

GWENDOLYN F. GARCIA, PETITIONER, V. HONORABLE SANDIGANBAYAN, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 205904-06. October 17, 2018

Ponente: A. REYES, JR., J.

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A. REYES, JR., J.:

This is a petition for certiorari filed by Gwendolyn F. Garcia (petitioner) assailing the Resolution[1] dated January 2, 2013 and the three (3) Hold Departure Orders (HDOs)[2] dated July 24, 2012 issued by the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0175 to 0177.

Factual Antecedents

Sometime in 1970, Luis Balili (Luis) acquired free patents over 10 parcels of land situated in Naga, Cebu, measuring 247,317 square meters (sq ms), more or less. In addition to the mentioned lots, he also made a claim over a parcel of land in Tina-an, Naga, Cebu, with an approximate area of 1,929 sq ms. These properties constitute the Balili Estate, more particularly described as follows:[3]

TITLE/LEGAL
DOCUMENT

LOT NUMBER

AREA (in sq. m.)

OCT-15311

1, SP-07-01-000062

5,825

OCT-15893

PSU-07-01-002299

2,484

OCT-58357

39-C-4-A

21,566

OCT-15313

2, SP-07-01-000062

26,231

OCT-15328

SP-07-01-000048

142,734

OCT-15012

1, SP-07-01-000047

2, SP-07-01-000047

9,914

27,737

OCT-15894

1, SP-07-01-002298

SP-07-01-002298

2,093

3,253

OCT-15312

2, SP-07-01-000063

5,480

TOTAL 247,317

TD 01-30-008592

Cad. Lot No. 6009

1,929

Upon Luis' death, Romeo Balili (Romeo), his nephew, was appointed as executor. As he was authorized to sell or dispose of the properties belonging to the estate of Luis, he engaged the services of several real estate brokers, one of them is Lumen Durano (Durano).[4]

In 2006, Durano learned that the Provincial Government of Cebu was planning to put up an international seaport. He approached Juan Bolo (Bolo), a member of Sangguniang Panlalawigan of Cebu and the Chairman of the Committee on Provincial Properties, and offered to sell the Balili Estate. Bolo communicated the offer to the petitioner, then governor of Cebu, who thereafter instructed him to inquire on the selling price of the property and to have the same appraised by the Appraisal Committee.

In a Letter[5] dated June 26, 2007, Bolo requested Engr. Anthony Sususco (Engr. Sususco) to appraise the fair market value of the Balili Estate. A team, which was headed by Assistant Provincial Assessor Mariflor Vera (Vera), together with Michelle Languido (Languido) and Roger Dumayac (Dumayac), was sent to the area to conduct an ocular inspection, appraise the property and gather opinion values.[6]

On July 6, 2007, Languido and Dumayac submitted a report to Engr. Sususco, together with the following data and/or attachments: (1) Zonal valuation from the Office of the Bureau of Internal Revenue-South District; (2)

Vicinity map; (3) Lot description; (4) Opinion values; (5) Tax declarations from the Office of the Municipal Assessor of Naga, and; (6) titles.[7] The report noted that the property, consisting of an area of 24 hectares, more or less, has a generally flat topography, with a portion thereof being utilized as a fishpond. It also mentioned the existence of a non-operational resort on the property and a three-meter wide right-of-way by the seaside, adjacent to the port of APO Cement Corporation, which serves as an access road to the national highway.[8]

On July 10, 2007, the Cebu Provincial Appraisal Committee headed by Engr. Sususco, with Roy Salubre (Salubre) and Eloguio Pelayre (Pelayre) as members, issued Resolution No. 23,[9] pegging the base unit market value of the subject property to P610.00 per sq m. On the basis of said resolution, Bolo authored Resolution No. 187-2008[10] dated January 14, 2008, authorizing the petitioner to execute and sign, for and in behalf of the Province of Cebu, the Memorandum of Agreement (MOA) for the sale of ten parcels of land composing the Balili Estate, with the purchase price pegged at P434.00 per sq m. He justified the acquisition in that the subject property, which was classified under industrial/recreational category, will provide a good opportunity for the province to develop and cater to the needs of interested investors.[11] The said resolution was duly attested by Vice Governor Gregorio Sanchez, Jr. (Vice Gov. Sanchez, Jr.) and approved on April 4, 2008.

Following the approval of Resolution No. No. 187-2008, the MOA for the Sale of Eleven Parcels of Land was executed on April 21, 2008.[12] Noticeably, however, the memorandum pertained to the purchase of eleven parcels of land at P400.00 per sq m, including the untitled lot being claimed by Luis, even when Resolution No. 187-2008 authorized only the purchase of ten parcels of land. Despite the discrepancy, the memorandum was signed by Garcia, in behalf of the Province of Cebu, and the representatives of the Balili Estate.[13]

To remedy the discrepancy, Bolo authored Resolution No. 1781-2008[14] dated April 21, 2008, proposing to amend Resolution No. 187-2008 specifically to authorize the petitioner to purchase eleven parcels of land, instead of only ten, to include the untitled parcel of land over which Luis also had a claim of ownership. This is to make the petitioner's authority conform to the signed MOA dated April 21, 2008 which pertained to the acquisition of eleven lots by the Province of Cebu.

As stipulated in the MOA, the Province of Cebu tendered the first installment payment of P49,849,200.00 thru Landbank of the Philippines Check No. 218470 dated April 28, 2008,[15] with Romeo as payee.[16] On June 11, 2008, a Deed of Absolute Sale[17] was executed, transferring the ownership of the eleven parcels of land, including one untitled lot, to the Province of Cebu. Subsequently, transfer certificates of title pertaining to the ten titled properties were issued in the name of the Province of Cebu. Thereafter, the second installment in the amount of P49,077,600.00 was settled, again with Romeo, not the estate of Luis, as payee. Significantly, the payments made by the Province of Cebu were taken out of the treasury of the provincial government without any resolution effecting appropriation and payment of the purchase price.[18] Further, there was discrepancy in the two (2) disbursement vouchers for the installment payments as the first one stated that it pertained to "50% of payment of eleven parcels of land situated in Naga City, Cebu, with a total area of 249,246 sq. meters,"[19] while the second one stated that it is in "full payment of ten parcels of land situated in Naga City, Cebu, with a total area of 247,317 sq. meters." [20]

The transaction attracted media attention which prompted the provincial government to conduct a survey of the subject property. It was discovered by the provincial surveyor that a large portion of the property, more or less 80,124 sq ms, was submerged in water and that another portion thereof, approximately 14,402 sq ms; was a mangrove area. Thus, the Officer-in-Charge of the Cebu Provincial Legal Office, Marino E. Martinquilla, wrote a Letter[21] dated August 14, 2009 to Romeo, informing him of the facts gathered during the survey and telling him that a sizable portion of the Balili Estate was beyond the commerce of man. He also demanded, in behalf of the Province of Cebu, for a reimbursement of the amount of P37,810,400.00, pertaining to the amount paid for

submerged and mangrove areas, plus legal interest computed from the time of payment.

Following the controversial transaction, the Public Assistance and Corruption Prevention Office – Visayas (PACPO-Visayas) conducted a fact-finding investigation on the matter. On September 2-3, 2009, representatives from the Department of Environment and Natural Resources (DENR) and the Office of the Ombudsman-Visayas (OMB-Visayas) conducted a verification survey on the area. The team discovered that 202,456-sq m portion of the 247,317-sq m property was classified as timberland. Further, 196,696-sq m portion thereof was underwater.[22]

It was likewise discovered that the appropriation for the purchase of the lots was classified as "Site Development and Housing Program" but no item enumerated thereon included site/land acquisition. Apart from this irregularity, it was learned that there was also a question on the legality of Luis' acquisition of ownership over the subject lots and that the DENR proposed that they be subjected to reversion proceedings.[23]

Subsequently, the OMB-Visayas, through PACPO-Visayas initiated the filing of criminal and administrative charges against the accountable public officials and employees pursuant to a letter of complaint from an anonymous letter-sender, to wit:

1)

Criminal Complaint for Violation of Section 3(g) of Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act," against the petitioner, as governor of the Province of Cebu;

2)

Criminal Complaint for Violation of Section 3(e) of R.A. No. 3019 against Bolo, as Provincial Board Member, and the members of the Provincial Appraisal Committee, namely, Engr. Sususco, Salubre and Pelayre; Members of the Technical Working Group, namely, Vero, Languido, Dumayac and Pilar Yburan (Yburan), and; Romeo and Amparo Balili, for conspiring and confederating with each other in the purchase of a property, with an area of 202,456 sq ms classified as timberland and another portion measuring 196,696 sq ms submerged in water, thereby causing undue injury to the government in the amount of P80,982,400.00 and P78,678,400.00, respectively;

3)

Criminal Case for Violation of Section 3(e) of R.A. No. 3019 against the petitioner, Vice Gov. Sanchez, Jr., members of the provincial board, among others, for gross inexcusable negligence in immediately approving the purchase of the property in question; and,

4)

Administrative Complaint for Grave Misconduct as defined under Rules IV, Section 52(a)(3) of the Civil Service Commission Uniform Rules on Administrative Cases (CSC Resolution No. 991936) against Engr. Sususco, Salubre, Pelayre, Vero, Languido, Dumayac, Yburan and Emme Gingoyon (Gingoyon).[24]

Thereafter, another Letter-Complaint dated December 23, 2010 was filed by a certain Manuel T. Manuel, questioning the provincial government's purchase of the Balili Estate and requesting that the concerned officials be investigated for violation of the Section 3(a) of R.A. No. 3019.[25]

This was followed by Letter-Complaint dated December 8, 2010 filed by Crisologo V. Saavedra, likewise assailing as illegal the provincial government's purchase of the Balili Estate and requesting that the petitioner be investigated for the commission of the crime of plunder and violations of Section 3(e) and (g) of R.A. No. 3019.[26]

In a Resolution dated August 26, 2011,[27] the OMB-Office of the Overall Deputy Ombudsman found probable cause to indict the petitioner for violation of Sections 3(e) and 3(g) of R.A. No. 3019, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, we found the following respondents, namely: GWENDOLYN F. GARCIA, JUAN V. BOLO, ANTHONY D. SUSUSCO, ROY G. SALUBRE, EULOGIO B. PELAYRE and EMME T. GINGOYON together with private respondents ROMEO J. BALILI and AMPARO G. BALILI, probably guilty of violation of Section 3(e) of Republic Act 3019. We likewise found GWENDOLYN F. GARCIA probably guilty of violation of Section 3(g) of Republic Act 3019.

The charges of Plunder (Republic Act 7080) and Violation of Section 3(a) of Republic Act 3019 against the respondents are hereby dismissed for insufficiency of evidence.

The charges against respondents: MARIFLOR D. VERO, PILAR C. YBURAN, MICHELLE V. LANGUIDO, ROGER L. DUMAYAC, VICTOR A. MAAMBONG, JULIAN DAAN, AGNES A. MAGPALE, JOSE MARIA S. GASTARDO, WILFREDO CAMINERO, PETER JOHN CALDERON, JOVEN MONDIGO JR., TERESITA D. CELES, ROSEMARIE D. DURANO, WENCESLAO GAKIT, ALFRED FRANCIS M. OUANO, AND BEA MERCEDS A. CALDERON are hereby dismissed for insufficiency of evidence. The charges against GREGORIO SANCHEZ JR., on account of his death, are hereby DISMISSED.

Let the herein appended Information for Violation of Section 3(e) of Republic Act 3019 and the Information for Violation of Section 3(g) of Republic Act 3019 against the above-named respondents be filed before the Sandiganbayan.

x x x x

SO ORDERED.[28]

In an Addendum to the Resolution[29] dated July 10, 2012, then Ombudsman Conchita Carpio Morales held that, in addition to the disposition in the Resolution dated August 26, 2011, there is also evidence to engender a well-founded belief that the petitioner committed or is probably guilty of the crime of Technical Malversation, defined and penalized under Article 220 of the Revised Penal Code (RPC). She pointed out that the petitioner used the funds specifically appropriated for Site Development and Housing Program in the amount of P50,000,000.00 provided under Appropriation Ordinance No. 2007-15 in order to settle the first installment payment of the Balili Estate in the amount of P49,849,200.00, when the said fund was exclusively intended for acquisition and development of real property for the furtherance of the province's housing program. In view of said circumstance, an information for the commission of technical malversation was likewise ordered to be filed against the petitioner.

On July 19, 2012, informations[30] charging Garcia, among others, for violation of Sections 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the RPC were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB12 CRM 0175, SB12 CRM 0176 and SB12 CRM 0177, respectively.

Subsequently, on July 24, 2014, the Sandiganbayan issued three (3) (HDOs) against the petitioner and her co-accused, to wit:

CRIM. CASES NOS. SB12 CRM 0175[31]

HOLD DEPARTURE ORDER

The above-entitled case/s having been filed against accused: GWENDOLYN F. GARCIA; JUAN V. BOLO; ANTHONY D. SUSUSCO; ROY G. SALUBRE; EULOGIO B. PELAYRE; EMMIE T. GINGOYON; AMPARO G. BALILI; and ROMEO J. BALILI, this Court, in the exercise of its inherent power to use all means necessary to carry its orders into effect, more specifically, to preserve and maintain the effectiveness of its jurisdiction over the case/s and the person/s of the accused so as to render accused at all times amenable to its writs and processes (Section 6, Rule 135; Section 23, Rule 114 of the Rules of Court; Santiago v. Vasquez, et al., 217 SCRA 633), HEREBY ORDERS the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named accused and to include the names of said accused/s in the Hold Departure List of said Bureau.

x x x x

CRIM. CASES NOS. SB12 CRM 0176[32]

HOLD DEPARTURE ORDER

The above-entitled case/s having been filed against accused: GWENDOLYN F. GARCIA; this Court, in the exercise of its inherent power to use all means necessary to carry its orders into effect, more specifically, to preserve and maintain the effectiveness of its jurisdiction over the case/s and the person/s of the accused so as to render accused at all times amenable to its writs and processes (Section 6, Rule 135; Section 23, Rule 114 of the Rules of Court; Santiago v. Vasquez, et al., 217 SCRA 633), HEREBY ORDERS the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named accused and to include the name of said accused/s in the Hold Departure List of said Bureau.

x x x x

CRIM. CASES NOS. SB12 CRM 0177[33]

HOLD DEPARTURE ORDER

The above-entitled case/s having been filed against accused: GWENDOLYN F. GARCIA, this Court, in the exercise of its inherent power to use all means necessary to carry its orders into effect, more specifically, to preserve and maintain the effectiveness of its jurisdiction over the case/s and the person/s of the accused so as to render accused at all times amenable to its writs and processes (Section 6, Rule 135; Section 23, Rule 114 of the Rules of Court; Santiago v. Vasquez, et al., 217 SCRA 633), HEREBY ORDERS the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named accused and to include the name of said accused/s in the Hold Departure List of said Bureau.

x x x x

In the meantime, on July 20, 2012, the petitioner, who was based in Cebu, voluntarily surrendered to Judge Soliver C. Peras (Judge Peras), First Vice Executive Judge of Cebu City, and made three separate cash deposits of P30,000.00 as bail for her provisional liberty corresponding to the three cases filed against her. Accordingly, Judge Peras issued three separate orders of release.[34]

On July 25, 2012, the petitioner filed a Motion for Reconsideration/Reinvestigation[35] of the Resolution dated August 26, 2011, praying for a reinvestigation of the case and reversal of the finding of probable cause against her for violations of Section 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the RPC. She argued that before there could be a valid prosecution of a purported violation of Section 3(e) of R.A. No. 3019, there must be a prima facie evidence of actual injury or damage to the government and, on the other hand, a gross and manifest disadvantage

to the government for supposed violation of Section 3(g) of the same law. Both standards were not met.[36] Further, she claimed that there was no technical malversation when the purchase of the Balili Estate was classified as an item falling under Site Development and Housing Program since the Province of Cebu, as a local government unit vested with corporate powers, has the authority to determine on its own accord the projects and programs for which funds from the provincial coffers would be utilized. Moreover, the item "Site Development and Housing. Program" is broad enough to cover projects that fall under "Site Development" or "Housing Program" and that the province cannot be limited by the OMB in its utilization of general items in its own annual budget.[37]

On the same day, the petitioner filed a Motion for Leave to File Motion for Reconsideration with the OMB with Motion for Suspension of Proceedings. On August 3, 2012 after hearing the motion, the Sandiganbayan issued an order, holding in abeyance further proceedings in the cases with respect to the petitioner and ordering the OMB to take cognizance of the motion for reconsideration she filed before the said office.[38]

On September 4, 2012, the petitioner received a Notice of HDO along with the three (3) HDOs issued against her. She thereafter filed a Motion for Reconsideration (with prayer to lift or set aside prematurely-issued HDOs),[39] arguing that the HDOs cannot be issued without a final determination of probable cause. She claimed that the HDOs were violative of her constitutional right to travel, which may be impaired only in the interest of national security, public safety, or public health, as maybe provided by law.[40] She asseverated that the only apparent reason that can prevent her from traveling abroad is the pendency of a criminal case. Citing *Mupas v. Español*[41] (A.M. No. RTCJ-04-1850, 14 July 2004), she argued that there should be an actual case "filed and pending" with the Court before an HDO can be issued. Since there was no final resolution yet on her motion for reconsideration, it cannot be said that there is already a pending criminal case against her. The issuance of the HDOs, therefore, was premature.[42]

In its Comment/Opposition,[43] the prosecution dismissed the petitioner's arguments and argued that the Resolution dated August 26, 2011 was, for all intents and purposes, a final determination of probable cause against her as it bore the signature of the Ombudsman who signified her review and approval thereof.[44] There was likewise no premature issuance of HDOs since the Sandiganbayan had already acquired jurisdiction over the case when the informations were file before the Sandiganbayan.[45] It also pointed out that *Mupas* was inapplicable since in the mentioned case the criminal complaint was still on the investigation stage and still subject to the review of the provincial prosecutor prior to the filing of information in court.[46]

Ruling of the Sandiganbayan

On January 2, 2013, the Sandiganbayan issued a Resolution,[47] denying the motion filed by the petitioner, the, pertinent portions of which read as follows:

There is nothing premature in, and no legal impediment whatsoever to, the issuance of HDOs in these cases by the Court following a valid judicial determination of probable cause to hold movant for trial, The Court issued orders of arrest against movant. It would be illogical to order her arrest but freely allow her to depart for abroad.

x x x x

Finally, the contention of movant that there is no case against her "filed and pending" before the Court because the Court suspended the proceedings to allow the Office of the Ombudsman to resolve her Motion for Reconsideration/Reinvestigation is untenable. Such action of the Court did not oust it of jurisdiction over the cases and over the person of the accused. Movant remains charged before the Court with the offenses described in the Informations filed.

WHEREFORE, premises considered, the Motion for Reconsideration (with prayer to lift or set aside prematurely-issued Hold Departure Orders) dated September 12, 2012, filed by [petitioner] Gwendolyn Fiel Garcia, through counsel, is hereby denied.

SO ORDERED.[48]

On March 11, 2013, the petitioner filed the instant petition for certiorari, praying that the Resolution dated January 2, 2013 be reversed and set aside and that the HDOs dated July 24, 2012 be lifted and set aside. She raised the following grounds in support of the petition:

- The Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction, when it issued the HDOs in the absence of any law, governmental regulation or guidelines authorizing its issuance.
- The Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the HDOs without sufficient justification for curtailing the constitutionally-guaranteed right to travel.
- The Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the HDOs despite a pending motion for reconsideration before the OMB.[49]

The petitioner argues that the Sandiganbayan does not have the authority of any law or governmental regulation to issue an HDO. She points out that the Supreme Court Circular No. 39-97 (SC Circular No. 39-97) dated June 19, 1997 provides that only Regional Trial Courts (RTCs) can issue HDOs and nowhere does it recognize a similar authority of the Sandiganbayan to issue the same. With the omission of the Sandiganbayan in the circular, there is no legal basis for said special court to issue HDOs.[50]

The petitioner further contends that the issuance of HDOs against her was violative of her fundamental right to travel which may only be impaired in the interest of national security, public safety or public health, as maybe provided by law. Since the Sandiganbayan was not given the express authority by a law to issue an HDO, its act of restraining her liberty of movement through the issuance of HDOs is a grave and continuing threat to her constitutional right to travel.[51]

Finally, the petitioner argues that the HDOs were prematurely-issued since she has yet to exhaust all her legal remedies. Specifically, the HDOs were issued before there had been a final determination of probable cause against her by the Ombudsman since she had a pending motion for reconsideration before the said office, which was promptly filed before the expiration of the prescribed period.[52]

Ruling of the Court

The power to issue HDO is an inherent power belonging to the courts

The petitioner argues that the absence of a law granting the Sandiganbayan the express authority to issue HDOs only translates to its lack of power to do so. She then referred to the SC Circular No. 39-97 which grants the power to issue HDOs to the RTCs and argues that the omission of the Sandiganbayan in the guidelines means that it does not have the authority to make such an issuance.

To further illustrate her point, she cites the Department of Justice (DOJ) Circular No. 41 (DOJ Circular No. 41) which grants the Secretary of the DOJ the authority to issue HDOs and claims that the Sandiganbayan had not been given a similar authority.

The petitioner's argument lacks merit.

It bears emphasizing that in *Genuino v. De Lima*,[53] the Court already declared as unconstitutional DOJ Circular No. 41 on the ground that it has no legal basis and held, thus:

x x x To begin with, there is no law particularly providing for the authority of the secretary of justice to curtail the exercise of the right to travel, in the interest of national security, public safety or public health. As it is, the only ground of the former DOJ Secretary in restraining the petitioners, at that time, was the pendency of the preliminary investigation of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them.

To be clear, DOJ Circular No. 41 is not a law. It is not a legislative enactment which underwent the scrutiny and concurrence of lawmakers, and submitted to the President for approval. It is a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary believed to be Executive Order (E.O.) No. 292, otherwise known as the "Administrative Code of 1987." x x x x

x x x x

The questioned circular does not come under the inherent power of the executive department to adopt rules and regulations as clearly the issuance of HDO and WLO is not the DOJ' s business. As such, it is a compulsory requirement that there be an existing law, complete and sufficient in itself, conferring the expressed authority to the concerned agency to promulgate rules. On its own, the DOJ cannot make rules, its authority being confined to execution of laws. This is the import of the terms "when expressly provided by law" or "as may be provided by law" stated in Sections 7(4) and 7(9), Chapter 2, Title III, Book IV of E.O. 292. The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted.[54] Without a clear mandate of an existing law, an administrative issuance is ultra vires.

Consistent with the foregoing, there must be an enabling law from which DOJ Circular No. 41 must derive its life. Unfortunately, all of the supposed statutory authorities relied upon by the DOJ did not pass the completeness test and sufficient standard test. The DOJ miserably failed to establish the existence of the enabling law that will justify the issuance of the questioned circular.

That DOJ Circular No. 41 was intended to aid the department in realizing its mandate only begs the question. The purpose, no matter how commendable, will not obliterate the lack of authority of the DOJ to issue the said issuance. Surely, the DOJ must have the best intentions in promulgating DOJ Circular No. 41, but the end will not justify the means. To sacrifice individual liberties because of a perceived good is disastrous to democracy. x x x[55]

In view of the foregoing, DOJ Circular No. 41 is no longer relevant in the present discussion.

On the other hand, SC Circular No. 39-97, admittedly, does not mention of Sandiganbayan. Following the argument of the petitioner, however, would mean that the issuance of HDO is a power pertaining to the RTCs alone, to the exclusion of all other courts. This is an inaccurate interpretation of the guidelines.

The rationale for the issuance of SC Circular No. 39-97 was "to avoid the indiscriminate issuance of HDO resulting in inconvenience to the parties affected, the same being tantamount to an infringement of the right and liberty of an individual to travel." It is in view of the perceived unnecessary impairment on the right to travel in certain instances that the guidelines for the issuance of HDOs were issued. It bears emphasis, however, that the circular was not meant to declare the RTC as the sole and exclusive authority in the issuance of HDOs. It only recognizes that the power exists in courts and, at the same time, seeks to temper its breadth by excluding criminal offenses cognizable by the first level courts, i.e. Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and the Municipal Circuit Trial Courts. The Court elucidated on this point in *Genuino v. De Lima*,[56] thus:

Contrary to the understanding of the DOJ, the Court intentionally held that the issuance of HDOs shall pertain only to criminal cases within the exclusive jurisdiction of the RTC, to the exclusion of criminal cases falling within the jurisdiction of the MTC and all other cases. The intention was made clear with the use of the term

"only." The reason lies in seeking equilibrium between the state's interest over the prosecution of the case considering the gravity of the offense involved and the individual's exercise of his right to travel. Thus, the circular permits the intrusion on the right to travel only when the criminal case filed against the individual is within the exclusive jurisdiction of the RTC, or those that pertain to more serious crimes or offenses that are punishable with imprisonment of more than six years. The exclusion of criminal cases within the jurisdiction of the MTC is justified by the fact that they pertain to less serious offenses which is not commensurate with the curtailment of a fundamental right. Much less is the reason to impose restraint on the right to travel of respondents of criminal cases still pending investigation since at that stage no information has yet been filed in court against them. It is for these reasons that Circular No. 39-97 mandated that HDO may only be issued in criminal cases filed with the RTC and withheld the same power from the MTC.[57]

As gathered from the foregoing, the point of distinction in the guidelines is not on the type of court that may issue an HDO but the kind of cases involved. Thus, the first paragraph of the SC Circular 39-97 was worded as follows:

- Hold-Departure Orders shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts;

x x x x (Emphasis ours)

Notably, the language of the circular places emphasis on criminal cases that warrant the issuance of an HDO, specifically the graver or more serious transgressions of the law that are punishable with imprisonment of more than six years, which incidentally are within the exclusive jurisdiction of the RTCs. The circular was not meant to exclude all other courts from issuing HDO but, more accurately, seeks to make a distinction among the types of criminal offenses by excluding less grave and light offenses from the instances when an HDO may be validly issued. This is to avoid unnecessary restraint on the right to travel especially in instances when the gravity of the offense is not serious enough to warrant a restriction. Thus, the Court issued the circular as a means of regulating its own power pursuant to its authority to "promulgate rules concerning the protection and enforcement of constitutional rights." [58]

That the Sandiganbayan was not mentioned in the circular only means it is given the full disposition of all the powers inherent in all courts of justice in order to effectuate the exercise of its jurisdiction, including the issuance of HDOs, if in its good judgment, it finds necessary in the administration of justice. It bears emphasizing that the Sandiganbayan is a special court tasked to hear and decide cases against public officers and employees and entrusted with the difficult task of policing and ridding the government ranks of the dishonest and corrupt. "The Constitution specifically made mention of the creation of this court precisely in response to a problem, the urgency of which cannot be denied, namely, dishonesty in the public service." [59] Confronted with the heavy responsibility of restoring "public office as a public trust," [60] the Sandiganbayan will need all means within its powers in order to hold erring public officials accountable for their misdeeds.

The petitioner then proceeds to argue that the lack of a law that specifically grants the Sandiganbayan the authority to issue HDOs and its continued practice to do the same amounts to an unreasonable curtailment of the right to travel. What the petitioner misses, however, is that the right to travel, while a fundamental right, is not absolute.

Section 6, Article III of the 1987 Constitution states:

SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law. (Emphasis supplied)

Based on the foregoing, the right to travel may be impaired, if necessary, in interest of national security, public

safety or public health. Apart from the presence of these exclusive grounds, there is a further requirement that there must be a law authorizing the impairment. The requirement for a law ensures that the necessity for the impairment has undergone the validation and deliberation of Congress before its enactment. The strict requirement for the concurrence of these two elements are formidable enough to serve as safeguard in the full enjoyment of the right to travel.

In *Silverio v. Court of Appeals*,^[61] the Court explained, thus:

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of national security, public safety, or public health and as may be provided by law, a limitative phrase which did not appear in the 1973 text (*The Constitution*, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party.^[62]

The petitioner may be correct in arguing that there is no law particularly vesting the Sandiganbayan the authority to issue HDOs but this is precisely because the same is not necessary for it to exercise this power.

It bears reiterating that apart from constitutional limitations, there are also statutory and inherent limitations on the right to travel. In *Leave Division, Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Wilma Salvacion P. Heusdens*,^[63] the Court enumerated some of the statutory limitations on the right to travel, to wit:

- 1] The Human Security Act of 2010 or [R.A.] No. 9372. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.
- 2] The Philippine Passport Act of 1991 or R.A. No. 8239. Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.
- 3] The "Anti-Trafficking in Persons Act of 2003" or R.A. No. 9208. Pursuant to the provisions thereof, the [BI], in order to manage migration and curb trafficking in persons, issued Memorandum Order Radir No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.
- 4] The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022. In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.
- 5] The Act on Violence against Woman and Children or R.A. No. 9262. The law restricts movement of an individual against whom the protection order is intended.
- 6] Inter-Country Adoption Act of 1995 or R.A. No. 8043. Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."^[64]

On the other hand, the power to issue HDO is an exercise of the court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused.^[65]

Inherent powers are innate and essential faculties that are fundamental to the constitution of an effective judicial system. They are integral to the creation of courts. They do not require legislative conferment or constitutional recognition; they co-exist with the grant of judicial power.[66] Broadly defined, they "consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists." [67]

In other words, this authority flows from the powers possessed by a court simply because it is a court; it is an authority that inheres in the very nature of a judicial body and requires no grant of power other than that which creates the court and gives it jurisdiction.[68]

Verily, inherent powers are brought into existence by the grant of judicial power to the courts to in 1 Section 1, Article 8 of the 1987 Constitution "to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." As with other jurisdictions, "[t]he Constitution does not circumscribe the means that the courts may invoke on their own initiative to facilitate their exercise of judicial power. Thus, the courts may regularly apply their "inherent powers" to take some action that has not been specifically authorized by the Constitution, written rule, or statute." [69]

In *Santiago v. Vasquez*, [70] the Court explained the nature of the inherent powers of the courts, thus:

Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Therefore, while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has the power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. Hence, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.[71]

Necessarily included in the grant of jurisdiction is the power to ensure that its exercise shall be effective. "When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer." [72] Inherent powers, in effect, facilitate and reinforce the court's exercise of its specific powers. As vital components of jurisdiction, they fortify the court's jurisdiction through processes that ensure its full disposition. And, while not enumerated in the Constitution or statute, they are considered part and parcel of the grant of authority to courts. The power to issue hold departure order is properly subsumed under the inherent power of the courts because it is an implement by which the jurisdiction of the court is preserved.

Contrary to the allegation of the petitioner, the issuance of HDOs is not a mere practice that has ripened into a law or rule. The Sandiganbayan issues HDO because it has the authority to do so and this attaches from the moment it acquired jurisdiction over the case and over the person. In this case, jurisdiction over the case was acquired when

the Informations against the petitioner were filed with the Sandiganbayan on July 19, 2012. Thereafter, the petitioner voluntarily submitted herself to the jurisdiction of the court by posting bail of P30,000.00 for each of the cases filed against her.

The implication of posting of a bond was well-explained in *Manotoc v. Court of Appeals*,^[73] viz.:

A court has the power to prohibit a person admitted to bail from leaving the Philippines. This is a necessary consequence of the nature and function of a bail bond.

Rule 114, Section 1 of the Rules of Court defines bail as the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.

Its object is to relieve the accused of imprisonment and the state of the burden of keeping him, pending the trial, and at the same time, to put the accused as much under the power of the court as if he were in custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.

The condition imposed upon petitioner to make himself available at all times whenever the court requires his presence operates as a valid restriction on his right to travel. As we have held in *People vs. Uy Tuising*, 61 Phil. 404 (1935).

... the result of the obligation assumed by appellee (surety) to hold the accused amenable at all times to the orders and processes of the lower court, was to prohibit said accused from leaving the jurisdiction of the Philippines, because, otherwise, said orders and processes will be nugatory, and inasmuch as the jurisdiction of the courts from which they issued does not extend beyond that of the Philippines they would have no binding force outside of said jurisdiction.^[74]

Upon posting bail, the accused subjects himself to the jurisdiction of the court and may validly be restricted in his movement and prohibited from leaving this jurisdiction. He cannot leave the country without the permission of the court where his case is pending. Remember that the grant of bail merely secures provisional or temporary liberty under conditions set by the court. The court may recall said grant and return the accused to detention should he violate the conditions for his temporary liberty or when reasons for the lifting of his bail arise. Thus, it is not entirely correct for the petitioner to argue that the issuance of HDOs amounted to an unreasonable restriction on her liberty of movement or right to travel. The truth of the matter is that she was already under restricted right to travel when she submitted to the jurisdiction of the Sandiganbayan by posting bail. The rule is that "a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel, the reason being that a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice."^[75] The issuance of the HDO is a process complementary to the granting of bail since it puts the Bureau of Immigration on notice that a certain person is charged before the courts of law and must not be allowed to leave our jurisdiction without the permission of the court. After all, the granting of bail does not guaranty compliance by the accused of the conditions for his temporary liberty, particularly, his presence at every stage of the proceedings. Some, if not all, maybe tempted to jump bail and leave the country. This is what the HDO seeks to avoid by keeping the accused within the territory where court processes and dispositions may be enforced and implemented.

As to the question on the determination of the necessity of the issuance of HDOs, it is largely dependent on the good judgment of the Sandiganbayan. It is worth reiterating that it is a special court tasked with a particular undertaking of hearing and deciding "criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled

corporations, in relation to their office.[76] It is of the same level as the Court of Appeals and possesses all the inherent powers of a court of justice.[77] Considering the complexity of its tasks which was made even more complicated by the fact that it is dealing with high-ranking public officials and employees, it is given the wide latitude of resorting to the exercise of its express and implied powers for the proper determination of the fitting recompense for the injury done to the government.

The indispensable necessity of the resort to the inherent power to issue HDO was epitomized in *Genuino*, which led this Court to issue A.M. No. 18-07-05-SC pertaining to the Rule on Precautionary Hold Departure Order, a remedy formulated to fill in the vacuum created by the declaration of nullity of DOJ Circular No. 41, the provisions of which are quoted as follows:

RULE ON PRECAUTIONARY HOLD DEPARTURE ORDER

Section 1. Precautionary Hold Departure Order. – is an order in writing issued by a court commanding the Bureau of Immigration to prevent any attempt by a person suspected of a crime to depart from the Philippines, which shall be issued ex-parte in cases involving crimes where the minimum of the penalty prescribed by law is at least six (6) years and one (1) day or when the offender is a foreigner regardless of the imposable penalty.

Section 2. Where filed. – The application for a precautionary hold departure order may be filed by a prosecutor with any regional trial court within whose territorial jurisdiction the alleged crime was committed: Provided, that for compelling reason, it can be filed with any regional trial court within the judicial region where the crime was committed if the place of the commission of the crime is known; Provided, further, that the regional trial courts in the City of Manila, Quezon City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City shall also have the authority to act on applications filed by the prosecutor based on complaints instituted by the National Bureau of Investigation, regardless where the alleged crime was committed.

Section 3. Finding of probable cause. – Upon motion by the complainant in a criminal complaint filed before the office of the city or provincial prosecutor, and upon a preliminary determination of probable cause based on the complaint and attachments, the investigating prosecutor may file an application in the name of the People of the Philippines for a precautionary hold order (PHDO) with the proper regional trial court. The application shall be accompanied by the complaint-affidavit and its attachments, personal details, passport number and a photograph of the respondent, if available.

Section 4. Grounds for issuance. – precautionary hold departure order shall not issue except upon determination by the judge, in whose court the application is filed, that probable cause exists, and there is a high probability that respondent will depart from the Philippines to evade arrest and prosecution of crime against him or her. The judge shall personally examine under oath or affirmation, in the form of searching questions and answers in writing, the applicant and the witnesses he or she may produce on facts personally known to them and attaching to the record their sworn statements.

If the judge finds that probable cause exists and there is a high probability that the respondent will depart, he or she shall issue the PHDO and direct the Bureau of Immigration to hold and prevent the departure of the respondent at any Philippine airport or ports. Otherwise, the judge shall order the dismissal of the application.

Section 5. Preliminary finding of probable cause. – Since the finding of probable cause by the judge is solely based on the complaint and is specifically issued for the purpose of issuing the PHDO, the same shall be without prejudice to the resolution of the prosecutor of the criminal complaint considering the complaint-affidavit, counter-affidavit, reply--affidavit, and the evidence presented by both parties during the preliminary investigation. If the prosecutor after preliminary investigation dismisses the criminal complaint for lack of probable cause then the respondent may use the dismissal as a ground for the lifting of the PHDO with the regional trial court that issued the order. If the prosecutor finds probable cause and files the criminal information, the case with the court that issued the PHDO, on motion of the prosecutor shall be consolidated

with the court where the criminal information is filed.

Section 6. Form and validity of the precautionary hold departure order. – The precautionary hold departure order shall indicate the name of the respondent, his or her alleged crime, the time and place of its commission, and the name of the complainant. (See Annex "A" herein). A copy of the application, personal details, passport number, photograph of the respondent, if available, shall be appended to the order. The order shall be valid until lifted by the issuing court as may be warranted by the result of the preliminary investigation.

The court shall furnish the Bureau of Immigration with a duly certified copy of the hold departure order within twenty-four (24) hours from issuance.

Section 7. Lifting of the Order. – The respondent may file a verified motion before the issuing court for the temporary lifting of PHDO on meritorious ground; that, based on the complaint-affidavit and the evidence that he or she will present, there is doubt that probable cause exists to issue the PHDO or it is shown that he or she is not a flight risk: Provided, that the respondent posts a bond; Provided, further, that the lifting of the PHDO is without prejudice to the resolution of the preliminary investigation against the respondent.

Section 8. Bond. – Respondent may ask the issuing court to allow him or her to leave the country upon posting of a bond in an amount to be determined by the court subject to the conditions set forth in the Order granting the temporary lifting of the PHDO.

Section 9. Effectivity. – This Rule shall take effect within fifteen (15) days following its publication in two (2) newspapers of general circulation in the Philippines.

With the declaration of nullity of DOJ Circular No. 41 which stripped off the Secretary of Justice of self-imposed authority to issue HDOs, it becomes more imperative for the courts to use their inherent powers to prevent miscarriage of justice. It was in response to this need that A.M. No. 18-07-05-SC was issued. Specifically, it authorizes the issuance of a precautionary HDO even prior to the filing of an information in court when justified under the circumstances. This recognizes the fact that the processes leading to the filing of a case usually take a while before they are concluded such that by the time the information is filed in court, the accused may have already left the country and is now beyond the reach of courts. This renders futile the processes taken up prior to the filing of information and stalls the administration of justice until the accused is brought to the jurisdiction of the court. The issuance of a precautionary HDO cures this predicament.

Public officials and employees are a class of their own

Still, the petitioner laments the fact that the Sandiganbayan issues HDO regardless of the nature and gravity of the offense charged, the official charged and the nature of his responsibilities. This, she argues, is unlike SC Circular No. 39-97 which limits the issuance of HDOs to criminal cases within the exclusive jurisdiction of the RTCs, pertaining to offenses punishable by more than six (6) years of imprisonment.[78]

The implication of the petitioner's argument is that the Sandiganbayan indiscriminately issues HDOs without distinction as to the offense and the offender. The point is that it is a superfluity to draw further distinction since the Sandiganbayan is precisely constituted as a special court for cases of graft and corruption and other cases committed by public officials and employees. This has been recognized in the 1973 and 1987 Constitutions, which classified public officers and employees as a class of their own from whom is required the highest degree of responsibility and integrity. To be specific, Section 1, Article XIII of the 1973 Constitution reads:

ARTICLE XIII

Accountability of Public Officers

Section 1. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people.

A similar provision in Section 1 Article XI of the 1987 Constitution states, thus:

ARTICLE XI

Accountability of Public Officers

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Both constitutions mandated for the creation of a special court that shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees in relation to their office.[79] Thus, the Sandiganbayan was constituted by Presidential Decree No. 1486 which, through the years, had undergone several revisions and amendments. This only demonstrates that public officers and employees are a class of their own in that they are reposed with public trust and must be accountable to the people at all times, hence, the higher standards of conduct and integrity. In a similar way, violations committed by public officers and employees in relation to office are treated differently from all other offenses. After all, betrayal of public trust, dishonesty and dereliction of official duties are serious transgressions which should not be taken lightly. More than that, public officials and employees are required, at all times, "to uphold the Constitution and put loyalty to country above loyalty to persons or party." [80] Thus, there are special laws governing the (1) conduct of public officers and employees; (2) acts and omissions that are considered as misconduct in public office; and (3) penalties that are especially imposable to erring public officials and employees. These are based on substantial distinctions and do not amount to an unreasonable classification or unfair treatment.

At any rate, it bears pointing out that, notwithstanding the issuance of HDOs, the petitioner is not absolutely prohibited from travelling abroad. She was only restricted from leaving the country as this would place her beyond the jurisdiction of our courts and might render nugatory the processes and proceedings being conducted in the cases against her. Nonetheless, she may, at any time, request for permission to travel abroad, citing grounds for its necessity. The Sandiganbayan, in numerous instances, had been liberal in granting permissions based on meritorious grounds, sometimes even for humanitarian considerations, for as long as certain conditions are complied with. Based on the records and allegations of the parties, however, there has yet an instance when the petitioner asked permission to travel from the Sandiganbayan and was denied of it.

The petitioner misappreciated the ruling of this Court in *Cojuangco v. Sandiganbayan* [81] which, in fact, reiterates our disposition that the Sandiganbayan may issue HDO in the exercise of its inherent powers. In the said case, an HDO was issued against petitioner therein, Eduardo Cojuangco (Cojuangco), after he was charged for violation of R.A. No. 3019 before the Sandiganbayan. The HDO would later be lifted, albeit temporarily, after the invalidation of the warrant of arrest issued against him on the ground that the Sandiganbayan failed to abide by the constitutional mandate of personally determining the existence of probable cause before issuing the same. Even then, the lifting of the HDO was intended for a single occasion and only for a period of three months counted from the finality of the decision. Subsequent requests during the pendency of the case before the Sandiganbayan were still subject to the discretion of the said court. The relevant portion of the disposition in *Cojuangco* reads:

Meanwhile, the Resolution of the Sandiganbayan (First Division), dated February 20, 1995, imposing a ban on petitioners travel abroad without its prior approval pending the resolution of Criminal Case No. 22018 is, for the reasons heretofore advanced, hereby LIFTED for a period of three (3) months counted from the finality of this decision. Any similar request during the pendency of said case before the Sandiganbayan shall be addressed to that court. [82] (Emphasis ours)

The said temporary lifting of the HDO was granted after Cojuangco had asked the permission of the court to

travel and demonstrated that there is a very lean probability that he will not comply to the conditions that will be set by the court. On the other hand, the petitioner had never asked for a permission to travel abroad from the Sandiganbayan nor alleged circumstances in her pleadings before the said court to justify the lifting of the TRO. When she filed a motion for reconsideration and prayed for the lifting of the HDOs, she argued against its validity on the ground of prematurity and that the Sandiganbayan has no authority to issue the same. She never questioned the necessity or sufficiency of the basis of its issuance. Being the party seeking relief, it is incumbent upon the petitioner to prove and allege circumstances that would warrant the granting of her prayer. This, she failed to do.

The HDOs were not prematurely-issued

The petitioner questions the validity of the HDOs against her on the ground that they were issued before she was able to exhaust her legal remedies and even before there was a final determination of probable cause against her. She asseverates that the HDOs were issued on July 24, 2012, before the lapse of the period when she may file a motion for reconsideration of the finding of probable cause against her, or until July 25, 2012.[83] For this reason, she argues that the HDOs were void.

The argument lacks merit.

In *People v. Borje*,^[84] the Court stressed that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Office of the Ombudsman.^[85] The said office is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law."^[86] In deference to the independent nature of this office, this Court has almost always adopted, quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers."^[87] The rationale behind the policy was discussed in *Ocampo v. Ombudsman*,^[88] thus:

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court, or dismiss a complaint by a private complainant.^[89]

In the present case, the investigating prosecutor of the OMB found probable cause to indict the petitioner for violation of Sections 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the Revised Penal Code, and his findings and recommendation to file the corresponding informations before the Sandiganbayan were approved by the Ombudsman. From the filing of information, the Sandiganbayan acquires jurisdiction over the case and the authority to control the conduct of the proceedings until its disposition. In *Ocampo*, the Court declared:

[W]hile it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the informations may not be dismissed without the approval of the said court.^[90]

Verily, "once jurisdiction attaches, it shall not be removed from the court until the termination of the case."^[91] This was reiterated in *Fuentes v. Sandiganbayan*,^[92] in an enumeration of cases emphasizing this doctrine, viz.:

As early as *US v. Valencia*, this Court, through Justice Charles A. Willard, ruled that once an Information has been filed in court, the latter acquires jurisdiction over the case; and, accordingly, it is the court, not the fiscal, which has control over it. In *US v. Barredo*, this Court explained that fiscals are not clothed with the power to

dismiss or nolle prosequi criminal actions once these have been instituted, for the power to dismiss is solely vested in the court. The Barredo doctrine has continuously been applied through the years. In other words, once a court acquires jurisdiction, the same continues until the termination of the case. The rule, therefore, in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case, whether it be dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court. The only qualification to this exercise of the judicial prerogative is that the substantial rights of the accused must not be impaired nor the People be deprived of the right to due process.[93] (Emphasis ours)

Further, in *Crespo v. Mogul*,[94] the Court explained, thus:

The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.[95]

From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it.[96] Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest, HDOs and other processes that it deems warranted under the circumstances.

In this case, the Sandiganbayan acted within its jurisdiction when it issued the HDOs against the petitioner. That the petitioner may seek reconsideration of the finding of probable cause against her by the OMB does not undermine nor suspend the jurisdiction already acquired by the Sandiganbayan. There was also no denial of due process since the petitioner was not precluded from filing a motion for reconsideration of the resolution of the OMB. In addition, the resolution of her motion for reconsideration before the OMB and the conduct of the proceedings before the Sandiganbayan may proceed concurrently.

Moreover, the Rules of Procedure of the Office of the Ombudsman expressly provides that the filing of a motion of reconsideration does not prevent the filing of information. Section 7, Rule II of Administrative Order No. 07 reads:

Section 7. Motion for reconsideration

- a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;
- b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2000) (Emphasis ours)

As can be understood from the foregoing, an information may be filed even before the lapse of the period to file a motion for reconsideration of the finding of probable cause. The investigating prosecutor need not wait until the resolution of the motion for reconsideration before filing the information with the Sandiganbayan especially that his findings and recommendation already carry the stamp of approval of the Ombudsman. In any case, the

continuation of the proceedings is not dependent on the resolution of the motion for reconsideration by the investigating prosecutor. In the event that, after a review of the case, the investigating prosecutor was convinced that there is no sufficient evidence to warrant a belief that the accused committed the offense, his resolution will not result to the automatic dismissal of the case or withdrawal of information already filed before the Sandiganbayan. The matter will still depend on the sound discretion of the court. Having acquired jurisdiction over the case, the Sandiganbayan is not bound by such resolution but is required to evaluate it before proceeding further with the trial and should embody such assessment in the order disposing the motion.[97] Thus, in *Fuentes v. Sandiganbayan*,[98] the Court emphasized:

The court is not limited to the mere approval or disapproval of the stand taken by the prosecution. The court must itself be convinced that there is indeed no sufficient evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution. What is required is the court's own assessment of such evidence.[99]

All told, the Sandiganbayan did not commit abuse of discretion, much less grave, in denying the motion for reconsideration and the prayer for the lifting of the HDOs issued against the petitioner. The HDOs were validly issued pursuant to its inherent powers as a court of justice.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

[1] Rollo, pp. 29-36.

[2] Id. at 353, 355 and 357.

[3] Id. at 175.

[4] Id.

[5] Id. at 81.

[6] Id. at 176.

[7] Id. at 83.

[8] Id. at 85.

[9] Id. at 92-95.

[10] Id. at 96-98.

[11] Id. at 97.

[12] Id. at 99-101.

[13] Id. at 178.

[14] Id. at 103-105.

[15] Id. at 179.

- [16] Id. at 106.
- [17] Id. at 111-112.
- [18] Id. at 179-180.
- [19] Id. at 106.
- [20] Id. at 125.
- [21] Id. at 346-347.
- [22] Id. at 180.
- [23] Id.
- [24] Id. at 45-47.
- [25] Id. at 171.
- [26] Id. at 172.
- [27] Id. at 167-214.
- [28] Id. at 211-212.
- [29] Id. at 217-219.
- [30] Id. at 221-223, 225-226, 228-229.
- [31] Id. at 353.
- [32] Id. at 355.
- [33] Id. at 357.
- [34] Id. at 32.
- [35] Id. at 231-257.
- [36] Id. at 235-236.
- [37] Id. at 250.
- [38] Id. at 360-361.
- [39] Id. at 359-367.
- [40] Id. at 361.
- [41] 478 Phil. 396, 405 (2004).
- [42] Rollo, pp. 363-364.
- [43] Id. at 372-381.
- [44] Id. at 373.
- [45] Id. at 379-380.
- [46] Id. at 376.

[47] Id. at 29-36.

[48] Id. at 34-36.

[49] Id. at 8.

[50] Id. at 9.

[51] Id. at 12.

[52] Id. at 22.

[53] Efraim C. Genuino, et al., v. Hon. Leila M. de Lima, in her capacity as Secretary of Justice, et al./ Ma. Gloria Macapagal-Arroyo v. Hon. Leila M. de Lima, as Secretary of the Department of Justice, et al./Jose Miguel T. Arroyo v. Hon. Leila M. de Lima, as Secretary of the Department of Justice, et al., G.R. No. 197930, April 17, 2018.

[54] Manila Electric Company v. Spouses Edito and Felicidad Chua, 637 Phil. 80, 98 (2010).

[55] Supra note 53.

[56] Id.

[57] Id.

[58] Section 5(5), Article 8, 1987 Constitution.

[59] Rufino V. Nuñez v. Sandiganbayan, 197 Phil. 407, 424 (1982).

[60] City Mayor of Zamboanga v. Court of Appeals, 261 Phil. 936, 945 (1990).

[61] 273 Phil. 128 (1991).

[62] Id. at 134.

[63] 678 Phil. 328 (2011).

[64] Id. at 339-340.

[65] Miriam Defensor-Santiago v. Conrado M. Vasquez, 291 Phil. 664, 680 (1993).

[66] Efraim C. Genuino v. Hon. Leila M. De Lima, supra note 53.

[67] Bankers Trust Co. v. Braten, 420 N.Y.S.2d 584, 590 (Sup. Ct. 1979).

[68] Daniel J. Meador, Inherent Judicial Authority in the Conduct of Civil Litigation, 73 Tex. L. Rev. 1805 (1995).

[69] Joseph J. Anclien, Broader is Better: The Inherent Powers of Federal Courts, 64 N.Y.U. Ann. Surv. Am. L. 37, (2008).

[70] Supra note 65.

[71] Id. at 679-680.

[72] Rules of Court, Section 6, Rule 135.

[73] 226 Phil. 75 (1986).

- [74] Id. at 82.
- [75] Eduardo Cojuangco, Jr. v. Sandiganbayan, 360 Phil. 559, 589 (1998).
- [76] People of the Philippines v. Sandiganbayan, 491 Phil. 591, 597 (2005).
- [77] Section 1, Presidential Decree No. 1606, as amended.
- [78] Rollo, p. 19.
- [79] Section 5, Article XIII, 1973 Constitution; Section 4, Article XI, 1987 Constitution.
- [80] Section 4 (g), Republic Act No. 6713.
- [81] 360 Phil. 559 (1998).
- [82] Id. at 590-591.
- [83] Rollo, p. 21.
- [84] 749 Phil. 719 (2014).
- [85] Id. at 727.
- [86] Sen. Jinggoy Ejercito Estrada v. Office of the Ombudsman, G.R. Nos. 212761-62, July 31, 2018.
- [87] Venancio R. Nava v. Commission on Audit, 419 Phil. 544, 553 (2001).
- [88] 296-A Phil. 770 (1993).
- [89] Id. at 775.
- [90] Id.
- [91] Ambassador Hotel, Inc. v. Social Security System, G.R. No. 194137, June 21, 2017.
- [92] 527 Phil. 58 (2006).
- [93] Id. at 64.
- [94] 235 Phil. 465 (1987).
- [95] Id. at 474-475.
- [96] Mustapha M. Gandarosa v. Evaristo Flores, 554 Phil. 636, 651 (2007).
- [97] Ark Travel Express, Inc. v. Hon. Zeus Abrogar, 457 Phil. 189, 203 (2003).
- [98] Sen. Jinggoy Ejercito Estrada v. Office of the Ombudsman, *supra* Note 86.
- [99] Id.

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