BGEN. (RET.) JOSE S. RAMISCAL, JR., PETITIONER, VS. HON. JOSE R. HERNANDEZ, AS JUSTICE OF THE SANDIGANBAYAN; 4TH DIVISION, SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPO...

G.R. Nos. 173057-74. September 20, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This is a Petition for Certiorari and Prohibition with prayer for the issuance of a Temporary Restraining Order (TRO) seeking to reverse and set aside the Resolution[1]dated May 4, 2006 of the Sandiganbayan in Criminal Case Nos. 28022-23 and 25122-45. The assailed Resolution denied petitioner's motions for inhibition,[2] which sought to disqualify respondent Justice Jose R. Hernandez, Associate Justice of the Sandiganbayan, Fourth Division, from taking part in said cases.

The facts are as follows:

Petitioner, Retired BGen. Jose S. Ramiscal, Jr., then President of the Armed Forces of the Philippines-Retirement and Separation Benefits System (AFP-RSBS),[3] signed several deeds of sale for the acquisition of parcels of land for the development of housing projects and for other concerns. However, it appears that the landowners from whom the AFP-RSBS acquired the lots executed unilateral deeds of sale providing for a lesser consideration apparently to evade the payment of correct taxes. Hence, the Senate Blue Ribbon Committee conducted an extensive investigation in 1998 on the alleged anomaly.

In its Report dated December 23, 1998, the Committee concluded that there were irregularities committed by the officials of the AFP-RSBS and recommended the prosecution of those responsible, including petitioner, who had signed the unregistered deeds of sale as AFP-RSBS President. Accordingly, on January 28, 1999, fourteen (14) informations were filed with the Sandiganbayan against petitioner for violation of Section 3(e)[4] of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and for the crime of estafa through falsification of public documents as defined under paragraph 4 of Article 171[5] of the Revised Penal Code, as amended.[6] The informations charging petitioner with violations of the Anti-Graft and Corrupt Practices Act were docketed as Criminal Case Nos. 25122-25133 while those charging estafa through falsification of public documents were docketed as Criminal Case Nos. 25134-25145.

Then, on July 27, 2003, junior officers and enlisted men from elite units of the AFP took over the Oakwood Premier Apartments at Ayala Center in Makati City to air their grievances about graft and corruption in the military. In response to the incident, President Gloria Macapagal-Arroyo created a Fact-Finding Commission (Feliciano Commission) wherein respondent's wife, Professor Carolina G. Hernandez, was appointed as one of the Commissioners. On October 17, 2003, the Feliciano Commission submitted its Report recommending, among others, the prosecution of petitioner. President Arroyo then issued Executive Order No. 255 on December 5, 2003, creating the Office of a Presidential Adviser under the Office of the President to implement the recommendations of the Feliciano Commission.[7] Professor Carolina G. Hernandez was appointed as Presidential Adviser in the

newly created office. Shortly thereafter, respondent Justice Hernandez was appointed as Associate Justice of the Sandiganbayan and assigned to its Fourth Division.

On October 11, 2004, eight additional informations were filed with the Sandiganbayan against petitioner. Two were assigned to the Fourth Division of the court, one for violation of R.A. No. 3019, docketed as Criminal Case No. 28022, and the other for estafa through falsification of public documents, docketed as Criminal Case No. 28023.

On April 6, 2006, petitioner filed two motions to inhibit Justice Hernandez from taking part in Criminal Case Nos. 25122-45 and Criminal Case Nos. 28022-23 pending before the Fourth Division. Petitioner cited that Justice Hernandez's wife, Professor Hernandez, was a member of the Feliciano Commission and was tasked to implement fully the recommendations of the Senate Blue Ribbon Committee, including his criminal prosecution. Further, the spousal relationship between Justice Hernandez and Professor Hernandez created in his mind impression of partiality and bias, which circumstance constitutes a just and valid ground for his inhibition under the second paragraph of Section 1, Rule 137 of the Rules of Court.

In its Consolidated Comment/Opposition,[8] the Office of the Special Prosecutor (OSP) asserted that the grounds raised by petitioner in his motions for inhibition were anchored on mere speculations and conjectures. It stressed that the recommendation of the Feliciano Commission was a product of consensus of the members of the Commission which was a collegial body. And even if Professor Hernandez signed the Report of the Commission to implement the recommendations of the Senate Blue Ribbon Committee, the findings of the said Commission did not remove the presumption of innocence in petitioner's favor. Hence, the OSP argued that the mere membership of Prof. Hernandez in the Feliciano Commission did not automatically disqualify Justice Hernandez from hearing the criminal cases against petitioners.

On May 4, 2006, Justice Hernandez issued the assailed Resolution, the dispositive portion of which reads:

> ACCORDINGLY, accused Jose S. Ramiscal's Motions for Inhibition are DENIED.
>
> SO ORDERED.

Petitioner did not seek reconsideration of the Resolution, but instead filed a petition for certiorari and prohibition before this Court on the following grounds:

> I
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> THE RESPONDENT HON. JOSE R. HERNANDEZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN REFUSING TO INHIBIT HIMSELF FROM THE CASES PENDING BEFORE THE 4[TH] DIVISION AGAINST PETITIONER NOTWITHSTANDING THAT UNDER RULE 137 HE IS DISQUALIFIED TO TRY OR SIT IN JUDGMENT IN THESE CASES;
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> II
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> THE RESPONDENT 4[TH] DIVISION OF THE SANDIGANBAYAN IS PROCEEDING TO HEAR THESE CASES WITHOUT OR IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION NOTWITHSTANDING THAT ITS MEMBER, THE RESPONDENT JUSTICE JOSE HERNANDEZ, IS DISQUALIFIED FROM SITTING OR TAKING PART IN ITS PROCEEDINGS; AND,
>
> III
>
> THE HON. JUSTICE HERNANDEZ IS DISQUALIFIED FROM TAKING PART IN SITTING OR HEARING THE CASES AGAINST PETITIONER IN ALL THE CASES PENDING BEFORE ALL THE

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> FIVE (5) DIVISIONS OF THE SANDIGANBAYAN IN CONSEQUENCE OF HIS DISQUALIFICATION UNDER RULE 137.[9]

Essentially, the issue is: Did Justice Hernandez commit grave abuse of discretion amounting to lack or excess of jurisdiction in not inhibiting himself from the cases against petitioner pending before the Sandiganbayan?

Petitioner submits that it was erroneous for Justice Hernandez to deny the motions to inhibit himself under the second paragraph of Section 1 of Rule 137 of the Rules of Court, when in fact the basis for his disqualification was the latter's spousal relationship with Professor Hernandez, which situation was governed by the first paragraph of the said section. According to petitioner, while Professor Hernandez was not directly "pecuniarily interested" in the case, she was more than so interested in them because as an appointee of President Arroyo, she was receiving emoluments to monitor the progress of the cases and to see to it that the recommendations of the Feliciano Commission are fulfilled.

We deny the petition.

The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court:

> 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 the 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.

The Rules contemplate two kinds of inhibition: compulsory and voluntary. Under the first paragraph of the cited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The second paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[10]

In denying the motions for his inhibition, Justice Hernandez explained that petitioner failed to impute any act of bias or impartiality on his part, to wit:

> What can reasonably be gleaned from jurisprudence on this point of law is the necessity of proving bias and partiality under the second paragraph of the rule in question. The proof required needs to point to some act or conduct on the part of the judge being sought for inhibition. In the instant Motions, there is not even a single act or conduct attributed to Justice Hernandez from where a suspicion of bias or partiality can be derived or appreciated. In fact, it is oddly striking that the accused does not even make a claim or imputation of bias or partiality on the part of Justice Hernandez. Understandably, he simply cannot make such allegation all because there is none to be told. If allegations or perceptions of bias from the tenor and language of a judge is considered by the Supreme Court as insufficient to show prejudgment, how much more insufficient it becomes if there is absent any allegation of bias or partiality to begin with.[11]

We find the above explanation well-taken and thus uphold the assailed Resolution upon the grounds so stated. We have ruled in Philippine Commercial International Bank v. Dy Hong Pi,[12] that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial.

An allegation of prejudgment, without more, constitutes mere conjecture and is not one of the "just or valid reasons" contemplated in the second paragraph of Section 1, Rule 137 of the Rules of Court for which a judge may inhibit himself from hearing the case. The bare allegations of the judge's partiality, as in this case, will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough.[13]

Petitioner contends that his motions were based on the second paragraph of Section 1, Rule 137, but a closer examination of the motions for inhibition reveals that petitioner undoubtedly invoked the second paragraph by underscoring the phrase, "for just or valid reasons other than those mentioned above." This was an express indication of the rule that he was invoking. Moreover, it was specifically stated in paragraph 7 of both motions that "in accused's mind, such circumstances militates against the Hon. Justice Hernandez and constitutes a just and valid ground for his inhibition under the 2[nd] paragraph, Section 1 of Rule 137, in so far as the cases against accused are concerned." Hence, there is no question that petitioner relied on the second paragraph of the Rule which contemplates voluntary inhibition as basis for his motions for inhibition.

And even if we were to assume that petitioner indeed invoked the first paragraph of Section 1, Rule 137 in his motions to inhibit, we should stress that marital relationship by itself is not a ground to disqualify a judge from hearing a case. Under the first paragraph of the rule on inhibition, "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...." The relationship mentioned therein becomes relevant only when such spouse or child of the judge is "pecuniarily interested" as heir, legatee, creditor or otherwise. Petitioner, however, miserably failed to show that Professor Carolina G. Hernandez is financially or pecuniarily interested in these cases before the Sandiganbayan to justify the inhibition of Justice Hernandez under the first paragraph of Section 1 of Rule 137.

WHEREFORE, the petition is DENIED. The Resolution dated May 4, 2006 of the Sandiganbayan in Criminal Case Nos. 25122-45 and Criminal Case Nos. 28022-23 is AFFIRMED and UPHELD.

With costs against petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Peralta,[*] Bersamin, and Sereno, JJ., concur.

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[*] Designated as additional member per Special Order No. 885 dated September 1, 2010.

[1] Rollo, pp. 58-64. Penned by Associate Justice Jose R. Hernandez.

[2] Id. at 36-44.

[3] Presidential Decree No. 361, Section 1. An Armed Forces Retirement and Separation Benefits System, referred to in this Act as "System," for payment of retirement and separation benefits provided and existing laws to military members of the Armed Forces of the Philippines and such similar laws as may in the future be enacted applicable to commissioned officers and enlisted personnel of the Armed Forces of the Philippines is hereby established.

[4] 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:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[5] ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister.--The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x

4. Making untruthful statements in a narration of facts;

x x x x

[6] Rollo, p. 5.

[7] Id. at 33-34.

[8] Id. at 45-48.

[9] Id. at 17.

[10] Pagoda Philippines, Inc. v. Universal Canning, Inc., G.R. No. 160966, October 11, 2005, 472 SCRA 355, 360-361, citing Gochan v. Gochan, 446 Phil. 433, 446 (2003) and People v. Kho,G.R. No.139381, April 20, 2001, 357 SCRA 290, 296.

[11] Rollo, p. 63.

[12] G.R. No. 171137, June 5, 2009, 588 SCRA 612, 632.

[13] Pagoda Philippines, Inc. v. Universal Canning, Inc., supra note 10, at 362.

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