

QUINTIN S. DOROMAL, PETITIONER, VS. SANDIGANBAYAN, OMBUDSMAN AND SPECIAL PROSECUTOR, RESPONDENTS.*G.R. No. 85468. September 07, 1989*

Ponente: GRIÑO-AQUINO, J.

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Brought up for review before this Court is the order dated August 19, 1988 of the Sandiganbayan denying petitioner's motion to quash the information against him in Criminal Case No. 12893, entitled "People of the Philippines vs. Hon. Quintin S. Doromal," and the Sandiganbayan's order suspending him from office during the pendency of the case.

In October 1987, Special Prosecution Officer II, Dionisio A. Caoili, conducted a preliminary investigation of the charge against the petitioner, Quintin S. Doromal, a former Commissioner of the Presidential Commission on Good Government (PCGG), for violation of the Anti-Graft and Corrupt Practices Act (RA 3019), Sec. 3(h), in connection with his shareholdings and position as president and director of the Doromal International Trading Corporation (DITC) which submitted bids to supply P61 million worth of electronic, electrical, automotive, mechanical and airconditioning equipment to the Department of Education, Culture and Sports (or DECS) and the National Manpower and Youth Council (or NMYC).

On January 25, 1988, with the approval of Special Prosecutor Raul Gonzales, Caoili filed in the Sandiganbayan an information against the petitioner (Criminal Case No. 12766) alleging:

"That in or about the period from April 28, 1986 to October 16, 1987, in Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then Commissioner of the Presidential Commission on Good Government, did then and there willfully and unlawfully have direct or indirect financial interest in the Doromal International Trading Corporation, an entity which transacted or entered into a business transaction or contract with the Department of Education, Culture and Sports and the National Manpower and Youth Council, both agencies of the government which business, contracts or transactions he is prohibited by law and the constitution from having any interest." (pp. 246-247, Rollo; underlining supplied.)

The petitioner filed a petition for certiorari and prohibition in this Court questioning the jurisdiction of the "Tanodbayan" to file the information without the approval of the Ombudsman after the effectivity of the 1987 Constitution (G.R. No. 81766, entitled "Doromal vs. Sandiganbayan").

On June 30, 1988, this Court annulled the information in accordance with its decision in the consolidated cases of Zaldivar vs. Sandiganbayan, G.R. Nos. 79690-707 and Zaldivar vs. Gonzales, G.R. No. 80578, April 27, 1988 (160 SCRA 843), where it ruled that:

"x x x the incumbent Tanodbayan (called Special Prosecutor under the 1987 Constitution and who is supposed to retain powers and duties NOT GIVEN to the Ombudsman) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases with the Sandiganbayan, except upon orders

of the Ombudsman. This right to do so was lost effective February 2, 1987. From that time, he has been divested of such authority."

Upon the annulment of the information against the petitioner, the Special Prosecutor sought clearance from the Ombudsman to refile it.

In a Memorandum dated July 8, 1988, the Ombudsman, Honorable Conrado Vasquez, granted clearance but advised that "some changes be made in the information previously filed." (p. 107, Rollo.)

Complying with that Memorandum, a new information, duly approved by the Ombudsman, was filed in the Sandiganbayan (Criminal Case No. 12893), alleging that:

"x x x, the above-named accused [Doromal], a public officer, being then a Commissioner of the Presidential Commission on Good Government, did then and there wilfully and unlawfully, participate in a business through the Doromal International Trading Corporation, a family corporation of which he is the President, and which company participated in the biddings conducted by the Department of Education, Culture and Sports and the National Manpower & Youth Council, which act or participation is prohibited by law and the constitution." (p. 68, Rollo; emphasis supplied.)

On July 25, 1988, petitioner filed a "Motion to Quash" the information for being:

- (a) invalid because there had been no preliminary investigation; and
- (b) defective because the facts alleged do not constitute the offense charged (Annex C).

The Sandiganbayan denied the motion to quash in its orders dated July 25, 1988 and August 19, 1988 (Annexes D, N and O, pp. 81, 173 & 179, Rollo).

On August 22, 1988, the Special Prosecutor filed a "Motion to Suspend Accused Pendente Lite" pursuant to Section 13 of the Anti-Graft and Corrupt Practices Act (R.A. 3019). Over the petitioner's objection (because the President had earlier approved his application for indefinite leave of absence as PCGG commissioner "effective immediately and until final decision of the courts in your case" [Annex S-1, p. 189, Rollo]), the Sandiganbayan on September 5, 1988 ordered his suspension pendente lite from his position as PCGG Commissioner and from any other office he may be holding (Annex T). His motion for reconsideration of that order was also denied by the Court (Annex Y). Hence, this petition for certiorari and prohibition alleging that the Sandiganbayan gravely abused its discretion: (1) in denying the petitioner's motion to quash the information in Criminal Case No. 12893; and, (2) in suspending the petitioner from office despite the President's having previously approved his indefinite leave of absence "until final decision" in this case.

The petitioner contends that as the preliminary investigation that was conducted prior to the filing of the original information in Criminal Case No. 12766 was nullified by this Court, another preliminary investigation should have been conducted before the new information in Criminal Case No. 12893 was filed against him. The denial of his right to such investigation allegedly violates his right to due process and constitutes a ground to quash the information.

On the other hand, the public respondent argues that another preliminary investigation is unnecessary because both old and new informations involve the same subject matter - a violation of Section 3(H) of R.A. No. 3019 (the Anti-Graft and Corrupt Practices Act) in relation to Section 13, Article VII of the 1987 Constitution. Moreover, the petitioner allegedly waived the second preliminary investigation by his failure to comply with the Court's Order dated August 12, 1988 directing him to submit a statement of new or additional facts, duly supported by photo copies of documents which he would present should a new preliminary investigation be ordered (Annex H, p. 94, Rollo).

The petition is meritorious. A new preliminary investigation of the charge against the petitioner is in order not only because the first was a nullity ("a dead limb on the judicial tree which should be lopped off and wholly disregarded" - *Anuran vs. Aquino*, 38 Phil. 29) but also because the accused demands it as his right. Moreover, the charge against him had been changed, as directed by the Ombudsman.

Thus, while the first information in Criminal Case No. 12766 charged that the DITC -

"entered into a business transaction or contract with the Department of Education, Culture and Sports and the National Manpower and Youth Council, x x x which business, contracts or transactions he [petitioner] is prohibited by law and the constitution from having any interest." (p. 70, Rollo.)

the new information in Criminal Case No. 12883 alleges that the petitioner:

"unlawfully participate[d] in a business through the Doromal International Trading Corporation, a family corporation of which he is the President, and which company participated in the biddings conducted by the Department of Education, Culture and Sports and the National Manpower & Youth Council, which act or participation is prohibited by law and the constitution." (p. 68, Rollo.)

The petitioner's right to a preliminary investigation of the new charge is secured to him by the following provisions of Rule 112 of the 1985 Rules on Criminal Procedure:

"SEC. 3. Procedure. x x x no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted x x x."

"SEC. 7. When accused lawfully arrested without warrant. - When a person is lawfully arrested without a warrant for an offense cognizable by the Regional Trial Court, the complaint or information may be filed by the offended party, peace officer or fiscal without a preliminary investigation having been first conducted, on the basis of the affidavit of the offended party or arresting officer or person.

"However, before the filing of such complaint or information, the person arrested may ask for a preliminary investigation by a proper officer in accordance with this Rule x x x.

"If the case has been filed in court without a preliminary investigation having been first conducted, the accused may within five (5) days from the time he learns of the filing of the information, ask for a preliminary investigation with the same right to adduce evidence in his favor in the manner prescribed in this Rule."

That right of the accused is "a substantial one." Its denial over his opposition is a "prejudicial error, in that it subjects the accused to the loss of life, liberty, or property without due process of law" (*U.S. vs. Marfori*, 35 Phil. 666).

The need to conduct a new preliminary investigation when the defendant demands it and the allegations of the complaint have been amended, has been more than once affirmed by this Court:

"III. (a) x x x, the Court finds that since the information for alleged violation of the Anti-Graft Law was filed without any previous notice to petitioners and due preliminary investigation thereof, and despite the dismissal of the original charge for falsification as being 'without any factual or legal basis,' petitioners are entitled to a new preliminary investigation for the graft charge, with all the rights to which they are entitled under section 1 of Republic Act No. 5180, approved September 8, 1967, as invoked by them anew from respondent court, viz, the submittal of the testimonies in affidavit form of the complainant and his witnesses duly, sworn to before the investigating fiscal, and the right of accused, through counsel, to cross-examine them and to adduce evidence in their defense. In line with the settled doctrine as restated in *People vs. Abejuela* (38 SCRA 324), respondent court shall hold in abeyance all proceedings in the case before it until after the outcome of such new preliminary investigation. (*Luciano vs. Mariano*, 40 SCRA 187, 201; underlining ours).

"The right of the accused not to be brought to trial except when remanded therefor as a result of a preliminary examination before a committing magistrate, it has been held is a substantial one. Its denial over the objections of the accused is prejudicial error in that it subjects the accused to the loss of life, liberty or property without due process of law. (Conde vs. Judge of Court of First Instance of Tayabas, 45 Phil. 173, 176.)

"The absence of a preliminary investigation - if it is not waived - may amount to a denial of due process. (San Diego vs. Hernandez, 24 SCRA 110, 114.)

"In this jurisdiction, the preliminary investigation in criminal cases is not a creation of the Constitution; its origin is statutory and it exists and the right thereto can be invoked when so established and granted by law. (Mariano Marcos, et al. vs. Roman A. Cruz, 68 Phil. 96; underscoring supplied.)"

The Solicitor General's argument that the right to a preliminary investigation may be waived and was in fact waived by the petitioner, impliedly admits that the right exists. Since the right belongs to the accused, he alone may waive it. If he demands it, the State may not withhold it.

However, as the absence of a preliminary investigation is not a ground to quash the complaint or information (Sec. 3, Rule 117, Rules of Court), the proceedings upon such information in the Sandiganbayan should be held in abeyance and the case should be remanded to the office of the Ombudsman for him or the Special Prosecutor to conduct a preliminary investigation. Thus did We rule in Luciano vs. Mariano, 40 SCRA 187, 201, Ilagan vs. Enrile, 139 SCRA 349 and more recently in Sanciangco, Jr. vs. People, 149 SCRA 1, 3-4:

"The absence of preliminary investigation 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 vs. Gomez, 117 SCRA 72, 77-78; citing People vs. Casiano, 1 SCRA 478). In this case, the Tanodbayan has the duty to conduct the said investigation."

There is no merit in petitioner's insistence that the information should be quashed because the Special Prosecutor admitted in the Sandiganbayan that he does not possess any document signed and/or submitted to the DECS by the petitioner after he became a PCGG Commissioner (p. 49, Rollo). That admission allegedly belies the averment in the information that the petitioner "participated" in the business of the DITC in which he is prohibited by the Constitution or by law from having any interest. (Sec. 3-h, RA No. 3019.)

The Sandiganbayan in its order of August 19, 1988 correctly observed that "the presence of a signed document bearing the signature of accused Doromal as part of the application to bid x x x is not a sine qua non" (Annex O, p. 179, Rollo), for, the Ombudsman indicated in his Memorandum/Clearance to the Special Prosecutor, that the petitioner "can rightfully be charged x x x with having participated in a business which act is absolutely prohibited by Section 13 of Article VII of the Constitution" because "the DITC remained a family corporation in which Doromal has at least an indirect interest." (pp. 107-108, Rollo.)

Section 13, Article VII of the 1987 Constitution provides that "the President, Vice-President, the members of the Cabinet and their deputies or assistants shall not x x x during (their) tenure, x x x directly or indirectly x x x participate in any business." The constitutional ban is similar to the prohibition in the Civil Service Law (PD No. 807, Sec. 36, subpar. 24) that "pursuit of private business x x x without the permission required by Civil Service Rules and Regulations" shall be a ground for disciplinary action against any officer or employee in the civil service.

On the suspension of the petitioner from office, Section 13 of the Anti-Graft and Corrupt Practices Act (RA 3019)

provides:

"SEC. 13. Suspension and loss of benefits. - Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him."

Since the petitioner is an incumbent public official charged in a valid information with an offense punishable under the Constitution and the laws (RA 3019 and PD 807), the law's command that he "shall be suspended from office" pendente lite must be obeyed. His approved leave of absence is not a bar to his preventive suspension for, as indicated by the Solicitor General, an approved leave, whether it be for a fixed or indefinite period, may be cancelled or shortened at will by the incumbent.

Nevertheless, as we held in *Layno, Sr. vs. Sandiganbayan*, 136 SCRA 536 (1985), a preventive suspension for an indefinite period of time, such as one that would last until the case against the incumbent official shall have been finally terminated, would "outrun the bounds of reason and result in sheer oppression" and a denial of due process.

In the case of *Garcia vs. The Executive Secretary*, 6 SCRA 1 (1962), this Court ordered the immediate reinstatement, to his position as chairman of the National Science Development Board of a presidential appointee whose preventive suspension had lasted for nearly seven (7) months. Some members of the Court held that the maximum period of sixty (60) days provided in Section 35 of the Civil Service Act of 1959 (Republic Act 2260) was applicable to the petitioner. The others believed, however, that that period may not apply strictly to cases of presidential appointees, nevertheless, the preventive suspension shall be limited to a reasonable period. Obviously, the Court found the petitioner's preventive suspension for seven (7) months to be unreasonable. The Court stated:

"To adopt the theory of respondents that an officer appointed by the President, facing administrative charges can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution (No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law. [Art. XII, Sec. 4, Constitution of the Philippines]) and the Civil Service Law (No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law and after due process). x x x In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. x x x."

Pursuant to the guarantee of equal protection of the laws in the Bill of Rights of our Constitution, that same ruling was applied in *Deloso vs. Sandiganbayan*, G.R. Nos. 86899-903, May 15, 1989.

The petitioner herein is no less entitled to similar protection. Since his preventive suspension has exceeded the reasonable maximum period of ninety (90) days provided in Section 42 of the Civil Service Decree of the Philippines (P.D. 807), it should now be lifted.

WHEREFORE, the petition for certiorari and prohibition is granted. The Sandiganbayan shall immediately remand Criminal Case No. 12893 to the Office of the Ombudsman for preliminary investigation and shall hold in abeyance the proceedings before it pending the result of such investigation. The preventive suspension of the petitioner is hereby lifted. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

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