

**JESUS E. SANCIANGCO, JR., AND NAPOLEON E. SANCIANGCO,
PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, REPRESENTED
BY THE HONORABLE BERNARDO P. FERNANDEZ, IN HIS CAPACITY
AS TANO...**

G.R. No. 72830. March 24, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

On September 5, 1984, private respondent Borje filed a complaint in the Office of the City Fiscal, Ozamis City, against the petitioners for violation of Section 3(f), Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The charge alleged "the unjustifiable refusal after a lawful demand to the respondent Mayor to sign the Business Permit to held cockfight at the Ozamis City Coliseum unless the coliseum comes across and settles a promised donation in favor of the Association of Barangay Councils of which his brother Napoleon was the President and to whom the amount of P3,000.00 should be given. And this was despite the coliseum having paid in full all licenses, fees, and among others, the business permit which had to be signed by the Mayor".

On September 12, 1984, private respondent Borje submitted the affidavits of his witnesses in support of his complaint.

The petitioners submitted their counter-affidavits, dated September 14, 1984 and September 19, 1984, respectively, as well as documentary evidence.

Deputized Prosecutor Epifanio Vergara of Ozamis City started to conduct the preliminary investigation but inhibited himself from resolving the case.

The Office of the Tanodbayan re-assigned the case to Deputized Prosecutor Luzviminda V. Uy, also of Ozamis City, for resolution but she likewise inhibited herself.

The Tanodbayan ordered the matter re-assigned to Juanito Ibanez, also of Ozamis City, but the private respondent requested for his disqualification, which was granted.

The Tanodbayan, through telegram, ordered the transmission of the records of the case to the Office of the Tanodbayan, Manila which "will conduct preliminary investigation thereon".

The case was assigned to Special Prosecutor Eduardo R. Benitez who forthwith issued a Resolution on June 7, 1985, finding enough prima facie evidence against the petitioners to warrant their indictment for violation of Republic Act 3019, Section 3(f) and Section 4 thereof. The resolution was approved by the Tanodbayan.

On June 26, 1985, an information was filed against the petitioners before the respondent Sandiganbayan for violation of Section 3(f) and Section 4 of Republic Act 3019, as amended.

On July 30, 1985, the petitioners filed a Motion for Reconsideration and/or Reinvestigation of the Resolution of June 7, 1985, on the ground that said resolution is without factual and legal basis and that they did not commit any act in violation of Section 3(f) and Section 4 of Republic Act 3019, as amended. This motion was denied for lack of merit. A motion for reconsideration of the order of denial filed by the petitioners suffered the same fate.

It is now stressed by the petitioners that the proceedings before the Sandiganbayan are null and void because no preliminary investigation of the case was first conducted.

The petitioners argue that since the Tanodbayan sought the transmission of the records of the case to its office in Manila to "conduct preliminary investigation thereon", it is bound to conduct that investigation pursuant to law.

It is further argued that the Tanodbayan, in resolving the case against the petitioners, considered evidence not previously made available to the petitioners. This evidence refers to the sworn statement of Engr. Estanislao Bodiongan, the President of the Coliseum, stating that the coliseum had no obligation whatsoever to pay P3,000.00 either to Napoleon Sanciango or to the Association of Barangay Councils. This surfaced only upon the transmittal of the case records to the Office of the Tanodbayan. Hence, for lack of preliminary investigation conducted by the Tanodbayan, the petitioners were not given the opportunity to controvert the evidence of the complainant.

The absence of preliminary investigations does not affect the court's jurisdiction over the case. Nor do they impair the validity of the information or otherwise render it defective; but, if there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted. (See *People v. Gomez*, 117 SCRA 72, 77-78, citing *People v. Casiano*, 1 SCRA 478). In this case, the Tanodbayan has the duty to conduct the said investigation.

CONSIDERING THE FOREGOING, the COURT RESOLVED to GRANT the petition and SET ASIDE the Resolution of the Tanodbayan dated June 7, 1985 and all acts of the respondents subsequent thereto. The Tanodbayan is hereby ordered to CONDUCT a preliminary investigation of Criminal Case No. 10471.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Cruz, Paras, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.

Melencio-Herrera and Feliciano, JJ., on leave.

Sarmiento, J., no part, having been counsel of the petitioners

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