

ROMAN CRUZ, JR., PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE HONORABLE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENTS.

G.R. No. 94595. February 26, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue in this petition is whether or not the respondent Presidential Commission on Good Government (PCGG) has the authority to conduct a preliminary investigation and file the information with the Sandiganbayan for violation of the Anti-Graft and Corrupt Practices Act by alleged cronies or associates of former President Ferdinand E. Marcos.

On January 10, 1989, an information was filed by the PCGG Chairman, Mateo Caparas, with the Sandiganbayan charging petitioner Roman Cruz, Jr. and certain other individuals as follows:

"That on or about May 16, 1983, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the President and General Manager and the Vice President and Treasurer, respectively of the Government Service Insurance System (GSIS), a government financial institution, conspiring and confederating together and with others who will be charged separately, did then and there, in the discharge of their official administrative functions, willfully, knowingly and unlawfully and contrary to Central Bank Rules and Regulations, enter into a contract with Cor-Asia, a private corporation, whereby GSIS, under the terms and conditions manifestly and grossly disadvantageous to the GSIS, sold, transferred and conveyed to said Cor-Asia seven percent (7%) 20-year Cultural Center of the Philippines (CCP) bonds with a total face value of ELEVEN MILLION FOUR HUNDRED FORTY THOUSAND TWO HUNDRED SIXTY-SIX and 20/100 (P11,440,266.20) PESOS at about forty (40%) percent discount or at a lower price of only about SEVEN MILLION TWO HUNDRED THREE (sic) (P7,203,000.00) PESOS, when said bonds could then be easily sold, and was in fact eventually sold to COMBANK, a few days thereafter, at about twelve (12%) percent discount only or at a much higher price of TEN MILLION FOUR HUNDRED FIFTEEN THOUSAND ONE HUNDRED (P10,415,100.00) PESOS, thereby giving Cor-Asia unwarranted benefits and advantages, to the damage and prejudice of the Philippine Government in the sum of about THREE MILLION TWO HUNDRED TWELVE THOUSAND (P3,212,000.00) PESOS, Philippine Currency." [1]

Said information was filed after a preliminary investigation was conducted by Fiscal Freddie A. Gomez of the respondent PCGG, based on a complaint, various affidavits and counter-affidavits and exhibits submitted to him.

On February 2, 1989, petitioner filed a motion to quash the information to which an opposition was filed by the respondent PCGG and a reply was filed by petitioner. At the hearing of the motion to quash on March 22, 1989, respondent PCGG informed the court that it will file an amended information.

On May 29, 1989 respondent PCGG filed an amended information which reads as follows:

"That on or about May 16, 1983, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused ROMAN A. CRUZ, a subordinate and close associate of former President Ferdinand E.

Marcos, being then the President and General Manager of the Government Service Insurance System (GSIS), a government financial institution and a high ranking officer of various government corporations by taking undue advantage of his public office and by using his powers, authority, influence, connections, or relationship to said former President Ferdinand E. Marcos and MANUEL S. RODRIGUEZ, Vice President and Treasurer also of GSIS, conspiring and confederating together and with others who will be charged separately, did then and there, in the discharge of their official administrative functions, willfully, knowingly, and unlawfully, and contrary to Central Bank rules and regulations, enter into a contract with Cor-Asia, a private corporation, whereby GSIS, under terms and conditions manifestly and grossly disadvantageous to the GSIS, sold, transferred and conveyed unto said Cor-Asia seven percent (7%)-20 year Cultural Center of the Philippines (CCP) bonds with total face value of ELEVEN MILLION FOUR HUNDRED FORTY THOUSAND TWO HUNDRED SIXTY-SIX and 20/100 (P11,440,266.20) PESOS at about forty (40%) percent discount or at a low price of only about SEVEN MILLION TWO HUNDRED THREE THOUSAND (P7,203,000.00) PESOS, when said bonds could then be easily sold, and was in fact eventually sold to COMBANK, a few days thereafter, at about twelve (12%) percent discount only or at a much higher price of TEN MILLION FOUR HUNDRED FIFTEEN THOUSAND ONE HUNDRED (P10,415,100.00) PESOS, thereby giving Cor-Asia unwarranted benefits and advantages, to the damage and prejudice of the Philippine Government in the sum of about THREE MILLION TWO HUNDRED TWELVE THOUSAND P3,212,000.00) PESOS.[2]

Petitioner filed his comment and opposition to the amended information and a supplementary motion to quash. After a hearing on the matter, on June 16, 1989 the respondent court issued an order that reads as follows:

"A preliminary discussion between the parties, however, indicated that the position of the accused Cruz is that, on the face of the complaint and of the information filed with the PCGG to support that complaint, the 'crony related crime' alleged thereon did not exist and for which reason from the very first instance, the PCGG did not have the 'literal' justification to even entertain the matter under its enabling enactments. The parties agree that the issue, therefore, to be presented before the Court is whether or not the complaint, and the affidavits in support of that complaint, would sustain the proposition, assuming that these affidavits are duly substantiated, that the crime charged in the present Information is a 'crony related crime' for which the PCGG has adequate authority to petition to investigate and to file an Information on the very first instance. The Court will not look into the correctness of the determination of probable cause, that matter being which the exclusive realm of the investigating office and jurisdiction is conceded to it." [3]

An opposition to petitioner's motion was filed by respondent PCGG to which petitioner filed a reply.

On August 7, 1990 respondent court issued a resolution denying the motion to quash. A motion for reconsideration filed by petitioner was denied by the respondent court on May 15, 1990.

Hence, this petition which is predicated on the following grounds:

"A

WITH THE EFFECTIVITY OF THE 1987 CONSTITUTION, RESPONDENT PCGG NO LONGER HAD ANY AUTHORITY TO PROSECUTE CASES, SUCH JURISDICTION BEING SOLELY VESTED IN THE OFFICE OF THE OMBUDSMAN; THE PROSECUTING OFFICER BEING WITHOUT AUTHORITY TO PROSECUTE, ALL PROCEEDINGS THEREAFTER WERE NULL AND VOID.

B

ASSUMING, ARGUENDO, RESPONDENT PCGG STILL HAD AUTHORITY TO PROSECUTE THE CASES ENUMERATED IN SECTION 2(A) OF EXECUTIVE ORDER NO. 1, THE RESPONDENT SANDIGANBAYAN HAD NO JURISDICTION OVER HEREIN PETITIONER BY REASON OF A JURISDICTIONALLY DEFECTIVE INFORMATION AND CONSEQUENTLY THE AMENDED INFORMATION WHICH ADDED THE JURISDICTIONAL MATTERS COULD NOT BE ADMITTED

WITHOUT PRELIMINARY INVESTIGATION ON SUCH MATTERS, EXCEPT IN VIOLATION OF PETITIONER'S SUBSTANTIVE RIGHTS AND RIGHT TO DUE PROCESS.

C

ASSUMING, ARGUENDO, THAT RESPONDENT PCGG HAD JURISDICTION TO FILE INFORMATIONS FOR ACTS FALLING UNDER SECTION 2(A) OF E.O. NO. 1, THE RESPONDENT SANDIGANBAYAN ACTED IN GRAVE ABUSE OF DISCRETION IN NOT RULING THAT UPON THE EVIDENCE IT REQUIRED TO BE PLACED BEFORE IT, THERE WAS NO PRIMA FACIE CASE FOR THE FILING OF THE AMENDED INFORMATION, THE AVERMENTS WHICH PURPORT TO MAKE A CRONY CASE BEING FALSE, THAN (sic) AND NOT ESTABLISHED BY THE RECORD OF THE PRELIMINARY INVESTIGATION."[4]

The question raised in this petition has been resolved by this Court in *Eduardo M. Cojuangco, Jr. vs. Presidential Commission on Good Government, et al.*,[5] where the Court made the following disquisition:

"However, this exclusive jurisdiction of the Tanodbayan to conduct preliminary investigation of said cases was modified by Executive Order No. 1 signed by President Corazon C. Aquino on February 28, 1986 creating the PCGG and constituting its membership to assist the President in the recovery of ill gotten wealth accumulated by the former President, his relatives and cronies. Therein it is provided, among others:

'SECTION 2. – The Commission shall be charged with the task of assisting the President in regard to the following matters:

(a)

The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

(b)

The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.

(c)

The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.

SECTION 3. The Commission shall have the power and authority:

(a)

To conduct investigations as may be necessary in order to accomplish and carry out the purposes of this order. (Underscoring supplied.)

"Under Executive Order No. 14 signed by President Aquino on May 7, 1986, it is also provided:

'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.

SECTION 3. Civil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil actions under the Civil Code or other existing laws, in connection with Executive Order No. 1 dated February 28, 1986 and Executive Order No. 2 dated March 12, 1986, may be filed separately from and proceed independently of any criminal proceedings and may be proved by preponderance of evidence. (Underscoring supplied.)'

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."[6]

In the same case We ruled that after the ratification of the 1987 Constitution whereby the office of the Ombudsman was created under Article XI, the said authority of respondent PCGG was maintained, to wit:

"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."[7]

And even upon the passage of Republic Act No. 6770 known as the Ombudsman Act of 1989 whereby under Section 15(1) the Ombudsman has primary jurisdiction over the cases cognizable by the Sandiganbayan, this Court held in Cojuanco that this authority of the Ombudsman is "not exclusive but is concurrent with other similarly authorized agencies of the government."[8] Thus, this Court held "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.[9]

From the foregoing what is clear is that the PCGG, at the time it conducted the investigation and filed the information against petitioner in this case, had the authority to investigate and prosecute such ill-gotten wealth cases of former President Ferdinand E. Marcos, members of his family, his relatives, subordinates, and close associates, and graft and corrupt practices cases that may be assigned from time to time by the President to the PCGG to be filed with the Sandiganbayan.

A careful reading of Sections 2(a) and 3, of Executive Order No. 1, in relation with Sections 1, 2, and 3 of Executive Order No. 14, show that what the authority of the respondent PCGG to investigate and prosecute covers are:

(a) The investigation and prosecution of the civil action for the recovery of ill-gotten wealth under Republic Act

No. 1379, accumulated by former President Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through his nominees, by taking undue advantage of their public office and/or using their powers, authority and influence, connections or relationship; and

(b) The investigation and prosecution of such offenses committed in the acquisition of said ill-gotten wealth as contemplated under Section 2(a) of Executive Order No. 1.

However, other violations of the Anti-Graft and Corrupt Practices Act not otherwise falling under the foregoing categories, require a previous authority of the President for the respondent PCGG to investigate and prosecute the same in accordance with Section 2(b) of Executive Order No. 1. Otherwise, jurisdiction over such cases is vested in the Ombudsman and other duly authorized investigating agencies as the provincial and city prosecutors, their assistants, the Chief State Prosecutor and his assistants, and the state prosecutors.

Thus for a penal violation to fall under the jurisdiction of the respondent PCGG under Section 2(a) of Executive Order No. 1, the following elements must concur:

- (1). It must relate to alleged ill-gotten wealth;
- (2). Of the late President Marcos, his immediate family, relatives, subordinates and close associates;
- (3). Who took undue advantage of their public office and/or used their power, authority, influence, connections or relationship.

A reading of the information and the amended information that was filed by the PCGG in this case shows that petitioner is charged with a violation of Republic Act No. 3019 as amended, the Anti-graft and Corrupt Practices Act. It is alleged that petitioner, as president and general manager of the GSIS, allegedly entered into a contract of sale with Cor-Asia, a private corporation, manifestly and grossly disadvantageous to the GSIS, of seven percent (7%) of the 20-year Cultural Center of the Philippines (CCP) bonds with a total face value of ELEVEN MILLION FOUR HUNDRED FORTY THOUSAND TWO HUNDRED SIXTY SIX PESOS and 20/100 (P11,440,226.20), at about forty percent (40%) discount, or at a lower price of about SEVEN MILLION TWO HUNDRED THREE THOUSAND PESOS (P7,203,000.00), when said bonds could then be easily sold and was in fact eventually sold to COMBANK a few days thereafter at twelve percent (12%) discount only, to the damage and prejudice of the Philippine government in the sum of THREE MILLION TWO HUNDRED TWELVE THOUSAND PESOS (P3,212,000.00).

The amended information that was thereafter filed against petitioner contained substantially the same allegations with the only amendment that petitioner was identified as "a subordinate and crony/associate of former President Ferdinand E. Marcos," and with the additional allegation of "taking undue advantage of his public office and by using his relationship to said former President Ferdinand E. Marcos, xxxx." There is no allegation that, President Marcos, his immediate family, relatives, subordinate or close associate, as petitioner, thereby acquired ill-gotten wealth. In fact all that the information and its amendment allege is that damage was thereby caused to the Philippine government. From its allegation it also appears that it was Cor-Asia which gained or profited by this transaction not petitioner.

Consequently, the amended information that was filed against petitioner does not fall under the category of criminal actions for recovery of ill-gotten wealth filed against a member of the family of President Marcos, relatives, subordinates or close associates, who took undue advantage of their office or authority as contemplated under Section 2(a) of Executive Order No. 1.

What the petitioner is actually charged with is for a violation of Republic Act No. 3019. Public respondent PCGG does not pretend that the President assigned to it this particular case against the petitioner for investigation and prosecution in accordance with Section 2(b) of Executive Order No. 1.

Moreover, an examination of the complaint filed with respondent PCGG, as well as the affidavits, counter-affidavits and exhibits submitted at the preliminary investigation show that there is no evidence at all that this alleged violation is crony-related, committed by petitioner by taking advantage of his public office, and was committed in relation with the ill-gotten wealth being sought to be recovered aforesaid.[10] There is, therefore, no evidence in the hands of the respondent PCGG to justify the amendment of the information.

Indeed, the said amendment appears to be an afterthought to make it fall under the type of offenses respondent PCGG may investigate and prosecute under the law. It is a fundamental principle that when on its face the information is null and void for lack of authority to file the same, it cannot be cured nor resurrected by an amendment.[11] Another preliminary investigation must be undertaken and thereafter, based on evidence adduced, a new information should be filed.[12]

Consequently all the actions respondent PCGG had taken in his case including the filing of the information and amended information with the respondent court should be struck down.

WHEREFORE, the petition is GRANTED and the questioned resolutions of the respondent court dated August 7, 1989 and May 15, 1990 are hereby REVERSED AND SET ASIDE, and another judgment is hereby rendered DISMISSING the case S. B. Criminal Case No. 13342 and permanently enjoining public respondents from further proceeding with the said case. The records of this case are hereby remanded and referred to the Honorable Ombudsman, who has primary jurisdiction over the same, for appropriate action.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Cruz, J., no part, related to the petitioners.

[1] Annex C to Petition.

[2] Annex I to petition.

[3] Annex K to petition.

[4] Pages 8 to 9, Rollo.

[5] G. R. Nos. 92319-20, dated October 2, 1990.

[6] Ibid., pages 13 to 14.

[7] Ibid, pages 16 to 17.

[8] Ibid, page 19.

[9] Ibid, pages 19 to 20.

[10] Annexes A to E-18 of Annex F to petition.

[11] Villa vs. Ibañez, 88 Phil. 403 (1951); Doromal vs. Sandiganbayan, 177 SCRA 354 (1989).

[12] Doromal vs. Sandiganbayan, supra.

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