

BENJAMIN “KOKOY” ROMUALDEZ, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (FIRST DIVISION) AND THE PEOPLE OF THE PHILIPPINES REPRESENTED BY SPECIAL PROSECUTION OFFICER II EVELYN T...*G.R. Nos. 143618-41. July 30, 2002*

Ponente: YNARES-SANTIAGO, J.

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Previous to this case, petitioner instituted a petition docketed as G.R. No. 105248, entitled, “Benjamin (Kokoy) Romualdez, Petitioner, versus Sandiganbayan (First Division) and Presidential Commission on Good Government (PCGG), Respondents.” [1] He assailed therein, among others, the validity of twenty-four informations which the PCGG filed against him for violation of Section 7 of Republic Act No. 3019, more specifically for failure to file his statements of assets and liabilities covering the years 1962 to 1985 when he was in the government service. The cases were filed with the Sandiganbayan as Criminal Cases Nos. 13406-13429. He argued that PCGG Commissioner Augusto E. Villarin, who conducted the preliminary investigation, had no authority to do so.

On May 16, 1995, a Decision was rendered in said case declaring the preliminary investigation conducted by the PCGG invalid, based on the following findings:

Now, the crimes ascribed to Romualdez (failure to file his annual statements of assets and liabilities) do not “relate to alleged ill-gotten wealth” amassed by him. No such relation may be perceived in the indictments themselves, which in fact merely state that there was no justifiable cause for Romualdez’s refusal or failure to file his annual statements. Moreover, the Sandiganbayan itself made the finding that the cases against Romualdez did not refer to acquisition of wealth under a crony status, but “solely ** (to) his bare physical non-compliance with his mechanical duty to file his statement of assets and liabilities over a period of twenty-four (24) years **,” and that the omissions have no bearing on Civil Case No. 0035 against Romualdez involving transactions in which he “allegedly took advantage of his relationship with the spouses Ferdinand and Imelda Marcos.” These considerations also call for rejection of the Solicitor General’s theory that Romualdez’s “non-filing of statements of assets and liabilities ** (was) a means of concealing ** (his) assets and frustrating the efforts of the Government to determine the actual value or extent of ** (his) wealth.”

The Court therefore declares invalid the preliminary investigation conducted by the PCGG over the 24 offenses ascribed to Romualdez (of failure to file annual statements of assets and liabilities), for lack of jurisdiction of said offenses. [2]

While the preliminary investigation was invalid, we ruled that the invalidity of the preliminary investigation did not impair the validity of the informations much less did it affect the jurisdiction of the Sandiganbayan. Hence, we held that the Sandiganbayan did not commit grave abuse of discretion in refusing to quash the warrants of arrest against petitioner. However, the Sandiganbayan was directed to suspend the proceedings in Criminal Cases Nos. 13406-13429, and to require the Office of the Ombudsman to conduct a proper preliminary investigation of the charges against petitioner.

In compliance with the said decision, the Sandiganbayan, on November 13, 1995, issued a resolution giving petitioner fifteen days from receipt thereof within which to submit his counter-affidavit and controverting evidence, furnishing copies thereof to the PCGG. The Sandiganbayan also gave the PCGG the same period to file a reply affidavit or pleading if it so desired. Thereafter, the Office of the Special Prosecutor was directed to conduct the reinvestigation. [3]

At that time, however, petitioner was still in exile abroad. Naturally, he failed to submit the required counter-affidavits. He returned to the Philippines only on April 27, 2000, after which he voluntarily surrendered to the Sandiganbayan and posted the required bail bond.

On May 8, 2000, the Sandiganbayan gave Special Prosecutor Evelyn T. Lucero ten days within which to submit the result of any reinvestigation she may have undertaken. [4] Prosecutor Lucero informed the Sandiganbayan that she has set a clarificatory hearing on June 2, 2000, and moved for a thirty-day extension to submit the results of the reinvestigation. [5]

Prosecutor Lucero sent notice of the clarificatory hearing to Atty. Jesus Borromeo, on behalf of petitioner. The latter immediately went to Prosecutor Lucero's office to inform her that he was not the counsel for petitioner in these particular cases, although he represented petitioner in other cases pending before different divisions of the Sandiganbayan. The scheduled hearing on June 2, 2000 was cancelled for non-appearance of petitioner and counsel.

In the meantime, petitioner, through Atty. Otilia Dimayuga-Molo, filed with the Sandiganbayan on June 2, 2000 a Motion to Quash the informations in Criminal Cases Nos. 13406-13429. [6] He argued therein that the PCGG Commissioner who filed the informations had no authority to do so.

On June 6, 2000, petitioner received at his address in Tacloban City a notice from Prosecutor Taguba of the clarificatory hearing scheduled on June 9, 2000. [7]

The Motion to Quash was heard by the Sandiganbayan on June 8, 2000, one day before the clarificatory hearing. Without granting the prosecution time to oppose the motion, the Presiding Justice, in open court, denied the Motion to Quash and terminated the preliminary investigation being conducted by Prosecutor Lucero. Furthermore, the Presiding Justice set the arraignment of petitioner on June 26, 2000.

On June 23, 2000, petitioner was able to obtain a written copy of the order dated June 8, 2000 denying his Motion to Quash and setting his arraignment on June 26, 2000. [8] Petitioner likewise received another order dated June 8, 2000, denying his oral motion for reconsideration. [9]

The arraignment scheduled on June 26, 2000 was reset to July 28, 2000. [10]

On July 7, 2000, petitioner filed the instant petition, seeking to annul the assailed orders dated June 8, 2000 and to prohibit the Sandiganbayan from implementing the same. Petitioner further prayed for the issuance of a writ of preliminary injunction and temporary restraining order, enjoining his arraignment on July 28, 2000.

In a resolution dated July 17, 2000, respondents were required to comment and the parties were directed to maintain the status quo ante prevailing at the time of filing of the petition. [11]

The petition is anchored on the following grounds:

I. RESPONDENT COURT ACTED WITHOUT JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING PETITIONER'S MOTION TO QUASH THE INFORMATION FILED IN CRIMINAL CASES NOS. 13406-13429 NOTWITHSTANDING THE FACT THAT THE PCGG COMMISSIONER WHO FILED SAID INFORMATION HAD NO

AUTHORITY TO DO SO;

II. THE RESPONDENT COURT ACTED WITHOUT JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT COMPLYING WITH THE DIRECTIVE OF THE SUPREME COURT IN THE ROMUALDEZ CASE THAT IT SHOULD ORDER THE OMBUDSMAN TO CONDUCT A PROPER PRELIMINARY INVESTIGATION;

III. THE PETITION WAS DENIED DUE PROCESS THAT SHOULD COME FROM AN IMPARTIAL AND COLDLY NEUTRAL JUDGE. RESPONDENT PREJUDGED THE ISSUES WHEN IT DICTATED IN OPEN COURT THE LENGTHY ORDER OF JUNE 8, 2000, DENYING OUTRIGHT THE MOTION TO QUASH AND ISSUING ANOTHER ORDER ON THE SAME DATE DENYING AN ALLEGED ORAL MOTION FOR RECONSIDERATION. [12]

Respondents counter that the first issue raised by petitioner has already been resolved in G.R. No. 105248, thus:

The invalidity or absence of a preliminary investigation does not however affect the jurisdiction of the Trial Court which may have taken cognizance of the information. The controlling principles are set out by a well known authority now sitting in the Court, in his work entitled "Remedial Law Compendium," as follows:

"**. Any objection to lack of preliminary investigation must be made before entry of the plea (People vs. Monteverde, G.R. No. 60962, July 11, 1986) and the court, instead of dismissing the information, must remand the case for preliminary investigation (People vs. Casiano, L-15309, Feb. 16, 1961; People vs. Figueroa, L-24273, April 30, 1960; Zacarias vs. Cruz, L-25899, Nov. 29, 1969; People vs. Abejuela, L-29715, Mar. 31, 1971; Sanciangco, et al. vs. People, G.R. No. 12830, Mar. 24, 1987). The refusal of the court to remand the case for preliminary investigation can be controlled by certiorari and prohibition to prevent trial (Bandiala vs. CFI, L-24652, Sept. 30, 1970).**."

As regards proceedings in the Sandiganbayan, particularly, another author observes that:

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

The principle was applied despite the fact that trial on the merits had begun and the prosecution had already presented four witnesses. The trial was ordered suspended pending the preliminary investigation (Go vs. Court of Appeals, G.R. No. 101837, February 11, 1992)."

Considering that the invalidity of the preliminary investigation "did not impair the validity of the informations or otherwise render it defective, ** (m)uch less did it affect the jurisdiction of the Court **," the only effect, to repeat, being the imposition on the latter of the obligation to suspend the proceedings and require the holding of a proper preliminary investigation," it follows that all acts done by the Court prior thereto must be accorded validity and effect, subject to the outcome of the preliminary investigation yet to be conducted. The dispositions thus made by respondent Sandiganbayan, i.e., its refusal to recall and quash the warrants of arrest or to modify the conditions laid down by it for petitioner's cash bond; and its confiscation of the cash deposit of petitioner for violation by the latter of the conditions thereof, cannot be regarded as having been made without or in excess of jurisdiction, or so whimsical, capricious or oppressive or so utterly without foundation as to amount to grave abuse of discretion. [13]

The above-quoted ruling is based on our earlier decisions in the cited cases of Luciano v. Mariano, [14] Ilagan v. Enrile, [15] Sanciangco, Jr. v. People [16] and Go v. Court of Appeals. [17] In these cases, what was assailed was

the lack of proper preliminary investigation before the filing of the informations. The informations therein were filed by the proper officer albeit without conducting the requisite preliminary investigation. The case at bar, on the other hand, differs in that the officer who filed the informations against petitioner, PCGG Commissioner Villarín, was not authorized to do so.

This defect invoked by petitioner is one of the grounds for filing a motion to quash, to wit:

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

xxx xxx xxx.

(d) That the officer who filed the information had no authority to do so;

xxx xxx xxx. [18]

What was assailed in G.R. No. 105248 was the Sandiganbayan's refusal to quash the warrants and modify the conditions of the bail bond, as well as its confiscation of the cash deposit. While we ruled therein that the PCGG Commissioner had no authority to conduct the preliminary investigation, we did not squarely rule on his lack of authority to file the informations. The issue before the Court was the invalidity of the preliminary investigation and its consequences.

The Solicitor General, on behalf of the Sandiganbayan, argues that a petition for certiorari is not the proper remedy against the denial of a motion to quash. He cites the cases of *Quiñón v. Sandiganbayan*[19] and *Raro v. Sandiganbayan*. [20] That, however, is the general rule, from which there are known exceptions. In both cases, we qualified the rule by stating that "[i]t is only where there are special circumstances clearly demonstrating the inadequacy of an appeal that the special civil action of certiorari and prohibition may exceptionally be allowed." [21]

There are such special circumstances in the case at bar. Indeed, it would be a gross infringement of petitioner's right to due process, not to mention an utter waste of time and judicial resources, if trial is allowed to proceed only to be nullified by the higher courts later on upon the ground that the charges were filed by a person who had no authority to file the same.

An information is defined as an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. [22]

As can be clearly gleaned, it is the prosecutor, not the PCGG, who subscribes and files the information. In cases before the Sandiganbayan, the prosecutor is the Ombudsman. As we have held, the crimes charged against petitioner do not relate to alleged ill-gotten wealth, over which the PCGG had no jurisdiction.

All trial courts, the Sandiganbayan included, are reminded that they should take all the necessary measures guaranteeing procedural due process from the inception of custodial investigation up to rendition of judgment. [23] They are not to turn a blind eye to procedural irregularities which transpired before the criminal case reached the court. The validity and sufficiency of the information are important. [24]

In the case at bar, the flaw in the information is not a mere remediable defect of form, as in *Pecho v. Sandiganbayan* [25] where the wording of the certification in the information was found inadequate, or in *People v. Marquez*, [26] where the required certification was absent. Here, the informations were filed by an unauthorized party. The defect cannot be cured even by conducting another preliminary investigation. An invalid information is no information at all and cannot be the basis for criminal proceedings.

In fact, where an information does not conform substantially to the prescribed form, it is subject to quashal. More

particularly, the information may be quashed where the officer who filed it had no authority to do so. [27]

At all stages of the proceedings leading to his trial and conviction, the accused must be charged and tried according to the procedure prescribed by law and marked by observance of the rights given to him by the Constitution. In the same way that the reading of the information to the accused during arraignment is not a useless formality, [28] so is the validity of the information being read not an idle ceremony.

Criminal due process requires that the accused must be proceeded against under the orderly processes of law. [29] In all criminal cases, the judge should follow the step-by-step procedure required by the Rules. The reason for this is to assure that the State makes no mistake in taking the life or liberty except that of the guilty. [30]

The case of Cruz, Jr. v. Sandiganbayan[31] is directly in point:

Consequently, the amended information that was filed against petitioner did 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 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 as aforesaid. 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. Another preliminary investigation must be undertaken and thereafter, based on evidence adduced, a new information should be filed.

Consequently all the actions respondent PCGG had taken in this case including the filing of the information and amended information with the respondent court should be struck down.[32]

Recently, we ruled that the infirmity in the information caused by lack of authority of the officer signing it cannot be cured by silence, acquiescence or even by express consent. A new information must be filed by the proper officer. Thus:

xxx xxx xxx. It is a valid information signed by a competent officer, among other requisites, which confers jurisdiction on the court over the person of the accused (herein petitioner) and the subject matter of the accusation. In consonance with this view, an infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent.

In fine, there must have been a valid and sufficient complaint or information in the former prosecution. If, therefore, the complaint or information was insufficient because it was so defective in form or substance that the conviction upon it could not have been sustained, its dismissal without the consent of the accused cannot be pleaded. As the fiscal had no authority to file the information, the dismissal of the first information would not be a bar in petitioner's subsequent prosecution. Jeopardy does not attach where a defendant pleads guilty to a defective indictment that is voluntarily dismissed by the prosecution.[33]

The Sandiganbayan also committed grave abuse of discretion when it abruptly terminated the reinvestigation

being conducted by Prosecutor Lucero. It should be recalled that our directive in G.R. No. 105248 for the holding of a preliminary investigation was based on our ruling that the right to a preliminary investigation is a substantive, rather than a procedural right. Petitioner's right was violated when the preliminary investigation of the charges against him were conducted by an officer without jurisdiction over the said cases. It bears stressing that our directive should be strictly complied with in order to achieve its objective of affording petitioner his right to due process.

The Sandiganbayan contends that petitioner waived his right to a proper preliminary investigation. This is untenable. The records show that petitioner was unable to attend the clarificatory hearings on June 2 and 5, 2000 simply due to lack of notice. Prosecutor Lucero herself admits that Atty. Borromeo, to whom she initially served notice of the hearing, did not represent petitioner in Criminal Cases Nos. 13406-13429. Effectively, petitioner was only notified of the clarificatory hearing scheduled on June 9, 2000. That setting, however, no longer materialized because the day before, the Sandiganbayan prematurely terminated the reinvestigation.

Finally, petitioner charges the Sandiganbayan with having prejudged the cases and deprived him of his right to due process. Considering the defective nature of the informations in the criminal cases below, there is no more need to pass upon this last assignment of error. The Sandiganbayan has committed grave abuse of discretion in refusing to quash the informations against petitioner. In the exercise of their discretion, all courts are admonished to uphold the law and procedure and to do what is fair and just.^[34] The Sandiganbayan failed in this regard.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The assailed orders of the Sandiganbayan dated June 8, 2000 are ANNULLED and SET ASIDE.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Kapunan, and Austria-Martinez, JJ., concur.

[1] 244 SCRA 152 [1995].

[2] Ibid., at 162-163; emphasis provided.

[3] Rollo, p. 103.

[4] Ibid., p. 107.

[5] Ibid., pp. 108-109.

[6] Ibid., pp. 110-114.

[7] Ibid., p. 115.

[8] Ibid., pp. 45-50.

[9] Ibid., pp. 51-52.

[10] Ibid., p. 53.

[11] Ibid., pp. 132-134.

[12] Ibid., p. 14.

[13] Romualdez v. Sandiganbayan, supra, at 164-165; emphasis provided.

[14] 40 SCRA 187 [1971].

[15] 139 SCRA 349 [1985].

[16] 149 SCRA 1 [1987].

[17] 206 SCRA 138 [1992].

[18] Rules of Court, Rule 117, Sec. 3.

[19] 271 SCRA 575 [1997].

[20] 335 SCRA 581 [2000].

[21] Quiñon v. Sandiganbayan, supra, at 592; Raro v. Sandiganbayan, supra, at 600.

[22] Rules of Court, Rule 110, Sec. 4.

[23] Constitution, Art. III, Sec. 12 (1); Morales v. Enrile, 121 SCRA 538 [1983]; People v. Lino, 196 SCRA 809 [1991].

[24] People v. Mencias, 46 SCRA 88 [1972].

[25] 238 SCRA 116 [1994].

[26] 27 SCRA 808 [1969].

[27] Revised Rules of Criminal Procedure, Rule 117, Section 3 (d).

[28] Borja v. Mendoza, 77 SCRA 422 [1977]; Twining v. New Jersey, 211 U.S. 78 [1908]; Rogers v. Peck, 199 U.S. 425 [1905].

[29] Mejia v. Pamaran, 160 SCRA 457 [1988].

[30] Tabao v. Espina, 257 SCRA 298 [1996] and Alonte v. Sabellano, 287 SCRA 245 [1998].

[31] 194 SCRA 474, 484-485 [1991].

[32] Ibid., at 484-485; emphasis supplied.

[33] Cudia v. Court of Appeals, 284 SCRA 173, 182 [1998].

[34] Tabao v. Espina, 257 SCRA 298 (1996).

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