONSTITUTION;

- THAT THE AMENDMENT TO SECTION 11 OF R.A. 9160 SHOULD BE APPLIED RETROACTIVELY IN THIS CASE, WITHOUT CONSIDERING THAT APPLICATION OF SECTION 11 IN THIS CASE VIOLATES THE RIGHT TO PRIVACY DERIVED FROM THE DUE PROCESS CLAUSE; AND THAT SECTION 11, INSOFAR AS IT DISPENSES WITH THE 'NOTICE' REQUIREMENT TO HOLDERS OF RELATED ACCOUNTS, IS UNCONSTITUTIONAL;

- THAT THE CONTENTS OF THE AMLC INQUIRY REPORT IS ADMISSIBLE EVIDENCE IN THIS CASE, CONSIDERING THAT IT WAS OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHT TO PRIVACY;

- IN FAILING TO APPLY THE STANDARD OF 'STRICT SCRUTINY' IN DETERMINING WHETHER PETITIONER MA. PRESENTACION EJERCITO WAS DEPRIVED OF HER RIGHT TO PRIVACY.[12]

The Office of the Special Prosecutor (OSP), in representation of the State, counters that the petition has not laid the foundation for a finding of grave abuse of discretion on the part of the Sandiganbayan; that the Sandiganbayan correctly held that the right to privacy was not an illimitable right but one necessarily circumscribed by the exceptions embedded in both the 1987 Constitution and the laws; that the constitutionality of R.A. No. 10167 could not be attacked collaterally; that, in any event, the Sandiganbayan properly ruled that the amendment under R.A. No. 10167 applied to Estrada; that the "heightened/strict scrutiny" test was inapplicable because the extent and delimitation of Estrada's privacy rights were specifically laid down in laws and jurisprudence, and were matters of judicial application, not interpretation; and that the petition has not established grounds that would entitle the petitioners to the provisional remedy of a temporary restraining order or writ of preliminary injunction.[13]

In its comment, the AMLC posits that Ejercito is not a proper party; that R.A. No. 10167 does not violate the constitutional rights to privacy and to due process; that R.A. No. 10167 is not an ex post facto law; that the Congress has the power to enact R.A. No. 10167; and that the Inquiry Report did not emanate from a fishing expedition, and, as such, the Inquiry Report and the testimony of Atty. Negradas were admissible as evidence against Estrada.[14]

In other words, the issues are restated as follows:

- Does Section 11 of R.A. No. 9160, as amended, violate the constitutionally mandated right to due process and right to privacy?
- Should the ex parte application for a bank inquiry order provided for in Section 11 of R.A. No. 9160, as amended, be applied retroactively?

Ruling of the Court

1.

Section 11 of R.A. No. 9160, as amended, is constitutional

We restate the relevant legal and jurisprudential milieu expounded on in *Subido Pagente Certeza Mendoza* and

Binay Law Offices v. Court of Appeals[15] (Subido), viz.:

As a brief backgrounder to the amendment to Section 11 of the AMLA, the text originally did not specify for an ex parte application by the AMLC for authority to inquire into or examine certain bank accounts or investments. The extent of this authority was the topic of Rep. of the Phils. v. Hon. Judge Eugenio, Jr., et al. (Eugenio) where the petitioner therein, Republic of the Philippines, asseverated that the application for that kind of order under the questioned section of the AMLA did not require notice and hearing. Eugenio schooled us on the AMLA, specifically on the provisional remedies provided therein to aid the AMLC in enforcing the law.

x x x x

Quite apparent from the foregoing is that absent a specific wording in the AMLA allowing for ex parte proceedings in orders authorizing inquiry and examination by the AMLC into certain bank deposits or investments, notice to the affected party is required.

Heeding the Court's observance in Eugenio that the remedy of the Republic then lay with the legislative, Congress enacted Republic Act No. 10167 amending Section 11 of the AMLA and specifically inserted the word ex parte appositive of the nature of this provisional remedy available to the AMLC thereunder.

Like the petitioners in Subido, the petitioners herein contend that Section 11 of R.A. No. 9160, as amended, is unconstitutional insofar as it allows the filing of an ex parte application for an order to inquire into bank deposits and investments for violating the constitutionally-mandated right to due process and right to privacy; that Section 11 of R.A. No. 9160 is being used for a "fishing expedition;" that the disclosure of "related accounts" imposed by the amendment to Section 11 of R.A. No. 9160 is clearly a "fruit of the poisonous tree;" and that the Inquiry Report should consequently be declared inadmissible as evidence.[16]

The petitioners' contentions have no merit.

To start with, the procedural rules under Rule 65 of the Rules of Court governing the special civil actions for certiorari, prohibition and mandamus limit the remedy to a person aggrieved by the assailed decision, resolution, order or act.[17] For purposes of the rule, a person aggrieved is one who was a party in the original proceedings before the respondent officer, tribunal or agency.[18] As such, Ejercito cannot seek the annulment of the assailed resolutions of the Sandiganbayan because she was not a party in the original proceeding pending thereat involving Estrada, her husband.

And, secondly, the petitioners' assailing herein the constitutionality of Section 11 of R.A. No. 9160, as amended, constitutes a collateral attack against such legal provision. A collateral attack against a presumably valid law like R.A. No. 9160 is not permissible. Unless a law or rule is annulled by a direct proceeding, the legal presumption of its validity stands.[19]

It is relevant to remind, however, that the constitutionality of Section 11 of R.A. No. 9160, as amended, has been dealt with and upheld in Subido, where we ruled that the AMLC's ex parte application for the bank inquiry order based on Section 11 of R.A. No. 9160, as amended by R.A. No. 10167, did not violate substantive due process because the physical seizure of the targeted corporeal property was not contemplated by the law.

We clarify that the AMLC, in investigating probable money laundering activities, does not exercise quasi-judicial powers, but merely acts as an investigatory body with the sole power of investigation similar to the functions of the National Bureau of Investigation (NBI). Hence, the ex parte application for the bank inquiry order cannot be said to violate any person's constitutional right to procedural due process.[20] Also, the source of the right to privacy respecting bank deposits is statutory, not constitutional; hence, the Congress may validly carve out

exceptions to the rule on the secrecy of bank deposits, as illustrated in Section 11 of R.A. No. 9160.[21]

With the consistency of the assailed provision of R.A. No. 9160 with the Constitution, the petitioners' argument that the Inquiry Report was the fruit of a poisonous tree and, therefore, inadmissible in evidence remains unsubstantiated.

2.

The amendment to Section 11 of R.A. 9160 allowing an ex parte application for the bank inquiry does not violate the proscription against ex post facto laws

The petitioners insist that R.A. No. 10167, which amended Section 11 of R.A. No. 9160, is an ex post facto legislation because it applies retroactively to bank transactions made prior to the effectivity of the amendment and imposes new legal burdens to already-completed transactions; that R.A. No. 10167 should only be prospective; that in *Republic v. Eugenio, Jr.* (545 SCRA 384), the application for the bank inquiry order issued on July 4, 2005 as a means of inquiring into the records of transactions entered into prior to the passage of R.A. No. 9160 would be constitutionally infirm and offensive to the ex post facto clause; that the present case involves transactions and deposits made by the petitioners in the period from 2005 up to 2012, or prior to the amendment of Section 11 of R.A. No. 9160 that took effect on June 18, 2012; that by analogy the authority given through the order issued upon ex parte application under R.A. No. 10167 cannot be made to apply to deposits and transactions of the petitioners prior to June 18, 2012.[22]

The insistence of the petitioners is unfounded and bereft of substance.

An ex post facto law is a law that either: (1) makes criminal an act done before the passage of the law that was innocent when done, and punishes such act; or (2) aggravates a crime, or makes the crime greater than it was when committed; or (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; or (5) assumes to regulate civil rights and remedies only, but in effect imposes a penalty or deprivation of a right for an act that was lawful when done; or (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.[23]

The petitioners rely on *Republic v. Eugenio, Jr.*, wherein the Court declared that the proscription against ex post facto laws should be applied to the interpretation of the original text of Section 11 of R.A. No. 9160 because the passage of said law "stripped another layer off the rule on absolute confidentiality that provided a measure of lawful protection to the account holder." Accordingly, we held therein that the application for the bank inquiry order as the means of inquiring into records of transactions entered into prior to the passage of R.A. No. 9160 would be constitutionally infirm, offensive as it was to the ex post facto clause of the Constitution.[24]

The petitioners' reliance on *Republic v. Eugenio, Jr.* is misplaced. Unlike the passage of R.A. No. 9160 in order to allow an exception to the general rule on bank secrecy, the amendment introduced by R.A. No. 10167 does away with the notice to the account holder at the time when the bank inquiry order is applied for. The elimination of the requirement of notice, by itself, is not a removal of any lawful protection to the account holder because the AMLC is only exercising its investigative powers at this stage. Indeed, R.A. No. 10167, in recognition of the ex post facto clause of the Constitution, explicitly provides that "the penal provisions shall not apply to acts done prior to the effectivity of the AMLA on October 17, 2001."

Furthermore, the AMLC's inquiry and examination into bank accounts are not undertaken whimsically based on its investigative discretion. The AMLC and the CA are respectively required to ascertain the existence of probable

cause before any bank inquiry order is issued. Section 11 of R.A. 9160, even with the allowance of an ex parte application therefor, cannot be categorized as authorizing the issuance of a general warrant. This is because a search warrant or warrant of arrest contemplates a direct object but the bank inquiry order does not involve the seizure of persons or property.[25]

Lastly, the holder of a bank account subject of a bank inquiry order issued ex parte is not without recourse. He has the opportunity to question the issuance of the bank inquiry order after a freeze order is issued against the account. He can then assail not only the finding of probable cause for the issuance of the freeze order, but also the finding of probable cause for the issuance of the bank inquiry order.[26]

3.

The petition has been rendered moot and academic by supervening events

The foregoing discussion notwithstanding, the Court takes cognizance of the fact that Estrada has already been granted bail by the Sandiganbayan on September 15, 2017, the resolution for which disposed:

WHEREFORE, in view of the foregoing, the Court hereby RESOLVES to:

(1) DENY accused Estrada's Motion to Dismiss the case for lack of merit; and

(2) RECONSIDER and SET ASIDE the Resolution dated January 7, 2016 as to accused Estrada, and hereby GRANTS bail to accused Estrada, upon the submission and approval of bail in the amount of One Million Pesos (P1,000,000.00), to be posted in cash.

SO ORDERED.[27]

On November 10, 2017, the Sandiganbayan denied the People's motion for reconsideration and upheld the grant of bail to Estrada.[28]

Considering that the resolutions being assailed trace their roots to the bail hearing of Estrada, the aforementioned conclusions of the Sandiganbayan relevant to his bail application, and the eventual grant of bail to him have rendered his petition for certiorari, prohibition and mandamus moot and academic. There is no question that whenever the issues have become moot and academic, there ceases to be any justiciable controversy, such that the resolution of the issues no longer have any practical value.[29] In effect, the Court can no longer grant any substantial relief to which the petitioner may be entitled. Hence, the Court should abstain from expressing its opinion in a case where no legal relief is needed or called for.[30]

WHEREFORE, the Court DISMISSES the petition for certiorari, prohibition and mandamus for being moot and academic, without pronouncement on costs of suit.

SO ORDERED.

Carpio, (Acting C. J.), Velasco, Jr., Leonardo-De Castro, Peralta, Del Castillo, Leonen, Martires, Tijam, and A. Reyes, Jr., JJ., concur.

Perlas-Bernabe, J., on official business.

Jardeleza,**] and Gesmundo,****] JJ., no part.

Caguioa, J., on leave.

[**] No part, due to prior participation as Solicitor General.

[****] No part, due to prior participation in the Sandiganbayan.

- [1] Rollo (Vol. I), pp. 169-171; penned by Associate Justice Roland B. Jurado (Chairperson), with the concurrence of Associate Justice Alexander G. Gesmundo (now a Member of the Court) and Associate Justice Ma. Theresa Dolores C. Gomez-Estoesta.
- [2] Rollo (Vol. 1), p. 4.
- [3] Id. at 318-319.
- [4] Id. at 34, 319.
- [5] Id. at 320.
- [6] Id. at 320.
- [7] Id. at 32-33.
- [8] Id. at 321-322.
- [9] Id. at 34, 322-323.
- [10] Id. at 323.
- [11] Id.
- [12] Id. at 8.
- [13] Id. at 264.
- [14] Id. at 323-324.
- [15] G.R. No. 216914, December 6, 2016, 831 SCRA 1, 25, 28.
- [16] Rollo (Vol. 1), pp.9-24, 381.
- [17] Sections 1-3, Rule 65, Rules of Court.
- [18] Tang v. Court of Appeals, G.R. No. 117204, February 11, 2000, 325 SCRA 394, 402-403.
- [19] Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas, G.R. No. 191424, August 7, 2013, 703 SCRA 290, 311.
- [20] Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals, note 15, at 42.
- [21] Republic v. Bolante, G.R. Nos. 186717 & 190357, April 17, 2017, 822 SCRA 526, 558.
- [22] Rollo (Vol. 1), pp. 9-24.
- [23] Republic v. Eugenio, Jr., G.R. No. 174629, February 14, 2008, 545 SCRA 384, 419.
- [24] Republic v. Eugenio, Jr., G.R. No. 174629, February 14, 2008, 545 SCRA 384, 418-420.
- [25] Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals, note 15, at 68.
- [26] Republic v. Bolante, G.R. Nos. 186717 & 190357, April 17, 2017, 822 SCRA 526, 558.
- [27]
http://sb.judiciary.gov.ph/RESOLUTIONS/2017/I_Crim_SB-14-CRM-0239_People%20vs%20Estrada,20et%20a1_09_15_2017.pdf

[28]

http://sb.judiciary.gov.ph/RESOLUTIONS/2017/K_Crim_SB-14-CRM-0239_People%20vs%20Estrada,%20et%20al_11_10_2017.pdf

[29] City Sheriff, Iligan City v. Fortunado, G.R. No. 80390, March 27, 1998, 288 SCRA 190, 195; Philippine Airlines Inc. v. Pascua, G.R. No. 143258, August 15, 2003; 409 SCRA 195, 202; Paloma v. Court of Appeals, G.R. No. 145431, November 11, 2003; 415 SCRA 590, 595; Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr., G.R. No. 132796, March 10, 2004; 425 SCRA 129; Vda. de Dabao v. Court of Appeals, G.R. No. 116526, March 23, 2004, 426 SCRA 91, 97.

[30] Desaville, Jr. v. Court of Appeals, G.R. No. 128310, August 13, 2004, 436 SCRA 387, 391.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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