

EUGENIO U. CABALLERO, NERITA CUENTO AND MA. THERESA G. CABALLERO, PETITIONERS, VS. SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 137355-58. September 25, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

In this joint petition for certiorari and prohibition under Rule 65 of the Rules of Court, petitioners assail and seek to set aside the Sandiganbayan's resolution[1] dated December 8, 1998 in Criminal Case Nos. 24366-69, denying their motion to quash, and its resolution[2] of February 12, 1999 which likewise denied their motion for reconsideration. The prohibition aspect of the petition aims at prohibiting the respondent court from taking further proceedings in said criminal cases.

Petitioner Eugenio Caballero, at the time this petition was filed in 1999, was the incumbent mayor of the Municipality of Manukan, Zamboanga del Norte, while co-petitioner Ma. Theresa Caballero is his wife and the proprietress of GP's Food Catering Services and Genty General Merchandise. Co-petitioner Nerita Cuento, on the other hand, was the municipal accountant of Manukan, Zamboanga del Norte.

The factual antecedents:

During Caballero's incumbency as municipal mayor in 1993, the Municipality of Manukan, Zamboanga del Norte conducted committee hearings on tax ordinance and seminar-workshop on budget, undertakings which required the purchase of materials for use therefor and catering services for the meals and snacks of the participants. For the purpose, a public bidding was held by the Committee on Awards, during which awards were made to the lowest bidder, namely, Genty General Merchandise for the supply of materials, and GP's Food Catering Services for the supply of meals and snacks. Both entities were admittedly owned and operated by the mayor's wife, Theresa Caballero.

Thereafter, a letter-complaint was filed by one Crisologo Decierdo before the Office of the Auditor in Roxas, Zamboanga del Norte charging Mayor Caballero and his wife Theresa, Municipal Treasurer Semie Torres and Municipal Accountant Nerita Cuento of violating Republic Act (RA) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The letter-complaint charged the municipal officials for allowing their offices to be used as a tool to unlawfully secure benefits to favor the mayor and his wife in connection with the supply of materials and meals by Theresa Caballero's businesses, i.e., GP's Food Catering Services and Genty General Merchandise.

State Auditor Leonilo Morales of Roxas, Zamboanga del Norte was tasked to investigate and determine whether the complaint was meritorious as to warrant the filing of criminal and/or administrative case against Mayor Caballero, et al. In his Report[3] dated June 16, 1995, Morales made the following findings:

- The awarding of the winning bidder was made only after the bidders have complied with all the terms and

conditions stated in the "Invitation to Bid/Call for Quotation" and after determining whose bid is most advantageous to the government;

- In the opening and awarding of bids, Mayor Caballero did not sit as "Chairman" of the Committee on Awards. The Committee on Awards, without the participation of Mayor Caballero, awarded to GP's Food Catering Services the contract for meals and snacks as the lowest bidder and as it offered, free of charge, its building space as convention hall for the seminar/workshop; and to Genty General Merchandise for the supply of the materials as the lowest bidder; and

- After delivery of the goods and after their payment, when all transactions had been completed, the four vouchers together with their supporting documents were forwarded to Mayor Caballero for signature which he did only on November 9, 1993.

Accordingly, State Auditor Morales recommended in his Report the dismissal of the complaint against Mayor Caballero, et al. for lack of sufficient basis.

However, despite Morales' findings and recommendation, the Office of the Ombudsman-Mindanao proceeded with the investigation of the same complaint, and, in a resolution dated October 14, 1997, Graft Investigation Officer Corazon A. Arancon found a prima facie case for violation of Section 3(h) of RA No. 3019[4] and recommended the filing of the corresponding information against Mayor Caballero, et al. The resolution was approved by then Ombudsman Aniano A. Desierto.

Thereafter, four (4) informations,[5] all for violation of Section 3(h) of RA No. 3019, were filed against the herein petitioners and one Semie Torres before the Sandiganbayan, thereat docketed as Criminal Case Nos. 24366, 24367, 24368 and 24369. The information in Criminal Case No. 24366 alleged as follows:

That in or about the month of September 1993 or sometime prior or subsequent thereto, in the Municipality of Manukan, Zamboanga del Norte, Philippines and within the jurisdiction of this Honorable Court, accused EUGENE U. CABALLERO, a high ranking public officer, being the Mayor of the Municipality of Manukan, together with accused SEMIE L. TORRES and NERITA E. CUENTO, Municipal Treasurer and Municipal Accountant, respectively, also of the said municipality, all while in the performance of their official functions, thus committing the offense in relation to their office, confederating together, helping one another and in conspiracy with private person Theresa G. Caballero, accused Mayor Caballero, did then and there willfully, unlawfully and feloniously approved the award to GP's Food Catering Services, an establishment registered in the name of accused MA. THERESA G. CABALLERO, the wife of accused Mayor Caballero and of the Purchase Order for meals and snacks to be served during the training of Barangay Captains/Barangay Health Workers/Barangay Nutrition Scholars upon the recommendation of accused Torres and thereafter, approved disbursement voucher no. 101-9311-973 in the amount of Five Thousand Pesos (P5,000.00) as certified by accused Torres that the expense is legal and by accused Cuento that there is adequate fund available for the purpose, in violation of the Anti-Graft and Corrupt Practices Act.

CONTRARY TO LAW.

Similarly worded were the informations in Criminal Case Nos. 24367, 24368 and 24369, except for the variance in the amounts and the disbursement voucher (DV) number, viz:

Criminal Case No.
DV Number
Amount
24367
101-9311-974
P3,600.00

24368
101-9311-970
3,593.66

24369
101-9311-972
1,499.00

Meanwhile, Municipal Treasurer Semie Torres died on September 13, 1997. Hence, the complaint against him was dismissed.[6]

On September 18, 1998, petitioners filed a Motion to Quash the four informations on the ground that the facts charged therein do not constitute the offense of violation of Section 3(h) of RA No. 3019.

On October 8, 1998, Special Prosecution Officer II Norberto Ruiz of the Office of the Ombudsman filed his comment on the motion, thereunder recommending the quashal of the informations on the ground that there existed no case for violation of Section 3(h) of RA No. 3019 because the requirements of public bidding and auditing regulations have been faithfully complied with, and that there was no evidence at all that Mayor Caballero influenced or coerced the members of the Committee on Awards to favor his wife's bids for the items subject of the bidding.

In the herein first assailed resolution dated December 8, 1998, the Sandiganbayan, thru its Third Division, denied the petitioners' motion to quash. Partly says the respondent court:

Indeed, the facts charged in the informations constitute the offense of violation of Section 3(h) of Republic Act 3019, as amended, because (1) the accused is a Municipal Mayor and therefore, a public officer; (2) he has financial or pecuniary interest in the business, contract or transaction entered into by GP's Food Catering Services with the government considering that the said establishment is registered in the name of his wife; and (3) he intervened and took part, in his official capacity as Mayor, in the consummation of said contract or transaction by approving the award made by the Committee on Awards in favor of said establishment.[7]

With their motion for reconsideration having been denied by the Sandiganbayan in its subsequent resolution of February 12, 1999, petitioners are now with this Court via the instant recourse, submitting for our consideration the following arguments:

- THE SANDIGANBAYAN, THIRD DIVISION, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT REFUSED TO QUASH THE INFORMATIONS EVEN WHEN THE FACTS ALLEGED IN THE INFORMATIONS AND THE UNDISPUTED FACTS AND DOCUMENTS ADMITTED BY THE PROSECUTION DO NOT CONSTITUTE THE OFFENSE DEFINED IN SEC. 3(H) OF RA 3019, AS AMENDED, THE ELEMENTS THEREOF NOT BEING PRESENT AS SHOWN BY SAID FACTS AND DOCUMENTS, AND EVEN WHEN THE PROSECUTION RECOMMENDED THE QUASHAL OF THE INFORMATIONS ON SUCH GROUND;
- ASSUMING, ARGUENDO, THAT PETITIONERS WERE PROBABLY GUILTY OF THE OFFENSE AND SHOULD BE HELD TO TRIAL, THE SANDIGANBAYAN HAS NO JURISDICTION OVER THE OFFENSE ALLEGED TO HAVE BEEN COMMITTED BY PETITIONER MUNICIPAL MAYOR EUGENE CABALLERO AND THE OTHER ACCUSED, PURSUANT TO REPUBLIC ACT NOS. 7975 AND 8249 BECAUSE A MUNICIPAL MAYOR IS NOT ONE OF THOSE OFFICIALS SPECIFICALLY MENTIONED IN SAID ACTS WHOSE OFFENSES COME WITHIN THE JURISDICTION OF THE SANDIGANBAYAN.[8]

Essentially, the arguments raised center on two principal issues, to wit: (1) whether or not the facts alleged and

charged in the informations constitute the offense defined in Section 3(h) of RA No. 3019; and (2) whether or not the Sandiganbayan exercises exclusive original jurisdiction over criminal cases involving municipal mayors accused of violations of RA No. 3019.

We shall first address the issue of jurisdiction.

Petitioners question the jurisdiction of the Sandiganbayan over the offense alleged to have been committed by Mayor Caballero because the position of a municipal mayor is not included in the enumeration in Section 4a(1) of Presidential Decree (PD) No. 1606,[9] as amended by RA No. 7975[10] and RA No. 8249.[11]

Section 4a(1) of PD 1606, as amended by RA No. 7975 and RA No. 8249, reads:

Sec. 4. Jurisdiction. - The Sandiganbayan shall exercise original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

- Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Official of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police occupying the position of provincial director and those holding the rank of senior superintendent and higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

- Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;

- Members of the judiciary without prejudice to the provisions of the Constitution;

- Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

- All other national and local officials classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989. (Emphasis supplied).

The case of *Binay v. Sandiganbayan*[12] has finally settled the question of whether or not municipal mayors are excluded from the Sandiganbayan's exclusive original jurisdiction. There, the Court held that violations of RA No. 3019 by a municipal mayor come within the exclusive original jurisdiction of the Sandiganbayan because

under RA No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, municipal mayors are local officials classified as Grade "27." They thus fall under the catch-all provision of Section 4a(5) of PD 1606 which speaks of "national and local officials classified as Grade `27' under the Compensation and Position Classification Act of 1989." More accurately, municipal mayors fall under Section 4a(1) of PD 1606 as they are "officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade `27' and higher, of the Compensation and Position Classification Act of 1989."

Moreover, Section 444(d) of the Local Government Code settles any doubt as to whether municipal mayors are under the category of Salary Grade "27." The provision reads:

The municipal mayor shall receive a minimum monthly compensation corresponding to Salary Grade twenty-seven ("27") as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

Clearly then, the Sandiganbayan has exclusive and original jurisdiction over the herein petitioners.

Petitioners next question the sufficiency of the allegations in the informations in that the same do not constitute an offense, allegedly because the undisputed facts would show that Mayor Caballero did not intervene nor did he exert pressure or influence in the awarding of the contract/bid in favor of his wife's business entities. In the main, petitioners assert that the facts do not even make out a prima facie case for violation of Section 3(h) of RA No. 3019, hence they are entitled to the quashal of the informations.

On this score, we agree with the petitioners.

Petitioners' Motion to Quash is anchored on Section 3(a), Rule 117, of the Rules of Court, to wit:

Section 3. Grounds.-- The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

xxx xxx xxx

The fundamental test in considering a motion to quash anchored on Section 3(a), above, is the sufficiency of the averments in the information, that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. It is axiomatic that the information must state every single fact necessary to constitute the offense charged, otherwise, a motion to quash on the ground that the information charges no offense may be properly sustained.[13]

Here, the informations sought to be quashed charged petitioners with violation of Section 3, paragraph (h) of the Anti-Graft and Corrupt Practices Act. The provision allegedly transgressed reads:

Sec. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

Under settled jurisprudence,[14] the following elements need to be proven in order to constitute a violation of Section 3(h) of RA No. 3019:

- The accused is a public officer;
- He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
- He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.

In view of the definition of the offense, the charge herein would specifically pertain to Mayor Caballero, with the two other petitioners, Nerita Cuento and Theresa Caballero, being charged as co-conspirators of the mayor.

That petitioner Eugenio Caballero is a public officer is undisputed. He was, in fact, the mayor of Manukan, Zamboanga del Norte at the time the letter-complaint was lodged by complainant Crisologo Decierdo with the Office of the Auditor, Zamboanga del Norte. There is thus no question that the first element is present in this case.

The second element requires the public officer to have a direct or indirect financial or pecuniary interest in any business, contract or transaction. The informations stated that GP's Food Catering Services and Genty General Merchandise were registered in the name of Mayor Caballero's wife, Theresa. The element that the mayor must have a direct pecuniary interest in the said businesses was sufficiently alleged in the informations because, even if these entities were registered in his wife's name and not in his own name, still Mayor Caballero would have a direct interest thereon because they remained married to each other and as such their property relations can be presumed to be under the regime of conjugal partnership of gains, in the absence of evidence to the contrary. Article 116 of the Family Code provides that all property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife. Too, Article 106 of the same Code declares that all the properties of the conjugal partnership of gains are owned in common by the husband and wife. Thus, Mayor Caballero had a direct interest in GP's Food Catering Services and Genty General Merchandise.

The third element enumerates the two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft Law. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

The informations alleged that Mayor Caballero "willfully, unlawfully and feloniously approved the award to GP's Food Catering Services and Genty General Merchandise which were both registered in the name of Ma. Theresa Caballero, the wife of Mayor Caballero." A reading of the informations would disclose that the third element of the offense was not sufficiently alleged. As it were, the informations failed to state the mode by which Mayor Caballero supposedly violated Section 3(h) of the Anti-Graft Law. While it may be deduced therefrom that Mayor Caballero was indicted via the first mode, that is, by intervening or taking part in his official capacity in connection with his financial or pecuniary interest in the subject transactions, still there was no statement in the said informations that Mayor Caballero actually intervened in awarding the contract in favor of his wife's businesses, which is an element necessary to constitute a violation of Section 3(h) of RA No. 3019. It is essential that the information states the ultimate facts needed to constitute the offense charged, so that the accused may be properly apprised of the nature and cause of the accusation against him.[15]

What is more, the undisputed facts of this case would demonstrate that Mayor Caballero did not unlawfully intervene in his official capacity in connection with the awards to his wife.

In a nutshell, the procedure for the procurement of government supplies and materials can be summarized as follows: the end-user agency or department draws a purchase request for the supplies and materials; an invitation

to bid is announced; the bidding and award to the lowest bidder will be conducted by the Committee on Awards; purchase order will then be executed in favor of the winning bidder; the supplies and materials will be delivered to the end-user agency or department; inspection of the delivered supplies will be made by the requisitioning officer; and DVs will be executed for payment of the supplies and materials.

As can be gleaned from the records, Mayor Caballero had nary any participation from the drawing of the purchase request to the awarding of the contracts to the lowest bidder by the Awards Committee. Quite the contrary, the records reveal that after learning that his wife's business entities were among those invited to bid, Mayor Caballero inhibited himself in all the proceedings of the Committee on Awards even if he is, by law, the chairman thereof. It can thus be concluded that the decision by the Awards Committee on who will be the winning bidder was made through its members' own determination and volition and without any intervention on the part of the mayor.

To our mind, such act of the mayor in inhibiting himself from taking part in the Committee's proceedings clearly shows that he had never intended to influence or pressure the members of the Committee on Awards to favor his wife's bid. When the Committee eventually awarded the contracts to Theresa Caballero, it was only because the Committee found her bid to be the lowest and the most advantageous to the government, and not because she is the mayor's wife or because the mayor had a pecuniary interest in it. True enough, GP's Catering Services even offered its building space free of charge for use by the participants in the seminar-workshop. Indeed, the advantage to the government was two-fold: one, for the lowest price quotation for the supply of meals; and the other, for the free use of the building space as convention hall for the entire duration of the seminar-workshop. With such advantage to the government, it is only logical and appropriate for Mayor Caballero to approve the awards. Even then, his approval of the awards in favor of his wife's business establishments came after the decision had already been reached by the Committee on Awards, thus he cannot be said to have influenced the same. It is, therefore, safe to say that the mayor did not intervene in the transactions as the contracts therefor were awarded by the Committee without his participation.

Worth citing is the case of *Trieste, Sr. v. Sandiganbayan*[16] where the Court clarified the kind of intervention that would constitute a violation of Section 3(h) of RA No. 3019:

What is contemplated in Section 3(h) of the Anti-Graft Law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach. For the law aims to prevent dominant use of influence, authority and power. (Emphasis supplied.)

The undisputed facts of the case negate any showing that Mayor Caballero had, in his capacity as mayor, used his influence, power and authority in the award of the two (2) contracts to his wife's business entities. He did not ask nor did he demand the members of the Committee on Awards to award the respective contracts for the supply of meals and materials to GP's Food Catering Services and Genty General Merchandise.

Too, while Mayor Caballero signed the DVs, he did it only after all the purchases had already been made, delivered and paid for by the municipal treasurer. In fine, the mayor's participation was limited to signing the said vouchers long after the Committee on Awards had decided to award the contracts to the business establishments of his wife, and long after the transactions had been completed. To stress, the only participation of Mayor Caballero in the transactions in question was the mechanical act of signing the DVs for accounting and record purposes. As this Court declared in *Trieste*:

Inasmuch as Treasurer Vega signed and paid the vouchers after the materials were delivered, petitioner's (municipal mayor) signature on the vouchers after payment is not, we submit, the kind of intervention contemplated under Section 3(h) of the Anti-Graft Law.

To be sure, Mayor Caballero's participation in the whole transaction was certainly not the actual and direct participation that would render him liable under Section 3(h) of the Anti-Graft Law. The third element of the offense, i.e., he intervenes or takes part in his official capacity in connection with his interest in a business, is thus wanting herein.

Likewise, the supporting documents, such as the purchase request, sales invoices and the DVs, were all in order as the signatures of the municipal officials appearing thereon were regular and consistent with the regular course of business. Records show that Municipal Accountant Nerita Cuento prepared the DVs only after determining that the same had been properly audited and there were adequate available funds for the purpose.

Clearly, the existence of a prima facie case against petitioners had not been established. It should also be noted that as early as the initial investigation of the charges against petitioners, the Office of the Auditor-Zamboanga del Norte found no basis for the filing of a criminal and/or administrative case against petitioners because the requirements of public bidding and the auditing regulations have been faithfully complied with. For his part, Special Prosecution Officer II, Norberto Ruiz, in his comment to the petitioners' Motion to Quash, found that petitioners had not violated Section 3(h) of RA No. 3019 and accordingly recommended the dismissal of the cases for want of probable cause. Too, the Solicitor General, in his Manifestation before this Court, declared that the Sandiganbayan committed grave abuse of discretion in denying the petitioners' motion to quash.

With the view we take of this case, it would be superfluous and a sheer waste of time to still require the parties to go through the rigors of trial when the issues can be resolved at the outset. As the facts charged do not constitute the offense of violation of Section 3(h) of RA No. 3019, petitioners' motion to quash on that ground must be sustained. It follows that the Sandiganbayan gravely abused its discretion in issuing the assailed resolutions denying petitioners' motion to quash in Criminal Case Nos. 24366-69.

WHEREFORE, the petition is GRANTED. Accordingly, the December 8, 1998 resolution of the respondent Sandiganbayan denying petitioners' Motion to Quash, as reiterated in its subsequent resolution of February 12, 1999, is SET ASIDE and Criminal Case Nos. 24366-69 are DISMISSED.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Ricardo M. Ilarde, with Associate Justice Cipriano A. Del Rosario and Teresita Leonardo-De Castro, concurring; rollo, pp. 47-48.

[2] Id. at 46.

[3] Id. at 151-154.

[4] Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

...

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

[5] Rollo, pp. 49-56.

[6] Records, p. 90.

[7] Id. at 48.

[8] Id. at 17-18.

[9] Entitled "Revising Presidential Decree No. 1486 Creating a Special Court to be known as Sandiganbayan and for Other Purposes," promulgated on December 10, 1978.

[10] Entitled "An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, amending for that Purpose Presidential Decree No. 1606, as amended," which took effect on May 16, 1995.

[11] Entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, amending for that Purpose Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes," which took effect on February 8, 1997.

[12] G.R. Nos. 120681-83, October 1, 1999, 316 SCRA 65.

[13] Cruz, Jr. v. Court of Appeals, G.R. No. 83754, February 18, 1991, 194 SCRA 145.

[14] Teves v. Sandiganbayan, G.R. No. 154182, December 17, 2004, 447 SCRA 309.

[15] Article III, Section 14, 1987 Constitution.

[16] G.R. Nos. 70332-43, November 13, 1996, 145 SCRA 508.

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