

CESAR E. A. VIRATA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 86926. October 15, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

These are petitions for certiorari and prohibition with a prayer for a restraining order and/or injunction urging this Court (a) to review and annul the resolutions of respondent Sandiganbayan in Civil Case No. 0035 entitled Republic of the Philippines vs. Benjamin (Kokoy) Romualdez, et al.[1] of 28 October 1988 denying the separate motions to dismiss filed by petitioners and of 20 January 1989 denying the separate motions for reconsideration filed by them, and (b) to issue an order commanding respondent Sandiganbayan to desist from further proceeding in Civil Case No. 0035. The first petition (hereinafter referred to as the Virata case) was filed on 17 February 1989, while the second (hereinafter referred to as the Mapa case) was filed on 20 February 1989.

We earlier ordered the consolidation of these petitions.

Considering the allegations made, the issues raised and the arguments adduced in the Petitions, the Comment of the respondent filed by the Solicitor General in each case, and the replies, rejoinder and the sur-rejoinder thereafter filed by the parties, We resolved to give due course to the petitions, consider the Comments as the Answers, dispense with the submission of Memoranda as the pleadings exhaustively discuss and argue the issues, and decide the petitions on their respective merits.

Both petitions are anchored on the following grounds, to wit:

"I.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in finding that the complaint sufficiently states a cause of action against petitioner Virata.

II.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in concluding that the PCGG and the Solicitor General have the authority to file the complaint and to prosecute the same despite the provisions of the 1987 Constitution which vests (sic) such authority upon the Office of the Tanodbayan.

III.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in

concluding that the PCGG as presently constituted has not become functus officio.

IV.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in concluding that the PCGG Charter does not constitute discriminatory legislation violative of the equal protection clause of the 1987 Constitution.

V.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in concluding that the PCGG Charter is not unconstitutional and void as a bill of attainder.

VI.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in concluding that the PCGG Charter is not unconstitutional as an ex post facto law.

VII.

The Honorable Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in concluding that petitioner Virata was not denied due process of law even as no preliminary investigation, with prior notice to him and opportunity to be heard, was conducted by the authorized governmental agency."[2]

These are, substantially, the same grounds which petitioners raised before respondent Sandiganbayan in their separate motions to dismiss the Second Amended Complaint (Expanded per Court Approved Manifestation/Motion Acted on 8 December 1989)[3] which respondent Sandiganbayan denied in its challenged resolution of 28 October 1988,[4] the pertinent portion of which reads:

"We are not impressed by defendants--movants arguments to support the instant motions to dismiss the Expanded Amended Complaint. Hereunder are set out the reasons to support Our ruling.

Firstly, the instant action is a civil suit for the recovery of ill-gotten wealth filed in accordance with Executive Orders Nos. 1, 2 and 14, as amended, enacted pursuant to Section 1 (d), Article II of Proclamation No. 3, dated March 25, 1986, otherwise known as the Freedom Constitution (For reference, see pertinent Resolution in Republic vs. Lucio Tan, et al., Civil Case No. 0005). It is completely separate and distinct from the proceedings contemplated in Republic Act No. 1379, hence, 'no previous, inquiry similar to preliminary investigation in criminal cases' need be conducted. Considering the purely civil nature of the instant case, the rules on procedure apply. Consequently, the requirements of due process and fairness, due notice, hearing and opportunity to adduce evidence are matters which are involved prior to the filing of the complaint, since such filing connotes that a prima facie case had been found and determined by the PCGG in accordance with its Rules and Regulations promulgated on April 11, 1986.

Secondly, a motion to dismiss for failure to state a cause of action admits, for the purpose of the motion, the truth of all facts well pleaded in the pleading attached and, likewise, any inferences fairly deducible therefrom. In other words, it hypothetically admits the truth of the allegations of fact made in the complaint (Pinero vs. Enriquez, 84 Phil. 774). The test is whether or not, admitting the facts alleged, the Court could render a valid judgment in accordance with the prayer in the complaint (De Jesus vs. Belarmino, 95 Phil. 365). Any factual

issues raised in plaintiff's cause of action should be the subject of a full-dress trial (*Socorro vs. Vargas*, 25 SCRA 592). The complaint in the instant case, original and expanded, contains five (5) causes of action, based not only on 'General Averments' but also on 'Specific Averments of Defendants' Illegal Acts' (Paragraphs 15, (a) to (i) and 16). Perusal thereof clearly support (sic) the view that the Expanded Complaint, indeed, state (sic) valid and sufficient causes of action, wherein alleged violations of legal rights by the defendants are averred (Please refer to *Ma-ao Sugar Central Co. vs. Barrios*, 79 Phil. 667, *Militante vs. Edrosolano*, 39 SCRA 489).

Thirdly, the jurisdiction of this Court over the persons of the defendants-movants and the subject matter of the Expanded Complaint in the instant cases, as well as in other cases of the same nature pending before all three Division (sic) of this Court, cannot be validly disputed or objected to. Executive Orders Nos. 1, 2 and 14, as amended, constitute the very roots and sources of Our authority to accept the filing of complaints for the recovery of ill-gotten wealth. Once it is shown that said complaints are filed within the time constraints provided in the 1987 Constitution, (Sections 26, 27 and Article XVIII of the Transitory Provisions), this Court is vested with the appropriate authority to try and decide the issues raised therein. (Sections 2 and 3, Executive Order No. 14, as amended). The original and exclusive jurisdiction of this Court over cases for the recovery of ill-gotten wealth accumulated by the persons mentioned in Executive Orders Nos. 1 and 2 have been expressly confirmed by the Hon. Supreme Court in the leading cases of *Bataan Shipyard & Engineering Co., Inc. (BASECO) vs. PCGG*, et al. (G.R. No. 75885, June 30, 1988); *PCGG vs. Hon. Emmanuel G. Peña*, et al. (G.R. No. 77663, April 12, 1988); and *Ofelia Trinidad vs. PCGG*, et al. (G.R. No. 77695, June 16, 1988); *Soriano*, et al. vs. Hon. Mannel (sic) Yuzon, Eduardo Cojuangco, et al. vs. SEC, et al., and *Clifton Ganay vs. PCGG*. (G.R. Nos. 74910, 75075, 75094, 76397, 79549 and 75250, August 10, 1988). Lately, the Hon. Supreme Court upheld the dismissal by this Court of the motion to dismiss filed by J. Chua, one of the defendants in the *Binondo Central Bank* case (PCGG Case No. 0017) questioning the service of summons and the Amended Complaint upon him. (G.R. No. 83428, July 29, 1988).

Fourthly, neither do We find valid and/or justified the objections to the constitution and membership of the PCGG when the instant case was filed, it being seemingly indicative of a bankruptcy of argumentation. Nor are there any taint (sic) of unconstitutionality (re: equal protection, bill of attainder or ex post facto law), considering that (1) a reasonable standard or classification exist (sic) wherein persons similarly situated are charged and accorded due process; (2) the sequestration, freeze/hold orders and provisional takeover are mere provisional remedies applicable generally and/or peculiarly to unearthed instances of ill-gotten wealth; (3) there are (sic) no preclusion of enactments imparting penal or criminal taint to conduct bereft of such character, and, (4) no divestment of title over property seized (*BASECO vs. PCGG*, supra)."

Petitioners' separate motions to reconsider the same having been denied by respondent Sandiganbayan in its resolution of 20 January 1989 on the ground that they are repetitions of the arguments in the motion to dismiss and that the resolution of 28 October 1988 amply discussed and disposed of the same, petitioners separately filed the instant petitions.

The antecedent facts and proceedings generative of the instant petitions are as follows:

On 31 July 1987, the Republic of the Philippines, represented by the Presidential Commission on Good Government (PCGG), assisted by the Solicitor General, filed a complaint with the respondent Sandiganbayan (SB) against Benjamin (Kokoy) Romualdez and forty-four others[5] for, as stated under the heading Nature of the Action, recovery of "ill-gotten wealth consisting of funds and other property which they, in unlawful concert with one another, had acquired and accumulated in flagrant breach of trust and of their fiduciary obligations as public officers, with grave abuse of rights and power and in brazen violation of the Constitution and laws of the Republic of the Philippines, thus resulting in their unjust enrichment during Defendant Ferdinand E. Marcos' 20 years of rule from December 30, 1965 to February 25, 1986 x x x." It is further alleged therein that "the wrongs committed by defendants, acting singly and collectively, and in unlawful concert with one another, include the

misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power." [6]

The above complaint was docketed as Civil Case No. 0035. It underwent three (3) amendments. The Amended Complaint was filed on 20 August 1987; [7] the Second Amended Complaint was filed on 4 November 1987; [8] and the Second Amended Complaint, as expanded upon appropriate motion duly approved by respondent SB, was filed on 20 January 1988. [9]

This expanded Second Amended Complaint, which maintains the allegations under the heading Nature of the Action in the original and the Amended complaints, impleads as additional co-defendants Jose F.S. Bengzon, Jr., Jose Vicente Jimenez, Amando Faustino, Jr., Leonardo C. Cruz, Eugenia Muñoz, Rex Drilon, Jose Mantecon and Kurt Bachmann, Jr.; and, so far as pertinent and relevant in these petitions, alleges, inter alia:

(A) Under the heading THE PARTIES, that petitioners, with the other co-defendants specifically named, are dummies, nominees or agents of defendants Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos, and Imelda R. Marcos for having allowed themselves to be incorporators, directors, board members and/or stockholders of corporations beneficially held and/or controlled by said defendants Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos and Imelda R. Marcos. [10]

(B) Alleges under the heading GENERAL AVERMENTS OF DEFENDANTS' ILLEGAL ACTS, that:

x x x x x x x x

"9. (a) From the early years of his presidency, Defendant Ferdinand E. Marcos took undue advantage of his powers as President. All throughout the period from September 21, 1972 to February 25, 1986, he gravely abused his powers under martial law and ruled as Dictator under the 1973 Marcos-promulgated Constitution. Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth;

(b) Upon his unfettered discretion and sole authority, for the purpose of implementing the plan referred to above, Defendant Ferdinand E. Marcos ordered and caused, among others:

(b-i) the massive and unlawful withdrawal of funds, securities, reserves and other assets and property from the National Treasury, the Central Bank, the other financial institutions and depositories of Plaintiff;

(b-ii) the transfer of such funds, securities, reserves and other assets and property to payees or transferees of his choice and whether and in what manner such transactions should be recorded in the books and records of these institutions and other depositories of Plaintiff;

10. Among others, in furtherance of the plan and acting in the manner referred to above, in unlawful concerted (sic) with one another and with gross abuse of power and authority, Defendants Ferdinand E. Marcos and Imelda R. Marcos:

(a) confiscated and/or appropriated for themselves large private enterprises, particularly those belonging to opponents of the Marcos regime, to the serious detriment and material damage of their owners as well as the corporation and banking system of the country;

(b) converted government-owned and controlled corporations into private enterprises and appropriated them and/or their assets for their own benefit and enrichment;

(c) awarded contracts with the Government to their relatives, business associates, dummies, nominees, agents or persons who are beholden to said defendants, under terms and conditions grossly and manifestly disadvantageous

to the Government;

(d) misappropriated, embezzled and/or converted to their own use funds of government financial institutions, particularly those allocated to the Office of the President and other ministries and agencies of the government including, those conveniently denominated as intelligence or counter-insurgency funds, as well as funds provided to Plaintiff by foreign countries, multinational, public and private financial institutions;

(e) raided Government financial and banking institutions of billions of pesos in loans, guarantees and other types of financial accommodations to finance dubious and/or overpriced projects of favored corporations or individuals and misused and/or converted to their own use and benefit deposits found therein to the financial ruin of Plaintiff and the Filipino people;

(f) extorted, demanded and received improper payments in the form of, among others, commissions, bribes and kickbacks from persons and corporations entering into contracts with the Government, or exacting from the Government or its agencies or instrumentalities for themselves or for third persons, permits, licenses or concessions which were then required in order to engage in particular business activities;

(g) established monopolies and combinations in restraint of trade in various fields of commerce and agriculture, as well as in gambling, to facilitate their exploitation for their own benefit and enrichment;

(h) sold, conveyed and/or transferred Government property, real and/or personal, to corporations beneficially held and/or controlled by them or through third persons, under such terms and condition's grossly and manifestly disadvantageous to the Government;

(i) engaged in other illegal and improper acts and practices designed to defraud Plaintiff and the Filipino people, or otherwise misappropriated and converted to their own use, benefit and enrichment the lawful patrimony and revenues of Plaintiff and the Filipino people.

11. Among the assets acquired by defendants in the manner above-described and discovered by the Commission in the exercise of its official responsibilities (sic) are funds and other property listed in Annex "A" hereof and made an integral part of this Complaint.

12. Defendants, acting singly or collectively, and/or in unlawful concert with one another, for the purpose of preventing disclosure and avoiding discovery of their unmitigated plunder of the National Treasury and of their other illegal acts, and employing the services of prominent lawyers, accountants, financial experts, businessmen and other persons, deposited, kept and invested funds, securities and other assets estimated at billions of US dollars in various banks, financial institutions, trust or investment companies and with persons here and abroad.”[11]

(C) Under the heading SPECIFIC AVERMENTS OF DEFENDANTS' ILLEGAL ACTS, that:

x x x x x x x x

"14. Defendants Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez, acting by themselves and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter Defendant spouses, engaged in devices, schemes and stratagems to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, among others:

x x x x x x x x

(b) gave MERALCO undue advantage (i) by effecting the increase of power rates with automatic authority to tack into the consumers' electric bills the so-called purchased and currency adjustment, and (ii) with the active collaboration of Defendant Cesar E.A. Virata, by reducing the electric franchise tax from 5% to 2% of gross

receipts and the tariff duty on fuel oil imports by public utilities from 20% to 10%, resulting in substantial savings for MERALCO but without any significant benefit to the consumers of electric power and loss of millions of pesos in much needed revenues to the government;

x x x x x x x x

(g) secured, in a veiled attempt to justify MERALCO's anomalous acquisition of the electric cooperatives, with the active collaborations of Defendants Cesar E.A. Virata, Juanito R. Remulla, Isidro Rodriguez, Jose C. Hernandez, Pedro Dumol, Ricardo C. Galing, Francisco C. Gatmaitan, Mario D. Camacho and the rest of the Defendants, the approval by Defendant Ferdinand E. Marcos and his cabinet of the so-called 'Three-Year Program for the Extension of MERALCO's Services to Areas Within the 60-Kilometer Radius of Manila,' which required government capital investment amounting to millions of pesos;

x x x x x x x x

(m) manipulated, with the support, assistance and collaboration of Philguarantee officials led by Chairman Cesar E.A. Virata and the senior managers of FMMC/PNI Holdings, Inc. led by Jose S. Sandejas, Jr., Jose M. Mantecon and Kurt S. Bachmann Jr., among others, the formation of Erectors Holdings, Inc. without infusing additional capital solely for the purpose of making it assume the obligation of Erectors Incorporated with Philguarantee in the amount of P527,387,440.71 with insufficient securities/collaterals just to enable Erectors, Inc. to appear viable and to borrow more capitals (sic), so much so that its obligation with Philguarantee has reached a total of more than P2 Billion as of June 30, 1987;

x x x x x x x x

17. The following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be used as instruments in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff, or (ii) to be incorporators, directors, or members of corporations beneficially held and/or controlled by Defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) T. Romualdez and Juliette Gomez Romualdez in order conceal (sic) and prevent recovery of assets illegally obtained: Francisco Tantuico, x x x, Cesar E.A. Virata, x x x, Placido Mapa, Jr., x x x ;

18. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of right and power, unjust enrichment, violation of the Constitution and the laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people."

(D) Under the heading CAUSES OF ACTION, that:

"19. First Cause of Action: BREACH OF PUBLIC TRUST — A public office is a public trust. By committing all the acts described above, Defendants repeatedly breached public trust and the law, making them jointly and severally liable to Plaintiff. The funds and other property acquired by Defendants following, or as a result of, their breach of public trust are deemed to have been acquired for the benefit of Plaintiff and are, therefore, impressed with constructive trust in favor of Plaintiff and the Filipino people. Consequently, Defendants are solidarily liable to return or reconvey to Plaintiff all such funds and property thus impressed with constructive trust for the benefit of Plaintiff and the Filipino people;

20. Second Cause of Action: ABUSE OF RIGHT AND POWER — (a) Defendants, in perpetrating the unlawful acts described above, committed abuse of right and power which caused untold misery, sufferings and damages to Plaintiff. Defendants violated, among others, Articles 19, 20, and 21 of the Civil Code of the Philippines;

(b) As a result of the foregoing acts, Defendants acquired title to and the beneficial interest in funds and other property and concealed such title, funds and interests through the use of relatives, business associates,

nominees, agents or dummies. Defendants are, therefore, jointly and severally, liable to Plaintiff to return and reconvey all such funds and other property unlawfully acquired, or alternatively, to pay Plaintiff, jointly and severally, by way of indemnity, the damage caused to Plaintiff equivalent to the amount of such funds or the value of other property not returned or restored to Plaintiff, plus interest thereon from the date of unlawful acquisition until full payment.

21. Third Cause of Action: UNJUST ENRICHMENT — Defendants illegally accumulated funds and other property in violation of the laws of the Philippines and in breach of their official functions and fiduciary obligations. Defendants, therefore, have unjustly enriched themselves to the grave and irreparable damage and prejudice of Plaintiff. Defendants have an obligation at law, independently of breach of trust and abuse of right and power and, as an alternative, to jointly and severally return to Plaintiff such funds and other property with which Defendants, in gross evident bad faith, have unjustly enriched themselves or, in default thereof, restore to Plaintiff the amount of such funds and the value of the other property including those which may have been wasted, and/or lost, with interest thereon from the date of unlawful acquisition until full payment;

22. Fourth Cause of Action: ACCOUNTING — The Commission, acting pursuant to the provisions of applicable law, respectfully maintains that Defendants, acting singly or collectively, and/or in unlawful concert with one another, acquired funds, assets and property during the incumbency of Defendant public officers, manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property. Consequently, they are required to show to the satisfaction of this Honorable Court that they have lawfully acquired all such funds, assets and property which are in excess of their legal net income, and for this Honorable Court to decree that the Defendants are under obligation to account to Plaintiff with respect to all legal or beneficial interest in funds, properties and assets of whatever kind and wherever located in excess of the lawful earnings or lawful income from legitimately acquired property;

23. Fifth Cause of Action: LIABILITY FOR DAMAGES — (a) By reason of the unlawful acts set forth above, Plaintiff and the Filipino people have suffered actual damages in an amount representing the pecuniary loss sustained by the latter as a result of Defendants' unlawful acts, the approximate value and interest on which from the time of their wrongful acquisition, plus expenses which Plaintiff has been compelled to incur and shall continue to incur in its effort to recover Defendants' ill-gotten wealth all over the world. Defendants are, therefore, jointly and severally liable to Plaintiff for actual damages and for expenses incurred in the recovery of Defendants' ill-gotten wealth;

(b) As a result of Defendants' unlawful, malicious, immoral and wanton acts described above, Plaintiff and the Filipino people had painfully endured and suffered for more than twenty long years, and still continue to endure and suffer anguish, fright, sleepless nights, serious anxiety, wounded feelings and moral shock, as well as besmirched reputation and social humiliation before the international community, for which Defendants are jointly and severally liable to Plaintiff and the Filipino people for moral damages;

(c) In addition, Plaintiff and the Filipino people are entitled to temperate damages for their sufferings which, by their very nature, are incapable of pecuniary estimation, but which this Honorable Court may determine in the exercise of its sound discretion;

(d) Defendants, by reason of the above described unlawful acts, have violated and invaded the inalienable right of Plaintiff and the Filipino people to a fair and decent way of life befitting a Nation with rich natural and human resources. This basic and fundamental right of Plaintiff and the Filipino people should be recognized and vindicated by awarding nominal damages in an amount to be determined by the Honorable Court in the exercise of its sound discretion;

(e) By way of example and correction for the public good and in order to ensure that Defendants' unlawful, malicious, immoral and wanton acts are not repeated, said Defendants are jointly and severally liable to Plaintiff for exemplary damages.”[12]

(E) It then prays for judgment ordering Defendants to return and reconvey to Plaintiff all funds and other property impressed with constructive trust in favor of Plaintiff and the Filipino people, to account to Plaintiff all legal or beneficial interest in funds, properties and assets in excess of their lawful earnings, and to pay Plaintiff actual, moral, temperate, nominal, and exemplary damages and attorney's fees.[13]

We shall now turn Our attention to the grounds relied upon in these petitions.

A.

No doubt is left in Our minds that the questioned expanded Second Amended Complaint is crafted to conform to a well-planned outline that forthwith focuses one's attention to the asserted right of the State, expressly recognized and affirmed by the 1987 Constitution,[14] and its corresponding duty[15], to recover ill-gotten wealth from the defendants named therein; the alleged schemes and devices used and the manipulations made by them to amass such ill-gotten wealth, which are averred first generally and then specifically; and the extent of the reliefs demanded and prayed for. However, as shown above, the maze of unnecessary literary embellishments may indeed raise some doubts on the sufficiency of the statement of material operative facts to flesh out the causes of action. Be that as it may, We are, nevertheless, convinced that the questioned pleading has sufficiently shown viable causes of action.

The essential elements of a cause of action are a legal right of the plaintiff, a correlative obligation of the defendant, and an act or omission of the defendant violative of said legal right.[16] The test of sufficiency of the facts to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer.[17] As stated in *Adamos vs. J.M. Tuason & CO., Inc.*,[18] "It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether these allegations are true or not is beside the point, for their truth is hypothetically admitted. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer in the complaint? x x x So rigid is the norm prescribed that if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits." [19]

If petitioners perceive some ambiguity or vagueness therein, the remedy is not a motion to dismiss. An action should not be dismissed upon a mere ambiguity, indefiniteness or uncertainty, for these are not grounds for a motion to dismiss, but rather for a bill of particulars.[20] *Militante vs. Edrosolano, et al.*[21] prescribes the proper judicial attitude when confronted by such a problem:

"x x x The judiciary is expected then to exercise utmost care and circumspection in passing upon a motion to dismiss on the ground of the absence thereof [cause of action] lest, by its failure to manifest a correct appreciation of the facts alleged and deemed hypothetically admitted, what the law grants or recognizes is effectively nullified. If that happens, there is a blot on the legal order. The law itself stands in disrepute."

B.

The power of the PCGG to file and prosecute, with the assistance of the Solicitor General, all cases investigated by it pursuant to Executive Order No. 14, in relation to Executive Orders No. 1 and No. 2, remains in full force and effect. It was not taken away by the provisions of the 1987 Constitution on the Tanodbayan. As a matter of fact, the Constitution recognizes this power when, in reference to the recovery of ill-gotten wealth, it did not divest the PCGG of said power but merely fixes a deadline for the exercise of the authority to issue sequestration or freeze orders under Proclamation No. 3 dated 25 March 1986 and provides the safeguards in its issuance, including the registration with the proper court of the order and the list of the sequestered or frozen properties, and

the filing of the corresponding judicial action or proceeding.[22] Sections 1 and 2 of Executive Order No. 14, which read:

“SECTION 1. Any provision of the law to the contrary notwithstanding, the Presidential Commission on Good Government, with the assistance of the Office of the Solicitor General and other government agencies, is hereby empowered to file and prosecute all cases investigated by it under Executive Order No. 1, dated February 28, 1986, and Executive Order No. 2, dated March 12, 1986, as may be warranted by its findings.

SECTION 2. The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof.”

was enacted by the President on 8 May 1986, or after the promulgation on 25 March 1986 of Proclamation No. 3 (The Provisional Constitution of the Republic of the Philippines). That continuing power of the PCGG above outlined has been sustained by this Court in *Bataan Shipyard and Engineering Co., Inc. vs. Presidential Commission on Good Government, et al.*,^[23] *PCGG vs. Peña, et al.*,^[24] *Soriano, et al. vs. Yuson, et al., Cojuangco, et al. vs. SEC, et al., Ganay vs. PCGG, Board of Directors of SMC, et al. vs. SEC, et al., Cojuangco, et al. vs. Laggui, et al., Nepternia Corp., et al. vs. PCGG, et al.*,^[25] *Cojuangco, Jr. vs. PCGG, et al.*,^[26] and *Roman Cruz vs. Sandiganbayan, et al.*^[27]

In *PCGG vs. Peña, supra.*, We ruled:

“2. These ample powers and authority vested in the Commission by the President in the exercise of legislative power granted her in the Provisional (Freedom) Constitution were confirmed in said Constitution and in the 1987 Constitution x x x.” (Italics supplied).

In *Cojuangco, Jr. vs. PCGG, et al., supra.*, We held:

x x x x x x x x

“From the foregoing provisions of law, particularly Sections 2(b) and 3(a) of Executive Order No. 1 and Sections 1 and 2 of Executive Order No. 14, it is clear that the PCGG has the power to investigate and prosecute such ill-gotten wealth cases of the former President, his relatives and associates, and graft and corrupt practices cases that may be assigned by the President to the PCGG to be filed with the Sandiganbayan. No doubt, the authority to investigate extended to the PCGG includes the authority to conduct a preliminary investigation.

Thus, the Tanodbayan lost the exclusive authority to conduct the preliminary investigation of these types of cases by the promulgation of Executive Orders 1 and 14 whereby the PCGG was vested concurrent jurisdiction with the Tanodbayan to conduct such preliminary investigation and to prosecute said cases before the Sandiganbayan. The power of the PCGG to conduct preliminary investigation of the aforementioned types of cases has been recognized by this Court in *Bataan Shipyard and Engineering Co., Inc. (BASECO) vs. PCGG*.

x x x x x x x x

This Court, in *Zaldivar*, interpreting the aforesaid provision of the Constitution, particularly Section 13(1) thereof vesting on the Ombudsman the right and the power to investigate on its own or on complaint, any act or omission of any public official, employee, office or agency which appears ‘to be illegal, unjust, improper, or inefficient’ held that the general power of investigation covers the lesser power to conduct a preliminary investigation. Thus, as the power of investigation vested on the Ombudsman under the Constitution includes the power to conduct such a preliminary investigation, then the special prosecutor (former Tanodbayan) may no longer conduct such a preliminary investigation unless duly authorized by the Ombudsman.

A reading of the foregoing provision of the Constitution does not show that the power of investigation including preliminary investigation vested on the Ombudsman is exclusive. Hence, the said provision of the

Constitution did not repeal or remove the power to conduct an investigation, including the authority to conduct a preliminary investigation, vested on the PCGG by Executive Orders Nos. 1 and 14.

Although under Section 26 of Article XVIII of the Constitution the authority of the PCGG to issue sequestration or freeze orders was maintained for not more than eighteen months after the ratification of the Constitution, it cannot be construed thereby that its power of investigation had thereby been revoked by the failure to reiterate said power in the Constitution.

x x x x x x x x

Under Section 15(1) of Republic Act No. 6770 aforesaid, the Ombudsman has primary jurisdiction over cases cognizable by the Sandiganbayan so that it may take over, at any stage from any investigatory agency of the government, the investigation of such cases. The authority of the Ombudsman to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government. Such investigatory agencies referred to include the PCGG x x x.

x x x x x x x x

It is also noted that under Section 15(11) of the aforesaid Republic Act No. 6770, among the powers vested on the Ombudsman is to investigate and to initiate the proper action for recovery of ill-gotten wealth and/or unexplained wealth amassed after 25 February 1986 and the prosecution of the parties involved therein. x x x this provision is a tacit recognition that the authority of the PCGG to conduct preliminary investigation of ill-gotten wealth and/or unexplained wealth amassed before February 25, 1986 is maintained."

x x x x x x x x

C.

The PCGG never became functus officio. Petitioners' claim that it did because persons who were originally named in Executive Order No. 1 to compose it[28] have long ceased to be members thereof is dismally absurd and groundless. Petitioners know that an office is separate and distinct from the holders thereof and We find no possible explanation, except perhaps their sheer reluctance to read Executive Order No. 1, as to how petitioners would have missed the title of said Order which reads Creating The Presidential Commission on Good Government and Section 1 thereof the first clause of which reads: "There is hereby created a Commission to be known as the Presidential Commission on Good Government x x x."

D.

The PCGG Charter (composed of Executive Orders Nos. 1, 2, and 14) does not violate the equal protection clause and is not a bill of attainder or an ex post facto law. The constitutionality of laws is presumed. To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful or argumentative implication; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond a reasonable doubt.[29] "The presumption is always in favor of constitutionality x x x. To doubt is to sustain." [30] Petitioners have not acquitted themselves of the duty to demonstrate such a conflict or to rebut that presumption. On the contrary, Our disquisitions in BASECO vs. PCGG, supra., and PCGG vs. Peña, supra., unequivocally sustain and affirm the constitutionality of the PCGG Charter. There is valid and reasonable basis for the classification. In the latter case, We stated:

"Hence, the imperative need for the Government of the restored Republic as its first official act to create the Commission as an administrative and quasi-judicial commission to recover the ill-gotten wealth 'amassed from vast resources of the government by the former President, his immediate family, relatives and close associates.'"

In the BASECO case, We expressly stated:

"Neither will this Court sustain the theory that the executive orders in question are a bill of attainder (sic). A bill of attainder is a legislative act which inflicts punishment without judicial trial. Its essence is the substitution of a legislative for a judicial determination of guilt.

In the first place, nothing in the executive orders can be reasonably construed as a determination or declaration of guilt. On the contrary, the executive orders, inclusive of Executive Order No. 14, make it perfectly clear that any judgment of guilt in the amassing or acquisition of 'ill-gotten wealth' is to be handed down by a judicial tribunal, in this case the Sandiganbayan, upon complaint filed and prosecuted by the PCGG. In the second place, no punishment is inflicted by the executive orders, as the merest glance at their provisions will immediately make apparent. In no sense, therefore, may the executive orders be regarded as a bill of attainder (sic)."

Equally untenable is the claim that the PCGG Charter is ex post facto because it alters the legal rules of evidence and receives less or different testimony than what the law required at the time of the commission of the offense in order to convict the offender.

For both the civil and criminal cases covered by the PCGG Charter, nothing has been altered in terms of the quantum of proof required for an adverse judgment against the defendants or a judgment of conviction against the accused, respectively. The plaintiff's burden to establish a preponderance of evidence in the former and proof beyond reasonable doubt in the latter has not been altered or modified.

E.

As correctly ruled by the respondent Sandiganbayan, the challenged case before it is not a criminal case but a civil suit. Accordingly, no previous inquiry similar to preliminary investigation in criminal cases need be conducted.

WHEREFORE, for want of merit, the instant petitions are DISMISSED.

Costs against petitioners.

SO ORDERED.

Fernan, C.J., Cruz, Paras, Padilla, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Narvasa, J., no part in GR No 86926: personal association with a party.

Melencio-Herrera, J., on leave.

Gutierrez, Jr., J., please see dissent.

Feliciano, J., see concurring and dissenting statement.

Bidin, J., I join in the dissent of Justice Gutierrez Jr.

[1] For reconveyance, reversion, accounting, restitution and damages. Forty-four (44) others were originally impleaded as co-defendants, namely: Juliette Gomez Romualdez, Ferdinand E. Marcos, Imelda R. Marcos, Conchita Romualdez Yap, Edon Yap, Francisco Tantuico, Delia Tantuico, Eduardo Abello, Cleofe Villar-Verzola, Mario Camacho, Carlos J. Valdez, Cesar Zalamea, Jovencio Sinco, Senen Gabaldon, Mamerto Nepomuceno, Antonio Ozaeta, Cesar Virata, Isidro Rodriguez, Juanito Remulla, Domingo Ingco, Jose Sandejas, Ber Bernabe, Jose Cruz, Jr., Josefiel Cruz, Jose Dans, Jr., Pedro Dumol, Ricardo Galing, Leonardo Gamboa, Francisco Gatmaitan, Jose Hernandez, Virgilio Leynes, Placido Mapa, Jr., Vicente Mills, Jr., Edilberto Narciso, Jr., Evelyn Nicasio, Lydia Nicasio, Zenaida Ocampo, Rosario Olivares, Josephine Ramirez, Edgardo Regala, Abelardo Termulo, Mauro Yumang, Josefa Cruz and Masaru Kabori. In the expanded Second Amended Complaint, the

following additional parties were impleaded as co-defendants, namely: Jose F.S. Bengzon, Jr., Jose Vicente Jimenez, Amando Faustino, Jr., Leonardo Cruz, Eugenia Muñoz, Rex Drilon II, Jose Mantecon and Kurt Bachmann, Jr.

[2] Rollo, Virata case, 14-15; Id., Mapa case, 13-14.

[3] Annex "F" of Petitions in both cases.

[4] Annex "A" of Petitions in both cases.

[5] Enumerated in footnote no. 1, supra.

[6] Rollo, Virata case, 119-120; Id., Mapa case, 100-101.

[7] Annex "D" of Petitions in both cases.

[8] Annex "E" of Petitions in both cases.

[9] Annex "F" of Petitions in both cases.

[10] Par. 7, under the heading Parties, of Second Amended Complaint, as expanded, 5-10.

[11] Rollo, Virata case, 217-223; Id., Mapa case, 202-208.

[12] Rollo, Virata case, 246-251; Id., Mapa case, 230-235.

[13] Id., Virata case, 251-253; Id., Mapa case, 235-237.

[14] Section 15 of Article XI on Accountability of Public Officers specifically provides: "The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel."

[15] Bataan Shipyard & Engineering Co., Inc. vs. PCGG, et al., 150 SCRA 181, 207.

[16] Ma-ao Sugar Central Co. vs. Barrios, 79 Phil. 666.

[17] Paminsan vs. Costales, 28 Phil. 487.

[18] 25 SCRA 529.

[19] Citing Republic Bank vs. Cuaderno, L-22399, 30 March 1967, 125 Phil. 1076.

[20] Amaro, et al. vs. Sumanguit, 5 SCRA 707.

[21] 39 SCRA 473, 479.

[22] Sec. 26, Article XVIII.

[23] Supra., footnote 15.

[24] 159 SCRA 556 (1988).

[25] 164 SCRA 226.

[26] G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226.

[27] G.R. No. 94595, 26 February 1991.

[28] Minister Jovito R. Salonga, as Chairman, Mr. Ramon Diaz, Mr. Pedro L. Yap, Mr. Raul Daza and Ms. Mary Concepcion Bautista as Commissioners.

[29] Peralta vs. Commission on Elections, 82 SCRA 30; Paredes, et al. vs. Executive Secretary, 128 SCRA 6.

[30] Yu Cong Eng vs. Trinidad, 47 Phil. 385.

DISSENTING OPINION

GUTIERREZ, JR., J.:

I am constrained to dissent from the majority opinion which dismisses the petitions filed in these cases.

The complaints, insofar as they refer to Messrs. Virata and Mapa, consist of mere inferences and general conclusions which cannot give rise to any cause of action against them. Merely stating that the petitioners engaged in various kinds of diabolical evils against the Filipino people with no statements of ultimate facts to support the sweeping and polemical charges cannot substitute for a cause of action. The petitioners have been carelessly swept into an all-encompassing net thrown over 45 persons. Their not belonging to the group for whom the net should have been cast calls for the grant of the petitions.

On February 18, 1985, about one year before the EDSA upheaval, this Court emphatically stated:

"Infinitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution. The integrity of a democratic society is corrupted if a person is carelessly included in the trial of around forty persons when on the very face of the record no evidence linking him to the alleged conspiracy exists." (Salonga v. Cruz Paño, 134 SCRA 438, 448 [1985])

In Salonga v. Cruz Paño, the petitioner, now President of the Senate of the Philippines, asked us to prohibit and prevent the respondents from using the iron arm of the law to harass, oppress, and persecute him, a member of the then democratic opposition in the Philippines. The Court granted his petition.

A similar plea is now made by former Prime Minister E. A. Virata who asks us to stop "the spiteful oppression being waged against him by the Presidential Commission on Good Government (PCGG) under the unarticulated theory of guilt by association." Petitioner Placido L. Mapa, Jr. has a similar plea. He asks the Court to put an end to the unreasonable oppression and harassment waged against him by PCGG for the simple reason that he served as a professional under the previous dispensation.

To me it is not a material difference whether the case is a criminal prosecution for murder, a case for forfeiture of ill-gotten wealth, an investigation to strip one of a professional or other license, or the unloosing of agents from the Bureau of Internal Revenue, Immigration and Deportation Commission, municipal health officers, fire departments, etc. to hound and harass a person who is viewed with disfavor by current government officials. This Court must stop the harassment.

Petitioners Cesar E. A. Virata and Placido Mapa, Jr. have been carelessly thrown into a conspiracy net with 43 other persons for no apparent reason except their having been ranking officials who necessarily had to participate in many official acts of the past Administration.

The PCGG in the name of the Republic, has come up with general and sweeping averments regarding ill-gotten wealth, plunder, extortion, blackmail, and various kinds of diabolical evils committed against the Filipino people.

I have no objection to the prosecution of the cases against some of the persons named in the complaint. What

disturbs me is the reckless inclusion of the petitioners who, on the basis of the pleadings, cannot by any stretch of the imagination be considered presumably guilty with some others. In denying the petition, the Court has validated a dangerous political act, not of the President or her Cabinet, but lesser functionaries who have fecklessly filed only one case against 45 persons whose acts are diverse and unconnected and whose individual degrees of culpability or innocence are kilometers apart. To validate an act of oppressive harassment against a high official of a past Administration simply because the prosecuting officials detest that administration runs counter to every principle of fair play, reconciliation, and simple justice which we are sworn to uphold.

What the PCGG is doing when it includes the petitioners with 43 other respondents in this case is to set up a more sinister version of the *residencia* during early Spanish colonial times. In the *residencia*, the outgoing officials of the colonial administration were subjected to a judicial examination and required to explain their acts while still in power. Never mind if they are innocent. They must be judicially examined.

In this case, the former Prime Minister, one of the most decent and dedicated persons to ever hold high public office, is charged with all kinds of fancied offenses with no statements of ultimate facts. He is being asked to defend himself for alleged illegal acts of the former President with no clear showing of how he happens to be responsible for the commission of those generalized offenses. Mr. Virata is charged with offenses related to the illegal accumulation of vast wealth and plunder, with not the slightest indication where his wealth is stashed, how he accumulated it, or how he knowingly and willfully helped others in raiding the national treasury.

What are the general averments of illegal acts allegedly committed by the 45 defendants, the two petitioners included.

It is charged, among others, that the defendants:

- (1) Acted singly or collectively and in unlawful concert with one another in the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power.
- (2) Acted as dummies, nominees, or agents of Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos, and Imelda R. Marcos.
- (3) Conspired with former President Marcos in the latter's embarking upon a systematic plan to accumulate ill-gotten wealth.
- (4) Conspired in preventing disclosure and avoiding discovery of the unmitigated plunder of the National Treasury. They conspired in the deposit and investment of funds, securities, and other assets estimated at billions of US dollars in various banks, financial institutions, trust or investment companies and with persons here and abroad.

More specifically, Mr. Virata is charged with:

- (1) Actively collaborating with Benjamin (Kokoy) Romualdez, Juliette Gomez Romualdez, Ferdinand E. Marcos and Imelda R. Marcos to justly enrich themselves by giving MERALCO undue advantage through the reduction of the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by public utilities from 20% to 10%.
- (2) Actively collaborating with others in securing the approval by President Marcos and his Cabinet of the "Three-Year Program for the Extension of MERALCO's Services to Areas Within the 60 Kilometer Radius of Manila."
- (3) Collaborating in the manipulation of the formation of Erectors Holdings, Inc. so it could assume the

obligations of Erectors, Inc. with Philguarantee in the amount of P527,387,440.71 with insufficient securities or collaterals.

(4) Acting as dummy, nominee, or agent to be used as an instrument in accumulating ill-gotten wealth through government concessions, orders, or policies prejudicial to the Republic of the Philippines, or as an incorporator, director, or member of corporations held or controlled by Ferdinand E. Marcos, Imelda R. Marcos, Benjamin Romualdez and Juliette Romualdez.

I note from the records that the reduction of the franchise tax from 5% to 3% of gross receipts was intended for all electric companies and was effected through P.D. 551. The Decree also reduced the tariff on fuel oils. The Decree was applicable to all grantees of electric franchises and was intended to benefit consumers. Its implementation was left to the Board of Energy. In *Philippine Consumer Foundation, Inc. v. Board of Energy and Meralco* (G.R. No. 63018, October 22, 1985) this Court sustained the validity of P.D. 551. Justice Claudio Teehankee himself, who filed a dissent, agreed with the objectives of the Decree. The Decree enacted by Mr. Marcos is in force up to the present and I cannot see why Mr. Virata should answer a harassment suit under the circumstances.

The expansion program authorized for MERALCO was intended to benefit consumers who had to pay exorbitant rates to small companies servicing them. The program continues to the present. MERALCO like the MWSS is constantly expanding. So is the program of the National Power Corporation, actively endorsed by President Aquino, to takeover inefficient electric cooperatives in various parts of the country. The expansion program of MERALCO was studied and endorsed by the entire Marcos Cabinet. To hold Mr. Virata solely responsible for an act which is manifestly not criminal or disadvantageous to the common people is an act of harassment. The petitioner points out that today NEDA presided over by the President has approved P880,200,000.00 of government financing for the MERALCO expansion program. The expansion continues.

The alleged role of Mr. Virata in the formation of Erectors Holdings, Inc. (EHI) is pure innuendo, inference, and speculation. There is no allegation of facts showing the character of his involvement in organizing the company or that he had knowledge of or was privy to the Romualdezes intentions in setting it up. The PCGG is playing loose with mere inferences and conclusions, substituting suspicions and conjectures for averments of a legal causal relation between facts set forth in the pleadings. (See *Alzua, et al. v. Johnson*, 21 Phil. 308 [1912]).

Alleging that Mr. Virata acted as a dummy for Mr. Marcos or Mr. Romualdez is a conclusion. Without a statement of ultimate facts supporting it, there is no cause of action. Anyone among thousands of Filipinos whom the PCGG dislikes could be singled out by it as a dummy or agent of Mr. Marcos. To accuse is one thing. To have a rational basis for the accusation is another.

The charges against Mr. Mapa are equally murky.

The same sweeping allegations are levelled against him, of having conspired in the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement, and brazen abuse of power.

There is only one allegation of an actionable wrong against Mr. Mapa. He allegedly acted as a dummy and allowed himself to be used as an instrument in the accumulation of ill-gotten wealth or to be an incorporator or director of corporations controlled by Ferdinand E. Marcos, Imelda R. Marcos, Benjamin Romualdez and Juliette Romualdez.

The complaint charges that Mr. Mapa was a dummy because he was "an incorporator, director, or member of corporations beneficially held or controlled by defendants Ferdinand Marcos, Imelda Marcos, Benjamin Romualdez and Juliette Romualdez" in order "to conceal and prevent recovery of assets illegally obtained."

The corporations are not named. I am not aware of any law or precedent which declares it an offense or actionable wrong to be a stockholder or even director of a corporation, the majority ownership of which happens to belong to an alleged wrong doer. A cause of action must state the ultimate facts to show the guilty knowledge or participation of a defendant. To say he is a dummy is not only a conclusion but requires the defendant to engage in pure and unmitigated speculation. It is worse because the corporations where his membership is supposed to be that of a dummy are not even indicated.

I see from the records that Mr. Mapa is prosecuted for only one reason — he shared his professional competence in economics and finance with Government. We allow a dangerous precedent when we allow the harassment of two individuals by validating their inclusion with 43 defendants, some of whom may be properly proceeded against.

As early as *Kwong Sing v. City of Manila* (41 Phil. 103 [1920]) and *Dimayuga, et al. v. Fernandez* (43 Phil. 304 [1922]), this Court has applied the rule that prohibition should issue where it is necessary for the orderly administration of justice or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or to stop harassments through a multiplicity of actions.

In *Lim v. Antonio*, (125 SCRA 273 [1983]), the Court ruled that disgruntled complainants against members of the Bar may not be allowed to make use of judicial process as an instrument of retaliation.

I agree with the general rule that criminal prosecutions, civil cases, or administrative actions should not ordinarily be blocked by prohibition, injunction, or grants of motions to dismiss. There are, however, exceptions.

As we stated in the case of *Teofisto Guingona, Jr. v. City Fiscal of Manila, et al.* (128 SCRA 577 [1984]), exceptions may arise in the following instances:

- "1. for the orderly administration of justice;
2. to prevent the use of the strong arm of the law in an oppressive and vindictive manner;
3. to avoid multiplicity of actions;
4. to afford adequate protection to constitutional rights;
5. in proper cases, because the statute relied upon is unconstitutional or was held invalid. (*Primicias v. Municipality of Urdaneta, Pangasinan*, 93 SCRA 462, 469-470 [1979]; citing *Ramos v. Torres*, 25 SCRA 557 [1968]; and *Hernandez v. Albano*, 19 SCRA 95, 96 [1967])."

In the fairly recent case of *Brocka, et al. v. Juan Ponce Enrile, et al.* (G.R. Nos. 69863-65, December 10, 1990), this Court, through Mr. Justice Medialdea expanded the list of exceptions as follows:

- "a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano, et al.*, L-19272, January 25, 1967, 19 SCRA 95);
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304; *Hernandez v. Albano*, supra; *Fortun v. Labang, et al.* L-38383, May 27, 1981, 104 SCRA 607);
- c. When there is a pre-judicial question which is sub judice (*De Leon v. Mabanag*, 70 Phil. 202);
- d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62);
- e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389);
- f. When double jeopardy is clearly apparent (*Sangalang v. People and Alvendia*, 109 Phil. 1140);

g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, L- 25795, October 29, 1966, 18 SCRA 616);

h. Where it is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L. J. [1953], cited in *Ranoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf *Guingona, et al v. City Fiscal*, L-60035, April 4, 1984, 128 SCRA 577); and

j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga v. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA 438).

7. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez v. Castelo*, L-6374, August 1, 1953). (cited in *Regalado*, Remedial Law Compendium, p. 188, 1988, Ed.)"

There were many who deplored the use of the awesome powers of government by the past dispensation to harass, intimidate, or silence critics of its acts. We now have a Government which takes pride in proclaiming to the whole world its adherence to principles of justice and fair play, its desire for reconciliation, and its hopes for a genuine and lasting democracy.

Unfortunately, what it says and what it does are poles apart, at least in these two cases. Mr. Virata and Mr. Mapa are not critics of the present Administration. They live quiet, dignified, and useful lives serving in the private sector. I can see no other reason for their vindictive inclusion in the sweeping charges of PCGG Case No. 35 except to harass and persecute them. I submit that it is the duty of the Court to stop these actions.

FOR THE FOREGOING REASONS, I VOTE to GRANT the petitions.

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