

HERMILO RODIS, SR., PETITIONER, VS. THE SANDIGANBAYAN, SECOND DIVISION, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 71404-09. October 26, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for certiorari with prayer for a writ of preliminary injunction seeking to annul the Resolution^[1] of the Sandiganbayan dated July 15, 1985 denying herein petitioner's Motion to Quash the Informations in Criminal Cases Nos. 10389, 10390, 10391, 10393 and 10394 pending before said court and to enjoin the arraignment, pre-trial and trial therein.

The antecedents are as follows:

On May 22, 1985, petitioner Hermilo V. Rodis Sr., former President of the Philippine Underwriters Finance Corporation (PHILFINANCE), together with some other persons, was charged before the Sandiganbayan in separate informations docketed therein as Criminal Cases Nos. 10389, 10390, 10391, 10393 and 10394 with five (5) counts of violation of Section 3(b) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

On May 31, 1985, petitioner filed a motion to quash said informations as against him on the ground of lack of preliminary investigation, with the alternative prayer that the "issue and/or enforcement of the warrant of arrests as against him be held in abeyance -- while he seeks a reinvestigation by the Tanodbayan pursuant to his right of (sic) preliminary investigation."^[2]

In its opposition to said motion, the Prosecution cited as basis therefor Sec. 3, Rule 117 of the 1985 Rules on Criminal Procedure enumerating the grounds for a motion to quash. It argued that since lack of preliminary investigation is not among those enumerated thereunder, the motion to quash on this ground should be denied for lack of merit and instead, petitioner should be ordered to file his Petition for Reinvestigation and/or Motion for Reconsideration in accordance with Section 13 of the Revised Rules of Procedure of the Tanodbayan.^[3]

Petitioner filed a Reply to the Opposition controverting the prosecution's claim that lack of preliminary investigation is not a ground for quashing the information; but manifesting that he would file a petition for re-investigation with the Tanodbayan as suggested.^[4] This he did, on June 24, 1985.

On July 15, 1985, while petitioner's petition for reinvestigation was pending action by the Tanodbayan, the Sandiganbayan promulgated the assailed resolution denying petitioner's motion to quash for lack of merit, stating:

“x x x this Court is of the considered opinion that the alleged absence of preliminary investigation with respect to the accused-movant (herein petitioner) or his inability to participate in the preliminary investigation for the reason that he was not duly served with a subpoena is not a proper ground for a motion to quash. If the accused

was not afforded due preliminary investigation, the proper remedy for him is to file a Petition for Reinvestigation with the Office of the Tanodbayan, pursuant to Section (13) of Administrative Order No. 111 of the Revised Rules of Procedure of the Tanodbayan, promulgated on December 1, 1979.”[5]

On the premise that no appeal or any plain and speedy remedy in the ordinary course of law will prove adequate under the circumstances obtaining in the case at bar -- arraignment, pre-trial and trial having been set on August 26, 27 and 28, 1985 -- and on the allegation that in denying his motion to quash, respondent Sandiganbayan had acted with grave abuse of discretion amounting to lack or excess of jurisdiction, petitioner brought the instant petition.

On August 1, 1985, the Court issued a Temporary Restraining Order enjoining the respondent Sandiganbayan from proceeding with the arraignment, pre-trial and trial of Criminal Cases Nos. 10389, 10390, 10391, 10392,[6] 10393 and 10394.[7]

Petitioner contends that while it may be true that lack of preliminary investigation neither affects the jurisdiction of the court nor impairs the validity of the information filed, nonetheless such lack of preliminary investigation affects the regularity of the proceedings which led to the filing of the information, such that in several cases, the Court had ordered the quashal of the information on said ground; and that although lack of preliminary investigation is not enumerated as one of the grounds for a motion to quash, the Sandiganbayan can nevertheless order the quashal of the informations pursuant to its inherent power to amend and control its processes so as to make them conformable to law and justice.[8] He further claims that given the chance to be heard on preliminary investigation, he will demonstrate to the Tanodbayan that he had no participation in the transactions complained of, except in one where he merely approved for reimbursement representation expense incurred by one subordinate to him, the Executive Vice-President, and after it had been approved by one superior to him, the Vice-Chairman of the Executive Committee and Chief Executive Officer of the PHILFINANCE.

Respondent People of the Philippines on the other hand avers that as petitioner does not dispute that a preliminary investigation was indeed conducted, what he is really protesting against is the lost opportunity to participate therein due to the alleged failure of the Tanodbayan to serve a subpoena upon him. It is, however, contended that this alleged failure did not affect the regularity of the preliminary investigation as the Tanodbayan is justified under Section 3, Rule 112 of the 1985 Rules of Criminal Procedure in proceeding with the preliminary investigation after an attempt to subpoena petitioner at the latter's known address proved unavailing, and in basing its resolution on the evidence presented by the complainant.

The analysis of respondent People, thru the Solicitor General, as to the real nature of the controversy at bar is correct. It is not disputed that a preliminary investigation was conducted by the Tanodbayan prior to the filing of the informations. Petitioner, however, was not able to participate therein as the subpoena addressed to him at PHILFINANCE his last known address, was returned "unserved" petitioner having already severed his employment with said company at the time of service. As petitioner reportedly left PHILFINANCE under most unfriendly circumstances, PHILFINANCE did not give the process server his residence address on record with it.

Under Section 3, sub-section (d) of Rule 112 of the 1985 Rules on Criminal Procedure, "if the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating office shall base his resolution on the evidence presented by the complainant." It is to be noted that this provision does not require as a condition sine qua non to the validity of the proceedings the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert the evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics.

Considering that petitioner has voluntarily appeared before the respondent Sandiganbayan in connection with the criminal cases in question and has appeared in other preliminary investigations of other PHILFINANCE charges filed in various fiscals' offices and the Ministry (now Department) of Justice, it is apparent that the non-service of the subpoena upon him was not of his own doing or liking. To apply the full force and effect of section 3, sub-section (d) of Rule 112 of the 1985 Rules on Criminal Procedure would, to our mind, greatly prejudice him.

It is worthwhile repeating that the avowed purposes of a preliminary investigation are "to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials.[9] And while the "absence of preliminary investigations does not affect the court's jurisdiction over the case (n)or do they impair the validity of the information or otherwise render it defective, but, if there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted.[10] In this case, the Tanodbayan has the duty to conduct the said investigation." [11]

Thus, although the Sandiganbayan was correct in ruling that the absence of a preliminary investigation is not a ground for quashing an information, it should have held the proceedings in the criminal cases in abeyance pending resolution by the Tanodbayan of petitioner's petition for reinvestigation, as alternatively prayed for by him in his motion to quash.

During the pendency of the case at bar, petitioner manifested to the Court that in a Joint Order dated September 26, 1985, Tanodbayan Special Prosecutors Roger C. Berbano, Sr. and Eleuterio F. Guerrero had recommended that the separate petitions for reinvestigation filed by petitioner and his co-accused be given due course by the Tanodbayan and that said special prosecutors be given clearance and authority to conduct such reinvestigation. Although it appears that these recommendations were approved by then Tanodbayan Bernardo P. Fernandez on October 14, 1985,[12] no further report on this matter has reached the Court. As we cannot assume that the reinvestigation was indeed conducted as would render the instant petition moot and academic, and considering the importance of the issue involved, we deemed it proper to decide the petition on the merits.

WHEREFORE, the assailed resolution of the respondent Sandiganbayan dated July 15, 1985 in Criminal Cases Nos. 10389, 10390, 10391, 10393 and 10394 is hereby affirmed, but respondent Sandiganbayan is ordered to hold in abeyance the proceedings therein with respect to petitioner, subject to the outcome of the reinvestigation of the Tanodbayan of the aforesaid cases. The Temporary Restraining Order issued by the Court on August 1, 1985 is deemed superseded by this directive.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., no part. I was on leave during the deliberations.

[1] Penned by Associate Justice Romeo M. Escareal, concurred in by Associate Justices Ramon V. Jabson and Amante Q. Alconcel.

[2] Annex "B", Petition, p. 27, Rollo.

[3] Annex "C," Petition, pp. 32-35, Rollo, Section (13) of the Revised Rules of Procedure of the Tanodbayan

reads:

"A Petition for Reconsideration and/or Reinvestigation may be addressed to the Tanodbayan only under the following instances:

(a) When such motion for reconsideration and/or reinvestigation is filed within fifteen (15) days, which period shall be deemed to commence for the accused from the time he is arrested or has posted his bail bond, or from the time actual or constructive notice of the resolution is received by him, whichever is earlier;

(b) When new and material evidence and/or issue are raised;

(c) When the accused has not yet been arraigned. Only one motion for reconsideration and/or reinvestigation shall be entertained."

[4] Annex "D", Petition, pp. 36-38, Rollo.

[5] p. 40, Rollo.

[6] Criminal Case No. 10392 should not have been included as petitioner does not appear to be an accused in this case.

[7] pp. 44-45, Rollo.

[8] Sec. 5, Rule 135, Rules of Court.

[9] *Trocio v. Manta*, 118 SCRA 241; citing *Hashim v. Boncar*, 71 Phil. 216; *Salonga v. Cruz Paño*, 134 SCRA 438.

[10] See *People v. Gomez*, 117 SCRA 72, 77-78, citing *People v. Casiano*, 1 SCRA 478.

[11] *Sanciangco, Jr. v. People*, 149 SCRA 1.

[12] p. 94, Rollo.

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