PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUSTICE GREGORY S. ONG, CHAIRMAN, FOURTH DIVISION, SANDIGANBAYAN, AND MRS. IMELDA R. MARCOS, RESPONDENTS.

G.R. Nos. 162130-39. May 05, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for certiorari and prohibition with prayer for a temporary restraining order and/or preliminary injunction seeking to nullify and set aside the resolutions issued by public respondent Gregory S. Ong, Associate Justice and Chairperson of the Fourth Division of the Sandiganbayan, in Criminal Case Nos. 17287 to 17291, 19225 and 22867 to 22870, specifically:

> (1) The Resolution[1] dated October 15, 2003 denying the motion for inhibition filed by petitioner People of the Philippines; and,
>
> (2) The Resolution[2] dated December 30, 2003 denying petitioner's motion for reconsideration.

Petitioner likewise prays that public respondent be permanently enjoined from presiding over the trial and sitting in judgment in these ten consolidated cases against private respondent Ms. Imelda R. Marcos for violation of Section 3(h) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

At the outset, it must be noted that the above cases relate intimately to Civil Case No. 0141 (forfeiture case) arising from the petition for forfeiture filed by the Presidential Commission on Good Government on behalf of the Republic of the Philippines (Republic) to recover from former President Ferdinand E. Marcos and herein private respondent (collectively, respondents) funds alleged to be ill-gotten and deposited under different Swiss bank accounts in the name of several foreign foundations.

The forfeiture case was heard by the First Division of the Sandiganbayan which, at that time, was composed of Presiding Justice Francis E. Garchitorena as Chairperson with Justice Catalino R. Castañeda and public respondent as regular members. In the Decision[3] dated September 19, 2000, the First Division granted the Republic's motion for summary judgment and declared the Swiss deposits held in the name of the various foundations as forfeited in the name of the government. However, acting upon the motion for reconsideration filed by respondents, the Special First Division[4] of the Sandiganbayan reversed this decision in a Resolution[5] dated January 31, 2002 to which public respondent wrote a separate concurring opinion. The resolution was later set aside by this Court in an en banc Decision[6] dated July 15, 2003 which has since attained finality.

The records show that prior to consolidation, the criminal cases were being heard by the Third and Fourth Divisions of the Sandiganbayan albeit they were at different stages of proceedings. In contrast to the four cases[7] pending with the Fourth Division, trial on the merits had already begun in the six cases[8] docketed with the Third Division. In fact, the prosecution had been in the course of presenting its first witness in the person of Atty.

Francisco I. Chavez. It must be noted that on one occasion, public respondent had the opportunity to hear part of the testimony of Atty. Chavez[9] when he was designated to sit as a special member of the Third Division.[10]

As previously mentioned, and conformably to the Resolution[11] dated January 2, 2003 issued by the Fourth Division, the cases were consolidated in the Third Division which, at that time, was chaired by Justice Godofredo Legaspi. Justice Legaspi, however, recused himself on the ground that private respondent was one of the principal sponsors in his son's wedding. As a result, the cases were submitted for re-raffle to another division.

Petitioner, acting through Special Prosecutor Wendell E. Barreras-Sulit, filed a Manifestation and Motion[12] dated February 21, 2003 praying that the cases be assigned to the First Division in lieu of the proposed re-raffle, considering that the chairperson thereof, Justice Teresita J. Leonardo-De Castro, was already familiar with the cases.[13] This manifestation/motion, though, was rendered moot when the cases were actually raffled to the Fourth Division chaired by public respondent.

Nonetheless, prior to the issuance of the Resolution[14] dated October 15, 2003 denying petitioner's manifestation/motion, Prosecutor Sulit personally met with public respondent in the latter's office sometime in February 2003, purportedly to explain that the manifestation/motion which sought that the cases be assigned to Justice De Castro was not meant to undermine the capability of the other Justices of the Sandiganbayan to try the cases but was mainly because of Justice De Castro's familiarity with them and also to ensure the smooth flow of proceedings.[15] According to Prosecutor Sulit, it was at this juncture that she and Atty. Elissa V. Rosales, the Fourth Division Clerk of Court whom she requested to accompany her during her visit, heard public respondent say:

> Actually, ayaw ko sa kasong yan, idi-dismiss ko 'yan, puro hearsay lang naman ang sinasabi ni Chavez nong umupo ako minsan sa trial nyo.[16]

Petitioner avers that public respondent even confirmed at a later date to Special Prosecutor Dennis Villa-Ignacio that he issued that statement.[17]

Perceiving the remark to be prejudicial and revealing a predisposition to dismiss the criminal cases, petitioner moved for the inhibition of public respondent. Petitioner also contends that public respondent's apparent dislike of Atty. Chavez who is a key witness for the prosecution, taken with his judicial record[18] of favoring the Marcoses in the earlier forfeiture case, bolstered petitioner's fear that the criminal cases would not be tried before an impartial tribunal.

The hostility towards Atty. Chavez was purportedly evidenced by another statement made by public respondent in open court whereby he expressed displeasure over the letter[19] he received from the former requesting for the consolidation of the ten cases at a time when these cases were still being separately heard by the Third and Fourth Divisions. Public respondent was likewise alleged to have been overheard as saying he did not like Atty. Chavez because "mayabang yan."[20] In view of this, petitioner prayed that public respondent voluntarily inhibit himself from hearing the cases pursuant to Section 1, Rule 137 of the Rules of Court.

As stated above, petitioner's motion for inhibition was denied in a Resolution[21] dated October 15, 2003 on the ground that public respondent (1) has not prejudged the merits of the consolidated criminal cases to favor private respondent; (2) is not biased against or hostile towards petitioner's principal witness, Atty. Chavez; and (3) does not possess a judicial track record of favoring or promoting the interests of private respondent.

After the motion for reconsideration of this resolution was denied by public respondent in a Resolution[22] dated December 30, 2003, petitioner filed this present petition on the ground that:

> Public respondent acted without or in excess of jurisdiction and gravely abused his discretion amounting to

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> lack or excess of jurisdiction when he DENIED PROSECUTOR SULIT'S MOTION TO INHIBIT HIMSELF FROM TRYING THE CASES DESPITE THE EXISTENCE OF CLEAR SHOWING OF HIS BIAS AND PARTIALITY IN FAVOR OF ACCUSED MRS. MARCOS, HIS HOSTILITY TOWARDS THE PROSECUTION WITNESS AND HIS DETERMINATION TO DISMISS SAID CASES OF MRS. MARCOS AS SERIOUSLY UTTERED BY HIM ALLEGEDLY BECAUSE THE TESTIMONIES OF CHAVEZ ARE PURE HEARSAY.[23]

By way of response, public respondent, in his Comment[24] dated August 13, 2004, denied having abused his discretion when he did not voluntarily inhibit himself from the criminal cases and declared that he has not prejudged the cases in favor of private respondent or that he had anything against petitioner's principal witness, Atty. Chavez. He further denied the factual allegations mentioned by petitioner in the motion for inhibition, taking particular exception to the imputation that he made the controversial remark when Prosecutor Sulit personally appeared before him in his office sometime in February 2003.

According to public respondent, Prosecutor Sulit was allowed entry into his chambers on the day in question only upon her representation that her visit would be a purely social one. He was thus dismayed to learn that the actual purpose of Prosecutor Sulit's visit was "upon a pending judicial matter, in that she wanted to personally convince respondent Justice, as Chairman of the Fourth Division, to transfer, assign or otherwise agree to transfer or assign, the consolidated Imelda R. Marcos cases directly to the First Division."[25] While public respondent purportedly told Prosecutor Sulit he would not accede to her request to transfer the cases, he also firmly denied having issued the objectionable statement. In disputing the version given by petitioner, public respondent cited the contents of the affidavit executed by Atty. Rosales who disavowed that she was present when the alleged statement was made by public respondent.

For her part, private respondent likewise argued for the dismissal of the present case in her Comment[26] dated August 20, 2004 on the ground that petitioner "miserably failed to adduce facts or evidence indicating arbitrariness, bias or prejudice" on the part of public respondent.

Section 1, Rule 137 of the Rules of Court sets forth the rule on inhibition and disqualification of judges, to wit:

> SECTION 1. Disqualification of judges. - No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied.)

This rule enumerates the specific grounds upon which a judge may be disqualified from participating in a trial. It must be borne in mind that the inhibition of judges is rooted in the Constitution, specifically Article III, the Bill of Rights, which guarantees that no person shall be held to answer for a criminal offense without due process of law. Due process necessarily requires that a hearing is conducted before an impartial and disinterested tribunal[27] because unquestionably, every litigant is entitled to nothing less than the cold neutrality of an impartial judge. All the other elements of due process, like notice and hearing, would be meaningless if the ultimate decision would come from a partial and biased judge.[28]

Relevant to the present case is the second paragraph governing voluntary inhibition. Based on this provision, judges have been given the exclusive prerogative to recuse themselves from hearing cases for reasons other than

those pertaining to their pecuniary interest, relation, previous connection, or previous rulings or decisions. The issue of voluntary inhibition in this instance becomes primarily a matter of conscience and sound discretion on the part of the judge.[29] It is a subjective test the result of which the reviewing tribunal will generally not disturb in the absence of any manifest finding of arbitrariness and whimsicality.

This discretion granted to trial judges takes cognizance of the fact that these judges are in a better position to determine the issue of voluntary inhibition as they are the ones who directly deal with the parties-litigants in their courtrooms.[30] Nevertheless, it must be emphasized that the authority for voluntary inhibition does not give judges unlimited discretion to decide whether or not they will desist from hearing a case.[31] The decision on whether or not judges should inhibit themselves must be based on their rational and logical assessment of the circumstances prevailing in the cases brought before them.[32]

Similarly, the right of a party to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case must be balanced with the latter's sacred duty to decide cases without fear of repression.[33] The movant must therefore prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial.

The Court now addresses the particulars of the present case.

The primary evidence relied upon by petitioner to substantiate its claim that public respondent has prejudged the criminal cases is the remark attributed to him by Prosecutor Sulit which purportedly showed his predisposition to dismiss the criminal cases based largely on his characterization of Atty. Chavez's testimony as being hearsay. Whether the remark was actually made, however, is disputed and petitioner may indeed not have adduced evidence to the degree of certainty required.

Nevertheless, there remain the declarations made by Prosecutor Sulit and Special Prosecutor Villa-Ignacio. These declarations unavoidably cast doubt on public respondent's impartiality in deciding these very critical cases before his Court. So while it may not be sufficient as a ground to compel him to inhibit himself, it should have been considered by him, as any truly circumspect and prudent person would, as sufficient ground for him to voluntarily inhibit himself from considering the cases. For judges must be like Caesar's wife - above suspicion.

Furthermore, while it is settled principle that opinions formed in the course of judicial proceedings, based on the evidence presented and conduct observed by the judge, do not prove personal bias or prejudice on the part of the judge,[34] the situation involved in this case relates to an extrajudicial remark or comment and not one in the course of the proceedings.

Petitioner's second contention is that public respondent has a judicial record favoring private respondent. Normally, bias or partiality cannot be inferred from the fact that a judge ruled in favor of a party in a previous case. When taken together, however, with an extrajudicial remark showing bias against a key witness, public respondent should have voluntarily declined to participate in the cases. For it is essential that the people continue to trust in the fairness and impartiality of our magistrates, particularly in sensitive cases with far-reaching consequences.

Public respondent is reminded of the principle that judges should avoid not just impropriety in their conduct but even the mere appearance of impropriety[35] for appearance is an essential manifestation of reality.[36] In insulating the Bench from unwarranted criticism, thus preserving a democratic way of life, it is essential that judges be above suspicion.[37] It bears stressing that the duty of judges is not only to administer justice but also to conduct themselves in a manner that would avoid any suspicion of irregularity.[38] This arises from the avowed duty of members of the bench to promote confidence in the judicial system. Occupying as they do an exalted

position in the administration of justice, judges must pay a high price for the honor bestowed upon them. Hence, any act which would give the appearance of impropriety becomes, of itself, reprehensible.[39]

WHEREFORE, the petition for certiorari and prohibition is GRANTED and public respondent is DIRECTED to recuse himself from participating in the Criminal Cases Nos. 17287 to 17291, 19225 and 22867 to 22870 of the Sandiganbayan.

No costs.

SO ORDERED.

Sandoval-Gutierrez, (Acting Chairperson), Corona, and Garcia, JJ., concur.
Puno, (Chairperson), J. on leave.

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[1]Rollo, pp. 67-89.

[2]Id. at 90-123.

[3] Id. at 460-489.

[4]At that time, the Special First Division was composed of the members of the First Division as well as Justice Nicodemo T. Ferrer and Justice Francisco Villaruz, Jr.

[5] Rollo, pp. 213-230.

[6] Republic v. Sandiganbayan, G.R. No. 152154, July 15, 2003, 406 SCRA 190.

[7] Criminal Case Nos. 22867 to 22870.

[8] Criminal Case Nos. 17287 to 17291 and 19225.

[9] Rollo, pp. 267-268.

[10]Public respondent filled in for Justice Ricardo M. Ilarde who was unable to attend the trial or participate in the deliberations of the Third Division on November 16, 2001.

[11] Rollo, pp. 135-137.

[12]Id. at 140-142.

[13] Justice De Castro was a former member of the Third Division which originally tried six of the ten criminal cases against private respondent.

[14]Rollo, pp.146-147.

[15] Id. at 11.

[16] Ibid.

[17] Id. at 210-212.

[18]In support of this allegation, petitioner cites the fact that (1) public respondent changed his position in the forfeiture case and wrote a separate concurring opinion favoring the respondents; and (2) public respondent concurred in granting private respondent's Motion to Travel dated September 3, 2003 to the United States and Europe. (See rollo, pp. 161-163, 183).

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[19] Rollo, pp. 207-209.

[20] Id. at 13-14.

[21] Rollo, pp. 67-89.

[22] Id. at 90-123.

[23]Rollo, pp. 28-29.

[24]Id. at 255-502.

[25]Id. at 280.

[26] Rollo, pp. 265-275.

[27] Gutierrez v. Santos, G.R. No. L-15824, May 30, 1961, 2 SCRA 249.

[28]Rallos v. Gako, A.M. Nos. RTJ-99-1484 and RTJ-99-1484 (A), March 17, 2000, 328 SCRA 324.

[29] Latorre v. Ansaldo, A.M. No. RTJ-00-1563, May 31, 2001, 358 SCRA 311.

[30]Gutang v. CA, 354 Phil. 77 (1998).

[31]People v. Kho, G.R. No. 139381, April 20, 2001, 357 SCRA 290.

[32] Gacayan v. Pamintuan, A.M. No. RTJ-99-1483, September 17, 1999, 314 SCRA 682.

[33]Webb v. People, G.R. No. 127262, July 24, 1997, 276 SCRA 243.

[34]Webb v. People, supra note 33.

[35] San Juan vs. Bagalacsa, G.R. No. A.M. No. RTJ-97-1395, December 22, 1997, 283 SCRA 416.

[36]Espiritu v. Jovellanos, A.M. MTJ-97-1139, October 16, 1997, 280 SCRA 579.

[37]Concerned Employees of the RTC of Dagupan City v. Falloran-Aliposa, A.M. No. RTJ-99-1146, March 9, 2000, 237 SCRA 427.

[38] Contreras v. Solis, A.M. No. RTJ-94-1266, August 21, 1996, 260 SCRA 572.

[39]Concerned Employees of the RTC of Dagupan City v. Falloran-Aliposa, supra note 37.

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