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FROM

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MANILA
2019

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 10243. October 2, 2017]

MYRNA OJALES, *complainant, vs.* **ATTY. OBDULIO GUY D. VILLAHERMOSA III**, *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; FAILURE TO COMPLY WITH HIS OBLIGATION TO THE CLIENT AND TO RETURN THE MONEY RECEIVED FROM HER CONSTITUTE VIOLATION OF CANON 16, CANON 18 AND RULE 18.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY.— The records show that respondent notarized the *Deed of Absolute Sale of a Portion of Real Property* executed by the vendor, Alberto C. Tajo, and the vendee, complainant herein. In two receipts both dated March 2, 2010, respondent acknowledged that complainant gave him the amount of ₱11,280.00 for payment of the capital gains tax on the sale of property and that complainant paid him ₱10,000.00 for processing the transfer of the title of the property in complainant's name. As respondent failed to comply with his obligation at the promised time, complainant went to the BIR to inquire whether the capital gains tax had been paid. Complainant learned from the BIR that no document of her transaction was submitted, and respondent could not produce the claim slip from the BIR, which showed that respondent did not fulfill the legal matter entrusted to him by the complainant. Respondent's omission is violative of Canon 18 and Rule 18.03[.] x x x Moreover,

> despite complainant's demand that respondent return her money as he did not fulfil his obligation, respondent failed to do so, which is violative of Canon 16 of the Code of Professional Responsibility[.] x x x The Court sustains the recommendation of the IBP Board of Governors that respondent be penalized with suspension from the practice of law for six (6) months. The restitution of the processing fee and payment for the capital gains tax in the total amount of ₱21,280.00 is proper, since respondent failed to fulfill his obligation toward complainant.

R E S O L U T I O N

PERALTA, *J.*:

On July 15, 2011, complainant Myrna Ojales filed a Complaint[1] against respondent Atty. Obdulio Guy Villahermosa III with the Integrated Bar of the Philippines (*IBP*).

In her Complaint, complainant Ojales stated that on February 26, 2010, she bought a parcel of land situated in Palinpinon, Valencia, Negros Occidental as evidenced by a Deed of Absolute Sale[2] notarized by respondent Atty. Villahermosa. Respondent volunteered to process the issuance of the title in complainant's name and assured her that the title would come out in two to three months.

On March 2, 2010, respondent received from complainant the total amount of ₱21,280.00 as evidenced by two receipts signed by respondent. The first receipt for ₱10,000.00[3] was for the payment of respondent's processing fee, and the second receipt for ₱11,280.00[4] was for the payment of the capital gains tax.

After five months, complainant went to the Bureau of Internal Revenue (*BIR*) to inquire whether the capital gains tax on the

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[1] *Rollo*, pp. 2-5.

[2] *Id.* at 6-7.

[3] *Id.* at 9.

[4] *Id.* at 8.

sale of property was paid, but she was told that no document pertaining to a deed of sale in her favor was submitted to the BIR. So complainant went to the house of respondent, who assured her that her title would be ready by September 4, 2010. After September 4, 2010, complainant went back to the BIR, but she was again informed that no document of her transaction was submitted. She was advised to secure from respondent the claim slip normally issued by the BIR for such transaction. Thus, complainant asked respondent for the claim slip from the BIR, but respondent could not produce it and asked for another month to process her title. Finally, complainant went back to respondent's house to ask for a refund of her money, but she was instead scolded by respondent's wife. Hence, complainant filed this administrative case praying for the refund of the money she gave respondent and that the appropriate disciplinary action be imposed on the respondent.

On July 18, 2011, Director for Bar Discipline Alicia A. Risos-Vidal issued an Order[5] directing respondent to answer the Complaint within 15 days from receipt of the Order. A copy of the Order was received by respondent on August 3, 2011 per the registry return receipt[6] attached to the record. However, respondent did not file an Answer.

On October 10, 2011, a Notice of Mandatory Conference/ Hearing scheduled on December 1, 2011 at 2:00 p.m. was sent to the parties. A copy of the Notice was received by the respondent on October 25, 2011 per the registry return receipt[7] attached to the record. Only the complainant appeared at the scheduled mandatory conference.

On December 1, 2011, Commissioner Loreto C. Ata issued an Order[8] declaring respondent in default and deemed to have waived his right to participate in the proceedings.

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[5] *Id*. at 11.

[6] *Id.* (back).

[7] *Id.* at 12 (back).

[8] *Id*. at 14.

The Commissioner's Report and Recommendation

On June 1, 2012, Investigating Commissioner Loreto C. Ata submitted a Report and Recommendation[9] on the administrative complaint.

Commissioner Ata stated that the record shows that respondent received from complainant ₱21,280.00 for which respondent wrote and signed two receipts. Respondent's acceptance of the amount established an attorney-client relationship between him and complainant, thereby giving rise to his duty of fidelity to the client's cause,[10] and to attend with dedication and care to the legal matter entrusted to him, which was to pay the capital gains tax on the sale of property and to work on the transfer of the title of the property in complainant's name. As twice verified by complainant from the BIR, nothing was done by respondent on the matter from the time he received the money from complainant on March 2, 2010 and even after complainant filed her complaint with the Committee on Bar Discipline of the IBP Negros Oriental Chapter.

The Investigating Commissioner reported that as of the date of the mandatory conference held on December 1, 2011, complainant affirmed that respondent had not performed the legal matter entrusted to him and he had not returned the amount received from complainant as she had demanded. Respondent's omissions give rise to the presumption that he appropriated for himself the amount of ₱21,280.00 that he received from complainant to the latter's prejudice.

Moreover, the Investigating Commissioner stressed that respondent failed to answer the complaints filed against him by complainant with the Committee on Bar Discipline of the IBP Negros Oriental Chapter and the IBP Commission on Bar Discipline. He also did not attend the mandatory conference held on December 1, 2011 despite notice. He had not taken steps to meet the issue against him, deny the charge, or offer

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[9] *Id*. at 30-35.

[10] *Id.* at 33, citing *Rollon v. Atty. Naraval*, 493 Phil. 24, 29 (2005).

a valid explanation for his conduct, as would have been expected of someone who is innocent of the charge. His failure to answer the charge and participate in the disciplinary proceeding evinces disrespect and disregard of authority.[11]

On the basis of the foregoing, the Investigating Commissioner recommended that the respondent be suspended for six months from the practice of law and ordered to return to the complainant the amount of ₱21,280.00 within 30 days from notice.

On March 20, 2013, the IBP Board of Governors passed Resolution No. XX-2013-197, which adopted and approved the Report and Recommendation of the Investigating Commissioner. The Resolution reads:

RESOLUTION NO. XX-2013-197
CBD Case No. 11-3096
Myrna Ojales vs.
Atty. Obdulio Guy Villahermosa III

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering respondent's failure to perform the legal matter entrusted to him nor returned the amount received from complainant and for his disrespect and disregard of the notices of the Commission on Bar Discipline, Atty. Obdulio Guy Villahermosa III is hereby **SUSPENDED from the practice of law for six (6) months**.[12]

In a letter[13] dated October 7, 2013, the Director for Bar Discipline notified the Chief Justice of the Supreme Court of the transmittal of the documents of the case to the Court and that no motion for reconsideration has been filed by either party.

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[11] *Id.* at 34, citing *Yu v. Atty. Palaña*, 580 Phil. 19, 28 (2008).

[12] *Rollo*, p. 29.

[13] *Id.* at 28.

The Ruling of the Court

The Court agrees with the finding and recommendation of the IBP Board of Governors.

The records show that respondent notarized the *Deed of Absolute Sale of a Portion of Real Property* executed by the vendor, Alberto C. Tajo, and the vendee, complainant herein. In two receipts[14] both dated March 2, 2010, respondent acknowledged that complainant gave him the amount of ₱11,280.00 for payment of the capital gains tax on the sale of property and that complainant paid him ₱10,000.00 for processing the transfer of the title of the property in complainant's name. As respondent failed to comply with his obligation at the promised time, complainant went to the BIR to inquire whether the capital gains tax had been paid. Complainant learned from the BIR that no document of her transaction was submitted, and respondent could not produce the claim slip from the BIR, which showed that respondent did not fulfill the legal matter entrusted to him by the complainant. Respondent's omission is violative of Canon 18 and Rule 18.03, thus:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x x x x x

Rule 18.03. — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Moreover, despite complainant's demand that respondent return her money as he did not fulfill his obligation, respondent failed to do so, which is violative of Canon 16 of the Code of Professional Responsibility:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

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[14] *Id*. at 8-9.

In *Barnachea v. Atty. Quiocho*,[15] the Court held:

> A lawyer is obliged to hold in trust money or property of his client that may come to his possession. He is a trustee to said funds and property. He is to keep the funds of his client separate and apart from his own and those of others kept by him. Money entrusted to a lawyer for a specific purpose such as for the registration of a deed with the Register of Deeds and for expenses and fees for the transfer of title over real property under the name of his client if not utilized, must be returned immediately to his client upon demand therefor. The lawyer's failure to return the money of his client upon demand gave rise to a presumption that he has misappropriated said money in violation of the trust reposed on him. x x x[16]

Further, respondent failed to answer the complaint filed against him with the Committee on Bar Discipline of the IBP Negros Oriental Chapter and the IBP Commission on Bar Discipline. He did not attend the mandatory conference held on December 1, 2011 despite notice. Respondent's failure to comply with the orders of the IBP without justifiable reason manifests his disrespect of judicial authorities.[17] As a lawyer, he ought to know that the compulsory bar organization was merely deputized by this Court to undertake the investigation of complaints against lawyers.[18] In short, his disobedience to the IBP is in reality a gross and blatant disrespect of the Court.[19]

The Court sustains the recommendation of the IBP Board of Governors that respondent be penalized with suspension from the practice of law for six (6) months. The restitution of the processing fee and payment for the capital gains tax in the total amount of ₱21,280.00 is proper, since respondent failed to fulfill his obligation toward complainant.

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[15] 447 Phil. 67 (2003).

[16] *Barnachea v. Atty. Quiocho, supra,* at 75.

[17] *Yu v. Atty. Palaña, supra* note 11, at 28.

[18] *Id.*

[19] *Id.*

WHEREFORE, premises considered, the Court finds respondent Atty. Obdulio Guy Villahermosa III **GUILTY** of violating Canon 16, Canon 18 and Rule 18.03 of the Code of Professional Responsibility. Hence, respondent is **SUSPENDED** from the practice of law for **SIX (6) MONTHS,** which shall take effect immediately upon receipt of this Resolution by the respondent, and he is **STERNLY WARNED** that a repetition of the same or a similar offense shall be dealt with more severely. Respondent is also **DIRECTED** to return to the complainant Myrna Ojales the amount of Twenty-One Thousand Two Hundred Eighty Pesos (₱21,280.00), with interest at the legal rate of six percent (6%) *per annum,* from the date of receipt of this Resolution until fully paid.

Upon receipt of this Resolution, respondent is **DIRECTED** to immediately file a Manifestation informing this Court that his suspension has started and to furnish a copy of the Manifestation to all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished to the Office of the Bar Confidant to be appended to respondent's personal record; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts of the country for their information and guidance.

SO ORDERED.

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

SPECIAL SECOND DIVISION

[G.R. No. 171836. October 2, 2017]

DEPARTMENT OF AGRARIAN REFORM, represented by HON. NASSER C. PANGANDAMAN, in his capacity as DAR-OIC Secretary, *petitioner, vs.* **SUSIE IRENE GALLE,** *respondent.*

[G.R. No. 195213. October 2, 2017]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **SUSIE IRENE GALLE, substituted by her heirs, namely HANS PETER, CARL OTTO, FRITZ WALTER, and GEORGE ALAN, all surnamed RIETH,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; WHILE EMINENT DOMAIN IS AN INDISPENSABLE ATTRIBUTE OF SOVEREIGNTY AND INHERENT IN THE GOVERNMENT, THE EXERCISE OF WHICH IS BOUNDED BY TWO CONSTITUTIONAL REQUIREMENTS; FAILURE TO NOTIFY THE LANDOWNER IN THE EXPROPRIATION OF HER PROPERTY AMOUNTS TO DENIAL OF DUE PROCESS AND THE DECISION RENDERED THEREIN IS NULL AND VOID; EFFECTS.— On the matter of serious lapses committed by DAR in the expropriation of Galle's property, the Court agrees with the CA's factual findings in its September 15, 2015 Report and Recommendation that: x x x Nowhere in the records is it shown that Galle had been notified pursuant to Section 16(a) of RA 6657. This omission had remained unexplained, [and] undisputed by DAR and LBP. xxx We therefore opine that the failure of DAR to notify landowner as mandated by law had effectively and unduly prevented the [landowner] from submitting the required statement of income and other proofs to show the clear financial condition of the estate. x x x Eminent domain is an indispensable attribute of sovereignty and inherent in government. However, such power

is not boundless; it is circumscribed by two constitutional requirements: "first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law." x x x For the foregoing reasons, the DARAB's October 15, 1996 Decision is null and void. It cannot therefore acquire finality. x x x Being a void judgment, the DARAB Decision "may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored."

2. ID.; ID.; ID.; JUST COMPENSATION; THE COURT UPHOLDS THE COURT OF APPEALS' COMPUTATION OF JUST COMPENSATION TO BE PROPER AND IN ORDER HAVING BASED THE SAME ON PROPERTY VALUES AND COMPARATIVE SALES/VALUES OF PROPERTIES WITHIN THE AREA AT THE TIME OF TAKING.— The Court validates the CA's use of data relative to property values in three *barangays* within Zamboanga City, which is authorized under AO No. 5, particularly AO No. 5 (II)(C.2)(a)[.] x x x It would appear that the CA should have depreciated the property to its 1988 level, given the directive in DAR Administrative Order No. 5 (II)(C.2)(c), to the effect that **the comparable sales transactions that may be considered in computing Comparable Sales (CS) should be those sales transactions that were executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988**. This found reiteration in the *Alfonso* case, and later in *Land Bank of the Philippines v. Heirs of Tañada*. However, a serious legal issue in this regard would necessarily arise: Galle's property was taken only in 1993, and the settled principle is that **just compensation shall be determined as of the time of taking.** x x x For the above reasons, the Court finds the CA's computation of just compensation in the amount of ₱397,680,657.31 to be proper and in order, having based the same on property values and comparative sales/values of properties within the Patalon, Talisayan, and Sinubung areas in 1993, when Galle's properties were taken, that is, when the Zamboanga City Registry of Deeds cancelled Galle's titles and transferred the entire property to the State, in whose favor TCT Nos. T-110,927 and T-110,928 were issued.

3. ID.; ID.; ID.; ID.; ATTORNEY'S FEES AWARDED AND LEGAL INTEREST IMPOSED ON THE AMOUNT OF JUST COMPENSATION.— The Court likewise agrees with the CA findings on the matter of attorney's fees. However, instead of the rate imposed by the CA, *i.e.* 5% of the just compensation adjudged herein, we deem the amount of ₱100,000.00 realistic, reasonable, commensurate, and just under the circumstances. The recommendation for the imposition of interest is also well taken. Thus, legal interest shall be adjudged and pegged at the rate of 12% per annum from November 17, 1993 until June 30, 2013; and thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the legal rate of 6% per annum, conformably with the modification on the rules respecting interest rates introduced by *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, Series of 2013.

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Philippines.

Zenaida M. Garcia for the Heirs of Galle.

Office of the Solicitor General for Department of Agrarian Reform.

R E S O L U T I O N

DEL CASTILLO, *J.*:

On August 11, 2014, the Court issued a Decision[1] in the instant case, decreeing as follows:

WHEREFORE, the Court resolves as follows:

1. The Petition in G.R. No. 171836 is DENIED. The assailed September 23, 2004 Decision and February 22, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 80678 are AFFIRMED;

2. The Petition in G.R. No. 195213 is GRANTED IN PART. The assailed July 27, 2010 Consolidated Decision and January 19, 2011

[1] *Rollo*, G.R. No. 195213, pp. 1131-1172.

Resolution of the Court of Appeals in CA-G.R. SP No. 00761-MIN and CA-G.R. SP No. 00778-MIN are REVERSED and SET ASIDE;

3. Civil Case No. 4436-2K3 is REMANDED to the Court of Appeals, which is directed to receive evidence and immediately determine the just compensation due to Susie Irene Galle's estate/heirs – including all applicable damages, attorney's fees and costs, if any – in accordance with this Decision, taking into consideration Section 17 of Republic Act No. 6657, the applicable Department of Agrarian Reform Administrative Orders, including Administrative Order No. 6, Series of 1992, as amended by Administrative Order No. 11, Series of 1994, and prevailing jurisprudence. The Court of Appeals is further directed to conclude the proceedings and submit to this Court a report on its findings and recommendations within 90 days from notice of this Decision; and

4. The petitioner Land Bank of the Philippines is ORDERED to PAY Susie Irene Galle's estate or heirs – herein respondents – the amount of SEVEN MILLION FIVE HUNDRED THIRTY FOUR THOUSAND SIXTY THREE AND 91/100 PESOS (₱7,534,063.91), in cash, immediately upon receipt of this Decision.

SO ORDERED.[2]

On September 22, 2014, petitioner Land Bank of the Philippines (LBP) filed a Motion for Reconsideration[3] arguing that it was improper for this Court to declare null and void the October 15, 1996 Decision in DARAB Case No. JC-RIX-ZAMBO-0011-CO, which fixed just compensation on the basis of outdated 1991 data instead of valuation criteria as of 1993, the time of taking of the subject property; that said October 15, 1996 DARAB Decision is already final and executory and thus beyond judicial review, even by this Court; and that even if it were to be assumed that said DARAB Decision is null and void, it nonetheless cannot be the subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Petitioner Department of Agrarian Reform (DAR) likewise filed a Motion for Reconsideration[4] insisting that the October

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[2] *Id*. at 1170.

[3] *Id*. at 1173-1186.

[4] *Id*. at 1192-1203.

15, 1996 DARAB Decision is correct; that the 1991 valuation is accurate since the actual taking of Galle's property for purposes of fixing just compensation may be said to have occurred at that time when the Notice of Coverage was served upon Galle; that a property valuation discrepancy of three years is not significant in the determination of just compensation due to the owner of expropriated property; and that the October 15, 1996 DARAB Decision, being correct and having attained finality, shall prevail as regards the amount of just compensation to be paid for Galle's expropriated property.

On September 15, 2015, the Court of Appeals (CA) submitted its Report and Recommendation,[5] stating as follows:

> Simply put, in the crucial choice of the applicable formula for determination of the land value of the subject properties, We need to ascertain whether the three (3) factors are present, relevant, and applicable.
>
> The Capitalized Net Income (CNI) factor
>
> This refers to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%, expressed in the following equation form:
>
> $$CNI = \frac{(AGP \times SP) - CO}{.12}$$
>
> Before proceeding to the computation proper, We noted the following significant circumstances:
>
> 1) There was non-compliance by the DAR with the rules prescribed by Section 16 of RA 6657, to wit: a) failure of the DAR, after having identified the land, the landowners and the beneficiaries, *to send out a notice to acquire the land* to the owners by personal delivery or registered mail and post the same in the municipal building and barangay hall of the place where the property is located; b) lack of actual inspection by LBP and DAR;

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[5] *Id*. at 1230-1248; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Henri Jean Paul B. Inting and Rafael Antonio M. Santos.

2) LBP, in its Petition for Review on Certiorari dated March 7, 2011 filed before the Supreme Court docketed as G.R. No. 195213, declared that in November 1995, a re-evaluation of the Galle property was made by LBP taking into consideration the factors under DAR Administrative Order (AO) No. 06, series of 1992 as amended by AO No. 11, series of 1994 where the valuation was Php7,534,063.91;

3) In its Petition for Review dated December 29, 2005 before this Court docketed as CA-G.R. SP No. 00761, LBP made the same declaration that the just compensation for Galle must be computed in accordance in [sic] AO 6, Series of 1992, as amended.

4) In this final stage of the case, however, particularly in their Memorandum filed before this Court, LBP would now insist that the applicable Administrative Order is AO 2 Series of 2009, claiming that the basic formula of AO 6, as amended, and AO 2 are the same. No explanation was given by LBP for their sudden shift to AO 2 instead of AO 6 in their determination of just compensation. This change of theory of the case results in undue surprise to the opposite party, and offends the basic rules of fair play, justice, and due process.

DAR Administrative Order 02-09 pertains to Rules and Procedures Governing the Acquisition and Distribution of Agricultural Lands under Republic Act No. 6657, as amended by Republic Act No. 9700. It seeks to strengthen the comprehensive reform program and provides for the continuing acquisition and distribution of agricultural lands covered under the Comprehensive Agrarian Reform Program (CARP) for a period of five (5) years under various phases, and the simultaneous provision of support services and the delivery of agrarian justice to Agrarian Reform Beneficiaries (ARBs).

x x x x x x x x x

Obviously out of that coverage are Galle's properties which had already been taken as far back as 1993. This fact, to Our mind, effectively rules out LBP's suggestion that DAR AO 2-09 should control the computation of just compensation. In short[,] in determining the just compensation due to Galle, AO 02-09 did not have the effect of changing the basic formula to be used in the valuation: it continues

to be governed by AO 6, as amended, as LBP itself had always insisted all throughout this litigation, until its recent change of tune.

Now back to Administrative Order No. 6 which computes AGP *as the latest available 12 month's gross production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA while SP is reckoned as the average of the latest available 12 month's selling prices prior to the date of receipt of the claimfolder by LBP for processing*. It should be particularly noted that the *date of receipt* of the claimfolder by LBP from DAR is mandated to mean the very date when the claimfolder is officially determined by LBP to be *complete*, that is, with all the required documents and valuation inputs duly verified and validated and ready *for computation and processing*.

As a matter of record, Galle's properties were compulsorily acquired (CA). Yet, the date of coverage of her properties has remained uncertain. Nowhere in the records is it shown that Galle had been notified pursuant to Section 16(a) of RA 6657. This omission had remained unexplained, even as it had remained undisputed by DAR and LBP. Surprisingly, a Notice of Coverage was submitted by LBP. A notice of land valuation dated August 25, 1992 in the amount of ₱6,083,545.26 was allegedly offered and it further states that the Notice of Acquisition is dated January 21, 1991 or 19 months earlier, contrary to the law's mandate that the Notice of Acquisition should state the specific offer of compensation. In the notice of land valuation, mention was made of a notice of acquisition dated January 22, 1991, which actually was a postdate, a date that was yet to come more than a year into the future. Such a gross failure of the government agency concerned to notify Galle pursuant to Section 16 of RA 6657 had rendered computation of the AGP uncertain, speculative, and unreliable – especially when made to depend on the basis of the date submitted by LBP, considering that the date of notice of coverage is uncertain to begin with. AGP is the one year's Average [G]ross Production *immediately preceding the date of offer in case of Voluntary [O]ffer to [S]ell (VOS) or date of notice of coverage in case of compulsory acquisition (CA)*. We therefore opine that the failure of DAR to notify [the] landowner as mandated by law had effectively and unduly prevented the [landowner] from submitting the required statement of income and other proofs to show the clear financial condition of the estate. Securing and unduly relying on indirect, tangential, and largely secondary information definitely create a significant impact on the CNI factor and its reliability and fairness.

Assuming *arguendo* that LBP received the claimfolder of Galle from DAR on October 4, 1991, then We cannot help agreeing with the respondents' position that it does not necessarily mean that the claimfolder was already complete with the essential requirements and ready for processing. DAR AO No. 11, series of 1994, clearly provides that:

> For purposes of this Administrative Order, the date of receipt of claimfolder by LBP from DAR shall mean *the date when the claimfolder is determined by the LBP to be complete with all the required documents and valuation inputs duly verified and validated, and is ready for final computation/processing.*

LBP secured a certification from PCA on selling prices of copra on July 21[,] 1995, thus it is fair to assume that [on] October 4, 1991 date of receipt, the claimfolder was yet to be completed. It was not at all complete and ready for processing.

In sum, considering that the [date] of the notice of coverage and the date of receipt of the claimfolder by LBP cannot be determined with certainty, it is now impossible to arrive at the *relevant average gross production* and selling prices as well as the cost of operations. [This is] because respondents had been prevented from submitting – as and when pertinent data and statistics were still fresh and available – an accurate and realistic statement of income. And all these, because of the unexplained and unjustifiable failure or omission of DAR to notify the [landowner] of the subject land acquisition as expressly mandated by law. The so-called industry figure used by LBP as the cost of operations in lieu of a statement of net income which Galle allegedly failed to submit could not be appreciated against the innocent [landowner] Galle, and in favor of the erring state agency. Because of want of reliable data, through no fault of the [landowner], CNI could not be accurately ascertained.

Considering that CNI factor is not present, We find it proper to use the following formula in AO 6, as amended, in computing just compensation for Galle:

> When the CNI factor is not present, and CS and MV are applicable, the formula shall be:
>
> $$LV = (CS \times 0.9) + (MV \times 0.1)$$

Respondents Galle presented Resolutions of the City Government of Zamboanga City showing the payment for properties expropriated

by the City as determined by the City Appraisal Committee fixing the value of private lands for its acquisitions or expropriations for governmental purposes. These were resolutions between years 2000 and 2003. Respondents brought down the values of the properties to the year 1993 using the appreciation and conversely depreciation rate factor of 5% employed by bank appraisers. The barangays mentioned in the resolutions are near barangay Patalon, where Galle's properties [are] located and taken in 1993.

(Summary of the 5 Resolutions issued by the City Government of Zamboanga)

YEAR	PATALON	TALISAYAN	TALISAYAN	SINUBUNG	TALISAYAN
2003	152.52				
2002	144.89				
2001	137.65	200.00	200.00		
2000	130.77	200.00	200.00	200.00	200.00
1999	124.23	190.00	190.00	190.00	190.00
1998	118.02	180.50	180.50	180.50	180.50
1997	112.12	171.48	171.48	171.48	171.48
1996	106.51	162.90	162.90	162.90	162.90
1995	101.19	154.76	154.76	154.76	154.76
1994	96.13	147.02	147.02	147.02	147.02
1993	91.32	139.67	139.67	139.67	139.67

We opted to use the 3 Resolutions instead of 5 since the Talisayan area had the same appraised value.

YEAR	PATALON	TALISAYAN	SINUBUNG
2003	152.52		
2002	144.89		
2001	137.65	200.00	
2000	130.77	200.00	200.00
1999	124.23	190.00	190.00
1998	118.02	180.50	180.50
1997	112.12	171.48	171.48
1996	106.51	162.90	162.90
1995	101.19	154.76	154.76
1994	96.13	147.02	147.02
1993	**91.32**	**139.67**	**139.67**

Taking into consideration that the questioned property is a fully developed land with a heavy extraction of sand and gravel on the river that abounds Galle's property, the comparable contemporaneous sales transactions of nearby places (Patalon, Talisayan, Sinubung) the *average of the CS factor* should be:

$$\frac{91.32 \text{ (Patalon)} + 139.67 \text{ (Talisayan)} + 139.67 \text{ (Sinubung)}}{3}$$

= **123.55** per square meter x 3,568,257 square meters (356.8257 hectares)

CS = Php440,858,152.35

On the other hand, the market value of the property which refers to the market value per Tax Declaration, are as follows:

Tax Declaration No. 016000017	=	₱ 4,395,622.00
Tax Declaration No. 016000018	=	₱ 4,687,580.00
TOTAL (MV FACTOR)	**=**	**₱ 9,083,202.00**

Applying the formula LV = (CS x 0.9) + (MV x 0.1), the value of the property would be:

LV = 440,858,152.35 (.90) + 9,083,202.00 (.10)

396,772,337.115 + 908,320.20

LV = 397,680,657.315

In summary, this Court recommends that the just compensation due to Galle be set at Php397,680,657.315. Such valuation, it is respectfully submitted, is fair, reasonable, and consistent with the letter and spirit of the law and applicable DAR regulations on the fixing of just compensation, specifically AO 6, as amended.

The Supreme Court consistently defined just compensation as 'the full and fair equivalent of the property taken from its owner by the expropriator,' and that the gauge for computation is not the taker's gain but the owner's loss. In order to be 'just', the payment must be real, substantial, full, and ample. The concept of just compensation embraces not only the correct determination of the amount to be paid to the owner of the land, but also the payment of the land within a 'reasonable time' from the taking of the property.

Without prompt payment, compensation cannot be considered 'just' inasmuch as the property owner is made to suffer the consequences

of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his or her loss.

In this case, the DAR literally took respondent's land without her knowledge and participation, and without paying her just compensation. Worse, from the time of the taking of respondent's land in 1993 to the time this case reached the Supreme Court until it was decided on 11 August 2014, LBP has not compensated respondent although DAR has already distributed the lands to the farmer beneficiaries for more than twenty-one (21) years ago. Justice and equity require that the unreasonable, even oppressive, delay in the payment of just compensation be appropriately remedied by the award of legal interest in respondent's favor. Legal interest is the measure of damages arising from delay (*mora solvendi*) under the Civil Code. We thus RECOMMEND 12% interest per annum, computed from November 17, 1993 to June 30, 2013 and 6% per annum from July 1, 2013 until their full satisfaction in the nature of damages for the delay in payment.

We also RECOMMEND an award of attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. If at all granted, attorney's fees must be reasonable, just, and equitable. It is necessary for the court to make findings of fact and law to justify the grant of such award. It must be clearly explained and justified by the trial court in the body of its decision.

In this case, We deem it proper that an award of attorney's fees be allowed at the suggested rate of 5% of the total amount payable in this suit. It is needful to note that although the main case appears at surface to be merely for determination of just compensation with damages, that complaint had, in reality, spawned several incidents in the close to twenty-two (22) years that this case has gone thorough litigation. Earlier, the DAR elevated the case to this Court seeking relief from the denial of their motion to dismiss. Then, after the SAC had constituted the Board of Commissioners, respondent had to wiggle her way through in presenting and defending her claim for just compensation and damages. Then, respondent had to contend with the separate petitions for review filed by DAR and LBP before this Court, which were later elevated to the Supreme Court. And now, respondent still has to deal with the remand of these cases for determination of just compensation. It is noteworthy that respondent's land had been actually taken from her and distributed to the farmer

beneficiaries as far back as 1993. Yet LBP has not compensated at all. That is twenty-one long years of downright delay (*mora solvendi*). It is even sad to note that the original respondent had already passed to the great beyond without seeing the fruition of her toils and efforts, all because of the prolonged process of determination of what is due her in compensation. In fine, taking into account the over-all factual milieu in which this case has proceeded, We find it just and equitable to award attorney's fees equivalent to 5% of the total just compensation payable in this suit.

FOR THESE REASONS, this Court RECOMMENDS the amount of Php397,680,657.315 as just compensation for the Galle properties, which shall earn legal interest of 12% interest per annum, computed from November 17, 1993 to June 30, 2013 and 6% per annum from July 1, 2013 until the entire obligation is fully paid, minus whatever amount may have been already paid in accordance with the Decision of the Supreme Court dated 11 August 2014. In addition, LBP is adjudged liable to pay respondent Susie Irene Galle or her Heirs attorney's fees equivalent to 5% of the total amount of just compensation adjudged in this suit. No costs.

RESPECTFULLY SUBMITTED.[6]

In an October 5, 2015 Resolution,[7] this Court resolved to await the *en banc* ruling in the case of *Alfonso v. Land Bank of the Philippines*,[8] the resolution of which would settle long-standing issues surrounding the computation of just compensation for lands placed within the coverage of the government's Comprehensive Agrarian Reform Program. This was reiterated in the Court's subsequent April 20, 2016 and October 19, 2016 Resolutions.[9]

On November 29, 2016, the Court *en banc* issued its ruling in the *Alfonso* case. It held, relevantly:

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[6] *Id*. at 1240-1248.

[7] *Id*. at 1258.

[8] G.R. Nos. 181912 and 183347, November 29, 2016.

[9] *Rollo*, G.R. No. 195213, pp. 1259-1260.

For example, the Cuervo Report cited a number of 'comparable sales' for purposes of its market data analysis. Aside from lack of proof of fact of said sales, the Report likewise failed to explain how these purported 'comparable' sales met the guidelines provided under DAR AO No. 5 (1998). The relevant portion of DAR AO No.5 (1998) reads:

II. C.2 The criteria in the selection of the comparable sales transaction (ST) shall be as follows:

a. When the required number of STs is not available at the barangay level, additional STs may be secured from the municipality where the land being offered/covered is situated to complete the required three comparable STs. In case there are more STs available than what is required at the municipal level, the most recent transactions shall be considered. The same rule shall apply at the provincial level when no STs are available at the municipal level. In all cases, the combination of STs sourced from the barangay, municipality and province shall not exceed three transactions.

b. The land subject of acquisition as well as those subject of comparable sales transactions should be similar in topography, land use, i.e., planted to the same crop. Furthermore, in case of permanent crops, the subject properties should be more or less comparable in terms of their stages of productivity and plant density.

c. **The comparable sales transactions should have been executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988**.

d. STs shall be grossed up from the date of registration up to the date of receipt of CF by LBP from DAR for processing, in accordance with Item II.A.9. (Emphasis and underscoring supplied.)

To this Court's mind, a reasoned explanation from the SAC to justify its deviation from the foregoing guidelines is especially important considering that both the DAR and the LBP were unable to find sales of comparable nature.

Worse, further examination of the cited sales would show that the same far from complies with the guidelines as to the cut-off

dates provided under the DAR AO No. 5 (1998). The purported sales were dated between November 28, 1989 (at the earliest) to March 12, 2002 (at the latest), whereas DAR AO No. 5 (1998) had already and previously set the cut-off between June to September of 1988. We also note that these purported sales involve much smaller parcels of land (the smallest involving only 100 square meters). We can hardly see how these sales can be considered 'comparable' for purposes of determining just compensation for the subject land. (Emphasis supplied)

The Court's Resolution

Motions for Reconsideration

LBP and DAR argue in their respective Motions for Reconsideration that it was improper for the Court to nullify the DARAB's October 15, 1996 Decision, which is already final and executory and thus beyond judicial review. If only the DARAB Decision were correct, this proposition would apply. However, far from it, the DARAB Decision goes against the law; at the same time, it is unfair, unjust, and oppressive, for the reason that the just compensation decreed therein is grossly erroneous. Galle's properties were grossly undervalued, and the DAR committed serious lapses in the process of expropriating the same. Undervaluation results in denial of due process of law. This Court has repeatedly held that –

> Just compensation is defined as the full and fair equivalent of the property sought to be expropriated. The measure is not the taker's gain but the owner's loss. The compensation, to be just, must be fair not only to the owner but also to the taker. Even as **undervaluation would deprive the owner of his property without due process**, so too would its overvaluation unduly favor him to the prejudice of the public.[10] (Emphasis supplied)

In *Land Bank of the Philippines v. Lajom*,[11] the Court made the following pronouncement as well:

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[10] *B.H. Berkenkotter & Co. v. Court of Appeals*, 290-A Phil. 371, 374 (1992).

[11] 741 Phil. 655, 669 (2014).

As a final word, the Court would like to emphasize that while the agrarian reform program was undertaken primarily for the benefit of our landless farmers, this undertaking should, however, not result in the oppression of landowners by pegging the cheapest value for their lands. Indeed, although the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, it should not be carried out at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.

On the matter of serious lapses committed by DAR in the expropriation of Galle's property, the Court agrees with the CA's factual findings in its September 15, 2015 Report and Recommendation that:

x x x Nowhere in the records is it shown that Galle had been notified pursuant to Section 16(a) of RA 6657. This omission had remained unexplained, [and] undisputed by DAR and LBP. x x x Such a gross failure of the government agency concerned to notify Galle pursuant to Section 16 of RA 6657 had rendered computation of the AGP uncertain, speculative, and unreliable – especially when made to depend on the basis of the date submitted by LBP, considering that the date of notice of coverage is uncertain to begin with. x x x We therefore opine that the failure of DAR to notify landowner as mandated by law had effectively and unduly prevented the [landowner] from submitting the required statement of income and other proofs to show the clear financial condition of the estate. Securing and unduly relying on indirect, tangential, and largely secondary information definitely create a significant impact on the CNI factor and its reliability and fairness.

x x x x x x x x x

In sum, considering that the dates of the notice of coverage and the date of receipt of the claimfolder by LBP cannot be determined with certainty, it is now impossible to arrive at the *relevant average gross production* and selling prices as well as the cost of operations. These because respondents had been prevented from submitting – as and when pertinent data and statistics were still fresh and available – an accurate and realistic statement of income. And all these, because of the unexplained and unjustifiable failure or omission of DAR to notify the [landowner] of the subject land acquisition as expressly mandated by law. The so-called industry figure used by LBP as the cost of operations in lieu of a statement of net income which Galle

allegedly failed to submit could not be appreciated against the innocent [landowner] Galle, and in favor of the erring state agency. Because of want of reliable data, through no fault of the [landowner], CNI could not be accurately ascertained.[12]

Eminent domain is an indispensable attribute of sovereignty and inherent in government. However, such power is not boundless; it is circumscribed by two constitutional requirements: "first, that there must be just compensation, and second, that no person shall be deprived of life, liberty or property without due process of law."[13]

Since the exercise of the power of eminent domain affects an individual's right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty, the need for its circumspect operation cannot be overemphasized. In *City of Manila vs. Chinese Community of Manila* we said:

> The exercise of the right of eminent domain, whether directly by the State, or by its authorized agents, is necessarily in derogation of private rights, and the rule in that case is that the authority must be strictly construed. No species of property is held by individuals with greater tenacity, and none is guarded by the constitution and the laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right, and, for greater public purposes, appropriates the land of an individual without his consent, the plain meaning of the law should not be enlarged by doubt[ful] interpretation. (*Bensley vs. Mountainlake Water Co*., 13 Cal., 306 and cases cited [73 Am. Dec. 576].)
>
> The statutory power of taking property from the owner without his consent is one of the most delicate exercise of governmental authority. It is to be watched with jealous scrutiny. Important as the power may be to the government, the inviolable sanctity

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[12] *Rollo*, G.R. No. 195213, pp. 1242-1243.

[13] *Metropolitan Cebu Water District (MCWD) v. J. King and Sons Company, Inc.,* 603 Phil. 471, 480 (2009), citing *Barangay Sindalan, San Fernando, Pampanga, rep. by Brgy. Capt. Gutierrez v. Court of Appeals,* 547 Phil. 542, 551 (2007).

> which all free constitutions attach to the right of property of the citizens, constrains the strict observance of the substantial provisions of the law which are prescribed as modes of the exercise of the power, and to protect it from abuse. ...(Dillon on Municipal Corporations [5th Ed.], Sec. 1040, and cases cited; *Tenorio vs. Manila Railroad Co*., 22 Phil., 411.)[14] (Citations omitted)

For the foregoing reasons, the DARAB's October 15, 1996 Decision is null and void. It cannot therefore acquire finality.

Thus, a void judgment is no judgment at all. It cannot be the source of any right nor of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.[15]

Being a void judgment, the DARAB Decision "may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored."[16]

Just Compensation

Under DAR AO No. 5 (1998), issued on April 15, 1998:

II. The following rules and regulations are hereby promulgated to govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

$$LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1)$$

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[14] *Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676, 688-689 (2000).

[15] *Nazareno v. Court of Appeals*, 428 Phil. 32, 42 (2002), citing *Arcelona v. Court of Appeals*, 345 Phil. 250, 287 (1997) and *Leonor v. Court of Appeals*, 326 Phil. 74, 88 (1996).

[16] *Imperial v. Armes,* G.R. Nos. 178842 & 195509, January 30, 2017, citing *Yu v. Judge Reyes-Carpio*, 667 Phil. 474 (2011).

Where:

LV	**=**	**Land Value**
CNI	=	Capitalized Net Income
CS	**=**	**Comparable Sales**
MV	**=**	**Market Value per Tax Declaration**

The above formula shall be used if all the three factors are present, relevant and applicable.

x x x x x x x x x

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

(Emphasis supplied)

The CA was correct in utilizing the above formula, in the absence of a CNI factor, which could not be determined based on the extant data. In the same manner, it correctly applied the property values determined by the Zamboanga City Government and its Appraisal Committee as contained in the former's Resolutions; this Court declares so in the absence of official data on comparative sales and in the face of DAR's gross mishandling of Galle's case and the multiple irregularities committed by it, which resulted in inordinate delay and wrongful determination and payment of just compensation to the landowner who passed away before she could receive and enjoy what was due her. Meanwhile, the agrarian beneficiaries of her land have profited and benefited from the use thereof, considering the period that has elapsed (20 years), the location thereof, the rise in land prices, and commercialization of the area,[17] in which case it may be said that the nature of the property has been altered considerably during the interregnum.

The Court validates the CA's use of data relative to property values in three *barangays* within Zamboanga City, which is

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[17] The subject property is situated near the Zamboanga City Special Economic Zone Authority and the Ayala de Zamboanga Industrial Estate, which were established as early as in 1997.

authorized under AO No. 5, particularly AO No. 5 (II)(C.2)(a) which states:

> a. **When the required number of STs is not available at the barangay level, <u>additional STs may be secured from the municipality where the land being offered/ covered is situated to complete the required three comparable STs</u>**. In case there are more STs available than what is required at the municipal level, the most recent transactions shall be considered. **The same rule shall apply at the provincial level when no STs are available at the municipal level**. **In all cases, the combination of STs sourced from the barangay, municipality and province shall not exceed three transactions**. (Emphasis and underscoring supplied)

For the same reason, the Court finds nothing wrong with using the appreciation and depreciation rate factor of 5% employed by bank appraisers, in the absence of official DAR data/evidence or any other reliable method, and given the DAR's incompetence in handling Galle's case and the unjust consequences that resulted from such inefficiency and neglect. After all, Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 (CARL) provides that –

> Sec. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, *the current value of like properties*, *its nature*, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Italics supplied)

It would appear that the CA should have depreciated the property to its 1988 level, given the directive in DAR

Administrative Order No. 5 (II)(C.2)(c), to the effect that **the comparable sales transactions that may be considered in computing Comparable Sales (CS) should be those sales transactions that were executed within the period January 1, 1985 to June 15, 1988, and registered within the period January 1, 1985, to September 13, 1988**. This found reiteration in the *Alfonso* case, and later in *Land Bank of the Philippines v. Heirs of Tañada*.[18] However, a serious legal issue in this regard would necessarily arise: Galle's property was taken only in 1993, and the settled principle is that **just compensation shall be determined as of the time of taking**.

In *Land Bank of the Philippines v. Heirs of Salvador Encinas*, this Court reiterated this long-established principle, thus:

> **The 'taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding.' In computing the just compensation for expropriation proceedings, the RTC should take into consideration the 'value of the land at the time of the taking**, not at the time of the rendition of judgment.' '**The time of taking is the time when the landowner was deprived of the use and benefit of his property**, such as when title is transferred to the Republic.'[19] (Emphasis supplied; citations omitted)

In *Alfonso*, the Court reiterated the settled doctrine that **the ultimate determination of just compensation in expropriation proceedings remains a judicial prerogative**, stating thus:

For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned

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[18] G.R. No. 170506, January 11, 2017, where the Court held:

Notably, in *Alfonso,* we recognized that comparable sales is one of the factors that may be considered in determining the just compensation that may be paid to the landowner. However, **there must still be proof that such comparable sales met the guidelines set forth in DAR AO No. 5 (1998), which included among others, that such sales should have been executed within the period January 1, 1985 to June 15, 1988 and registered within the period January 1, 1985 to September 13, 1988**. (Emphasis supplied)

[19] *Land Bank of the Philippines v. Peralta*, 734 Phil. 219, 234 (2014).

implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. **If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom**, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, **courts of law possess the power to make a final determination of just compensation**. (Emphasis supplied)

Taking the cue from *Alfonso*, therefore, the Court finds no merit in applying the rule laid out in DAR Administrative Order No. 5 (II)(C.2)(c), as it goes against the fundamental principle in eminent domain that just compensation shall be determined as of the time of taking. The reason behind DAR Administrative Order No. 5 (II)(C.2)(c) is evident: it sets a cap on the expropriation value of properties placed under the agrarian reform program in order that these properties may be acquired as cheaply as possible and at little cost to government; understandably, it is aimed at preventing the dissipation of the state's coffers. But this goes against the mandate of the Constitution; the great cost to private landowners occasioned by an unwarranted undervaluation of their properties cannot be ignored. If DAR Administrative Order No. 5 (II)(C.2)(c) were to be applied in the present case, there would be an unjust taking, a clear violation of due process.

For the above reasons, the Court finds the CA's computation of just compensation in the amount of ₱397,680,657.31 to be proper and in order, having based the same on property values and comparative sales/values of properties within the Patalon, Talisayan, and Sinubung areas in 1993, when Galle's properties were taken, that is, when the Zamboanga City Registry of Deeds cancelled Galle's titles and transferred the entire property to the State, in whose favor TCT Nos. T-110,927 and T-110,928 were issued.

The Court likewise agrees with the CA findings on the matter of attorney's fees. However, instead of the rate imposed by

the CA, *i.e.* 5% of the just compensation adjudged herein, we deem the amount of ₱100,000.00 realistic, reasonable, commensurate, and just under the circumstances.

The recommendation for the imposition of interest is also well taken. Thus, legal interest shall be adjudged and pegged at the rate of 12% per annum from November 17, 1993 until June 30, 2013; and thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the legal rate of 6% per annum, conformably with the modification on the rules respecting interest rates introduced by *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, Series of 2013.[20]

WHEREFORE, the Court adopts the September 15, 2015 Report and Recommendation of the Court of Appeals with modification as to the amount of attorney's fees. Petitioner Land Bank of the Philippines is **ORDERED** to **PAY** Susie Irene Galle's estate or heirs, herein respondents:

1) The amount of **THREE HUNDRED NINETY SEVEN MILLION SIX HUNDRED EIGHTY THOUSAND SIX HUNDRED FIFTY SEVEN AND 31/100 PESOS (₱397,680,657.31)** as just compensation for the expropriation of her estate, the herein subject properties;

2) **ATTORNEY'S FEES** in the amount of ONE HUNDRED THOUSAND PESOS (₱100,000.00); and

3) **INTEREST** at the rate of 12% per annum from November 17, 1993 until June 30, 2013; and thereafter, or beginning July 1, 2013, the total award shall earn interest at the legal rate of 6% per annum until the same is fully paid.

4) No costs.

SO ORDERED.

Carpio (*Chairperson*), *Velasco, Jr., Perlas-Bernabe,* and *Tijam, JJ.,* concur.

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[20] *Land Bank of the Philippines v. Lajom*, *supra* note 11.

FIRST DIVISION

[G.R. No. 181435. October 2, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ROSARIO L. NICOLAS,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. 1529); REQUISITES FOR REGISTRATION OF ALIENABLE AND DISPOSABLE LANDS OF PUBLIC DOMAIN.— Section 14(1) of P.D. 1529 governs applications for registration of alienable and disposable lands of the public domain. This paragraph operationalizes Section 48(b) of Commonwealth Act No. 141 as amended. This provision grants occupants of public land the right to judicial confirmation of their title. Based on these two provisions and other related sections of C.A. 141, registration is allowed provided the following requisites have been complied with: 1. The applicant is a Filipino citizen. 2. The applicant, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the property since 12 June 1945. 3. The property has been declared alienable and disposable as of the filing of the application. 4. If the area applied for does not exceed 12 hectares, the application should be filed by 31 December 2020.

2. ID.; ID.; ID.; RESPONDENT FAILED TO PROVE THAT THE PROPERTY IS ALIENABLE AND DISPOSABLE AGRICULTURAL LAND THAT MAY BE REGISTERED UNDER SECTION 14(1) OF P.D. 1529; PRIVATE SURVEY IS NOT SUFFICIENT TO PROVE THE CLASSIFICATION OR ALIENABLE CHARACTER OF THE LAND.— The Court has emphasized in a long line of cases that an applicant for registration under Section 14(1) must prove that the subject property has been classified as alienable and disposable agricultural land by virtue of a positive act of the Executive Department. x x x In this case, we note that both the RTC and the CA glossed over this requirement. The RTC, for instance, only made a general conclusion as to the classification and

alienability of the property, but without any discussion of the evidence presented[.] x x x The CA, on the other hand, simply relied on the fact that the property had been the subject of a private survey in 1964[.] x x x [R]espondent not only neglected to submit the required CENRO/PENRO certification and DENR classification, but also presented evidence that completely failed to prove her assertion. x x x The Court also finds that the ruling of the CA on the evidentiary value of the private survey is untenable. The fact that the land has been privately surveyed is not sufficient to prove its classification or alienable character. While the conduct of a survey and the submission of the original tracing cloth plan are mandatory requirements for applications for original registration of land under P.D. 1529, they only serve to establish the true identity of the land and to ensure that the property does not overlap with another one covered by a previous registration. These documents do not, by themselves, prove alienability and disposability of the property. In fact, in several cases, the Court has declared that even a survey plan with a notation that the property is alienable cannot be considered as sufficient evidence of alienability. Here, the survey plan and original tracing cloth plan submitted by respondent does not even bear that notation. Consequently, it was grave error for the CA to consider the mere conduct of a private survey as proof of the classification and the alienability of the land.

3. **ID.; ID.; ID.; RESPONDENT LIKEWISE FAILED TO PROVE THAT THE SUBJECT LAND IS PART OF THE PATRIMONIAL PROPERTY OF THE STATE THAT MAY BE ACQUIRED BY PRESCRIPTION UNDER SECTION 14(2) OF P.D. 1529; CONDITIONS FOR ACQUISITION OF PUBLIC LAND BY PRESCRIPTION, NOT ESTABLISHED.—** The Court finds no sufficient basis to allow the registration of the property under Section 14(2). By express provision of the law, only *private* lands that have been acquired by prescription under existing laws may be the subject of applications for registration under Section 14(2). The starting point of the Court's evaluation must, therefore, be whether the property involved falls within the scope of the paragraph. Under the Civil Code, all things within human commerce are generally susceptible of prescription. Properties of the public dominion, or those owned by the State, are expressly excluded by law from this general rule, unless they are proven to be *patrimonial*

in character. x x x To establish that the land subject of the application has been converted into patrimonial property of the State, an applicant must prove the following: 1. The subject property has been classified as agricultural land. 2. The property has been declared alienable and disposable. 3. There is an express government manifestation that the property is already patrimonial, or is no longer retained for public service or the development of national wealth. It must be emphasized that without the concurrence of these three conditions, the land remains part of public dominion and thus incapable of acquisition by prescription. Here, the records show that respondent has failed to allege or prove that the subject land belongs to the patrimonial property of the State. As earlier discussed, the evidence she has presented does not even show that the property is alienable and disposable agricultural land. She has also failed to cite any government act or declaration converting the land into patrimonial property of the State. Contrary to the ruling of the CA, the DENR-CENRO Certifications submitted by respondent are not enough; they cannot substitute for the three conditions required by law as proof that the land may be the subject of prescription under the Civil Code. For the same reason, the mere conduct of a private survey of a property – even with the approval of the Bureau of Lands – does not convert the lot into private land or patrimonial property of the State. Clearly, the appellate court erred when it relied on the survey to justify its conclusion that the land is private in nature. Considering the absence of sufficient evidence that the subject land is a patrimonial property of the State, we must consider it part of public dominion and thus immune from acquisitive prescription.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Liberato C. Teneza for respondent.

D E C I S I O N

SERENO, *C.J.:*

This is a Petition for Review on Certiorari[1] filed by the Republic of the Philippines to assail the Court of Appeals (CA) Decision[2] and Resolution[3] in CA-G.R. CV No. 81678. The CA affirmed the Regional Trial Court (RTC) Decision,[4] which granted the Petition[5] filed by respondent Rosario L. Nicolas for the registration of title to a parcel of land located in *Barangay* (*Brgy.*) San Isidro, Rodriguez, Rizal.[6] The appellate court agreed with the conclusion of the RTC that respondent had convincingly established her ownership of the land and was therefore entitled to judicial confirmation and registration of title.[7]

FACTUAL ANTECEDENTS

On 22 March 1996, respondent filed a Petition before the RTC of San Mateo, Rizal,[8] seeking to register her title over Lot 2 of Survey Plan Psu- 213331, a parcel of land located in *Brgy.* San Isidro, Rodriguez, Rizal, with an area of 118,448 square meters.[9] She asserted that she was entitled to confirmation and registration of title, as she had been in "natural, open, public,

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[1] *Rollo*, pp. 10-49.

[2] *Id.* at 52-62; Dated 23 August 2007, penned by Associate Justice Lucenito M. Tagle and concurred in by Associate Justices Amelita G. Tolentino and Sixto Marella, Jr.

[3] *Id.* at 64; Dated 22 January 2008.

[4] *Id.* at 135-138; Dated 31 July 2002, penned by Presiding Judge Elizabeth Balquin-Reyes.

[5] *Id.* at 104-107.

[6] *Id.* at 104.

[7] *Id.* at 59.

[8] The case was docketed as LRC Case No. N-271-96 SM and assigned to Branch 75 of the RTC of San Mateo Rizal.

[9] *Rollo*, p. 53.

adverse, continuous, uninterrupted" possession of the land in the concept of an owner since October 1964.[10]

Petitioner Republic of the Philippines filed an Opposition[11] to the Petition. It contended that (a) neither respondent nor her predecessors-in-interest had been in open, continuous, exclusive and notorious possession of the land since 12 June 1945;[12] (b) the Tax Declarations attached to the Petition did not constitute sufficient evidence of the acquisition or possession of the property;[13] (c) respondent failed to apply for registration of title within six months from 16 February 1976 as required by Presidential Decree No. (P.D.) 892;[14] and (d) the land in question was part of the public domain and not subject to private appropriation.[15]

After the conduct of proceedings to confirm compliance with jurisdictional requisites,[16] the RTC directed respondent to submit documents to establish that (a) the property that was the subject of the application for registration of title was not covered by the Comprehensive Agrarian Reform Program of the Government; (b) there were no tenants on the property; and (c) the land was not subject to any homestead, free patent, or grant of title from the Land Registration Authority (LRA), the Bureau of Lands, or the Department of Agrarian Reform.[17] Respondent was also directed to begin the presentation of her evidence.[18]

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[10] *Id*. at 106.

[11] *Id*. at 112-114; Dated 28 May 1997.

[12] *Id*. at 112.

[13] *Id*.

[14] *Id*. at 113.

[15] *Id*.

[16] *Id*. at 19.

[17] *Id*. at 19.

[18] *Id*. at 19-20.

In line with this directive, the Community Environment and Natural Resources Office (CENRO) submitted a Report[19] on the results of its verification of the existing records on the subject property. The Report stated that the land "appears to be [n]ot covered by any public land application nor embraced by any administrative title."[20] However, the entry with respect to whether the land was within the alienable and disposable zone was left blank with a notation that the area was "not projected due to [u]navailability of coordinates re[:] Tala Estate Tie-Line."[21]

The LRA likewise submitted a Report[22] stating that it "was not in a position to verify whether or not the parcel of land subject of registration is already covered by land patent and is within the area classified as alienable and disposable land of the public domain."[23] Hence, the LRA recommended that the CENRO of Antipolo, Rizal, be ordered to submit a report on the status of the land.[24] This proposal was adopted by the RTC in an Order[25] dated 28 December 1998.

During trial, respondent presented three witnesses to prove her right to register the property: Leonila Alfaro, her daughter and attorney-in-fact, who testified that respondent had occupied the land since 1940 and had paid the real estate taxes therefor since 1969;[26] Santiago Eulin, who was allegedly hired by respondent to plant vegetables and fruit trees on the land and who acted as its caretaker since 1942;[27] and Roberto M.

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[19] Records, p. 80; Dated 26 November 1997.

[20] *Id*.

[21] *Id*.

[22] *Id*. at 9; Dated 5 November 1998.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 9.

[26] Transcript of Stenographic Notes (TSN) dated 18 March 1999, pp. 7-9.

[27] TSN dated 30 June 1999, p.3.

Valdez of the LRA, who identified the original tracing cloth plan for the property.[28]

The following documents were likewise submitted to the trial court: Survey Plan PSU-213331,[29] a Surveyor's Certificate[30] and technical descriptions of the property,[31] which purportedly proved that the land had been duly surveyed by the Land Management Sector; various Tax Declarations and receipts;[32] and a Certification issued by the CENRO that the land applied for was not covered by any public land application.[33]

Petitioner, on the other hand, decided to have the case submitted for resolution without any further submission.[34]

THE RULING OF THE RTC

In a Decision dated 31 July 2002, the RTC granted the Petition and ordered the issuance of a Decree of Registration in favor of respondent.[35] It declared that she had acquired ownership of the land by way of open, continuous, public, adverse, actual and *bona fide* possession in the concept of an owner since 1940.[36]

Petitioner appealed the RTC Decision to the CA. In the Appellant's Brief,[37] the Republic argued that respondent had failed to clearly and convincingly establish that she had actual, continuous, exclusive and notorious possession of the property since 12 June 1945 or earlier as required by Section 14(1) of

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[28] *Rollo*, p. 137.

[29] Records, pp. 15, 175.

[30] *Id*. at 17.

[31] *Id*. at 16.

[32] *Id*. at 130-135.

[33] *Id*. at 126.

[34] *Id*. at 163.

[35] *Supra* note 4.

[36] *Id*. at 138.

[37] *Id*. at 141-168.

P.D. 1529 or the Property Registration Decree.[38] Petitioner further asserted that there was no basis for the finding of the RTC that she had occupied the land since 1940.[39]

Respondent failed to file an appellee's brief.[40] Consequently, the CA considered the case submitted for resolution.[41]

THE RULING OF THE CA

On 23 August 2007, the CA dismissed petitioner's appeal.[42] According to the appellate court, the evidence presented proved that respondent had occupied the land since 1940. Even assuming that her possession of the property started only when she had it privately surveyed in 1964, she had been its occupant for more than 30 years.[43] As such, she was still entitled to registration of title under Section 14(2) of P.D. 1529.

The CA further characterized the land as private property:

> The fact that the subject land is covered by a private survey (PSU) (EXH. "J") way back in 1964, which survey was approved on April 1965 by Director Nicanor Jorge of the then Bureau of Lands, is a clear indication that it is already private in nature. Moreover, applicant's evidence consisting of the DENR-CENRO Certifications (Exhs. "O" and "P") that Lot 2 of PSY 213331 is not covered by any public land application and that its equivalent is Lot No, 10549 of the Montalban Cadastre have substantial probative value which established (sic) that the land is alienable and disposable and not covered by any land grant from the government.

Petitioner moved for reconsideration of the Decision.[44] The CA, however, denied the motion in a Resolution[45] dated 22

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[38] *Id*. at 158.

[39] *Id*. at 161.

[40] *CA rollo*, p. 48.

[41] *Id*.

[42] *Rollo*, p. 62.

[43] *Id*. at 60.

[44] *Id*. at 65-98.

[45] *Id*. at 64.

January 2008, prompting petitioner to elevate the case to this Court.

PROCEEDINGS BEFORE THIS COURT

In its Petition for Review, the Republic argues that (a) the decision of the CA and the RTC to confirm the title of respondent to the land based on her possession and occupation thereof was not supported by evidence; and (b) the testimonial and documentary evidence she presented did not establish possession of the property in the manner and period required by law, that is, her possession of the property since 12 June 1945 or earlier. Petitioner also emphasizes that the lower courts gave undue importance to the Tax Declarations and receipts presented,[46] as well as to the testimonies of respondent's witnesses, notwithstanding the inconsistencies in their statements.

On 26 September 2008, respondent filed a Manifestation and Comment[47] in which she pointed out that the grounds relied upon by petitioner all pertain to allegedly erroneous findings of fact. She argued that these grounds could not be raised in a Rule 45 proceeding; hence, the dismissal of the petition was warranted.[48]

Petitioner reiterated its arguments in its Reply[49] and Memorandum[50] filed on 17 March 2009 and 19 February 2010, respectively.

ISSUES

Based on the submissions of the parties and the Decisions of the CA and the RTC, two issues are presented for resolution by this Court:

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[46] *Id*. at 37-45.

[47] *Id*. at 184-186.

[48] *Id*.

[49] *Id*. at 198-214.

[50] *Id*. at 228-275.

(1) Whether the CA erroneously allowed the judicial confirmation of respondent's title to the property under Section 14(1) of P.D. 1529; and

(2) Whether the CA erred in declaring that respondent is likewise entitled to registration of title based on ownership by acquisitive prescription under Section 14(2) of P.D. 1529.

OUR RULING

We **GRANT** the Petition.

Applications for registration of title to land, both public and private, are governed by Section 14 of P.D. 1529:

SECTION 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under pacto de retro, the vendor a retro may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the vendee a retro, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

Each paragraph of Section 14 refers to a distinct type of application depending on the applicable legal ground. Since each type is governed by its own set of legal principles, the framework for analysis to be used in resolving an application would vary depending on the paragraph invoked.[51] Hence, it is important for the Court to first determine the exact legal ground used by an applicant for registration.[52]

In this case, we note that the application filed by respondent before the RTC did not state the exact legal basis of her request. At best, the pleading implied that her claim was one for registration and confirmation of title based on her *possession* and *occupation* of the property:

COMES NOW Petitioner Rosario L. Nicolas, of legal age, widow, Pilipino [sic] with address at Brgy. San Isidro, Rodriguez (formerly Montalban), Rizal Province, Philippines, by her undersigned counsel and to this Honorable Court respectfully petitions to have the land hereinafter described below brought under the operation of the Land Registration Act and to have said land **titled, registered and confirmed** in her name and further declares that:

x x x x x x x x x

6. Petitioner acquired the subject parcel of land **by way of occupation** and has been in **natural, open, public, adverse, contin[u]ous, uninterrupted** and in the concept of an **owner/possessor** thereof since October 1964 up to the present.[53] (Emphases supplied)

From the foregoing allegations, it appears that the claim of respondent is anchored on either of the first two paragraphs of Section 14. However, it is unclear whether she sought judicial confirmation and registration of her title pursuant to Section

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[51] See *Heirs of Malabanan v. Republic*, 605 Phil. 244 (2009).

[52] *Canlas v. Republic*, G.R. No. 200894, 10 November 2014.

[53] *Id*. at 104-106.

14(1) of P.D. 1529, or of the registration of her title on the ground of acquisitive prescription under Section 14(2) of the same law.

Similarly, no specific provision in P.D. 1529 was identified by the RTC when it granted the Petition.[54] Its mention of the Civil Code, however, seems to indicate an application of the principle of acquisitive prescription. The CA, for its part, delineated the differences between the first two paragraphs of Section 14, but decided to apply both clauses. In its Decision, it ruled that respondent is entitled to register her title under either paragraph:

> From the evidence adduced, **applicant-appellee has convincingly established her registrable title to the subject land, which is entitled to confirmation and registration by the trial court.** As testified by the daughter of applicant, her mother commenced occupying the subject land since 1940 and up to the present which (sic) has been planted with fruit-bearing trees and vegetables by their caretaker. Her testimony was corroborated by Santiago Eulin, their caretaker since 1942 who took over after his father, the original caretaker. These witnesses declared that they even stayed on the land in question where the applicant has a hut. It was also established that the applicant had the property surveyed in 1964 resulting in the approval of Plan PSU 21331 by the Bureau of Lands. This qualifies applicant under **Section 14, par. 1 of the Property Registration Decree.**
>
> Even assuming that applicant's occupation and possession of the subject land did not start on July 12, 1945 or earlier but only in 1964 when she had it surveyed, still **she can apply for registration of title under Sec. 14, par. 2 of the Property Registration Decree as she has been occupying the land continuously for more than thirty (30) years from the time the application was filed in 1996**.[55] (Emphases supplied)

Given these findings, the Court has examined the application for registration in this case under the legal framework of *both* Section 14(1) and (2) of P.D. 1529. We find that respondent

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[54] *Id*. at 137-138.

[55] *Id*. at 59-60.

has failed to sufficiently establish the requisites of both paragraphs; in particular, with respect to the classification and the character of the land in question. Hence, we are constrained to reverse the CA and the RTC Decisions allowing the registration of her title to the property.

Respondent has failed to prove that the property is alienable and disposable agricultural land that may be registered under Section 14(1) of P.D. 1529.

Section 14(1) of P.D. 1529 governs applications for registration of alienable and disposable lands of the public domain. This paragraph operationalizes Section 48(b) of Commonwealth Act No. 141 as amended.[56] This provision grants occupants of public land the right to judicial confirmation of their title. Based on these two provisions and other related sections of C.A. 141, registration is allowed provided the following requisites have been complied with:

1. The applicant is a Filipino citizen.[57]

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[56] Section 48(b) of Commonwealth Act No. 141, as amended by Presidential Decree No. 1073, states:

SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or interest therein, but whose titles have not been perfected or completed, may apply to the Regional Trial Court of the province or city where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Property Registration Decree, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

[57] *Id*.

2. The applicant, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the property since 12 June 1945.[58]

3. The property has been declared alienable and disposable as of the filing of the application.[59]

4. If the area applied for does not exceed 12 hectares, the application should be filed by 31 December 2020.[60]

As earlier stated, respondent failed to establish the third requisite, i.e., that the property subject of the application is alienable and disposable agricultural land.

The Court has emphasized in a long line of cases[61] that an applicant for registration under Section 14(1) must prove that the subject property has been classified as alienable and disposable agricultural land by virtue of a positive act of the Executive Department. In *Heirs of Malabanan v. Republic,*[62] we declared:

> Alienable and disposable lands of the State fall into two categories, to wit: (a) patrimonial lands of the State, or those classified as lands of private ownership under Article 425 of the Civil Code, without limitation; and (b) lands of the public domain, or the public lands as provided by the Constitution, but with the limitation that the lands

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[58] *Id*.

[59] *Heirs of Malabanan v. Republic,* Resolution on the Motion for Reconsideration, G.R. No. 179987, 3 September 2013, 734 SCRA 561.

[60] C.A. 141, Section 47.

[61] See, for instance, *Republic v. Sogod Development Corp*., G.R. No. 175760, 17 February 2016; *Republic v. Lualhati*, G.R. No. 183511, 25 March 2015; *Republic v. Dayaoen*, G.R. No. 200773, 8 July 2015; *Republic v. Sese*, G.R. No. 185092, 4 June 2014, 724 SCRA 592; *Republic v. Heirs of Sin*, G.R. No. 157485, 26 March 2014; *Spouses Fortuna v. Republic*, G.R. No. 173423, 5 March 2014, 718 SCRA 35; *Republic v. De Tensuan*, G.R. No. 171136, 23 October 2013, 708 SCRA 367; *Republic of the Philippines v. T.A.N. Properties, Inc.,* 578 Phil. 441 (2008).

[62] *Supra* note 59.

must only be agricultural. Consequently, lands classified as forest or timber, mineral, or national parks are not susceptible of alienation or disposition unless they are reclassified as agricultural. A positive act of the Government is necessary to enable such reclassification, and the exclusive prerogative to classify public lands under existing laws is vested in the Executive Department, not in the courts. xxx Thus, until the Executive Department exercises its prerogative to classify or reclassify lands, or until Congress or the President declares that the State no longer intends the land to be used for public service or for the development of national wealth, the Regalian Doctrine is applicable.

In this case, we note that both the RTC and the CA glossed over this requirement. The RTC, for instance, only made a general conclusion as to the classification and alienability of the property, but without any discussion of the evidence presented:

From the evidence adduced, applicant-appellee has convincingly established her registrable title to the subject land which is entitled to confirmation and registration by the trial court. x x x It was also established that the applicant had the property surveyed in 1964 resulting in the approval of Plan PSU-213331 by the Bureau of Lands. This qualifies applicant under Sec. 14, par. 1 of the Property Registration Decree.[63]

The CA, on the other hand, simply relied on the fact that the property had been the subject of a private survey in 1964:

From the evidence adduced, the following facts have been duly proved:

x x x x x x x x x

That the land applied for is neither subject to any water, oil/nor (sic) mineral rights, not within any government reservation, naval or military, or mineral rights, within the forest zone, and neither is it part of the inalienable or undisposable land of the public domain nor covered by the Code on Comprehensive Agrarian Reform or subject to any subsisting Public Patent application;

x x x x x x x x x

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[63] *Rollo*, p. 59.

That the said parcel of land applied for is duly surveyed for registration (Exh. "J"), classified as agricultural; that they planted mangoes, buko, sometimes corn in the area through their caretaker x x x.[64]

While a petition for review on certiorari under Rule 45 is generally limited to a review of errors of law, the Court may conduct its own review of the evidence if the findings of the lower courts are bereft of legal and factual bases.[65] In this case, the conclusions of the RTC and the CA are not only contradicted by the evidence on record; they are likewise contrary to law and jurisprudence. As a result, the Court is constrained to set aside these pronouncements.

To prove that the property subject of an application for original registration is part of the alienable and disposable lands of the public domain, applicants must "identify a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes."[66] To sufficiently establish this positive act, they must submit (1) a certification from the CENRO or the Provincial Environment and Natural Resources Office (PENRO); and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[67]

Here, respondent presented the following pieces of evidence to establish her claim that the land had been classified as agricultural and considered alienable and disposable:

(1) A CENRO Report[68] stating that the land was not covered by any public land application or embraced by any administrative

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[64] *Id.* at 136-137.

[65] *Republic v. Lualhati*, *supra*.

[66] *Republic v. Heirs of Sin*, *supra* at 55.

[67] *Republic v. T.A.N. Properties, Inc.,* 578 Phil. 441-464 (2008).

[68] Records, p. 80; Signed by Romeo C. Cadano, Land Management Officer III of the CENRO, Region IV, Antipolo, Rizal.

title, but with a notation that that the alienability of the land was "[n]ot projected due to [u]navailability of coordinates re: Tala Estate Tie-line";

(2) A CENRO Certification[69] that the lot "is not covered by any kind of public land application";

(3) A Report[70] from the Land Registration Authority (LRA) declaring that it was "not in a position to verify whether or not the parcel of land subject of registration is already covered by land patent and is within the area classified as alienable and disposable land of the public domain"; and

(4) The testimonies of Leonila Alfaro,[71] her daughter, and Santiago Eulin[72] (the caretaker of the land) confirming that the property is agricultural in nature.

It is evident from the foregoing enumeration that respondent not only neglected to submit the required CENRO/PENRO certification and DENR classification, but also presented evidence that completely failed to prove her assertion.

First, the testimonies of Leonila and Santiago on the classification of the land have very little evidentiary value. That they consider the property agricultural in nature is irrelevant, as their statements are mere opinions bereft of any legal significance.

Second, none of the documents submitted by respondent to the trial court indicated that the subject property was agricultural or part of the alienable and disposable lands of the public domain. At most, the CENRO Report and Certification stated that the land was not covered by any kind of public land application. This was far from an adequate proof of the classification of the

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[69] Records, p. 153; Dated 5 January 1998 and signed by Rogelio C. Matias, Chief of Land Management Services, CENRO, Antipolo, Rizal.

[70] *Id*. at 97; Signed by Felino M. Cortez, Director of the Department on Registration.

[71] TSN dated 18 March 1999, p. 6.

[72] TSN dated 30 June 1999, p. 4.

land. In fact, in *Republic v Lualhati,*[73] the Court rejected an attempt to prove the alienability of public land using similar evidence:

> Here, respondent failed to establish, by the required evidence, that the land sought to be registered has been classified as alienable or disposable land of the public domain. The records of this case merely bear certifications from the DENR-CENRO, Region IV, Antipolo City, stating that no public land application or land patent covering the subject lots is pending nor are the lots embraced by any administrative title. Said CENRO certifications, however, do not even make any pronouncement as to the alienable character of the lands in question for they merely recognize the absence of any pending land patent application, administrative title, or government project being conducted thereon. But even granting that they expressly declare that the subject lands form part of the alienable and disposable lands of the public domain, these certifications remain insufficient for purposes of granting respondent's application for registration. As constantly held by this Court, it is not enough for the CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. Unfortunately for respondent, the evidence submitted clearly falls short of the requirements for original registration in order to show the alienable character of the lands subject herein.

Applying these standards to the instant case, we declare that the RTC did not have sufficient basis for its finding that the property in question was alienable and disposable.

The Court also finds that the ruling of the CA on the evidentiary value of the private survey is untenable. The fact that the land has been privately surveyed is not sufficient to prove its classification or alienable character. While the conduct of a survey and the submission of the original tracing cloth plan are mandatory requirements for applications for original

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[73] *Supra* note 65.

registration of land under P.D. 1529, they only serve to establish the true identity of the land and to ensure that the property does not overlap with another one covered by a previous registration.[74] These documents do not, by themselves, prove alienability and disposability of the property. In fact, in several cases,[75] the Court has declared that even a survey plan with a notation that the property is alienable cannot be considered as sufficient evidence of alienability. Here, the survey plan and original tracing cloth plan submitted by respondent does not even bear that notation. Consequently, it was grave error for the CA to consider the mere conduct of a private survey as proof of the classification and the alienability of the land.

Respondent has failed to prove that the land subject of the application is part of the patrimonial property of the State that may be acquired by prescription under Section 14(2) of P.D. 1529.

As previously noted, the CA also allowed the registration of the property under Section 14(2) of P.D. 1529 based on the following findings: (1) the property is "private in nature" as shown by the fact that it is "covered by a private survey";[76] (2) respondent had occupied the land continuously for more than 30 years from the time of the filing of the application in 1996;[77] and (3) the land is not covered by any public land application based on the DENR-CENRO Certifications submitted by respondent.[78]

We do not agree. The Court finds no sufficient basis to allow the registration of the property under Section 14(2).

By express provision of the law, only *private* lands that have been acquired by prescription under existing laws may be the

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[74] *Republic v. Guinto-Aldana*, 642 Phil. 364-379 (2010).

[75] *Republic v. Espinosa*, 691 Phil. 314-335 (2012); *Republic v. Sarmiento,* 547 Phil. 157 (2007); *Menguito v. Republic,* 401 Phil. 274 (2000).

[76] *Rollo*, p. 60.

[77] *Id*.

[78] *Id*.

subject of applications for registration under Section 14(2). The starting point of the Court's evaluation must, therefore, be whether the property involved falls within the scope of the paragraph.

Under the Civil Code, all things within human commerce are generally susceptible of prescription.[79] Properties of the public dominion, or those owned by the State, are expressly excluded by law from this general rule,[80] unless they are proven to be *patrimonial* in character. As the Court explained in *Republic of the Philippines v. Tan*:

> Only private property can be acquired by prescription. Property of public dominion is outside the commerce of man. It cannot be the object of prescription because prescription does not run against the State in its sovereign capacity. However**, when property of public dominion is no longer intended for public use or for public service, it becomes part of the patrimonial property of the State.** When this happens, the property is withdrawn from public dominion and becomes property of private ownership, albeit still owned by the State. The property is now brought within the commerce of man and becomes susceptible to the concepts of legal possession and prescription.[81] (Emphasis supplied)

To establish that the land subject of the application has been converted into patrimonial property of the State, an applicant must prove the following:

1. The subject property has been classified as agricultural land.[82]
2. The property has been declared alienable and disposable.[83]

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[79] CIVIL CODE, Article 1113.

[80] *Id*.

[81] G.R. No. 199537, 10 February 2016.

[82] CONSTITUTION, Art. XII, Secs. 2 and 3.

[83] C.A. 141, Section 6.

3. There is an express government manifestation that the property is already patrimonial, or is no longer retained for public service or the development of national wealth.[84]

It must be emphasized that without the concurrence of these three conditions, the land remains part of public dominion and thus incapable of acquisition by prescription.[85]

Here, the records show that respondent has failed to allege or prove that the subject land belongs to the patrimonial property of the State. As earlier discussed, the evidence she has presented does not even show that the property is alienable and disposable agricultural land. She has also failed to cite any government act or declaration converting the land into patrimonial property of the State.

Contrary to the ruling of the CA, the DENR-CENRO Certifications submitted by respondent are not enough; they cannot substitute for the three conditions required by law as proof that the land may be the subject of prescription under the Civil Code. For the same reason, the mere conduct of a private survey of a property – even with the approval of the Bureau of Lands – does not convert the lot into private land or patrimonial property of the State. Clearly, the appellate court erred when it relied on the survey to justify its conclusion that the land is private in nature.

Considering the absence of sufficient evidence that the subject land is a patrimonial property of the State, we must consider it part of public dominion and thus immune from acquisitive prescription.

As a final note, the Court must point out that proof of the classification, alienability and disposability of the subject property is of particular significance in applications for the registration of land. Given the general rule that public lands

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[84] CIVIL CODE, Art. 422. Also see *Heirs of Malabanan v. Republic, supra* note 51.

[85] *Id*.

may not be alienated,[86] it is the burden of applicants to prove that the land they seek to register falls within the classifications enumerated in Section 14 of P.D. 1529; in particular, the specific paragraph they invoke as basis for registration.[87]Absent that proof, no length of possession or occupation would vest any right of ownership over the property,[88] and registration under P.D. 1529 cannot be sanctioned by this Court.

WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated 23 August 2007 and Resolution dated 22 January 2008 are **REVERSED** and **SET ASIDE**. Respondent's application for land registration is **DENIED** for lack of merit.

SO ORDERED.

Leonardo-de Castro, del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

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[86] *Supra* note 62.

[87] *Republic v. Dayaoen*, G.R. No. 200773, 8 July 2015 citing *Remman Enterprises, Inc. v. Republic*, G.R. No. 188494, 26 November 2014.

[88] *Republic v. Zurbaran Realty & Development Corp.*, G.R. No. 164408, 24 March 2014, 719 SCRA 601.

FIRST DIVISION

[G.R. No. 192708. October 2, 2017]

MANILA PUBLIC SCHOOL TEACHERS' ASSOCIATION (MPSTA), TEACHERS' DIGNITY COALITION (TDC), MELCHOR V. CAYABYAB, EVA V. FERIA, ELCIRA A. PONFERRADA, AND NATIVIDAD P. TALASTAS, IN THEIR BEHALF AND IN BEHALF OF ALL GSIS MEMBERS AND RETIREES SIMILARLY SITUATED, *petitioners, vs.* **MR. WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND GENERAL MANAGER OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), GSIS BOARD OF TRUSTEES, AND SEC. ARMIN LUISTRO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1997 (RA 8291); RESOLUTIONS NOS. 238, 90, AND 179 (ASSAILED RESOLUTIONS) ISSUED BY GSIS BOARD; THE COURT IS CONVINCED THAT THE ASSAILED RESOLUTIONS CANNOT BE VIEWED SIMPLY AS A CONSTRUCTION OF RA 8291 SINCE THEY SUBSTANTIALLY INCREASE THE BURDEN OF GSIS MEMBERS; CONSIDERING THE HEAVY BURDEN IMPOSED, THE REQUIREMENTS OF NOTICE, HEARING, AND PUBLICATION SHOULD HAVE BEEN OBSERVED.— A reading of the resolutions convinces us that these cannot be viewed simply as a construction of R.A. 8291, as they, in fact, substantially increase the burden of GSIS members. It must now be proven that the PS or GS for the PBP and the APL, and loan amortization payments for CLIP, have been remitted by DepEd and posted by GSIS. x x x According

to the Court in *Veterans Federation of the Philippines v. Reyes*, interpretative regulations that do not add anything to the law or affect substantial rights of any person do not entail publication. This is because "they give no real consequence more than what the law itself has already prescribed." However, "when x x x an administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but **substantially adds to or increases the burden of those governed**, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law." In this case, the resolutions additionally obligate member-employees to ensure that their employer-agency includes the GS in the budget, deducts the PS, as well as loan amortizations, and timely remits them; and that the GSIS receives, processes, and posts the payments. These processes are beyond the control of the employees; yet they are being made to bear the consequences of any misstep or delay by either their agency or GSIS. As aptly observed by the CA, "the fault lies with how the deficiencies in payment by the DepEd, real or imagined, are attributed to the employees--members." Surely, this was not the scenario contemplated by law. The statutorily prescribed mechanism – through salary deduction – is a clear indication that the law's intent is precisely to make contribution by members less cumbersome. Considering the heavy burden imposed, the requirements of notice, hearing, and publication should have been observed.

2. ID.; ID.; ID.; ID.; THE ASSAILED RESOLUTIONS EITHER DIMINISH OR DEPRIVE RETIREES OF THEIR RETIREMENT BENEFITS; NO LAW CAN DEPRIVE A PERSON OF HIS PENSION RIGHTS WITHOUT DUE PROCESS OF LAW.— [T]he resolutions effectively diminish, and in some instances, even absolutely deprive retirees of their retirement benefits – albeit "momentarily," as GSIS claims – when these were meant as their reward for giving the best years of their lives in the service of their country. In *GSIS v. Montesclaros*, this Court expounded on the nature of retirement benefits as property interest in this wise: x x x [A] pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. **No law can deprive such person of his pension rights**

without due process of law, that is, without notice and opportunity to be heard.

3. ID.; ID.; ID.; THE COURT IS NOT IN THE POSITION TO INTRUDE INTO THE OPERATIONAL PROCESSES OF RESPONDENTS, WHICH ARE UNDER THE EXECUTIVE DEPARTMENT.— [T]his Court is not in a position to intrude into the operational processes of respondents, which are under the control of the executive department. We are constrained to refrain from intruding upon purely executive and administrative matters, which are properly within the purview of other branches of government. Petitioners themselves accurately trace the root of this controversy to "the internal logistical and administrative problems of the GSIS and the [DepEd], specifically, in their remittance, reconciliation, posting, and budgetary processes for premium payments, which are wreaking havoc upon the GSIS members." On the other hand, respondents claim that they are in the process of updating and reconciling their records. It bears emphasis that this Court is one of law and, as such, tasked with resolving legal controversies.

APPEARANCES OF COUNSEL

Racquel T. Ruiz-Dimalanta for petitioners.
GSIS Legal Services Group for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on Certiorari[1] of the Court of Appeals (CA) Decision[2] rendered in CA-G.R. SP No. 105797. The CA issued a writ of Prohibition against the immediate and retroactive application of the Premium-Based Policy (PBP), Automatic Policy Loan and Policy Lapse (APL) and Claims

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[1] *Rollo*, pp. 9-68.

[2] *Id.* at 81-101; dated 18 June 2010, penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Mario L. Guariña III and Rodil V. Zalameda.

and Loans Interdependency Policy (CLIP) to the teacher-petitioners' claims, without or prior to a complete determination and reconciliation of the employer-share liabilities of the Department of Education (DepEd).[3] The appellate court, however, did not grant the following prayers, which petitioners reiterate before this Court:

1. Nullify the PBP, APL and CLIP
2. Order the Government Service Insurance System (GSIS) to do the following:
    a. Restore the creditable service of all GSIS members (not just teachers), reckoned simply from the date of their respective original appointments or elections;
    b. Compute and grant the creditable service, benefits, and claims of GSIS members based on their period of service, regardless of any deficiency in the employer premium share contributions;
    c. Account the automatic deduction of the employee premium share contributions from their salaries as conclusive compliance with their obligation of premium share payments, and thus entitle them to their full benefits and claims, regardless of the remittance thereof by the agency-employer to the GSIS;
    d. Accept as proof of employee premium share payment and loan repayments the pay slips of the employees and/or remittance lists or certifications from the agency-employer, or other proof of payment as may be provided by the employee and/or the agency, and to update the employee's service records using these documents; and
    e. Refund to the GSIS members those amounts that were deducted from their claims and benefits arising from the implementation of the PBP, APL, and

[3] *Id.* at 100.

CLIP, with interest at the legal rate of 12% per annum from the time of withholding of each such amount.

3. Order DepEd to procure the appropriation in the national budget of the amounts needed to keep current its employer premium share contributions, and to remit all payment deficiencies to the GSIS.[4]

FACTS

On 14 November 1936, a government service insurance system was created by virtue of Commonwealth Act (C.A.) No. 186 in order to promote the efficiency and welfare of the employees of the government of the Philippines. On 31 May 1977, then President Marcos approved Presidential Decree (P.D.) No. 1146 amending, expanding, increasing, and integrating the social security and insurance benefits of government employees and facilitating the payment thereof under C.A. No. 186. More than 20 years later, P.D. 1146 was amended, and Republic Act (R.A.) No. 8291, or the "The GSIS Act of 1997," took effect.

Under this Act, the employee-member and the employer-agency are required by law to pay monthly contributions to the system.[5] The share of the employer ("GS," or government share) is sourced from the national budget, while that of the employee ("PS," or personal share) is *automatically* deducted by the former from the employee's salary.[6] The employer is mandated to remit the GS and PS directly to the GSIS within the first 10 days of the calendar month following the month to which the contributions apply.[7]

One of the changes made in R.A. 8291 was the increase in the employer's contribution from 9.5% to 12%.[8] However, there

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[4] *Id.* at 67-68.

[5] R.A. 8291, Sec. 5(a).

[6] R.A. 8291, Secs. 5(b), 6(a).

[7] R.A. 8291, Sec. 6(b).

[8] *Rollo*, p. 84.

was no concomitant increase in the budget appropriation.[9] As a result, DepEd was unable to pay GSIS the equivalent of the 2.5% increase in the employer's share.[10]

Based on the figures provided in the Memorandum of Agreement (MOA)[11] executed by DBM, DepEd and GSIS on 11 September 2012, DepEd incurred premium deficiencies totalling ₱6,923,369,633.15 from 1 July 1997 to 31 December 2010 pertaining to the GS.[12] GSIS alleges that for the same period, DepEd personnel incurred premium deficiencies totalling ₱4,511,907,486.98 pertaining to the PS.[13]

In the meantime, GSIS issued the assailed Resolutions, to wit:

1. Resolution No. 238[14]— In 2002, the GSIS Board introduced **CLIP**, by which the arrears incurred by members from their overdue loans are deducted from the proceeds of their new loan or retirement benefits. CLIP also involves the collective suspension of the loan privileges of the member when a loan account is in default, except when its proceeds are used to pay for the arrearages.

2. Resolution No. 90[15] — In 2003, the GSIS Board adopted the **PBP** whereby for the purpose of computing GSIS benefits, the creditable service of a member is determined by the corresponding monthly premium contributions that were timely and correctly remitted or paid to GSIS.

Petitioners claim that the policy shifted the basis for the claims and benefits of GSIS members from the actual length of service

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[9] *Id*.

[10] *Id*. at 24.

[11] *Id*. at 530-537.

[12] *Id*. at 531.

[13] *Id*.

[14] *Id*. at 125-134.

[15] *Id*. at 102-108.

to the creditable years of service.[16] Section 10 of R.A. 8291, which provided for the computation of service, states:

SECTION 10. Computation of Service. —

(a) The computation of service for the purpose of determining the amount of benefits payable under this Act shall be from the date of original appointment/election, including periods of service at different times under one or more employers, those performed overseas under the authority of the Republic of the Philippines, and those that may be prescribed by the GSIS in coordination with the Civil Service Commission.

(b) All service credited for retirement, resignation or separation for which corresponding benefits have been awarded under this Act or other laws shall be excluded in the computation of service in case of reinstatement in the service of an employer and subsequent retirement or separation which is compensable under this Act.

For the purpose of this section the term service shall include full time service with compensation: Provided, That part time and other services with compensation may be included under such rules and regulations as may be prescribed by the GSIS.

It must be noted that neither DepEd nor GSIS denies that there is a problem with the reconciliation of their records, such that the GSIS database might reflect nonpayment of the PS despite its automatic deduction from the employee's salary and its remittance by DepEd. As for the GS, it is also possible that the database might reflect nonpayment despite remittance. In fact, GSIS itself admitted that "it is public knowledge that previous problems in the Information Technology infrastructure of GSIS have severely affected the efficient servicing of members[']claims."[17] Further, instead of denying that its nonposting may result in the nonpayment of benefits, GSIS merely offered an excuse:

x x x. The GSIS has around 1,500,000 member-employees. Continuous efforts to make its records accurate are being earnestly

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[16] *Id*. at 18.

[17] *Id*. at 232.

taken. The GSIS does not claim perfection and one hundred percent fool-proof precision in its database recording. When millions of entries are involved, a few mistakes due to human error cannot be avoided. What the GSIS assures this Honorable Court is that errors brought to its attention and shown to be existing are promptly rectified. Where benefits are concerned, expeditious corrections of records and payments are done.[18]

3. Resolution No. 179[19] — In 2007, the GSIS Board approved the **APL**, which is "a feature of a GSIS life insurance policy that keeps the policy in force in case of nonpayment of premiums by taking out a loan amount against the unrestricted portion of the policy's accumulated cash value (CV) or the termination value (TV)"[20] until the total APL and policy loan balances exceed the CV of the Life Endowment Policy or the TV of the Enhanced Life Policy. A 6% interest per annum compounded monthly is imposed on the APL, which is independent of the 2% interest per month compounded annually charged to the agency for delayed remittances.[21]

These Resolutions were not published in a newspaper of general circulation and were enforced before they were even filed with the Office of the National Administrative Register.[22]

Petitioners seek to nullify the resolutions for being "*intrinsically* unconstitutional, illegal, unjust, oppressive, arbitrary, confiscatory, immoral, *ultra vires*, and unconscionable."[23] They make the following factual allegations to demonstrate how the policies were applied:

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[18] *Id*. at 238.

[19] *Id*. at 109-124.

[20] *Id*. at 110.

[21] *Id*. at 113-114.

[22] *Id*. at 170; copy of a Certification from the National Printing Office dated 10 October 2008 stating that the office had no record of the receipt, estimate, payment and publication of the resolutions. Respondents do not dispute that the resolutions were not published.

[23] *Id*. at 600-601.

1. **CLIP –** Petitioners Eva Feria, Elcira Ponferrada, and Natividad Talastas obtained policy and/or emergency loans, which they have fully paid for. The loan repayments have been automatically deducted from their salaries as certified by DepEd. Despite full payment, their vouchers indicate underpayment of the loans.[24]

2. **PBP –** Petitioner Melchor Cayabyab is also a public school teacher.[25] As of 11 June 2008, his Premium and Loan Accounts Balances Index showed that he had the following arrearages:

PS	₱ 44,206.73
GS	₱ 61,327.67
EC	₱ 3,411.70
TOTAL	₱108,946.10

On the other hand, DepEd certified that the monthly contributions for the GS, PS and EC had been deducted from Cayabyab's salary from January 2001 to July 2006.[26]

Because of the PBP, Cayabyab's creditable service was reduced as follows:

Total Length of Service	7.72678 years
Less: Equivalent Years of Service yet to be reconciled with Agency and Member's Records	4.15462 years
Provisional/Tentative Creditable Years of Service with Retirement Premium Payments	3.57216 years

[24] *Id*. at 31-32.

[25] *Id*. at 12.

[26] *Id*. at 29

3. **APL -** As of 6 June 2005, before the APL was approved, the cash surrender value of petitioner Talastas' policy amounted to ₱51,252.53. In 2008, she inquired about the cash surrender value of her policy and was apprised by GSIS that her policy had resulted in ***zero*** proceeds because of the following deductions:[27]

Cash Value as of 6/6/2005		₱51,252.53
Less:	Underpayments	
	Personal Share	₱ 9,045.48
	Interests	₱11,737.88
	Government Share	₱ 9,710.35
	Interests	₱20,758.82
	Policy Loan	₱0.00
	Interests on Policy Loan	₱0.00
Net Proceeds		₱0.00

Another case in point is petitioner Ponferrada, whose Life Insurance Claim Voucher showed that the premium in arrears was deducted from the face value of her policy despite DepEd's certification that she had paid the monthly contributions, including the GS and the EC, from January 2000 to December 2006.[28]

On 7 July 2008, respondent Garcia, who was then the president of GSIS, wrote a letter[29] to DepEd alleging that the agency's unpaid premiums, as of 30 June 2008, had reached ₱21.3 billion, to wit:

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[27] *Id*. at 30-31.

[28] *Id*. at 30.

[29] *Id*. at 136-137.

Unpaid premiums (GS)	₱4,451,361,535.55
Unpaid premium (PS)	₱2,946,674,455.57
Interest	₱13,926,610,685.47
Total Premium arrearages of DepEd	₱21,324,646,676.59

In its reply letter dated 15 July 2008,[30] DepEd asked the GSIS to break down the ₱21.3 billion lump sum by naming each and every one of the employees who supposedly had unpaid premiums and thereafter providing the Service Records indicating the months or years in which the PS or the GS of these employees were not paid. DepEd also suggested that the official receipts issued to it by GSIS be reconciled with the latter's records.[31]

Petitioners claim that while DepEd was still discussing its alleged arrearages with GSIS, the latter converted the entire ₱21,324,646,676.59 into personal loans of the teachers through the APL, earning interest at 6% per annum compounded monthly, while also effectively reducing the teachers' creditable years of service through the PBP.[32]

In response to the alleged "chronic" non-remittance of premium contributions resulting in premium deficiencies based on the GSIS records of creditable service, the DBM, DepEd, and the GSIS executed a MOA on 11 September 2012.[33] The following terms and conditions were agreed upon:

1. The DBM will settle the government share in the premium arrearages of DepEd from 1 July 1997 to 31 December 2010 in the amount of ₱6,923,369,633.15, half of which shall be advanced upon submission by the GSIS of a billing statement, list of employees covered, and request letter;

2. The GSIS will condone, in its entirety, the interests due on the aforesaid premium deficiencies amounting to ₱14,041,029,495.73; and

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[30] *Id*. at 139.

[31] *Id*.

[32] *Id*. at. 24

[33] *Id*. at 530-537.

3. Upon release of the advance payment, the GSIS will lift the suspension of loan privileges and other benefits applicable to the covered DepEd personnel and make the proportionate adjustment in their records of creditable service.

On 31 May 2013, respondents informed the Court of the developments in the reconciliation of membership records of DepEd personnel, the execution of the MOA, and the national appropriation for the settlement of DepEd's GSIS premium arrearages.

Petitioners asserted that regardless of the execution of the MOA, the Resolutions must still be nullified, because "most of the initiatives described in the GSIS Manifestation appeared to be merely operational x x x which do not amend, modify, or reverse any of the GSIS policies, and which are thus still in place."[34] Moreover, the MOA refers only to the DepEd, one of the many agency-employers in the government, without "similar reported endeavours to address the internal arrangements between the GSIS and the rest of the agency-employers in the Government."[35]

In a Resolution dated 17 June 2015,[36] the Court required the parties to submit their respective memoranda. All memoranda were received by 9 October 2015.

OUR RULING

The policies are invalid due to lack of publication.

As early as 1986, the Court in *Tañada v. Tuvera*[37] already laid down a definitive interpretation of Article 2[38] of the Civil Code:

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[34] *Id*. at 599-605; Comment on the "Motion for Leave to File and to Admit Herein Manifestation of the GSIS" dated 31 May 2013.

[35] *Id*. at 601.

[36] *Id*. at 611-614.

[37] 230 Phil. 528 (1986).

[38] The provision reads:

We hold therefore that *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. **Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.**

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.[39]

After *Tañada*, the Administrative Code of 1987[40] was enacted, with Section 3(1) of Chapter 2, Book VII, specifically providing that:

Filing. (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.

In *Republic v. Pilipinas Shell Petroleum Corp.,*[41] this Court held that the requirements of publication and filing must be strictly complied with, as these were designed to safeguard against abuses on the part of lawmakers and to guarantee the constitutional right to due process and to information on matters

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Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette or in a newspaper of general circulation, unless it is otherwise provided. This Code shall take effect one year after such publication.

[39] *Supra* note 37, at 535.

[40] Executive Order No. 292 (1987).

[41] 574 Phil. 134 (2008).

of public concern. Even in cases where the parties participated in the public consultation and submitted their respective comments, strict compliance with the requirement of publication cannot be dispensed with.[42]

While GSIS filed copies of the subject resolutions with the Office of the National Administrative Register (ONAR), it only did so after the claims of the retirees and beneficiaries had already been lodged.[43] The resolutions were not published in either the *Official Gazette* or a newspaper of general circulation in the country.

GSIS maintains that the publication of the resolutions was unnecessary, because the policies were "just a mere reiteration of the time-honored principles of insurance law."[44] According to GSIS, the PBP is actually contained in R.A. 8291, which allegedly contemplates the actual payment of premiums.[45] It alludes to the records of the Senate, which was supposedly clearly in support of its position that the payment of premium contributions is a precondition for the availment of benefits from the system.[46] The cited excerpt reads:

> Senator Romulo: As I understand it, Mr. President, after they have served in their respective offices for three years, or after they have paid their contributions within a period of three years, they are entitled to the benefits under this proposed measure.
>
> Senator Enrile: Yes, Mr. President, with certain limitations. My understanding is that there must be at least three years of service, which means three years of contributions to the system.[47]

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[42] *Id*.

[43] CA Decision, *rollo*, p. 98. Based on a copy of Resolution Nos. 90 and 238 attached to the Petition, it was received by the ONAR on 23 October 2003; *rollo*, pp. 102, 125. Based on a copy of Resolution No. 179 attached to the Petition, it was received by the ONAR on 15 February 2008; *rollo*, p. 109.

[44] *Rollo*, p. 299.

[45] *Id*. at 796.

[46] *Id*. at 298-299.

[47] Record of the Senate, Vol. IV No. 92, Interpellations and deliberations on Senate Bill No. 2013, p. 622.

Regarding the APL Policy and CLIP, respondent GSIS made a general statement that those are "part and parcel of the business of insurance."[48]

The GSIS admits that the Certificate of Membership[49] contains the following provision:

> 4.3. *Creditable services*
>
> For purposes of determining his length of service, all services with compensation rendered by the members from the date of his original employment whether full-time or part-time shall be credited.

However, the agency downplays its own words by adding that the certificate "does not discount Section 5 and 6 of R.A. 8291 which emphasize the need for the correct and prompt payment and remittance of the premium contributions."[50]

A reading of the resolutions convinces us that these cannot be viewed simply as a construction of R.A. 8291, as they, in fact, substantially increase the burden of GSIS members. It must now be proven that the PS or GS for the PBP and the APL, and loan amortization payments for CLIP, have been remitted by DepEd and posted by GSIS.

GSIS cannot deny that it has made posting a prerequisite for the crediting of the period of service and loan repayments.[51] Specifically, the PBP guidelines provide:[52]

> POLICIES:
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> x x x x x x x x x
>
> 4. For services in government where the corresponding premium contributions were not paid, or if the amounts remitted or paid were

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[48] *Rollo,* p. 824.

[49] *Id*. at 300.

[50] *Id*.

[51] *Id*. at 815.

[52] *Id*. at 105-107.

less than what should be paid, such services can only be recognized as creditable services if the following conditions are observed:

Competent proof that the member actually rendered those services and received fixed basic compensation.

Actual payment or remittance of the unpaid premium balances, including the interest imposed above for their delayed payment, both for government and/or personal share.

PROCEDURAL GUIDELINE:

x x x x x x x x x

6. The Record of Creditable Services shall be the member's record of services in government where the corresponding premium contributions, including interest, if any, have been duly paid or remitted to GSIS.

x x x x x x x x x

9. The RCS shall be the basis for computing the GSIS benefits due the member x x x

In case of error in the Record of Creditable Service, GSIS says that the following documents are acceptable to correct the discrepancy:[53]

Conflict	Documentary Proof
Monthly premium payments or Salary	Statement of Account/Remittance List and Official Receipt
Years of Service	Statement of Account/Remittance List and Official Receipt/Monthly Premiums Posted

GSIS does not consider the certifications issued by DepEd as substantial proof of payment, as these were "clearly self-serving."[54]

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[53] *Id*. at 807.

[54] *Id*. at 294.

In its Comment, the GSIS admits that employees are "momentarily made to pay for the unremitted and/or unposted government share in the premium obligation."[55] The agency views this occurrence acceptable and even boasts that because of the APL, the unpaid period is still credited to employees. Note, however, that under the APL, any unpaid or unposted *government* share is considered a loan by the *employee,* and interests thereon will be charged to *both* the government and the employee.

According to the Court in *Veterans Federation of the Philippines v. Reyes,*[56] interpretative regulations that do not add anything to the law or affect substantial rights of any person do not entail publication. This is because "they give no real consequence more than what the law itself has already prescribed."[57] However, "when xxx an administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but **substantially adds to or increases the burden of those governed,** it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."[58]

In this case, the resolutions additionally obligate member-employees to ensure that their employer-agency includes the GS in the budget, deducts the PS, as well as loan amortizations, and timely remits them; and that the GSIS receives, processes, and posts the payments. These processes are beyond the control of the employees; yet they are being made to bear the

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[55] *Id*. at 810.

[56] 518 Phil. 668 (2006).

[57] *Association of Southern Tagalog Electric Cooperatives, Inc. v. Energy Regulatory Commission,* 695 Phil. 243 (2012) further citing *CIR v. CA,* 329 Phil. 987 (1996).

[58] *CIR v. CA,* 329 Phil. 987 (1996) cited in *Michel J. Lhuiller Pawnshop Inc.,* 453 Phil. 1043 (2003); further cited in *Commissioner of Customs v. Hypermix Feeds Corp.,* 680 Phil. 681 (2012).

consequences of any misstep or delay by either their agency or GSIS. As aptly observed by the CA, "the fault lies with how the deficiencies in payment by the DepEd, real or imagined, are attributed to the employees-members."[59]

Surely, this was not the scenario contemplated by law. The statutorily prescribed mechanism – through salary deduction – is a clear indication that the law's intent is precisely to make contribution by members less cumbersome. Considering the heavy burden imposed, the requirements of notice, hearing, and publication should have been observed.

The Court has invalidated administrative issuances as a consequence of their non-publication. In *De Jesus v. COA,*[60] this Court declared DBM Corporate Compensation Circular No. 10 ineffective. It may be recalled that in implementing Section 12 of R.A. 6758,[61] the DBM ordered the discontinuance of all allowances and fringe benefits granted on top of the basic salary beginning 1 November 1989. The circular was not published. This Court pointed out that since it was more than a mere interpretative or internal regulation, the circular should have been published to be effective and enforceable:

> x x x And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines — to the end that they be given amplest opportunity to voice out whatever opposition they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.

Similarly in the present case, the resolutions effectively diminish, and in some instances, even absolutely deprive retirees

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[59] *Rollo,* p. 96.

[60] 355 Phil. 584 (1998).

[61] The "Compensation and Position Classification Act of 1989."

of their retirement benefits – albeit "momentarily," as GSIS claims – when these were meant as their reward for giving the best years of their lives in the service of their country. In *GSIS v. Montesclaros,*[62] this Court expounded on the nature of retirement benefits as property interest in this wise:

> Under Section 5 of PD 1146, it is mandatory for the government employee to pay monthly contributions. PD 1146 mandates the government to include in its annual appropriation the necessary amounts for its share of the contributions. It is compulsory on the government employer to take off and withhold from the employees' monthly salaries their contributions and to remit the same to GSIS. The government employer must also remit its corresponding share to GSIS. Considering the mandatory salary deductions from the government employee, the government pensions do not constitute mere gratuity but form part of compensation.
>
> In a pension plan where employee participation is mandatory, the prevailing view is that employees have contractual or vested rights in the pension where the pension is part of the terms of employment. The reason for providing retirement benefits is to compensate service to the government. Retirement benefits to government employees are part of emolument to encourage and retain qualified employees in the government service. Retirement benefits to government employees reward them for giving the best years of their lives in the service of their country.
>
> Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause. Retirees enjoy a protected property interest whenever they acquire a right to immediate payment under pre-existing law. Thus, a pensioner acquires a vested right to benefits that have become due as provided under the terms of the public employees' pension statute. **No law can deprive such person of his pension rights without due process of law, that is, without notice and opportunity to be heard.** (Citations omitted, emphasis supplied)

If presidential decrees that name a public place after a favored individual or exempt that individual from certain prohibitions

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[62] 478 Phil. 573 (2004).

or requirements must be published,[63] how much more these resolutions that involve vested property rights of public officers?

Aside from seeking the nullification of the Resolutions, petitioners are also praying that this Court order respondent GSIS to 1) restore the creditable service of all GSIS members (not just teachers), reckoned simply from the date of their respective original appointments or elections; 2) compute and grant the creditable service, benefits, and claims of GSIS members based on their periods of service and regardless of any deficiency in the GS; 3) account the automatic deduction of the PS from their salaries as conclusive compliance with their obligation of premium share payments, and thus entitle them to their full benefits and claims, regardless of the remittance thereof by the agency-employer to the GSIS; and 4) accept as proof of employee premium share payment and loan repayment the pay slips of the employees and/or remittance lists or certifications from the agency-employer, or other proof of payment as may be provided by the employee and/or the agency; and to update the employee's service records using these documents. Petitioners are also asking us to order the refund to GSIS members of those amounts that were deducted from their claims and benefits arising from the implementation of the PBP, APL, and CLIP, with interest at the legal rate of 12% per annum from the time of withholding of each of those amounts.

Much as we commiserate with the plight of petitioners, this Court is not in a position to intrude into the operational processes of respondents, which are under the control of the executive

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[63] The following is an excerpt from *Tanada v. Tuvera,* 230 Phil. 528 (1986):

Accordingly, even the charter of a city must be published notwithstanding that it applies to only a portion of the national territory and directly affects only the inhabitants of that place. **All presidential decrees must be published, including even, say, those naming a public place after a favored individual** or exempting him from certain prohibitions or requirements. The circulars issued by the Monetary Board must be published if they are meant not merely to interpret but to "fill in the details" of the Central Bank Act which that body is supposed to enforce.

department. We are constrained to refrain from intruding upon purely executive and administrative matters, which are properly within the purview of other branches of government.

Petitioners themselves accurately trace the root of this controversy to "the internal logistical and administrative problems of the GSIS and the [DepEd], specifically, in their remittance, reconciliation, posting, and budgetary processes for premium payments, which are wreaking havoc upon the GSIS members."[64] On the other hand, respondents claim that they are in the process of updating and reconciling their records. It bears emphasis that this Court is one of law and, as such, tasked with resolving legal controversies.

The prayer to order the department to procure the appropriation in the national budget of the amounts needed to keep the employer's premium share contributions current must be denied on the ground of mootness. Petitioners do not dispute that DepEd executed a MOA with the DBM on 11 September 2012 for the settlement of premium deficiencies pertaining to the government share from 1 July 1997 to 31 December 2010.

On a last note, we forward the concerns of petitioners to Congress, which holds the power of the purse, for its consideration to fund the payment of premium deficiencies pertaining to the PS for the same period, July 1997 to 31 December 2010. We refer to those amounts that had been deducted from the salaries of the employees, but remain unremitted by their respective agencies.

We likewise forward a copy of this Decision to the Ombudsman for consideration to file the appropriate cases against the officials and persons responsible for the non-remittance or delayed remittance of premiums and loan repayment.

WHEREFORE, the Petition is **PARTIALLY GRANTED.** GSIS Resolutions Nos. 238, 90, and 179, which respectively embody the Claims and Loans Interdependency Policy, Premium-

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[64] *Rollo*, pp. 599-600.

Based Policy, and Automatic Policy Loan and Policy Lapse, are declared **INVALID** and **OF NO FORCE AND EFFECT.**

Let a copy of this Decision be forwarded to the Senate, the House of Representatives, and the Department of Budget and Management for their consideration on the matter of funding the payment of the portion pertaining to the personal share of the employees. A copy should likewise be furnished the Office of the Ombudsman for its consideration on the matter of filing the appropriate cases against the officials and persons responsible for the non-remittance or delayed remittance of premiums and loan repayment.

SO ORDERED.

Leonardo-de Castro, del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[G.R. No. 199885. October 2, 2017]

JESUSA DUJALI BUOT, *petitioner, vs.* **ROQUE RASAY DUJALI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; WHAT THE RULE PROHIBITS IS A SECOND MOTION FOR RECONSIDERATION FILED BY THE SAME PARTY INVOLVING THE SAME JUDGMENT OR FINAL RESOLUTION.— When Buot filed her petition for administration, Dujali filed an opposition with a motion to dismiss. When the RTC denied his motion to dismiss, Dujali filed a motion for reconsideration. This led to the RTC's

issuance of the Order of September 19, 2011 granting Dujali's motion for reconsideration and holding that Buot's petition for administration should be dismissed. It was only at this point that Buot filed, for the first time, a motion seeking for reconsideration of the Order which declared the dismissal of her petition for administration. Clearly, this is not the motion for reconsideration contemplated in Section 2 of Rule 52 of the Rules of Court[.] x x x What it prohibits is a second motion for reconsideration filed by the *same* party involving the *same* judgment or final resolution. In the present case, Buot's motion for reconsideration was only her first motion challenging the Order dismissing her petition for administration of Gregorio's estate. The RTC clearly erred in denying her motion on the ground that it is a second motion for reconsideration prohibited under the Rules.

2. **ID.; SPECIAL PROCEEDINGS; PETITION FOR LETTERS OF ADMINISTRATION; WHETHER OR NOT THE EXTRAJUDICIAL SETTLEMENT COVER THE ENTIRE ESTATE IS NOT A COMPELLING REASON TO ORDER THE ADMINISTRATION OF THE ESTATE.—** We have reviewed the reasons which Buot proffers to warrant the grant of her petition for letters of administration and rule that these do not suffice to warrant the submission of Gregorio's estate to administration proceedings. That the extrajudicial settlement in this case did not cover Gregorio's entire estate is, by no means, a sufficient reason to order the administration of the estate. Whether the extrajudicial settlement did in fact cover the entire estate and whether an extrajudicial settlement that does not cover the entire estate may be considered valid do not automatically create a compelling reason to order the administration of the estate. Parties seeking to challenge an extrajudicial settlement of estate possess sufficient remedies under the law and procedural rules.

3. **ID.; SPECIAL CIVIL ACTIONS; PARTITION; THE PROPER AND APPROPRIATE REMEDY IN CASE AT BAR.—** As to Buot's other allegations that: (1) there has been no effort to partition the estate; (2) that Dujali challenges her status as an heir; (3) that other heirs have been deprived of the estate; and (4) these heirs are amenable to the appointment of an administrator, we find that none of these allegations actually prevent the filing of an ordinary action for partition. In fact, if

it is indeed true that there has been no effort to partition Gregorio's entire estate, the filing of an action for partition before the proper court will leave his heirs with no choice but to proceed. An action for partition is also the proper venue to ascertain Buot's entitlement to participate in the proceedings as an heir. Not only would it allow for the full ventilation of the issues as to the properties that ought to be included in the partition and the true heirs entitled to receive their portions of the estate, it is also the appropriate forum to litigate questions of fact that may be necessary to ascertain if partition is proper and who may participate in the proceedings.

APPEARANCES OF COUNSEL

Pantojan Bernardo-Mamburam & Associates for petitioner.
DGWT Law Offices for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court. Petitioner Jesusa Dujali Buot (Buot) challenged the Orders of Branch 34 of the Regional Trial Court (RTC), Panabo City, dated September 19, 2011[2] and December 8, 2011,[3] dismissing her petition and denying her subsequent motion for reconsideration, respectively.

Buot filed before the RTC a petition[4] for letters of administration of the estate of deceased Gregorio Dujali (Gregorio). In her petition, Buot alleged that she was a surviving heir, along with Roque Dujali, Constancia Dujali-Tiongson, Concepcion Dujali-Satiembre, Marilou Sales-Dujali, Marietonete Dujali, Georgeton Dujali, Jr. and Geomar Dujali, of Gregorio

[1] *Rollo*, pp. 13-34.

[2] *Id.* at 35-36.

[3] *Id.* at 37-38.

[4] *Id.* at 48-54.

who died intestate.[5] Buot annexed[6] to her petition a list of Gregorio's properties that are allegedly publicly known. She claimed that since Gregorio's death, there had been no effort to settle his estate. Roque Dujali (Dujali) purportedly continued to manage and control the properties to the exclusion of all the other heirs. Buot further alleged that Dujali for no justifiable reason denied her request to settle the estate.[7] Thus, Buot asked that: (1) an administrator be appointed to preserve Gregorio's estate; (2) a final inventory of the properties be made; (3) the heirs be established; and (4) the net estate be ordered distributed in accordance with law among the legal heirs.[8]

Dujali filed an opposition with motion to dismiss,[9] arguing that Buot had no legal capacity to institute the proceedings. He asserted that despite Buot's claim that she was Gregorio's child with his first wife Sitjar Escalona, she failed to attach any document, such as a certificate of live birth or a marriage certificate, to prove her filiation. Dujali, on the other hand, attached a certificate of marriage between Gregorio and his mother Yolanda Rasay. This certificate also indicated that Gregorio had never been previously married to a certain Sitjar Escalona. Thus, as Buot failed to prove that she is an heir, Dujali prayed that her petition be dismissed outright.

Buot filed her comment[10] to Dujali's opposition with motion to dismiss. She argued that under the Rules of Court, only ultimate facts should be included in an initiatory pleading. The marriage certificate and certificate of live birth which Dujali demands are evidentiary matters that ought to be tackled during trial. Nevertheless, to answer Dujali's allegations, Buot attached to

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[5] *Id*. at 49-50. ("Marietonete" was also referred to as "Marrietonete" in some parts of the record.)

[6] *Id*. at 50, 56.

[7] *Id*. at 51.

[8] *Id*. at 52.

[9] *Id*. at 66-69.

[10] *Id*. at 72-74.

her comment a copy of the necrological services program[11] where she was listed as one of Gregorio's heirs, a certification[12] from the municipal mayor that she is Gregorio's child, and a copy of the Amended Extrajudicial Settlement[13] dated July 4, 2001 which includes both Buot and Dujali as Gregorio's heirs. Notably, this Amended Extrajudicial Settlement pertained to parcels of land not included in the list of properties annexed in Buot's petition.

On May 3, 2011, the RTC denied Dujali's motion to dismiss. It agreed with Buot that the issues raised by Dujali are evidentiary matters that should be addressed during trial.[14]

Dujali filed a motion for reconsideration.[15] He argued that under the Rules of Court and prevailing jurisprudence, a party's lack of legal capacity to sue should be raised in a motion to dismiss. Further, he took issue with the existence of the Amended Extrajudicial Settlement. According to him, when an estate has no debts, recourse to administration proceedings is allowed only when there are good and compelling reasons. Where an action for partition (whether in or out of court) is possible, the estate should not be burdened with an administration proceeding.

The RTC, in its Order dated September 19, 2011, granted Dujali's motion for reconsideration. It held that under the law, there are only two exceptions to the requirement that the settlement of a deceased's estate should be judicially administered—extrajudicial settlement and summary settlement of an estate of small value.[16] According to the RTC, in the case of Buot's petition, administration has been barred by the fact that Gregorio's estate has already been settled extrajudicially as evidenced by the Amended Extrajudicial Settlement. It also

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[11] *Id.* at 82-83.

[12] *Id.* at 84.

[13] *Id.* at 75-81.

[14] *Id.* at 85-86.

[15] *Id.* at 90-94.

[16] *Id.* at 35-36.

noted that Gregorio had no creditors since Buot failed to allege it in her petition.[17] Since recourse to judicial administration of an estate that has no debt is allowed only when there are good reasons for not resorting to extrajudicial settlement or action for partition, the RTC dismissed Buot's petition. Buot filed a motion for reconsideration which the RTC denied in its Order dated December 8, 2011. According to the RTC, not only was Buot's motion a second motion for reconsideration prohibited under the Rules, there was also no sufficient reason to reverse its earlier dismissal of the petition.[18]

Buot filed this petition for review on *certiorari* under Rule 45 of the Rules of Court challenging the RTC's Orders on pure questions of law. In her petition, Buot argues that her motion for reconsideration is not a prohibited second motion for reconsideration. Section 2 of Rule 52 of the Rules of Court states that a prohibited second motion for reconsideration is one filed by the *same* party. In this case, Buot's motion for reconsideration was her first, since the motion for reconsideration subject of the Order dated September 19, 2011 was filed by Dujali. She also argued that the Amended Extrajudicial Settlement did not cover all of Gregorio's properties.[19]

Further, Buot maintains that heirs are not precluded from instituting a petition for administration if they do not, for good reason, wish to pursue an ordinary action for partition. In her case, she claims that there are good reasons justifying her recourse to administration proceedings: (1) the Amended Extrajudicial Settlement did not cover the entire estate; (2) there has been no effort to partition the property; (3) Dujali seeks to challenge Buot's status as an heir; (4) other heirs have been deprived of the properties of the estate; and (5) other heirs, particularly Constancia Dujali and Marilou Dujali, have already manifested that they are amenable to the appointment of an administrator.[20]

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[17] *Id*. at 36.

[18] *Id*. at 37-38.

[19] *Id*. at 26.

[20] *Id*. at 102-103.

In his comment,[21] Dujali argues that Buot is not an interested person allowed to file a petition for administration of the estate. While she claims to be Gregorio's heir, public documents, such as Buot's certificate of live birth and the certificate of marriage between Gregorio and Yolanda Rasay, reveal otherwise. Dujali also attached to his comment certain documents that appear to show that there has been an extrajudicial settlement of some of the properties of the estate and that Buot has already received her share from the proceeds of the sale of these properties by the true heirs.[22] Further, he explains that Buot was only allowed to participate in the Amended Extrajudicial Settlement by Gregorio's legitimate heirs out of humanitarian considerations, not because she is a true heir. All these, Dujali argues, clearly indicate that there is no good and compelling reason to grant Buot's petition for administration.[23]

In her reply,[24] Buot contends that the issue of whether she is a person interested in the estate is a matter that should be raised during the trial by the RTC of her petition for administration.

We deny the petition.

First, we must emphasize that this is a petition for review on *certiorari* under Rule 45 of the Rules of Court. This recourse to the Court covers only a review of questions of law. In this case, the question of law presented before us is whether the RTC properly dismissed the petition for administration on the ground that there has already been an extrajudicial settlement of certain properties of the estate. An additional question of procedure raised here is whether the RTC was correct in holding that Buot's motion for reconsideration should be denied as it is a prohibited second motion for reconsideration.

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[21] *Id*. at 145-157.

[22] *Id*. at 168-195.

[23] *Id*. at 150-152.

[24] *Id*. at 206-209.

All other issues raised in the pleadings before us are questions of fact that we cannot resolve at this time. As we shall shortly explain in this Decision, these questions of fact ought to be resolved by a trial court in the appropriate proceeding.

We will first rule on the procedural issue raised in the petition. In its Order dated September 19, 2011, the RTC held that Buot's motion for reconsideration is a second motion for reconsideration prohibited under the Rules of Court. Thus, the motion was denied. We reviewed the motions filed by the parties before the RTC and rule that the RTC erred in its finding.

When Buot filed her petition for administration, Dujali filed an opposition with a motion to dismiss. When the RTC denied his motion to dismiss, Dujali filed a motion for reconsideration. This led to the RTC's issuance of the Order of September 19, 2011 granting Dujali's motion for reconsideration and holding that Buot's petition for administration should be dismissed. It was only at this point that Buot filed, for the first time, a motion seeking for reconsideration of the Order which declared the dismissal of her petition for administration. Clearly, this is not the motion for reconsideration contemplated in Section 2 of Rule 52 of the Rules of Court which states:

> Sec. 2. *Second motion for reconsideration*.— No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Section 2 of Rule 52 is clear and leaves no room for interpretation. What it prohibits is a second motion for reconsideration filed by the *same* party involving the *same* judgment or final resolution. In the present case, Buot's motion for reconsideration was only her first motion challenging the Order dismissing her petition for administration of Gregorio's estate. The RTC clearly erred in denying her motion on the ground that it is a second motion for reconsideration prohibited under the Rules.

Nevertheless, we rule that the RTC properly ordered the dismissal of Buot's petition for administration.

When a person dies intestate, his or her estate may generally be subject to judicial administration proceedings.[25] There are, however, several exceptions. One such exception is provided for in Section 1 of Rule 74 of the Rules of Court. This Section states:

> Sec. 1. *Extrajudicial settlement by agreement between heirs.* — If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under Section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.
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> The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

According to this provision, when the deceased left no will and no debts and the heirs are all of age, the heirs may divide the estate among themselves without judicial administration. The heirs may do so extrajudicially through a public instrument

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[25] RULES OF COURT, Rule 73, Sec. 1 & Rule 78, Sec. 6.

filed in the office of the Register of Deeds. In case of disagreement, they also have the option to file an action for partition.

Section 1 of Rule 74, however, does not prevent the heirs from instituting administration proceedings if they have good reasons for choosing not to file an action for partition. In *Rodriguez, et al. v. Tan, etc. and Rodriguez*,[26] we said:

> S]ection 1 [of Rule 74] does not preclude the heirs from instituting administration proceedings, even if the estate has no debts or obligation, if they do not desire to resort for good reasons to an ordinary action of partition. While section 1 allows the heirs to divide the estate among themselves as they may see fit, or to resort to an ordinary action of partition, it does not compel them to do so if they have good reasons to take a different course of action. Said section is not mandatory or compulsory as may be gleaned from the use made therein of the word *may*. If the intention were otherwise the framer of the rule would have employed the word *shall* as was done in other provisions that are mandatory in character. x x x[27] (Italics in the original.)

Since such proceedings are always "long," "costly," "superfluous and unnecessary,"[28] resort to judicial administration of cases falling under Section 1, Rule 74 appears to have become the exception rather than the rule. Cases subsequent to *Rodriguez* emphasized that "[w]here partition is possible, either in or out of court, the estate should not be burdened with an administration proceeding without good and compelling reasons."[29]

In *Pereira v. Court of Appeals*,[30] we had the opportunity to explain what the "good reason exception" means. What constitutes good reason depends on the circumstances of each case. We said:

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[26] 92 Phil. 273 (1952).

[27] *Id.* at 276-277.

[28] *Pereira v. Court of Appeals*, G.R. No. 81147, June 20, 1989, 174 SCRA 154, 159-160.

[29] *Id.* at 159. Citation omitted.

[30] *Supra*.

> "Again the petitioner argues that 'only when the heirs do not have any dispute as to the bulk of the hereditary estate but only in the manner of partition does Section 1, Rule 74 of the Rules of Court apply and that in this case the parties are at loggerheads as to the corpus of the hereditary estate because respondents succeeded in sequestering some assets of the intestate. The argument is unconvincing, because, as the respondent judge has indicated, questions as to what property belonged to the deceased (and therefore to the heirs) may properly be ventilated in the partition proceedings, especially where such property is in the hands of one heir."

In another case, We held that if the reason for seeking an appointment as administrator is merely to avoid a multiplicity of suits since the heir seeking such appointment wants to ask for the annulment of certain transfers of property, that same objective could be achieved in an action for partition and the trial court is not justified in issuing letters of administration. In still another case, We did not find so powerful a reason the argument that the appointment of the husband, a usufructuary forced heir of his deceased wife, as judicial administrator is necessary in order for him to have legal capacity to appear in the intestate proceedings of his wife's deceased mother, since he may just adduce proof of his being a forced heir in 2 intestate proceedings of the latter.[31] (Citations omitted.)

Thus, in *Pereira*, we refused to allow administration proceedings where the only reason why the appointment of an administrator was sought so that one heir can take possession of the estate from the other heir. We held that this was not a compelling reason to order judicial administration. We added that in cases like this, "the claims of both parties as to the properties left by the deceased may be properly ventilated in simple partition proceedings where the creditors, should there be any, are protected in any event."[32]

We have reviewed the reasons which Buot proffers to warrant the grant of her petition for letters of administration and rule that these do not suffice to warrant the submission of Gregorio's estate

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[31] *Id*. at 160-161.

[32] *Id*. at 161.

to administration proceedings. That the extrajudicial settlement in this case did not cover Gregorio's entire estate is, by no means, a sufficient reason to order the administration of the estate. Whether the extrajudicial settlement did in fact cover the entire estate and whether an extrajudicial settlement that does not cover the entire estate may be considered valid do not automatically create a compelling reason to order the administration of the estate. Parties seeking to challenge an extrajudicial settlement of estate possess sufficient remedies under the law and procedural rules.

As to Buot's other allegations that: (1) there has been no effort to partition the estate; (2) that Dujali challenges her status as an heir; (3) that other heirs have been deprived of the estate; and (4) these heirs are amenable to the appointment of an administrator, we find that none of these allegations actually prevent the filing of an ordinary action for partition. In fact, if it is indeed true that there has been no effort to partition Gregorio's entire estate, the filing of an action for partition before the proper court will leave his heirs with no choice but to proceed. An action for partition is also the proper venue to ascertain Buot's entitlement to participate in the proceedings as an heir.[33] Not only would it allow for the full ventilation of the issues as to the properties that ought to be included in the partition and the true heirs entitled to receive their portions of the estate, it is also the appropriate forum to litigate questions of fact that may be necessary to ascertain if partition is proper and who may participate in the proceedings.

WHEREFORE, this petition for review on *certiorari* is **DENIED.** The Orders of Branch 34 of the Regional Trial Court, Panabo City, dated September 19, 2011 and December 8, 2011 are **AFFIRMED** insofar as they ordered the dismissal of the petition for letters of administration.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Tijam, JJ.,* concur.

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[33] *Butiong v. Plazo*, G.R. No. 187524, August 5, 2015, 765 SCRA 227.

FIRST DIVISION

[G.R. No. 206826. October 2, 2017]

CAREER PHILIPPINES SHIPMANAGEMENT, INC. and COLUMBIAN SHIPMANAGEMENT, LTD., *petitioners, vs.* **EDUARDO[*] J. GODINEZ,** *respondent.*

[G.R. No. 206828. October 2, 2017]

EDUARDO J. GODINEZ, *petitioner, vs.* **CAREER PHILIPPINES SHIPMANAGEMENT, INC. and COLUMBIAN SHIPMANAGEMENT, LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; WORK-RELATED MENTAL ILLNESSES OR DISORDERS ARE COMPENSABLE; PRINCIPLE, APPLIED.— x x x Godinez was never given medical care onboard as soon as he became ill. x x x [T]hey ignored him as he wandered aimlessly half-naked around the ship; simply watched him make a fool of himself in front of his peers; and allowed him to precariously roam the ship even as it became evident that he was becoming a danger to himself, the crew, and the ship. In short, he was treated like a stray dog, whose presence is merely condoned. The vessel master's reaction was not reassuring either: instead of exhibiting compassion and providing needed care, he could not wait to expel Godinez from the ship, because the poor boy's strange behavior was starting to get on his nerves. x x x The confluence of all these, the inhumane treatment inflicted upon this green, fragile, and innocent fledgling; the harsh environment and conditions of work he was exposed to for the very first time in his young life; the indifference of his superiors despite realizing what was happening to him; and the utter lack of a professional and medical response to the boy's progressing medical condition, led to the complete breakdown of Godinez's body, mind, and spirit. The Court concludes that Godinez's grave illness was directly caused by the unprofessional and inhumane treatment,

[*] Referred to as "Eduard" or "Edward" in some parts of the records.

as well as the physical, psychological, and mental abuse inflicted upon him by his superiors, aggravated by the latter's failure and refusal to provide timely medical and/or professional intervention, and their neglect and indifference to his condition even as it was deteriorating before their very eyes. x x x In *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.,* the Court declared that work-connected mental illnesses or disorders are compensable, thus: x x x **petitioner's illness and disability were the direct results of the demands of his shipboard employment contract and the harsh and inhumane treatment of the officers on board the vessel**[.]

2. **ID.; ID.; ID.; SEAFARER IN CASES AT BAR IS ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS AND MEDICAL EXPENSES; ENTITLEMENT TO MEDICAL EXPENSES MUST BE DULY SUPPORTED BY RECEIPTS.—** The Court finds as well that Godinez suffered permanent total disability, as there has been no definite medical assessment by the company-designated physician regarding his condition – even up to now. "The company-designated doctor is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine [the degree of] his disability within a period of 120 or 240 days from repatriation, [as the case may be. If after the lapse of the 120/240-day period the seafarer remains incapacitated and the company-designated physician has not yet declared him fit to work or determined his degree of disability,] the seafarer is deemed totally and permanently disabled." x x x On the matter of medical expenses, this Court finds nothing irregular in the CA's finding that the amount awarded must be reduced on account of failure to substantiate. An examination of the evidence supports the view that some of the claimed expenses were not actually supported by the necessary receipts. In the determination of actual damages, "[c]redence can be given only to claims which are duly supported by receipts."

3. **REMEDIAL LAW; EVIDENCE; THE COURT WARNS AGAINST THE PRESENTATION OF FABRICATED EVIDENCE AND THE USE OF UNDERHANDED TACTICS.—** This Court notes that Career, Columbian, and their counsel-of-record, have submitted documents of dubious nature and content; inadmissible in evidence and oppressive to the cause of labor; and condoned a licensed physician's

> unethical and unprofessional conduct. x x x [T]hey submitted no less than four (4) dubious and irregular pieces of evidence. x x x Thus, this Court warns against the continued use of underhanded tactics that undermine the interests of labor, damages the integrity of the legal profession, mock the judicial process as a whole, and insult the intelligence of this Court. In prosecuting a client's case, there are multiple ways of securing victory, other than through fabrication, prevarication, and guile. x x x The manner in which Godinez was dealt with in these proceedings evinces a perverse attempt to evade liability by fabricating evidence and utilizing objectionable and oppressive means and schemes to secure victory. It constitutes an affront, not only to this Court, but to all honest workingmen earning a living through hard work and risking their lives for their families.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for Career Phils. Shipmanagement, Inc., *et al.*

Dela Cruz Entero & Associates for Eduardo J. Godinez.

D E C I S I O N

DEL CASTILLO, *J.*:

The Court cringes at the thought, generated by the experience in this proceeding and in past cases, that in spite of all the laws passed and jurisprudence created to level the playing field for the disadvantaged worker, his plight continues against employers who will stop at nothing to avoid their obligations by taking advantage of the worker's weakness, ignorance, financial hardship, other handicap, or the cunning of their lawyers.

Before us are consolidated Petitions for Review on *Certiorari*[1] assailing the May 22, 2012 Decision[2] of the Court of Appeals

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[1] *Rollo*, G.R. No. 206826, pp. 46-86; G.R. No. 206828, pp. 34-56;

[2] *Id.*, G.R. No. 206826, pp. 88-108; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Rebecca de Guia-Salvador and Normandie B. Pizarro.

(CA) in CA-G.R. SP No. 105602, as well as its April 18, 2013 Resolution[3] denying the parties' respective Motions for Reconsideration.[4]

Factual Antecedents

Eduardo J. Godinez (Godinez) was hired by local manning agency Career Philippines Shipmanagement, Inc. (Career), for its foreign principal Columbian Shipmanagement, Ltd. (Columbian). He was assigned as Deck Cadet onboard the vessel "M/V Norviken." His nine-month stint, covered by a Philippine Overseas Employment Administration (POEA) Standard Employment Contract,[5] began on November 7, 2003.

Godinez was 20 years old at the time.

Prior to his employment, Godinez underwent a pre-employment medical examination (PEME) consisting of a physical medical examination and psychological evaluation, involving an intelligence and personality test, after which he was declared fit to work. Particularly, Godinez's Psychological Evaluation[6] revealed "no significant manifestation of personality and mental disturbances noted at the time of evaluation."

As Deck Cadet, Godinez's duties were as follows:

1. Act as look-out from 12:00 to 4:00 p.m. and 12:00 to 4:00 a.m. during navigation;
2. Perform gangway watch from 6:00 a.m. to 4:00 p.m. in port;
3. Assist in deck preventive maintenance;
4. Assist in arrival and departures, mooring, and unmooring;
5. Assist officers in the conduct of their work; and

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[3] *Id*. at 179-181.

[4] *Id*. at 109-138; 139-151.

[5] *Id*. at 220.

[6] *Id*. at 222.

6. Perform other tasks that may be assigned by his superiors.[7]

On November 13, 2003, Godinez boarded "M/V Norviken" and commenced his work.

On the evening of December 17, 2003, just before the start of his look-out duty at midnight, Godinez failed to wake up despite attempts by the crew to rouse him from sleep. As a result, his superior, Second Officer Antonio Dayo (Dayo) took his place and acted as look-out, together with the outgoing look-out. For this, Dayo became strict with Godinez, requiring the latter, as punishment, to clean toilets instead of performing his regular look-out duty; Dayo became rude, always finding fault and humiliating, accusing, shouting, insulting, nagging, and snapping at Godinez, who was also prevented from preparing his food for breakfast and snacks.[8]

On December 24, 2003, a report[9] was prepared and sent by the vessel master via electronic mail to Career, stating thus:

Subj: Update for Deck Cadet Eduard SJ. Godinez

x x x x x x x x x

Early morning of 23 Dec. 2003, abt 0800 hrs. he inform[ed] Bosun that if Bosun need[ed] him just call him in the crew smoke room where he [was] viewing tv.

At abt 1030 hrs. he came up to Master cabin to take the Bond store key and open it for he want[ed] to take beer, fanta and cigarettes for he said he [was] very thirsty. But then I didn't give anything. Instead, he ask[ed] chief officer [for] a packet of cigarettes when in fact for this month he got already 3 cartons.

At noon time while the crew [was] having lunch he [came] inside the messroom wearing short[s] without [a] shirt and shout[ed] that (babasagin ko lahat ang mga mukha ninyo). Then he [ate] and [kept] on transferring from one place to another (smoke room, crew mess, officer mess).

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[7] *Id*. at 246, 335.

[8] *Id*. at 247, 343-344.

[9] *Id*. at 223.

Before lunch he [came] up to 2/o and asked for his declared beer and cigarette. When 2/o asked him if he had [a] problem he said no. When 2/O ask him if he had taste[d] marijuana and shabu before, he admitted YES it taste[d] very good. He said he taste[d] marijuana during his high school days and shabu during his college days.

After [the] crews[']coffee break, at abt 1530 to 1745, he [was] on deck walking around with sometimes a basketball ball on his hand sometimes mop handle and sometimes a floor mop itself. The crew had to [stop] working when he pass[ed] by for they [were] afraid that he might hit them.

At dinner time he [came] down to crew messroom wearing white uniform with shoulder board wearing short pants (sleeping short pants) and rubber shoes without socks. After dinner he join[ed] the crew in [the] smoke room and [kept] on talking and laughing. Without any sense.

He [was] still under guard by one crew most of the time especially during night time until he [got] inside his cabin and [slept]. But in the early evening he [brought] his pillow and blanket in [the] crews[']smoke room to sleep.

Yours truly,

Capt. Vicente A. Capero
Master

On December 25, 2003, another report[10] was sent via electronic mail by the vessel master to Career, declaring as follows:

Subject: UPDATE OF DCD1 GODINEZ – CONDITION

x x x x x x x x x

The condition now [was getting worse]. He [didn't] want to listen anymore to the officer on duty.

Today 25 Dec. 2003 at 0255 lt second officer woke me up and told me that deck cadet GODINEZ [was] in the focsle railings doing sight seeing again with binocular[s]. Upon arrival on the bridge I switch[ed] on the foremast light and [saw] him [in the] same position as I mention[ed] before. I call[ed] him thru the compass deck external

[10] *Id*. at 224.

speaker or public address system to come back here in the accommodation. As per second officer info he [came] up to the bridge at about 0235 and [took] the binocular[s] and [brought] it down w[h]ere the escort [was] also following him. When he [didn't] listen to his escort and to [the] second officer on duty, he [rang] me up for it also near to [sic] the mark on chart as per my instruction to be [woken] up. At that time we [were] about to enter the TSS in [the] Gulf of Suez w[h]ere there [was] so [much] traffic. When he [came] up on the bridge I asked him why he [did] that, he just answer[ed] that he want[ed] to see the light if it [was] a tug boat. So, I told him just go down in the messroom or dayroom and he obey[ed]. I call[ed] another crew for escort.

At 0400lt, 1AE called me up on bridge that Deck cadet [was] forcing to open engine room door coz he want[ed] to see the engine. But then he didn't let him in.

At about 0445hrs it was noticed that he [was] walking on deck again. The escort inform[ed] the bridge that he [didn't] want to sleep, he want[ed] to see the lights. Then I shout[ed] again in [the] public address system to let him come back inside coz [it was] still too dark.

At 0608hrs he [was] again on deck walking/jogging with no shirt[,] only short pants and slippers. He had not been sleeping for the whole night as per escort report. Also third officer inform[ed] me that at abt 2200hrs he [came] up also on the bridge with blanket and pillow. When ask by third officer just say this is just my baby. At daytime he [was] always in the dayroom playing music and [on] full volume [for] which galley boys are also complaining.

In this condition of him of which everyday is getting wors[e], I strongly oppose his presence on board. I want him to be dis-embarked immediately on arrival. He is now resisting orders, he [doesn't] listen to the officers and to his escort. This endanger[s] the safety of all crew on board and the vessel especially during transit and maneuvering. All my patience is over now.

Yours truly,

Capt. V. A. Capero

Upon the vessel's arrival in Egypt on December 25, 2003, a physician was called on board to assist Godinez, and he was brought to a local medical facility.

On January 10, 2004, Godinez was repatriated, and was referred to and confined at Sachly International Health Partners, Inc. (Sachly), the company-designated medical facility, for evaluation and treatment. The resulting Initial Medical Report[11] on Godinez's case, **which was unsigned**, contains an admission made by the latter that when he was 15 years old, he began to have episodes of insomnia and paranoia, for which he sought psychiatric evaluation and management.

On January 13, 2004, Godinez was once more examined at Sachly, and the January 19, 2004 Medical Progress Report[12] issued by Sachly's Medical Coordinator Dr. Susannah Ong-Salvador (Salvador) thereafter contained a recommendation that a psychological test be done "to [c]onsider bipolar disorder II", as it was noted that Godinez became "excessively talkative, with flight of ideas, and had erratic sleeping patterns [of only 1-2 hours, hallucinations, and was verbally abusive towards his mother and suffered from uncontrolled sleepiness]." He was admitted at the University of Santo Tomas Hospital on January 19, 2004.

On January 22 and 23, 2004, Godinez underwent psychological tests.

On February 6, 2004, Salvador issued another report[13] which confirmed that Godinez was suffering from bipolar disorder, which "has a good prognosis with adequate treatment" but "is not an occupational related illness."

On February 13, 2004, Godinez was again examined at Sachly, and Salvador's Report[14] of even date states that he "is in euthymic mood at present" with continuation of scheduled oral medication.

On March 12, 2004, an **unsigned** Medical Progress Report[15] on the findings of the examination conducted on Godinez on

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[11] *Id*. at 225.

[12] *Id*. at 227.

[13] *Id*. at 229.

[14] *Id*. at 230.

[15] *Id*. at 231, 659.

even date was ostensibly issued by Sachly. It contained findings that Godinez was "asymptomatic and doing well with no recurrence of depressive episodes;" that Godinez "verbalized a feeling of wellness;" that his "[v]ital signs were stable;" that he was in a "euthymic mood, and is able to sleep and eat well;" and finally, that he was "found to be functionally stable at present."

That very same day, or on March 12, 2004, Godinez was made to sign a prepared form/document entitled "Certificate of Fitness for Work"[16] whose particulars were mechanically filled out. Godinez signed this document as the declarant, and, interestingly, Sachly's Medical Coordinator, Dr. Salvador, signed as witness. The document was likewise notarized. It reads as follows:

I, Eduard Godinez, for myself and my heirs, do hereby release Columbia Shipmanagement Ltd. and Career Phils. Shipmgt. Inc. of all actions, claims, demands, etc., in connection with being released on this date as fit for duty.

In recognizing this Certificate of Fitness for Work, I hold the said Columbia Shipmanagement Ltd. and its Agent Career Phils. Shipmgt. Inc. free from all liabilities as consequence thereof.

Finally, I hereby declare that this Certificate of Fitness for Work may be pleaded in bar or any proceedings of the law that may be taken by any government agency, and I do promise to defend the right of said Career Phils. Shipmgt. Inc. and Columbia Shipmanagement Ltd. in connection with this Certificate of Fitness for Work.

Witness my hand this 12 day of March 2004 in the City of Manila, Philippines.

(signed)
EDUARD GODINEZ
Name of Vessel: M/V NORVIKEN
Nature of Illness or Injury: BIPOLAR MOOD
DISORDER, TYPE II, IMPROVED
Date of Ill/Inj.: 25 December 2003

(signed)
Witness: SUSANNAH O. SALVADOR MEDICAL COORDINATOR

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[16] *Id*. at 232.

Ako, EDUARD GODINEZ, ay nagsasaad na ang bahagi ng salaysay na ito ay aking nabasa at ang nasabi ay naipaliwanag sa akin sa salitang aking naiintindihan. Ito pa rin ay katunayan na ang aking pagsangayon sa nasabi ay aking sarili at kusang kagustuhan, at hindi bunga ng anumang pangako, pagkukunwari o pagpilit ng sinumang may kinalaman sa mga nasasaad na usapin.

Katunayan, aking nilagdaan ang pagpapahayag nitong ika-12 ng MARSO 2004 sa MANILA.

(signed)
EDUARD GODINEZ

(jurat and notarization)

All medical expenses incurred prior to Godinez's above certification were paid for by Career and Columbian. Godinez also received his sickness allowance for the period beginning from his repatriation up to March 12, 2004.[17]

Godinez sought to be re-hired and re-engaged by Career, but he was denied. He sought to be hired by other manning agents as well, but he was rejected just the same.[18]

On February 26, 2006, Godinez consulted an independent specialist, Dr. Randy Dellosa (Dellosa), who diagnosed him to be suffering from bipolar disorder, per Dellosa's handwritten Medical Certificate/Psychiatric Report dated February 27, 2006.[19] Godinez was declared "unfit to work as a seaman," placed on "maintenance medication," and advised to undergo "regular counseling and psychotherapy" as he was "prone to relapses due to emotional triggers."

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[17] *Id*. at 192.

[18] *Id*. at 248.

[19] *Id*. at 261. Since the document is handwritten, it is difficult to discern if the date as written appears as a "27" or "22." However, since the record, specifically the Labor Arbiter, NLRC, and CA Decisions, indicates that Godinez consulted Dellosa on February 26, 2006, then it must be assumed that the latter's findings were embodied in a report only on February 27, or the following day, and not before the date of consultation.

Godinez returned to the company-designated physician, Dr. Johnny K. Lokin (Lokin), who provided regular treatment and medication at Godinez's personal expense.

Ruling of the Labor Arbiter

On March 7, 2006, Godinez filed a labor case with a claim for disability benefits, sickness allowance, medical and hospital expenses, moral and exemplary damages, attorney's fees, and other relief against Career, Columbian, and Verlou Carmelino (Carmelino), Career's Operations Manager. The case was docketed as NLRC-NCR Case No. (M) 06-03-00768-00.

In his Position Paper[20] and Reply,[21] Godinez essentially argued that he should be paid permanent total disability benefits for contracting bipolar disorder during his employment; that such illness was work-related and aggravated by the harsh treatment he received from Dayo; that there was no declaration of fitness to work as the March 12, 2004 Medical Progress Report merely stated that he "was found to be functionally stable at present," which did not amount to an assessment of his fitness for work; that his illness persisted and had not been cured; that the Certification of Fitness for Work he signed was void as it was a general waiver, and he was cajoled into signing it under the false hope that he would be re-employed by Career, and for the reason that he could not make a competent finding or declaration of his own state of health since he was not a doctor; that based on Dellosa's findings, he was deemed unfit to work as a seaman, and thus entitled to disability benefits, sickness allowance, and other benefits; and that he should be entitled to moral and exemplary damages and attorney's fees for the treatment he received from his employers, and for the latter's malice and bad faith in evading their liabilities. Thus, Godinez prayed that Career, Columbian and Carmelino be held solidarily liable for the following:

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[20] *Id*. at 245-258.

[21] *Id*. at 318-331.

1. To pay disability grading equivalent to Grade 1 of the POEA SEC and based on Amosup ITF-TCC Agreement or US$60,000.00[;]
2. To pay 120 days sickness allowance equivalent to US$1,000.00[;]
3. To pay medical and hospital expenses in the total amount of Php70,475.90[;]
4. To pay moral damages in the amount of US$10,000 and exemplary damages in the amount of US$10,000[;]
5. To pay attorney's fees equivalent to 10% of the total award[;]
6. Other relief just and equitable under the premises, are also prayed for.[22]

In their joint Position Paper,[23] Career, Columbian, and Carmelino argued that Godinez should have filed his case before the Voluntary Arbitrator as it involved a dispute regarding a collective bargaining agreement and the interpretation of the POEA-Standard Employment Contract; that his illness is not compensable and work-related, since bipolar disorder is "chiefly rooted in gene defects" and in heredity; therefore, he could not have contracted bipolar disorder during his employment on board Columbian's vessel, and his work did not expose him to any risk of contracting the illness; that he was nonetheless declared fit to work, and he did not dispute this, as he, in fact, executed a Certificate of Fitness for Work; that Godinez's failure to declare in his pre-employment medical examination that he previously suffered from insomnia and paranoia amounted to fraudulent concealment under Section 20(E) of the POEA contract which states that "a seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate

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[22] *Id*. at 257.

[23] *Id*. at 185-218.

administrative and legal sanctions;" that Godinez has been paid his illness allowance; and that for lack of merit, Godinez is not entitled to his claim of damages and attorney's fees. Thus, they prayed for dismissal of the case.

In their joint Reply,[24] Career, Columbian, and Carmelino also argued that it was not possible for Godinez to have been maltreated by Dayo during the period from December 17 to 25, 2003, since the latter was repatriated on November 29, 2003 due to chronic gastritis, hyperlipidemia and hypercholesteremia; and that Dellosa's findings actually indicated that Godinez was fit to work, although he was required to continue medication in order to avoid relapse.

On May 16, 2007, Labor Arbiter Thelma M. Concepcion issued her Decision[25] declaring that her office had jurisdiction over the case; that Godinez's bipolar disorder was work-connected and thus compensable, pursuant to Section 20(B)(4) of the POEA Standard Employment Contract; and that based on substantial evidence, the nature of Godinez's work and/or his working conditions on board "M/V Norviken," as well as Dayo's harsh treatment, which caused trauma and anxiety, increased the risk of contracting his illness.

The Labor Arbiter stated further that the defense that Dayo could not have maltreated Godinez in December, 2003, since he was already medically repatriated as early as November 29, 2003, could not hold because: a) there was no documentary or other evidence to prove that Dayo was indeed repatriated on said date; b) on the contrary, the documentary evidence submitted, a November 21, 2003 Medical Examination Report[26] on Dayo's condition, did not contain an advice of repatriation, but instead a recommendation "to consult doctor for more detailed exams and further treatment at the patient's home country **3 months later**;" c) an Initial Medical Report[27] dated February 3,

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[24] *Id*. at 302-311.

[25] *Id*. at 333-353.

[26] *Id*. at 315.

[27] *Id*. at 316-317.

2004 issued by Sachly's Salvador showed that Dayo was examined only on February 3, 2004, indicating that he could not have been repatriated on November 29, 2003 but later, at a date closer to February 3, 2004, as it would be illogical for him to have belatedly consulted a doctor given the seriousness of the declared illnesses, chronic gastritis, hyperlipidemia and hypercholesteremia, which caused his repatriation; and d) the said February 3, 2004 Initial Medical Report is a forgery, considering that Salvador's signature affixed thereon is "strikingly dissimilar" to her signature contained in the other medical reports she issued in Godinez's case. The Labor Arbiter concluded that Career, Columbian, and Carmelino were guilty of misrepresentation for submitting a forged document.

The Labor Arbiter held further that the "psychological trauma and anxiety attacks as a result of the maltreatment which complainant suffered under 2nd Officer Dayo has already rendered Godinez permanently and totally disabled;"[28] that the "result of the x x x trauma and anxiety attacks caused by 2nd Officer Dayo's harassment and maltreatment of Godinez caused his permanent and total disability considering that the result of the first episode has left Godinez a high risk to subsequent episodes of a mood disorder;"[29] that Godinez's status and his genetic history were not factors to be considered as he was still single and there was no history of bipolar disorder in his family; that the claim that Godinez was already fit for work, as opined by Sachly's doctors and certified in the March 12, 2004 Medical Progress Report could not be considered as there was nothing in said report to suggest that Godinez was fit for work; that the Certificate of Fitness for Work executed by Godinez was an improper waiver, "irregular and scandalous"[30] especially when it was witnessed by Salvador, and did not deserve evidentiary weight since there was nothing in the POEA contract

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[28] *Id*. at 348.

[29] *Id*.

[30] *Id*. at 349.

authorizing or requiring a seafarer to certify his own state of health.

On the defense that following Section 20(E) of the POEA contract, Godinez should be barred from claiming benefits in view of his concealment of and failure to disclose during the PEME that he consulted medically for insomnia and paranoia when he was 15 years old, the Labor Arbiter held that Godinez's failure to disclose this fact was not intentional and did not amount to intentional concealment; that the fact simply "slipped his mind considering the passage of time;"[31] and that when he underwent the PEME, he was only 20 years old and could not have known the consequences of the PEME except that it was a simple prerequisite to employment.

Regarding monetary claims, the Labor Arbiter held that, having found permanent and total disability, Godinez was entitled to US$60,000.00 as disability benefit; sickness allowance, less what he already received; medical expenses; moral and exemplary damages since malice and bad faith attended the denial of his claims and for presenting forged documentary evidence; and attorney's fees. The Decision thus decreed:

WHEREFORE, premises considered, respondents Career Phils. Shipmanagement, Inc.; Columbia Shipmanagement Ltd. and individual respondent Verlou R. Carmelino are hereby ordered jointly and severally to pay complaint Eduard J. Godinez the following:

1. Permanent and total disability compensation in the amount of US$60,000.00;
2. Sickness allowance amounting to US$475.00;
3. Reimbursement of medical expenses in the amount of Php70,475.90;
4. Moral damages in the amount of US$10,000.00; and Exemplary damages in the amount of US$5,000.00; and
5. Ten percent (10%) of the total judgment award for and as attorney's fees.

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[31] *Id*. at 350.

In US DOLLARS or its equivalent in PHILIPPINE PESO at the time of payment.

All other claims are hereby ordered dismissed for lack of merit.

SO ORDERED.[32]

Ruling of the National Labor Relations Commission

Career, Columbian, and Carmelino appealed before the National Labor Relations Commission (NLRC), which docketed the case as OFW(M) 06-03-00768-00 (CA NO. 08-000152-07).

On April 30, 2008, the NLRC issued a Decision[33] declaring as follows:

Aggrieved by the adverse ruling, the respondents-appellants interposed the instant appeal premised on serious errors, allegedly committed by the Labor Arbiter, such as:

1. In ruling that the Labor Arbiter has jurisdiction over the complaint *a quo*;
2. In awarding disability benefits to appellee;
3. In ruling that appellee is entitled to sickness allowance amounting to US$475.00;
4. In failing to consider that appellee's claims for medical expenses against appellants have been fully paid;
5. In awarding moral and exemplary damages; and,
6. In holding individual appellant personally liable.

WE MODIFY.

x x x x x x x x x

It must be stressed though that pursuant to Section 10 of R.A. No. 8042, entitled Migrant Workers and Overseas Filipinos Act of 1995, 'the Labor Arbiter of the NLRC shall have the original and exclusive jurisdiction to hear and decide within ninety (90) calendar

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[32] *Id*. at 353.

[33] *Id*. at 407-417; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioner Victoriano R. Calaycay.

days after filing of the complaint, the claims arising out of an employer-employee relationship involving Filipino workers for overseas deployment x x x.'

Similarly, under the 2005 Revised Rules of Procedure of the NLRC, particularly Section (G), Rule V, thereof, explicitly provides that:

> 'Section 1. Jurisdiction of Labor Arbiters. – Labor Arbiters shall have original and exclusive jurisdiction to hear and decide the following cases, including workers, whether agricultural or non-agricultural;
>
> x x x x x x x x x
>
> g) Money claims arising out of employer-employee relationship or by virtue of any law or contract, involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.'

It is also observed that the respondents-appellants herein vigorously participated and argued their defense during the proceedings below, hence, it is too late in the day to question the same on appeal.

Moreover, as between the provisions of a mere administrative order and the Republic Act and of the 2005 Revised Rules of Procedure of the NLRC, we are persuaded that the law should be accorded with respect. In other words, R.A. 8042 that confers exclusive and original jurisdiction to the Labor Arbiter and of the Commission, to hear and decided money claims arising out of an employer-employee relationship of Filipino overseas workers should prevail.

As to the averment x x x that the award of disability benefits has no basis in law because complainant-appellee has been declared fit to return to his duties, We are more inclined though to agree with the Labor Arbiter's position that there is 'nothing on record that would suggest that complainant is already fit and may now go back to work' x x x. If indeed, the said allegation is to be accorded with respect, how come that herein respondents-appellants did not welcome him back? Moreover, as observed by the Labor Arbiter which we adopt as Ours,

> 'Furthermore, we find irregular and scandalous the execution by Godinez of the 'Certificate of Fitness For Work' on March 12, 2004, specially so, when witnessed by the company-designated physician. This certification do not deserve

> evidentiary value, as there is nothing in the POEA Standard Employment Contract requiring the seafarer to certify as to his own health status. Neither can the said certificate bar complainant to his claim for disability compensation. Jurisprudence is replete that waiver and release cannot bar complainant from claiming what he is legally entitled to.' x x x

Anent the issue of complainant-appellee's entitlement to sickness allowance in the amount of US$ 475.00, the respondents-appellants alleged that the same has been reimbursed to him x x x. A closer examination of the alleged Annex 'Q' of their Position Paper, however, would show that this refers to a handwritten 'Medical Certificate-Psychiatric Report' of a certain Dr. Randy Dellosa, which does not show of any payment made to him x x x. The alleged Annex 'Q-1' is also not among the records. Hence, the said finding of the Labor Arbiter must be sustained.

The awards for moral and exemplary damages should, likewise, be granted because the instant case falls under the instances when such award is due, considering that the respondents-appellants acted in bad faith in refusing to comply with their obligation and such refusal is clearly tainted with oppression to labor.

Attorney's fees is also justifiable because this is an action for recovery of unpaid monetary benefits and complainant-appellee was forced to litigate and incur expenses to protect his rights and interests.

The ruling of the Labor Arbiter 'holding individual appellant personally liable in this action', cannot be sustained though. We agree with the respondents-appellants' position that there is really no basis, in fact and in law, to make individual respondent-appellant liable both by way of official capacity as officer and in his individual capacity. Worded differently, since the corporate employer has already been specified in the case, his inclusion in the caption of the case is therefore immaterial.

WHEREFORE, premises considered, the appealed Decision is hereby, AFFIRMED with MODIFICATION only, insofar as Our order for individual respondent-appellant to be deleted from the dispositive portion.

SO ORDERED.[34]

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[34] *Id*. at 411-416.

Career and Columbian moved to reconsider, but in a July 31, 2008 Resolution,[35] the NLRC held its ground.

Ruling of the Court of Appeals

Career and Columbian went up to the CA on *certiorari*. On May 22, 2012, the CA issued the assailed Decision, decreeing as follows:

> As gleaned from the above-cited issues, petitioners anchor this Petition on procedural and substantive grounds. Anent the procedural matter, petitioners question the assumption of jurisdiction by the Labor Arbiter in this case on the supposition that the case should have been lodged with the Voluntary Arbitrator, in accordance with Section 29 of POEA Standard Contract. As to substantive matters, on the other hand, petitioners bewail the common decision of the Labor Arbiter and the NLRC to grant disability benefits and other monetary awards to private respondent on the theory that their decisions are bereft of factual basis and were done in utter disregard of evidence as well as applicable laws and jurisprudence.
>
> Resolving the issue of jurisdiction, We are of the considered view that petitioners cannot fault the Labor Arbiter for taking cognizance of this case. Section 29 of the POEA Standard Contract is explicit that the voluntary arbitrator or panel of arbitrators have jurisdiction only when the claim or dispute arises from employment. In the instant case, the Labor Arbiter was correct that there was no longer an employer-employee relationship existing between the parties when private respondent filed the Complaint. Consequently, We agree with the Labor Arbiter that Section 31 of the POEA Standard Contract, and not Section 29 thereof, should apply in this case. As said provision states —
>
> 'SECTION 31. APPLICABLE LAW
>
> Any unresolved dispute, claim or grievance arising out of or in connection with this Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants where the Philippines is a signatory.

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[35] *Id*. at 478-479; penned by Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

We also find it apt to point out that Section 10 of Republic Act No. 8042 (Migrant Workers Act) clearly states that claims arising from contract entered into by Filipino workers for overseas employment are cognizable by the labor arbiters of the NLRC –

x x x x x x x x x

In view of the foregoing, We hold that the labor tribunals did not err in taking cognizance of this case.

Prescinding, this Court, after thoroughly reading the entire records and weighing all the facts and evidence on hand, found [sic] and so holds that petitioners failed in their duty to prove that the NLRC committed grave abuse of discretion or had grossly misappreciated evidence insofar as its affirmation of the Labor Arbiter's conclusion that private respondent was entitled to disability benefits in the amount of Sixty Thousand US Dollars (US$60,000.00).

As the records bear out, the Labor Arbiter declared private respondent to be suffering from a permanent and total disability because of the psychological trauma and anxiety attacks which resulted from the maltreatment inflicted on him by Second Officer Dayo, private respondent's immediate superior on board 'MV Norviken'. We see no reason to reverse this finding as the same is duly supported by substantial evidence. Significantly, the Labor Arbiter even emphasized that such 'factual findings is supported by the medical opinion on Psychosocial Factors, a risk factor as shown in Chapter 15, P. 543, Kaplan and Sadock's Synopsis of Psychiatry, Eighth Edition x x x.'

Notably, petitioners vehemently deny that private respondent's illness was compensable and take serious exception on [sic] the common findings of the Labor Arbiter and the NLRC that private respondent's working conditions on board the 'M/V Norviken' aggravated his illness.

To be sure, this Court agrees that '[f]or disability to be compensable under **Section 20(B) of the 2000 POEA-SEC**, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; **it must also be shown** that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. The 2000 POEA-SEC

defines 'work-related injury' as 'injury[ies] resulting in disability or death arising out of and in the course of employment' and 'work-related illness' as 'any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.'

Relative to the foregoing, it bears pointing out that this pertinent provision under the POEA Standard Contract is interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. x x x

In light of the foregoing pertinent precepts, the question now is whether there is substantial evidence to prove the existence of the above-stated elements.

Our assiduous assessment of the records leads Us to answer in the affirmative. Indeed, like the Labor Arbiter and the NLRC, We too are convinced that private respondent was able to prove by substantial evidence that his risk of contracting such illness was aggravated by his working conditions on board petitioners' 'MV Norviken', specially taking into consideration the inhumane treatment he suffered from Second Officer Dayo which ultimately led private respondent to snap. And as aptly pointed out by the Labor Arbiter, the degree of proof required in this case is merely substantial evidence and a reasonable work-connection; not a direct causal relation. 'It is enough that the hypothesis on which the workmen's claim is based is probable. *Medical opinion to the contrary can be disregarded especially where there is some [basis] in the facts for inferring a work connection*. Probability, not certainty, is the touchstone. x x x.' Furthermore, under the POEA Standard Contract, private respondent is disputably presumed work-related [sic] and, therefore, it is incumbent for petitioners to contradict it by their own substantial evidence. As the records would reveal, however, petitioner miserably failed to discharge this burden since, as found by the Labor Arbiter, and affirmed by the NLRC, the pieces of evidence, which petitioners presented were either of dubious character or bereft of probative value.

On petitioners' stance that private respondent is, under Section 20(E) of the POEA Standard Contract, barred from claiming disability benefit for his failure to disclose his previous bout with insomnia and paranoia, suffice it to state that We fully concur with the labor tribunal that this omission cannot just be taken against private

respondent as to deprive him of disability benefits considering that Section 20(E) requires that such information should have been knowingly concealed. Considering that private respondent was only at a tender age of fifteen (15) when it happened, it is indeed fair to conclude that he really had no intention of deliberately withholding such information and that it merely slipped his mind when answering his PEME.

All the foregoing considered, We hold that there is no basis for Us to annul and set aside the findings of the Labor Arbiter, as affirmed by the NLRC, with respect to private respondent's right to disability benefit, as no amount of grave abuse of discretion attended the same.

x x x x x x x x x

With respect to the award of sickness allowance, Paragraph 3, Section 20(B) of the 2000 POEA Standard Employment Contract is categorical that '[u]pon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.'

Based on this provision and given the finding that private respondent's illness was work-related and had become total and permanent, We hold that the NLRC correctly awarded sickness allowance equivalent to his four (4) months salary or the maximum period of one hundred twenty (120) days.

x x x x x x x x x

In the instant case, however, We found that the pieces of evidence submitted by private respondent are not sufficient enough for him to successfully claim reimbursement of x x x [₱70,475.90]. To be sure, most of the documents submitted by private respondent are not official receipts but are actually mere itemization of the medicines supposedly procured by private respondent as well as the price of each medicine prescribed by his doctor. 'Jurisprudence instructs that the award of actual damages must be duly substantiated by receipts.' Verily, '[a] list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions.' For this reason, the award for reimbursement of medical expenses should be reduced appropriately. Based on this Court's computation, private

respondent should be entitled only to a reimbursement of x x x [₱16,647.85], as this is only the amount duly substantiated by receipts.

Coming now to the award of moral damages and exemplary damages, it is long settled that '[m]oral damages may be recovered only where the dismissal of the employee was tainted by bad faith or fraud, or where it constituted an act oppressive to labor, and done in a manner contrary to morals, good customs or public policy while exemplary damages are recoverable only if the dismissal was done in a wanton, oppressive, or malevolent manner.'

In the instant case, the records show that the awards are premised on the following findings of the Labor Arbiter –

x x x x x x x x x

> Consequently, we hold respondents Career Phils. and Columbia and individual respondent Verlou Carmelino guilty of 'misrepresentation for having falsely claimed that 2nd Officer Dayo was no longer on board M/V NORVIKEN at the time complainant was allegedly subjected to 'verbal and psychological harassment' x x x .
>
> We are also led to believe that respondents submitted a fraudulent Medical Report x x x. Thus, we find the signature of Dr. Susannah Ong-Salvador appearing on the Initial Medical Report relative to the health status of 2nd Officer Dayo, a 'forgery', which rendered the claim of 2nd Officer Dayo's repatriation a mere afterthought.

x x x x x x x x x

Considering that the NLRC affirmed the grant of moral damages and exemplary damages based on such findings of the Labor Arbiter and considering further that petitioners did not shown [sic] any convincing proof to contradict such findings before this Court, as in fact they did not make any effort to directly contest the said findings of the Labor Arbiter, We are wont to likewise affirm private respondent's entitlement to moral damages and exemplary damages in view of the express findings of bad faith and malice on the part of the petitioners in denying private respondent's just claims.

However, while We affirm the Labor Arbiter's award of moral damages and exemplary damages, We are convinced that the amount of moral damages and the exemplary damages awarded are far too excessive, if not unconscionable. As it is always stressed in

jurisprudence, '[m]oral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive.' Similarly, 'x x x [e]xemplary [d]amages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.' In line with prevailing jurisprudence, We hereby reduce the moral damages and exemplary damages to the more equitable level of One Thousand US Dollars (US$1,000.00) each.

Finally, regarding the award of attorney's fees to private respondent, We found the same to be warranted based on the facts of this case and prevailing jurisprudence. As it is oft-said, '[t]he law allows the award of attorney's fees when exemplary damages are awarded, and when the party to a suit was compelled to incur expenses to protect his interest.'

In view of Our herein disquisition, We shall no longer delve into the merits of petitioners' prayer for issuance of a Temporary Restraining Order (TRO) for it is now moot and academic.

WHEREFORE, premises considered, the instant Petition is **DISMISSED**. The assailed Decision and Resolution of the NLRC are **AFFIRMED** with the following **MODIFICATIONS** —

1. Reimbursement of medical expenses is **REDUCED** to Sixteen Thousand Six Hundred Forty-Seven Pesos and 85/100 (₱16,647.85);
2. Moral damages is **REDUCED** to One Thousand US Dollars (US$1,000.00); and
3. Exemplary damages is **REDUCED** to One Thousand US Dollars (US$1,000.00).

In addition, the prayer for issuance of Temporary Restraining Order (TRO) is hereby **DENIED** for being moot and academic. All other claims are likewise **DISMISSED** for lack of merit.

SO ORDERED.[36] (Citations omitted; emphasis and underscoring in the original)

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[36] *Id*. at 96-107.

Godinez filed a Motion for Partial Reconsideration, questioning the reduction in the award of medical expenses and moral and exemplary damages. In essence, he sought reinstatement of the monetary awards contained in the NLRC Decision. On the other hand, Career and Columbian filed a joint Motion for Reconsideration questioning the entire decision and award, and reiterating all their arguments before the Labor Arbiter, NLRC, and in their Petition for *Certiorari*.

On April 18, 2013, the CA issued the assailed Resolution denying the parties' respective motions for reconsideration. Thus, the present petitions.

Issues

The following issues are raised by the parties in their respective Petitions:

By Career and Columbian as petitioners in G.R. No. 206826

A. THE HONORABLE COURT OF APPEALS COMMITTED CLEAR ERROR OF LAW AND IN ITS APPRECIATION OF THE FACTS AND EVIDENCE WHEN IT AFFIRMED THE AWARD OF TOTAL AND PERMANENT DISABILITY BENEFITS, SICKNESS ALLOWANCE, AND REIMBURSEMENT OF MEDICAL EXPENSES DESPITE THE FOLLOWING:

a.1 Malicious concealment of a past mental disorder is fraudulent misrepresentation. Under express provisions of the governing POEA Contract, fraudulent misrepresentation of a past medical condition disqualifies a seafarer from any contractual benefits and claims [sic].

a.2 Work-relation must be proved by substantial evidence. Convenient allegations cannot justify a claim for disability benefits. In the present case, respondent's allegations that his mental breakdown was due to the maltreatment of Second Officer Dayo is a falsity as the latter had already been signed-off prior to the material period. Work-relation is therefore absent and the claim is not compensable.

a.3 Notwithstanding the above, respondent was provided necessary treatment until he was declared fit to work, a fact he himself confirmed and never disputed for almost two (2) years. Clearly

therefore, petitioners can no longer be rendered liable for respondent's subsequent mental condition.

B. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN AFFIRMING THE AWARD OF DAMAGES AND ATTORNEY'S FEES DESPITE ABSENCE OF ANY FINDING OR DISCUSSION SHOWING BAD FAITH OR MALICE ON THE PART OF PETITIONERS.[37]

By Godinez as petitioner in G.R. No. 206828

THE LONE ISSUE BEING RAISED BY THE PETITIONER IN THIS CASE IS WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN MODIFYING AND REDUCING THE AMOUNT OF DAMAGES.[38]

The Parties' Respective Arguments

In G.R. No. 206826. In their Petition and Reply,[39] Career and Columbian insist that Godinez's failure to disclose his past medical record amounts to fraudulent concealment which disqualifies him from receiving the benefits and claims he seeks; that it was erroneous for the CA to simply assume that this fact merely slipped Godinez's mind during the PEME; that the PEME itself contained a certification, which Godinez read and signed, that any false statement made therein shall disqualify him from any benefits and claims; that Godinez's condition is not work-related; that Dayo's alleged maltreatment is not supported by any other evidence, such as written statements of other crewmembers; that on the contrary, it has been sufficiently shown that Dayo was no longer aboard the vessel during the period that Godinez claims Dayo maltreated him; that it has been opined and certified by the company-designated medical facility in a February 6, 2004 medical report that Godinez's illness is not an occupational disease, but a mere symptom of genetic defects, developmental problems, and psychological stresses; that even assuming that Godinez's misrepresentation is excusable and

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[37] *Id*. at 59-60.

[38] *Rollo*, G.R. No. 206828, p. 43.

[39] *Id*., G.R. No. 206826, pp. 708-720.

his illness is work-related, he was nonetheless afforded full medical treatment and was cured and declared fit for work by the company-designated medical facility in a March 12, 2004 medical progress report; that Godinez himself declared that he was cured and fit for work by way of his March 12, 2004 Certificate of Fitness for Work; and, that Dellosa's February 27, 2006 Medical Certificate/Psychiatric Report actually declared that Godinez was fit for work.

As for the other monetary awards, Career and Columbian argue that moral and exemplary damages may not be awarded to Godinez, absent malice and bad faith on their part. On the award of attorney's fees, they claim that this must be deleted as well, since they are not at fault and did not conduct themselves in bad faith and with malice. Thus, they pray that the assailed CA dispositions be reversed and set aside; that Godinez's labor case be ordered dismissed; and that he be ordered to return the amount of ₱4,105,276.07 which was advanced to him by virtue of a premature execution of the judgment award.

In his Comment[40] seeking denial of the Petition and reinstatement of the NLRC's April 30, 2008 Decision, Godinez reiterates that his illness is compensable as it is work-related; that there is no fraudulent concealment on his part; that permanent and total disability has been shown to exist and was caused and triggered by the harsh and cruel treatment he received while aboard "M/V Norviken," as well as by conditions of work, such as "confined living quarters, motion of the ship, exposure to varied climatic conditions, lack of stability in hours [of] work, noise and vibrations from engines and equipment, exposure to irritant substances, inadequate nutrition, overheated surroundings and inadequate physical work combined with monotony and mental stress resulting from larger and more automated vessels, x x x seasickness x x x unsuitable [food] and water supplies on board, improper eating habits, and intemperate behavior while ashore,"[41]

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[40] *Id*. at 673-688.

[41] *Id*. at 675; citing the *International Labor Organization Encyclopedia of Occupational Health and Safety*, Volume 2, Third Edition, 1989, pp. 1330-1331.

and psychosocial factors and stressors in the work environment, such as "role ambiguity, role conflicts, discrimination, supervisor-supervisee conflicts, work overload, and work setting [which are] associated with greater susceptibility to stress-related illness, tardiness, absenteeism, poor performance, depression, anxiety, and other psychological distress;"[42] that there was no categorical declaration by the company-designated physician that he is cured and fit for work; that the certificate of fitness for work he was made to execute is null and void as it was forced upon him at a time of financial and emotional distress, and he was made to believe falsely that after its execution, he may once more work for Career and Columbian; that his medical expenses should be reimbursed in full; that while the CA did not err in affirming the award of moral and exemplary damages, it was not correct in reducing them, considering the fraudulent and malicious manner in which Career and Columbian conducted themselves in the proceedings, in trying to avoid liability and deny medical assistance to him and sacrificing the welfare of their employees for the sake of keeping and protecting their profits; and, that as a result of the cruel and inhuman treatment he received at work, he is now condemned to a lifetime of maintenance medication consisting of mood stabilizers and other medicines, under pain of relapse.

G.R. No. 206828. In his Petition and Reply,[43] Godinez essentially reproduces and reiterates the issues and arguments contained in his Comment to the Petition in G.R. No. 206826.

In their Comment,[44] Career and Columbian essentially reproduce and replead the allegations, arguments, and relief sought in their Petition in G.R. No. 206826, apart from seeking the denial of the Petition in G.R. No. 206828. They, however, reiterate that in dealing with Godinez, they were not motivated by bad faith, malice, or ill will; nor did they act in a manner that is contrary to morals, good customs, or public policy.

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[42] *Id*. at 675-676; citing Levi, Frandenhacuser and Gardell 1986; Sutherland and Cooper 1988.

[43] *Rollo*, G.R. No. 206828, pp. 177-187.

[44] *Id*. at 143-158.

Our Ruling

We find for Godinez.

Workers are not robots built simply for labor; nor are they machines that may be turned on or off at will; not objects that are conveniently discarded when every ounce of efficiency and utility has been squeezed out of them; not appliances that may be thrown away when they conk out. They are thinking and feeling beings possessed of humanity and dignity, worthy of compassion, understanding, and respect.

Defense of Fraudulent Concealment

It is claimed that Godinez concealed his past medical history when he failed to disclose during the PEME that when he was 15, he suffered from insomnia and paranoia for which he sought psychiatric evaluation and management. This is based on an unsigned document, an Initial Medical Report, containing a supposed admission by Godinez that he was treated in the past for insomnia and paranoia. However, this unsigned report cannot have any evidentiary value, as it is self-serving and of dubious character. In *Asuncion v. National Labor Relations Commission*,[45] the Court disregarded unsigned listings and computer printouts presented in evidence by the employer to prove its employee's absenteeism and tardiness. It was held therein that –

> In the case at bar, there is a paucity of evidence to establish the charges of absenteeism and tardiness. We note that the employer company submitted mere handwritten listing and computer print-outs. The handwritten listing was not signed by the one who made the same. As regards the print-outs, while the listing was computer generated, the entries of time and other annotations were again handwritten and unsigned.
>
> We find that the handwritten listing and unsigned computer print-outs were **unauthenticated** and, hence, **unreliable**. **Mere self-serving**

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[45] 414 Phil. 329, 337 (2001). In this case, the Court also cited *Jarcia Machine Shop and Auto Supply, Inc. v. National Labor Relations Commission*, 334 Phil. 84 (1997), where unsigned daily time records presented to prove the employee's neglect of duties were held incompetent.

evidence of which the listing and print-outs are of that nature should be rejected as evidence without any rational probative value even in administrative proceedings. x x x (Emphasis supplied)

Thus, there could be no fraudulent concealment on Godinez's part.

Even if it is true that Godinez suffered from insomnia and paranoia and he failed to disclose this fact, we do not believe that the omission was intentional and fraudulent. As the labor tribunals and the CA correctly opined, the fact may have simply "slipped his mind considering the passage of time"[46] since his bout with insomnia and paranoia occurred when he was only 15 years old. Given his age, innocence, and lack of experience at the time he was applying for work with Career, one is not quick to assume that Godinez was capable of deception or prevarication; as a young boy breaking into the world and facing the prospect of serious honest work for the first time in his life, it can be said that he innocently believed this fact to be unimportant and irrelevant. In any event, Career and Columbian's defense is grounded on Section 20(E) of the POEA contract which, to be applicable, requires that the seafarer must *knowingly* conceal his past medical condition, disability, and history. This cannot apply in Godinez's case. If he were a seasoned and experienced seafarer, this Court would have viewed his failure to disclose in a different way.

Nature and Cause of Godinez's Illness

On the other hand, the Court believes that Godinez was unjustifiably maltreated by his superior, 2nd Officer Dayo, who, according to the former in his Position Paper below —

x x x suddenly became irritated and angry at the complainant x x x, ordered and forced complainant to clean the toilets as punishment instead of performing his regular functions and duties on board as watch on the bridge. Then, Second Officer Dayo became rude to him, always finding fault in him, humiliating him or giving him conflicting orders such as cleaning all the toilets instead of performing

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[46] *Rollo*, G.R. No. 206826, p. 350.

the look-out job which he regularly performed from 12:00 P.M. – 16:00 P.M. and 00:00 – 04:00 A.M. In every instance when there is an opportunity to accuse him, Second Officer Dayo would snap at him, nag him and shout to him in front of everyone while the poor complainant cadet was performing his four-hour watch job. In other words, these harrowing experiences became regular. Such daily and regular acts of harassment by the said Second Officer took its toll on the emotional and psychological health of the complainant. He was traumatized and it had become so unbearable for him to continue working.

Regularly, from 00:00 (Midnight) to 04:00 A.M., complainant was regularly not allowed to prepare his food for breakfast and snacks. Because of this, he starved and he became weak. As a result, he became mentally and physically weak during his regular four (4) [-]hour watch. Furthermore, having experienced insults, verbal abused [sic], humiliation, pressures and stress during his three-day ordeal with his indifferent supervisor Second Officer Dayo, complainant suffered trauma and anxiety attacks during the period from December 21 to December 25, 2003 x x x.[47]

When Godinez applied for work with Career, he was an innocent boy of 20; his stint with Career would be his very first employment as a seafarer onboard an ocean-going vessel.[48] He was lacking in experience and knowledge, yet full of innocence, dreams, idealism, positive expectations, enthusiasm, and optimism. All these were shattered by his horrible experience onboard the "M/V Norviken," under the hands of Dayo, who unnecessarily exposed the young, inexperienced, and innocent boy to a different reality, a cruel one, and robbed him of the positive expectations and dreams he had coming to his very first job as a seafarer. His uncalled for cruelty broke the heart and spirit of this fledgling until he could no longer take it. The conditions of work, the elements, the environment, the fear and loneliness, the strange surroundings, and the unnecessary cruelty and lack of understanding and compassion of his immediate superior, the weight of all these was too much for

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[47] *Id*. at 247.

[48] *Id*. at 188, 219.

the young man to handle. Like a tender twig in a vicious storm, he snapped.

To complicate matters, Godinez was never given medical care onboard as soon as he became ill. The December 24 and 25, 2003 reports of the vessel master, Capt. Vicente A. Capero, sent to Career prove that even as Godinez was already exhibiting the symptoms of a nervous breakdown, his superiors and the crew provided no medical intervention or support. Instead, they ignored him as he wandered aimlessly half-naked around the ship; simply watched him make a fool of himself in front of his peers; and allowed him to precariously roam the ship even as it became evident that he was becoming a danger to himself, the crew, and the ship. In short, he was treated like a stray dog, whose presence is merely condoned. The vessel master's reaction was not reassuring either: instead of exhibiting compassion and providing needed care, he could not wait to expel Godinez from the ship, because the poor boy's strange behavior was starting to get on his nerves. We quote him, thus:

> In this condition of him which x x x is getting [worse everyday], **I strongly oppose his presence on board**. **I want him to be disembarked immediately** on arrival. He is now resisting orders, he [doesn't] listen to the officers and to his escort. This endanger[s] the safety of all crew on board and the vessel especially during transit and maneuvering. **All my patience is over now**.[49] (Emphasis supplied)

The confluence of all these, the inhumane treatment inflicted upon this green, fragile, and innocent fledgling; the harsh environment and conditions of work he was exposed to for the very first time in his young life; the indifference of his superiors despite realizing what was happening to him; and the utter lack of a professional and medical response to the boy's progressing medical condition, led to the complete breakdown of Godinez's body, mind, and spirit.

The Court concludes that Godinez's grave illness was directly caused by the unprofessional and inhumane treatment, as well

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[49] *Id*. at 224.

as the physical, psychological, and mental abuse inflicted upon him by his superiors, aggravated by the latter's failure and refusal to provide timely medical and/or professional intervention, and their neglect and indifference to his condition even as it was deteriorating before their very eyes.

The Court does not subscribe to the defense that Dayo could not have committed the acts attributed to him as he was medically repatriated on November 29, 2003 due to chronic gastritis, hyperlipidemia and hypercholesteremia. The only evidence presented to substantiate his claimed repatriation consist of: 1) a November 21, 2003 Medical Examination Report issued by a doctor in Japan,[50] and 2) an Initial Medical Report dated February 3, 2004 issued by Sachly's Salvador.[51] However:

1. The **November 21, 2003** Medical Examination Report contains a recommendation for Dayo to consult a "doctor for more detailed exams and further treatment at the patient's home country **3 months later**."[52] The second medical report **coincides** with the first, being dated **February 3, 2004**, or nearly three months after November 21, 2003, meaning that Dayo must have followed the Japanese doctor's advice and indeed consulted Sachly nearly three months after he consulted with the latter. It can only be that before that time, February 3, 2004, Dayo remained onboard "M/V Norviken".

2. If Dayo was truly repatriated on November 29, 2003, experience and logic dictate that he should have, pursuant to the provisions of the standard POEA contract, submitted himself to a post-employment medical examination by a company-designated physician within three working days upon his return, because his failure to comply with such mandatory examination shall result in the forfeiture of his benefits. Yet it appears that he only presented himself for post-employment medical examination on February 3, 2004. Given that he was then

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[50] *Id*. at 315.

[51] *Id*. at 316.

[52] *Id*. at 315.

suffering from serious illnesses, chronic gastritis, hyperlipidemia and hypercholesteremia, and his failure to timely submit himself for examination would result in the forfeiture of his benefits, it cannot be believed that he consulted with Sachly only on February 3, 2004.

3. An examination of Salvador's signature affixed on the February 3, 2004 medical report would indeed lead Us to the conclusion that it is materially different from her customary signature affixed on the five medical reports she issued in this case and on the Certificate of Fitness for Work executed by Godinez, where she signed as witness.

The Court thus concludes that Dayo was not repatriated on November 29, 2003; he remained as part of the "M/V Norviken" crew, which leads us to the allegations of Godinez that he was maltreated and harassed by Dayo, which, apart from being credible, necessarily remain unrefuted by Career and Columbian on account of their insistence upon the sole defense that Dayo was not on board during the time that Godinez claims he was maltreated.

In *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.*,[53] the Court declared that work-connected mental illnesses or disorders are compensable, thus:

> As to the basic issue raised herein, the CA confined the resolution of the dispute to the enumerated list of injuries under the category 'HEAD' per Appendix 1 of the old POEA Standard Employment Contract, and ruled that only those injuries that are 'traumatic' shall be considered compensable. The CA ratiocinated that '[B]ecause the enumeration of head injuries listed under the category of **HEAD** includes only those mental conditions or illnesses caused by external or physical force,' it follows that mental disorders which are not the direct consequence or effect of such external or physical force were not intended by law to be compensable. And while the CA gives judicial emphasis to the word 'traumatic,' it did not bother to explain why petitioner's illness, classified as schizophrenia, should not be considered 'traumatic' and compensable. x x x

[53] 537 Phil. 897, 912-916 (2006).

x x x x x x x x x

As it were, the foregoing observation of the appellate court contradicts both the ruling of the Labor Arbiter and the NLRC. In its decision, the labor arbiter states:

> [Petitioner's] disability is total and permanent. He worked with respondent INC in another vessel to finish his contract. Respondent INC was satisfied with [petitioner's] efficiency and hard work that when the very first opportunity where a vacancy occur[red, petitioner] was immediately called to [join] the vessel MV Olandia.
>
> Barely two and a half months after joining MV Olandia, the misery and mental torture he suffered totally disabled him. The supporting medical certification issued by a government physician/hospital and by another expert in the field of psychiatry, respectively find him suffering from psychosis and schizophrenia which under the OWWA impediment classification falls under Grade I-A (Annex C/ Complaint). Under the POEA Revised Standard Employment Contract, the employment of all Filipino Seamen on board ocean-going vessel, particularly appendix 1-A, Schedule of Disability Allowances, Impediment Grade 1, the disability allowance is maximum rate multiplied by 120%

The above findings of the Labor Arbiter were seconded by the NLRC in this wise:

> Likewise bereft of scant consideration is Respondents' argument that psychosis or schizophrenia is not compensable, claiming that such mental disorder does not result from traumatic head injury which contemplates accidents involving physical or head contacts. **There is nothing in the Standard Terms and Conditions governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels, particularly Section 30, thereof, that specifically states that traumatic head injury contemplates accidents involving physical or head contacts. Notably, The New Britannica-Webster Dictionary & Reference Guide, Copyright 1988 by Encyclopedia Britannica, Inc. defines the word injure as '1: an act that damages or hurts: WRONG 2: hurt, damage, or loss sustained.' Here, said dictionary does not specifically state that the hurt, damage, or loss sustained should be**

> **physical in nature, hence, the same may involve mental or emotional hurt, damage or loss sustained. Further, said dictionary defines the word trauma as 'a: a bodily injury caused by a physical force applied from without; b: a disordered psychic or behavioral state resulting from stress or injury.' From the above definitions, it is patent that 'traumatic head injury' does not only involve physical damage but mental or emotional damage as well.** Respondents' argument that [petitioner's] co-seaman belied the claimed harassment is bereft of merit. Suffice it to state that [petitioner's] illness occurred during the term of his employment contract with them, hence, respondents are liable therefor.

The above findings of the NLRC are in recognition of the emotional turmoil that petitioner experienced in the hands of the less compassionate German officers. This Court has ruled that schizophrenia is compensable. In *NFD International Manning Agents, Inc. v. NLRC*,[54] the Court went further by saying:

> Strict rules of evidence, it must be remembered, are not applicable in claims for compensation and disability benefits. Private respondent having substantially established the causative circumstances leading to his permanent total disability to have transpired during his employment, we find the NLRC to have acted in the exercise of its sound discretion in awarding permanent total disability benefits to private respondent. Probability and not the ultimate degree of certainty is the test of proof in compensation proceedings.

The findings of both the Labor Arbiter and the NLRC as well as the records of the case convince the Court that petitioner's claim is substantiated by enough evidence to show that his disability is permanent and total. *First*, there is the medical findings of the Philippine General Hospital that petitioner is down with psychosis; to consider paranoid disorder, making it extremely difficult for him to return to shipboard action; and *second*, the findings of the Social Benefits Division of the Overseas Workers Welfare Administration through its attending doctor Leonardo Bascar, that petitioner is suffering from 'schizophrenic form disorder.'

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[54] 336 Phil. 466 (1997).

Time and again, the Court has consistently ruled that *disability should not be understood more on its medical significance but on the loss of earning capacity*. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that she was trained for or accustomed to perform, or any kind of work which a person of her mentality and attainment could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.

Lastly, it is right that petitioner be awarded moral and exemplary damages and attorney's fees. Article 2220 of the Civil Code provides:

> Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Here, petitioner's illness and disability were the direct results of the demands of his shipboard employment contract and the harsh and inhumane treatment of the officers on board the vessel Olandia. For no justifiable reason, respondents refused to pay their contractual obligations in bad faith. Further, it cannot be gainsaid that petitioner's disability is not only physical but mental as well because of the severe depression, mental torture, anguish, embarrassment, anger, sleepless nights and anxiety that befell him. To protect his rights and interest, petitioner was constrained to institute his complaint below and hire the services of an attorney. (Emphasis supplied)

Permanent and Total Disability, Benefits and Medical Expenses

The Court finds as well that Godinez suffered permanent total disability, as there has been no definite medical assessment by the company-designated physician regarding his condition – even up to now. "The company-designated doctor is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine [the degree of] his disability within a period of 120 or 240 days from repatriation, [as the case may be. If after the lapse of the 120/240-day period the seafarer

remains incapacitated and the company-designated physician has not yet declared him fit to work or determined his degree of disability,] the seafarer is deemed totally and permanently disabled."[55]

The defense that Godinez was cured and became fit for work is founded on an **unsigned** March 12, 2004 Medical Progress Report (Annex "M" of Career and Columbian's Position Paper[56]) stating that Godinez was "asymptomatic and doing well with no recurrence of depressive episodes;"[57] that Godinez "verbalized a feeling of wellness;"[58] that his "[v]ital signs were stable;"[59] that he was in a "euthymic mood, and is able to sleep and eat well;"[60] and that he was "found to be functionally stable at present."[61] Being unsigned, it has no evidentiary value as well, just like the January 10, 2004 Initial Medical Report containing Godinez's supposed admission to a past history of mental illness. Indeed, even the Labor Arbiter must have noted that this January 10, 2004 medical report was unsigned, as it was not considered in the comparison of Salvador's customary signature and that appearing on the Initial Medical Report dated February 3, 2004 utilized by Career and Columbian to prove Dayo's alleged repatriation on November 29, 2003.[62]

Neither can the Certificate of Fitness for Work executed by Godinez serve as proof of his state of health. He is not a trained physician; his declaration is not competent and cannot take the place of the company-designated physician's assessment required

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[55] *Magsaysay Maritime Corporation v. Cruz*, G.R. No. 204769, June 6, 2016, 792 SCRA 344, 356.

[56] *Rollo*, G.R. No. 206826, p. 231.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.* at 347.

by law and the POEA contract. Nor can Salvador's signature as witness on the certificate validate the document or be considered as substitute for the legally required medical assessment; quite the contrary, it proves her unethical and unprofessional conduct. As the Medical Coordinator of Sachly and the officer who customarily signs the medical reports issued in Godinez's case, it was fundamentally improper for her not to have signed the Medical Progress Report issued by her employer on March 12, 2004, and yet participate as witness in Godinez's certificate, executed on that very same day to boot.

On the matter of medical expenses, this Court finds nothing irregular in the CA's finding that the amount awarded must be reduced on account of failure to substantiate. An examination of the evidence supports the view that some of the claimed expenses were not actually supported by the necessary receipts. In the determination of actual damages, "[c]redence can be given only to claims which are duly supported by receipts."[63]

Fabricated Evidence and Underhanded Tactics

This Court notes that Career, Columbian, and their counsel-of-record, have submitted documents of dubious nature and content; inadmissible in evidence and oppressive to the cause of labor; and condoned a licensed physician's unethical and unprofessional conduct.

For this case, they submitted no less than four (4) dubious and irregular pieces of evidence. **First** of all, the January 10, 2004 *unsigned* Initial Medical Report where Godinez is claimed to have admitted to a history of insomnia and paranoia. The **second** is the March 12, 2004 Medical Progress Report, also *unsigned*, which supposedly contains a physician's certification that Godinez was cured or fit for work. The **third** is the March 12, 2004 Certificate of Fitness for Work, a prepared blank form which Godinez merely filled up and signed, which, given the

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[63] *OMC Carriers, Inc. v. Spouses Nabua*, 636 Phil. 634, 650 (2010).

surrounding circumstances, shows that it was prepared by them and not by Godinez. And **fourth** is the falsified Initial Medical Report dated February 3, 2004 containing an express declaration that Dayo was medically repatriated on November 29, 2003.

The execution of the "Certificate of Fitness for Work" is inherently absurd in light of the fact that Godinez is not a doctor and also considering the legal requirement that only a licensed physician may issue such certification. It is a ploy that aims to take advantage of the worker's lack of sufficient legal knowledge and his desperate circumstances.

Indeed, the impression generated by the absence of Salvador's signature on the March 12, 2004 Medical Progress Report, and her consenting to sign as witness to Godinez's Certificate of Fitness for Work instead, is that Salvador refused to certify that Godinez's condition had been cured or had improved. But somehow, she was prevailed upon to affix her signature just the same, but only as witness to Godinez's Certificate of Fitness for Work, which must have been the final concession she was willing to make, but an unethical and unprofessional one nonetheless. By what she did, she was hiding, as witness, under the cloak of Godinez's own admission that he was already well, hoping and expecting that any tribunal, *including this Court*, possibly gullible or unthinking, might be duped into believing that her signature should lend credibility to Godinez's certification.

Thus, this Court warns against the continued use of underhanded tactics that undermine the interests of labor, damages the integrity of the legal profession, mock the judicial process as a whole, and insult the intelligence of this Court. In prosecuting a client's case, there are multiple ways of securing victory, other than through fabrication, prevarication, and guile.

Evident Malice and Bad Faith

It has become evident, without need of further elaboration, that in dealing with Godinez and in prosecuting their case, Career

and Columbian acted in evident malice and bad faith thus entitling Godinez to an award of moral and exemplary damages.

Not only was Godinez's illness caused directly by his employment, as a result of unnecessary cruelty on the part of the officers aboard Columbian's ship; there was also failure and refusal to properly and professionally address his condition until it became worse; and lack of compassion and understanding on the part of the ship's officers in failing to consider that Godinez was an innocent young man who was on his very first assignment onboard an ocean-going vessel, and in treating him inhumanely even as it became evident that he was already gravely afflicted. The manner in which Godinez was dealt with in these proceedings evinces a perverse attempt to evade liability by fabricating evidence and utilizing objectionable and oppressive means and schemes to secure victory. It constitutes an affront, not only to this Court, but to all honest workingmen earning a living through hard work and risking their lives for their families.

WHEREFORE, the Court resolves to **DENY** the Petitions in G.R. No. 206826 and G.R. No. 206828. The May 22, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 105602 is **AFFIRMED WITH MODIFICATION**, in that **INTEREST** is hereby imposed upon the total monetary award at the rate of six percent (6%) per annum from the date of finality of this judgment until full satisfaction.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.,* concur.

SECOND DIVISION

[G.R. No. 214866. October 2, 2017]

APEX BANCRIGHTS HOLDINGS, INC., LEAD BANCFUND HOLDINGS, INC., ASIA WIDE REFRESHMENTS CORPORATION, MEDCO ASIA INVESTMENT CORPORATION, ZEST-O CORPORATION, HARMONY BANCSHARES HOLDINGS, INC., EXCALIBUR HOLDINGS, INC., and ALFREDO M. YAO, *petitioners, vs.* **BANGKO SENTRAL NG PILIPINAS and PHILIPPINE DEPOSIT INSURANCE CORPORATION**, *respondents.*

SYLLABUS

1. COMMERCIAL LAW; BANKS AND BANKING; THE NEW CENTRAL BANK ACT (RA 7653); SECTION 30 THEREOF DOES NOT REQUIRE THE MONETARY BOARD TO MAKE AN INDEPENDENT DETERMINATION OF WHETHER A BANK MAY STILL BE REHABILITATED OR NOT.— As correctly held by the CA, nothing in Section 30 of RA 7653 requires the BSP, through the Monetary Board, to make an independent determination of whether a bank may still be rehabilitated or not. As expressly stated in the afore-cited provision, once the receiver determines that rehabilitation is no longer feasible, the Monetary Board is simply obligated to: (*a*) notify in writing the bank's board of directors of the same; (*b*) direct the PDIC to proceed with liquidation[.] x x x Suffice it to say that if the law had indeed intended that the Monetary Board make a separate and distinct factual determination before it can order the liquidation of a bank or quasi-bank, then there should have been a provision to that effect. There being none, it can safely be concluded that the Monetary Board is not so required when the PDIC has already made such determination. It must be stressed that the BSP (the umbrella agency of the Monetary Board), in its capacity as government regulator of banks, and the PDIC, as statutory receiver of banks under RA 7653, are the principal agencies mandated by law to determine the financial viability of banks

and quasi-banks, and facilitate the receivership and liquidation of closed financial institutions, upon a factual determination of the latter's insolvency.

2. ID.; ID.; THE MONETARY BOARD DID NOT GRAVELY ABUSE ITS DISCRETION IN ORDERING THE LIQUIDATION OF EXPORT AND INDUSTRY BANK (EIB) THROUGH ISSUANCE OF ITS RESOLUTION NO. 571.— [T]he Monetary Board's issuance of Resolution No. 571 ordering the liquidation of EIB cannot be considered to be tainted with grave abuse of discretion as it was amply supported by the factual circumstances at hand and made in accordance with prevailing law and jurisprudence. To note, the "actions of the Monetary Board in proceedings on insolvency are explicitly declared by law to be 'final and executory.' They may not be set aside, or restrained, or enjoined by the courts, except upon 'convincing proof that the action is plainly arbitrary and made in bad faith,'" which is absent in this case.

APPEARANCES OF COUNSEL

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Office of the Government Corporation for respondent PDIC.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioners Apex Bancrights Holdings, Inc., Lead Bancfund Holdings, Inc, Asia Wide Refreshments Corporation, Medco Asia Investment Corporation, Zest-O Corporation, Harmony Bancshares Holdings, Inc., Excalibur Holdings, Inc., and Alfredo

[1] *Rollo,* pp. 49-90.

M. Yao (petitioners) assailing the Decision[2] dated January 21, 2014 and the Resolution[3] dated October 10, 2014 of the Court of Appeals in CA-G.R. SP No. 129674, which affirmed Resolution No. 571 dated April 4, 2013 of the Monetary Board of respondent *Bangko Sentral ng Pilipinas* (BSP) ordering the liquidation of the Export and Industry Bank (EIB).

The Facts

Sometime in July 2001, EIB entered into a three-way merger with Urban Bank, Inc. (UBI) and Urbancorp Investments, Inc. (UII) in an attempt to rehabilitate UBI which was then under receivership.[4] In September 2001, following the said merger, EIB itself encountered financial difficulties which prompted respondent the Philippine Deposit Insurance Corporation (PDIC) to extend financial assistance to it. However, EIB still failed to overcome its financial problems, thereby causing PDIC to release in May 2005 additional financial assistance to it, conditioned upon the infusion by EIB stockholders of additional capital whenever EIB's adjusted Risk Based Capital Adequacy Ratio falls below 12.5%. Despite this, EIB failed to comply with the BSP's capital requirements, causing EIB's stockholders to commence the process of selling the bank.[5]

Initially, Banco de Oro (BDO) expressed interest in acquiring EIB. However, certain issues derailed the acquisition, including BDO's unwillingness to assume certain liabilities of EIB, particularly the claim of the Pacific Rehouse Group against it. In the end, BDO's acquisition of EIB did not proceed and the latter's financial condition worsened. Thus, in a letter[6] dated April 26, 2012, EIB's president and chairman voluntarily turned-

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[2] *Id*. at 9-29. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Magdangal M. De Leon and Stephen C. Cruz, concurring.

[3] *Id*. at 43-47.

[4] See *id*. at 54 and 215.

[5] *Id*. at 11.

[6] *Id*. at 302.

over the full control of EIB to BSP, and informed the latter that the former will declare a bank holiday on April 27, 2012.[7]

On April 26, 2012, the BSP, through the Monetary Board, issued Resolution No. 686[8] prohibiting EIB from doing business in the Philippines and placing it under the receivership of PDIC, in accordance with Section 30 of Republic Act No. (RA) 7653, otherwise known as "The New Central Bank Act."[9] Accordingly, PDIC took over EIB.[10]

In due course, PDIC submitted its initial receivership report to the Monetary Board which contained its finding that EIB can be rehabilitated or permitted to resume business; ***provided***, that a bidding for its rehabilitation would be conducted, and that the following conditions would be met: (*a*) there are qualified interested banks that will comply with the parameters for rehabilitation of a closed bank, capital strengthening, liquidity, sustainability and viability of operations, and strengthening of bank governance; and (*b*) all parties (including creditors and stockholders) agree to the rehabilitation and the revised payment terms and conditions of outstanding liabilities.[11] Accordingly, the Monetary Board issued Resolution No. 1317 on August 9, 2012 noting PDIC's initial report, and its request to extend the period within which to submit the final determination of whether or not EIB can be rehabilitated. Pursuant to the rehabilitation efforts, a public bidding was scheduled by PDIC on October 18, 2012, but the same failed as no bid was submitted. A re-bidding was then set on March 20, 2013 which also did not materialize as no bids were submitted.[12]

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[7] *Id*. at 11.

[8] See BSP Memorandum No. M-2012-022 dated April 26, 2012 issued by Deputy Governor Nestor A. Espenilla, Jr.

[9] Approved on June 14, 1993.

[10] *Rollo*, p. 12.

[11] See *id*.

[12] See *id*. at 12-13.

On April 1, 2013, PDIC informed BSP that EIB can hardly be rehabilitated.[13] Based on PDIC's report that EIB was insolvent, the Monetary Board passed Resolution No. 571 on April 4, 2013 directing PDIC to proceed with the liquidation of EIB.[14]

On April 29, 2013, petitioners, who are stockholders representing the majority stock of EIB,[15] filed a petition for *certiorari*[16] before the CA challenging Resolution No. 571. In essence, petitioners blame PDIC for the failure to rehabilitate EIB, contending that PDIC: (*a*) imposed unreasonable and oppressive conditions which delayed or frustrated the transaction between BDO and EIB; (*b*) frustrated EIB's efforts to increase its liquidity when PDIC disapproved EIB's proposal to sell its MRT bonds to a private third party and, instead, required EIB to sell the same to government entities; (*c*) imposed impossible and unnecessary bidding requirements; and (*d*) delayed the public bidding which dampened investors' interest.[17]

In defense, PDIC countered[18] that petitioners were already estopped from assailing the placement of EIB under receivership and its eventual liquidation since they had already surrendered full control of the bank to the BSP as early as April 26, 2012.[19] For its part, BSP maintained[20] that it had ample factual and legal bases to order EIB's liquidation.[21]

The CA Ruling

In a Decision[22] dated January 21, 2014, the CA dismissed the petition for lack of merit. It ruled that the Monetary Board

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[13] *Id*. at 13.

[14] *Id*.

[15] See *id*. at 157-159.

[16] Dated April 26, 2013. *Id*. at 156-183.

[17] See *id*. at 171-174. See also *id*. at 13-14.

[18] See comment dated June 3, 2013; *id*. at 475-509.

[19] See *id*. at 493.

[20] See Comment/Opposition dated June 10, 2013; *id*. at 561-575.

[21] *Id*. at 562. See also *id*. at 24.

[22] *Id*. at 9-29.

did not gravely abuse its discretion in ordering the liquidation of EIB pursuant to the PDIC's findings that the rehabilitation of the bank is no longer feasible. In this regard, the CA held that there is nothing in Section 30 of RA 7653 that requires the Monetary Board to make its own independent factual determination on the bank's viability before ordering its liquidation. According to the CA, the law only provides that the Monetary Board "shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution,"[23] which it did in this case.

Undaunted, petitioners moved for reconsideration[24] which was, however, denied by the CA in its Resolution[25] dated October 10, 2014; hence, this petition.

The Issue Before the Court

The sole issue before the Court is whether or not the CA correctly ruled that the Monetary Board did not gravely abuse its discretion in issuing Resolution No. 571 which directed the PDIC to proceed with the liquidation of EIB.

The Court's Ruling

The petition is without merit.

Section 30 of RA 7653 provides for the proceedings in the receivership and liquidation of banks and quasi-banks, the pertinent portions of which read:

> Section 30. *Proceedings in Receivership and Liquidation.* – Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:
>
> (a) is unable to pay its liabilities as they become due in the ordinary course of business: *Provided*, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

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[23] *Id.* at 28.

[24] See motion for reconsideration dated February 11, 2014; *id.* at 30-41.

[25] *Id.* at 43-47.

(b) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, **the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution**.

x x x x x x x x x

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court x x x[.]

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

x x x x x x x x x

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for *certiorari* may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation

of a conservator is not a precondition to the designation of a receiver. (Emphases and underscoring supplied)

It is settled that "[t]he power and authority of the Monetary Board to close banks and liquidate them thereafter when public interest so requires is an exercise of the police power of the State. Police power, however, is subject to judicial inquiry. It may not be exercised arbitrarily or unreasonably and could be set aside if it is either capricious, discriminatory, whimsical, arbitrary, unjust, or is tantamount to a denial of due process and equal protection clauses of the Constitution."[26] Otherwise stated and as culled from the above provision, the actions of the Monetary Board shall be final and executory and may not be restrained or set aside by the court except on petition for *certiorari* on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. "There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism."[27]

In line with the foregoing considerations, the Court agrees with the CA that the Monetary Board did not gravely abuse its discretion in ordering the liquidation of EIB through its Resolution No. 571.

To recount, after the Monetary Board issued Resolution No. 686 which placed EIB under the receivership of PDIC, the latter submitted its initial findings to the Monetary Board, stating that EIB can be rehabilitated or permitted to resume business; ***provided***, that a bidding for its rehabilitation would be conducted, and that the following conditions would be met: (*a*) there are qualified

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[26] *Miranda v. PDIC*, 532 Phil. 723, 730 (2006), citing *Banco Filipino Savings and Mortgage Bank v. Monetary Board*, G.R. Nos. 70054, 68878, 77255-58, 78766, 78767, 78894, 81303, 81304, 90473, December 11, 1991, 204 SCRA 767, 798.

[27] *City of General Santos v. Commission on Audit*, 733 Phil. 687, 697 (2014).

interested banks that will comply with the parameters for rehabilitation of a closed bank, capital strengthening, liquidity, sustainability and viability of operations, and strengthening of bank governance; and (*b*) all parties (including creditors and stockholders) agree to the rehabilitation and the revised payment terms and conditions of outstanding liabilities.[28] However, the foregoing conditions for EIB's rehabilitation "were not met because the bidding and re-bidding for the bank's rehabilitation were aborted since none of the pre-qualified Strategic Third Party Investors (STPI) submitted a letter of interest to participate in the bidding,"[29] thereby resulting in the PDIC's finding that EIB is already insolvent and must already be liquidated – a finding which eventually resulted in the Monetary Board's issuance of Resolution No. 571.

In an attempt to forestall EIB's liquidation, petitioners insist that the Monetary Board must first make its own independent finding that the bank could no longer be rehabilitated – instead of merely relying on the findings of the PDIC – before ordering the liquidation of a bank.[30]

Such position is untenable.

As correctly held by the CA, nothing in Section 30 of RA 7653 requires the BSP, through the Monetary Board, to make an independent determination of whether a bank may still be rehabilitated or not. As expressly stated in the afore-cited provision, once the receiver determines that rehabilitation is no longer feasible, the Monetary Board is simply obligated to: (*a*) notify in writing the bank's board of directors of the same; and (*b*) direct the PDIC to proceed with liquidation, *viz.*:

> If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. x x x.

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[28] *Rollo*, p. 12.

[29] *Id.* at 27.

[30] See *id.* at 24. See also *id.* at 79-88.

x x x x x x x x x[31]

Suffice it to say that if the law had indeed intended that the Monetary Board make a separate and distinct factual determination before it can order the liquidation of a bank or quasi-bank, then there should have been a provision to that effect. There being none, it can safely be concluded that the Monetary Board is not so required when the PDIC has already made such determination. It must be stressed that the BSP (the umbrella agency of the Monetary Board), in its capacity as government regulator of banks, and the PDIC, as statutory receiver of banks under RA 7653, are the principal agencies mandated by law to determine the financial viability of banks and quasi-banks, and facilitate the receivership and liquidation of closed financial institutions, upon a factual determination of the latter's insolvency.[32] Thus, following the maxim *verba legis non est recedendum* – which means "from the words of a statute there should be no departure" – a statute that is clear, plain, and free from ambiguity must be given its literal meaning and applied without any attempted interpretation,[33] as in this case.

In sum, the Monetary Board's issuance of Resolution No. 571 ordering the liquidation of EIB cannot be considered to be tainted with grave abuse of discretion as it was amply supported by the factual circumstances at hand and made in accordance with prevailing law and jurisprudence. To note, the "actions of the Monetary Board in proceedings on insolvency are explicitly declared by law to be 'final and executory.' They may not be set aside, or restrained, or enjoined by the courts, except upon 'convincing proof that the action is plainly arbitrary and made in bad faith,'"[34] which is absent in this case.

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[31] See Section 30, RA 7653.

[32] See *Miranda v. PDIC*, *supra* note 24 at 731.

[33] See *Bolos v. Bolos*, 648 Phil. 630, 637 (2010), citing *Padua v. People*, 581 Phil. 489, 500-501 (2008).

[34] *Miranda v. PDIC*, *supra* note 24, at 731, citing *Central Bank of the Philippines v. De la Cruz*, 269 Phil. 365, 374 (1990).

WHEREFORE, the petition is hereby **DENIED**. The Decision dated January 21, 2014 and the Resolution dated October 10, 2014 of the Court of Appeals in CA-G.R. SP No. 129674 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Peralta, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 227505. October 2, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERLINDA RACHO *y* SOMERA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MIGRANT WORKERS OVERSEAS FILIPINO ACT OF 1995 (RA 8042); ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.— The elements of the offense are: (*a*) the offender has no valid license or authority to enable him to lawfully engage in recruitment and placement of workers; (*b*) he undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code or any prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of RA 8042); and (*c*) he commits the same against three or more persons, individually or as a group. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

2. ID.; ID.; ID.; ELEMENTS OF ILLEGAL RECRUITMENT IN LARGE SCALE, PRESENT IN CASE AT BAR; ACCUSED'S ACT OF OFFERING AND PROMISING TO DEPLOY THE COMPLAINANTS TO EAST TIMOR FOR

WORK AND COLLECTING PLACEMENT FEES FROM MORE THAN THREE PERSONS DESPITE NOT BEING AUTHORIZED TO DO SO RENDERS HER LIABLE FOR ILLEGAL RECRUITMENT IN LARGE SCALE; PENALTY.— [B]oth the RTC and the CA found that all these elements are present. The POEA certification, as confirmed by Bella Diaz, sufficiently established that Racho is neither licensed nor authorized to recruit workers for overseas employment. Clearly, a person or entity engaged in recruitment and placement activities without the requisite authority is engaged in illegal recruitment. The definition of "recruitment and placement" under Article 13 (b) of the Labor Code includes **promising or advertising for employment**, locally or abroad, whether for profit or not, provided, that any person or entity which, in any manner, **offers or promises for a fee,** employment to two or more persons shall be deemed engaged in recruitment and placement. Thus, Racho's act of offering and promising to deploy the complainants to East Timor for work and collecting placement fees from more than three (3) persons, despite not being authorized to do so, renders her liable for Illegal Recruitment in Large Scale. In this relation, her defense of denial cannot overcome complainants' categorical and positive testimonies against her. Therefore, the Court finds no cogent reason to deviate from the lower courts' findings on this score. Racho is therefore sentenced to suffer the penalty of life imprisonment and penalized with a fine of ₱1,000,000.00.

3. ID.; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT; ELEMENTS, PROVEN BEYOND REASONABLE DOUBT.— Estafa by means of deceit is committed when these elements concur: (*a*) the accused used fictitious name or false pretense that he possesses power, influence, qualifications, property, credit, agency, business or imaginary transactions, or other similar deceits; (*b*) he used such deceitful means prior to or simultaneous with the commission of the fraud; (*c*) the offended party relied on such deceitful means to part with his money or property; and (*d*) the offended party suffered damage. x x x Records show that Racho defrauded Odelio, Simeon, Bernardo, Renato, and Rodolfo by representing that she can provide them with jobs in East Timor even though she had no license to recruit workers for employment abroad. She even collected the irrelevant documents and placement fees of varying

amounts. Although complainants were able to fly to East Timor, they remained unemployed there due to Racho's failure to obtain their working visas. When they returned to the country and looked for Racho, complainants could not locate her to recover the amounts they paid. Undeniably, the prosecution was able to prove beyond reasonable doubt that Racho committed Estafa against the five (5) complainants.

4. **ID.; ID.; ID.; PROPER PENALTY FOR FIVE (5) COUNTS OF ESTAFA WHERE THE AMOUNTS INVOLVED ARE ₱100,000.00, ₱80,000.00, AND ₱35,000.00.—** The defrauded amounts involved in this case are: ₱100,000.00 in Criminal Case Nos. 05-1938 and 05-1948; ₱80,000.00 in Criminal Case Nos. 05-1941 and 05-1945; and ₱35,000.00 in Criminal Case No. 05-1951. x x x Racho is likewise found **GUILTY** of five (5) counts of Estafa. Accordingly, she is sentenced to suffer the penalty of imprisonment as follows: (*a*) In Criminal Case No. 05-1938, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; (*b*) In Criminal Case No. 05-1941, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; (*c*) In Criminal Case No. 05-1945, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; (*d*) In Criminal Case No. 05-1948, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; and (*e*) In Criminal Case No. 05-1951, six (6) months of *arresto mayor.*

5. **ID.; ID.; ID.; ID.; ACCUSED IS ORDERED TO PAY ACTUAL DAMAGES TO PRIVATE COMPLAINANTS SUBJECT TO APPLICABLE LEGAL INTEREST.—** Racho is **ORDERED** to pay the following complainants actual damages in these amounts: (*a*) ₱100,000.00 to Odelio Gasmen; (*b*) ₱80,000.00 to Simeon Filarca; (*c*) ₱80,000.00 to Bernardo Peña; and (*d)* ₱100,0000.00 to Renato Pescador; and (*e*) ₱35,000.00 to Rodolfo Pagal. These monetary awards are subject to interest at the rate of twelve percent (12%) per annum from the filing of the Informations on October 18, 2005 until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Erlinda Racho *y* Somera (Racho) assailing the Decision[2] dated October 15, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06932, which affirmed the Decision[3] dated May 28, 2014 of the Regional Trial Court of Makati City, Branch 62 (RTC) in Criminal Case Nos. 05-1935, 05-1938, 05-1941, 05-1943, 05-1945, 05-1948, 05-1949, and 05-1951 convicting Racho of Illegal Recruitment in Large Scale, as defined and penalized under Section 6 (l) and (m), in relation to Section 7 (b) of Republic Act No. (RA) 8042,[4] otherwise known as the Migrant Workers Overseas Filipino Act of 1995, and six (6) counts of Estafa under Article 315 paragraph 2 (a) of the Revised Penal Code.

The Facts

This case stemmed from, among others, an Information[5] dated August 19, 2005 charging Radio for the crime of Illegal

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[1] See Notice of Appeal dated November 2, 2015; *rollo*, pp. 15-16.

[2] *Id*. at 2-14. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando concurring.

[3] CA *rollo*, pp. 44-59. Penned by Judge Selma Palacio Alaras.

[4] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[5] CA *rollo*, p. 23.

Recruitment in Large Scale, docketed as Criminal Case No. 05-1935, the accusatory portion of which reads:

CRIMINAL CASE NO. 05-1935

That in or about during [sic] the period from November, 2004 up to February 07, 2005 or prior thereto, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there without first obtaining a license or authority to recruit workers for overseas employment from the Philippine Overseas Employment Administration, willfully, unlawfully and feloniously recruit and promise employment/job placement and collect fee[s] from complainants Bernardo Peña, Arsenio N. Sevania, Maximo V. Gambon, Simeon Adame Filarca, Vincent B. Baldoz. Odelio C. Gasmen, Cirilo A. Arruejo, Romeo E. Torres, Renato P. Velasco, Rex D. Villaruz,Celso V. Doctolero, Renato L. Pescador, Rodolfo C. Pagal, William D. Villaruz, Franklin B. Delizo[,] and Dominador S. Peña as contract workers, without any license/authority from the Philippine Overseas Employment Administration (POEA) or by the Department of Labor and Employment (DOLE) to recruit workers for overseas employment.

CONTRARY TO LAW.

Racho was also charged with sixteen (16) counts[6] of Estafa, of which only six (6) cases prospered and eventually, were appealed before the Court. The Informations for these six (6) cases are similarly worded, except for the details pertaining to the date of commission of the offense, name of the complainant, job recruited for, and the amount involved. Among others, the accusatory portion of the Information[7] for Criminal Case No. 05-1938 involving the complainant Odelio C. Gasmen (Odelio) reads:

CRIMINAL CASE NO. 05-1938

That on or about the 26th of November, 2004 or prior thereto, in Makati, The Philippines, the above-named accused, did then and there willfully, unlawfully and feloniously defraud one Odelio C. Gasmen

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[6] *Id*. at 24-39.

[7] *Id* at. 26.

in the following manner, to wit: The said accused by false pretenses or fraudulent acts committed prior to or simultaneously with the commission of the fraud, to the effect that she can recruit workers for overseas employment and deploy complainant as construction worker in East Timor for a fee of Php100,000.00, which representation [she] well knew to be false and was only made to induce the aforementioned complainant to give and deliver, as in fact the said complainant gave and delivered, to her the said amount of [Php100,000.00], to the damage and prejudice of the said Odelio C. Gasmen in the aforementioned amount of Php100,000.00.

CONTRARY TO LAW.

The variations in the Informations for the other five (5) criminal cases, *i.e.*, Criminal Case Nos. 05-1941, 05-1945, 05-1948, 05-1949, and 05-1951, are summarized below:

Criminal Case No.	Date of Commission of the Offense	Complainant	Job Recruited For	Amount Involved
05-1941	January 13, 2005	Simeon Adame Filarca (Simeon)	Carpenter	₱80,000.00
05-1945	January 13, 2005	Bernardo Peña (Bernardo)	Plumber/electrician	₱80,000.00
05-1948	January 17, 2005	Renato L. Pescador (Renato)	Carpenter	₱100,000.00
05-1949	**January 18, 2005**	**William D. Villaruz (William)**	**Contract worker**	**₱80,000.00**
05-1951	February 24, 2005	Rodolfo C. Pagal (Rodolfo)	Contract worker	₱60,000.00

All of the cases against Racho were consolidated and tried jointly.[8] On May 24, 2011, Racho was arraigned and pleaded not guilty to all the charges against her.[9]

During trial, the prosecution presented the testimonies of Bella Diaz (Bella), a senior Labor and Employment Officer from the Philippine Overseas Employment Administration, as well as of the complainants in the above-cited criminal cases (*i.e.*, Odelio, Simeon, Bernardo, Renato, and Rodolfo), with the exception of **William**, the complainant in **Criminal Case No. 05-1949**, who failed to appear despite his receipt of the Subpoenas dated February 28, 2012 and June 20, 2012

[8] *Rollo*, p. 4.

[9] *Id.* See also records, pp. 140-141.

(Subpoenas).[10] Another witness, Rex Villaruz (Rex), who was the complainant in **Criminal Case No. 05-1937**, gave his testimony in court.[11] However, this latter case was provisionally dismissed by the RTC and as such, did not reach this Court.[12]

In particular, Bella Diaz confirmed that Racho was neither licensed nor authorized to recruit workers for employment abroad as certified in a document dated July 12, 2012.[13]

Meanwhile, Odelio, Simeon, Bernardo, Renato, Rodolfo, and Rex uniformly alleged that they heard either from a radio advertisement or a friend about an employment opportunity in East Timor linked to Racho. On separate dates, they went to meet with Racho either at her residence in Vigan, Ilocos Sur or her office in Makati City where they were briefed about the available position for them and the corresponding compensation. They were then asked to provide documents, fill out bio-data forms, and pay placement fees, which they did. They then left the Philippines on different dates and stayed in East Timor while waiting for their working visas. However, two to three months passed and yet no working visas were issued despite Racho's promises. Thus, they went back to the Philippines, and after failing to find Racho, filed their complaints before the Presidential Anti-Illegal Recruitment Task Force Hunter.[14]

In the course of the proceedings, Racho moved that some cases be provisionally dismissed[15] due to the failure of the other

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[10] Records, pp. 186 and 193.

[11] See *rollo*, p. 4.

[12] See Order dated September 17, 2012; records, pp. 204-205.

[13] See *rollo*, p. 7.

[14] See *id.* at 4-7.

[15] See RTC's Order dated August 14, 2012 (records, p. 203) which reads:

Considering that the witnesses, the private complainants in this case were duly notified for several times but failed to appear, the prosecution is given fifteen (15) days from today to formally offer its evidence. The defense is given ten (10) days from receipt of the formal offer to file their comment/opposition, thereafter, the incident is submitted for resolution. **The defense**

complainants to give their testimonies despite due notice. In an Order[16] dated September 17, 2012, the RTC provisionally dismissed nine (9) Estafa cases,[17] leaving the following cases to proceed: (*a*) the Illegal Recruitment in Large Scale case, *i.e.*, Crim. Case No. 05-1935; (*b*) the above-stated six Estafa cases — Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, 05-1949, and 05-1951; and (*c*) an additional Estafa case, namely **Criminal Case No. 05-1943** filed by complainant Dominador S. Peña (Dominador), who, same as William, failed to give his testimony.

As to the cases which proceeded, the defense countered with the sole testimony of Racho, who denied the charges against her and argued that she was an auditor of PET Plans, Inc. from March 23, 2000 to August 31, 2005, making it highly unlikely for her to have engaged in the business of recruitment and promised employment abroad. She also belied the claim that she received the amounts allegedly paid by the complainants and insisted that the latter only found out about the employment abroad from another person over the radio.[18]

The RTC Ruling

In a Decision[19] dated May 28, 2014, the RTC found Racho guilty beyond reasonable doubt of: (*a*) Illegal Recruitment in Large Scale in Criminal Case No. 05-1935, and accordingly, sentenced her to suffer life imprisonment and to pay a fine of

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likewise moved that considering the failure of the prosecution to offer evidence in **some cases**, let those cases **be considered PROVISIONALLY DISMISSED**.

The Court holds in abeyance the ruling on the motion until such time it has identified the cases where there was no evidence offered by the prosecution. (Emphases supplied)

[16] Records, pp. 204-205.

[17] These were the cases that were provisionally dismissed: Criminal Case Nos. 05-1936, 05-1937, 05-1939, 05-1940, 05-1942. 05-1944, 05-1946, 05-1947, and 05-1950. (See *id*.)

[18] *Rollo*, p. 7.

[19] CA *rollo*, pp. 44-59.

₱1,000,000.00; and (*b*) six (6) counts of Estafa in Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, 05-1951, **including Criminal Case No. 05-1949**, and accordingly, sentenced her to suffer imprisonment for indeterminate periods[20] and to pay[21] complainants the amounts they paid as placement fees plus twelve percent (12%) per annum from the filing of the information until finality of its judgment.[22]

At the outset, the RTC dismissed Criminal Case No. 05-1943 involving Dominador for failure of the prosecution to present any evidence.[23]

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[20] See *id*. at 58-59. Pursuant to Article 315 of the RPC in relation to the Indeterminate Sentence Law, the RTC imposed indeterminate penalties summarized as follows:

Crim. Case No.	Minimum Penalty	Maximum Penalty
05-1938	Two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*	Thirteen (13) years, eight (8) months, and twenty one (21) days of *reclusion temporal*
05-1941	Two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*	Eleven (11) years, eight (8) months, and twenty one (21) days of *prision mayor*
05-1945	Two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*	Eleven (11) years, eight (8) months, and twenty one (21) days of *prision mayor*
05-1948	Two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*	Thirteen (13) years, eight (8) months, and twenty one (21) days of *reclusion temporal*
05-1949	Two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*	Eleven (11) years, eight (8) months, and twenty one (21) days of *prision mayor*
05-1951	Two (2) years, eleven (11) months, and eleven (11) days of *prision correccional*	Nine (9) years, eight (8) months, and twenty one (21) days of *prision mayor*

(Emphases supplied).

[21] See *id*.

Crim. Case No.	Complainant	Amount
05-1938	Odelio C. Gasmen	₱100,000.00
05-1941	Simeon Adame Filarca	₱ 80,000.00
05-1945	Bernardo Peña	₱ 80,000.00
05-1948	Renato L. Pescador	₱100,000.00
05-1949	**William D. Villaruz**	**₱ 80,000.00**
05-1951	**Rodolfo C. Pagal**	**₱ 60,000.00**

(Emphases supplied).

[22] See *id*. at 58-59.

[23] *Id*. at 59.

On the other hand, in the Illegal Recruitment in Large Scale case, the RTC was convinced that Racho offered and promised employments in East Timor to complainants despite not having any license to recruit them. It found that Racho indeed required the complainants to submit their bio-data, birth certificates, and passports, as well as pay placement fees.[24] As to the six (6) Estafa cases, the RTC held that the prosecution has proven Racho's misrepresentation that she could provide jobs to complainants in East Timor despite lack of authority from the POEA and that she demanded payment of placement fees. It added that Radio's deceit was underscored by the fact that complainants were stranded in East Timor without any jobs and upon their return to the country, could not find her to recover their payments.[25]

Aggrieved, Racho appealed[26] to the CA.

The CA Ruling

In a Decision[27] dated October 15, 2015, the CA affirmed Racho's convictions *in toto*.[28] It held that Racho's representation that she had the authority to deploy workers in East Timor for employment despite the absence of the required license or authority from the POEA, as well as her demand for payment of placement fees from the complainant, proved her guilt in the Illegal Recruitment in Large Scale and six (6) Estafa cases;[29] hence, the instant appeal involving these cases.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Racho is guilty beyond reasonable doubt of Illegal Recruitment in Large Scale and of Estafa.

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[24] See *id*. at 52-55.

[25] See *id*. at 55-56.

[26] See Notice of Appeal dated June 9, 2014; records, p. 480.

[27] *Rollo*, pp. 2-14.

[28] *Id*. at 13-14.

[29] See *id*. at 10-13.

The Court's Ruling

Settled is the rule that an appeal in a criminal case throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those raised as errors by the parties.[30] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[31]

In this light, the Court affirms Racho's convictions in Criminal Case No. 05-1935 for Illegal Recruitment in Large Scale, as well as the Estafa cases docketed as Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, and 05-1951, but acquits her in Crim. Case No. 05-1949, *i.e.*, the Estafa case filed by William, for lack of evidence. Moreover, the Court reduces the damages awarded to Rodolfo, the complainant in Criminal Case No. 05-1951, from ₱60,000.00 to ₱35,000.00 to conform with the amount proven in court. Finally, the Court adjusts the penalties imposed on Racho as regards the Estafa cases in view of the recent amendment under RA 10951,[32] as well as the interest rate pursuant to law.

I.

Illegal Recruitment in Large Scale is defined under Section 6 of RA 8042, to wit:

Section 6. Definition. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting,

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[30] See *Ramos v. People*, G.R. Nos. 218466 and 221425, January 23, 2017.

[31] *Id*.

[32] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE', AS AMENDED," approved on August 29, 2017.

utilizing, hiring, or procuring workers and includes referring, contact services-promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

x x x x x x x x x

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed **committed in large scale if committed against three (3) or more persons individually or as a group**. (Emphasis and underscoring supplied)

The elements of the offense are: (*a*) the offender has no valid license or authority to enable him to lawfully engage in recruitment and placement of workers; (*b*) he undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code or any prohibited practices enumerated under Article 34 of the Labor Code (now Section 6 of RA 8042); and (*c*) he commits the same against three or more persons, individually or as a group.[33] Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.[34]

In this case, both the RTC and the CA found that all these elements are present. The POEA certification,[35] as confirmed by Bella Diaz, sufficiently established that Racho is neither licensed nor authorized to recruit workers for overseas employment. Clearly, a person or entity engaged in recruitment and placement activities without the requisite authority is engaged

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[33] *People v. Daud*, 734 Phil. 698, 715 (2014).

[34] See Section 6 (m) of RA 8042.

[35] Records, p. 256.

in illegal recruitment.[36] The definition of "recruitment and placement" under Article 13 (b) of the Labor Code includes **promising or advertising for employment**, locally or abroad, whether for profit or not, provided, that any person or entity which, in any manner, **offers or promises for a fee**, employment to two or more persons shall be deemed engaged in recruitment and placement. Thus, Racho's act of offering and promising to deploy the complainants to East Timor for work and collecting placement fees from more than three (3) persons, despite not being authorized to do so, renders her liable for Illegal Recruitment in Large Scale. In this relation, her defense of denial cannot overcome complainants' categorical and positive testimonies against her.[37] Therefore, the Court finds no cogent reason to deviate from the lower courts' findings on this score. Racho is therefore sentenced to suffer the penalty of life imprisonment and penalized with a fine of ₱1,000,000.00.

As to the penalty, although Section 7 of RA 8042 has been amended by Section 6 of RA 10022[38] which, accordingly, increased the penalty for the crime, the old law, *i.e.*, RA 8042 — which is more advantageous to the accused — still applies considering that the crime was committed from 2004 to 2005 when the old law was still in effect.[39] Thus, the courts *a*

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[36] *People v. Lalli*, 675 Phil. 126, 150 (2011).

[37] See *People v. Molina*, G.R. No. 207811, June 1, 2016, 792 SCRA 14, 29.

[38] Entitled "AN ACT AMENDING REPUBLIC ACT NO, 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," lapsed into law on March 8, 2010 without the signature of the President, in accordance with Section 27 (1), Article VI, of the 1987 Constitution.

[39] Although Section 7 of RA 8042 has been amended by Section 6 of RA 10022, which amendment increased the penalty in RA 8042, the old penalty still applies considering that the crime was committed from 2004 to 2005 when RA 8042 had yet to be amended and thus, was still in effect. (See *People v. Lalli*, *supra* note 36, at 151.)

quo correctly imposed the penalty of life imprisonment and fine of ₱1,000,000.00.[40]

II.

Racho's conviction for Estafa in Criminal Case Nos. 05-1938, 05-1941, 05-1945, 05-1948, and 05-1951 is likewise warranted. Article 315 of the RPC states:

> Article 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned herein below x x x:
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> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.
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> x x x x x x x x x

Under this provision, Estafa by means of deceit is committed when these elements concur: (*a*) the accused used fictitious name or false pretense that he possesses power, influence, qualifications, property, credit, agency, business or imaginary transactions, or other similar deceits; (*b*) he used such deceitful means prior to or simultaneous with the commission of the fraud; (*c*) the offended party relied on such deceitful means to part with his money or property; and (*d*) the offended party suffered damage.[41]

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[40] Section 7. *Penalties.* —

x x x x x x x x x

(b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

x x x x x x x x x (Underscoring supplied)

[41] *Lopez v. People*, 715 Phil. 839, 847 (2013).

Case law holds that the same pieces of evidence that establish liability for illegal recruitment in large scale confirm culpability for Estafa. In *People v. Chua*:[42]

> [W]e agree with the appellate court that the same pieces of evidence which establish appellant's liability for illegal recruitment in large scale likewise confirm her culpability for *estafa*.
>
> It is well-established in jurisprudence that a person may be charged and convicted for both illegal recruitment and *estafa*. The reason therefor is not hard to discern: illegal recruitment is *malum prohibitum*, while *estafa* is *mala in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such intent is imperative. *Estafa* under Article 315, paragraph 2 (a) of the Revised Penal Code is committed by any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud.[43]

Records show that Racho defrauded Odelio, Simeon, Bernardo, Renato, and Rodolfo by representing that she can provide them with jobs in East Timor even though she had no license to recruit workers for employment abroad. She even collected the irrelevant documents and placement fees of varying amounts. Although complainants were able to fly to East Timor, they remained unemployed there due to Racho's failure to obtain their working visas. When they returned to the country and looked for Racho, complainants could not locate her to recover the amounts they paid. Undeniably, the prosecution was able to prove beyond reasonable doubt that Racho committed Estafa against the five (5) complainants.

However, the Court acquits Racho in Criminal Case No. 05-1949 due to the prosecution's failure to present any evidence to prove the crime charged. Records show that William, the complainant in this particular Estafa case, failed to testify before the RTC despite receipt of two Subpoenas ordering him to appear

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[42] 695 Phil. 16 (2012).

[43] *Id*. at 31.

and testify. No documentary or other testimonial evidence was also presented. Therefore, an acquittal is warranted for this particular case and, accordingly, the award of actual damages to William is deleted. Therefore, Racho's conviction for Estafa is affirmed only for five (5) counts.

III.

For another, the Court reduces the actual damages awarded to Rodolfo in Criminal Case No. 05-1951 to ₱35,000.00. Even though the amount alleged in the Information was ₱60,000.00,[44] Rodolfo's testimony revealed that he paid only ₱35,000.00 as placement fee.[45] "A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved."[46]

Furthermore, the Court modifies the penalties for the five (5) counts of Estafa pursuant to the recently-enacted RA 10951, which adjusted the base amounts that determine the incremental penalties to be imposed in Estafa cases and effectively reduced the imposable penalties. Notably, Section 100[47] of RA 10951 echoes the rule that a penal law may have retroactive effect when it is favorable to the accused,[48] as in this case.

The defrauded amounts involved in this case are: ₱100,000.00 in Criminal Case Nos. 05-1938 and 05-1948; ₱80,000.00 in Criminal Case Nos. 05-1941 and 05-1945; and ₱35,000.00 in Criminal Case No. 05-1951.[49]

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[44] Records, p. 35.

[45] See TSN, October 24, 2011, p. 91.

[46] *PNOC Shipping and Transport, Corp. v. CA*, 358 Phil. 38, 43 (1998).

[47] Section 100. *Retroactive Effect*. — This Act shall have retroactive effect to the extent that it is **favorable to the accused** or person serving sentence by final judgment. (Emphasis supplied)

[48] *People v. Derilo*, 338 Phil. 350, 379 (1997).

[49] Summarized as follows:

Crim. Case No.	Complainant	Amount
05-1938	Odelio C. Gasmen	₱100,000.00
05-1941	Simeon Adame Filarca	₱80,000.00

Prior to RA 10951, the imposable penalty when the amount involved exceeds ₱22,000.00 is the maximum period of *prision correccional* in its maximum, as minimum, to *prision mayor* in its minimum (*i.e.*, six [6] years, eight [8] months, and twenty one [21] days to eight [8] years), as maximum, plus one year for each additional ₱10,000.00.

With the enactment of RA 10951,[50] the imposable penalties were effectively reduced. For instance, when the amount involved is over ₱40,000.00 but not exceeding ₱1,200,000.00, the prescribed penalty is only *arresto mayor* in its maximum period to *prision correccional* in its minimum period (*i.e.*, four [4] months and one [1] day to two [2] years and four [4] months), which applies to Criminal Case Nos. 05-1938, 05-1941, 05-1945, and 05-1948 in this case. Applying the Indeterminate Sentence Law (ISL),[51] the minimum term should be taken from *arresto*

05-1945	Bernardo Peña	₱80,000.00
05-1948	Renato L. Pescador	₱100,000.00
05-1951	Rodolfo C. Pagal	₱35,000.00

[50] The relevant provision, as amended, reads:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885. Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

"ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

"3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

"4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (₱40,000): x x x

x x x x x x x x x

[51] Pertinently, Section 1 of Act No. 4103, or ISL, provides:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be

mayor in its minimum and medium periods (*i.e.*, one [1] month and one [1] day to four [4] months), while the maximum term should be within the medium period of the prescribed penalty (*i.e.*, one [1] year and one [1] day to one [1] year and eight [8] months) there being no aggravating or mitigating circumstances present in this case. In view of the circumstances in the above-cited criminal cases, the Court finds it proper to impose a penalty of four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum.

On the other hand, if the amount involved is less than ₱40,000.00, the imposable penalty is only *arresto mayor* in its medium and maximum periods (*i.e.*, two [2] months and one [1] day to six [6] months), as is applicable to Criminal Case No. 05-1951. The ISL no longer applies because the imposable penalty is less than one (1) year.[52] Thus, a straight penalty of six (6) months of *arresto mayor* is proper.

In sum, the Court modifies the penalties imposed on Racho as follows:

Criminal Case No.	Amount Defrauded	Minimum Penalty	Maximum Penalty
05-1938	₱100,000.00	Four (4) months of *arresto mayor*	One (1) year and one (1) month of *prision correccional*
05-1941	₱80,000.00	Four (4) months of *arresto mayor*	One (1) year and one (1) month of *prision correccional*
05-1945	₱80,000.00	Four (4) months of *arresto mayor*	One (1) year and one (1) month of *prision correccional*
05-1948	₱100,000.00	Four (4) months of *arresto mayor*	One (1) year and one (1) month of *prision correccional*
05-1951	₱35,000.00	Six (6) months of *arresto mayor*	

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that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x. (Underscoring supplied)

[52] Section 2 of the ISL reads:

IV.

Finally, the Court adjusts the interest imposed. Records show that the CA affirmed the RTC's imposition of interest at the rate of twelve percent (12%) per annum, reckoned from the filing of the Information until finality of judgment. In line with the Court's ruling in *Nacar v. Gallery Frames*[53] applying Resolution No. 796 of the *Bangko Sentral ng Pilipinas* Monetary Board, the interest rate should, however, be modified to the rate of twelve percent (12%) per annum from the filing of the Informations in said cases on October 18, 2005 until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.[54] The amounts owed to complainants constitute forbearances of money whose corresponding interests are treated under the said parameters.

WHEREFORE, the appeal is **PARTLY GRANTED**. The Decision dated October 15, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06932, is hereby **AFFIRMED** with **MODIFICATIONS**:

(1) Erlinda Racho *y* Somera (Racho) is found **GUILTY** of Illegal Recruitment in Large Scale in Criminal Case No. 05-1935 and, accordingly **SENTENCED** to suffer the penalty of life imprisonment and **ORDERED** to pay a fine of ₱1,000,000.00 therefor;

(2) Racho is likewise found **GUILTY** of five (5) counts of Estafa. Accordingly, she is sentenced to suffer the penalty of imprisonment as follows:

SEC. 2. This Act shall not apply to x x x those whose maximum term of imprisonment does not exceed one year x x x.

(See also *People v. Mancera*, 108 Phil. 785, 787-788 (1960); and *Humilde v. Pablo*, A.M. No. 604-CFI, February 20, 1981, 102 SCRA 731, 732.)

[53] 716 Phil. 267 (2013).

[54] See *id*. at 281-283. See also *People v. Villanueva*, 755 Phil. 28, 40 (2015).

(*a*) In Criminal Case No. 05-1938, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum;

(*b*) In Criminal Case No. 05-1941, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum;

(*c*) In Criminal Case No. 05-1945, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum;

(*d*) In Criminal Case No. 05-1948, four (4) months of *arresto mayor*, as minimum, to one (1) year and one (1) month of *prision correccional*, as maximum; and

(*e*) In Criminal Case No. 05-1951, six (6) months of *arresto mayor*.

(3) Moreover, Racho is **ORDERED** to pay the following complainants actual damages in these amounts: (*a*) ₱100,000.00 to Odelio Gasmen; (*b*) ₱80,000.00 to Simeon Filarca; (*c*) ₱80,000.00 to Bernardo Peña; and (*d*) ₱100,000.00 to Renato Pescador; and (*e*) ₱35,000.00 to Rodolfo Pagal. These monetary awards are subject to interest at the rate of twelve percent (12%) per annum from the filing of the Informations on October 18, 2005 until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

(4) Finally, Racho is **ACQUITTED** of the Estafa charge in Criminal Case No. 05-1949 for lack of evidence.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa*, and *Reyes, Jr., JJ.*, concur.

EN BANC

[A.C. No. 11483. October 3, 2017]

LUZVIMINDA S. CERILLA, *complainant, vs.* **ATTY. SAMUEL SM. LEZAMA**, *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED WHEN A LAWYER CLEARLY ACTS BEYOND THE SCOPE OF HIS AUTHORITY; CASE AT BAR.— Respondent entered into the Compromise Agreement on the basis of the SPA granted to him by complainant. The SPA authorized respondent to represent complainant in filing the ejectment case and "[t]o appear on [complainant's] behalf during the preliminary conference in said ejectment case and to make stipulations of fact, admissions and other matters for the early resolution of the case, including amicable settlement of the case if necessary." Nowhere is it expressly stated in the SPA that respondent is authorized to compromise on the sale of the property or to sell the property of complainant. As the SPA granted to him by the complainant did not contain the power to sell the property, respondent clearly acted beyond the scope of his authority in entering into the compromise agreement wherein the property was sold to the defendant Carmelita S. Garlito. x x x The obligations of lawyers as a consequence of their Canon 5 duty have been reiterated in *Hernandez v. Atty. Padilla* x x x. As found by the IBP Board of Governors, respondent x x x violated Canons 15 and 17 of the Code of Responsibility x x x. The Court sustains the recommendation of the IBP Board of Governors that respondent be penalized with suspension from the practice of law for a period of two (2) years.

APPEARANCES OF COUNSEL

Danilo L. Francisco for complainant.

RESOLUTION

PERALTA, *J.*:

On November 22, 2010, complainant Luzviminda S. Cerilla filed an administrative complaint[1] for gross misconduct against respondent Atty. Samuel SM. Lezama with the Integrated Bar of the Philippines (*IBP*).

In her Complaint, complainant stated that she is one of the co-owners of a parcel of land located at *Barangay* Poblacion, Municipality of Sibulan, Negros Oriental, with an area of 730 square meters. The said property is covered by TCT No. 1-20416 and registered in the name of Fulquerio Gringio. It was later sold by his sole heir, Pancracio A. Gringio, to the heirs of Fabio[2] Solmayor, including the herein complainant. Being a co-owner of the subject property, complainant engaged the services of respondent to file an unlawful detainer case against Carmelita S. Garlito with the Municipal Trial Court (*MTC*) of Sibulan, Negros Oriental. At that time, the complainant was working at Camp Aguinaldo, Quezon City, and for this reason, she executed a Special Power of Attorney (*SPA*) in favor of the respondent to perform the following acts, to wit:

(1) To represent and act on my behalf in filing a case of ejectment against Lita Garlito of Sibulan, Negros Oriental;

(2) To appear on my behalf during the preliminary conference in Civil Case No. 497-04 and to make stipulations of facts, admissions and other matters for the early resolution of the same including amicable settlement of the case if necessary.[3]

Complainant said that on the basis of the SPA, respondent entered into a compromise agreement with the defendant in the unlawful detainer case to sell the subject property of the complainant for ₱350,000.00 without her consent or a special

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[1] Administrative Case No. 10-2832, *rollo*, pp. 2-6.

[2] Also spelled as "Favio" in another case.

[3] *Rollo*, p. 69.

authority from her. Paragraph 2 of the Compromise Agreement dated January 31, 2005 states:

> 2. The plaintiff is willing to sell [the] property in question to the defendant in the amount of ₱350,000.00 within a period of three months beginning February 1, 2005 up to April 30, 2005, the payment of which shall be paid in one setting.[4]

The Compromise Agreement was approved by the MTC of Sibulan, Negros Oriental in an Order[5] dated January 31, 2005. Subsequently, a Motion for Execution[6] dated June 2, 2005 was filed due to complainant's failure to comply with the terms and conditions set forth in the compromise agreement, as complainant refused to execute a Deed of Sale. The MTC issued a Writ of Execution[7] on June 10, 2005.

Complainant contended that respondent misrepresented in paragraph 2 of the Compromise Agreement that she was willing to sell the subject property for ₱350,000.00. Complainant averred that she did not authorize the respondent to sell the property and she is not willing to sell the property in the amount of ₱350,000.00, considering that there are other co-owners of the property.

Complainant contended that by entering into the compromise agreement to sell the subject property without any special power to do so, respondent committed gross misconduct in the discharge of his duties to his client. She asserted that respondent's misconduct was the proximate cause of the loss of the subject property in the ejectment case, which prejudiced her and the other co-owners, as respondent knew that the ejectment case was filed by her for the benefit of all the co-owners of the property.

According to complainant, the subject property is located near the Municipal Hall and town plaza of the Municipality of Sibulan, Negros Oriental and the property's market value is

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[4] *Id*. at 15.

[5] *Id*. at 16.

[6] *Id.* at 17.

[7] *Id.* at 19.

not less than ₱1,500,000.00. Since respondent sold the property for only ₱350,000.00, she (complainant) and the other co-owners suffer actual loss.

Complainant contended that respondent's act of entering into the compromise agreement with the misrepresentation that she was willing to sell the property in the unlawful detainer case without her consent or conformity, which caused her material damage, warrants respondent's suspension or disbarment.

In his Answer,[8] respondent denied complainant's allegation that he misrepresented that complainant was willing to sell the property in the amount of ₱350,000.00, since he was duly armed with an SPA to enter into a compromise agreement, and the price of ₱350,000.00 was the actual price paid by the complainant to the owner of the property.

Respondent contended that complainant has no cause of action against him for the following reasons:

(a) The SPA dated December 27, 2004 was executed by the complainant in favor of the respondent due to her inability to attend every hearing of the unlawful detainer case;

(b) The SPA contains the sentence under number 2: "including amicable settlement of the case if necessary";

(c) During the preliminary conference of the unlawful detainer case, the respondent requested Presiding Judge Rafael Cresencio C. Tan, Jr. to allow him to contact the complainant by mobile phone before any compromise agreement could be executed. Respondent tried several times to contact complainant to no avail during the recess. When the case was called again, he requested a resetting, but the Presiding Judge insisted on a compromise agreement to be submitted because respondent was armed with the necessary SPA anyway, and the result was the Compromise Agreement of January 31, 2005;

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[8] *Id*. at 21.

(d) Upon the signing of the Compromise Agreement, respondent was able to contact complainant, who objected to the agreement because the amount of ₱350,000.00 was small;

(e) After writing a letter of repudiation to the counsel of the defendant in the unlawful detainer case, respondent filed a *Manifestation* dated February 24, 2005 with the MTC of Sibulan, attaching therewith the letter of repudiation, and he also filed a *Motion to Set Aside Order and to Annul Compromise Agreement*[9] (on the ground of mistake). However, the MTC denied the said motion in an Order[10] dated May 30, 2005. Respondent filed a motion for reconsideration, which was also denied by the MTC;

(f) In 2006, the heirs of Favio Solmayor filed another unlawful detainer case over the same property with the same MTC against the same defendant, which was dismissed by the court on the ground of *res judicata*;[11] and

(g) In 2008, complainant filed a civil case[12] for annulment of judgment/quieting of title, recovery of possession and damages against Carmelita S. Garlito, respondent Atty. Lezama and the MTC of Sibulan, Negros Oriental, and the case is still pending before the Regional Trial Court of Dumaguete City, Branch 35, Negros Oriental.[13]

Further, respondent stated that the payment for the property in the amount of ₱350,000.00 is under the custody of the MTC of Sibulan, although the money was deposited with the Philippine Veterans Bank by defendant Carmelita S. Garlito, who opened

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[9] *Id*. at 28.

[10] *Id*. at 30.

[11] *Id*. at 31-38.

[12] *Id*. at 40-46.

[13] *Id*. at 22-24.

an account in respondent's name. Respondent stated that he has never touched the said deposit.

Respondent contended that the SPA given to him by the complainant was sufficient authority to enter into the said compromise agreement. The amount of ₱350,000.00 was the price of the subject property, because the complainant paid the same amount for the purchase of the property from the Gringio family.

According to the respondent, he entered into the compromise agreement under the honest and sincere belief that it was the fairest and most equitable arrangement. Under the present policy of the Court, parties should endeavor to settle their differences (in civil cases, at least) amicably. To penalize lawyers for their judgment calls in cases where they are armed with authority to settle would wreck havoc on our system of litigation, making them hesitant, apprehensive and wary that their clients might file disciplinary cases against them for the slightest reasons. While the filing of such complaint is part of the professional hazards of lawyering, the same should only be anchored on the most serious misconduct of lawyers, which respondent does not believe is present in this case. Hence, respondent prayed for the dismissal of the complaint.

On June 10, 2011, the IBP Commission on Bar Discipline held a mandatory conference with the parties, who were required to submit their respective Position Papers thereafter.

The Commissioner's Report

On June 28, 2013, Investigating Commissioner Jose I. De La Rama, Jr. submitted his Report,[14] finding respondent guilty of violating Canons 15 and 17 of the Code of Professional Responsibility and recommending that respondent be suspended from the practice of law for a period of two (2) years.

The Investigating Commissioner stated that during the mandatory conference, it was agreed upon that the SPA dated December 27, 2004 was the same SPA granted by complainant in favor of respondent. It was also agreed upon that by virtue

[14] *Id*. at 190-196.

of the said SPA, respondent entered into a compromise agreement with the defendant in the unlawful detainer case. According to the complainant, while it is true that she executed an SPA in favor of the respondent, there was no specific authority granted to him to sell the subject property for ₱350,000.00, and that was the reason why she refused to sign the Deed of Sale.

Moreover, respondent admitted during the mandatory conference that complainant did not give him any instruction to sell the property, thus:

Comm. De La Rama:		Prior to the execution of the compromise agreement on January 31, 2005, were you under instruction by Ms. Cerilla to sell the property?
Atty. Lezama:		No, Your Honor.
Comm. De La Rama:		You were not?
Atty. Lezama	:	There was none.
Comm. De La Rama:		So what prompted you to [have] that idea that Ms. Cerilla is willing to sell this property in the amount of Php350,000.00?
Atty. Lezama	:	Because that is the same amount that she paid [for] the property. It is an amicable settlement in meeting halfway.
Comm. De La Rama:		But you at that time, prior to the signing of the Compromise Agreement, you do not have any instruction from Ms. Cerilla to sell the property?
Atty. Lezama	:	No, Your Honor.
Comm. De La Rama:		So it was your own volition?
Atty. Lezama	:	Yes, my own belief.[15]

The Investigating Commissioner stated that respondent must have overlooked the fact that the subject property was co-owned

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[15] TSN, June 10, 2011; *rollo,* pp. 153-155.

by complainant's siblings. Respondent knew about the co-ownership because of the existence of the Extrajudicial Settlement of Estate,[16] but he did not assert that his authority to compromise binds only the complainant. Respondent merely made a flimsy excuse as shown in the transcript of stenographic notes, to wit:

Comm. De La Rama: Are you aware, Atty. Lezama, that the property does not belong exclusively to Ms. Cerilla?

Atty. Lezama : I was of the impression that it was owned by complainant that's why the ejectment complaint filed speaks only of Luzviminda Cerilla but that was her claim because she said she paid for it.[17]

The Investigating Commissioner stated that the transcript of stenographic notes shows that respondent admitted that complainant did not grant him the authority to sell the property in the amount of ₱350,000.00. Thus, knowing that he did not possess such authority, respondent cannot validly claim that his client, complainant herein, was willing to sell the property in the amount of ₱350,000.00.

In order to save himself, respondent allegedly filed a *Manifestation*, but he failed to submit a copy of the same before the Commission.

Further, the transcript of stenographic notes taken during the preliminary conference of the unlawful detainer case shows that it was the respondent who stated that the plaintiff (complainant herein) was willing to sell the property, and it was also the respondent who fixed the selling price of the property at ₱350,000.00, thus:

Court : The plaintiff is willing to sell the property?

Atty. Lezama : Yes, if the defendant is willing to pay the amount of sale.

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[16] *Rollo*, pp. 51-52.

[17] TSN, June 10, 2011, *rollo*, p. 76. (Emphasis ours)

Court	:	How much?
Atty. Lezama	:	₱100,000.00, although the record is more than that, your Honor.
Court	:	They will also want to buy the property. You will sell it for ₱100,000.00?
Atty. Lezama	:	I don't think, your Honor. Maybe it's ₱300,000.00.
Court	:	₱300,000.00. How much?
Atty. Lezama	:	₱350,000.00.

x x x x x x x x x.[18]

The MTC Judge also inquired about respondent's authority, and respondent replied, thus:

Court	:	Are you authorize[d] to make some suggestions to other matter, dismissal or other settlement? Do you have an authority?
Atty. Lezama	:	Yes, your Honor, but I have some limitations. I think, your Honor, we need one more setting because I cannot agree on the proposal of the amount of the property your Honor.[19]

The Investigating Commissioner stated that based on the foregoing, respondent acted beyond the scope of his authority. Respondent knew beforehand that no instruction was given by his client to sell the property, yet he bound his client to sell the property without her knowledge. Thus, he betrayed the trust of his client, complainant herein.

The Investigating Commissioner found respondent guilty of violating Canons 15[20] and 17[21] of the Code of Professional

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[18] TSN, January 31, 2005, *rollo*, pp. 85-86.

[19] *Id.* at 87-88.

[20] CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

[21] CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Responsibility and recommended that respondent be suspended from the practice of law for a period of two (2) years.

The Ruling of the IBP Board of Governors

On August 8, 2014, the IBP Board of Governors passed Resolution No. XXI-2014-386,[22] which adopted and approved the Report and recommendation of the Investigating Commissioner. Finding that the recommendation was fully supported by the evidence on record and the applicable laws and for violation of Canons 15 and 17 of the Code of Professional Responsibility, the Board suspended respondent from the practice of law for two (2) years.

Respondent's motion for reconsideration was denied by the IBP Board of Governors in Resolution No. XXII-2016-179[23] dated February 25, 2016.

In a letter[24] dated August 18, 2016, Director for Bar Discipline Ramon S. Esguerra notified the Chief Justice of the Supreme Court of the transmittal of the documents of the case to the Court for final action, pursuant to Rule 139-B of the Rules of Court.

Ruling of the Court

The Court agrees with the finding and recommendation of the IBP Board of Governors.

Respondent entered into the Compromise Agreement[25] on the basis of the SPA granted to him by complainant. The SPA

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[22] *Rollo*, p. 213.

[23] *Id.* at 211.

[24] *Id.* at 210.

[25] COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

The plaintiff and the defendant assisted by counsels have agreed to enter into a Compromise Agreement as follows:

1. The defendant recognizes the ownership and possession of the plaintiff of Lot No. 36 under TCT No. T-25416 subject of this case;

authorized respondent to represent complainant in filing the ejectment case and "[t]o appear on [complainant's] behalf during the preliminary conference in said ejectment case and to make stipulations of fact, admissions and other matters for the early resolution of the case, including amicable settlement of the case if necessary." Nowhere is it expressly stated in the SPA that respondent is authorized to compromise on the sale of the property or to sell the property of complainant.

The records show that respondent admitted that he entered into the compromise agreement with the defendant in the unlawful detainer case and stated that the plaintiff, who is the complainant herein, was willing to sell the property to the defendant in the amount of ₱350,000.00 even if the complainant did not instruct or authorize him to sell the property, and he merely acted upon

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2. The plaintiff is willing to sell this property in question to the defendant in the amount of ₱350,000 within a period of three months beginning February 1, 2005 up to April 30, 2005, the payment of which shall be paid in one setting;
3. The defendant is willing to buy the said property in the said amount of ₱350,000 within the period required by the plaintiff;
4. That in the event that the defendant cannot pay the amount stated within the specified period, the defendant will vacate the property in question without need of demand at the end of period required which is April 30, 2005; and
5. That all other claims by both parties are deemed waived.

IN WITNESS HEREOF, we have hereunto affixed our signatures this 31st day of January 2005, at Sibulan, Negros Oriental, Philippines, with a prayer that this agreement be approved and judgment be rendered in accordance therewith.

	(Signed)
LUZVIMINDA S. CERILLA	CARMELITA S. GARLITO
Plaintiff	Defendant
Represented by:	Assisted by:
(Signed)	(Signed)
ATTY. SAMUEL SM. LEZAMA Attorney-In-Fact	ATTY. BIENA MARIETA CABUSAO Counsel for Defendant

(*Rollo*, p.15)

his own belief.[26] As the SPA granted to him by the complainant did not contain the power to sell the property, respondent clearly acted beyond the scope of his authority in entering into the compromise agreement wherein the property was sold to the defendant Carmelita S. Garlito.

Respondent, in his Answer and Motion for Reconsideration of Resolution No. XXI-2014-386, stated that his action was based on an honest belief that he was serving both the interest of his client and the policy of the law to settle cases amicably. However, his justification does not persuade, because his alleged honest belief prejudiced his client, since the property she was not willing to sell was sold at a price decided upon by respondent on his own, which caused his client and her co-owners to file further cases to recover their property that was sold due to respondent's *mistake*. He overlooked the fact that he was not authorized by his client to sell the property.

Canon 5 of the Code of Professional Responsibility states:

> CANON 5 — A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

The obligations of lawyers as a consequence of their Canon 5 duty have been reiterated in *Hernandez v. Atty. Padilla*,[27] thus:

> It must be emphasized that the primary duty of lawyers is to obey the laws of the land and promote respect for the law and legal processes. They are expected to be in the forefront in the observance and maintenance of the rule of law. This duty carries with it the obligation to be well-informed of the existing laws and to keep abreast with legal developments, recent enactments and jurisprudence. It is imperative that they be conversant with basic legal principles. Unless they faithfully comply with such duty, they may not be able to discharge competently

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[26] *Supra* note 16.

[27] 688 Phil. 329 (2012).

and diligently their obligations as members of the bar. Worse, they may become susceptible to committing mistakes.[28]

As found by the IBP Board of Governors, respondent also violated Canons 15 and 17 of the Code of Responsibility:

CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

The Court sustains the recommendation of the IBP Board of Governors that respondent be penalized with suspension from the practice of law for a period of two (2) years.

WHEREFORE, respondent Atty. Samuel SM. Lezama is found guilty of violating Canons 5, 15 and 17 of the Code of Professional Responsibility. Hence, he is **SUSPENDED** from the practice of law for a period of **TWO (2) YEARS** and **STERNLY WARNED** that a repetition of the same or a similar offense shall be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant, to be appended to the personal file of respondent. Likewise, copies shall be furnished the Integrated Bar of the Philippines and the Court Administrator for circulation to all courts of the country for their information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

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[28] *Hernandez v. Atty. Padilla, supra,* at 336, citing *Dulalia, Jr. v. Cruz*, 550 Phil. 409, 420 (2007). (Underscoring supplied).

EN BANC

[A.C. No. 11754. October 3, 2017]

JOAQUIN G. BONIFACIO, *complainant, vs.* **ATTY. EDGARDO O. ERA and ATTY. DIANE KAREN B. BRAGAS,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; ACTS WHICH INVOLVE THE DETERMINATION BY A TRAINED LEGAL MIND OF THE LEGAL EFFECTS AND CONSEQUENCES OF EACH COURSE OF ACTION IN THE SATISFACTION OF A JUDGMENT AWARD CONSTITUTE PRACTICE OF LAW; CASE AT BAR.— In this case, it is undisputed that Atty. Era committed the following acts: (1) appeared on behalf of his winning clients in the public auction of the condemned properties; (2) tendered bid in the auction for his clients; (3) secured the certificate of sale and presented the said document to the corporation's officers and employees present in the premises at that time; (4) insisted that his clients are now the new owners of the subject properties, hence, should be allowed entry in the premises; (5) initiated the pull out of the properties; and (6) negotiated with Bonifacio's children in his law office as regards the payment of the judgment award with interest instead of pulling out the properties. It is true that being present in an auction sale and negotiating matters relating to the same may not be exclusively for lawyers, as opined by the Investigating Commissioner. However, in this case, as aptly put by the Board in its Resolution, Atty. Era's acts clearly involved the determination by a trained legal mind of the legal effects and consequences of each course of action in the satisfaction of the judgment award. Precisely, this is why his clients chose Atty. Era to represent them in the public auction and in any negotiation/settlement with the corporation arising from the labor case as stated in the SPA being invoked by Atty. Era. Such trained legal mind is what his clients were relying upon in seeking redress for their claims. This is evident from the fact that they agreed not to enter into any amicable settlement without the prior written consent of Atty. Era, the latter being

their lawyer. It could readily be seen that the said SPA was executed by reason of Atty. Era being their legal counsel. Thus, We are one with the Board's submission that the said SPA cannot be invoked to support Atty. Era's claim that he was not engaged in the practice of law in performing the acts above-cited as such SPA cunningly undermines the suspension ordered by this Court against Atty. Era, which We cannot countenance.

2. **ID.; ID.; WILLFUL DISOBEDIENCE OF THE LAWFUL ORDER OF THE COURT; LAW PRACTICE DURING THE PERIOD OF SUSPENSION FROM THE PRACTICE OF LAW, A CASE OF.—** Atty. Era was suspended from the practice of law for a period of two years in this Court's Decision dated July 16, 2013. He performed the x x x acts on the same year, specifically November to December 2013. Indubitably, Atty. Era was engaged in an unauthorized law practice. Atty. Era's acts constitute willful disobedience of the lawful order of this Court, which under Section 27, Rule 138 of the Rules of Court is a sufficient cause for suspension or disbarment. Further, Atty. Era's intentional maneuver to circumvent the suspension order not only reflects his insubordination to authority but also his disrespect to this Court's lawful order which warrants reproach. Members of the bar, above anyone else, are called upon to obey court orders and processes. Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes. x x x We agree with the Board of Governors' Resolution, finding Atty. Era guilty of willfully disobeying the lawful order of this Court warranting the exercise of Our disciplining authority. We also adopt the Board's recommendation as to the penalty to be imposed upon Atty. Era, *i.e.*, three years suspension from the practice of law, taking into account that this is his second infraction.

3. **ID.; ID.; SHOULD NOT ASSIST IN THE UNAUTHORIZED PRACTICE OF LAW FOR THE LAW PRACTICE IS LIMITED ONLY TO INDIVIDUALS FOUND DULY QUALIFIED IN EDUCATION AND CHARACTER.—** There is no question that Atty. Bragas has knowledge of Atty. Era's suspension from the practice of law and yet, she allowed herself to participate in Atty. Era's unauthorized practice. Clearly, Atty. Bragas violated the CPR x x x. Indeed, it is a lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law. Such duty is founded upon public interest and

policy, which requires that law practice be limited only to individuals found duly qualified in education *and* character. x x x Atty. Bragas ought to know that Atty. Era's acts constitutive of law practice could be performed only by a member of the Bar in good standing, which Atty. Era was not at that time. Hence, she should have not participated to such transgression. Being an associate in Atty. Era's law firm cannot be used to circumvent the suspension order. The factual circumstances of the case clearly shows that Atty. Bragas did not act to replace Atty. Era as counsel for his and/or the law firm's clients during the latter's suspension. Atty. Bragas merely assisted Atty. Era, who admittedly was the one actively performing all acts pertaining to the labor case he was handling. Considering the foregoing, We also adopt the Board's recommendation as regards Atty. Bragas' guilt in the violation of the CPR.

D E C I S I O N

TIJAM, *J.*:

This administrative case arose from a verified Affidavit-Complaint[1] filed before the Integrated Bar of the Philippines (IBP) by complainant Joaquin G. Bonifacio (Bonifacio) against respondents Atty. Edgardo O. Era (Atty. Era) and Atty. Diane Karen B. Bragas (Atty. Bragas) for violating the Code of Professional Responsibility (CPR).

The Facts

Sometime in 2003, an illegal dismissal case was lodged against Bonifacio and his company, Solid Engine Rebuilders Corporation entitled *Gil Abucejo, Edgar Besmano, Efren Sager, Darlito Sosa, Gerardo G. Talosa, and Salvador Villanueva v. Solid Engine Rebuilders Corporation and/or Joaquin G. Bonifacio*, docketed as NLRC NCR Case No. 00-05-05953-03. Complainants therein (Abucejo Group) were represented by Era and Associates Law Office through Atty. Era.[2]

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[1] *Rollo*, pp. 2-13.

[2] *Id.* at 424.

On June 15, 2004, the Labor Arbiter found Bonifacio and the corporation liable for illegal dismissal and, consequently, ordered them to pay Abucejo Group their separation pay, full backwages and pro-rated 13th month pay. More specifically, Bonifacio and his corporation were ordered to pay a partially computed amount of ₱674,128 for the separation pay and full backwages, and ₱16,050.65 for the 13th month pay.[3] Bonifacio and the corporation brought their case up to the Supreme Court but they suffered the same fate as their appeals and motions were decided against them.[4]

Thus, on January 26, 2006, a Writ of Execution[5] was issued to implement the June 15, 2004 Decision. A Notice of Garnishment dated February 6, 2006 was likewise issued.[6] Two alias writs dated May 8, 2008[7] and April 16, 2013[8] were later on issued, directing the sheriff to collect the sum of ₱4,012,166.43, representing the judgment award plus interest and attorney's fees.

Meanwhile, an administrative complaint was filed against Atty. Era for representing conflicting interests entitled *Ferdinand A. Samson v. Atty. Edgardo O. Era*, docketed as A.C. No. 6664.[9] In a July 16, 2013 Decision, this Court found Atty. Era guilty of the charge and imposed the penalty of suspension from the practice of law for two years, the dispositive portion of which reads:

> WHEREFORE, the Court FINDS and PRONOUNCES Atty. EDGARDO O. ERA guilty of violating Rule 15.03 of Canon 15, and Canon 17 of the Code of Professional Responsibility; and SUSPENDS him from the practice of law for two years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

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[3] *Id.* at 128.

[4] *Id.* at 107-109.

[5] *Id.* at 148-150.

[6] *Id.* at 109.

[7] *Id.* at 151-156.

[8] *Id.* at 157-159.

[9] *Samson v. Era,* 714 Phil. 101 (2013).

Let copies of this decision be included in the personal record of Atty. EDGARDO O. ERA and entered m [sic] his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines for its guidance.

SO ORDERED.[10]

On November 28, 2013, the scheduled public auction over Bonifacio's and/or the corporation's properties in the business establishment was conducted to implement the alias writ. Atty. Era actively participated therein. He attended the public auction and tendered a bid for his clients who were declared the highest bidders. On the same day, a certificate of sale was issued, which Atty. Era presented to the corporation's officers and employees who were there at that time. Armed with such documents, Atty. Era led the pulling out of the subject properties but eventually stopped to negotiate with Bonifacio's children for the payment of the judgment award instead of pulling out the auctioned properties. Atty. Era summoned Bonifacio's children to continue with the negotiation in his law office. On behalf of his clients, their counter-offer for the satisfaction of the judgment award went from ₱6 Million to ₱9 Million.[11]

As the parties were not able to settle, on December 3, 2013, Attys. Era and Bragas went back to Bonifacio's business establishment together with their clients and several men, and forced open the establishment to pull out the auctioned properties. This was evidenced by the videos presented by Bonifacio in the instant administrative complaint.[12]

This prompted Bonifacio to file a criminal complaint for malicious mischief, robbery, and trespassing with the Office

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[10] *Id*. at 113.

[11] *Rollo*, p. 441.

[12] *Id*. at 5-9.

of the City Prosecutor, Pasay City. In its Resolution[13] dated March 31, 2014, the Office of the City Prosecutor found probable cause to indict Attys. Era and Bragas for grave coercion.[14]

Meanwhile, Atty. Era's name remains to appear in pleadings filed before the NLRC and this Court sometime in February and April, 2014 with regard to the subject labor case.[15]

On August 8, 2014, Bonifacio filed the instant administrative complaint.[16]

In their Answer,[17] Attys. Era and Bragas alleged that Bonifacio has no personal knowledge as to what transpired on November 28, 2013 and December 3, 2013 as the latter was not present therein at that time.[18] Hence, his allegations of force, threat, and intimidation in the execution of the judgment is without basis.[19] In his defense, Atty. Era further argued that he did not violate the Court's order of suspension from the practice of law as he merely acted as his clients' attorney-in-fact pursuant to a Special Power of Attorney[20] (SPA) dated May 3, 2006. It is Atty. Era's theory that with such SPA, he was not engaged in the practice of law in representing his clients in the implementation of the alias writ. He added that he never signed any document or pleading on behalf of his clients during his suspension. For Atty. Bragas, being an associate of Era and Associates Law Firm, she was merely representing the Abucejo Group as said law firm's clients. Anent the Php 6 Million to 9 Million counter-offer that they made, Attys. Era and Bragas explained that the parties were still on negotiation, hence, both

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[13] *Id*. at 69-74.

[14] *Id*. at 438.

[15] *Id*. at 30 and 62.

[16] *Rollo*, pp. 2-13.

[17] *Id*. at 106-124.

[18] *Id*. at 115.

[19] *Id*. at 116.

[20] *Id*. at 185.

parties are free to have their own computations, which they could respectively accept or otherwise.[21]

In his Report and Recommendation[22] dated March 17, 2015, Investigating Commissioner Jose Villanueva Cabrera recommended the dismissal of the instant administrative complaint for insufficiency of evidence.

The Investigating Commissioner found nothing wrong with the indication of a suspended lawyer's name in a pleading considering that the same was not signed by the latter. There was also no proof that a pleading was prepared by Atty. Era. On the other hand, there was no impediment against Atty. Bragas to sign the pleadings. There was also no proof that in doing so, Atty. Bragas was assisting suspended Atty. Era in filing a pleading. Neither the presence of Atty. Era during the public auction and the negotiations was an implication or proof that Atty. Era was engaging in the practice of law during his suspension. According to the Investigating Commissioner, anybody, not exclusively lawyers, can be present at an auction sale or negotiation.

As to whether Attys. Era and Bragas violated any rules/laws in the implementation of the judgment by using force, threat, and intimidation, the Investigating Commissioner noted that complainant contradicted such imputations by filing the following pleadings, to wit: (1) a Motion to Close and Terminate Case[23] dated December 18, 2013, acknowledging the full satisfaction of the judgment award and even prayed for Attys. Era and Bragas' clients to take possession of the remaining machines in his business establishment; (2) a Manifestation[24] dated March 12, 2014, wherein complainant stated that he has surrendered the vehicles listed in the certificate of sale; (3) an Omnibus Motion with Entry of Appearance (Motion to Withdraw and Motion to

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[21] *Id*. at 117.

[22] *Id*. at 422-434.

[23] *Id*. at 239-242.

[24] *Id*. at 244-246.

Reiterate Motion to Close and Terminate Case and release of TRO Bond[25] dated February 4, 2014; (4) A Motion for Consignation with Motion to Lift Levy[26] dated October 29, 2014; and (5) a Motion to Withdraw Complaint[27] dated December 10, 2013 on the criminal case for Malicious Mischief, Robbery, and Trespassing against Attys. Era and Bragas. In fine, the Investigating Commissioner ratiocinated that in acknowledging the satisfaction of the judgment in the labor case and withdrawing the criminal case that he filed against Attys. Era and Bragas with regard to the implementation of the said judgment, complainant contradicted and demolished his own allegation that the satisfaction of the judgment was improperly and unlawfully implemented.[28]

Thus, the Investigating Commissioner recommended that the administrative charges against Attys. Era and Bragas be dismissed for insufficiency of evidence.[29]

The IBP Board of Governors (Board), in its Resolution No. XXI-2015-270[30] dated April 18, 2015 reversed and set aside the Investigating Commissioner's findings and conclusions:

RESOLUTION No. XXI-2015-270
CBD Case No. 14-4300
Joaquin G. Bonifacio vs.
Atty. Edgardo O. Era and
Atty. Diane Karen B. Bragas

RESOLVED to REVERSE as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering Atty. Era's continued

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[25] *Id*. at 258-261.

[26] *Id*. at 273-275.

[27] *Id*. at 351.

[28] *Id*. at 431-433.

[29] *Id*. at 433-434.

[30] *Id*. at 419-420.

engagement in the practice of law during the period of his suspension by admittedly participating in the negotiation for the payment of money judgment including pegging of interest he acted as his clients advocate instead as an agent in view of the presence also of his client in the negotiation, for holding office and admittedly summoned the complainant's children to determine the money judgment. Hence, Atty. Edgardo O. Era is hereby ***SUSPENDED from the practice of law for three (3) years.***

RESOLVED FURTHER, for her assistance in the unauthorized practice of law of Atty. Edgardo O. Era, Atty. Diane Karen B. Bragas is hereby ***SUSPENDED from the practice of law for one (1) month***.

In its Extended Resolution[31] dated October 17, 2016, the IBP Board of Governors found Atty. Era's argument that he merely acted pursuant to an SPA given to him untenable. The Board explained that the invoked SPA gave Atty. Era the authority to appear and represent the Abucejo Group only on the May 4, 2006 auction and did not include the November 28, 2013 auction. Also, while he was authorized to receive payment on behalf of his clients, the SPA specifically stated that said payments should be made in the form of checks and not machinery or property. Thus, Atty. Era had no authority under the SPA to represent his clients during the November 28, 2013 auction and to pull out and receive the corporation's machines as payment of the judgment award. At any rate, according to the Board, Atty. Era's clients relied on his legal knowledge in having the judgment award satisfied. Clearly, Atty. Era violated Section 28,[32] Rule 138 of the Rules of Court.[33]

Corollary to this, the Board also found Atty. Bragas liable for allowing and assisting Atty. Era to engage in an unauthorized practice of law. The Board concluded that Atty. Bragas ought

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[31] *Id*. at 435-444.

[32] Sec. 28. *Suspension of attorney by the Court of Appeals or a Court of First Instance.* — The Court of Appeals or a Court of First Instance may suspend an attorney from practice for any of the causes named in the last preceding section, and after such suspension, such attorney shall not practice his profession until further action of the Supreme Court in the premises.

[33] *Rollo*, pp. 441-442.

to know that Atty. Era's acts during the satisfaction of the alias writ could be performed only by a member of the bar in good standing.[34]

Pursuant to Section 12(b),[35] Rule 139-B of the Rules, the records of the instant case were transmitted to this Court.

No motion for reconsideration or petition for review was filed by either party as of June 29, 2017.

Necessarily, the Court will now proceed to give its final action on the instant administrative case, the issues being: (1) Did Atty. Era engage in the practice of law during his suspension therefrom that would warrant another disciplinary action against him?; and (2) In the affirmative, is Atty. Bragas guilty of directly or indirectly assisting Atty. Era in his illegal practice of law that would likewise warrant this Court's exercise of its disciplining authority against her?

We sustain the findings and recommendations of the Board of Governors.

Atty. Era's acts constituted "practice of law".

On this matter, Our pronouncement in the landmark case of *Renato L. Cayetano v. Christian Monsod, et al.*[36] is on point. Thus, We quote herein the relevant portions of the said Decision, *viz.*:

Black defines "practice of law" as:

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[34] *Id*. at 442-443.

[35] Section 12. *Review and decision by the Board of Governors.* —x x x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[36] 278 Phil. 235 (1991).

"The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law. An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate." (*Black's Law Dictionary*, 3rd ed.)

The practice of law is not limited to the conduct of cases in court. (*Land Title Abstract and Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650) A person is also considered to be in the practice of law when he:

> "xxx for valuable consideration engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies and there, in such representative capacity performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. **Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law."** (*State ex. rel. Mckittrick v. C.S. Dudley and Co.*, 102 S.W. 2d 895, 340 Mo. 852).

This Court in the case of *Philippine Lawyers Association v. Agrava*, (105 Phil. 173, 176-177) stated:

> "*The practice of law* is not limited to the conduct of cases or *litigation in court*; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of

> clients before judges and courts, and in addition, conveying. In general, all *advice to clients*, and all action taken for them in matters *connected with the law* incorporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and **conducting proceedings in attachment**, and in matters of estate and guardianship have been held to constitute law practice, as do the preparation and drafting of legal instruments, **where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions."** (5 Am. Jur. pp. 262, 263).

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The University of the Philippines Law Center in conducting orientation briefing for new lawyers (1974-1975) listed the dimensions of the practice of law in even broader terms as advocacy, counselling and public service.

> "One may be a practicing attorney in following any line of employment in the profession. If what he does exacts knowledge of the law and is of a kind usual for attorneys engaging in the active practice of their profession, and he follows some one or more lines of employment such as this he is a practicing attorney at law within the meaning of the statute." (*Barr v. Cardell, 155 NW 312*)

Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill." (111 ALR 23)[37] (Emphasis supplied)

In *Atty. Edita Noe-Lacsamana v. Atty. Yolando F. Bustamante*,[38] We succinctly ruled that the term practice of law implies customarily or habitually holding oneself out to the public as a lawyer for compensation as a source of livelihood

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[37] *Id*. at 241-243.

[38] 677 Phil. 1 (2011).

or in consideration of services. Holding one's self out as a lawyer may be shown by acts indicative of that purpose, such as identifying oneself as an attorney, appearing in court in representation of a client, or associating oneself as a partner of a law office for the general practice of law.[39]

In this case, it is undisputed that Atty. Era committed the following acts: (1) appeared on behalf of his winning clients in the public auction of the condemned properties; (2) tendered bid in the auction for his clients; (3) secured the certificate of sale and presented the said document to the corporation's officers and employees present in the premises at that time; (4) insisted that his clients are now the new owners of the subject properties, hence, should be allowed entry in the premises; (5) initiated the pull out of the properties; and (6) negotiated with Bonifacio's children in his law office as regards the payment of the judgment award with interest instead of pulling out the properties.[40]

It is true that being present in an auction sale and negotiating matters relating to the same may not be exclusively for lawyers, as opined by the Investigating Commissioner. However, in this case, as aptly put by the Board in its Resolution, Atty. Era's acts clearly involved the determination by a trained legal mind of the legal effects and consequences of each course of action in the satisfaction of the judgment award.[41] Precisely, this is why his clients chose Atty. Era to represent them in the public auction and in any negotiation/settlement with the corporation arising from the labor case as stated in the SPA being invoked by Atty. Era.[42] Such trained legal mind is what his clients were relying upon in seeking redress for their claims. This is evident from the fact that they agreed not to enter into any amicable settlement without the prior written consent of Atty. Era, the latter being their lawyer.[43] It could readily be seen that the said

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[39] *Id*. at 5.

[40] *Rollo*, pp. 437-438.

[41] *Id*. at 441.

[42] *Id*. at 185.

[43] *Id*.

SPA was executed by reason of Atty. Era being their legal counsel. Thus, We are one with the Board's submission that the said SPA cannot be invoked to support Atty. Era's claim that he was not engaged in the practice of law in performing the acts above-cited as such SPA cunningly undermines the suspension ordered by this Court against Atty. Era, which We cannot countenance.

Atty. Era was engaged in an unauthorized practice of law during his suspension

As mentioned, Atty. Era was suspended from the practice of law for a period of two years in this Court's Decision dated July 16, 2013. He performed the above-cited acts on the same year, specifically November to December 2013. Indubitably, Atty. Era was engaged in an unauthorized law practice.

Atty. Era's acts constitute willful disobedience of the lawful order of this Court, which under Section 27,[44] Rule 138 of the Rules of Court is a sufficient cause for suspension or disbarment. Further, Atty. Era's intentional maneuver to circumvent the suspension order not only reflects his insubordination to authority but also his disrespect to this Court's lawful order which warrants reproach. Members of the bar, above anyone else, are called upon to obey court orders and processes.[45] Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.[46]

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[44] Sec. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.*— A member of the Bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. xxx

[45] *Sebastian v. Bajar*, 559 Phil. 211, 224 (2007).

[46] *Id.*

This case is not novel. We had previously disciplined erring lawyers who continue in their practice despite being suspended by the Court. In *Rodrigo A. Molina v. Atty. Ceferino R. Magat*,[47] this Court suspended Atty. Magat from the practice of law for practicing his profession despite this Court's previous order of suspension. Likewise in another case, We suspended a lawyer for continuing in her practice despite the clear language of this Court's suspension order.[48]

In view of the foregoing, We agree with the Board of Governors' Resolution, finding Atty. Era guilty of willfully disobeying the lawful order of this Court warranting the exercise of Our disciplining authority. We also adopt the Board's recommendation as to the penalty to be imposed upon Atty. Era, *i.e.*, three years suspension from the practice of law, taking into account that this is his second infraction.

Atty. Bragas is guilty of assisting Atty. Era in his unauthorized practice of law and, thus, must likewise be reproved.

There is no question that Atty. Bragas has knowledge of Atty. Era's suspension from the practice of law and yet, she allowed herself to participate in Atty. Era's unauthorized practice. Clearly, Atty. Bragas violated the CPR, specifically:

> CANON 9 – A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

Indeed, it is a lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law. Such duty is founded upon public interest and policy, which requires that law practice be limited only to individuals found duly qualified in education *and* character.[49]

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[47] 687 Phil. 1 (2012).

[48] *Ibana-Andrade and Andrade-Casilihan v. Atty. Paita-Moya*, A.C. No. 8313, July 14, 2015, 762 SCRA 571.

[49] *Cambaliza v. Atty. Cristal-Tenorio*, 478 Phil. 378, 389 (2004).

As correctly observed by the Board, Atty. Bragas ought to know that Atty. Era's acts constitutive of law practice could be performed only by a member of the Bar in good standing, which Atty. Era was not at that time. Hence, she should have not participated to such transgression.

Being an associate in Atty. Era's law firm cannot be used to circumvent the suspension order. The factual circumstances of the case clearly shows that Atty. Bragas did not act to replace Atty. Era as counsel for his and/or the law firm's clients during the latter's suspension. Atty. Bragas merely assisted Atty. Era, who admittedly was the one actively performing all acts pertaining to the labor case he was handling.

Considering the foregoing, We also adopt the Board's recommendation as regards Atty. Bragas' guilt in the violation of the CPR.

WHEREFORE, premises considered, Atty. Edgardo O. Era is found **GUILTY** of willfully disobeying this Court's lawful order and is hereby **SUSPENDED** from the practice of law for a period of three (3) years, while Atty. Diane Karen B. Bragas is likewise found **GUILTY** of violating CANON 9 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for one (1) month, effective immediately from receipt of this Decision. Also, both Attys. Era and Bragas are **WARNED** that a repetition of the same or similar offense, or a commission of another offense will warrant a more severe penalty.

Let a copy of this Decision be entered in the personal records of respondents as members of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Reyes, Jr., and *Gesmundo, JJ.,* concur.

EN BANC

[G.R. No. 188163. October 3, 2017]

LT. SG. MARY NANCY P. GADIAN, *petitioner, vs.* **ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF LT. GEN. VICTOR IBRADO; PHILIPPINE NAVY FLAG OFFICER IN COMMAND VICE-ADMIRAL FERDINAND GOLEZ; COL. JOEL IBAÑEZ-CHIEF OF STAFF OF THE WESTERN MINDANAO COMMAND; LT. COL. ANTONIO DACANAY, MANAGEMENT AND FINANCIAL OFFICER OF THE WESTERN MINDANAO COMMAND; RETIRED LT. GEN. EUGENIO CEDO, FORMER COMMANDER OF THE WESTERN MINDANAO COMMAND,** *respondents.*

[G.R. No. 188195. October 3, 2017]

GEN. VICTOR S. IBRADO, AFP; VICE ADMIRAL FERDINAND S. GOLEZ, PN; COL. JOEL IBAÑEZ, PA; AND LTC ANTONIO DACANAY, PA, *petitioners, vs.* **NEDINA GADIAN-DIAMANTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; THE RULE ON THE *WRIT OF AMPARO*; *WRIT OF AMPARO*; MAY BE PREVENTIVE OR CURATIVE AND MAY BE ISSUED TO SECURE A PERSON WHO IS CONSUMED BY FEAR FOR HER LIFE AND LIBERTY THEREBY COMPLETELY LIMITING HER MOVEMENT, PROVIDED THAT THE SOURCE OF FEAR MUST BE VALID AND SUBSTANTIATED BY CIRCUMSTANCES.— A writ of *amparo* is an independent and summary remedy to provide immediate judicial relief for the protection of a person's constitutional right to life and liberty. When a person is consumed by fear for her life and liberty that it completely limits her movement, the writ may be issued to secure her. Note, however, that the source of this fear must be valid and substantiated by circumstances, and not mere paranoia.

Thus, in resolving the necessity of issuing a writ of *amparo* and the corresponding protection order, the courts must look at the overall circumstance surrounding the applicant and respondents. Moreover, the writ of *amparo* is both preventive and curative. It is preventive when it seeks to stop the impunity in committing offenses that violates a person's right to live and be free. It is curative when it facilitates subsequent punishment of perpetrators through an investigation and action. Thus, the writ of *amparo* either prevents a threat from becoming an actual violation against a person, or cures the violation of a person's right through investigation and punishment.

2. ID.; ID.; ID.; THE VIABILITY OF ANY PRIVATE OR RELIGIOUS ORGANIZATION OR PERSON TO PROVIDE PROTECTION TO THE AGGRIEVED PARTY SHOULD NOT BE DISMISSED OR IGNORED ONLY BECAUSE OF THE LACK OF ACCREDITATION; CASE AT BAR.— Under the *Rule on the Writ of Amparo*, the persons or agencies who may provide protection to the aggrieved parties and any member of the immediate family are limited to government agencies, and accredited persons or private institutions capable of keeping and securing their safety, but in respect of the latter, they should be accredited in accordance with guidelines still to be issued. Conformably with the rule, the CA observed that the only official with the capacity to provide protection to Lt. SG Gadian at that time was incumbent Defense Secretary Teodoro considering that the AMRSP, despite being her personal choice, was not yet an accredited agency in the context of the *Rule on the Writ of Amparo*. x x x The viability of the AMRSP, or of any other private or religious organization or person so disposed into taking a petitioner like Lt. SG Gadian under its protection, should not be dismissed or ignored only because of the lack of accreditation, but should have been fully determined by hearing the AMRSP thereon. The lack of accreditation should not have hindered but instead invited the holding of the hearing. Indeed, the matter of protection and sanctuary should be of foremost consideration by the court because the personal and immediate concern of the petitioner whose life and liberty were under threat was exactly her temporary protection. x x x To repeat, the lack of accreditation required by the *Rule on the Writ of Amparo*, which can follow, should be a lesser concern.

3. ID.; ACTIONS; MOOT AND ACADEMIC CASES; CEASE TO PRESENT ANY JUSTICIABLE CONTROVERSIES BY VIRTUE OF SUPERVENING EVENTS AND COURTS OF LAW WILL NOT DETERMINE MOOT QUESTIONS BECAUSE IT IS UNNECESSARY FOR THE COURTS TO INDULGE IN ACADEMIC DECLARATIONS.— We recognize that as of today the danger to the life and security of Lt. SG Gadian had already ceased, if not entirely disappeared. Although summoned to appear at the AFP's investigation of her expose, she voluntarily chose not to despite the institutional assurances for her personal safety. The AFP then declared her on AWOL status as of April 22, 2009, and dropped her from the roster as a deserter on May 2, 2009 following her unexplained failure to report to her mother unit. Worth noting, too, is that the individuals to whom she had attributed the threats to her life and liberty had since retired from active military service. These circumstances are supervening events that have rendered the resolution on the merits of the consolidated appeals moot and academic, that is, to still continue with the resolution when no practical consequence will be achieved or ensured is pointless and of no utility. Moot and academic cases cease to present any justiciable controversies by virtue of supervening events. The courts of law will not determine moot questions, because it is unnecessary for the courts to indulge in academic declarations.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioner in G.R. No. 188163 and respondent in G.R. No. 188195.

Artuz Bello & Borja Law Offices for respondent Lt. Gen. Eugenio V. Cedo.

The Solicitor General for public parties.

R E S O L U T I O N

BERSAMIN, *J.*:

For consideration are the consolidated petitions for review on *certiorari* separately brought against the decision promulgated on June 15, 2009 by the Court of Appeals (CA) in CA-G.R. SP

No. 00034 entitled *Nedina Gadian-Diamante v. Armed Forces of the Philippines Chief of Staff Lt. Gen. Victor Ibrado, Philippine Navy Flag Officer In Command Vice Admiral Ferdinand Golez, Col. Joel Ibañez — Chief of Staff of the Western Mindanao Command (WESTMINCOM), Lt. Col. Antonio Dacanay — Management and Financial Officer of the WESTMINCOM, Retired Lt. Gen. Eugenio Cedo — Former Commander of the WESTMINCOM*,[1] whereby the CA disposed as follows:

WHEREFORE, the Court finds and directs that —

(a) petitioner has established by substantial evidence that there is threat to life, liberty and security to the aggrieved party, Lt. SG Mary Nancy Gadian and thus, she is entitled to the benefits of a protection order under A.M. No. 07-9-12 SC (The Rule on the Writ of *Amparo*).

The Secretary of National Defense is hereby directed to extend the protection to the aggrieved party by adopting necessary measures and employing such personnel to ensure no impairment of the right of the aggrieved party, Lt. SG Mary Nancy P. Gadian to life, liberty and security;

(b) for lack of basis, petitioner's prayer that respondents be directed to refrain from issuing or carrying out any threat to life, liberty and security of the aggrieved party, Lt. SG Mary Nancy P. Gadian, is denied; and

(c) respondent General Ibrado shall comply strictly with his undertaking to provide material facts of the investigation conducted by the Flag Officer of the Philippine Navy and the Commander of the WESTMINCOM pursuant to his directive issued on May 26, 2009 relative to the circumstances of the threats to the life, liberty and security of the aggrieved party, Lt. SG Mary Nancy P. Gadian, and to bring those responsible, including military personnel, if shown to have participated or had complicity in the commission of the acts complained of, to the courts of justice.

Within five (5) days from receipt of this Decision, a report of the results of the investigation shall be submitted to the Court.

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[1] *Rollo* (G.R. No. 188163), pp. 28-56; penned by Associate Justice Sixto C. Marella, Jr. (deceased), with Associate Justice Rebecca De Guia-Salvador and Associate Justice Japar B. Dimaampao concurring.

Let a copy of this Decision be served personally on the Secretary of National Defense.

SO ORDERED.

Antecedents

On May 19, 2009, Nedina Gadian-Diamante, the respondent in G.R. No. 188195, alleging herself as the older sister of Lt. SG Mary Nancy P. Gadian (Lt. SG Gadian), brought in this Court a petition for the issuance of a writ of *amparo* in behalf of the latter, impleading as respondents various officers of the Armed Forces of the Philippines (AFP), including then AFP Chief of Staff Lt. Gen. Victor Ibrado (Gen. Ibrado). The petition was docketed as G.R. 187652.[2] On May 21, 2009, the Court issued the writ of *amparo*, and directed the CA to hear and decide the petition.[3]

On May 22, 2009, the Association of Major Religious Superiors of the Philippines (AMRSP) manifested to the Court their willingness to provide sanctuary to Lt. SG Gadian.[4]

The case, meanwhile docketed as CA-G.R. SP No. 00034, was heard in the CA. The initial hearing took place in the CA on May 28, 2009 but Lt. SG Gadian asked for time to submit evidence to support her allegations. The preliminary conference and summary hearing actually proceeded on June 5, 2009. The parties stipulated on the testimonies of psychologist Dr. Lopez, and Roy Lirazan and Armando Matutina, Lt. SG Gadian's companions. After the issues were defined and agreed upon, the evidence of the parties were respectively received.

Lt. SG Gadian's Evidence

Lt. SG Gadian was a commissioned officer of the Philippine Navy. At the time material to this case, she served as the Officer-In-Charge of the Civil Military Operations (CMO) Fusion Cell

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[2] *Id.* at 4.

[3] *Id.*

[4] *Id.*

for the RP-US Balikatan Exercises 2007. As such, she was responsible for the allocation of Balikatan funds and the planning and preparation of the Civil Military Operations component of the RP-US Balikatan Exercises 2007. Balikatan CMO Task Group (BK CMOTG) was formed for this purpose.[5]

For funding, Lt. SG Gadian asked for assistance from her immediate supervisor Lt. Col. Bajunaid Abid who reported to the General Headquarters (GHQ) through Lt. Col. Steve Crespillo (Lt. Col. Crespillo). They learned that the Balikatan Exercises 2007 had an approximate budget of ₱40 to ₱46 Million. They requested ₱4 Million to support the requirements of BK CMOTG.[6]

Out of the ₱4 Million approved budget, Lt. Col. Crespillo secured only ₱2.7 Million, and delivered ₱2.3 million thereof to BK CMOTG on two separate occasions, specifically on February 25, 2008 and March 3, 2008. The funds were turned over to Ms. Tessie Beldad, the fund custodian, but Lt. Col. Crespillo retained ₱400,000.00. Later, Ms. Beldad told Lt. SG Gadian that only ₱1.3 Million were actually turned over to her, for which she signed an acknowledgment report, pursuant to Lt. Col. Crespillo's instructions, despite the original plan being for him to distribute the funds personally to the participants. Lt. SG Gadian then accompanied Lt. Col. Crespillo to the office of Col. Joel Ibañez (Col. Ibañez) where they started to talk about funding problems, to which Lt. Col. Crespillo replied: *Meron akong dalang konti, sir*. Ms. Tessie Beldad was still required by Col. Buena of the Office of the Deputy Chief of Staff for Operations to submit receipts covering the disbursement of funds.[7]

On February 14, 2007, the CMO held the opening ceremony where the funds for food allowance were distributed to the participants.

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[5] *Id.* at 32.

[6] *Id.*

[7] *Id.* at 33.

In May 2007, Lt. SG Gadian was asked about the status of the funds during the staff conference presided by Col. Ibañez. When she reported that the funds had been distributed to the recipients who were grateful for the support, Col. Ibañez shouted: *You are not authorized to distribute the funds! You should tell the people at GHQ that they should follow the proper channel!* She was then required to submit a fund utilization report, but Lt. Col. Crespillo told her not to submit the report to Col. Ibañez because only the Exercise Directorate could require them to submit such report.[8]

Thereafter, at the behest of Retired Lt. General Eugenio Cedo (Gen. Cedo) to the Office of the Inspector General, Lt. SG Gadian was investigated for: (a) lavish spending; (b) misuse of funds; and (c) willful disobedience. She was placed on floating status until her transfer to the Philippine Navy in January 2008. The Philippine Navy Efficiency and Separation Board took jurisdiction of her case upon the recommendation of AFP Investigation General Lt. Gen. Bocobo. In January 2009, Gadian was arraigned and pleaded not guilty to the charges. She was absolved from liability by prosecution witnesses. The case was submitted for decision in April 2009.[9]

Lt. SG Gadian went on official ordinary leave from April 9 to May 21, 2009. On April 13, 2009, she received a message through text and email requiring her to report to Manila. She flew to Manila on April 14, and attended the hearing on April 15. On April 16, 2009, she filed her resignation from the AFP effective May 1, 2009.[10]

Fearing for her life after her resignation, Lt. SG Gadian went into hiding. On May 11, 2009, her sister sought the help of Archbishop Angel Lagdameo of Jaro, Iloilo City by delivering Lt. SG Gadian's letter appealing for help from the church, media, and all sectors of society. On May 13, 2009, Lt. SG Gadian

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[8] *Id*. at 34.

[9] *Id*. at 35-36.

[10] *Id*. at 36.

and her sister were interviewed by different media outlets on the alleged misuse of RP-US Balikatan Exercises 2007 funds.[11]

Since then, Lt. SG Gadian received text messages from concerned individuals warning her that people were conducting surveillance at their house. Two attempts were even made to 'snatch' her *en route* to the hearing in Manila. All these were testified to by her family members and people who were with her throughout her struggle.[12]

An apprehension order was released for Lt. SG Gadian's arrest, along with a "48 hour ultimatum" for her surrender. Again, concerned individuals told her that there was a verbal shoot to kill order to silence her. She was also not unaware of other unsolved cases similar to the case of Ensign Philip Andrew Pestaño's death after giving information of his superior's engagement in drugs, illegal logging and gun running.[13]

The AFP's Evidence

For their part, respondents General Ibrado, Vice Admiral Ferdinand Golez, Col. Ibañez and Lt. Col. Antonio Dacanay admitted that Lt. SG Gadian had been assigned to WESTMINCOM as its Deputy of the CMO. They confirmed that she had taken charge of and supervised the activities of BK CMOTG; that a total of ₱2.7 Million was turned over to her but she did not inform General Cedo, then the Commander of WESTMINCOM, of the receipt and utilization of the fund. According to them, she acted on her own in disposing the fund.[14] Gen. Cedo then constituted a committee to investigate, but she did not appear and instead questioned its jurisdiction because the fund had come from General Headquarters. The committee concluded that she had utilized the fund for its intended purpose, but without the approval of Gen. Cedo, and that she had falsely

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[11] *Id*.at36-37.

[12] *Id*. at 37-38.

[13] *Id*.

[14] *Rollo* (G.R. No. 188195), pp. 6-7.

declared the actual amount of her accommodation based on the receipt (difference of ₱2,500.00).

The Office of the Inspector General recommended that Lt. SG Gadian return the balance of ₱2,500.00 for her hotel stay; that she be reprimanded by her Commander according to Article 105 of the Articles of War for violation of Article 97 of the Articles of War, or conduct prejudicial to the good order and military discipline; and that she be reassigned to the Philippine Navy.[15]

The AFP Chief of Staff ordered a reinvestigation, however, to look into the matter of technical malversation and insubordination.[16] Pending resolution of her case, Lt. SG Gadian filed an application for ordinary leave, and later on tendered her resignation from the service effective May 1, 2009.

Lt. SG Gadian's resignation was not processed due to lack of requisite enclosures and justifications, and because of the pending case. As a consequence, the AFP declared her absent without leave (AWOL), leading to her being dropped from the rolls as a deserter on May 2, 2009. The apprehension order was issued against her pursuant to standard procedures.[17]

Aggrieved, Lt. SG Gadian, through her sister, filed the petition for the writ of *amparo* in this Court, alleging perceived threats to her life, liberty and security from the AFP. As earlier stated, the petition was referred to the CA for further proceedings.

In the CA, the parties stipulated on the following issues:

(a) whether or not there is [a] threat to aggrieved party's life, liberty and security and sufficiency of proof thereof;

(b) in the affirmative, whether or not there is [a] link between the threat to the life, liberty and security of the aggrieved party and, any or all, of the respondents; and

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[15] *Id*. at 7-9.

[16] *Id*. at 9-11.

[17] *Id*. at 11-12.

(c) whether or not the aggrieved party is entitled to the reliefs prayed [for] in the Petition.[18]

Lt. SG Gadian then made public appearances with media coverage giving statements about the conduct of RP-US Balikatan Exercises 2007. She explained that she had resorted to the writ of *amparo* because of perceived threats to her life, liberty and security. She incorporated her claims of the threats in her affidavit, wherein she detailed the text messages she had received about "people who were tracking, conducting casing and surveillance" of her place, and the presence of plain-clothes men at their house looking for her and her children. Her statements were corroborated by witnesses, including members of her family and friends who had accompanied her.[19]

The respondents denied knowledge of any existing threats against Lt. SG Gadian's life, but did not present controverting evidence. On his part, respondent Gen. Cedo averred that he had had no participation in the issuance of the apprehension order and the shoot-to-kill order against her; and that he had retired from the service in September 2007 and had not been interested in her whereabouts.[20]

Decision of the CA

The CA promulgated its assailed decision on June 15, 2009.[21]

In its decision, the CA observed that receiving messages through SMS warning of a shoot-to-kill order against a person was not alarming; that, however, the situation became different when the person threatened was a junior officer of the AFP who had exposed anomalies regarding the conduct of military exercises involving the country and the United States of America, and the expose could involve senior officers of the AFP; that the situation was complicated when unidentified persons had

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[18] *Rollo* (G.R. No. 188163), p. 46.

[19] *Id*. at 36-37.

[20] *Id*. at 42.

[21] *Supra* note 1.

knocked at the door of the house where Lt. SG Gadian lived without expressing the purpose of their visit, and, in addition, when there was an attempt to abduct; that such circumstances only proved that there had really been an actual threat to her life, liberty and security.[22]

Yet, the CA noted that Lt. SG Gadian had not established the authorship of the threats against her; that her affidavit did not implicate any of the respondents in the making of the threats; that although her father and sister had testified about men who had been making inquiries of her whereabouts, they had not attributed any overt act to the men that would suffice to deduce the clear intent to harm her; and that her two companions at the time the attempts to snatch her occurred did not identify any person in particular to be responsible.[23]

The CA concluded that Lt. SG Gadian had presented substantial evidence to prove the existence of a threat on her life, liberty and security but had not established the source of the threats; that then Secretary of National Defense Gilbert C. Teodoro (Defense Secretary Teodoro) should be deemed the appropriate person to extend protection to her as the aggrieved party inasmuch as he had executive supervision over the AFP even he did not engage in actual military directional operations;[24] and that respondent AFP Chief of Staff General Ibrado (Ret.) had also undertaken to cause the investigation of the alleged threats on her life, and the surrounding circumstances involved in her allegations.[25]

The parties then respectively appealed. On her part, respondent filed her petition for review on *certiorari* on June 22, 2009 (G.R. 188163),[26] while Gen. Ibrado, *et al.* filed their own petition

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[22] *Id*. at 49-50.

[23] *Id*. at 51.

[24] *Id*. at 51-53.

[25] *Id*. at 53.

[26] *Id*. at 2-13.

for review on *certiorari* on June 23, 2009 (G.R. 188195).[27] The appeals were consolidated.

Issues

Lt. SG Gadian assails the CA's ruling ordering then Secretary of National Defense Teodoro to provide protection to her, insisting that said official was biased in favor of the military hierarchy as borne out by the statement he had made during the Navy's anniversary celebration,[28] to wit:

> We are hoping the court will be careful in reviewing the petition and the circumstances behind it as well as granting such relief as this could affect the chain of command and the implementation of the disciplinary system in the military.

Lt. SG Gadian argues that although the Department of National Defense (DND) was civilian in character, the protection could only be extended to her through DND's military personnel.[29] Hence, she asks that the AMRSP be instead allowed to continue providing protection and sanctuary to her; and that the Court provides all means necessary to AMRSP, specifically the accreditation of it as a private institution or person capable of keeping and securing the aggrieved party under the *Rule on the Writ of Amparo*.

On their part, the AFP and Gen. Ibrado, *et al.* assail the CA for not dismissing the petition for the writ of *amparo* despite the CA having found no evidence showing that they were the authors of the alleged threat.[30]

The following issues are to be dealt with, namely: (a) Was the issuance of the writ of *amparo* warranted by the circumstance?; and (2) Assuming that there had really been threats against Lt. SG Gadian, who was in the best position to protect her — the Secretary of National Defense or the AMRSP?

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[27] *Rollo* (G.R. No. 188195), pp. 2-23.

[28] *Rollo* (G.R. No. 188163), p. 7.

[29] *Id*. at 8.

[30] *Rollo* (G.R. No. 188195), pp. 25-26.

Ruling of the Court

The appeals have no merit.

A writ of *amparo* is an independent and summary remedy to provide immediate judicial relief for the protection of a person's constitutional right to life and liberty.[31] When a person is consumed by fear for her life and liberty that it completely limits her movement, the writ may be issued to secure her. Note, however, that the source of this fear must be valid and substantiated by circumstances, and not mere paranoia. Thus, in resolving the necessity of issuing a writ of *amparo* and the corresponding protection order, the courts must look at the overall circumstance surrounding the applicant and respondents.

Moreover, the writ of *amparo* is both preventive and curative. It is preventive when it seeks to stop the impunity in committing offenses that violates a person's right to live and be free. It is curative when it facilitates subsequent punishment of perpetrators through an investigation and action.[32] Thus, the writ of *amparo* either prevents a threat from becoming an actual violation against a person, or cures the violation of a person's right through investigation and punishment.

The CA has correctly determined the existence of the justification to warrant the issuance of the writ of *amparo* in favor of Lt. SG Gadian, stating:

> In brief, prior to the filing of the present Petition, petitioner and aggrieved party's evidence of threat to the latter's life, liberty and security are their receipt of short messaging service or text messages warning them of the giving of "shoot to kill order." Taken alone, such messages may not lead a reasonable mind to consider seriously the existence of threat to life, liberty and security but when receipt of such messages come at a time when claims of anomalies in the holding of military exercises participated in by a foreign country affecting several individuals and involving significant amount of money

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[31] *Lozada, Jr. et al. v. President Macapagal-Arroyo, et al.*, G.R. Nos. 184379-80, April 24, 2012, 686 SCRA 536, 551.

[32] *Id*.

are being announced publicly, the situation differs, The aggrieved party is a junior officer in the military, with the rank of the lieutenant senior grade. The anomalies reported refer to the conduct of military exercises involving the Philippines and United States of America. The officers claimed to be involved are officers far more senior than the aggrieved party. There is a claim of the aggrieved party that she has resigned from her commission, an act which could be viewed, rightfully or wrongfully, as intended to evade the restrictions of military discipline.

Evidence was likewise presented that after public announcements were made by aggrieved party about the said anomalies, unidentified persons came to their house in Polomolok, South Cotabato asking for information about the aggrieved party and her family. No mention was made that the purpose of their visit was to serve a legal process, such as arrest warrant.

After the present petition was filed, an attempt to abduct the aggrieved party, to be attested to [sic] by Armando Matutina and Roy Lirazan, was committed.

The Court finds these sufficient to establish for purposes of the present proceedings, threat to life, liberty and security of the aggrieved party. Threat or intimidation must be viewed in the light of the perception of the victim at the time of the commission of the crime, not by any hard and fast rule.[33]

While it is conceded that Lt. SG Gadian's life was in actual danger, the possibility of danger must be acknowledged to exist. The reason, as she claims, was her expose of the Balikatan Funds anomaly. Consequently, she has hereby sought a preventive writ of *amparo*.

Yet, as the CA also pointed out, Lt. SG Gadian did not exactly know who had threatened her, and merely points towards the general direction of the military as the source of the threats. The uncertainty about the identities of the individuals who had knocked at her home, or who had conducted surveillance in her neighborhood, or who had even attempted to snatch her during her boat trip cannot be glossed over in order to

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[33] *Rollo* (G.R. No. 188163), pp. 49-50.

immediately hold the leadership of the AFP in suspicion of complicity. Indeed, to do so would convert the proceedings into an unwarranted witch-hunt that could unfairly implicate many in the country's military service.

Moreover, we note that the AFP declared Lt. SG Gadian a deserter because her resignation had not been accepted due to deficiencies that she did not rectify or fill. Under the regulations of the AFP, the declaration could most likely be not entirely unwarranted because she had apparently opted to quit her post and go into hiding. Her being a commissioned officer of the AFP called for the application of the Articles of War against her.[34] The military discipline that still applied to her then treated her as a deserter who was subject to apprehension even during a time of peace. Her going into hiding constituted abandonment of her post regardless of her reasons for doing so.

The choice Lt. SG Gadian made was to leave the military service in order to expose an irregularity. The AFP could justifiably consider her leaving as an act of cowardice and insubordination. For this reason, Defense Secretary Teodoro's observation that her conduct would affect the chain of command in the AFP as an organization could not be dismissed as unfounded.

It is noteworthy that the AFP already conducted its own investigation of the misuse of the Balikatan Fund. Despite the grant of the petition for the writ of *amparo* brought at her instance, Lt. SG Gadian still opted not to participate in that investigation. Such attitude could only reveal the lack of sincerity of her resort to the recourse of *amparo*.

Nonetheless, it becomes necessary for the Court to deal with the willingness and ability of the AMRSP to provide protection and sanctuary to persons like Lt. SG Gadian who seek protection after filing their petitions for the writ of *amparo*.

Under the *Rule on the Writ of Amparo*, the persons or agencies who may provide protection to the aggrieved parties and any

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[34] See Section 20, first paragraph of Republic Act No. 242, amending Article 58 of Commonwealth Act No. 408, (The Articles of War).

member of the immediate family are limited to government agencies, and accredited persons or private institutions capable of keeping and securing their safety, but in respect of the latter, they should be accredited in accordance with guidelines still to be issued.[35] Conformably with the rule, the CA observed that the only official with the capacity to provide protection to Lt. SG Gadian at that time was incumbent Defense Secretary Teodoro considering that the AMRSP, despite being her personal choice, was not yet an accredited agency in the context of the *Rule on the Writ of Amparo*.

Although the CA did not err in its observation, the Court feels that the AMRSP, which had manifested its willingness and readiness to give sanctuary to Lt. SG Gadian, could have been a viable provider of protection and sanctuary to her. The viability of the AMRSP, or of any other private or religious organization or person so disposed into taking a petitioner like Lt. SG Gadian under its protection, should not be dismissed or ignored only because of the lack of accreditation, but should have been fully determined by hearing the AMRSP thereon. The lack of accreditation should not have hindered but instead

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[35] Section 14 (a), *The Rule on the Writ of Amparo* states:

SEC. 14. *Interim Reliefs*.— Upon filing of the petition or at anytime before final judgment, the court, justice or judge may grant any of the following reliefs:

(a) *Temporary Protection Order*.— The court, justice or judge, upon motion or *motu proprio*, may order that the petitioner or the aggrieved party and any member of the immediate family be protected **in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution referred to in Section 3(c) of this Rule, the protection may be extended to the officers involved**.

The Supreme Court shall accredit the persons and private institutions that shall extend temporary protection to the petitioner or the aggrieved party and any member of the immediate family, in accordance with guidelines which it shall issue.

The accredited persons and private institutions shall comply with the rules and conditions that may be imposed by the court, justice or judge.

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invited the holding of the hearing. Indeed, the matter of protection and sanctuary should be of foremost consideration by the court because the personal and immediate concern of the petitioner whose life and liberty were under threat was exactly her temporary protection. The CA as the court hearing her petition for the writ of *amparo*, if satisfied by the qualifications of the AMRSP, could have effectively entrusted her temporary protection to the still-to-be accredited AMRSP given the latter's willingness and capability to provide her the sanctuary she needed. To repeat, the lack of accreditation required by the *Rule on the Writ of Amparo*, which can follow, should be a lesser concern.

In this regard, we advert to the following insights provided by Justice Leonen during the deliberations, to wit:

> Liberty and security are ultimately personal. No amount of admonition by another can undo a person's rational, well-founded fear. In petitions for the issuance of writs of amparo, it is well-within an aggrieved party's right to avail of protection through private persons and organizations. Precisely because the writ of *amparo* is a liberty-promoting mechanism, the aggrieved party's preferences must be upheld, to the extent practicable. The Rule on the Writ of Amparo imposes no compulsion or even an order of preference between public and private entities. As far as the Rule is concerned, the only requirement is that the private person or entity through whom the aggrieved party seeks to be protected is accredited by this Court. Uncertainty as to the identity of the persons responsible for threats against the aggrieved party's liberty and security are not grounds for curtailing the aggrieved party's liberty to choose.
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> The Court of Appeals then should not have undercut Lt. SG Gadian's resort to the Association of Major Religious Superiors of the Philippines or to another person or institution of her choosing. Even as the Association of Major Religious Superiors of the Philippines may have yet to secure accreditation, it was not for the Court of Appeals to consummately foreclose Lt. SG Gadian's choice as to who shall be protecting her. Certainly, the Court of Appeals could have been more deferential to Lt. SG Gadian's liberty to choose. It could have extended to the Association a reasonable period to obtain accreditation, and enabled Lt. SG Gadian to identify an alternative in the interim. If the Association is ultimately found wanting, the Court of Appeals

could have still enabled Lt. SG Gadian to name her preferred substitute. It could have taken better, more enfranchising, precautions.

We recognize that as of today the danger to the life and security of Lt. SG Gadian had already ceased, if not entirely disappeared. Although summoned to appear at the AFP's investigation of her expose, she voluntarily chose not to despite the institutional assurances for her personal safety. The AFP then declared her on AWOL status as of April 22, 2009, and dropped her from the roster as a deserter on May 2, 2009 following her unexplained failure to report to her mother unit.[36] Worth noting, too, is that the individuals to whom she had attributed the threats to her life and liberty had since retired from active military service. These circumstances are supervening events that have rendered the resolution on the merits of the consolidated appeals moot and academic, that is, to still continue with the resolution when no practical consequence will be achieved or ensured is pointless and of no utility. Moot and academic cases cease to present any justiciable controversies by virtue of supervening events.[37] The courts of law will not determine moot questions,[38] because it is unnecessary for the courts to indulge in academic declarations.[39]

WHEREFORE, the Court **DISMISSES** these consolidated appeals for being now moot and academic.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.*, concur.

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[36] *Rollo* (G.R. No. 188195), p. 124.

[37] *Barayuga v. Adventist University of the Philippines*, G.R. No. 168008, August 17, 2011, 655 SCRA 640, 654-655.

[38] *Cole v. Court of Appeals*, G.R. No. 137551, December 26, 2000, 348 SCRA 692, 698.

[39] *Pepsi-Cola Bottling Company v. Secretary of Labor*, G.R. No. 96663, August 10, 1999, 312 SCRA 104, 144.

EN BANC

[G.R. No. 223505. October 3, 2017]

PHILIPPINE ASSOCIATION OF DETECTIVE AND PROTECTIVE AGENCY OPERATORS (PADPAO), REGION 7 CHAPTER, INC., *petitioner, vs.* **COMMISSION ON ELECTIONS (COMELEC) AND/OR ITS COMMITTEE ON THE BAN ON FIREARMS AND SECURITY PERSONNEL (CBFSP),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE COURT MAY ONLY ADJUDICATE ACTUAL, ONGOING CONTROVERSIES; EXCEPTIONS. — [A]lthough the subject of the petition is a Resolution of the COMELEC promulgated relative to the May 2016 National and Local Elections, the issue raised herein has not been rendered moot and academic by the conclusion of the 2016 elections. As a rule, the Court may only adjudicate actual, ongoing controversies. x x x There are recognized exceptions to the rule; thus, the Court has seen fit to decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. The present case falls within the fourth exception. For this exception to apply, the following factors must be present: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); THE 30-DAY REGLEMENTARY PERIOD TO FILE A PETITION FOR *CERTIORARI* APPLIES TO FINAL ORDERS, RULINGS AND DECISIONS OF THE COMELEC *EN BANC* RENDERED IN THE EXERCISE OF ITS

ADJUDICATORY OR QUASI-JUDICIAL POWERS AND NOT UNDER ITS RULE-MAKING POWER.— On the timeliness of the filing of the petition, the Court holds that the 30-day reglementary period under Rule 64 in relation to Rule 65 does not apply. The Court's power to review decisions of the COMELEC stems from the Constitution itself x x x [under] Section 7, Article IX-A x x x. The Court has interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC *en banc* rendered in the exercise of its adjudicatory or quasi-judicial powers. The petition herein assails the validity of a COMELEC Resolution which was issued under its rule-making power, to implement the provisions of BP 881 and RA 7166. Thus, the period under Rule 64 does not apply.

3. ID.; ID.; ID.; HAS THE POWER TO ISSUE RULES AND REGULATIONS IMPLEMENTING THE GUN BAN DURING ELECTION PERIOD.— The power of the COMELEC to promulgate rules and regulations to enforce and implement election laws is enshrined in the Constitution x x x. The COMELEC's power to issue rules and regulations was reiterated in BP 881 x x x. COMELEC's Resolution No. 10015 finds statutory basis in BP 881 and RA 7166 x x x. [T]he Constitution and the cited laws specifically empower the COMELEC to issue rules and regulations implementing the so-called Gun Ban during election period. Under BP 881 and RA 7166, it is unlawful for any person to bear, carry, or transport firearms or other deadly weapons in public places during the election period, even if otherwise licensed to do so, unless authorized in writing by the COMELEC. Section 35 of RA 7166 also uses the mandatory word "shall" to impose upon the COMELEC its duty to issue rules and regulations to implement the law. To be sure, the COMELEC's authority to promulgate rules and regulations to implement Section 32 of RA 7166 has jurisprudential imprimatur.

4. ID.; ID.; ID.; MERELY REGULATES THE BEARING, CARRYING, AND TRANSPORTING OF FIREARMS AND OTHER DEADLY WEAPONS BY PRIVATE SECURITY AGENCIES AND ALL OTHER PERSONS DURING ELECTION PERIOD AND DOES NOT ENCROACH UPON THE AUTHORITY OF THE PHILIPPINE NATIONAL POLICE TO REGULATE THEM.— In RA 5487, it is the

PNP that exercises general supervision over the operation of all private detective and watchman security guard agencies. It has the exclusive authority to regulate and to issue the required licenses to operate security and protective agencies. The COMELEC does not encroach upon this authority of the PNP to regulate PSAs — as it merely regulates the bearing, carrying, and transporting of firearms and other deadly weapons by PSAs and all other persons, **during election period.** Notably, the language of RA 5487 and its implementing rules is not so restrictive as to prohibit other government agencies from imposing additional restrictions relating to the conduct of business by PSAs and PSSPs under special circumstances. In this case, the special circumstance is the election period.

5. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; DOES NOT PRECLUDE CLASSIFICATION OF INDIVIDUALS WHO MAY BE ACCORDED DIFFERENT TREATMENT UNDER THE LAW AS LONG AS THE CLASSIFICATION IS REASONABLE AND NOT ARBITRARY; CLASSIFICATION, WHEN REASONABLE.— The equal protection clause means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." The guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification. The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary. Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.

6. ID.; ID.; ID.; NON-IMPAIRMENT CLAUSE; APPLIES TO LAWS THAT DEROGATE FROM PRIOR ACTS OR CONTRACTS BY ENLARGING, ABRIDGING OR IN ANY MANNER CHANGING THE INTENTION OF THE PARTIES.— The non-impairment clause under Section 10, Article III of the Constitution is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties,

imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.

APPEARANCES OF COUNSEL

Gica Del Socorro Espinoza Fernandez Tan & Tan for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court assailing the validity of Section 2(e), Rule III of Commission on Elections (COMELEC) Resolution No. 10015[2] (Resolution No. 10015) filed by petitioner Philippine Association of Detective and Protective Agency Operators (PADPAO), Region 7 Chapter, Inc., which is an association of licensed security agencies and company security forces in Region 7 under Republic Act No. 5487[3] (RA 5487) or the Private Security Agency Law.

The Assailed COMELEC Resolution

Under Resolution No. 9981,[4] the COMELEC set the election period for the May 2016 National and Local Elections beginning

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[1] *Rollo*, pp. 3-39.

[2] RULES AND REGULATIONS ON: (1) THE BAN ON THE BEARING, CARRYING OR TRANSPORTING OF FIREARMS AND OTHER DEADLY WEAPONS; AND (2) THE EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS DURING THE ELECTION PERIOD OF THE MAY 9, 2016 SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS, promulgated on November 13, 2015.

[3] AN ACT TO REGULATE THE ORGANIZATION AND OPERATION OF PRIVATE DETECTIVE, WATCHMEN OR SECURITY GUARD AGENCIES, as amended by Presidential Decree Nos. 11, 100, and 1919.

[4] IN THE MATTER OF PRESCRIBING THE CALENDAR OF ACTIVITIES AND PERIODS OF CERTAIN PROHIBITED ACTS IN CONNECTION WITH THE MAY 09, 2016 NATIONAL AND LOCAL ELECTIONS, promulgated on August 18, 2015.

on January 10, 2016 up to June 8, 2016 (120 days before and 30 days after the election day).[5]

On November 13, 2015, the COMELEC promulgated Resolution No. 10015 which provided for the rules and regulations on the ban on bearing, carrying or transporting of firearms and other deadly weapons and the employment, availment or engagement of the services of security personnel or bodyguards during the election period, more commonly referred to as the "Gun Ban." Despite the nomenclature used, it must be noted that the regulation covers not only the subject of firearms, but also the engagement of security services.

Section 1, Rule II of Resolution No. 10015 provides for the prohibited acts during election period:

RULE II

GENERAL PROVISIONS

SECTION 1. ***Prohibited Acts.*** — During the Election Period:

a. No person shall bear, carry or transport Firearms or Deadly Weapons outside his residence or place of business, and in all public places, including any building, street, park, and in private vehicles or public conveyances, even if he is licensed or authorized to possess or to carry the same, unless authorized by the Commission, through the CBFSP,[6] in accordance with the provisions of this Resolution;

b. No person shall employ, avail himself or engage the services of security personnel or bodyguards, whether or not such security personnel or bodyguards are regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP), other law enforcement agency of the government or from a private security service provider,

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[5] 1987 CONSTITUTION, Art. IX-C, Sec. 9 which provides:

Sec. 9. Unless otherwise fixed by the Commission in special cases, the election period shall commence ninety days before the day of election and shall end thirty days thereafter.

[6] Committee on the Ban on Firearms and Security Personnel (Section 1[e], Rule I, Resolution No. 10015).

unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution;

c. No person or entity shall transport and deliver Firearms and/or its parts, Ammunition and/or its components, and Explosives and/or its components, unless authorized by the Commission, through the CBFSP, in accordance with the provisions of this Resolution.

In turn, Section 1, Rule III of Resolution No. 10015 lists those who may apply for authority to bear, carry, or transport firearms or deadly weapons. Private security services providers (PSSPs),[7] which include private security agencies (PSAs), are specifically included. The provision states:

RULE III

AUTHORITY TO BEAR, CARRY OR TRANSPORT FIREARMS OR OTHER DEADLY WEAPONS

SECTION 1. Who may bear, carry or transport firearms or deadly weapons. — Only the following persons may be authorized to bear, carry or transport Firearms or other Deadly Weapons during the Election Period:

x x x x x x x x x

L. **Members of Private Security Service Providers** (PSSPs); *Provided, That, when in the possession of Firearms, they are*:

i. in the agency-prescribed uniform with the agency-issued identification card prominently displayed and visible at all times, showing clearly the name and position;

ii. in possession of a valid License to Exercise Security Profession (LESP) with Duty Detail Order (DDO), and valid firearms license of the agency/company where they are employed.

iii. deployed by PSA/PDS/CGF duly licensed by the PNP;

iv. in the actual performance of official duty at his specified place or area of duty; and

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[7] Private Security Service Provider (PSSP) refers to a Private Security Agency (PSA), Private Detective Agency (PDA) or Company Guard Force (CGF); COMELEC Resolution No. 10015, Rule I, Section 1(p).

v. *carrying one (1) small firearm, unless specifically allowed otherwise under existing laws, rules and regulations;* (Emphasis supplied)

Section 2(e), Rule III of Resolution No. 10015 provides for the documentary requirements for the application:

SECTION 2. Application for authority to bear, carry or transport Firearms or Deadly Weapons – All applications shall include:

x x x x x x x x x

(e) For Private Security Services Providers (Agencies) mentioned in Section 1, paragraph L of Rule III:

1. Duly accomplished **CBFSP Form No. 2016-02** (downloadable at www.comelec.gov.ph) in three (3) copies with CD;

2. **Form 16A-02** indicating therein:

   i. the full names of the security personnel with their corresponding rank/position;

   ii. firearms description and registration data;

   iii. the security personnel's respective LESPs and DDOs;

3. **Form 16B** with the colored 4" x 5" picture and description of the authorized uniform of the Agency;

4. Copy of the Agency's License to Operate (LTO);

5. A certified true copy of the agency's updated and valid Monthly Disposition Report (MDR);

6. Certification under oath that x x x the firearms described are duly registered firearms and the persons named therein are:

   i. regular employees of the Agency;

   ii. performing actual security functions;

   iii. receiving regular compensation for the services rendered in the said agency;

   iv. duly authorized and sanctioned by their agency to bear, carry and transport firearms in the exercise of their security functions and duties;

v. covered by duly issued and valid LESPs and DDOs;

7. Copy of Official Receipt to prove payment of the filing fee in the amount of Fifty Pesos (PhP50.00) for each security personnel included in the list.

Thus, under the said provisions, PSAs may obtain authority to bear, carry, and transport firearms outside their place of work or business and in public places during the election period after compliance with the foregoing documentary requirements and under the conditions set forth therein.

The Petition

Petitioner assails the validity of Section 2(e), Rule III of Resolution No. 10015 insofar as its application to PSAs is concerned. Petitioner asserts that the COMELEC does not have any authority to promulgate rules regarding the bearing, carrying, or transporting of firearms by PSAs. Petitioner alleges that PSAs should not be required to secure authority from the COMELEC as RA 5487 already grants to PSAs and their security guards, watchmen, detectives, and security personnel the authority to possess, bear, carry, and transport firearms, being necessary equipment for the conduct of its business and practice of its personnel's profession. Section 13 of RA 5487 states:

Sec. 13. *Issuance of Firearms.* — A watchman or security agency shall be entitled to possess firearms after having satisfactorily passed the requirements prescribed by the Chief, Philippine Constabulary pertinent to the possession of firearm of any caliber not higher than 45 caliber in a number not exceeding one firearm for every two watchmen or security guards in its employ: *Provided, however*, That a watchman or security agent shall be entitled to possess not more than one riot gun or shotgun in order to provide adequate security when circumstances so demand: *Provided, further*, That all the firearms mentioned herein shall be carried by the watchman or security guard only during his tour of duty in proper uniform within the compound of the establishment except when he escorts big amounts of cash or valuables in and out of said compound.

Petitioner maintains that the power to promulgate rules and regulations with regard to said law is granted to the Philippine

National Police (PNP), in consultation with the PADPAO, under Section 17 of the said law:

> Sec. 17. *Rules and Regulations by Chief, Philippine Constabulary.* — The Chief of the Philippine Constabulary, in consultation with the Philippine Association of Detective and Protective Agency Operators, Incorporated and subject to the provisions of existing laws, is hereby authorized to issue the rules and regulations necessary to carry out the purpose of this Act.

Petitioner also asserts that the COMELEC's powers are defined and limited to election related matters under the 1987 Philippine Constitution. According to petitioner, nothing in the Constitution gives to the COMELEC, even during election period, the power and authority to promulgate rules and regulations relating to the bearing, carrying, and transporting of firearms by PSAs. According to petitioner, in issuing Resolution No. 10015, the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner further avers that Resolution No. 10015 violates the constitutional tenets of equal protection of laws and non-impairment of obligations of contracts as it impairs the contracts of its member PSAs with their respective clients. As well, petitioner asserts that the COMELEC contradicts itself. While Section 1, Rule III of Resolution No. 10015 provides that PSSPs or PSAs may bear, carry or transport firearms or deadly weapons, immediately thereafter, Section 2 mandates that they must apply for said authority. Petitioner also claims that the filing fee of ₱50.00 for each security personnel requesting for authority is exorbitant.

Lastly, petitioner cites *Rimando v. COMELEC*,[8] (*Rimando*) as supposedly strengthening its position that respondent COMELEC acted without or in excess of jurisdiction or with abuse of jurisdiction when it approved and implemented Resolution No. 10015.

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[8] 616 Phil. 562 (2009).

The petition includes a prayer for a writ of preliminary injunction and/or temporary restraining order which was noted by the Court.

The OSG Comment

The COMELEC, through the Office of the Solicitor General (OSG), filed its Comment[9] on June 27, 2016.

On the procedural issue, the OSG contends that the petition is moot and academic as Resolution No. 10015 is no longer in effect, since the election period already expired on June 8, 2016. Also, a petition for *certiorari* under Rule 65 is the wrong remedy because Resolution No. 10015 was issued in the exercise of COMELEC's administrative function and not its quasi-judicial power. The petition is actually one for declaratory relief over which the Court has no original jurisdiction. Assuming *arguendo* that the petition for *certiorari* is proper, it was filed out of time. Under Section 3, Rule 64 of the Rules of Court, a *certiorari* petition must be filed within 30 days from notice of a resolution. Resolution No. 10015 was promulgated on November 13, 2015 and was published on COMELEC's website[10] on November 14, 2015. However, the petition was filed only on April 8, 2016. Even assuming that the petition may be filed under Rule 65 under the Court's extraordinary jurisdiction, the petition is still filed beyond the 60-day period under the said Rule.

With regard to the substantive aspect, the OSG argues that the COMELEC's powers are not limited to those enumerated in the 1987 Constitution. Both Batas Pambansa Blg. 881[11] (BP

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[9] *Rollo*, pp. 141-179.

[10] www.comelec.gov.ph.

[11] OMNIBUS ELECTION CODE OF THE PHILIPPINES. Section 52 of BP 881 provides:

Sec. 52. *Powers and functions of the Commission on Elections*. — In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

881) and RA 7166[12] confer upon the COMELEC the power to promulgate rules and regulations to implement the provisions of said laws.

The OSG points out that the prohibition on carrying of firearms during the election period and the requirement of written authority from the COMELEC are found in both laws.[13] Thus, when the

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x x x x x x x x x

(c) Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer, and require the payment of legal fees and collect the same in payment of any business done in the Commission, at rates that it may provide and fix in its rules and regulations.

[12] AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES. Section 35 of RA 7166 provides:

SEC. 35. *Rules and Regulations.* — The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation.

[13] B.P. 881, Section 261 provides:

SEC. 261. *Prohibited Acts.* — The following shall be guilty of an election offense:

x x x x x x x x x

(q) *Carrying firearms outside residence or place of business.* – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: *Provided,* That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

R.A. 7166, Section 32 provides:

SEC. 32. *Who May Bear Firearms.* – During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearm licenses shall be suspended during the election period.

COMELEC issued Resolution No. 10015, it was merely implementing the mandates of BP 881 and RA 7166.

The OSG further argues that neither does Resolution No. 10015 violate the equal protection clause as PSAs are not singled out in the imposition of the requirement. The requirement of written authority to carry, possess, and transport firearms applies even to public officials, members of the PNP and AFP, security personnel of foreign diplomatic corps, cashiers, disbursing officers, or persons who habitually carry large sums of money, among others. The non-impairment of contracts clause is not violated as well. Resolution No. 10015 does not prevent PSAs from performing their contractual obligations. It merely requires written authority to bear, carry, and transport firearms during the election period.

Lastly, the OSG refutes the applicability of *Rimando* in this case. In said case, Rimando was the president of a security agency. It was alleged that he permitted his security guards to carry firearms outside their place of business without written authority from the COMELEC. The issue therein was Rimando's liability for failing to obtain a permit from the COMELEC. The Court, interpreting Section 261(s) of BP 881, absolved Rimando of the election offense as it was held that "bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not require prior written approval from the Commission."[14] The guards of Rimando were guarding a private residential subdivision, which was considered their place of work, although they had a separate main office.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

[14] *Rimando v. COMELEC*, *supra* note 8, at 577.

Thus, the guards were actually within their place of work and there was no need to secure written authority from the COMELEC.

Petitioner filed a Reply[15] on November 15, 2016 reiterating the arguments in the petition.

Issues

1. Whether the petition is moot;

2. Whether the remedy is proper and timely filed; and

3. Whether Section 2(e), Rule III of Resolution No. 10015 is valid.

The Court's Ruling

The petition has no merit.

Procedural aspects

At the outset, although the subject of the petition is a Resolution of the COMELEC promulgated relative to the May 2016 National and Local Elections, the issue raised herein has not been rendered moot and academic by the conclusion of the 2016 elections.

As a rule, the Court may only adjudicate actual, ongoing controversies. In *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*,[16] the Court held:

> An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.[17]

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[15] *Rollo*, pp. 189-203.

[16] G.R. Nos. 209271, 209276, 209301 & 209430, July 26, 2016, 798 SCRA 250.

[17] *Id*. at 270.

There are recognized exceptions to the rule; thus, the Court has seen fit to decide cases, otherwise moot, if: *first,* there is a grave violation of the Constitution; *second,* the exceptional character of the situation and the paramount public interest are involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth,* the case is capable of repetition yet evading review.[18]

The present case falls within the fourth exception. For this exception to apply, the following factors must be present: (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action.[19]

The election period in 2016 was from January 10 until June 8, 2016, or a total of only 150 days. The petition was filed only on April 8, 2016. There was thus not enough time for the resolution of the controversy. Moreover, the COMELEC has consistently issued rules and regulations on the Gun Ban for previous elections in accordance with RA 7166: Resolution No. 8714[20] for the 2010 elections, Resolution No. 9561-A[21] for the 2013 elections, and the assailed Resolution No. 10015 for the 2016 elections. Thus, the COMELEC is expected to promulgate similar rules in the next elections. Prudence

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[18] *Id*. at 270-271.

[19] *Id*. at 287.

[20] RULES AND REGULATIONS ON THE: (1) BEARING, CARRYING OR TRANSPORTING OF FIREARMS OR OTHER DEADLY WEAPONS; AND (2) EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS, DURING THE ELECTION PERIOD FOR THE MAY 10, 2010 NATIONAL AND LOCAL ELECTIONS.

[21] RULES AND REGULATIONS ON: (1) THE BAN ON THE BEARING, CARRYING OR TRANSPORTING OF FIREARMS AND OTHER DEADLY WEAPONS; AND (2) THE EMPLOYMENT, AVAILMENT OR ENGAGEMENT OF THE SERVICES OF SECURITY PERSONNEL OR BODYGUARDS DURING THE ELECTION PERIOD OF THE MAY 13, 2013 AUTOMATED SYNCHRONIZED NATIONAL, LOCAL ELECTIONS AND ARMM REGIONAL ELECTIONS, AS AMENDED.

accordingly dictates that the Court exercise its power of judicial review to finally settle this controversy.

On the timeliness of the filing of the petition, the Court holds that the 30-day reglementary period under Rule 64[22] in relation to Rule 65 does not apply. The Court's power to review decisions of the COMELEC stems from the Constitution itself. Section 7, Article IX-A thereof prescribes:

> Section 7. Each commission shall decide by a majority vote of all its members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the commission or by the commission itself. Unless otherwise provided by this constitution or by law, any decision, order, or ruling of each commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

The Court has interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC *en banc* rendered in the exercise of its adjudicatory or quasi-judicial powers.[23] The petition herein assails the validity of a COMELEC Resolution which was issued under its rule-making power, to implement the provisions of BP 881 and RA 7166. Thus, the period under Rule 64 does not apply.

On the propriety of the remedy, the OSG argues that the appropriate case should have been a petition for declaratory relief before the Regional Trial Court under Rule 63 of the Rules of Court. On this procedural issue, respondent's position

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[22] SEC. 3. *Time to file petition.* — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[23] *Cayetano v. Commission on Elections*, 663 Phil. 694, 701 (2011).

has merit. However, considering the very important and substantive issues raised that, as explained, are expected to recur, the Court resolves to set aside this technicality and rule on the substantive issue to put an end to this controversy.

Substantive Aspects

The COMELEC did not exceed its rule-making authority in issuing the assailed provision of Resolution No. 10015.

Petitioner contends that the COMELEC does not have the authority, during an election period, to impose upon PSAs the requirement of written authority from the COMELEC to bear, carry, and transport firearms and other deadly weapons, as the power to do so belongs exclusively to the PNP under RA 5487. Petitioner is mistaken.

The power of the COMELEC to promulgate rules and regulations to enforce and implement election laws is enshrined in the Constitution, which provides:

Section 6, Article IX-A:

Section 6. Each Commission *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

Section 2, Article IX-C:

Section 2. The Commission on Elections shall exercise the following powers and functions:

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

The COMELEC's power to issue rules and regulations was reiterated in BP 881:

Article VII. THE COMMISSION ON ELECTIONS

Sec. 52. *Powers and functions of the Commission on Elections.* — In addition to the powers and functions conferred upon it by the

Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x x x x x x x

(c) **Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer** x x x. (Emphasis supplied)

In *Aquino v. COMELEC*,[24] the Court recognized the wide latitude given to the COMELEC by the Constitution and by law to enforce and implement election laws to fulfil its mandate of ensuring free, orderly, peaceful, and honest elections. The Court held:

A common and clear conclusion that we can gather from these provisions is the obvious and unequivocal intent of the framers of the Constitution and of the law to grant the COMELEC with powers, necessary and incidental to achieve the objective of ensuring *free, orderly, honest, peaceful and credible elections*.

Thus, expressly, the Constitution and the laws grant the COMELEC with the power, first and foremost, to "*[e]nforce and administer all laws and regulations relative to the conduct of an election*," and second, to "*promulgate rules and regulations*." Together, these powers ensure that the COMELEC is well armed to properly enforce and implement the election laws and enable it to fill in the situational gaps which the law does not provide for or which the legislature had not foreseen.[25]

In *Lokin, Jr. v. COMELEC*,[26] the Court also ruled:

The COMELEC is constitutionally mandated to enforce and administer all laws and regulations relative to the conduct of an election, a plebiscite, an initiative, a referendum, and a recall. In addition to the powers and functions conferred upon it by the Constitution, the

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[24] 756 Phil. 80 (2015).

[25] *Id*. at 102.

[26] 635 Phil. 372 (2010).

COMELEC is also charged to promulgate IRRs implementing the provisions of the *Omnibus Election Code* or other laws that the COMELEC enforces and administers.[27]

COMELEC's Resolution No. 10015 finds statutory basis in BP 881 and RA 7166:

B.P. 881

Sec. 261. *Prohibited Acts*. – The following shall be guilty of an election offense:

x x x x x x x x x

(q) *Carrying firearms outside residence or place of business*. — **Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission**: *Provided*, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables. (Emphasis supplied)

R.A. 7166

SEC. 32. *Who May Bear Firearms*. — During the election period, **no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission.** The issuance of firearm licenses shall be suspended during the election period.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other law enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name,

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[27] *Id*. at 393.

rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

x x x x x x x x x

SEC. 35. *Rules and Regulations.* — **The Commission shall issue rules and regulations to implement this Act.** Said rules shall be published in at least two (2) national newspapers of general circulation. (Emphasis supplied)

Contrary to PADPAO's position, the Constitution and the cited laws specifically empower the COMELEC to issue rules and regulations implementing the so-called Gun Ban during election period.

Under BP 881 and RA 7166, it is unlawful for any person to bear, carry, or transport firearms or other deadly weapons in public places during the election period, even if otherwise licensed to do so, unless authorized in writing by the COMELEC. Section 35 of RA 7166 also uses the mandatory word "shall" to impose upon the COMELEC its duty to issue rules and regulations to implement the law.

To be sure, the COMELEC's authority to promulgate rules and regulations to implement Section 32 of RA 7166 has jurisprudential imprimatur. In *Orceo v. COMELEC*,[28] the Court upheld the inclusion of airguns and airsoft guns in the definition of firearm under COMELEC Resolution 8714, *viz.*:

Evidently, the COMELEC had the authority to promulgate Resolution No. 8714 pursuant to Section 35 of R.A. No. 7166. It was granted the power to issue the implementing rules and regulations of Sections 32 and 33 of R.A. No. 7166. **Under this broad power, the COMELEC was mandated to provide the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of "firearms," among others. These details are left to the discretion of the COMELEC, which is a constitutional body that possesses special knowledge and expertise on election**

[28] 630 Phil. 670 (2010).

matters, with the objective of ensuring the holding of free, orderly, honest, peaceful and credible elections.

x x x x x x x x x

A license to possess an airsoft gun, just like ordinary licenses in other regulated fields, does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed.

x x x x x x x x x

The Court holds that the COMELEC did not gravely abuse its discretion in including airsoft guns and airguns in the term firearm in Resolution No. 8714 for purposes of the gun ban during the election period, with the apparent objective of ensuring free, honest, peaceful and credible elections this year. x x x[29] (Emphasis supplied)

PADPAO's insistence that the power to issue rules and regulations in relation to the operation of PSAs belongs exclusively to the PNP is specious. In RA 5487, it is the PNP that exercises general supervision over the operation of all private detective and watchman security guard agencies. It has the exclusive authority to regulate and to issue the required licenses to operate security and protective agencies.[30] The COMELEC does not encroach upon this authority of the PNP to regulate PSAs — as it merely regulates the bearing, carrying, and transporting of firearms and other deadly weapons by PSAs and all other persons, **during election period**.

Notably, the language of RA 5487 and its implementing rules is not so restrictive as to prohibit other government agencies from imposing additional restrictions relating to the conduct of business by PSAs and PSSPs under special circumstances. In this case, the special circumstance is the election period. The Court takes judicial notice of the fact that historically, Philippine elections have been marred by violence and unnecessary bloodshed and additional guidelines must be put in place to eliminate, or at least, lessen the threat. Whether or

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[29] *Id.* at 682-685.

[30] *Ferrer v. Office of the Ombudsman*, 583 Phil. 50, 62 (2008).

not the Gun Ban has been an effective deterrent is a different matter, which is beyond the Court's domain.

The wording of Section 261 of BP 881 and Section 32 of RA 7166 also provides that the said provisions apply to any and all persons. Thus, PADPAO cannot claim any exception as a PSA under the cloak of RA 5487.

Moreover, the license to operate as a PSA and the right to possess and carry firearms do not confer an absolute right on the private licensee, as this is still subject to regulation. In *Chavez v. Romulo*,[31] the Court upheld the validity of the Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence[32] issued by the PNP, which revoked all permits to carry firearms outside of residence and imposed additional requirements and restrictions thereto.

As to the nature of the right to bear arms, the Court ruled:

> The right of individuals to bear arms is not absolute, but is subject to regulation. The maintenance of peace and order and the protection of the people against violence are constitutional duties of the State, and the right to bear arms is to be construed in connection and in harmony with these constitutional duties.[32a]

Lastly, RA 5487 is not a blanket authority on PSAs to carry firearms. Even if they are licensed as a security agency, they must still apply for license to own and possess a firearm as required under RA 10591[33] or the Comprehensive Firearms and Ammunition Regulation Act.

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[31] 475 Phil. 486 (2004).

[32] Issued on January 31, 2003.

[32a] *Chavez v. Romulo*, *supra* note 31, at 491.

[33] AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF. Section 5 provides:

SEC. 5. *Ownership of Firearms and Ammunition by a Juridical Entity.* — A juridical person maintaining its own security force may be issued a regular license to own and possess firearms and ammunition under the following conditions:

Resolution No. 10015 does not violate the equal protection clause and the non-impairment of contracts clause.

Petitioner's argument that the application of Resolution No. 10015 to PSAs violates the constitutional tenets of equal protection and non-impairment of contracts deserves scant consideration.

Under the Bill of Rights in Article III of the 1987 Constitution, these are protected rights:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

x x x x x x x x x

Section 10. No law impairing the obligation of contracts shall be passed.

The equal protection clause means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same

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(a) It must be Filipino-owned and duly registered with the Securities and Exchange Commission (SEC);

(b) It is current, operational and a continuing concern;

(c) It has completed and submitted all its reportorial requirements to the SEC; and

(d) It has paid all its income taxes for the year, as duly certified by the Bureau of Internal Revenue.

The application shall be made in the name of the juridical person represented by its President or any of its officers mentioned below as duly authorized in a board resolution to that effect: *Provided*, That the officer applying for the juridical entity, shall possess all the qualifications required of a citizen applying for a license to possess firearms.

Other corporate officers eligible to represent the juridical person are: the vice president, treasurer, and board secretary.

Security agencies and LGUs shall be included in this category of licensed holders but shall be subject to additional requirements as may be required by the Chief of the PNP.

place and in like circumstances."[34] The guaranty of the equal protection of the laws is not violated by a legislation based on a reasonable classification. The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary.[35]

Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.[36]

Resolution No. 10015 applies to any and all persons, whether private individuals or public officers. Rule III thereof contains a comprehensive list of persons required to obtain written authority from the COMELEC to bear, carry, and transport firearms outside his place or residence or business. Aside from PSAs and PSSPs, the regulation applies even to the President of the Republic of the Philippines, Vice President, Senators, Members of the House of Representatives, the Chief Justice of the Supreme Court and Associate Justices of the Supreme Court, Court of Appeals, Sandiganbayan, and Court of Tax Appeals and Judges of lower courts, members of the Philippine National Police, Armed Forces of the Philippines, and to cashiers and disbursing officers or persons who by the nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables, among others.[37]

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[34] *National Power Corporation v. Pinatubo Commercial*, 630 Phil. 599, 609 (2010).

[35] *Id*.

[36] *Commissioner of Customs v. Hypermix Feeds Corporation*, 680 Phil. 681, 693 (2012).

[37] **SECTION 1.** ***Who may bear, carry or transport firearms or deadly weapons.*** – Only the following persons may be authorized to bear, carry or transport Firearms or other Deadly Weapons during the Election Period:

A. The President of the Republic of the Philippines;
B. The Vice-President of the Republic of the Philippines;
C. Senators and Members of the House of Representatives (who are not candidates);

Under Section 2 of Rule III, PSAs/PSSPs and cashiers and disbursing officers or persons who by the nature of their official

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D. Cabinet Secretaries;
E. The Chief Justice and Justices of the Supreme Court, Justices of the Court of Appeals, Sandiganbayan, and Court of Tax Appeals; and Judges of the Regional Trial courts and Municipal/Metropolitan/ Circuit Trial Courts;
F. The Ombudsman and Deputy Ombudsmen;
G. The Chairmen and Commissioners of the Civil Service Commission (CSC) and the Commission on Audit (COA);
H. The Chairperson and Commissioners of the Commission on Human Rights;
I. Security Personnel of Foreign Diplomatic Corps, Missions and Establishments under international law, including Foreign Military Personnel in the Philippines covered by existing treaties and international agreements endorsed by the Secretary of the Department of Foreign Affairs and the Heads of Missions of foreign countries in the Philippines.
J. Regular **officers, members, and agents** of the following agencies of the government **who are actually performing law enforcement and/or security functions,** x x x:

x x x x x x x x x

1. Officers and Members of the Philippine National Police (PNP);
2. Commissioned Officers (COs), Non-Commissioned Officers (NCOs) and Enlisted Personnel (EP) of the Armed Forces of the Philippines (AFP);
3. National Bureau of Investigation (NBI);
4. Provincial and City Jails, Bureau of Corrections (BuCor), Department of Justice;
5. Bureau of Jail Management and Penology (BJMP);
6. (a) Intelligence Division and (b) Investigation Division of the Intelligence and Investigation Service; and the (c) Customs Police Division of the Enforcement and Security Service of the Bureau of Customs (BoC);
7. Port Police Department, Philippine Ports Authority (PPA);
8. Philippine Economic Zone Authority (PEZA) police forces;
9. Government Guard Units (GGUs) regulated by the PNP under RA No. 5487;
10. (a) The Commissioner and Deputy Commissioners, (b) members of the Law and Investigation Division and (c) members of the Intelligence Division, Bureau of Immigration (BI);
11. Manila International Airport (MIA) Authority Police Force;
12. Mactan-Cebu International Airport Authority Police Force;

duties, profession, business, or occupation habitually carry large sums of money or valuables are required to pay a filing fee.

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13. Law Enforcement Service of the Land Transportation Office (LTO);
14. Philippine Coast Guard (PCG);
15. Cebu Port Authority Police Force;
16. Internal Security Operations Group (ISOG) of the Witness Protection, Security and Benefits Program of the Department of Justice;
17. Enforcement and Investigation Division, Optical Media Board (OMB);
18. (a) The Security Investigation and Transport Department (SITD), (b) Cash Department and (c) the Office of Special Investigation (OSI), Branch Operations of the Bangko Sentral ng Pilipinas (BSP);
19. Offices of the Sergeant-At-Arms (OSAA) of (a) the Senate and (b) the House of Representatives, including the OSAA designated regular security escorts of Senators and Congressmen;
20. Inspection Service of the Philippine Postal Corporation (PhilPost);
21. Inspection, Monitoring and Investigation Service of the National Police Commission (NAPOLCOM);
22. Forest Officers defined under PD No. 705, Forest/Park Rangers, Wildlife Officers, and Forest Protection and Law Enforcement Officers of the Department of Environment and Natural Resources (DENR) under DAO No. 1997-32;
23. Intelligence and Security Unit, Office of the Secretary, Department of Foreign Affairs (DFA);
24. Philippine Drug Enforcement Agency (PDEA);
25. Philippine Center for Transnational Crime (PCTC);
26. National Intelligence Coordinating Agency (NICA);
27. Civilian Armed Forces Geographical Units (CAFGU) Active Auxiliaries and Special Civilian Armed Forces Geographical Units Active Auxiliaries already constituted upon the effectivity of this Resolution while within the barracks;
28. Presidential Security Group (PSG);
29. Internal Security Division of the Bureau of the Treasury (BoT), the Treasurer and Deputy Treasurers of the Philippines;
30. Internal Security of the Office of the Vice-President;
31. The Secretary, Undersecretaries, Assistant Secretaries of the Department of the Interior and Local Government and the Internal Security of the Office of the Secretary of the Interior and Local Government;

The former are required to pay ₱50.00 for each security personnel while the latter are required to pay ₱5,000.00. No filing fee is imposed on the government officials and employees.

As correctly put by the COMELEC, through the OSG, there is substantial distinction between and among the persons listed therein.

Majority of the persons listed are public officers who include high-ranking officials, law enforcement officers, members of the armed forces, and other government officials providing security services to officials of the Philippine government or foreign diplomatic corps.

Cashiers, disbursement officers, similar persons with the same nature of work, and PSAs do not fall under the same category. They are not public officers, law enforcement officers, and neither

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32. Internal Security of the Office of the Secretary of National Defense;
33. The Secretary, Undersecretaries, Assistant Secretaries, The Prosecutor General, Chief State Prosecutor, and the State, Regional, Provincial and City Prosecutors, Department of Justice;
34. The Solicitor-General;
35. Investigators and Prosecutors of the Office of the Ombudsman;
36. The Chief Public Attorney; and
37. The officers and members of departments/divisions/offices/units/detachments performing law enforcement and/or security functions;

K. Cashiers and disbursing officers or persons who by the nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables; x x x:

x x x x x x x x x

L. Members of Private Security Service Providers (PSSPs); x x x:

x x x x x x x x x

M. The Chairman and the Commissioners of the Commission on Elections, the Executive Director, Deputy Executive Directors, Directors and Lawyers employed by and holding office in the Main Office of the Commission, Regional Election Directors, Assistant Regional Election Directors, Chiefs-of-Staff of the Offices of the Chairman and Commissioners, Provincial Election Supervisors, Regional Attorneys and Election Officers, and Organic Security Officers of the Commission on Elections.

are they providing security services in relation to public office. The inclusion of cashiers and disbursement officers is due to the necessity for them to safeguard the significant sums of money or valuables in their possession. PSSPs/PSAs are included due to the nature of their private business, which is to provide security services to their clients.

On this imposition on private individuals, the Court ruled in the old case of *Government of the Philippine Islands v. Amechazurra*:[38]

> [N]o private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose, for the right to keep and bear arms is not secured to him by law. The Government can impose upon him such terms as it pleases. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the purpose of securing possession of the arms he does agree to such conditions, he must fulfill them. x x x[39]

Furthermore, the imposition of the license fee is germane to the purpose of the law, which is to regulate the bearing, carrying, and transporting of firearms during the election period. It is not limited to existing conditions only as it applies similarly to cashiers, disbursing officers, PSSPs, and PSAs during election period.

As to the violation of the non-impairment clause, petitioner's claim cannot be countenanced. The non-impairment clause under Section 10, Article III of the Constitution is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.[40]

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[38] 10 Phil. 637 (1908).

[39] *Id*. at 639.

[40] *Philippine Amusement and Gaming Corp. v. Bureau of Internal Revenue*, 660 Phil. 636, 655-656 (2011).

In this case, PSAs' contracts with their clients are not affected in any manner by the requirement of having to obtain from the COMELEC written authority to bear, carry, and transport firearms outside of their residence or place of work and in public places, during election period. All that PSAs must do is to secure such authority.

Lastly, the filing fee of fifty pesos (₱50.00) per security guard can hardly be said to be exorbitant. It is a reasonable charge for the issuance of the permit to private individuals. Besides, petitioner did not present any evidence to prove its allegation that the amounts collected are exorbitant or unreasonable.

Rimando v. COMELEC is not applicable in this case.

Petitioner's reliance on *Rimando* is hollow, if not totally pointless.

In said case, Rimando was the president and general manager of a security agency. The COMELEC had issued a resolution recommending the filing of an Information against Rimando for violation of Section 261(s) of BP 881. It was alleged that Rimando was guilty of an election offense as he unlawfully allowed his security guards to guard private residences in Santa Rosa Homes Subdivision in Laguna, using firearms, knowing fully well that they had no prior written authority from the COMELEC as required under then COMELEC Resolution No. 3328, in relation to the Gun Ban during election period from January 2, 2001 until June 13, 2001.

The Court ruled in favor of Rimando stating that under Section 261(s) of BP 881, the punishable act is the bearing of arms outside the immediate vicinity of one's place of work during the election period and not the failure of the head or responsible officer of the security agency to obtain prior written COMELEC approval. There is likewise nothing in RA 7166 that expressly penalizes the mere failure to secure written authority from the COMELEC as required in Section 32 thereof. Such failure to secure an authorization must still be accompanied by other operative acts, such as the bearing, carrying or

transporting of firearms in public places during the election period.

The Court also clarified the correct interpretation of Section 261(s):[41]

A perusal of Section 261 (s) in its entirety would show that, as a rule, the bearing of arms by a member of security or police organization of a government office or of a privately owned security agency outside the immediate vicinity of one's place of work is prohibited. Implicitly, the bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not require prior written approval from the Commission. However, Section 261 (s) also lays down exceptions to this rule and states that the general prohibition shall not apply in three instances: (a) when any of the persons enumerated therein is in pursuit of another person who has committed or is committing a crime in the premises the former is guarding; (b) when such person is escorting or providing security for the transport of payrolls, deposits, or other valuables; and (c) when he is guarding private residences, buildings or offices. It is only in the case of the third exception that it is provided that prior written approval from the COMELEC shall be obtained.[42]

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[41] Sec. 261. *Prohibited Acts*. — The following shall be guilty of an election offense:

x x x x x x x x x

(s) *Wearing of uniforms and bearing arms.* – During the campaign period, on the day before and on election day, any member of security or police organization of government agencies, commissions, councils, bureaus, offices, or government-owned or controlled corporations, or privately-owned or operated security, investigative, protective or intelligence agencies, who wears his uniform or uses his insignia, decorations or regalia, or bears arms outside the immediate vicinity of his place of work: *Provided*, That this prohibition shall not apply when said member is in pursuit of a person who has committed or is committing a crime in the premises he is guarding; or when escorting or providing security for the transport of payrolls, deposits, or other valuables; or when guarding the residence of private persons or when guarding private residences, buildings or offices: *Provided, further*, That in the last case prior written approval of the Commission shall be obtained. The Commission shall decide all applications for authority under this paragraph within fifteen days from the date of the filing of such application.

[42] *Rimando v. COMELEC*, *supra* note 8, at 577-578.

Thus, there is nothing in *Rimando* that would support petitioner's tenuous contentions. Precisely, Resolution No. 10015 provides for the requirements to obtain written authority from the COMELEC to bear, carry, and transport firearms or dangerous weapons outside one's residence or place of work, or in any public place **only during the election period**.

All told, the Court holds that the COMELEC did not gravely abuse its discretion or exceed its jurisdiction in including PSSPs and PSAs within the ambit of those persons required to secure written authority from the COMELEC to bear, carry, and transport firearms and other dangerous weapons outside their place of residence, work, or within public places during the election period.

WHEREFORE, the petition for *certiorari* with prohibition with prayer for the issuance of a writ of preliminary injunction/ temporary restraining order are **DENIED** for lack of merit. The Court upholds Section 2(e), Rule III of COMELEC Resolution No. 10015 as valid and constitutional.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

EN BANC

[G.R. No. 230628. October 3, 2017]

SMALL BUSINESS CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); THE DECISIONS, ORDERS OR RULINGS OF THE COA MAY BE BROUGHT TO THE SUPREME COURT ON *CERTIORARI* BY THE AGGRIEVED PARTY ONLY WHEN IT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— The remedy of *certiorari* is unavailing to petitioner. Article IX-A, Section 7 of the Constitution provides that decisions, orders or rulings of the COA may be brought to the Supreme Court on *certiorari* by the aggrieved party. Meanwhile, Rule 64, Section 2 of the 1997 Rules of Civil Procedure provides that judgments or final orders of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. x x x For a writ of *certiorari* against an unfavorable COA Decision to issue, there must be a showing that the respondent Commission acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Unlike an ordinary appeal or an appeal via review on *certiorari*, the petitioner must show that the Commission committed grave errors of jurisdiction and not mere errors of judgment. Any error of judgment cannot be remedied by certiorari. Unfortunately for petitioner, in its petition now before the Court, it utterly failed to show that the COA acted with grave abuse of discretion in sustaining the Notice of Disallowance dated August 27, 2014.

2. ID.; ADMINISTRATIVE LAW; GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; SALARIES AND ALLOWANCES; MERIT INCREASES; THE GRANT OF A MERIT INCREASE ONLY CARRIES WITH IT THE INCREASE IN THE RECIPIENT EMPLOYEE'S BASIC SALARY, AND DOES NOT INVOLVE ANY HORIZONTAL OR VERTICAL MOVEMENT IN THE JOB CLASSIFICATION FRAMEWORK.— [M]erit increases, as provided for in petitioner's BR No. 1863, are part of the basic salary of the employee or officer receiving them. This is in consonance with Department of Budget and Management (DBM) Corporate Compensation Circular No. 10-99, which defines actual salary as the sum total of actual basic salary including the Cost of Living Allowance (COLA) granted to GOCCs. BR No. 1863 itself recognizes that the step increments form part

of the basic salary, when it defines them as "the increase in basic salary from step to step within the salary rate ranges authorized for each job level." Merit increases take the form of step increment, which, under Clause 10 of BR No. 1863 itself, is an "[adjustment] in salary." There is no shadow of doubt, therefore, that when merit increases are granted to employees, the result is that the amount of their basic salary increases. x x x The grant of merit increases does not involve any vertical nor horizontal movement in the petitioner's job classification framework. x x x [T]he grant of a merit increase is not a personnel movement. The grant of a merit increase only carries with it the increase in the recipient employee's basic salary, and does not involve any horizontal or vertical movement in petitioner's job classification framework. The employee's position, insofar as petitioner's hierarchy is involved, does not change; only the amount of salary received by the employee changes. The entitlement to merit increase is nothing but petitioner augmenting the salary of the employee given the merit increase.

3. **ID.; ID.; ID.; ID.; EXECUTIVE ORDER NO. 7 PROHIBITS ANY AND ALL INCREASES IN THE SALARY RATE OF EMPLOYEES AND OFFICIALS OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; EXCEPTION.—** The moratorium imposed [under Section 9 of EO No. 7] is on the following: (1) increase in the rate of salary, and (2) grant of new increases in the rates of allowances, incentives, and other benefits. The prohibition is so broadly worded as to include any and all increases in the salary rate of employees and officials of GOCCs. x x x [T]he merit increases granted to the five officers partake of the nature of increase in salary rate. Sec. 9 provides only one exception to the prohibition: when the increase of salary is pursuant to the implementation of the first and second tranches of the Salary Standardization Law (SSL) 3. Petitioner, by express provision of law, is exempt from the application of the Salary Standardization Law. Thus, it is beyond question that the exception does not apply to it, because the first exception applies only to GOCCs which are within the application of the Salary Standardization law. The last clause of the provision, "until specifically authorized by the President," is not in the nature of an exception. On the contrary, it provides for the situation where the President, under the same authority by which the moratorium is imposed, deems

it proper to lift the said moratorium. The use of the preposition "until" before the phrase "specifically authorized by the President" denotes that the intention of the provision is for the moratorium to continue up to a particular point in time, i.e., when the President authorizes anew the grant of the prohibited increases. This is not in the nature of an exception, which, by its plain meaning, applies to particular cases where the rule does not apply.

4. ID.; ID.; ID.; ID.; THE PROHIBITION APPLIES ON THE ACTUAL GRANT OF INCREASED SALARY RATES REGARDLESS OF THE DATE OF APPROVAL OF THE SALARY STRUCTURE.— There is no question that EO No. 7 does not provide for any retroactive application. However, petitioner's interpretation of which acts are prohibited by the moratorium runs contrary to the plain wording of EO No. 7 when it imposed the moratorium on "increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits." The E.O. did not prohibit merely the grant of increased salary rates in corporate salary structures; it also intended to halt the actual giving of increased salary rates. x x x [T]he grant of merit increases to the five officers falls squarely within the phrase "[increase] in the rates of salaries." This interpretation is more in keeping with the spirit of the issuance, as enunciated in the whereas clauses. To hold otherwise is to disregard the clear intention of promoting transparency, accountability, and prudence in government spending. The issue of retroactivity, as posited by the petitioner, is not actually one of retroactive application, but an issue of which particular acts are prohibited. The Court holds that the moratorium is imposed on the actual grant of increased salary rates, allowances, incentives, and other benefits, regardless of the date of approval of the salary structure, irrespective of when the GOCC's/GFI's salary structure was approved. There is no merit, therefore, in petitioner's argument that COA effectively gave EO No. 7 retroactive effect. It is the date of the actual giving of the increased salary rate that is material insofar as determining whether the moratorium imposed by EO No. 7 is applicable or not.

5. ID.; ID.; ID.; GOVERNANCE COMMISSION FOR GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; HAS JURISDICTION OVER THE

COMPENSATION AND REMUNERATION SYSTEM, INCLUDING THE GRANT OF MERIT INCREASES OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS; CASE AT BAR.— Sec. 5 of RA No. 10149 provides x x x [for] the powers and functions of the GCG x x x. Petitioner, not being exempt from the application of RA No. 10149, undoubtedly is within the jurisdiction of the GCG. By express provision of the law, its compensation and remuneration system, including the grant of merit increases under BR No. 1610, is within the jurisdiction of the GCG. Hence, petitioner should have taken heed when the GCG responded to its June 25, 2014 letter and denied with finality the request for approval of the merit increases to the five officers. Instead, petitioner, after recognizing GCG's authority, decided to disregard GCG's ruling that the merit increases is covered by the moratorium. Therefore, petitioner only has itself to blame for the disallowance amounting to ₱759,042.41.

APPEARANCES OF COUNSEL

Small Business Corporation Legal Services Group for petitioner.

The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

For resolution of the Court is the Petition for *Certiorari* filed by petitioner Small Business Corporation (SB Corp.) dated April 7, 2017, pursuant to Rule 64, Section 1 in relation to Rule 65, Section 1 of the Rules of Civil Procedure. Petitioner assails the Decision of the Commission on Audit (COA) En Banc dated February 16, 2007,[1] which sustained the validity of Notice of Disallowance (ND) No. 14-001-401000-(13) dated August 27, 2014, disallowing the payment of merit increase to five officers of petitioner, amounting to a total of ₱759,042.41.

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[1] *Rollo*, pp. 36-44. By Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito.

Factual Background

Petitioner SB Corp. is a government-owned and controlled corporation (GOCC) created under Republic Act (RA) No. 6977,[2] as amended by RA No. 8289. It offers a wide range of financial services for small and medium enterprises engaged in manufacturing, processing, agribusiness (except crop level production) and services (except trading). These financial services include guarantee, direct and indirect lending, financial leasing, secondary mortgage, venture capital operations, and the issuance of debt instruments.[3] On May 23, 2008, RA No. 9501, the *Magna Carta for Micro, Small and Medium Enterprises (MSMEs)*, was enacted. Section 14 of the said law provides:

> f). Notwithstanding the provisions of Republic Act. No. 6758 and Compensation Circular No. 10, Series of 1989 issued by the Department of Budget and Management, the Board shall have the authority to provide for the organizational structure, staffing pattern of SB Corporation and extend to the employees and personnel thereof salaries, allowances, and fringe benefits similar to those extended to and currently enjoyed by employees and personnel of other government financial institutions.

On June 1, 2009, the Board of Directors (BOD) of SB Corp. passed Board Resolution (BR) No. 1610, Series of 2009,[4] approving its Revised Organizational Structure, Staffing Pattern, Qualification Standards and Salary Structure, pursuant to Sec. 11-A(f) of RA 6977.

Meanwhile, President Benigno S. Aquino III issued Executive Order (EO) No. 7 on September 8, 2010, which provides a moratorium on increases in salaries, allowances, and other benefits of GOCC officers and employees:

> SECTION 9. Moratorium on Increases in Salaries, Allowances, Incentives, and Other Benefits – Moratorium on increases in the rates

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[2] Also known as *Magna Carta for Small Enterprises*.

[3] Corporate profile. http://www.sbgfc.org.ph/about-us/corporate-profile. Last accessed on October 3, 2017.

[4] *Rollo*, pp. 46-67.

of salaries, and the grant of new increases in the rates of allowances, incentives, and other benefits, except salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010 are hereby imposed until specifically authorized by the President.

Soon after EO No. 7, on June 6, 2011, RA No. 10149[5] was enacted, creating the Governance Commission for GOCCs (GCG), the central advisory, monitoring, and oversight body with the authority to formulate, implement, and coordinate policies concerning GOCCs.[6]

On October 28, 2011, SB Corp.'s BOD approved BR No. 1863, Series of 2011[7] setting the guidelines and procedures on the implementation of SB Corp.'s revised salary structure. This sets the guidelines and rules on the implementation of BR No. 1610.[8] Among those guidelines set forth in BR No. 1863 is the grant of step increment to qualified employees, which carries with it the corresponding adjustment to the qualified employee's basic salary. The pertinent provisions read:

15. Definition. Step increment is a lateral adjustment of an employee's basic salary from one salary step to the next higher salary step.

16. Types of step increment. Step increment may be granted on the basis of merit or length of service.

16.1 ***Merit.*** Step increment based on merit (otherwise known as "**merit increase**") shall be given annually to deserving employees based on their individual performance and contribution to unit and corporate performance. The determination of officers and employees entitled to merit increase shall be based on the performance calibration as provided under **Item 11** of this Office Order.

16.2. ***Length of Service.*** A **1-step increment** shall be given to employees for every three (3) years of continuous satisfactory

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[5] Also known as *GOCC Governance Act of 2011*.

[6] *Id*., Section 5.

[7] *Rollo*, pp. 74-81.

[8] *Id*. at 5.

service in their present positions: *Provided*, that only those who have not received merit increase for the last 3 years shall be entitled to step increment based on length of service.[9]

On April 12, 2013, SB Corp. granted and paid merit increases to five officers occupying Job Level 6, namely: Charles Albert G. Belgica, Rowena G. Betia, Dida M. Delute, Evelyn P. Felias, and Victor M. Hernandez. On June 25, 2014, the President and CEO of SB Corp. wrote the GCG requesting confirmation to proceed with the grant of merit increase. The pertinent portions of the letter read:

This is to inform and request confirmation to proceed with Small Business Corporation's merit increase Program for 2013 based on 2012 performance. We look up to GCG as the proper authority to confirm our request prior to implementation which we intend to effect by July 15, 2014. The Corporation has in-placed guidelines and procedures in the administration of the Corporation's salary structure duly approved by its Board of Directors.

Your granting of our merit increase is without prejudice to all future requests to the Commission of the same nature. The merit increase is consistent with the program of other GFIs namely, Land Bank of the Philippines and Development Bank of the Philippines, which sit in our Board, and GSIS[,] to name a few.[10]

On July 8, 2014, the GCG denied the request with finality. The GCG cited Sec. 9 of EO No. 7, and pointed out that the moratorium provided thereunder is still in effect. It also noted that there is no rationale to recommending the approval of SB Corp.'s merit increase, which is apart from the Compensation and Position Classification System (CPCS).[11]

Thus, on August 27, 2014, the State Auditor, again citing Sec. 9 of EO No. 7, issued ND No. 14-001-401000-(13), disallowing the merit increase given to the five officers. The State Auditor reasoned:

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[9] *Id*. at 77.

[10] *Id*. at 98.

[11] *Id*. at 99-100.

We have examined and evaluated the payment of Merit Increase to five [SB Corp.] Officers for the period September 1, 2012 to March 31, 2013 totaling ₱257,560 under DV No. 1029457 dated April 11, 2013 paid [through] Land Bank of the Philippines Debit Advice (LDA) No. 2013-04044 dated April 12, 2013 is disallowed in audit in accordance with Governance Commission for Government Owned and/or Controlled Corporations (GCG) Memorandum dated July 8, 2014 which denied with finality [SB Corp.'s] two requests for confirmation to proceed with its merit increase program x x x.

x x x x x x x x x

x x x In addition, payments [through] payroll of the said merit increase from April 1, 2013 to August 31, 2014 including adjustment to other benefits due to the increase in rates totaling ₱501,482.41 (gross) are also disallowed. The total disallowance of the said merit increase from September 1, 2012 to August 31, 2014 amounted to ₱759,042.41 (Annex A). Discontinuance of the merit adjustments to concerned personnel on the next payroll period is hereby advised.

The following persons have been determined to be liable for the transactions:

Name	Position/Designation	Nature of Participation in the Transaction
1. Mr. Melvin E. Abanto	Head, SPCO	For approving the payment
2. Ms. Heide M. Vega	Department Manager II, CG	For signing for Mr. Alfredo S. Dimaculangan, Head, CG certifying for the availability of funds and certifying that expenses are necessary and lawful
3. Mr. Alfredo S. Dimaculangan	Head, CG	For authorizing Ms. Heide M. Vega to sign on his behalf
4. [SB Corp.] Officers	Payee	Receipt of payment

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowances not appealed within six

(6) months from receipt hereof shall become final and executory as prescribed under Section 48 and 51 of Presidential Decree (PD) No. 1445.[12]

The Ruling of the COA Cluster Director

Aggrieved, petitioner appealed ND No. 14-001-401000-(13) to the Office of the Cluster Director, Cluster II – Social Security Services and Housing. In its Decision[13] dated April 29, 2015, however, the Cluster Director denied the appeal, and upheld the validity of the ND. The Cluster Director ruled that SB Corp. is estopped from questioning the applicability of EO No. 7 because they asked for authorization from the GCG for the implementation of the merit increase. This, according to the Cluster Director, is an acknowledgment of GCG's authority over the implementation of the merit increase. Otherwise, petitioner would not have thought of the need to ask GCG for endorsement if there was no need for it. Hence, the Cluster Director dispositively held:

> WHEREFORE, foregoing premises considered, the appeal for the Notice of Disallowance to be reversed and set aside and subject merit increase be allowed in audit is hereby denied. This Office affirmed the Notice of Disallowance No. 14-001-401-000-(13) dated August 27, 2014.[14]

The Ruling of the COA En Banc

Undaunted, petitioner elevated the matter to the COA En Banc via a Petition for Review. In the presently assailed COA Decision dated February 16, 2017, however, the COA En Banc denied the Petition for Review, and upheld the validity of the ND. The COA En Banc first observed that, despite the provision in the petitioner's charter exempting it from the coverage of the Salary Standardization Law and authorizing the BOD to fix the organizational and compensation structures of its officers

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[12] *Id*. at 101-102.

[13] *Id*. at 103-106.

[14] *Id*. at 106.

and employees, this does not give SB Corp. an absolute financial independence.[15] The COA En Banc then went on to rule that Sec. 9 of EO No. 7 applied to the petitioner's grant of merit increases to the five officers, because EO No. 7 was already in effect when the merit increases were granted.

Moreover, the COA En Banc noted the June 25, 2014 letter of petitioner to the GCG, and held that the letter is tantamount to petitioner's recognition not only of GCG's jurisdiction over it but also an acknowledgment that petitioner has no authority to solely grant the merit increase. Hence, the COA En Banc held:

> **WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED.** Accordingly, Commission on Audit Corporate Government Sector Cluster 2 Decision No. 2015-005 dated April 29, 2015 sustaining Notice of Disallowance No. 14-001-401000-(13) dated August 27, 2014 on the payment of merit increase to five officers of Small Business Corporation for the period of September 1, 2012 to August 31, 2014, in the total amount of ₱759,042.41, is
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> **AFFIRMED.**[16]

Hence, the present Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court.

In its Comment dated September 8, 2017, respondent COA, through the Office of the Solicitor General, argues that petitioner is estopped from denying GCG's authority over it, and from questioning the applicability of EO No. 7 to the merit increases subject of the present controversy. Respondent cites the letter dated June 25, 2014 to GCG, which, to the COA, is a clear indication that petitioner sought approval of GCG to implement the merit increases.[17] Moreover, respondent contends that there was no retroactive application of EO No. 7 because the June 1, 2009 staffing pattern did not yet grant or implement the questioned

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[15] *Id*. at 40.

[16] *Id*. at 43.

[17] *Id*. at 132.

merit increases but merely revised the organizational structure, staffing pattern, qualification standards, and salary structure of petitioner. The moratorium imposed by EO No. 7 was only applied to the merit increases granted on April 12, 2013.[18]

The Issues

Petitioner posits the following issues in the present Petition:

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE BOARD OF DIRECTORS OF SB CORPORATION DID NOT HAVE THE AUTHORITY TO GRANT A MERIT INCREASE TO ITS EMPLOYEES

RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO CONSIDER THAT EXECUTIVE ORDER NO. 7 HAS ONLY PROSPECTIVE APPLICATION BECAUSE A RETROACTIVE APPLICATION WOULD IMPAIR VESTED AS WELL AS CONTRACTUAL RIGHTS

RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION IN FAILING TO CONSIDER THAT THE CLEAR INTENT OF EXECUTIVE ORDER NO. 7 IN RELATION TO SEC. 11 OF [RA] NO. 10149 IS THAT IT MUST BE APPLIED PROSPECTIVELY

PETITIONER WAS AUTHORIZED TO IMPLEMENT THE SUBJECT MERIT INCREASES PURSUANT TO ITS APPROVED SALARY STRUCTURE AND THE SAID MERIT INCREASES HAD ALREADY BEEN APPROVED BY THE CIVIL SERVICE COMMISSION AND THE SECRETARY OF TRADE AND INDUSTRY [AS] AN ALTER EGO OF THE PRESIDENT[19]

In fine, the petition posits that the grant of merit increases to the five officers is not in contravention of the moratorium established in EO No. 7, and that the COA En Banc committed grave abuse of discretion in disallowing the said merit increases.

The Court's Ruling

The petition lacks merit. Hence, it must be dismissed.

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[18] *Id.* at 132-136.

[19] *Id.* at 10-11.

Discussion

The remedy of *certiorari* is unavailing to petitioner. Article IX-A, Section 7 of the Constitution provides that decisions, orders or rulings of the COA may be brought to the Supreme Court on *certiorari* by the aggrieved party. Meanwhile, Rule 64, Section 2 of the 1997 Rules of Civil Procedure provides that judgments or final orders of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. In *Reyes v. Commission on Audit*, this Court clarified:

> The judgments and final orders of the Commission on Audit are not reviewable by ordinary writ of error or appeal via certiorari to this Court. Only when the Commission on Audit acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for certiorari under Rule 65. Hence, a petition for review on certiorari or appeal by certiorari to the Supreme Court under Rule 44 or 45 of the 1964 Revised Rules of Court is not allowed from any order, ruling or decision of the Commission on Audit.[20]

For a writ of *certiorari* against an unfavorable COA Decision to issue, there must be a showing that the respondent Commission acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Unlike an ordinary appeal or an appeal via review on *certiorari*, the petitioner must show that the Commission committed grave errors of jurisdiction and not mere errors of judgment. Any error of judgment cannot be remedied by *certiorari*.[21]

Unfortunately for petitioner, in its petition now before the Court, it utterly failed to show that the COA acted with grave abuse of discretion in sustaining the Notice of Disallowance dated August 27, 2014.

The resolution of the present controversy rests squarely on the applicability of the moratorium established in Sec. 9 of EO No. 7 to the petitioner's grant of merit increases to five of its

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[20] G.R. No. 125129, March 29, 1999, 305 SCRA 512, 517.

[21] *Villareal v. Aliga,* G.R. No. 166995, January 13, 2014, 713 SCRA 52, 73.

officers. Petitioner argues that the grant given to the five officers does not fall under the moratorium. The Court holds that the moratorium is applicable and that petitioner did not have authority to grant the merit increases. Thus, the respondent did not commit grave abuse of discretion in sustaining the validity of the Notice of Disallowance. Petitioner's arguments will be addressed *in seriatim*.

EO No. 7 is applicable to the grant of merit increase to the five officers of petitioner

For the Court to determine whether the moratorium imposed in EO No. 7 is applicable to merit increases as implemented by petitioner, an examination of the nature of such merit increases is in order.

There is no dispute that merit increases, as provided for in petitioner's BR No. 1863, are part of the basic salary of the employee or officer receiving them. This is in consonance with Department of Budget and Management (DBM) Corporate Compensation Circular No. 10-99,[22] which defines actual salary as the sum total of actual basic salary including the Cost of Living Allowance (COLA) granted to GOCCs. BR No. 1863 itself recognizes that the step increments form part of the basic salary, when it defines them as "the increase in basic salary from step to step within the salary rate ranges authorized for each job level."[23] Merit increases take the form of step increment, which, under Clause 10 of BR No. 1863 itself, is an "[adjustment] in salary."[24] There is no shadow of doubt, therefore, that when merit increases are granted to employees, the result is that the amount of their basic salary increases. Even petitioner does not contest this fact.

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[22] Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed Under R.A. No. 6758 for Government-Owned and/or Controlled Corporations (GOCCs) and Financial Institutions (GFIs). Issued on February 15, 1999.

[23] *Rollo*, p. 70.

[24] *Id.* at 76.

Next, an examination of the nature and entitlement to merit increases is proper. Merit increases under BR No. 1863 are awarded to those qualified employees who meet the standards determined by petitioner's Performance Evaluation Review Committee (PERC) under its own Performance Calibration System. "It is a system which determines the appropriate distribution of salary increases among officers and employees on the basis of performance and demonstrated competencies."[25] The grant of merit increases does not involve any vertical nor horizontal movement in the petitioner's job classification framework.

A horizontal movement,[26] as provided in petitioner's job classification framework, is a progression within petitioner's three competency levels, namely: developmental level (generally described as a "rookie" in the position), natural level (generally described as a "veteran"), and expanded level (generally described as an "expert").[27] The transfer from one competency level to another necessarily involves a lateral or horizontal transfer of that employee in petitioner's salary structure, and carries with it a corresponding adjustment in basic salary.[28] When one is granted a merit increase, however, that employee retains his/her position in the job classification framework, and only the amount of basic salary is adjusted.

Neither does the grant of a merit increase involve a vertical movement in petitioner's salary structure. Promotion, as BR No. 1863 itself defines it, is a vertical progression that carries with it "an advancement of an employee from one position to another with an increase in duties and responsibilities and usually accompanied by an increase in salary."[29] Again, this is not similar to the case of an employee given a merit increase, whose salary is increased, but whose duties and responsibilities remain the same.

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[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 78.

[29] *Id*. at 79.

The reasonable conclusion, therefore, is that the grant of a merit increase is not a personnel movement. The grant of a merit increase only carries with it the increase in the recipient employee's basic salary, and does not involve any horizontal or vertical movement in petitioner's job classification framework. The employee's position, insofar as petitioner's hierarchy is involved, does not change; only the amount of salary received by the employee changes. The entitlement to merit increase is nothing but petitioner augmenting the salary of the employee given the merit increase.

Third, an examination of the nature of the moratorium imposed by EO No. 7 is in order. At the risk of being repetitive, Section 9 of EO No. 7 is again quoted hereunder:

> Sec. 9. Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits. — Moratorium on **increases in the rates of salaries**, and the grant of new increases in the rates of allowances, incentives and other benefits, **except** salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed **until specifically authorized by the President.** (emphasis added)

The moratorium imposed is on the following: (1) increase in the rate of salary, and (2) grant of new increases in the rates of allowances, incentives, and other benefits. The prohibition is so broadly worded as to include any and all increases in the salary rate of employees and officials of GOCCs. As discussed above, the merit increases granted to the five officers partake of the nature of increase in salary rate.

Sec. 9 provides only one exception to the prohibition: when the increase of salary is pursuant to the implementation of the first and second tranches of the Salary Standardization Law (SSL) 3.[30] Petitioner, by express provision of law, is exempt

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[30] Executive Order No. 811 implements the first tranche of adjustments provided for in Joint Resolution No. 4, Series of 2009, in relation to Republic Act No. 6758, or the Salary Standardization Law, while Executive Order No. 900 implements the second tranche of adjustments.

from the application of the Salary Standardization Law.[31] Thus, it is beyond question that the exception does not apply to it, because the first exception applies only to GOCCs which are within the application of the Salary Standardization law.

The last clause of the provision, "until specifically authorized by the President," is not in the nature of an exception. On the contrary, it provides for the situation where the President, under the same authority by which the moratorium is imposed, deems it proper to lift the said moratorium. The use of the preposition "until" before the phrase "specifically authorized by the President" denotes that the intention of the provision is for the moratorium to continue up to a particular point in time, i.e., when the President authorizes anew the grant of the prohibited increases. This is not in the nature of an exception, which, by its plain meaning, applies to particular cases where the rule does not apply.

The Court then takes judicial notice of the fact that the President has never issued any further issuance to lift the moratorium imposed under Sec. 9 of EO No. 7.

There is no merit to the petitioner's contention, therefore, that the granted increase bears the imprimatur of the President when the Civil Service Commission (CSC) approved its BR No. 1610. The argument that the CSC's approval of BR No. 1610 takes precedence over the moratorium imposed by EO No. 7 holds no water because the CSC's approval was given only on April 12, 2011, well after the moratorium imposed by EO No. 7 was put in place.

The CSC has no authority to carve out an exception to EO No. 7, when the EO itself doesn't provide for it. It is of no moment, therefore, that the CSC approved petitioner's

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[31] Sec. 11-A, Republic Act No. 6977, as amended by Republic Act No. 9501:

x x x x x x x x x

f) Notwithstanding the provisions of Republic Act No. 6758 and Compensation Circular No. 10, Series of 1989 issued by the Department of Budget and Management, the Board shall have the authority to provide for

Performance Evaluation System, as contained in BR No. 1610, after the issuance of the moratorium.[32] Petitioner would have this Court rule that the approval of the CSC, knowing that the moratorium was already in place, can overturn the express mandate of the President of the Philippines to prohibit the grant of salary increases. That, the Court cannot do. Neither is the CSC empowered to alter, modify, or contravene the express mandate of EO No. 7.

Petitioner's reliance on *Ting v. Court of Appeals*[33] is severely misplaced, specifically the portion in which this Court emphasized the value of construction given by an administrative agency charged with the interpretation of a statute. Unlike the case in *Ting,* the CSC is not empowered to interpret EO No. 7, precisely because the words of EO itself and the prohibition it imposed is clear. The CSC cannot overturn this policy established by the President himself.

Respondent COA, therefore, did not commit grave abuse of discretion when it said that "petitioner cannot claim that the payment of merit increase has already been previously approved. The prior approval which petitioner refers to is merely its own BOD's approval of [SB Corp.'s] revised salary structure, and not an approval from the Office of the President, or the GCG."[34]

Given the foregoing, the Court can only conclude that the merit increase granted to the five officers falls squarely within the moratorium imposed by Sec. 9 of EO No. 7.

Respondent Commission did not apply EO No. 7 retroactively

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the organizational structure and staffing pattern of SB Corporation and to extend to the employees and personnel thereof salaries, allowances and fringe benefits similar to those extended to and currently enjoyed by employees and personnel of other government financial institution.

[32] *Rollo*, p. 20.

[33] G.R. No. 109216, October 27, 1994, 237 SCRA 797.

[34] *Rollo*, p. 41.

EO No. 7 was issued on September 8, 2010. The merit increases, meanwhile, were granted only on April 12, 2013, and were applied to salaries earned from the period September 1, 2012 to August 31, 2014. During this period, the moratorium established in EO No. 7 was already in effect since September 8, 2010.

A plain reading of the wording in Sec. 9 of EO No. 7 would reveal that the clear directive is to halt the grant of additional salaries and allowances to employees and officers of GOCCs. The rationale behind this moratorium can be gleaned from the first and third whereas clauses of the issuance:

> WHEREAS, transparency, accountability, and prudence in government spending are among the core governance policies being adopted by this administration;
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> x x x x x x x x x
>
> WHEREAS, there is a need to strengthen supervision over the compensation levels of GOCCs and GFIs, in order to control the grant of excessive salaries, allowances, incentives, and other benefits.

From the very broad wording of the prohibition, taking into context the whereas clauses, it can be deduced that the intention of the moratorium is to curb the excessive amounts given to employees and officers of GOCCs and GFIs. The prohibition is to bar the further increase of salaries, allowances, incentives, and other benefits.

Petitioner argues that, as applied to the grant of merit increases to the five officers, COA gave EO No. 7 retroactive effect. Petitioner argues that its salary structure had been in existence since June 1, 2009, well before the imposition of the moratorium. It asseverates that:

> The merit increases do not fall within the x x x enumeration. There is no increase in the rates of salaries after the issuance of E.O. No. 7. Nor was there any grant of new allowances, incentives, and other benefits. Petitioner's salary structure and the rates of increases by step increments had been [in] existence as early as 1 June 2009 or much earlier than E.O. No. 7. The merit increases subject of the disallowances were merely the implementation or the logical

progression of petitioner's Salary Structure approved on 1 June 2009. In petitioner's approved Salary Structure, an employee holding a certain Job Level may progress horizontally through competency levels by step increments due to meritorious performance or length of service, with increase in salaries corresponding to each competency level and step increment. The salary increases by competency levels or step increments were already provided for in petitioner's approved Salary Structure.[35]

What petitioner does not dispute, however, is that it was only on April 12, 2013 that it actually granted merit increases to the five officers involved in the present case. At that time, EO No. 7 was already in effect. The moratorium on the grant of increased salary rates was already in full force and effect.

Petitioner's interpretation of the alleged retroactive application of EO No. 7, therefore, is too restrictive as to give EO No. 7 any effect. Following petitioner's argument, it is the date of the passing and approval of a GOCC's salary structure which should be the reckoning period of when the salary rate increase is given. In effect, petitioner's interpretation would mean that the moratorium is only on the approval of salary structures with increased salary rates, and not the actual granting thereof.

There is no question that EO No. 7 does not provide for any retroactive application. However, petitioner's interpretation of which acts are prohibited by the moratorium runs contrary to the plain wording of EO No. 7 when it imposed the moratorium on "increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits." The E.O. did not prohibit merely the grant of increased salary rates in corporate salary structures; it also intended to halt the actual giving of increased salary rates.

As discussed above, the grant of merit increases to the five officers falls squarely within the phrase "[increase] in the rates of salaries." This interpretation is more in keeping with the spirit of the issuance, as enunciated in the whereas clauses. To hold otherwise is to disregard the clear intention of promoting

[35] *Id.* at 13.

transparency, accountability, and prudence in government spending.

The issue of retroactivity, as posited by the petitioner, is not actually one of retroactive application, but an issue of which particular acts are prohibited. The Court holds that the moratorium is imposed on the actual grant of increased salary rates, allowances, incentives, and other benefits, regardless of the date of approval of the salary structure, irrespective of when the GOCC's/GFI's salary structure was approved. There is no merit, therefore, in petitioner's argument that COA effectively gave EO No. 7 retroactive effect. It is the date of the actual giving of the increased salary rate that is material insofar as determining whether the moratorium imposed by EO No. 7 is applicable or not.

Petitioner is within the jurisdiction of the GCG

Finally, petitioner argues that it is not estopped from questioning GCG's jurisdiction over it, despite writing a letter to GCG on June 25, 2014 to request authority to implement the merit increase. Petitioner wrote:

> This is to inform and request confirmation to proceed with Small Business Corporation's merit increase Program for 2013 based on 2012 performance. **We look up to GCG as the proper authority to confirm our request prior to implementation** which we intend to effect by July 15, 2014. The Corporation has in-placed guidelines and procedures in the administration of the Corporation's salary structure duly approved by its Board of Directors.[36] (Emphasis added)

In the present Petition, petitioner argues that the letter should not be interpreted as an acceptance of GCG's authority over it. Citing the minutes of the Board Meeting that resulted in the writing of the letter to GCG, petitioner argues that the COA gravely abused its discretion in concluding that the letter is an acceptance of GCG's authority over it.

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[36] *Id.* at 98.

Petitioner's own argument, however, is belied by the words of the very letter in question. In it, petitioner expressly recognized that GCG is "the proper authority to confirm our request prior to implementation." Respondent COA, therefore, is correct in finding that the letter does not indicate that SB Corp. is merely "seeking clarification," but clearly reveals that it asked for authority from the GCG to implement its merit increase program. This letter is an express admission not only of GCG's jurisdiction over petitioner but also an acknowledgment that the latter has no authority to solely grant the merit increase.[37]

Moreover, petitioner's claim is contradicted by the very minutes of the BOD meeting, to wit:

> x x x [A] legal opinion from the Legal Services Group was requested by the HRMDG. LSG, in turn, opines that the adoption of merit increase does not require prior approval by GCG as, for one, there is nothing in R.A. No. 10149 which requires such prior approval.
>
> 3.11 Dir. Sarmiento commented that LBP sought GCG's approval for 2012 and 2013 merit increase. Dir. Beltran and Dir. Arjonillo were one in adding that to be safe, SBC should go to GCG. The Chairman then stated that in conformity to the suggestion, Management shall draft a letter.[38]

The minutes reveal the position of the petitioner's BOD on the matter. But contrary to petitioner's claim, the members of the Board of Directors actually recognized that GCG had authority to approve the merit increase. It was petitioner's Legal Services Group that gave the opinion that no prior approval of GCG is needed. At least three directors named in the minutes, as well as the chairman of the BOD, were one in opining that approval from GCG must be sought.

The members of the BOD, being the highest governing body of the corporation, determine the opinion of the corporation on a particular matter, and not simply its legal unit. In this case at bar, the BOD's opinion is to seek approval of the GCG

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[37] *Id.* at 41.

[38] *Id.* at 12.

prior to the implementation of the merit increases. In effect, it made its own policy stand and decided to overturn the opinion of the Legal Services Group. Otherwise, the BOD would not have instructed the writing of the letter to GCG to ask for its approval prior to the implementation of the merit increases.

Moreover, petitioner's position runs contrary to the provisions of RA No. 10149. Sec. 5 of RA No. 10149 provides that among the powers and functions of the GCG are to:

> (h) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;
>
> x x x x x x x x x
>
> (j) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs. It shall meet at least quarterly to:
>
> (1) Review Strategy Maps and Performance Scorecards of all GOCCs;
> (2) Review and assess existing performance-related policies including the compensation/remuneration of Board of Directors/ Trustees and Officers and recommend appropriate revisions and actions; and
> (3) Prepare performance reports of the GOCCs for submission to the President.

Petitioner, not being exempt from the application of RA No. 10149, undoubtedly is within the jurisdiction of the GCG. By express provision of the law, its compensation and remuneration system, including the grant of merit increases under BR No. 1610, is within the jurisdiction of the GCG.

Hence, petitioner should have taken heed when the GCG responded to its June 25, 2014 letter and denied with finality the request for approval of the merit increases to the five officers.[39] Instead, petitioner, after recognizing GCG's authority, decided to disregard GCG's ruling that the merit increases is

[39] *Id*. at 99.

covered by the moratorium. Therefore, petitioner only has itself to blame for the disallowance amounting to ₱759,042.41. The Court finds no grave abuse of discretion on the part of respondent COA in disallowing such amount.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is hereby **DENIED**. The assailed Decision of the Commission on Audit En Banc, Decision No. 2017-010, dated February 16, 2017, sustaining Notice of Disallowance No. 14-001-401000-(13), is **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 196074. October 4, 2017]

FLORENCIA ARJONILLO, *petitioner, vs.* **DEMETRIA PAGULAYAN, as substituted by her heirs namely: HERMANA Vda. de CAMBRI, PORFIRIO T. PAGULAYAN, and VICENTE, MAGNO, PEDRO, FLORENCIO, MELECIO, LERMA, all surnamed MATALANG, and AUREA MATALANG-DELOS SANTOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; *ACCION REIVINDICATORIA*; IN AN *ACCION REIVINDICATORIA*,

THE COMPLAINANTS MUST PROVE THE IDENTITY OF THE LAND AND THEIR TITLE THERETO.— Arjonillo and her co-heirs claim that the subject properties were owned by their predecessor, Cue. They sought to recover its full possession from Pagulayan by filing an *accion reivindicatoria* before the RTC. It is then incumbent upon them to convince the court by competent evidence that the subject properties form part of Cue's estate because in order to successfully maintain actions for recovery of ownership of a real property, the complainants must prove the identity of the land and their title thereto as provided under Article 434 of the Civil Code. They have the burden of proof to establish the averments in the complaint by preponderance of evidence, relying on the strength of their own evidence and not upon the weakness of their opponent's evidence.

2. **REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; HEARSAY RULE; HEARSAY EVIDENCE WHETHER OBJECTED TO OR NOT CANNOT BE GIVEN CREDENCE FOR IT HAS NO PROBATIVE VALUE, UNLESS THE TESTIMONY FALLS UNDER ANY OF THE RECOGNIZED EXCEPTIONS.—** [Arjonillo and her co-heirs] tried to prove that contrary to what appears in the deed of sale, the actual transaction transpired between Chua Bun Gui and Cue. But Chua Bun Gui did not testify during the trial. Neither his wife nor any witness to the sale was presented. Instead, Arjonillo and her co-heirs presented the testimony of Dr. Valdepanas who x x x is the nephew of Spouses Chua and has a clinic adjacent to the property under scrutiny. The subject of his testimony, however, is not of matters he himself knows; thus, it should be disregarded for being hearsay. x x x Despite claiming knowledge of the terms and conditions of the sale, perusal of the deed of absolute sale revealed that Dr. Valdepanas was neither a party nor a witness to the transaction. x x x Dr. Valdepanas merely repeated statements he heard from Cue and Chua Bun Gui. When asked if he was present whenever Cue paid Chua Bun Gui, he did not give a categorical answer but simply claimed that he knew about it personally. More importantly, proponent offered the testimony to prove "that the lot in question was purchased by the late Avelardo Cue and not by the defendant, Demetria Pagulayan, although the Deed of Sale was in the name of the said defendant Demetria

Pagulayan." It was offered as evidence of the truth of the fact being asserted. Clearly, the x x x testimony is hearsay and thus inadmissible in evidence. A witness can only testify on facts within his personal knowledge. This is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. Unless the testimony falls under any of the recognized exceptions, hearsay evidence whether objected to or not cannot be given credence for it has no probative value.

3. **CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; SERVES AS EVIDENCE OF AN INDEFEASIBLE AND INCONTROVERTIBLE TITLE TO THE PROPERTY IN FAVOR OF THE PERSON WHOSE NAME APPEARS THEREIN, BUT PLACING A PARCEL OF LAND UNDER THE MANTLE OF THE TORRENS SYSTEM DOES NOT MEAN THAT OWNERSHIP THEREOF CAN NO LONGER BE DISPUTED.—** "[T]he documentary and testimonial evidence on record clearly support [Pagulayan's] ownership of the disputed property as reflected in TCT No. T-35506, which was issued in her name pursuant to the aforesaid Deed of Sale." It is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The titleholder is entitled to all the attributes of ownership, including possession of the property. Though it has been held that placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed, this Court cannot ignore the fact that Arjonillo, together with her co-heirs, failed to discharge the burden of proving their claim by a preponderance of evidence as required under the law.

APPEARANCES OF COUNSEL

Batungbacal & Associates for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a Petition for Review on Certiorari assailing the Decision[1] promulgated on 7 January 2011 and Resolution[2] dated 16 March 2011 of the Court of Appeals *(CA)* in CA-G.R. CV No. 89206, which reversed and set aside the Decision[3] dated 31 August 2006 of the Regional Trial Court, Branch 2 of Tuguegarao City *(RTC),* in Civil Case No. 4778.

THE FACTS

Avelardo Cue *(Cue)* died intestate on 8 December 1987 in Tuguegarao, Cagayan. Cue died single with no surviving descendants or ascendants but was survived by the following: 1) his brother, Felix Cue; 2) Alfonsa Sim and Rodolfo Sia, his niece and nephew by his deceased sister Marta Cue; 3) the herein petitioner Florencia Arjonillo *(Arjonillo)*, his niece by his deceased sister Angelita Cue; and 4) Antonio, Isidra, Jacinto, Juanio, Nenita and Teodora, all surnamed Cue, his nieces and nephews by his deceased brother Francisco Cue. On 21 June 1989, they executed an extrajudicial settlement of the estate of Cue.

According to the heirs of Cue, the decedent acquired the following properties during his lifetime:

a) Lot 999-B-3-B, Psd-57204, being a portion of Lot 999-B-3, Psd-52698, located at Poblacion, Tuguegarao, Cagayan, with an area of two hundred ten (210) square meters, more or less; bounded on the N. along line 1-2 by Calle Commercio; on the N and E, along lines 2-3-4 by Lot 999-B-3-A, of the subdivision plan, and on the S, along line 4-1 by Lot 999-A, Psd-46471 (Pedro Abraham and Josefina Abraham); reasonably assessed at ₱105,000.00;

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[1] *Rollo*, pp. 28-35; penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justices Japar B. Dimaampao and Amy C. Lazaro-Javier.

[2] *Id*. at 36.

[3] Records, pp. 446-452.

b) A 2-storey commercial building erected on lot 999-B-3-B, Psd-57204, made of strong materials; assessed at ₱73,320.00.[4]

Lot 999-B-3-B, however, is registered in the name of Demetria Pagulayan *(Pagulayan)* per Transfer Certificate of Title *(TCT)* No. T-35506, issued by the Register of Deeds for the Province of Cagayan.

Some of the heirs of Cue, including Arjonillo, instituted Civil Case No. 4778 with the RTC for "Reivindicacion, with Partition and Application for Temporary Restraining Order and Preliminary Mandatory Injunction."[5] They alleged that although the property was registered in the name of Pagulayan, it was Cue who purchased it using his own funds; that being his paramour, Pagulayan exercised undue influence on him in order to register the property exclusively in her own name; and that the registration of the property in the name of Pagulayan is void as it is against public policy.

On the other hand, Pagulayan alleged that she acquired the property from Spouses Chua Bun Gui[6] and Esmeralda Valdepanas Chua *(Spouses Chua)* for and in consideration of ₱20,000.00 which was acknowledged to have been received in full by the vendors as evidenced by the deed of absolute sale executed on 25 August 1976.[7] She prayed in her answer that the complaint be dismissed since the plaintiffs have no legal personality or cause of action against her.

The Ruling of the RTC

On 31 August 2006, the RTC rendered a decision declaring that Pagulayan is not the rightful owner of the subject property and, consequently, ordered the partition of the subject lot and building among the heirs of Cue. According to the RTC, "[Demetria] failed to substantiate her financial capability to

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[4] *Id*. at 446.

[5] *Id*. at 1-9.

[6] Also stated as *Ching* and *Gin* in the testimonies.

[7] Records, p. 333; Exhibit "1".

acquire the properties subject of the suit, more so to erect and put up a building thereon jointly with Avelardo Cue."[8] Its findings were based, among others, on the testimony of Dr. Benito Valdepanas (Dr. Valdepanas), who is a nephew of Spouses Chua:

> After making a thorough evaluation on the merits of the case, as it has been well substantiated by the testimonies of witnesses presented during the court proceedings, Demetria Pagulayan failed to prove her claim that she bought the lot in question and put up a building thereon. Noted as well in the records of the case is the Deposition of a witness who testified among others that he knows the lot described in TCT No. T-35506; that said witness has personal knowledge of the sale of the lot in question by his uncle to the late Avelardo Cue; and that Defendant Demetria Pagulayan is a mere salesgirl of the late Avelardo Cue.
>
> The allegations of the Plaintiffs as above-discussed have been, in the mind of the Court, preponderantly proven as evidenced by the testimonies and documents presented during the trial of the case."[9]

The Ruling of the CA

Upon review, the CA, in its Decision dated 7 January 2011, reversed and set aside the RTC decision and dismissed the case. A motion for reconsideration was filed which was denied in the CA Resolution dated 16 March 2011.

In dismissing the case, the CA found that petitioners failed to discharge the burden of proving their allegation that the properties in dispute form part of the estate of Cue. It was also found that the testimonies of their witnesses could be considered as mere hearsay because they did not have personal knowledge of the circumstances attending the execution of the deed of sale in favor of Pagulayan and the consequent issuance of TCT No. T-35506 in her name.[10]

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[8] *Id*. at 449.

[9] *Id*. at 451.

[10] *Rollo*, p. 32.

ISSUES

Arjonillo is now before the Court assailing the decision of the CA on the following grounds:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED OR SET ASIDE THE TRIAL COURT'S 31 AUGUST 2006 DECISION AND DISMISSING THE COMPLAINT IN CIVIL CASE NO. 4778 ABANDONING THE FACTUAL FINDINGS OF THE COURT *A QUO*.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED ON THE INDEFEASIBILITY OF RESPONDENT DEMETRIA PAGULAYAN'S TITLE AND CATEGORICALLY DECLARED THAT THE OWNERSHIP OF THE DISPUTED PROPERTIES BELONG TO HER.

III. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT CONSIDERED WITNESS DR. BENITO VALDEPANAS' TESTIMONY AS HEARSAY.[11]

THE COURT'S RULING

The petition is without merit.

When a case is appealed to the CA, it is thrown wide open for review by that court which thereby has the authority to affirm, reverse, or modify the assailed decision of the lower court. The appellate court can render an entirely new decision in the exercise of its power of review in order to correct patent errors committed by the lower courts.[12]

Arjonillo and her co-heirs claim that the subject properties were owned by their predecessor, Cue. They sought to recover its full possession from Pagulayan by filing an *accion reivindicatoria* before the RTC. It is then incumbent upon them to convince the court by competent evidence that the subject

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[11] *Id.* at 17.

[12] *Sazon v. Vasquez-Menancio*, 682 Phil. 669, 679 (2012) citing *Heirs of Alcaraz v. Republic of the Phils.*, 502 Phil. 521, 536 (2005).

properties form part of Cue's estate because in order to successfully maintain actions for recovery of ownership of a real property, the complainants must prove the identity of the land and their title thereto as provided under Article 434 of the Civil Code.[13] They have the burden of proof to establish the averments in the complaint by preponderance of evidence,[14] relying on the strength of their own evidence and not upon the weakness of their opponent's evidence.[15]

Rather than dispensing with their burden of proof as required under the law, Arjonillo and her co-heirs concentrated on attacking Pagulayan's claim of ownership over the subject properties on the ground of the latter's alleged lack of financial capability to purchase the land and erect a building thereon. It was consistently emphasized that Pagulayan was a mere salesgirl who only had an annual salary of ₱1,950.00 in 1976.[16] On this basis, Arjonillo and her co-heirs maintained that Pagulayan could not have acquired the property on 25 August 1976 as reflected in the Deed of Absolute Sale executed by Spouses Chua.[17]

They also tried to prove that contrary to what appears in the deed of sale, the actual transaction transpired between Chua Bun Gui and Cue. But Chua Bun Gui did not testify during the trial. Neither his wife nor any witness to the sale was presented. Instead, Arjonillo and her co-heirs presented the testimony of Dr. Valdepanas who, as earlier noted, is the nephew of Spouses Chua and has a clinic adjacent to the property under scrutiny. The subject of his testimony, however, is not of matters he himself knows; thus, it should be disregarded for being hearsay.

Dr. Valdepanas testified as follows:

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[13] *Ibot v. Heirs of Francisco Tayco*, 757 Phil. 441, 449-450 (2015).

[14] *Heirs of Alejandra Arado v. Heirs Alcoran*, 763 Phil. 205, 216 (2015).

[15] *Bank of the Philippine Islands v. Mendoza*, G.R. No. 198799, 20 March 2017.

[16] Exhibit Folder; Exhibit "2" – Felix Cue, Individual Income Tax Return of Pagulayan for the calendar year 1976.

[17] Records, p. 333; Exhibit "1".

Q: Now, you said a while ago that Chua Bun [Gui] was the former owner of the lot in question, what did Chua Bun [Gui] do with the lot in question?

A: Two or three days after the fire that was August 22 1977 my uncle Chua Bun [Gui] went home to had a cup of coffee he told me that he sold the lot in question to Avelardo Cue when in fact I was also interested to buy it.

Q: Are we made to understand that the transaction regarding the sale of the lot in question to Avelardo Cue was made in your house?

A: No, sir. Avelardo Cue told me that the lot in question was sold in installment basis when infact I offered to purchase the lot in question in cash basis, sir.

x x x x x x x x x

Q: Were you present whenever the late Avelardo Cue made payments to your uncle Chua Bun Gin?

A: [A]side from knowing it personally, the late Avelardo Cue told me that he paid fifty percent of the purchased price and the remaining balance on installment basis, sir.[18]

Despite claiming knowledge of the terms and conditions of the sale, perusal of the deed of absolute sale revealed that Dr. Valdepanas was neither a party nor a witness to the transaction. It is noticeable that Dr. Valdepanas merely repeated statements he heard from Cue and Chua Bun Gui. When asked if he was present whenever Cue paid Chua Bun Gui, he did not give a categorical answer but simply claimed that he knew about it personally. More importantly, proponent offered the testimony to prove "that the lot in question was purchased by the late Avelardo Cue and not by the defendant, Demetria Pagulayan, although the Deed of Sale was in the name of the said defendant Demetria Pagulayan."[19] It was offered as evidence of the truth of the fact being asserted. Clearly, the above-quoted testimony is hearsay and thus inadmissible in evidence. A witness can

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[18] TSN, 29 March 1996, pp. 5-8.

[19] Records, p. 439.

only testify on facts within his personal knowledge.[20] This is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact.[21] Unless the testimony falls under any of the recognized exceptions, hearsay evidence whether objected to or not cannot be given credence for it has no probative value.[22]

On the other hand, to shed light on how she could afford to purchase the land, Pagulayan testified that she worked with free board and lodging from 1954 to 1976 and deposited her earnings in an account with the Philippine National Bank.[23] She further testified that she withdrew some of the money and used it in re-selling *palay* and pigs.[24]

The following documents were offered and admitted in evidence[25] to support Pagulayan's claim that it is indeed she who owns the land in question: 1) a notarized deed of absolute sale[26] executed by Spouses Chua on 25 August 1976 conveying the property to Pagulayan; 2) TCT No. T-35506[27] registered in the name of Pagulayan; and 3) Real Property Tax Receipts for 1993[28] and 1994[29] which were offered to prove that the land's tax declaration was in the name of Pagulayan.

We agree with the finding of the CA that "[t]he documentary and testimonial evidence on record clearly support [Pagulayan's]

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[20] Rules of Court, Rule 130, Section 36.

[21] *Bank of the Philippine Islands v. Domingo*, 757 Phil. 23, 50 (2015), citing *Da Jose v. Angeles*, 720 Phil. 451, 465 (2013).

[22] *Republic of the Phils. v. Galeno*, G.R. No. 215009, 23 January 2017.

[23] TSN, 25 August 1999, p. 8.

[24] *Id*. at 9.

[25] Records, p. 348.

[26] *Id*. at 333-334; Exhibit "1".

[27] *Id*. at 335; Exhibit "2".

[28] *Id*. at 339; Exhibit "6".

[29] *Id*. at 338; Exhibit "5".

ownership of the disputed property as reflected in TCT No. T-35506, which was issued in her name pursuant to the aforesaid Deed of Sale."[30] It is fundamental that a certificate of title *serves as evidence* of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The titleholder is entitled to all the attributes of ownership, including possession of the property.[31]

Though it has been held that placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed,[32] this Court cannot ignore the fact that Arjonillo, together with her co-heirs, failed to discharge the burden of proving their claim by a preponderance of evidence as required under the law. Based on the foregoing, we find no persuasive argument in the instant petition that will convince us to overturn the assailed judgment of the appellate court.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Decision and Resolution of the Court of Appeals dated 7 January 2011 and 16 March 2011, respectively, in CA-G.R. CV No. 89206 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Leonen, and *Gesmundo, JJ.,* concur.

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[30] *Rollo*, p. 33.

[31] *Spouses Orencia v. Crus Vda. De Ranin*, G.R. No. 190143, 10 August 2016.

[32] *Heirs of Tappa v. Heirs of Bacud*, G.R. No. 187633, 4 April 2016, 788 SCRA 13, 32, citing *Vda. De Figuracion v. Figuracion-Gerilla*, 703 Phil. 455, 469 (2013).

THIRD DIVISION

[G.R. No. 196419. October 4, 2017]

PILIPINAS MAKRO, INC., *petitioner, vs.* **COCO CHARCOAL PHILIPPINES, INC. and LIM KIM SAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; A MOTION FOR EXTENSION TO FILE A MOTION FOR RECONSIDERATION IS PROHIBITED; EXCEPTION; PRESENT IN CASE AT BAR.— It must be remembered that procedural rules are set not to frustrate the ends of substantial justice, but are tools to expedite the resolution of cases on their merits. The Court reminds us in *Gonzales v. Serrano* that the prohibition on motion for extension to file a motion for reconsideration is not absolute x x x. The Court finds that cogent reason exists to justify the relaxation of the rules regarding the filing of motions for extension to file a motion for reconsideration. The explanation put forth by Makro in filing its motions for extension clearly were not intended to delay the proceedings but were caused by reasons beyond its control, which cannot be avoided even with the exercise of appropriate care or prudence. Its former counsel had to withdraw in the light of his appointment as a cabinet secretary and its new lawyer was unfortunately afflicted with a serious illness. Thus, it would have been more prudent for the CA to relax the procedural rules so that the substantive issues would be thoroughly ventilated.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; OBLIGATIONS OF THE VENDOR; WARRANTY; REFERS TO THE COLLATERAL UNDERTAKING IN A SALE OF EITHER REAL OR PERSONAL PROPERTY, THAT IF THE PROPERTY SOLD DOES NOT POSSESS CERTAIN INCIDENTS OR QUALITIES, THE PURCHASER MAY EITHER CONSIDER THE SALE VOID OR CLAIM DAMAGES FOR BREACH OF WARRANTY; EXPRESS WARRANTY AND

IMPLIED WARRANTY, DISTINGUISHED.— A warranty is a collateral undertaking in a sale of either real or personal property, express or implied; that if the property sold does not possess certain incidents or qualities, the purchaser may either consider the sale void or claim damages for breach of warranty. Thus, a warranty may either be express or implied. An express warranty pertains to any affirmation of fact or any promise by the seller relating to the thing, the natural tendency of which is to induce the buyer to purchase the same. It includes all warranties derived from the language of the contract, so long as the language is express—it may take the form of an affirmation, a promise or a representation. On the other hand, an implied warranty is one which the law derives by application or inference from the nature of transaction or the relative situation or circumstances of the parties, irrespective of any intention of the seller to create it. In other words, an express warranty is different from an implied warranty in that the former is found within the very language of the contract while the latter is by operation of law.

3. **ID.; ID.; ID.; ID.; ID.; IMPLIED WARRANTY AGAINST EVICTION; REQUISITES.—** [I]n order for the implied warranty against eviction to be enforceable, the following requisites must concur: (a) there must be a final judgment; (b) the purchaser has been deprived of the whole or part of the thing sold; (c) said deprivation was by virtue of a prior right to the sale made by the vendor; and (d) the vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee.

4. **ID.; ID.; ID.; DAMAGES; ATTORNEY'S FEES; MAY NOT BE AWARDED EVEN WHEN A CLAIMANT IS COMPELLED TO LITIGATE HIS CAUSE WHEN THERE IS NO SUFFICIENT SHOWING THAT THE DEFENDANT ACTED IN BAD FAITH IN PERSISTING ON THE CASE.—** In *ABS-CBN Broadcasting Corporation v. Court of Appeals*, the Court cautioned that the fact that a party was compelled to litigate his cause does not necessarily warrant the award of attorney's fees x x x. Other than the bare fact that Makro was compelled to hire the services of counsel to prosecute its case, the RTC did not provide compelling reasons to justify the award of attorney's fees. Thus, it is but right to delete the award

especially since there is no showing that respondents had acted in bad faith in refusing Makro's demand for refund. It is in consonance with the policy that there is no premium on the right to litigate.

5. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; GRANTED IF THE DEFENDANT HAD ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER.— [E]xemplary damages may be awarded if the defendant had acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. The RTC found the award of exemplary damages warranted because respondents allegedly concealed the fact [that] the DPWH had already taken possession of a portion of the land they had sold to Makro. Bad faith, however, involves a state of mind dominated by ill will or motive implying a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Here, there is insufficient evidence to definitively ascertain that respondents' omission to mention the ongoing DPWH projects was impelled by a conscious desire to defraud Makro. This is especially true since the road widening project was already in progress even before the time of the sale, and which would have been noticeable when Makro conducted its ocular inspection.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Escobido And Pulgar Law Offices for respondents.

D E C I S I O N

MARTIRES, *J.*:

This Petition for Review on Certiorari seeks to reverse and set aside the 30 December 2010 Decision[1] and 7 April 2011 Resolution[2]

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[1] *Rollo*, pp. 36-49. Penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Ramon R. Garcia and Manuel M. Barrios.

[2] *Id*. at 33-34.

of the Court of Appeals *(CA)* in CA-G.R. CV No. 83836 which reversed the 16 August 2004 Decision[3] of the Regional Trial Court, Branch 276, Muntinlupa City *(RTC)*.

Petitioner Pilipinas Makro, Inc. *(Makro)* is a duly registered domestic corporation. In 1999, it was in need of acquiring real properties in Davao City to build on and operate a store to establish its business presence in the city. After conferring with authorized real estate agents, Makro found two parcels of land suitable for its purpose.[4]

On 26 November 1999, Makro and respondent Coco Charcoal Phils., Inc. *(Coco Charcoal)*[5] executed a notarized Deed of Absolute Sale[6] wherein the latter would sell its parcel of land, with a total area of 1,000 square meters and covered by Transfer Certificate of Title *(TCT)* No. 208776, to the former for the amount of ₱8,500,000.00. On the same date, Makro entered into another notarized Deed of Absolute Sale[7] with respondent Lim Kim San *(Lim)* for the sale of the latter's land, with a total area of 1,000 square meters and covered by TCT No. 282650, for the same consideration of ₱8,500,000.00.

Coco Charcoal and Lim's parcels of land are contiguous and parallel to each other. Aside from the technical descriptions of the properties in question, both deeds of sale contained identical provisions, similar terms, conditions, and warranties.[8]

In December 1999, Makro engaged the services of Engineer Josefino M. Vedua *(Engr. Vedua)*, a geodetic engineer, to conduct a resurvey and relocation of the two adjacent lots. As a result of the resurvey, it was discovered that 131 square meters of the lot purchased from Coco Charcoal had been encroached

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[3] *Id*. at 301-308. Penned by Presiding Judge N.C. Perello.

[4] *Id*. at 37.

[5] Spelled out as "Coco-Charcoal" in some parts of the records.

[6] *Id*. at 88-92.

[7] *Id*. at 193-197.

[8] *Id*. at 38.

upon by the Department of Public Works and Highways *(DPWH)* for its road widening project and construction of a drainage canal to develop and expand the Davao-Cotabato National Highway. On the other hand, 130 square meters of the land bought from Lim had been encroached upon by the same DPWH project. Meanwhile, TCT Nos. T-321199 and T-321049 were issued in January 2000 in favor of Makro after the deeds of sale were registered and the titles of the previous owners were cancelled.[9]

Makro informed the representatives of Coco Charcoal and Lim about the supposed encroachment on the parcels of land due to the DPWH project. Initially, Makro offered a compromise agreement in consideration of a refund of 75% of the value of the encroached portions. Thereafter, Makro sent a final demand letter to collect the refund of the purchase price corresponding to the area encroached upon by the road widening project, seeking to recover ₱1,113,500.00 from Coco Charcoal and ₱1,105,000.00 from Lim. Failing to recover such, Makro filed separate complaints against Coco Charcoal and Lim to collect the refund sought.

The RTC Decision

In its 16 August 2004 Decision, the RTC granted Makro's complaint and ordered respondents to refund the amount corresponding to the value of the encroached area. The trial court ruled that the DPWH project encroached upon the purchased properties, such that Makro had to adjust its perimeter fences. It noted that Makro was constrained to bring legal action after its demand for refund remained unheeded. The trial court expounded that the road right of way includes not only the paved road, but also the shoulders and gutters. It highlighted that the unpaved portion of the right of way was well within the area Makro had purchased.

The RTC also found respondents in bad faith because they had concealed from Makro the fact that the DPWH had already

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[9] *Id*. at 40-41.

taken possession of a portion of the lands they had sold, respectively, considering that drainage pipes had already been installed prior to the sale. It noted that DPWH could not have undertaken the diggings and subsequent installation of drainage pipes without Coco Charcoal and Lim's consent, being the previous owners of the lots in question. The dispositive portion reads:

> PREMISES CONSIDERED, judgment is rendered for the plaintiff and defendants LIM KIM SAN directed to return and reimburse to plaintiff the sum of ONE MILLION FIVE HUNDRED THOUSAND (Php1,500,000.00) PESOS, Philippine Currency, with interest at 12% per annum, attorney's fees of Php200,000.00, exemplary damages of Php200,000.00 to deter anybody similarly prone;
>
> Coco Charcoal Philippines, Inc. is likewise directed to pay a refund and return to plaintiff corporation the value of ONE MILLION FIVE HUNDRED THOUSAND (Php1,500,000.00) PESOS, Philippine Currency, with interest at 12% per annum, representing the 131 square meters parcel of land it cannot occupy and to pay attorney's fees in the sum of Php200,000.00 and exemplary damages of Php200,000.00 to deter anybody similarly inclined;
>
> Both Defendants are directed to pay the cost of this litigation.
>
> It is SO ORDERED.[10]

Aggrieved, Coco Charcoal and Lim appealed before the CA.

The CA Ruling

In its 30 December 2010 Decision, the CA reversed the RTC decision. While the appellate court agreed that the DPWH project encroached upon the frontal portions of the properties, it ruled that Makro was not entitled to a refund. It explained that the warranty expressed in Section 4(i)[11] of the deeds of sale is similar

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[10] *Id.* at 308.

[11] The property is and shall continue to be free and clear of all easements, liens and encumbrances of any nature whatsoever, and is, and shall continue to be, not subject to any claim set-off or defense which will prevent the BUYER from obtaining full and absolute ownership and possession over the Property or from developing or using it as a site for its store building.

to the warranty against eviction set forth under Article 1548 of the Civil Code. As such, the CA posited that only a buyer in good faith may sue to a breach of warranty against eviction. It averred that Makro could not feign ignorance of the ongoing road widening project. The appellate court noted Makro's actual knowledge of the encroachment before the execution of the sale constitutes its recognition that Coco Charcoal and Lim's warranty against liens, easements, and encumbrances does not include the respective 131 and 130 square meters affected by the DPWH project, but covers only the remainder of the property. It ruled:

> WHEREFORE, premises considered, the instant appeal is GRANTED. Accordingly, the herein assailed August 16, 2004 Decision of the trial court is REVERSED and SET ASIDE, and the action instituted by appellee MAKRO against appellants Coco Charcoal and Lim Kim San for collection of sum of money by way of refund is hereby DISMISSED for lack of cause of action.
>
> SO ORDERED.[12]

Makro moved for reconsideration, but the same was denied by the CA in its assailed 7 April 2011 Resolution.

Hence, this present petition raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS ERRED IN DENYING MAKRO'S MOTION FOR EXTENSION TO FILE A MOTION FOR RECONSIDERATION; AND

II

WHETHER THE COURT OF APPEALS ERRED IN DENYING MAKRO A REFUND ON THE GROUND OF BAD FAITH.

THE COURT'S RULING

The petition is meritorious.

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[12] *Id*. at 48-49.

Non-extendible period to file motion for reconsideration; exceptions

Makro filed two motions for extension to file a motion for reconsideration. On the first motion, it sought an extension after its former lawyer, Atty. Edwin Lacierda, withdrew as a counsel in view of his appointment as press secretary for former President Benigno Aquino III. Makro again asked for an extension after its present counsel was confined for dengue and typhoid fever. Eventually, it filed its motion for reconsideration on 7 March 2011.

In its 7 April 2011 Resolution, the CA denied Makro's motions for extension to file a motion for reconsideration, explaining that the 15-day period for the filing of such is non-extendible and that a motion for extension is prohibited.

It must be remembered that procedural rules are set not to frustrate the ends of substantial justice, but are tools to expedite the resolution of cases on their merits. The Court reminds us in *Gonzales v. Serrano*[13] that the prohibition on motion for extension to file a motion for reconsideration is not absolute, to wit:

> The Court shall first delve on the procedural issue of the case. In *Imperial v. Court of Appeals*,[14] the Court ruled:
>
> > In a long line of cases starting with *Habaluyas Enterprises v. Japson*,[15] we have laid down the following guideline:
> >
> > Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court.

[13] 755 Phil. 513, 526 (2015).

[14] 606 Phil. 391 (2009).

[15] 226 Phil. 144 (1986).

> Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.
>
> Thus, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed. This rule is consistent with the rule in the 2002 Internal Rules of the Court of Appeals that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the CA's decision becomes final. Thus, a motion for extension of time to file a motion for reconsideration does not stop the running of the 15-day period for the computation of a decision's finality. At the end of the period, a CA judgment becomes final, immutable and beyond our power to review.
>
> **This rule, however, admits of exceptions based on a liberal reading of the rule, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance**. xxx

While the CA was correct in denying his Urgent Motion for Extension to File Motion for Reconsideration for being a prohibited motion, the Court, in the interest of justice, looked into the merits of the case, and opted to suspend the prohibition against such motion for extension after it found that a modification of the CA Decision is warranted by the law and the jurisprudence on administrative cases involving sexual harassment. **The emerging trend of jurisprudence, after all, is more inclined to the liberal and flexible application of procedural rules. Rules of procedure exist to ensure the orderly, just and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed**. Thus, the relaxation or suspension of procedural rules, or exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it. (emphases and underscoring supplied)

The Court finds that cogent reason exists to justify the relaxation of the rules regarding the filing of motions for extension to file a motion for reconsideration. The explanation put forth by Makro in filing its motions for extension clearly were not intended to delay the proceedings but were caused by reasons beyond its control, which cannot be avoided even with the exercise of appropriate care or prudence. Its former counsel

had to withdraw in the light of his appointment as a cabinet secretary and its new lawyer was unfortunately afflicted with a serious illness. Thus, it would have been more prudent for the CA to relax the procedural rules so that the substantive issues would be thoroughly ventilated.

More importantly, the liberal application of the rules becomes more imperative considering that Makro's position is meritorious.

Express Warranty vis-à vis Implied Warranty

In addressing the issues of the present case, the following provisions of the deeds of sale between Makro and respondents are pertinent:

Section 2. General Investigation and Relocation

Upon the execution of this Deed, the BUYER shall undertake at its own expense a general investigation and relocation of their lots which shall be conducted by a surveyor mutually acceptable to both parties. Should there be any discrepancy between the actual areas of the lots as re-surveyed and the areas as indicated in their Transfer Certificates of Title, the Purchase Price shall be adjusted correspondingly at the rate of PESOS: EIGHT THOUSAND FIVE HUNDRED (Php8,500.000) per square meter. In the event that the actual area of a lot is found to be in excess of the area specified in the Titles, the Purchase Price shall be increased on the basis of the rate specified herein. Conversely, in the event that the actual area of a lot is found to be less than the area specified in the Titles, the BUYER shall deduct a portion of the Purchase Price corresponding to the deficiency in the area on the basis of the rate specified herein. In any case of discrepancy, be it more or less than the actual area of the Property as specified in the Titles, the SELLER agrees to make the necessary correction of the title covering the lots before the same is transferred to the BUYER.[16]

Section 4. Representations and Warranties

The SELLER hereby represents and warrants to the BUYER that:

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[16] *Rollo*, pp. 89-90 and 194.

i. The Property is and shall continue to be free and clear of all easements, liens and encumbrances of any nature whatsoever, and is, and shall continue to be, not subject to any claim set-off or defense which will prevent the BUYER from obtaining full and absolute ownership and possession over the Property or from developing or using it as a site for its store building.[17]

Pursuant to Section 2 of the deeds of sale, Makro engaged the services of a surveyor which found that the DPWH project had encroached upon the properties purchased. After demands for a refund had failed, it opted to file the necessary judicial action for redress.

The courts *a quo* agree that the DPWH project encroached upon the properties Makro had purchased from respondents. Nevertheless, the CA opined that Makro was not entitled to a refund because it had actual knowledge of the ongoing road widening project. The appellate court likened Section 4(i) of the deeds of sale as a warranty against eviction, which necessitates that the buyer be in good faith for it to be enforced.

A warranty is a collateral undertaking in a sale of either real or personal property, express or implied; that if the property sold does not possess certain incidents or qualities, the purchaser may either consider the sale void or claim damages for breach of warranty.[18] Thus, a warranty may either be express or implied.

An express warranty pertains to any affirmation of fact or any promise by the seller relating to the thing, the natural tendency of which is to induce the buyer to purchase the same.[19] It includes all warranties derived from the language of the contract, so long as the language is express—it may take the form of an affirmation, a promise or a representation.[20] On the other hand, an implied warranty is one which the law derives by application or inference from the nature of transaction or

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[17] *Id*. at 90 and 195.

[18] Pineda, *Sales and other Special Contracts* (2010), p. 250.

[19] Article 1546 of the Civil Code.

[20] Paras, *Civil Code of the Philippines Annotated* (2016), p. 211.

the relative situation or circumstances of the parties, irrespective of any intention of the seller to create it.[21] In other words, an express warranty is different from an implied warranty in that the former is found within the very language of the contract while the latter is by operation of law.

Thus, the CA erred in treating Section 4(i) of the deeds of sale as akin to an implied warranty against eviction. *First*, the deeds of sale categorically state that the sellers assure that the properties sold were free from any encumbrances which may prevent Makro from fully and absolutely possessing the properties in question. *Second*, in order for the implied warranty against eviction to be enforceable, the following requisites must concur: (a) there must be a final judgment; (b) the purchaser has been deprived of the whole or part of the thing sold; (c) said deprivation was by virtue of a prior right to the sale made by the vendor; and (d) the vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee.[22] Evidently, there was no final judgment and no opportunity for the vendors to have been summoned precisely because no judicial action was instituted.

Further, even if Section 4(i) of the deeds of sale was to be deemed similar to an implied warranty against eviction, the CA erred in concluding that Makro acted in bad faith. It is true that the warranty against eviction cannot be enforced if the buyer knew of the risks or danger of eviction and still assumed its consequences.[23] The CA highlights that Makro was aware of the encroachments even before the sale because the ongoing road widening project was visible enough to inform the buyer of the diminution of the land area of the property purchased.

The Court disagrees.

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[21] *Ang v. Court of Appeals*, 588 Phil. 366, 373 (2008).

[22] *Escaler, et al. v. Court of Appeals*, 222 Phil. 320, 326 (1985).

[23] *Luzon Development Bank v. Enriquez*, 654 Phil. 315, 337 (2011).

It is undisputed that Makro's legal counsel conducted an ocular inspection on the properties in question before the execution of the deeds of sale and that there were noticeable works and constructions going on near them. Nonetheless, these are insufficient to charge Makro with actual knowledge that the DPWH project had encroached upon respondents' properties. The dimensions of the properties in relation to the DPWH project could have not been accurately ascertained through the naked eye. A mere ocular inspection could not have possibly determined the exact extent of the encroachment. It is for this reason that only upon a relocation survey performed by a geodetic engineer, was it discovered that 131 square meters and 130 square meters of the lots purchased from Coco Charcoal and Lim, respectively, had been adversely affected by the DPWH project.

To reiterate, the fact of encroachment is settled as even the CA found that the DPWH project had disturbed a portion of the properties Makro had purchased. The only reason the appellate court denied Makro recompense was because of its purported actual knowledge of the intrusion which is not reason enough to deny Makro a refund of the proportionate amount pursuant to Section 2 of the deeds of sale.

Nevertheless, the RTC errs in ordering respondents to pay ₱1,500,00.00 each to Makro. Under Section 2 of the deeds of sale, the purchase price shall be adjusted in case of increase or decrease in the land area at the rate of ₱8,500.00 per square meter. In the case at bar, 131 square meters and 130 square meters of the properties of Coco Charcoal and Lim, respectively, were encroached upon by the DPWH project. Applying the formula set under the deeds of sale, Makro should be entitled to receive ₱1,113,500.00 from Coco Charcoal and ₱1,105,000.00 from Lim. It is noteworthy that Makro's complaint against respondents also prayed for the same amounts. The RTC awarded ₱1,500,00.00 without sufficient factual basis or justifiable reasons.

Exemplary damages and attorney's fees may be awarded only for cause provided for by law.

In finding for Makro, the RTC also awarded attorney's fees and exemplary damages in its favor. The trial court ruled that Makro was entitled to attorney's fees because it was forced to bring the matter before the court assisted by counsel. It found the grant of exemplary damages in order because respondents were in bad faith for concealing from Makro the fact that the DPWH had already dispossessed a portion of the lots purchased.

In *ABS-CBN Broadcasting Corporation v. Court of Appeals*,[24] the Court cautioned that the fact that a party was compelled to litigate his cause does not necessarily warrant the award of attorney's fees, to wit:

> As regards attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code.
>
> The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. **Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause**. (emphasis supplied)

Other than the bare fact that Makro was compelled to hire the services of counsel to prosecute its case, the RTC did not provide compelling reasons to justify the award of attorney's fees. Thus, it is but right to delete the award especially since

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[24] 361 Phil. 499 (1999).

there is no showing that respondents had acted in bad faith in refusing Makro's demand for refund. It is in consonance with the policy that there is no premium on the right to litigate.[25]

On the other hand, exemplary damages may be awarded if the defendant had acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[26] The RTC found the award of exemplary damages warranted because respondents allegedly concealed the fact the DPWH had already taken possession of a portion of the land they had sold to Makro. Bad faith, however, involves a state of mind dominated by ill will or motive implying a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[27] Here, there is insufficient evidence to definitively ascertain that respondents' omission to mention the ongoing DPWH projects was impelled by a conscious desire to defraud Makro. This is especially true since the road widening project was already in progress even before the time of the sale, and which would have been noticeable when Makro conducted its ocular inspection.

WHEREFORE, the petition is **GRANTED**. The 30 December 2010 Decision and 7 April 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 83836 are **REVERSED** and **SET ASIDE**. Petitioner Pilipinas Makro, Inc. is entitled to recover ₱1,113,500.00 from respondent Coco Charcoal Phils., Inc. and ₱1,105,000.00 from respondent Lim Kim San.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Leonen,* and *Gesmundo, JJ.,* concur.

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[25] *Philippine National Construction Corporation v. APAC Marketing Corporation*, 710 Phil. 389, 395 (2013).

[26] Article 2232 of the Civil Code.

[27] *Gatmaitan v. Gonzales*, 525 Phil. 658, 671 (2006).

THIRD DIVISION

[G.R. No. 197886. October 4, 2017]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ANTONIO Z. DE GUZMAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE POSTAL SERVICE ACT OF 1992 (RA 7354); THE POSTMASTER GENERAL OF THE PHILIPPINE POSTAL CORPORATION HAS THE POWER TO ENTER INTO CONTRACTS ON BEHALF OF THE CORPORATION AS AUTHORIZED BY THE BOARD OF DIRECTORS.— Respondent was designated Officer-in-Charge when the contract between the Philippine Postal Corporation and Aboitiz One was effected, since the Postmaster General had taken a leave of absence. Thus, he is considered to have been exercising the functions of the Postmaster General during this period. Under Republic Act No. 7354, the powers of the Philippine Postal Corporation are exercised by the Board of Directors, with the President appointing all seven (7) members and "with the Postmaster General as one of the members to represent the government shareholdings." The Postmaster General manages the Philippine Postal Corporation and has the power to sign contracts on behalf of the corporation as "authorized and approved by the Board [of Directors]." Valid corporate acts are those that have "the vote of at least a majority of the members present at a meeting at which there is a quorum."

2. CIVIL LAW; CIVIL CODE; CONTRACTS; A CONTRACT ENTERED INTO BY A CORPORATE OFFICER WITHOUT AUTHORITY GENERALLY DOES NOT BIND THE CORPORATION EXCEPT WHEN THE CONTRACT IS RATIFIED BY THE BOARD; WHERE THE BOARD OF DIRECTORS REMAINED SILENT DESPITE KNOWLEDGE OF THE CONTRACT AND IN FACT CONTINUED TO APPROVE PAYMENTS PURSUANT TO SUCH CONTRACT, THEY ARE PRESUMED TO HAVE SUBSTANTIALLY RATIFIED CORPORATE OFFICER'S UNAUTHORIZED ACTS.— There is no board resolution

authorizing respondent to enter into a contract with Aboitiz One for the outsourcing of mail deliveries in Luzon. Likewise, there are no Minutes of the April 29, 2004 Special Board Meeting. Thus, respondent relies on the transcript of stenographic notes taken during the April 29, 2004 Special Board Meeting to prove that he had the Board of Directors' approval to enter into the contract. x x x [T]he Board of Directors never actually took a vote on whether or not it should renew its contract with Aboitiz One for the outsourcing of its mail deliveries. A "no comment" from two (2) of the directors present cannot be considered as a unanimous approval. One (1) of the directors even required the presentation of the draft contract before its approval. There was also no board resolution issued after approving it. As there was no majority vote or a board resolution, respondent was not authorized to enter into the contract dated May 7, 2004. A contract entered into by corporate officers who exceed their authority generally does not bind the corporation except when the contract is ratified by the Board of Directors. x x x Postmaster General Villanueva approved the payments when he resumed work. Subsequent Postmaster General Rama, upon his assumption to office, also approved the payments to Aboitiz One. The Corporate Auditor Commission on Audit likewise certified that it did not issue any notice of disallowance on the Aboitiz One contract. Considering that the Board of Directors remained silent and the Postmaster Generals continued to approve the payments to Aboitiz One, they are presumed to have substantially ratified respondent's unauthorized acts. Therefore, respondent's action is not considered *ultra vires.*

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE GOVERNMENT PROCUREMENT ACT (RA 9184); ALL GOVERNMENT PROCUREMENT MUST UNDERGO COMPETITIVE BIDDING; RESORT TO ALTERNATIVE METHODS MAY BE ALLOWED SUBJECT TO CERTAIN CONDITIONS.— As a general rule, all government procurement must undergo competitive bidding. This ensures transparency, competitiveness, efficiency, and public accountability in the procurement process. However, the government entity may, subject to certain conditions, resort to alternative methods of procurement namely: (1) limited source bidding, (2) direct contracting, (3) repeat order, (4) shopping, and (5) negotiated procurement. The procuring entity must ensure that in any of

these methods, it secures the most advantageous price for the government.

4. ID.; ID.; ID.; NATURE OF THE SITUATIONS UNDER SECTION 53(b) OF RA 9184 WHERE NEGOTIATED PROCUREMENT MAY BE ALLOWED, EXPLAINED.— [N]egotiated procurement under Republic Act No. 9184, Section 53(b) involves situations beyond the procuring entity's control. Thus, it speaks of "imminent danger . . . during a state of calamity . . . natural or man-made calamities [and] other causes where immediate action is necessary." Following the principle of *ejusdem generis,* where general terms are qualified by the particular terms they follow in the statute, the phrase "other causes" is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities.

5. ID.; ID.; ID.; ID.; THE EXPIRATION OF THE MAIL CARRIAGE DRIVERS' EMPLOYMENT CONTRACTS IS NOT A CALAMITOUS EVENT CONTEMPLATED UNDER SECTION 53(b) OF RA 9184; EXPIRATION OF THE CONTRACTS WAS NOT A SUDDEN UNEXPECTED EVENT.— The expiration of the mail carriage drivers' employment contracts is not a calamitous event contemplated under Republic Act No. 9184, Section 53(b). The contracts were undertaken with a definite expiration date, i.e., March 31, 2004. The expiration of the contracts was not a sudden unexpected event. Respondent admits that a post study was conducted on the delivery system to study its effectivity. This means that immediately after the contracts were executed, the Central Mail Exchange Center was already gauging the delivery system's performance and studying alternative solutions. Before the contracts expired, there was still time to consider outsourcing mail carriage and the conduct of public bidding.

6. ID.; ID.; ID.; WHILE RESPONDENT IS NOT THE HEAD OF THE PROCURING ENTITY, HE MAY BE HELD LIABLE FOR NON-CONDUCT OF PUBLIC BIDDING AS HE WAS CONSIDERED "DULY AUTHORIZED OFFICIAL" OF THE PHILIPPINE POSTAL CORPORATION IN PROCURING ABOITIZ ONE'S SERVICES.— Respondent claims that even if public bidding was necessary, he cannot be

held liable for its non-conduct since he is not the head of the procuring entity. On the contrary, Republic Act No. 9184, Section 5(j)(ii) defines head of the procuring entity as "the governing board *or its duly authorized official,* for government-owned and/or -controlled corporations." As previously discussed, respondent's acts, while initially unauthorized, were eventually ratified by the Philippine Postal Corporation Board of Directors' silence. Thus, he was considered "its duly authorized official" in procuring Aboitiz One's services.

7. ID.; ID.; ID.; RESPONDENT IS FOUND GUILTY OF GROSS NEGLECT OF DUTY IN ENTERING INTO A CONTRACT WITH ABOITIZ ONE WITHOUT ENSURING THAT THE PROCUREMENT WOULD BE DONE THROUGH THE PROPER PROCEDURE AND AT THE MOST ADVANTAGEOUS PRICE.— Respondent's acts cannot be characterized as a mere failure to use reasonable diligence or that which results from carelessness or indifference. He was aware that the employment contracts would expire on March 31, 2004. He knew that the Central Mail Exchange Center was able to propose a viable alternative for mail carriage in Luzon. He waited until the contracts actually expired to recommend the use of outsourcing to the Board of Directors, thereby creating a condition where the Board of Directors were left with no choice but to acquiesce since denying the recommendation may result in indeterminable delay or stoppage. Respondent, as the acting Postmaster General, had the duty to first secure the Board of Directors' approval before entering into the May 7, 2004 contract with Aboitiz One. The Board of Directors did not actually give its approval since it required him to first fulfill certain conditions. Instead of complying, he went ahead and executed the contract with Aboitiz One without ensuring that the procurement of its services by the Philippine Postal Corporation would be done through the proper procedures and at the most advantageous price. Accordingly, he is found guilty of gross neglect of duty.

8. ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE.— Under Rule 10, Section 46(A)(2) of the Revised Rules on Administrative Cases, gross neglect of duty is categorized as a grave offense punishable by dismissal from service. In view of the constitutional principle that "public office is a public trust," erring public officials must be held accountable

not for punishment but to ensure the public's continued trust and confidence in the civil service.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Roland K. Javier for respondent.

D E C I S I O N

LEONEN, *J.*:

The Postmaster General may only execute contracts for procurement of services with the Board of Directors' approval. However, this lack of authority may be ratified through the Board of Directors' silence or acquiescence. The ratification of the unauthorized act does not necessarily mean that the contract is valid. If the contract is executed without complying with the laws on procurement, the erring public official may be held administratively liable.

This is a Petition for Review on Certiorari[1] assailing the May 4, 2011 Decision[2] and July 14, 2011 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 108182, which annulled and set aside the August 31, 2007 Decision[4] of the Office of the Ombudsman. The Office of the Ombudsman found respondent

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[1] *Rollo*, pp. 28-55.

[2] *Id.* at 57-75. The Decision was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rebecca De Guia-Salvador and Hakim S. Abdulwahid of the Special Fifth Division, Court of Appeals, Manila.

[3] *Id*. at 77. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rebecca De Guia-Salvador and Hakim S. Abdulwahid of the Former Special Fifth Division, Court of Appeals, Manila.

[4] *Id*. at 123-135. The Decision, docketed as OMB-C-A-06-0220-E, was penned by Graft Investigation and Prosecution Officer I Ruth Laura A. Mella, reviewed by Acting Director Mothalib C. Onos, recommended for approval by Acting Assistant Ombudsman Jose T. De Jesus, Jr., and approved by Acting Ombudsman Orlando C. Casimiro.

Antonio Z. De Guzman (De Guzman) guilty of grave misconduct and dishonesty for entering into a contract with a private entity for mail delivery in Luzon despite not having prior approval from the Philippine Postal Corporation Board of Directors.

Sometime in 2001, the Philippine Postal Corporation entered into a contract with Aboitiz Air Transport Corporation (Aboitiz Air) for the carriage of mail at a rate of ₱5.00 per kilogram.[5] This contract would expire on December 31, 2002.[6]

Sometime in October 2003, or after the expiry of its contract with Aboitiz Air, the Philippine Postal Corporation purchased 40 vehicles for mail deliveries in Luzon. It also hired 25 drivers for these vehicles on a contractual basis. All of these drivers' contracts would expire on March 31, 2004, except that of a certain Oliver A. Cruz.[7]

The Central Mail Exchange Center of the Philippine Postal Corporation conducted a post study of the delivery system and found that the expenses for the salaries and maintenance of its vehicles for Luzon deliveries were higher than its previous system of outsourcing deliveries to Aboitiz Air. On April 15, 2004, it submitted a recommendation that the Philippine Postal Corporation would save ₱6,110,152.44 per annum if deliveries were outsourced instead at the cost of ₱8.00 per kilogram.[8]

On April 29, 2004, the Board of Directors of the Philippine Postal Corporation held a Special Board Meeting where De Guzman,[9] the Officer-in-Charge, endorsed for approval the Central Mail Exchange Center's recommendation to outsource mail delivery in Luzon.[10]

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[5] *Id*. at 265-269.

[6] *Id*. at 124.

[7] *Id*. at 58.

[8] *Id*. at 58-59 and 384.

[9] Then Postmaster General Diomedo P. Villanueva had taken a leave of absence since February 16, 2004 so De Guzman was designated Officer-in-Charge effective February 17, 2004 (*rollo*, p. 58).

[10] *Rollo*, p. 58.

On May 7, 2004, De Guzman sent a letter to Aboitiz Air, now Aboitiz One, Inc. (Aboitiz One), through its Chief Operating Officer, Efren E. Uy, stating:

> Pending finalization of the renewal of our contract, you may now re-assume to undertake the carriage of mail from and to Regions 1, 2, 5, & CAR starting 11 May 2004 until further notice. The terms and conditions shall be the same as stipulated in the previous contract except for the schedule and the rate. The attached revised schedule shall be followed and the rate shall be ₱8.00 per Kilogram.[11]

Aboitiz One accepted the proposal and commenced its delivery operations in Luzon on May 20, 2004. When Postmaster General Diomedo P. Villanueva (Postmaster General Villanueva) resumed work, the Aboitiz One contract had already been fully implemented. Thus, the Postmaster General approved payments made to Aboitiz One for services rendered.[12]

On October 20, 2005, Atty. Sim Oresca Mata, Jr. filed an administrative complaint with the Office of the Ombudsman against De Guzman. He alleged that the Aboitiz One contract renewal was done without public bidding and that the rate per kilogram was unilaterally increased without the Philippine Postal Corporation Board of Directors' approval.[13]

In his Counter-Affidavit, De Guzman alleged that the Office of the Ombudsman no longer had jurisdiction over the case since it was filed one (1) year and five (5) months after the commission of the act complained of, or after he sent his May 7, 2004 letter to Aboitiz. He also alleged that the contract renewal was approved by the Board of Directors in the April 29, 2004 Special Meeting. He maintained that the expiration of the employment contracts of the drivers caused a delay in the delivery of mail, which justified the approval of the outsourcing of deliveries. [14]

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[11] *Id*. at 59.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 59-60.

On August 31, 2007, the Office of the Ombudsman rendered its Decision[15] finding De Guzman guilty of grave misconduct and dishonesty. The dispositive portion of this Decision read:

> **WHEREFORE**, premises considered, respondent ATTY. ANTONIO Z. DE GUZMAN is found GUILTY of GRAVE MISCONDUCT and DISHONESTY, and is hereby meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.
>
> The Honorable Postmaster General of Philippine Postal Corporation is hereby directed to implement immediately this decision pursuant to Memorandum Circular No. 01, Series of 2006.[16]

De Guzman filed his Motion for Reconsideration[17] but it was denied in an Order[18] dated June 16, 2008. Thus, he filed a Petition for Review[19] with the Court of Appeals, insisting that the outsourcing of mail deliveries in Luzon was approved by the Philippine Postal Corporation Board of Directors and that the lack of bidding was justified by the delivery delays due to the expiration of the mail delivery drivers' employment contracts.[20]

On May 4, 2011, the Court of Appeals rendered its Decision[21] annulling the Decision and Order of the Office of the Ombudsman and setting aside the Complaint against De Guzman for lack of merit.[22] The Court of Appeals found that according to the Minutes

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[15] *Id*. at 123-135.

[16] *Id*. at 133-134.

[17] *Id*. at 526-561.

[18] *Id*. at 190-196. The Order was penned by Graft Investigation and Prosecution Officer I Ruth Laura A. Mella, reviewed by Acting Director Mothalib C. Onos, recommended for approval by Assistant Ombudsman Jose T. De Jesus, Jr., and approved by Overall Deputy Ombudsman Orlando C. Casimiro.

[19] *Id*. at 136-189.

[20] *Id*. at 157-180.

[21] *Id*. at 57-75.

[22] *Id*. at 75.

of the April 29, 2004 Special Board Meeting, the engagement of Aboitiz's services was approved by the Board of Directors.[23] The Court of Appeals also found that there was an urgent need for the procurement of Aboitiz's services due to the expiration of the delivery drivers' employment contracts, which justified the negotiated procurement of Aboitiz's contract.[24]

The Court of Appeals likewise found that the rate increase per kilogram from ₱5.00 to ₱8.00 was approved by the Board of Directors in the April 29, 2004 Special Board Meeting after considering and deliberating on the Central Mail Exchange Center's study on the rates of Aboitiz One's competitors.[25] It also found that the implementation of the contract and the subsequent approvals of payments to Aboitiz One by then Postmaster General Villanueva and then Postmaster General Dario Rama (Postmaster General Rama) were a subsequent ratification of De Guzman's acts.[26]

The Office of the Ombudsman moved for reconsideration but it was denied by the Court of Appeals in a Resolution[27] dated July 14, 2011. Hence, this Petition[28] was filed.

Petitioner argues that respondent committed grave misconduct since he was not authorized to enter into a contract with Aboitiz One or to allow the rate increase per kilogram of mail considering that in the April 29, 2004 Special Board Meeting, respondent was merely instructed to provide more information on Aboitiz One and to submit a copy of the proposed contract.[29] It insists

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[23] *Id*. at 62-69.

[24] *Id*. at 70-71.

[25] *Id*. at 71-72.

[26] *Id*. at 72.

[27] *Id*. at 77.

[28] *Id*. at 28-55. Comment was filed on March 12, 2012 (*rollo*, pp. 599–648) while Reply was filed on August 6, 2012 (*rollo*, pp. 759-773). Parties were ordered to submit their respective memoranda on February 11, 2013 (*rollo*, pp. 775-776).

[29] *Id*. at 822.

that the approval of the contract was contingent upon respondent's compliance with the conditions set by the Board of Directors and that the Board of Directors was not fully apprised of the details during the meeting.[30] Petitioner likewise submits that negotiated procurement was not applicable. It alleges that Aboitiz One took over only two (2) months after the expiration of the mail delivery drivers' employment contracts, showing no urgency in the situation. It also avers that the Board of Directors could only exercise negotiated procurement when there are substantiated claims of losses.[31]

Respondent counters that he obtained the Board of Directors' approval of his request for authority to enter into the outsourcing contract with Aboitiz One after a full disclosure to the Board of Directors of the cost-benefit analysis submitted by the Central Mail Exchange Center.[32] Respondent likewise contends that he had no legal duty to conduct a public bidding since he was not the procuring entity.[33] The Board of Directors, as the procuring entity, did not direct or suggest the conduct of a public bidding.[34] He insists that negotiated procurement was necessary, arguing that the non-renewal of the mail delivery drivers' employment contracts would cause delay or stoppage of mail delivery to various parts of the country.[35]

Respondent explains that the Philippine Postal Corporation had been incurring costs of ₱21.00 per kilogram and that if services were outsourced at ₱8.00 per kilogram, it could save ₱13.00 per kilogram or a total of ₱6,110,152.44 per annum.[36] He alleges that this price would have been the most advantageous for the government since no other company offered a rate lower

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[30] *Id*. at 823.

[31] *Id*. at 826.

[32] *Id*. at 795-796.

[33] *Id*. at 801.

[34] *Id*. at 802.

[35] *Id*. at 805.

[36] *Id*. at 803.

than ₱8.00 per kilogram for its Luzon mail deliveries.[37] Respondent further asserts that a public bidding was conducted in 2005, and Airfreight 2100, Inc., the winning bidder, refused the award and did not sign the contract. He states that due to the cancellation of Aboitiz One's contract on January 31, 2006, the Philippine Postal Corporation has incurred costs of more than ₱25.00 per kilogram in Luzon mail deliveries.[38] Respondent contends that if he was the only official of the Philippine Postal Corporation found liable of grave misconduct and dishonesty, it would violate his right to due process since he merely endorsed for approval a recommendation by the Central Mail Exchange Center.[39]

This Court is tasked to resolve the issue of whether or not the Court of Appeals erred in absolving respondent Antonio Z. De Guzman of his administrative offenses. In resolving this issue, this Court must first resolve whether or not he committed grave misconduct and dishonesty in (a) engaging the services of Aboitiz One, Inc. allegedly without the approval of the Philippine Postal Corporation Board of Directors, and (b) in procuring Aboitiz One, Inc.'s services through negotiated procurement.

I

To determine whether or not respondent acted without authority when he procured Aboitiz One's services in outsourcing mail deliveries in Luzon, it is necessary to determine first the scope of his authority under the law.

Respondent was designated Officer-in-Charge when the contract between the Philippine Postal Corporation and Aboitiz One was effected, since the Postmaster General had taken a leave of absence. Thus, he is considered to have been exercising the functions of the Postmaster General during this period. Under Republic Act No. 7354,[40] the powers of the Philippine Postal

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[37] *Id*. at 807.

[38] *Id*.

[39] *Id*. at 811.

[40] The Postal Service Act of 1992.

Corporation are exercised by the Board of Directors,[41] with the President appointing all seven (7) members and "with the Postmaster General as one of the members to represent the government shareholdings."[42]

The Postmaster General manages the Philippine Postal Corporation[43] and has the power to sign contracts on behalf of the corporation as "authorized and approved by the Board [of Directors]."[44] Valid corporate acts are those that have "the vote of at least a majority of the members present at a meeting at which there is a quorum."[45]

There is no board resolution authorizing respondent to enter into a contract with Aboitiz One for the outsourcing of mail deliveries in Luzon. Likewise, there are no Minutes of the April 29, 2004 Special Board Meeting. Thus, respondent relies on the transcript of stenographic notes taken during the April 29, 2004 Special Board Meeting[46] to prove that he had the Board of Directors' approval to enter into the contract. Pertinent portions of the transcript state:

CORSEC F.C. CRUZ:

Next is, "Renewal of the contract with Aboitiz for the outsourcing of Luzon Mail Run from [the Central Mail Exchange Center] to Region[s] 1,2,5[,] CAR [and] [v]ice [v]ersa.'

. . . . . .

CHAIRMAN H.R.R. VILLANUEVA:

. . . . . .

So, ladies and gentlemen, what is the pleasure of the Board on this?

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[41] Rep. Act No. 7354, Sec. 8.

[42] Rep. Act No. 7354, Sec. 8.

[43] Rep. Act No. 7354, Sec. 20.

[44] Rep. Act No. 7354, Sec. 21(b).

[45] Rep. Act No. 7354, Sec. 8.

[46] *Rollo*, pp. 346-369.

DIRECTOR A.P. LORETO:

Mr. Chairman, we would like to request Atty. De Guzman to present to us more or less, a profile of this company, Aboitiz, and then, let's say, a draft of the contract before we can totally approve the proposal.

CHAIRMAN H.R.R. VILLANUEVA:

Is there a prepared contract here?

OIC-POSTGEN A.Z. DE GUZMAN:

Yeah, there was, sir.

CHAIRMAN H.R.R. VILLANUEVA:

Any other comments, Director Gelvezon?

DIRECTOR R.L. GELVEZON:

None.

CHAIRMAN H.R.R. VILLANUEVA:

Governor?

DIRECTOR I.S. SANTIAGO:

No.

CHAIRMAAN (SIC) H.R.R. VILLANUEVA:

So, we will consider it as approve[d] subject to . . . [pauses]

OIC-POSTGEN A.Z. DE GUZMAN:

Can I now terminate, sir, the [drivers' employment contracts] because they plan to terminate this at the end of this month, so that we can start on May 2. Can I now terminate this?

DIRECTOR R.L. GELVEZON:

Actually, *hindi na* terminate, but not to renew.

OIC-POSTGEN A.Z. DE GUZMAN:

Ah, okay, not to renew *nga*.

DIRECTOR R.L. GELVEZON:

Hindi pa nga nag-e-expire, e ite-terminate na. Let it expired (sic).

OIC-POSTGEN A.Z. DE GUZMAN:

Actually, *nag-expire na sila nitong* March 31.

Chairman H.R.R. VILLANUEVA:

Yeah, but these vehicles will be needing drivers?

OIC-POSTGEN A.Z. DE GUZMAN:

Sir, *may mga* available drivers *tayo*.

Chairman H.R.R. VILLANUEVA:

No additional hiring?

OIC-POSTGEN A.Z. DE GUZMAN:

No additional hiring.

. . . . . .

Chairman H.R.R. VILLANUEVA:

And allowing the contract of drivers to lapse?

OIC-POSTGEN A.Z. DE GUZMAN:

Yes, sir.

Chairman H.R.R. VILLANUEVA:

But no additional hiring?

OIC-POSTGEN A.Z. DE GUZMAN:

Yes, sir.

Chairman H.R.R. VILLANUEVA:

Next, Corsec!

CORSEC F.C. CRUZ:

No. 3, Renewal of Appointment of Legal Officer IV Atty. Marie Rose Magallen and Atty. Fernando . . .[47]

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[47] *Id*. at 347, 352-355.

While the minutes of a board meeting are not equivalent to a board resolution, they may be examined to determine what actually took place during the meeting. In *Brias v. Hord*:[48]

> The minutes of the transactions of a board such as the present, prepared by its secretary or some person named or appointed for the purpose of keeping a record of the proceedings, are generally accepted, once approved by the board, as *prima facie* evidence of what actually took place during that meeting.[49]

Ideally, there would have been minutes taken after the conduct of the board meeting. In its absence, as in this case, the transcript may be resorted to in order to determine the Board of Directors' action on a particular measure. For a corporate act of the Philippine Postal Corporation to be valid, it must have the vote of at least a majority of the members in a meeting where there is a quorum. In this instance, six (6) out of seven (7) members were present during the April 29, 2004 Special Board Meeting.[50]

However, the Board of Directors never actually took a vote on whether or not it should renew its contract with Aboitiz One for the outsourcing of its mail deliveries. A "no comment" from two (2) of the directors present cannot be considered as a unanimous approval. One (1) of the directors even required the presentation of the draft contract before its approval. There was also no board resolution issued after approving it. As there was no majority vote or a board resolution, respondent was not authorized to enter into the contract[51] dated May 7, 2004.

A contract entered into by corporate officers who exceed their authority generally does not bind the corporation except when the contract is ratified by the Board of Directors.[52]

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[48] 24 Phil 286 (1913) [*Per Curiam*, First Division].

[49] *Id*. at 294.

[50] *Rollo*, p. 346.

[51] *Id*. at 370.

[52] See CIVIL CODE, Art. 1898.

There was no evidence presented that the Board of Directors repudiated the contract dated May 7, 2004 with Aboitiz One. The contract remained effective until January 31, 2006.[53] While the transcript of the April 29, 2004 Special Board Meeting does not mention the proposal to increase the cost of delivery from ₱5.00 to ₱8.00 per kilogram, the Central Mail Exchange Center's cost-benefit analysis and recommendation for price increase was sent to the Board of Directors on April 20, 2004.[54] This memorandum was the reason for the April 29, 2004 Special Board Meeting. Therefore, the Board of Directors was informed that the renewal of the Aboitiz One contract would include an increase in costs.

Postmaster General Villanueva approved the payments when he resumed work.[55] Subsequent Postmaster General Rama, upon his assumption to office, also approved the payments to Aboitiz One.[56] The Corporate Auditor Commission on Audit likewise certified that it did not issue any notice of disallowance on the Aboitiz One contract.[57]

Considering that the Board of Directors remained silent and the Postmaster Generals continued to approve the payments to Aboitiz One, they are presumed to have substantially ratified respondent's unauthorized acts. Therefore, respondent's action is not considered *ultra vires*.

II

However, the ratification of respondent's unauthorized acts does not necessarily mean that the May 7, 2004 contract was validly executed. To determine if respondent committed grave misconduct when he entered into this contract, it must first be determined if public bidding was necessary.

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[53] *Rollo*, p. 793.

[54] *Id*. at 795.

[55] *Id*. at 792.

[56] *Id*. at 806.

[57] *Id*. at 525.

As a general rule, all government procurement must undergo competitive bidding.[58] This ensures transparency, competitiveness, efficiency, and public accountability in the procurement process.[59] However, the government entity may, subject to certain conditions, resort to alternative methods of procurement, namely: (1) limited source bidding, (2) direct contracting, (3) repeat order, (4) shopping, and (5) negotiated procurement.[60] The procuring entity must ensure that in any of these methods, it secures the most advantageous price for the government.[61]

In negotiated procurement, "the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant."[62] Resort to negotiated procurement is allowed only under the following conditions:

Section 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two (2) failed biddings, as provided in Section 35 hereof;

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided,*

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[58] Rep. Act No. 9184, Art. IV, Sec. 10.

[59] Rep. Act No. 9184, Art. I, Sec. 3.

[60] Rep. Act No. 9184, Art. XVI, Sec. 48.

[61] Rep. Act No. 9184, Art. XVI, Sec. 48.

[62] Rep. Act No. 9184, Art. XVI, Sec. 48 (e).

however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letter of Instruction No. 755 and Executive Order No. 359, series of 1989.[63]

Petitioner and respondent appear to have differing views on which instance this situation falls under. Petitioner argues that negotiated procurement does not apply in this case as it is not a situation covered by Republic Act No. 9184, Section 53**(c)**,[64] which reads:

Section 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:

. . . . . .

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities[.]

On the other hand, respondent argues that the expiration of the drivers' employment contracts on March 31, 2004 is an

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[63] Rep. Act No. 9184, Sec. 53.

[64] *Rollo*, pp. 825-826.

emergency situation where immediate action was warranted since the non-renewal of the contracts "would cause delay, if not stoppage, of delivery of mails to various parts of the country."[65] He cites Republic Act No. 9184, Section 53**(b)**, which provides:

> Section 53. Negotiated Procurement. – Negotiated Procurement shall be allowed only in the following instances:
>
> . . . . . .
>
> (b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities[.]

However, this situation cannot be categorized as a takeover of contracts. Republic Act No. 9184, Section 53(c) requires that the rescission or termination of the contract be for causes provided for in the contract and under the law. The drivers' employment contracts were not terminated; they merely expired and were not renewed. Moreover, there are certain guidelines that must be followed in terminations due to default, convenience, insolvency, unlawful acts, work stoppage, or breach of obligation.[66]

Respondent, in categorizing the situation as an "emergency," inevitably anchors the negotiated procurement of the Aboitiz One contract as a situation "where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities." Since neither damage, nor loss of life or property, nor restoration of infrastructure facilities or public utilities is

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[65] *Id*. at 805.

[66] *See* Government Procurement Policy Board, *Guidelines on Termination of Contracts*, available at <http://www.gppb.gov.ph/issuances/Guidelines/Termination%20of%20Contract.pdf> (last accessed August 15, 2017).

alleged, negotiated procurement in this instance was resorted to in restoring vital public services.

For ordinary citizens, postal services have become near obsolete in daily life with the advent of electronic mail and the presence of various private courier services that promise faster delivery than the local post office. In 2011, the Philippine Postal Corporation was rationalized and restructured "in light of the continued downtrend in mail patronage brought about by developments in communications technology."[67] However, despite advances in communications technology, postal services remain a vital part of government transactions.

Communications and notices involving judicial processes,[68] Bureau of Internal Revenue's assessment notices,[69] Department of Agrarian Reform's notifications,[70] international patent applications with the Intellectual Property Office,[71] Commission on Audit's notices of disallowance,[72] and Philippine Deposit Insurance Corporation's payments of closed banks' deposit insurance[73] are sent through registered mail. Corporations are also allowed to file their annual financial statements and general

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[67] Governance Commission for GOCCs Memorandum No. 2012-21, sixth whereas clause.

[68] *See* Presidential Decree No. 26 (1972) and *Philippine Judges Association v. Prado*, 298 Phil. 502 (1993) [Per *J*. Cruz, *En Banc*].

[69] See *Barcelon Roxas Securities v. Commissioner of Internal Revenue*, 529 Phil. 785 (2006) [Per *J*. Chico-Nazario, First Division].

[70] Department of Agrarian Reform, *Registered Mail (as of July22)*, available at <http://www.dar.gov.ph/registered-mail> (last accessed August 15, 2017).

[71] Intellectual Property Office, *Frequently Asked Questions about the PCT International Phase*, available at <http://www.ipophil.gov.ph/images/Patents/FAQ_PHInternationalPhase-2.pdf> (last accessed August 15, 2017).

[72] *See* 2009 Revised Rules of Procedure of the Commission on Audit, Sec.7.

[73] Philippine Deposit Insurance Corporation, *PDIC pays PHP82.8-M in deposit insurance to depositors of the closed Rural Bank of Goa (Camarines Sur), Inc*., June 13, 2017, available at <http://www.pdic.gov.ph/? nid1= 8 &nid2=1&nid=101154> (last accessed August 15, 2017).

information sheets with the Securities and Exchange Commission through regular mail.[74] This is by no means an exhaustive list of postal services relied on by government entities. Thus, any delays or stoppage in the carriage of mail would certainly have precarious effects.

However, negotiated procurement under Republic Act No. 9184, Section 53(b) involves situations beyond the procuring entity's control. Thus, it speaks of "imminent danger . . . during a state of calamity . . . natural or man-made calamities [and] other causes where immediate action is necessary." Following the principle of *ejusdem generis*, where general terms are qualified by the particular terms they follow in the statute,[75] the phrase "other causes" is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities.

The expiration of the mail carriage drivers' employment contracts is not a calamitous event contemplated under Republic Act No. 9184, Section 53(b).

The contracts were undertaken with a definite expiration date, i.e., March 31, 2004. The expiration of the contracts was not a sudden unexpected event. Respondent admits that a post study was conducted on the delivery system to study its effectivity.[76] This means that immediately after the contracts were executed, the Central Mail Exchange Center was already gauging the delivery system's performance and studying alternative solutions. Before the contracts expired, there was still time to consider outsourcing mail carriage and the conduct of public bidding.

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[74] SEC Memorandum Circular No. 2, series of 2017, available at <http://www.sec.gov.ph/wp-content/uploads/2017/03/2017MCno02-new.pdf> (last accessed August 15, 2017).

[75] See *Vera v. Cuevas*, 179 Phil. 307 (1979) [Per *J*. De Castro, First Division].

[76] *Rollo*, p. 784.

However, respondent chose to wait until the contracts expired to offer the Board of Directors a viable solution. Under the guise of an "emergency," he was able to skirt the requirement of competitive bidding and directly contract with Aboitiz One. Had outsourcing been discussed before the employment contracts actually expired, there would have been time to conduct a competitive public bidding.

Even respondent admits that in March 2005, a public bidding was eventually conducted to outsource mail carriage in Luzon.[77] The result of this bidding is telling. The winning bidder, Airfreight 2100, Inc., offered the rate of ₱4.95 per kilogram,[78] which was almost half Aboitiz One's rate of ₱8.00 per kilogram. This rate of ₱4.95 per kilogram would have been the price most advantageous to the government. If, as respondent claims, Airfreight 2100, Inc. refused to sign the contract,[79] the Philippine Postal Corporation was obliged under the law to conduct a second bidding.[80] It is only when the second bidding fails that the Philippine Postal Corporation will be allowed to undertake a negotiated procurement.[81] Thus, the direct resort to negotiated procurement in this case was highly irregular.

Respondent claims that even if public bidding was necessary, he cannot be held liable for its non-conduct since he is not the head of the procuring entity. On the contrary, Republic Act No. 9184, Section 5(j)(ii) defines head of the procuring entity as "the governing board *or its duly authorized official*, for government-owned and/or -controlled corporations." As previously discussed, respondent's acts, while initially unauthorized, were eventually ratified by the Philippine Postal Corporation Board of Directors' silence. Thus, he was considered "its duly authorized official" in procuring Aboitiz One's services.

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[77] *Id*. at 807.

[78] *Id*.

[79] *Id*.

[80] Rep. Act No. 9184, Sec. 35.

[81] Rep. Act No. 9184, Sec. 53 (a).

While respondent should be held responsible for transgression, the failure of the Board of Directors, Postmaster General Villanueva, and Postmaster General Rama to repudiate the Aboitiz One contract may also be basis to hold them administratively liable for the same offense as respondent. However, in view of their right to due process, petitioner must first file the appropriate action against them before any determination of their liability.

III

Petitioner may have incorrectly characterized respondent's offense as grave misconduct and dishonesty.

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."[82] There is no evidence that respondent lied, cheated, deceived, or defrauded when he directly resorted to negotiated procurement. Rather, he was under the mistaken presumption that he had the approval of the Board of Directors and that it was the necessary action to take since there was, in his opinion, an "emergency."

On the other hand, grave misconduct is defined as the "wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose."[83] In *Office of the Ombudsman v. PS/Supt. Espina*:[84]

> Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance

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[82] *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014) [Per J. Leonen, *En Banc*] *citing* Civil Service Commission Resolution No. 060538 dated April 4, 2006.

[83] *Office of the Ombudsman v. PS/Supt. Espina*, G.R. No. 213500, March 15, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> 6 [*Per Curiam*, First Division].

[84] G.R. No. 213500, March 15, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> [Per Curiam, First Division].

of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.

There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[85]

Grave misconduct and dishonesty are classified as grave offenses punishable by dismissal.[86] However, grave misconduct is not mere failure to comply with the law. Failure to comply must be deliberate and must be done in order to secure benefits for the offender or for some other person. Thus, in *Yamson v. Castro*:[87]

[T]o be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. There must be evidence, independent of the [offender's] failure to comply with the rules, which will lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.[88]

In this instance, petitioner has not presented evidence to show that respondent benefited from the lack of public bidding in the procurement of Aboitiz One's services. While there was a transgression of the established rules on public bidding, there must be evidence, independent from this transgression, which

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[85] *Id*. at 6 citing *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013) [Per *J*. Bersamin, *En Banc*]; *Amit v. Commission on Audit (COA)*, 699 Phil. 9, 26 (2012) [Per *J*. Brion, *En Banc*]; and *Imperial v. GSIS*, 674 Phil. 286, 296 (2011) [Per *J*. Brion, *En Banc*].

[86] *See* Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 46(A)(l) and (3).

[87] G.R. Nos. 194763-64, July 20, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/194763-64.pdf> [Per *J*. Reyes, Third Division].

[88] *Id*. at 21 citing *Litonjua v. Justices Enriquez, Jr. and Abesamis*, 482 Phil. 73, 101 (2004) [Per *J*. Azcuna, *En Banc*].

would show that respondent or some other person on his behalf benefited from the Aboitiz One contract.

It is true that in *Office of the Ombudsman-Mindanao v. Martel*,[89] this Court categorized the lack of public bidding as an offense constituting grave misconduct and dishonesty. However, *Martel* is inapplicable to this case.

In *Martel*, the Provincial Accountant and the Provincial Treasurer of Davao del Sur were found guilty of grave misconduct and gross neglect of duty in failing to conduct public bidding for the purchase of five (5) additional vehicles for the Office of the Provincial Governor. Specifically, this Court stated that respondents "allowed the governor of Davao del Sur to purchase and use more than one vehicle"[90] in violation of a Commission on Audit circular prohibiting it. Otherwise stated, there was grave misconduct because the lack of public bidding was deliberately done in order to benefit the governor of Davao del Sur.

There is no evidence presented that respondent in this case deliberately resorted to negotiated procurement to benefit himself or some other person. Respondent should, instead, be held administratively liable for gross neglect of duty.[91]

In *Office of the Ombudsman v. PS/Supt. Espina*:[92]

Gross neglect of duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation

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[89] G.R. No. 221134, March 1, 2017 [Per *J*. Mendoza, Second Division].

[90] *Id*.

[91] See *Avenido v. Civil Service Commission*, 576 Phil. 654, 661 (2008) [*Per Curiam, En Banc*], where this Court stated "that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling and one may be found guilty of another offense, where the substance of the allegations and evidence presented sufficiently proves one's guilt."

[92] G.R. No. 213500, March 15, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> [*Per Curiam*, First Division].

where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." In contrast, simple neglect of duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[93]

In *Espina*, PS/Supt. Rainer A. Espina (Espina) was initially charged with and found guilty of grave misconduct and dishonesty for anomalies in the Philippine National Police's procurement of 40 tires, repowering, refurbishing, repair and maintenance services of 28 Light Armored Vehicles, and other transportation and delivery services amounting to ₱409,740,000.00. As Acting Chief of the Management Division of the Philippine National Police Directorate for Comptrollership, Espina signed all the Inspection Report Forms without actually inspecting if the goods were delivered or services were rendered, which, in turn, resulted in the illegal disbursement of public funds.

This Court found that although Espina had the duty to ensure that procurement of goods and services must be done according to law, his failure would not be considered grave misconduct or dishonesty absent any independent evidence that he or some other person benefited from his infraction, thus:

> Here, the [Court of Appeals] correctly observed that while Espina may have failed to personally confirm the delivery of the procured items, the same does not constitute dishonesty of any form inasmuch as he did not personally prepare the [Inspection Report Forms] but merely affixed his signature thereon after his subordinates supplied the details therein.
>
> Neither can Espina's acts be considered misconduct, grave or simple. The records are bereft of any proof that Espina was motivated by a premeditated, obstinate or deliberate intent of violating the law, or

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[93] *Id*. at 8 citing *Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014) [Per *J*. Leonen, Second Division]; *Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013) [Per *J. Bersamin*, First Division]; and *Republic v. Canastillo*, 551 Phil. 987, 996 (2007) [Per *J.* Ynares-Santiago, Third Division].

disregarding any established rule, or that he wrongfully used his position to procure some benefit for himself or for another person, contrary to duty and the rights of others.[94]

This Court found that the proper offense was gross neglect of duty since "Espina acted negligently, unmindful of the high position he occupied and the responsibilities it carried, and without regard to his accountability for the hundreds of millions in taxpayers' money involved."[95]

In *Yamson v. Castro*,[96] respondents, who were members of the Bids and Awards Committee, were only found guilty of simple neglect of duty for failing to comply with the requirement of public bidding. This act was found by this Court as a mere "failure to use reasonable diligence in the performance of officially-designated duties."[97] However, in *Espina*, this Court emphasized that "a public officer's high position imposes upon him greater responsibility and obliges him to be more circumspect in his actions and in the discharge of his official duties."[98]

Respondent's acts cannot be characterized as a mere failure to use reasonable diligence or that which results from carelessness or indifference. He was aware that the employment contracts would expire on March 31, 2004. He knew that the Central Mail Exchange Center was able to propose a viable alternative for mail carriage in Luzon. He waited until the contracts actually expired to recommend the use of outsourcing to the Board of Directors, thereby creating a condition where the Board of Directors

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[94] *Id*. at 7.

[95] *Id*.

[96] G.R. Nos. 194763-64, July 20, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/194763-64.pdf> [Per *J*. Reyes, Third Division].

[97] *Id*. at 22.

[98] *Office of the Ombudsman v. P/Supt. Espina*, G.R. No. 213500, March 15, 2017 [<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> 9 [*Per Curiam*, First Division] citing *Amit v. Commission on Audit (COA)*, 699 Phil. 9, 26 (2012) [Per *J*. Brion, *En Banc*].

were left with no choice but to acquiesce since denying the recommendation may result in indeterminable delay or stoppage.

Respondent, as the acting Postmaster General, had the duty to first secure the Board of Directors' approval before entering into the May 7, 2004 contract with Aboitiz One. The Board of Directors did not actually give its approval since it required him to first fulfill certain conditions. Instead of complying, he went ahead and executed the contract with Aboitiz One without ensuring that the procurement of its services by the Philippine Postal Corporation would be done through the proper procedures and at the most advantageous price. Accordingly, he is found guilty of gross neglect of duty.

Under Rule 10, Section 46(A)(2) of the Revised Rules on Administrative Cases, gross neglect of duty is categorized as a grave offense punishable by dismissal from service. In view of the constitutional principle that "public office is a public trust,"[99] erring public officials must be held accountable not for punishment but to ensure the public's continued trust and confidence in the civil service.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The May 4, 2011 Decision and July 14, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 108182 are **REVERSED** and **SET ASIDE**. A new judgment is **ENTERED** finding respondent Antonio Z. De Guzman **GUILTY** of **GROSS NEGLECT OF DUTY**. Accordingly, he is **DISMISSED** from government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Caguioa,* and *Martires, JJ.,* concur.

Leonardo-de Castro, J., on official time.

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[99] CONST. Art. XI, Sec. 1.

THIRD DIVISION

[G.R. No. 200026. October 4, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO DELECTOR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON BY THE TRIAL COURT, ESPECIALLY WHEN CONFIRMED BY THE COURT OF APPEALS, ARE FINAL AND CONCLUSIVE ON APPEAL UNLESS THERE IS A DEMONSTRABLE ERROR IN APPRECIATION, OR A MISAPPREHENSION OF THE FACTS.— The factual findings of the RTC are accorded the highest degree of respect, especially if, as now, the CA adopted and confirmed them. Unlike the appellate courts, including ours, the trial judge had the unique firsthand opportunity to observe the demeanor and conduct of the witnesses when they testified at the trial, which were factors in the proper appreciation of evidence of past events. Such factual findings should be final and conclusive on appeal unless there is a demonstrable error in appreciation, or a misapprehension of the facts.

2. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; ACCIDENT; ELEMENTS.— Article 12, paragraph 4, of the *Revised Penal Code* exempts from criminal liability "(a)ny person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it." The elements of this exempting circumstance are, therefore, that the accused: (1) is performing a lawful act; (2) with due care; (3) causes injury to another by mere accident; and (4) without fault or intention of causing it.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; CAUSE OF THE ACCUSATION; THE NATURE AND CHARACTER OF THE CRIME CHARGED ARE DETERMINED BY THE FACTS ALLEGED IN THE INDICTMENT, THAT IS, THE ACTUAL RECITAL OF THE FACTS ALLEGED IN THE

BODY OF THE INFORMATION.— [T]he Court cannot uphold the judgments of the CA and the RTC and convict the accused for murder. A reading of the information indicates that murder had not been charged against him. The allegation of the information x x x did not sufficiently aver acts constituting either or both treachery and evident premeditation. The usage of the terms *treachery* and *evident premeditation*, without anything more, did not suffice considering that such terms were in the nature of conclusions of law, not factual averments. The sufficiency of the information is to be judged by the rule under which the information against the accused was filed. In this case, that rule was Section 9, Rule 110 of the *1985 Rules on Criminal Procedure* x x x. Section 9 required that the acts or omissions complained of as constituting the offense must be stated "in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense." As such, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated **but by the facts alleged in the indictment, *that is*, the actual recital of the facts as alleged in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law**. The facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime. To enable "a person of common understanding to know what offense is intended to be charged," as Section 9 further required, the courts should be mindful that the accused should be presumed innocent of wrongdoing, and was thus completely unaware of having done anything wrong in relation to the accusation. The information must then sufficiently give him or her the knowledge of what he or she allegedly committed.

4. ID.; ID.; ID.; ID.; ID.; THE ACCUSED CAN BE FOUND AND DECLARED GUILTY ONLY OF THE CRIME PROPERLY CHARGED IN THE INFORMATION; CASE AT BAR.— If the standards of sufficiency defined and set by the applicable rule of procedure were not followed, the consequences would be dire for the State, for the accused could be found and declared guilty only of the crime properly charged in the information. x x x Treachery, which the CA and the RTC ruled to be attendant,

always included basic constitutive elements whose existence could not be assumed. Yet, the information nowhere made any factual averment about the accused having deliberately employed means, methods or forms in the execution of the act — setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged — that tended directly and specially to insure its execution without risk to the accused arising from the defense which the offended party might make. To reiterate what was earlier indicated, it was not enough for the information to merely state *treachery* as attendant because the term was not a factual averment but a conclusion of law. The submission of the Office of the Solicitor General that neither treachery nor evident premeditation had been established against the accused is also notable. A review reveals that the record did not include any showing of the presence of the elements of either circumstance. As a consequence, the accused could not be properly convicted of murder, but only of homicide, as defined and penalized under Article 249, *Revised Penal Code*.

5. CRIMINAL LAW; REVISED PENAL CODE; TREACHERY; ELEMENTS.— Article 14, paragraph 16, of the *Revised Penal Code* states that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which [the] offended party might make." For treachery to be appreciated, therefore, two elements must concur, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

This case involves a brother fatally shooting his own brother. In his defense, the accused pleaded accident as an exempting circumstance. The trial and intermediate appellate courts rejected his plea and found him guilty of murder qualified by treachery. Hence, he has come to us to air his final appeal for absolution.

The Case

Under review is the decision promulgated on September 22, 2006,[1] whereby the Court of Appeals (CA) affirmed the decision rendered on March 17, 2003 by the Regional Trial Court (RTC), Branch 41, in Gandara, Samar convicting the accused of murder for the killing of the late Vicente Delector, and penalizing him with *reclusion perpetua*, with modification by increasing moral damages to ₱50,000.00.[2]

Antecedents

At about 6:00 o'clock in the afternoon of August 8, 1997, the late Vicente Delector was talking with his brother, Antolin, near his residence in Barangay Diaz in Gandara, Samar when the accused, another brother, shot him twice. Vicente was rushed to the Gandara District Hospital where he was attended to by Dr. Leonida Taningco, but he was later on transferred to the Samar Provincial Hospital where he succumbed to his gunshot wounds at about 1:00 a.m. of the next day.[3]

Vicente's son, Arnel, identified his uncle, the accused, as his father's assailant. Arnel attested that the accused had fired his gun at his father from their mother's house,[4] and had hit his

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[1] *Rollo,* pp. 3-10; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justice Romeo F. Barza and Associate Justice Priscilla Baltazar-Padilla.

[2] CA *rollo* pp. 19-30; penned by Judge Rosario B. Bandal.

[3] *Rollo,* pp. 3-4.

[4] TSN, Arnel Delector, August 9, 1999, p. 19.

father who was then talking with Antolin. Corroborating Arnel's identification was Raymond Reyes, who had happened to be along after having come from his school. Raymond also said that Vicente had been only conversing with Antolin when the accused shot him twice.[5]

On October 2, 1997, the Office of the Provincial Prosecutor of Samar charged the accused with murder in the RTC through the following information, *viz.*:

> That on or about the 8th day of August, 1997, at about 6:00 o'clock in the afternoon, at Barangay Diaz, Municipality of Gandara, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.
>
> CONTRARY TO LAW.[6]

In his defense, the accused insisted during the trial that the shooting of Vicente had been by accident. His own son corroborated his insistence. According to them, Vicente had gone to their house looking for him, but he had earlier left to go to their mother's house nearby in order to avoid a confrontation with Vicente; however, Vicente followed him to their mother's house and dared him to come out, compelling Antolin to intervene and attempt to pacify Vicente. Instead, Vicente attacked Antolin, which forced the accused to go out of their mother's house. Seeing Vicente to be carrying his gun, he tried to wrest the gun from Vicente, and they then grappled with each other for control of the gun. At that point, the gun accidentally fired, and Vicente was hit.[7]

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[5] *Id.* at 14.

[6] *Rollo,* p. 4.

[7] TSN, July 11, 2000, pp. 6-10.

Ruling of the RTC

After trial, the RTC rendered its decision,[8] finding the accused guilty of murder, and disposing:

> **WHEREFORE**, accused Armando Delector is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder and is hereby meted a penalty of **RECLUSION PERPETUA**.
>
> Accused shall likewise indemnify the heirs of Vicente Delector the sum of Php50,000.00, actual damages of Php12,000.00, moral damages of Php30,000.00 and costs.
>
> In line with Section 5, Rule 114 of the Rules on Criminal Procedure, the Warden of the Sub-Provincial Jail, Calbayog City, is hereby directed to immediately transmit the living body of the accused Armando Delector to the New Bilibid Prison at Muntinlupa City, Metro Manila where he may remain to be detained. The accused shall be credited for the period he was under preventive detention provided he has previously expressed his written conformity to comply with the discipline, rules and regulations by the detention center, otherwise he shall be entitled to only 4/5 thereof pursuant to Article 29 of the Revised Penal Code, as amended.
>
> **SO ORDERED**.[9]

Decision of the CA

Aggrieved, the accused appealed, contending that:

> I
>
> THAT THE LOWER COURT ERRED GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES; and
>
> II
>
> THAT THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

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[8] *Supra* note 2.

[9] CA *rollo,* pp. 29-30.

Nonetheless, the CA affirmed the conviction for murder subject to an increase of the moral damages to ₱50,000.00,[10] to wit:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the appeal filed in this case and **AFFIRMING** the decision of the lower court in Criminal Case No. 3403 with the **MODIFICATION** that the award of moral damages is increased to ₱50,000.00.

SO ORDERED.

The CA opined that the exempting circumstance of accident was highly improbable, stating:

Indeed, given the circumstances surrounding the death of the victim, it is highly improbable that the same was due to an accident. It is unlikely that the accused-appellant would purposely set out and grapple with the victim who, if he is to be believed, was already armed with a gun while he (accused-appellant) was totally unarmed. Such actuation is utterly inconsistent with the ordinary and normal behavior of one who is facing imminent danger to one's life, considering the primary instinct of self-preservation. But then, even granting that the accused-appellant merely acted in defense of his other brother, Antolin, his failure to help or show concern to the victim, who was also his brother, casts serious doubts to his defense of accident.

Furthermore, a revolver, the gun involved in this case, is not one that is prone to accidental firing because of the nature of its mechanism. Considerable pressure on the trigger must have been applied for it to have fired. [11]

Hence, this appeal, in which the accused insists that:

I

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

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[10] *Supra* note 1.

[11] *Id*. at 8-9.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.[12]

On its part, the State, through the Office of the Solicitor General, submitted its *appellee's brief* maintaining that the evidence of guilt was sufficient, but recommending that the crime for which the accused should be held guilty of was homicide, not murder, considering that the records did not support the holding that he had deliberately and consciously adopted a method of attack that would insure the death of the victim; and that evident premeditation was not also shown to be attendant.[13]

Ruling of the Court

We affirm the decision of the CA that accident could not be appreciated in favor of the accused, but we must find and declare that, indeed, the crime committed was homicide, not murder.

To start with, the lower courts did not err in giving more credence to the testimonies of the Prosecution's witnesses instead of to the testimony of the accused and his son. Arnel and Raymond positively identified the accused as the assailant. Their identification constituted direct evidence of the commission of the crime, and was fully corroborated by the recollection of a disinterested witness in the person of Dr. Taningco, the attending physician of the victim at the Gandara District Hospital, to the effect that the victim had declared to the police investigator interviewing him that it was the accused who had shot him.[14] The testimonies of Raymond and Dr. Taningco are preferred to the self-serving and exculpatory declarations of the accused and his son.

The factual findings of the RTC are accorded the highest degree of respect, especially if, as now, the CA adopted and

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[12] *Rollo*, p. 50.

[13] *Id*. at 88-99.

[14] *Id*. at 7.

confirmed them. Unlike the appellate courts, including ours, the trial judge had the unique firsthand opportunity to observe the demeanor and conduct of the witnesses when they testified at the trial, which were factors in the proper appreciation of evidence of past events. Such factual findings should be final and conclusive on appeal unless there is a demonstrable error in appreciation, or a misapprehension of the facts.[15]

Secondly, the RTC and the CA both observed that the exempting circumstance of accident was highly improbable because the accused grappled with the victim for control of the gun. We see no reason to overturn the observations of the lower courts.

Article 12, paragraph 4, of the *Revised Penal Code* exempts from criminal liability "(a)ny person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it." The elements of this exempting circumstance are, therefore, that the accused: (1) is performing a lawful act; (2) with due care; (3) causes injury to another by mere accident; and (4) without fault or intention of causing it.

Accident could not be appreciated herein as an exempting circumstance simply because the accused did not establish that he had acted with due care, and without fault or intention of causing the injuries to the victim. The gun was a revolver that would not fire unless there was considerable pressure applied on its trigger, or its hammer was pulled back and released. The assertion of accident could have been accorded greater credence had there been only a single shot fired, for such a happenstance could have been attributed to the unintentional pulling of the hammer during the forceful grappling for control of the gun. Yet, the revolver fired twice, which we think eliminated accident. Verily, the CA itself pointedly debunked the story of the accused as to how the accident had occurred by characterizing such

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[15] *People v. Tuy*, G.R. No. 179476, February 9, 2011, 642 SCRA 534, 537; *Garong v. People,* G.R. No. 148971, November 29, 2006, 508 SCRA 446, 455; *Lubos v. Galupo*, G.R. No. 139136, January 16, 2002, 373 SCRA 618, 622.

story not only incomprehensible but also contrary to human experience and behavior.[16] We adopt and reiterate the following observations by the CA:

> . . . had the accused really been grappling and twisting the victim's right hand which was holding a gun, the latter would not have sustained the wounds. **It was improbable that the gun would fire not only once but twice and both times hitting the victim, had its trigger not been pulled. Further, the location of the gunshot wounds belies and negate(d) accused (appellant's) claim of accident**.
>
> Also, the Court finds incredible [the] accused (appellant's) allegation that he did not know that the victim was hit. He admitted there were two gun reports. The natural tendency of (a) man in his situation would (be to) investigate what was hit. He surely must have known his brother was hit as he even said he let go of the gun. Then he said his brother went home so he also went home. It is odd that he did not attempt to help or show concern for the victim, his brother, had his intention (been) really merely to pacify.[17]

We reiterate that issues concerning the credibility of the witnesses and their account of the events are best resolved by the trial court whose calibration of testimonies, and assessment of and conclusion about their testimonies are generally given conclusive effect. This settled rule acknowledges that, indeed, the trial court had the unique opportunity to observe the demeanor and conduct of the witnesses, and is thus in the best position to discern whether they were telling or distorting the truth.[18]

Nonetheless, the Court cannot uphold the judgments of the CA and the RTC and convict the accused for murder. A reading of the information indicates that murder had not been charged against him. The allegation of the information that:—

> x x x the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully,

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[16] *Rollo,* p. 7.

[17] *Rollo,* pp. 7-8.

[18] *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 525.

unlawfully and feloniously attack, assault and shoot one VICENTE DELECTOR alias TINGTING with the use of a firearm (revolver), which the accused had conveniently provided himself for the purpose, thereby inflicting upon the latter mortal wounds on the different parts of his body, which caused the untimely death of said Vicente Delector.

did not sufficiently aver acts constituting either or both treachery and evident premeditation. The usage of the terms *treachery* and *evident premeditation*, without anything more, did not suffice considering that such terms were in the nature of conclusions of law, not factual averments.

The sufficiency of the information is to be judged by the rule under which the information against the accused was filed. In this case, that rule was Section 9, Rule 110 of the *1985 Rules on Criminal Procedure*, which provided thusly:

Section 9. *Cause of accusation.* — The acts or omissions complained of as constituting the offense **must be stated in ordinary and concise language without repetition**, not necessarily in the terms of the statute defining the offense, but **in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment**. (8)

Section 9 required that the acts or omissions complained of as constituting the offense must be stated "in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense." As such, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated **but by the facts alleged in the indictment, *that is*, the actual recital of the facts as alleged in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.**[19] The facts alleged in the body of the information, not the technical name given

[19] *People v. Diaz*, G.R. No. 130210, December 8, 1999, 320 SCRA 168, 175; *People v. Juachon*, G.R. No. 111630, December 6, 1999, 319 SCRA 761, 770; *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA 67, 88.

by the prosecutor appearing in the title of the information, determine the character of the crime.[20]

To enable "a person of common understanding to know what offense is intended to be charged," as Section 9 further required, the courts should be mindful that the accused should be presumed innocent of wrongdoing, and was thus completely unaware of having done anything wrong in relation to the accusation. The information must then sufficiently give him or her the knowledge of what he or she allegedly committed. To achieve this, the courts should assiduously take note of what Justice Moreland appropriately suggested in *United States v. Lim San*,[21] and enforce compliance therewith by the State, to wit:

> x x x Notwithstanding apparent contradiction between caption and body, we believe that we ought to say and hold that **the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried**. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice.
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> x x x x x x x x x
>
> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how**

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[20] *People v. Escosio*, G.R. No. 101742, March 25, 1993, 220 SCRA 475, 488;*People v. Mendoza*, G.R. No. 67610, July 31, 1989, 175 SCRA 743, 752; *People v. Bali-Balita,* G.R. No. 134266, September 15, 2000, 340 SCRA 450, 469; *Buhat v. Court of Appeals,* G.R. No. 119601, December 17, 1996, 265 SCRA 701, 716-717.

[21] 17 Phil. 273 (1910).

the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. x x x.

In *People v. Dimaano*,[22] the Court has reiterated the foregoing guideline thuswise:

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the **acts or omissions complained of as constituting the offense;** the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no**

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[22] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667 (the crimes involved two counts of rape and one count of attempted rape).

independent knowledge of the facts that constitute the offense. (Bold underscoring supplied for emphasis)

If the standards of sufficiency defined and set by the applicable rule of procedure were not followed, the consequences would be dire for the State, for the accused could be found and declared guilty only of the crime properly charged in the information. As declared in *People v. Manalili*:[23]

x x x **an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him.**

Article 14, paragraph 16, of the *Revised Penal Code* states that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make." For treachery to be appreciated, therefore, two elements must concur, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted,[24] that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender.[25]

Treachery, which the CA and the RTC ruled to be attendant, always included basic constitutive elements whose existence could not be assumed. Yet, the information nowhere made any

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[23] G.R. No. 121671, August 14, 1998, 294 SCRA 220, 252.

[24] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 480; *People v. Hugo*, G.R. No. 134604, August 28, 2003, 410 SCRA 62, 80-81.

[25] *People v. Punzalan*, No. 54562, August 6, 1987, 153 SCRA 1, 9.

factual averment about the accused having deliberately employed means, methods or forms in the execution of the act — setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged — that tended directly and specially to insure its execution without risk to the accused arising from the defense which the offended party might make. To reiterate what was earlier indicated, it was not enough for the information to merely state *treachery* as attendant because the term was not a factual averment but a conclusion of law.

The submission of the Office of the Solicitor General that neither treachery nor evident premeditation had been established against the accused is also notable. A review reveals that the record did not include any showing of the presence of the elements of either circumstance.

As a consequence, the accused could not be properly convicted of murder, but only of homicide, as defined and penalized under Article 249, *Revised Penal Code*, to wit:

> Art. 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

The accused is entitled to the benefits under the *Indeterminate Sentence Law*. Thus, the minimum of his indeterminate sentence should come from *prision mayor*, and the maximum from the medium period of *reclusion temporal* due to the absence of any modifying circumstance. Accordingly, the indeterminate sentence is nine years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

Conformably with *People v. Jugueta*,[26] the Court grants to the heirs of the late Vicente Delector ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages (in lieu of actual damages for burial expenses), plus interest of 6% *per annum* from the finality of this decision until the full satisfaction.

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[26] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

The records show that the accused was first detained at the Sub-Provincial Jail in Calbayog City on November 19, 1997,[27] and was transferred by the RTC on July 18, 2003 following his conviction for murder to the custody of the Bureau of Corrections in Muntinlupa City, Metro Manila.[28] Under the terms of this decision, the period of his actual imprisonment has exceeded his maximum sentence, and now warrants his immediate release from his place of confinement.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on September 22, 2006 of the Court of Appeals subject to the **MODIFICATION** that accused **ARMANDO DELECTOR** is found and pronounced guilty beyond reasonable doubt of **HOMICIDE**, and, **ACCORDINGLY**, sentences him to suffer the indeterminate sentence of **NINE YEARS OF *PRISION MAYOR*, AS THE MINIMUM, TO 14 YEARS, EIGHT MONTHS AND ONE DAY OF *RECLUSION TEMPORAL*, AS THE MAXIMUM**; and **ORDERS** him to pay to the heirs of the late Vicente Delector ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, plus interest of 6% *per annum* from the finality of this decision until the full satisfaction, and the costs of suit.

Considering that accused **ARMANDO DELECTOR** appears to have been in continuous detention since November 19, 1997, his immediate release from the New Bilibid Prison at Muntinlupa City, Metro Manila is ordered unless there are other lawful causes warranting his continuing detention.

The Court **DIRECTS** the Director of the Bureau of Corrections to immediately implement this decision, and to render a report on his compliance within 10 days from notice.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonen, Martires, and *Gesmundo, JJ.,* concur.

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[27] CA *rollo*, p. 32.

[28] *Id.* at 36.

SECOND DIVISION

[G.R. No. 200499. October 4, 2017]

SAN FERNANDO COCA-COLA RANK-AND-FILE UNION (SACORU), represented by its president, **ALFREDO R. MARAÑON,** *petitioner, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC. (CCBPI),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE AVAILED OF TO ASSAIL THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION BEFORE THE COURT OF APPEALS AND WHAT TO BE DETERMINED THEREIN IS ONLY THE EXISTENCE OF GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION; WHEN PRESENT.—** [A] careful examination of the issues on the validity of the redundancy program and whether it constituted an unfair labor practice shows that in resolving the issue, the Court would have to reexamine the NLRC and CA's evaluation of the evidence that the parties presented, thus raising questions of fact. This cannot be done following *Montoya v. Transmed Manila Corp*. that only questions of law may be raised against the CA decision and that the CA decision will be examined only using the prism of whether it correctly determined the existence of grave abuse of discretion x x x. "[G]rave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence." x x x The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; REDUNDANCY PROGRAM, WHEN VALID.—** For there to be a valid implementation of

redundancy program, the following should be present: "(1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. The NLRC found the presence of all the foregoing when it ruled that the termination was due to a scheme that CCBPI adopted and implemented which was an exercise of management prerogative, and that there was no proof that if was exercised in a malicious or arbitrary manner.

3. ID.; ID.; STRIKES AND LOCKOUTS; POWER OF THE DEPARTMENT OF LABOR AND EMPLOYMENT SECRETARY TO ASSUME JURISDICTION OVER A DISPUTE; EFFECTS.— The powers given to the DOLE Secretary under Article 263 (g) is an exercise of police power with the aim of promoting public good. In fact, the scope of the powers is limited to an industry indispensable to the national interest as determined by the DOLE Secretary. Industries that are indispensable to the national interest are those essential industries such as the generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries. And following Article 263 (g), the effects of the assumption of jurisdiction are the following: (a) the enjoining of an impending strike or lockout or its lifting, and (b) an order for the workers to return to work immediately and for the employer to readmit all workers under the same terms and conditions prevailing before the strike or lockout, or the retrun-to-work order.

4. ID.; ID.; ID.; ID.; RETURN-TO-WORK ORDER; MEANS TO MAINTAIN *STATUS QUO* WHILE THE MAIN ISSUE IS BEING THRESHED OUT IN THE PROPER FORUM.— Of import consideration in this case is the return-to-work order, which the Court characterized in *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.,* as "interlocutory in nature, and is merely meant **to maintain status quo while the main issue is being threshed out in the proper forum**." The *status quo* is simply the status of the

employment of the employees the day before the occurrence of the strike or lockout. x x x [F]rom the date the DOLE Secretary assumes jurisdiction over a dispute until its resolution, the parties have the obligation to maintain the *status quo* while the main issue is being threshed out in the proper forum — which could be with the DOLE Secretary or with the NLRC. This is to avoid any disruption to the economy and to the industry of the employer — as this is the potential effect of a strike or lockout in an industry indispensable to the national interest — while the DOLE Secretary or the NLRC is resolving the dispute. Since the union voted for the conduct of a strike on June 11, 2009, when the DOLE Secretary issued the return-to-work order dated June 23, 2009, this means that the *status quo* was the employment status of the employees on June 10, 2009. This *status quo* should have been maintained until the NLRC resolved the dispute in its Resolution dated March 16, 2010, where the NLRC ruled that CCBPI did not commit unfair labor practice and that the redundancy program was valid. This Resolution then took the place of the return-to-work order of the DOLE Secretary and CCBPI no longer had the duty to maintain the *status quo* after March 16, 2010.

APPEARANCES OF COUNSEL

Nenita C. Mahinay for petitioner.
Dela Rosa & Nograles for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Petitioner San Fernando Coca-Cola Rank and File Union (SACORU) filed a petition for review[1] on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated July 21,

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[1] *Rollo*, pp. 11-41.

[2] *Id.* at 42-53. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Mario L. Guariña III and Manuel M. Barrios concurring.

2011 and Resolution[3] dated February 2, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 115985. The CA affirmed the Resolution[4] dated March 16, 2010 of the National Labor Relations Commission. (NLRC), Second Division, which dismissed SACORU's complaint against respondent Coca-Cola Bottlers Philippines, Inc. (CCBPI) for unfair labor practice and declared the dismissal of 27 members of SACORU for redundancy as valid.

Facts

The facts, as found by the CA, are:

On May 29, 2009, the private respondent company, Coca-Cola Bottlers Philippines., Inc. ("***CCBPI***") issued notices of termination to twenty seven (27) rank-and-file, regular employees and members of the San Fernando Rank-and-File Union ("***SACORU***"), collectively referred to as "***union members***", on the ground of redundancy due to the ceding out of two selling and distribution systems, the *Conventional Route System* ("***CRS***") and *Mini Bodega System* ("***MB***") to the *Market Execution Partners* ("***MEPS***"), better known as "*Dealership System*". The termination of employment was made effective on June 30, 2009, but the union members were no longer required to report for work as they were put on leave of absence with pay until the effectivity date of their termination. The union members were also granted individual separation packages, which twenty-two (22) of them accepted, but under protest.

To SACORU, the new, reorganized selling and distribution systems adopted and implemented by CCBPI would result in the diminution of the union membership amounting to union busting and to a violation of the Collective Bargaining Agreement (CBA) provision against contracting out of services or outsourcing of regular positions; hence, they filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on June 3, 2009 on the ground of unfair

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[3] *Id*. at 72. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Noel G. Tijam (now a Member of this Court) and Manuel M. Barrios concurring.

[4] *Id*. at 120-157. Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese concurring.

labor practice, among others. On June 11, 2009, SACORU conducted a strike vote where a majority decided on conducting a strike.

On June 23, 2009, the then Secretary of the Department of Labor and Employment (DOLE), Marianito D. Roque, assumed jurisdiction over the labor dispute by certifying for compulsory arbitration the issues raised in the notice of strike. He ordered,

> "WHEREFORE, premises considered, and pursuant to Article 263 (g) of the Labor Code of the Philippines, as amended, this Office hereby CERTIFIES the labor dispute at COCA-COLA BOTTLERS PHILIPPINES, INC. to the National Labor Relations Commission for compulsory arbitration.
>
> Accordingly, any intended strike or lockout or any concerted action is automatically enjoined. If one has already taken place, all striking and locked out employees shall, within twenty-four (24) hours from receipt of this Order, immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike. The parties are likewise enjoined from committing any act that may further exacerbate the situation."

Meanwhile, pending hearing of the certified case, SACORU filed a motion for execution of the dispositive portion of the certification order praying that the dismissal of the union members not be pushed through because it would violate the order of the DOLE Secretary not to commit any act that would exacerbate the situation.

On August 26, 2009, however, the resolution of the motion for execution was ordered deferred and suspended; instead, the issue was treated as an item to be resolved jointly with the main labor dispute.

CCBPI, for its part, argued that the new business scheme is basically a management prerogative designed to improve the system of selling and distributing products in order to reach more consumers at a lesser cost with fewer manpower complement, but resulting in greater returns to investment. CCBPI also contended that there was a need to improve its distribution system if it wanted to remain viable and competitive in the business; that after a careful review and study of the existing system of selling and distributing its products, it decided that the existing CRS and MB systems be ceded out to the MEPs or better known as "*Dealership System*" because the enhanced MEPs is a cost-

effective and simplified scheme of distribution and selling company products; that CCBPI, through the simplied system, would derive benefits such as: (a) lower cost to serve; (b) fewer assets to manage; (c) zero capital infusion.

SACORU maintained that the termination of the 27 union members is a circumvention of the CBA against the contracting out of regular job positions, and that the theory of redundancy as a ground for termination is belied by the fact that the job positions are contracted out to a "*third party provider*"; that the termination will seriously affect the union membership because out of 250 members, only 120 members will be left upon plan implementation; that there is no redundancy because the sales department still exists except that job positions will be contracted out to a sales contractor using company equipment for the purpose of minimizing labor costs because contractual employees do not enjoy CBA benefits; that the contractualization program of the company is illegal because it will render the union inutile in protecting the rights of its members as there will be more contractual employees than regular employees; and that the redundancy program will result in the displacement of regular employees which is a clear case of union busting.

Further, CCBPI argued that in the new scheme of selling and distributing products through MEPs or "*Dealership [System]*", which is a contract of sale arrangement, the ownership of the products is transferred to the MEPs upon consummation of the sale and payment of the products; thus, the jobs of the terminated union members will become redundant and they will have to be terminated as a consequence; that the termination on the ground of redundancy was made in good faith, and fair and reasonable criteria were determined to ascertain what positions were to be phased out being an inherent management prerogative; that the terminated union members were in fact paid their separation pay benefits when they were terminated; that they executed quitclaims and release; and that the quitclaims and release being voluntarily signed by the terminated union members should be declared valid and binding against them.[5]

The NLRC dismissed the complaint for unfair labor practice and declared as valid the dismissal of the employees due to redundancy. The dispositive portion of the NLRC Resolution states:

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[5] *Id*. at 43-46; citations omitted.

WHEREFORE, in view of the foregoing, a Decision is hereby rendered ordering the dismissal of the labor dispute between the Union and Coca-Cola Bottlers Company, Inc.

Accordingly, the charge of Unfair Labor Practice against the company is DISMISSED for lack of merit and the dismissal of the twenty seven (27) complainants due to redundancy is hereby declared valid. Likewise, the Union's Motion for Writ of Execution is Denied for lack of merit.

SO ORDERED.[6]

With the NLRC's denial of its motion for reconsideration, SACORU filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. The CA, however, dismissed the petition and found that the NLRC did not commit grave abuse of discretion. The dispositive portion of the CA Decision states:

WHEREFORE, the instant petition is **DISMISSED**.

IT IS SO ORDERED.[7]

SACORU moved for reconsideration of the CA Decision but this was denied. Hence, this petition.

Issues

a. Whether CCBPI validly implemented its redundancy program;

b. Whether CCBPI's implementation of the redundancy program was an unfair labor practice; and

c. Whether CCBPI should have enjoined the effectivity of the termination of the employment of the 27 affected union members when the DOLE Secretary assumed jurisdiction over their labor dispute.

The Court's Ruling

The petition is partly granted.

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[6] *Id*. at 156.

[7] *Id.* at 53.

Although SACORU claims that its petition raises only questions of law, a careful examination of the issues on the validity of the redundancy program and whether it constituted an unfair labor practice shows that in resolving the issue, the Court would have to reexamine the NLRC and CA's evaluation of the evidence that the parties presented, thus raising questions of fact.[8] This cannot be done following *Montoya v. Transmed Manila Corp.*[9] that only questions of law may be raised against the CA decision and that the CA decision will be examined only using the prism of whether it correctly determined the existence of grave abuse of discretion, thus:

> Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. x x x[10]

"[G]rave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence."[11] The Court further held in *Banal III v. Panganiban* that:

> By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[12]

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[8] See *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc. (General Santos City)*, 598 Phil. 879, 884 (2009).

[9] 613 Phil. 696 (2009).

[10] *Id.* at 707; emphasis in the original; citations omitted.

[11] *Banal III v. Panganiban*, 511 Phil. 605, 614 (2005).

[12] *Id.* at 614-615; citations omitted.

The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion. As the Court held in *Soriano, Jr. v. National Labor Relations Commission*:[13]

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[14]

Here, the Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion.

CCBPI's redundancy program is valid.

For there to be a valid implementation of a redundancy program, the following should be present:

> (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[15]

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[13] 550 Phil. 111 (2007).

[14] *Id.* at 121-122.

[15] *Asian Alcohol Corp. v. National Labor Relations Commission*, 364 Phil. 912, 930 (1999); citations omitted.

The NLRC found the presence of all the foregoing when it ruled that the termination was due to a scheme that CCBPI adopted and implemented which was an exercise of management prerogative,[16] and that there was no proof that it was exercised in a malicious or arbitrary manner.[17] Thus:

> It appears that the termination was due to the scheme adopted and implemented by respondent company in distributing and selling its products, to reach consumers at greater length with greater profits, through MEPs or dealership system is basically an exercise of management prerogative. The adoption of the scheme is basically a management prerogative and even if it cause the termination of some twenty seven regular employees, it was not in violation of their right to self-organization much more in violation of their right to security of tenure because the essential freedom to manage business remains with management. x x x
>
> Prior to the termination of the herein individual complainants, respondent company has made a careful study of how to be more cost effective in operations and competitive in the business recognizing in the process that its multi-layered distribution system has to be simplified. Thus, it was determined that compared to other distribution schemes, the company incurs the lowest cost-to-serve through Market Execution Partners (ME[P]s) or Dealership system. The CRS and Mini-Bodega systems posted the highest in terms of cost-to-serve. Thus, the phasing out of the CRS and MB is necessary which, however, resulted in the termination of the complainants as their positions have become redundant. Be that as it may, respondent company complied with granting them benefits that is more than what the law prescribes. They were duly notified of their termination from employment thirty days prior to actual termination. x x x[18]

On the issue of CCBPI's violation of the CBA because of its engagement of an independent contractor, the NLRC ruled that the implementation of a redundancy program is not destroyed by the employer availing itself of the services of an independent contractor, thus:

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[16] *Rollo*, p. 148.

[17] *Id*. at 149.

[18] See *id*. at 148-150.

In resolving this issue, We find the ruling in Asian Alcohol vs. NLRC, 305 SCRA 416, in parallel application, where it was held that an employer's good faith in implementing a redundancy program is not necessarily destroyed by availment of services of an independent contractor to replace the services of the terminated employees. We have held previously that the reduction of the number of workers in a company made necessary by the introduction of the services of an independent contractor is justified when the latter is undertaken in order to effectuate more economic and efficient methods of production. Likewise, in Maya Farms Employees Organization vs. NLRC, 239 SCRA 508, it was held that labor laws discourage interference with employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of the employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of circumventing the rights of employees under the law or valid agreements, such exercise will be upheld. For while this right is not absolute, the employees right to security of tenure does not give him the vested right in his position as would deprive an employer of its prerogative to exercise his right to maximize profits. (Abbot Laboratories, Phils. Inc. vs. NLRC, 154 SCRA 713).[19]

For its part, the CA ruled that the NLRC did not commit grave abuse of discretion, even as it still reviewed the factual findings of the NLRC and arrived at the same conclusion as the NLRC. On whether redundancy existed and the validity of CCBPI's implementation, the CA ruled that CCBPI had valid grounds for implementing the redundancy program:

In the case at hand, CCBPI was able to prove its case that from the study it conducted, the previous CRS and MB selling and distribution schemes generated the lowest volume contribution which thus called for the redesigning and enhancement of the existing selling and distribution strategy; that such study called for maximizing the use of the MEPs if the company is to retain its market competitiveness and viability; that furthermore, based on the study, the company determined that the MEPs will enable the CCBPI to "*reach more*" with fewer manpower and assets to manage; that it is but a consequence

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[19] *Id.* at 152-153.

of the new scheme that CCBPI had to implement a redundancy program structured to downsize its manpower complement.[20]

The CA also agreed with the NLRC that CCBPI complied with the notice requirements for the dismissal of the employees.[21]

Given the limited review in this petition, the Court cannot now re-examine the foregoing factual findings of both the NLRC and CA that the redundancy program was valid.

As the CA found, the NLRC's factual findings were supported by substantial evidence and are in fact in compliance with the law and jurisprudence. The CA therefore correctly determined that there was no grave abuse of discretion on the part of the NLRC.

As stated earlier, the CA, even if it had no duty to re-examine the factual findings of the NLRC, still reviewed them and, in doing so, arrived at the very same conclusion. These factual findings are accorded not only great respect but also finality,[22] and are therefore binding on the Court.

CCBPI did not commit an unfair labor practice.

The same principle of according finality to the factual findings of the NLRC and CA applies to the determination of whether CCBPI committed an unfair labor practice. Again, the CA also correctly ruled that the NLRC, with its findings supported by law and jurisprudence, did not commit grave abuse of discretion.

In *Zambrano v. Philippine Carpet Manufacturing Corp.*,[23] the Court stated:

Unfair labor practice refers to acts that violate the workers' right to organize. There should be no dispute that all the prohibited acts

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[20] *Id.* at 50.

[21] *Id.* at 51-52.

[22] See *Skippers United Pacific, Inc. v. National Labor Relations Commission*, 527 Phil. 248, 256-257 (2006).

[23] G.R. No. 224099, June 21, 2017.

constituting unfair labor practice in essence relate to the workers' right to self-organization. Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.[24]

To prove the existence of unfair labor practice, substantial evidence has to be presented.[25]

Here, the NLRC found that SACORU failed to provide the required substantial evidence, thus:

> The union's charge of ULP against respondent company cannot be upheld. The union's mere allegation of ULP is not evidence, it must be supported by substantial evidence.
>
> Thus, the consequent dismissal of twenty seven (27) regular members of the complainant's union due to redundancy is not per se an act of unfair labor practice amounting to union busting. For while, the number of union membership was diminished due to the termination of herein union members, it cannot safely be said that respondent company acted in bad faith in terminating their services because the termination was not without a valid reason.[26]

The CA ruled similarly and found that SACORU failed to support its allegation that CCBPI committed an unfair labor practice:

> SACORU failed to proffer any proof that CCBPI acted in a malicious or arbitrarily manner in implementing the redundancy program which resulted in the dismissal of the 27 employees, and that CCBPI engaged instead the services of independent contractors. As no credible, countervailing evidence had been put forth by SACORU with which to challenge the validity of the redundancy program implemented by CCBPI, the alleged unfair labor practice acts allegedly perpetrated against union members may not be simply swallowed. SACORU was unable to prove its charge of unfair labor practice and support its allegations that the termination of the union members was done with the end-in-view of weakening union leadership and representation.

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[24] *Id*. at 10.

[25] *Id*.

[26] *Rollo*, pp. 147-148.

There was no showing that the redundancy program was motivated by ill will, bad faith or malice, or that it was conceived for the purpose of interfering with the employees' right to self-organize.[27]

The Court accordingly affirms these findings of the NLRC and the CA that SACORU failed to present any evidence to prove that the redundancy program interfered with their right to self-organize.

CCBPI violated the return-to-work order.

SACORU claims that CCBPI violated the doctrine in *Metrolab Industries, Inc. v. Roldan-Confesor*,[28] when it dismissed the employees after the DOLE Secretary assumed jurisdiction over the dispute. SACORU argues that CCBPI should have enjoined the termination of the employees which took effect on July 1, 2009 because the DOLE Secretary enjoined further acts that could exacerbate the situation.[29] On the other hand, CCBPI argued that the termination of the employment was a certainty, from the time the notices of termination were issued,[30] and the status *quo* prior to the issuance of the assumption order included the impending termination of the employment of the 27 employees.[31]

Both the NLRC[32] and CA[33] ruled that *Metrolab* did not apply to the dispute because the employees received the notice of dismissal prior to the assumption order of the DOLE Secretary, thus CCBPI did not commit an act that exacerbated the dispute.

To the Court, the issue really is this: whether the *status quo* to be maintained after the DOLE Secretary assumed jurisdiction

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[27] *Id*. at 51.

[28] 324 Phil. 416 (1996).

[29] *Rollo*, p. 33.

[30] *Id*. at 1226.

[31] *Id*. at 1227.

[32] *Id*. at 154-155.

[33] *Id*. at 49.

means that the effectivity of the termination of employment of the 27 employees should have been enjoined. The Court rules in favor of SACORU.

Pertinent to the resolution of this issue is Article 263 (g)[34] of the Labor Code, which provides the conditions for, and the effects of, the DOLE Secretary's assumption of jurisdiction over a dispute:

> ARTICLE 263. *Strikes, picketing, and lockouts*. x x x
>
> x x x x x x x x x
>
> (g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. **If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout.** The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. (Emphasis and underscoring supplied.)

The powers given to the DOLE Secretary under Article 263 (g) is an exercise of police power with the aim of promoting public good.[35] In fact, the scope of the powers is limited to an industry indispensable to the national interest as determined by the DOLE Secretary.[36] Industries that are indispensable to the national interest are those essential industries such as the

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[34] LABOR CODE OF THE PHILIPPINES, Book V, Chapter I, Art. 263 (g).

[35] See *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Union (TASLI-ALU) v. Court of Appeals*, 477 Phil. 715, 724 (2004).

[36] *Id*. at 727.

generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries.[37] And following Article 263 (g), the effects of the assumption of jurisdiction are the following:

(a) the enjoining of an impending strike or lockout or its lifting, and

(b) an order for the workers to return to work immediately and for the employer to readmit all workers under the same terms and conditions prevailing before the strike or lockout,[38] or the return- to-work order.

As the Court ruled in *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Union (TASLI-ALU) v. Court of Appeals:*[39]

> When the Secretary exercises these powers, he is granted "great breadth of discretion" in order to find a solution to a labor dispute. The most obvious of these powers is the automatic enjoining of an impending strike or lockout or the lifting thereof if one has already taken place. Assumption of jurisdiction over a labor dispute, or as in this case the certification of the same to the NLRC for compulsory arbitration, always co-exists with an order for workers to return to work immediately and *for employers to readmit all workers under the same terms and conditions prevailing before the strike or lockout*.[40]

Of important consideration in this case is the return-to-work order, which the Court characterized in *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Co., Inc.*,[41] as "interlocutory in nature, and is merely meant **to maintain status quo while the main issue is being**

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[37] See *GTE Directories Corp. v. Sanchez*, 274 Phil. 738, 757-758 (1991).

[38] *Trans-Asia Shipping Lines, Inc.-Unlicensed Crews Employees Union-Associated Labor Union (TASLI-ALU) v. Court of Appeals*, *supra* note 34, at 725.

[39] *Supra* note 34.

[40] *Id*. at 725; italics in the original.

[41] G.R. Nos. 190389 & 190390, April 19, 2017.

threshed out in the proper forum."[42] The *status quo*is simply the status of the employment of the employees the day before the occurrence of the strike or lockout.[43]

Based on the foregoing, from the date the DOLE Secretary assumes jurisdiction over a dispute until its resolution, the parties have the obligation to maintain the *status quo* while the main issue is being threshed out in the proper forum — which could be with the DOLE Secretary or with the NLRC. This is to avoid any disruption to the economy and to the industry of the employer — as this is the potential effect of a strike or lockout in an industry indispensable to the national interest — while the DOLE Secretary or the NLRC is resolving the dispute.

Since the union voted for the conduct of a strike on June 11, 2009, when the DOLE Secretary issued the return-to-work order dated June 23, 2009,[44] this means that the *status quo* was the employment status of the employees on June 10, 2009. This *status quo* should have been maintained until the NLRC resolved the dispute in its Resolution dated March 16, 2010, where the NLRC ruled that CCBPI did not commit unfair labor practice and that the redundancy program was valid. This Resolution then took the place of the return-to-work order of the DOLE Secretary and CCBPI no longer had the duty to maintain the *status quo* after March 16, 2010.

Given this, the 27 employees are therefore entitled to backwages and other benefits from July 1, 2009 until March 16, 2010, and CCBPI should re-compute the separation pay that the 27 employees are entitled taking into consideration that the termination of their employment shall be effective beginning March 16, 2010.

WHEREFORE, premises considered, the petition for review is hereby **PARTLY GRANTED**. The Decision of the Court of

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[42] *Id*. at 20; emphasis and underscoring supplied.

[43] See *Philippine Long Distance Telephone Co., Inc. v. Manggagawa ng Komunikasyon sa Pilipinas*, 501 Phil. 704, 719-720 (2005).

[44] *Rollo*, pp. 165-168.

Appeals dated July 21, 2011 and Resolution dated February 2, 2012 are hereby **AFFIRMED** as to the finding that respondent did not commit unfair labor practice and that the redundancy program is valid. Respondent, however, is directed to pay the 27 employees backwages from July 1, 2009 until March 16, 2010, and to re-compute their separation pay taking into consideration that the termination of their employment is effective March 16, 2010.

SO ORDERED.

Carpio (Chairperson), Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 201622. October 4, 2017]

ANGELITO L. CRISTOBAL, *petitioner, vs.* **PHILIPPINE AIRLINES, INC., and LUCIO TAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE; PROHIBITS THE SAME PARTY FROM ASSAILING THE SAME JUDGMENT TWICE; PETITIONER WAS NOT VIOLATING THE RULE AS IT WAS SEEKING RECONSIDERATION OF THE NEW NLRC DECISION.— The National Labor Relations Commission Rules of Procedure prohibits a party from questioning a decision, resolution, or order, twice. In other words, this rule prohibits the same party from assailing the same judgment. However, a decision substantially reversing a determination in a prior decision is a discrete decision from

the earlier one. x x x In *Barba v. Liceo De Cagayan University*, where the Court of Appeals denied a motion for reconsideration from an amended decision on the ground that it was a prohibited second motion for reconsideration, this Court held that the prohibition against a second motion for reconsideration contemplates the same party assailing the same judgment[.] x x x Here, the National Labor Relations Commission May 31, 2011 Decision substantially modified its September 30, 2010 Decision. Thus, petitioner was not precluded from seeking reconsideration of the new decision of the National Labor Relations Commission[.]

2. REMEDIAL LAW; PETITION FOR *CERTIORARI*; IT WAS REVERSIBLE ERROR FOR THE COURT OF APPEALS TO DISMISS PETITIONER'S PETITION FOR *CERTIORARI* FOR FAILURE TO ATTACH THE NECESSARY RECORDS.— As for the purported failure to attach the records necessary to resolve the petition, in *Wack Wack Golf & Country Club v. National Labor Relations Commission*, this Court held: x x x It was, therefore, reversible error for the CA to have dismissed the petition for *certiorari* before it. The ordinary recourse for us to take is to remand the case to the CA for proper disposition on the merits; however, considering that the records are now before us, we deem it necessary to resolve the instant case in order to ensure harmony in the rulings and expediency. x x x Thus, this Court finds that the Court of Appeals committed reversible error in dismissing the petition outright, considering the circumstances of this case.

APPEARANCES OF COUNSEL

Castro Canilao & Associates for petitioner.
PAL Legal Affairs Department for respondents.

D E C I S I O N

LEONEN, *J.*:

Where a tribunal renders a decision substantially reversing itself on a matter, a motion for reconsideration seeking reconsideration of this reversal, for the first time, is not a prohibited second motion for reconsideration.

This is a Petition for Review on Certiorari,[1] assailing the Court of Appeals Resolutions dated January 10, 2012[2] and April 18, 2012[3] in CA-G.R. SP No. 122034 dismissing petitioner Angelita L. Cristobal's (Cristobal) Petition for Certiorari for having been filed out of time.

Cristobal became a pilot for respondent Philippine Airlines, Inc. (PAL) on October 16, 1971.[4] In May 1998, in line with a downsizing program of PAL,[5] Cristobal applied for leave without pay from PAL to enter into a four (4)-year contract with EVA Air.[6] PAL approved the application and advised him that he would continue to accrue seniority during his leave and that he could opt to retire from PAL during this period.[7] In a letter dated March 10, 1999, Cristobal advised PAL of his intent to retire.[8] In response, PAL advised him that he was deemed to have lost his employment status on June 9, 1998.[9] Thus, on May 12, 1999, Cristobal filed a complaint with the National Labor Relations Commission.[10]

In a Decision[11] dated December 1, 1999, the Labor Arbiter found Cristobal's dismissal illegal. On the matter of retirement

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[1] *Rollo*, pp. 8-42.

[2] *Id*. at 43-45. The Resolutions were penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Noel G. Tijam and Romeo F. Barza of the Ninth Division, Court of Appeals, Manila.

[3] *Id*. at 46-47. The Resolutions were penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Noel G. Tijam and Romeo F. Barza of the Former Ninth Division, Court of Appeals, Manila.

[4] *Id*. at 154, NLRC Decision.

[5] *Rollo*, p. 10.

[6] *Id*. at 70.

[7] *Id*. at 71.

[8] *Id*. at 73.

[9] *Id*. at 74.

[10] *Id*. at 11.

[11] *Id*. at 154-166. The Decision was penned by Labor Arbiter Felipe P. Pati.

benefits, the Labor Arbiter noted PAL's claim that Cristobal could only be entitled to a retirement pay of ₱5,000,00 per year, pursuant to the Philippine Airlines, Inc.-Airline Pilots Association of the Philippines (PAL-ALPAP) Retirement Plan of 1967. However, he found that Cristobal's retirement benefits should not be less than the amount provided under the law. Thus, the Labor Arbiter found him entitled to an amount computed pursuant to Article 287 of the Labor Code.[12] The dispositive portion of the Labor Arbiter Decision read:

> WHEREFORE, judgment is hereby rendered finding the dismissal of the complainant illegal.
>
> The respondent is further ordered to pay the complainant:
>
> 1. Retirement pay in the amount of ₱1,575,964.30.
>
> 2. Moral damages in the amount of ₱500,000.00;
>
> 3. Exemplary damages in the amount of ₱500,000.00;
>
> 4. Attorney's fees in an amount equivalent to ten percent (10%) of the total award in favor of the complainant
>
> Respondent is likewise ordered to give and grant to complainant all other benefits he is entitled to under the law and existing Collective Bargaining Agreement.
>
> SO ORDERED.[13]

In a Decision[14] dated September 30, 2010, the National Labor Relations Commission affirmed the Labor Arbiter Decision but reduced the award of moral and exemplary damages to ₱100,000.00 each.[15] On Cristobal's retirement pay, it noted PAL's argument that any retirement benefits should be pursuant to

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[12] *Id*. at 162.

[13] *Id*. at 166.

[14] *Id*. at 320-335. The Decision was penned by Presiding Commissioner Alex A. Lopez and was oncurred in by Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr. of the Third Division, National Labor Relations Commission.

[15] *Id*. at 334.

the terms of the Collective Bargaining Agreement and affirmed the Labor Arbiter's computation. The dispositive portion of the National Labor Relations Commission Decision read:

> WHEREFORE, the assailed Decision is, hereby, AFFIRMED with MODIFICATION to the effect that the award for moral and exemplary damages is hereby reduced to ₱100,000.00 each.
>
> SO ORDERED.[16]

Cristobal filed a Motion for Partial Reconsideration[17] on November 12, 2010, raising the following assignment of errors:

1. Since the Honorable Commission found that Respondents-Appellants acted in bad faith, the award of Php 500,000.00 each for Moral and Exemplary Damages should be reinstated, instead of the reduced amount of Php 100,000.00
2. The monetary award should include a legal interest considering the long delay.
3. Respondents-Appellants should be jointly and severally be (sic) liable in view of the bad faith, as per findings of this Honorable Commission.[18]

PAL also filed a motion for reconsideration, claiming that it was error to find that Cristobal was illegally dismissed and to base his retirement benefits on Article 287 of the Labor Code.[19]

The National Labor Relations Commission resolved both motions in its Decision[20] dated May 31, 2011, deleting the award of moral and exemplary damages and reducing the amount of Cristobal's retirement benefits. It agreed that Cristobal's retirement benefits should not be computed in accordance with Article 287 of the Labor Code as Cristobal was not yet 60 years

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[16] *Id*.

[17] *Id*. at 353-359.

[18] *Id*. at 354.

[19] *Id*. at 339.

[20] *Id*. at 337-348.

old when he retired on March 10, 1999.[21] The National Labor Relations Commission cited *Philippine Airlines, Inc. vs. Airline Pilots Association of the Philippines*[22] to support this position and held that Cristobal was entitled to receive only ₱5,000.00 per year of service, under the 1967 PAL-ALPAP Retirement Plan:

> Nevertheless, the contention of respondents that complainant's retirement benefits should not be computed in accordance with Article 287 of the Labor Code, as amended by Republic Act No. 7641, the New Retirement Law, is meritorious. In their motion, the respondents cite the Supreme Court's decision in *Philippine Airlines. Inc. vs. Airline Pilots Association of the Philippines* (G.R. No. 143686, 15 January 2002). In said case, the Supreme Court categorically sustained respondent PAL's position and ruled that Article 287 of the Labor Code does not apply to PAL pilots who, without reaching the age of sixty (60), retire pursuant to the provisions of the 1967 PAL-ALPAP Retirement Plan. We have noted that complainant never refuted respondents' allegation that he has not reached the age of sixty (60) years when he opted to retire on 10 March 1999.
>
> . . . . . .
>
> Hence, PAL pilots who retire without reaching the age of 60 are entitled to claim retirement benefits from two (2) retirement plans: a) 1967 PAL-ALPAP Retirement Plan of 1967, and b) PAL Pilot[s'] Retirement Benefit Plan. The amount of ₱5,000.00 for every year of service provided under the 1967 PAL-ALPAP Retirement Plan would be in addition to the retirement benefits provided by the PAL Pilot[s'] Retirement Benefit Plan.
>
> In their supplement to motion tor reconsideration, respondents submit copies of the acknowledgment receipt for ₱5,530,214.67 signed by Ma. Pilar M. Cristobal on 29 June 1999 as well as Cashier's Checks issued by Metrobank all dated 28 June 1999 to complainant Angelito L. Cristobal in the amount of ₱5,346,085.23, ₱93,579.68 and ₱90,549.76. These amounts were acknowledged to have been paid by and received from the PAL PILOT[S'] RETIREMENT BOARD.

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[21] *Id*. at 344.

[22] 424 Phil. 356 (2002) [Per *J*. Ynares Santiago, First Division].

Accordingly, complainant is only entitled to receive retirement benefits from the 1967 PAL ALPAP Retirement Plan in an amount equal to ₱5,000.00 for every year of service. In this connection, the moral and exemplary damages awarded to complainant has (sic) no legal and factual basis and must be deleted.[23]

The dispositive portion of this May 31, 2011 Decision read:

CONSIDERING THE FOREGOING, the motion for partial reconsideration filed by complainant is DENIED. The motion for reconsideration filed by respondents is partially GRANTED.

The award of moral and exemplary damages is DELETED.

The respondents are directed to pay complainant the retirement benefits pursuant only to the 1967 PAL-ALPAP Retirement Plan in the amount of one hundred forty thousand pesos (₱140,000.00).

The other findings are reiterated.

SO ORDERED.[24]

On June 24, 2011, Cristobal tiled his Motion for Reconsideration,[25] seeking reconsideration of the reduction of retirement benefits. He pointed out that the PAL Pilots Retirement Benefit Plan is different from the PAL-ALPAP Retirement Plan, and that it is an investment plan:

It would appear that in reaching its Decision, the Honorable Commission took into consideration the fact that the complainant already received ₱5,530,214,67 paid for and received from tho PAL PILOTS RETIREMENT BENEFIT PLAN. Complainant begs [to] submit that this Honorable Commission committed serious error in taking into consideration in reducing the retirement benefits from the PAL-ALPAP Retirement Plan. The PAL PILOTS RETIREMENT BENEFIT PLAN is totally different from the PAL-ALPAP Retirement Plan.

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[23] *Id*. at 344-347.

[24] *Id*. at 347

[25] *Id*. at 291-298.

> Moreover, the PAL PILOTS RETIREMENT BENEFIT PLAN is a misnomer. It is not really a retirement plan but rather it[']s an investment plan where the funds come from the contributions of each pilot deducted from their monthly gross pay and upon retirement the pilot receives the full amount of his contribution. Thus, it is a mistake [to] reduce the retirement benefits of the complainant from the PAL-ALPAP Retirement Plan because the complainant already received his supposed retirement benefits (which should be investment) from the PAL PILOTS RETIREMENT BENEFIT PLAN.[26]

In its Resolution[27] dated August 24, 2011, the National Labor Relations Commission denied Cristobal's Motion for Reconsideration, deeming it a second motion for reconsideration of its May 31, 2011 Decision.[28] The dispositive portion of this Resolution read:

> PREMISES CONSIDERED, complainant's motion for reconsideration which we treat as a second motion for reconsideration is hereby DISMISSED. Let this case be dropped from the calendar of the Commission.
>
> SO ORDERED.[29]

On November 14, 2011, Cristobal filed his Petition for Certiorari before the Court of Appeals, which was dismissed in the Court of Appeals January 10, 2012 Resolution.[30] The Court of Appeals accepted the National Labor Relations Commission's premise that petitioner's June 24, 2011 Motion for Reconsideration was a second motion for reconsideration. Thus, it did not toll petitioner's period to file a petition for certiorari assailing the May 31, 2011 Decision. Consequently, the petition for certiorari was filed out of time. The Court of Appeals also held that the petition did not contain copies of

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[26] *Id*. at 294-295.

[27] *Id*. at 350-352.

[28] *Id*. at 350.

[29] *Id*. at 351.

[30] *Id*. at 43-45.

the pertinent supporting documents. The dispositive portion of this Resolution read:

> IN VIEW of all the foregoing patent infirmities, the petition is **DISMISSED**.
>
> SO ORDERED.[31]

Thus, on June 13, 2012, petitioner filed his Petition for Review on Certiorari[32] before this Court. Thereafter, there was an exchange of pleadings.[33]

Petitioner points out that his November 12, 2010 Partial Motion tor Reconsideration only assailed the National Labor Relations Commission May 31, 2011 Decision, which reduced the award of moral and exemplary damages. On the other hand, his June 24, 2011 Motion for Reconsideration assailed the reduction of his retirement benefits.[34] Moreover, the filing of a motion for reconsideration to afford the National Labor Relations Commission an opportunity to correct itself on the matter of retirement benefits was a condition *sine qua non* in instituting a petition for certiorari before the Court of Appeals.[35] As for the attachment of relevant records, petitioner argues that the main issue in his petition was whether or not the National Labor Relations Commission committed grave abuse of discretion in treating his motion for reconsideration as a prohibited second motion for reconsideration. Likewise, he adds that the Court of Appeals should have been more liberal and should have ordered him to submit documents, instead of dismissing his motion out right. Petitioner further discussed how the National Labor Relations Commission committed grave abuse of discretion in reducing his retirement benefits.[36]

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[31] *Id*. at 44.

[32] *Id*. at 8-42.

[33] *Id*. at 378-403, respondents' Comment and *rollo*, pp. 435-447, petitioner's Reply.

[34] *Id*. at 436-437.

[35] *Id*. at 438.

[36] *Id*. at 439.

Respondents insist that petitioner's June 24, 2011 Motion for Reconsideration is a prohibited second motion for reconsideration, which did not toll his period to question the May 31, 2011 Decision. Thus, petitioner's petition for certiorari with the Court of Appeals was filed out of time. Respondents call attention to the fact that the National Labor Relations Commission already rejected petitioner's arguments against the reduction of retirement benefits and claim that petitioner's June 24, 2011 Motion for Reconsideration repeated his arguments in his Opposition.[37]

The sole issue for this Court's resolution is whether or not the June 24, 2011 Motion for Reconsideration filed by petitioner Angelito L. Cristobal assailing the National Labor Relations Commission May 31, 2011 Decision was a prohibited second motion for reconsideration.

This Court grants the petition.

Rule VII, Section 15 of the National Labor Relations Commission Rules of Procedure provides:

> Section 15. Motions for Reconsideration. — Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only one such motion from the same party shall be entertained.

The National Labor Relations Commission Rules of Procedure prohibits a party from questioning a decision, resolution, or order, twice. In other words, this rule prohibits the same party from assailing the same judgment. However, a decision substantially reversing a determination in a prior decision is a discrete decision from the earlier one. Thus, in *Poliand Industrial Ltd. v. National Development Co.*,[38] this Court held:

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[37] *Id*. at 382-384.

[38] 523 Phil. 368 (2006) [Per *J*. Tinga, Special Second Division].

Ordinarily, no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Essentially, however, the instant motion is not a second motion for reconsideration since the viable relief it seeks calls for the review, not of the Decision dated August 22, 2005, but the November 23, 2005 Resolution which delved for the first time on the issue of the reckoning date of the computation of interest . . . (Citation omitted)

This Court ruled similarly in *Solidbank Corp. v. Court of Appeals*,[39] where the Labor Arbiter dismissed a labor complaint but awarded the employee separation pay, compensatory benefit, Christmas bonus, and moral and exemplary damages. This was appealed to the National Labor Relations Commission by both parties. The National Labor Relations Commission rendered a Decision affirming the Labor Arbiter Decision but modifying it by deleting the award of moral and exemplary damages. On appeal, the Court of Appeals ruled that the employee had been illegally dismissed and, considering the cessation of the employer's operations, awarded the employee separation pay, backwages, compensatory benefit, Christmas bonus, unpaid salary, moral and exemplary damages, and attorneys fees. Then, the employer bank filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, while the employee filed a Motion tor Clarification and/or Partial Motion for Reconsideration. The Court of Appeals then issued an Amended Decision, modifying the amount awarded as separation pay, backwages, and unpaid salary. Afterwards, the employee filed another Motion for Reconsideration/Clarification, and the Court of Appeals again corrected the amounts awarded as separation pay, backwages, and unpaid salary. In its petition assailing the Court of Appeals Resolution, the employer bank claimed that the Court of Appeals erred in granting the employee's second motion for reconsideration, a prohibited pleading. This Court held:

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[39] G.R. Nos. 166581 & 167187, December 7, 2015, <http://sc. judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/166581.pdf> [Per *C.J.* Sereno, First Division].

The Amended Decision is an entirely new decision which supersedes the original decision, for which a new motion for reconsideration may be filed again.

Anent the issue of Lazaro's "second" motion for reconsideration, we disagree with the bank's contention that it is disallowed by the Rules of Court. Upon thorough examination of the procedural history of this case, the "second" motion does not partake the nature of a prohibited pleading because the Amended Decision is an entirely new decision which supersedes the original, for which a new motion for reconsideration may be filed again.[40]

In *Barba v. Liceo De Cagayan University*,[41] where the Court of Appeals denied a motion for reconsideration from an amended decision on the ground that it was a prohibited second motion for reconsideration, this Court held that the prohibition against a second motion for reconsideration contemplates the same party assailing the same judgment:

Prefatorily, we first discuss the procedural matter raised by respondent that the present petition is filed out of time. Respondent claims that petitioner's motion for reconsideration from the Amended Decision is a second motion for reconsideration which is a prohibited pleading. Respondent's assertion, however, is misplaced for it should be noted that the CA's Amended Decision totally reversed and set aside its previous ruling. Section 2, Rule 52 of the 1997 Rules of Civil Procedure, as amended, provides that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. This contemplates a situation where a second motion for reconsideration is filed by the same party assailing the same judgment or final resolution. Here, the motion for reconsideration of petitioner was filed after the appellate court rendered an Amended Decision totally reversing and setting aside its previous ruling. Hence, petitioner is not precluded from filing another motion for reconsideration from the Amended Decision which held that the labor

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[40] *Id*. at 11.

[41] 699 Phil. 622 (2012) [Per *J*. Villarama, First Division].

tribunals lacked jurisdiction over petitioner's complaint for constructive dismissal. The period to file an appeal should be reckoned not from the denial of her motion for reconsideration of the original decision, but from the date of petitioner's receipt of the notice of denial of her motion for reconsideration from the Amended Decision. And as petitioner received notice of the denial of her motion for reconsideration from the Amended Decision on September 23, 2010 and filed her petition on November 8, 2010, or within the extension period granted by the Court to file the petition, her petition was filed on time.[42]

Here, the National Labor Relations Commission May 31, 2011 Decision substantially modified its September 30, 2010 Decision. Thus, petitioner was not precluded from seeking reconsideration of the new decision of the National Labor Relations Commission, and it was clearly an error for the Court of Appeals to find that petitioner's petition for certiorari was filed out of time on that ground.

As for the purported failure to attach the records necessary to resolve the petition, in *Wack Wack Golf & Country Club v. National Labor Relations Commission*,[43] this Court held:

In *Novelty Philippines, Inc. v. Court of Appeals*, the Court recognized the authority of the general manager to sue on behalf of the corporation and to sign the requisite verification and certification of non-forum shopping. The general manager is also one person who is in the best position to know the state of affairs of the corporation. It was also error for the CA not to admit the requisite proof of authority when in the *Novelty* case, the Court ruled that the subsequent submission of the requisite documents constituted substantial compliance with procedural rules. There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure in the interest of justice. While it is true that rules of procedure are intended to promote rather than frustrate the ends of justice, and while the swift unclogging of court dockets is a laudable objective, it nevertheless must not be met at the expense of substantial justice. It was, therefore, reversible error for the CA to have dismissed the petition for *certiorari* before

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[42] *Id*. at 639.

[43] 496 Phil. 180 (2005) [Per *J*. Callejo, Second Division].

it. The ordinary recourse for us to take is to remand the case to the CA for proper disposition on the merits; however, considering that the records are now before us, we deem it necessary to resolve the instant case in order to ensure harmony in the rulings and expediency.[44]

Thus, this Court finds that the Court of Appeals committed reversible error in dismissing the petition outright, considering the circumstances of this case.

Petitioner raises in issue whether or not the PAL Pilots Retirement Benefit Plan is part of the retirement benefits that should be computed in comparing the retirement benefits accorded to him under the Labor Code as against what he is entitled to under PAL policy. However, the matter of retirement benefits is not addressed in respondent's memorandum. It would better serve the interest of substantial justice to remand this case to the Court of Appeals to allow the parties to fully discuss this issue.

WHEREFORE, the assailed January 10, 2012 and April 18, 2012 Resolutions of the Court of Appeals are **REVERSED** and **SET ASIDE**. The Court of Appeals is directed to **REINSTATE** the petition for certiorari, docketed as CA-G.R. SP. No. 122034, for further proceedings.

No costs.

SO ORDERED.

Bersamin (*Acting Chairperson*), *Jardeleza,*[*] *Martires*, and *Gesmundo, JJ.*, concur.

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[44] *Id.* at 192.

[*] Designated additional member per Raffle dated October 2, 2017.

THIRD DIVISION

[G.R. No. 203986. October 4, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERSON DASMARIÑAS *y* GONZALES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE PROXIMITY OF THE POINT OF OBSERVATION AND THE ADEQUACY OF ILLUMINATION PROVIDE A MEANS TO MAKE A RELIABLE IDENTIFICATION OF THE ACCUSED.— We agree that the out-of-court identification of Dasmariñas by Perias as one of the two assailants did not result from any impermissible suggestion by the police or other external source; and that it could not have been influenced unfairly against Dasmariñas. It is notable that Perias repeated his identification in court during the trial. The reliability of the identification was based on Perias' having witnessed the shooting from the short distance of only two meters away. Also, although the shooting occurred at around 2:00 o'clock in the morning of June 16, 2007, there was adequate illumination because the scene of the crime was in front of the Sabnarra Beerhouse along Naga Road in Las Piñas City. The proximity of his point of observation and the adequacy of the illumination provided to him the means to make the reliable identification of Dasmariñas.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE NATURE AND CHARACTER OF THE CRIME CHARGED ARE DETERMINED BY THE FACTS STATED IN THE INDICTMENT, THAT IS, THE ACTUAL RECITAL OF THE FACTS IN THE BODY OF THE INFORMATION.— [T]he acts constitutive of treachery were not x x x sufficiently averred. The mere usage of the term *treachery* in the information, without anything more, did not suffice for such term was a conclusion of law, not a factual averment. The sufficiency of the information is judged by the rule applicable at the time of

its filing. In this case, that rule is Section 9, Rule 110 of the *2000 Rules on Criminal Procedure* x x x. The text of the rule requires that the acts or omissions complained of as constituting the offense must be stated "in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances." In other words, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated but by the facts stated in the indictment, *that is*, the actual recital of the facts in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law. Indeed, the facts alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime. Dasmariñas was presumed innocent of wrongdoing, and thus was unaware of having committed anything wrong in relation to the accusation. Hence, the information must sufficiently give him the knowledge of what he had allegedly committed. x x x The consequences are dire for the State if the standards of sufficiency defined by Section 9 x x x are not followed because the accused should be found and declared guilty only of the crime properly and sufficiently charged in the information.

3. CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS.— Article 14, paragraph 16, of the *Revised Penal Code* states that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which [the] offended party might make." For treachery to be appreciated, therefore, two elements must be alleged and proved, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, methods or forms of execution must be shown to be deliberated upon or consciously adopted by the offender.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES, INFORMATION; AN ACCUSED CAN ONLY BE CONVICTED OF HOMICIDE, AND NOT MURDER, WHEN THE INFORMATION MERELY STATES THAT TREACHERY IS ATTENDANT FOR THE USAGE OF SUCH TERM IS NOT A FACTUAL AVERMENT BUT A CONCLUSION OF LAW; CASE AT BAR.— The information herein did not make any factual averment on *how* Dasmariñas had deliberately employed means, methods or forms in the execution of the act — setting forth such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged — that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. x x x [T]o merely state in the information that *treachery* was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law. Consequently, Dasmariñas could not be properly convicted of murder, but only of homicide, which is defined and penalized under Article 249, *Revised Penal Code* x x x. Dasmariñas is entitled to the benefits under the *Indeterminate Sentence Law*. In view of the absence of any modifying circumstance, the minimum of his indeterminate sentence is taken from *prision mayor*, and the maximum from the medium period of *reclusion temporal*. Accordingly, the indeterminate sentence is nine years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXEMPLARY DAMAGES; RELATIVE TO THE CIVIL ASPECT OF A CRIMINAL CASE, AN AGGRAVATING CIRCUMSTANCE, WHETHER ORDINARY OR QUALIFYING, SHOULD ENTITLE THE OFFENDED PARTY TO AN AWARD OF EXEMPLARY DAMAGES.— We x x x grant exemplary damages of ₱50,000.00 despite our finding that the crime was only homicide. This is because we uphold the conclusion of the CA that treachery was shown to have characterized the shooting of the victim. The averment in the information of the facts constituting treachery was not indispensable for this purpose considering that the recovery of exemplary damages by the heirs of the victim was a matter of

civil law, and would not implicate the right of the accused to be informed of the nature and cause of the accusation against him. We have held so in *People v. Catubig*: "The term *aggravating circumstances* used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. x x x **[T]he ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code."**

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

The failure of the information supposedly charging murder to aver the factual basis for the attendant circumstance of treachery forbids the appreciation of the circumstance as qualifying the killing; hence, the accused can only be found guilty of homicide. To merely state in the information that treachery was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.

The Case

Under review is the decision promulgated on May 28, 2012,[1] whereby the Court of Appeals (CA) affirmed with modification in CA-G.R. CR-HC No. 04865 the judgment rendered on January 10, 2011 in Criminal Case No. 08-0168 by the Regional

[1] *Rollo*, pp. 2-32; penned by Associate Justice Celia C. Librea-Leagogo, with the concurrence of Associate Justice Elihu A. Ybañez and Associate Justice Angelita A. Gacutan.

Trial Court, Branch 255, in Las Piñas City (RTC) finding accused Jerson Dasmariñas and Nino Polo guilty of murder as charged.[2]

Antecedents

The Office of the City Prosecutor of Las Piñas charged Dasmariñas and Polo with murder, the accusatory portion of the information dated January 25, 2008 being as follows:

> That on or about the 16th day of June 2007, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other without justifiable motive, with intent to kill and with treachery, abuse of superior strength, and evident premiditation (sic), did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one **PO2 MARLON N. ANOYA**, by then and there shooting him twice on his head, thereby inflicting upon the latter mortal wound which directly caused her (sic) death.
>
> The killing of the aforesaid victim is qualified by the circumstances of treachery, abuse of superior strength and evident premiditation (sic).
>
> CONTRARY TO LAW.[3]

Polo, when arraigned on April 1, 2008, entered a plea of *not guilty*. Dasmariñas also entered his plea of *not guilty* on April 24, 2008.[4]

The Prosecution presented Aries Perias; the victim's widow, Lourdes Anoya; SPO1 Roland Abraham; and Dr. Voltaire Nulud as its witnesses-in-chief. On the other hand, the Defense relied on Erica Camille Pascua and Dasmariñas himself. On rebuttal, the Prosecution called Asst. City Prosecutor Benthom Paul Azares, while the Defense recalled Dasmariñas on sur-rebuttal.[5]

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[2] CA *rollo,* pp. 49-67; penned by Acting Presiding Judge Elizabeth Yu-Guray.

[3] *Id*. at 67-A.

[4] *Id*. at 105.

[5] *Id*. at 51-57.

The CA adopted the RTC's summation of the versions and evidence of the parties, to wit:

1. Mr. Perias

Mr. Perias, a sign art vendor, disclosed that in June 2007 he used to sell corn in front of Narra Beerhouse. He recalled that last 16 June 2007, at around 2:00 in the morning, he was beside the Sabnarra Beerhouse along Naga Road, Las Pinas City which is near his residence. According to him, he saw victim PO2 Marlon Anoya who is known to him as he frequents (sic) the said place. As far as he knows, the said victim was already drunk when he was in front of the beerhouse. At the time, there were other people most of whom were guest relations officers (GROs). The victim left the place on board a motorcycle but he returned after around 15 minutes. While the victim was standing in front of the beerhouse still drunk 2 men came from his right side and shot him. He recognized one of the men as accused Dasmariñas while the other person was then wearing a cap. The assailants then rode a jeep towards Zapote after shooting the victim. It was clarified by him that the victim was approached at the back and shot on his head. To him it was accused Dasmariñas who shot the victim using a 9 mm gun. Also, the victim was shot twice at the back of the head and on the right side of his face. He recalled that the victim fell down after being shot and his gun was being (sic) taken by the companion of the accused Dasmariñas. It was recalled by him that the companion of the accused Dasmariñas was about 5'8" or 5'9" tall. The victim was then brought by him and Capt. Alex Nase to the hospital but he was declared dead on arrival. When he went to the San Juan City Jail he then saw the accused. Later on, it was Police Officer Abraham who brought him to the Quezon City Jail where he identified accused Dasmariñas and pointed to him as the suspect while behind a tinted glass. x xx

On cross-examination he mentioned that he first saw accused Dasmariñas during the time of the incident last 16 June 2007. At the time, he does not know the name of the said accused. He told the police about what he witnessed on the said date. As such, there was a cartographic sketch of the accused Dasmariñas. Also, the description he gave was that of the accused whom he described as about 5'6" tall, fair complexioned and has short hair or semi-bald. He admitted that only accused Dasmariñas was presented to him at the Quezon City Jail. While he was brought to the San Juan City jail in August 2007. It was only in December 2007 that he executed his statement

as he was afraid to give one. However, his conscience bothered him so he executed a statement before police officer Abraham in the presence of the wife of the victim. He recalled that he was about 2 meters away from the crime scene and the black colored gun was fired with the barrel pointing towards him. x x x[6]

Private complainant Anoya

In her testimony private complainant Anoya alleged that she is the wife of victim PO2 Marlon Anoya per the marriage certificate that she presented. According to her, the victim is already dead and he was shot last 16 June 2007 at Pulang Lupa, Las Pinas City. She mentioned that at around 2:30 in the morning of said date, a text message was received by her from her cousin, Christopher Kanalis. At that time, she was told that her husband was at the Las Pinas City District Hospital. As she did not believe the news, her cousin and her father went to their house around 4:00 in the morning. When she was given the cellular phone and wallet of her husband she then believed that the latter was already dead. On account thereof, she lost consciousness and eventually went to theFuneraria Filipinas together with her relatives. She saw her husband with gunshot wounds on his head. While the wakeofthe victim was at Funeraria Filipinas hewas buried in Leyte last 27 June 2007. The remains of her husband were brought to Leyte via Cebu Pacific after 3 days of wake at said funeral parlor. She spent about ₱3,600.00 in transporting the remains of her husband. Also, the sum of ₱38,000.00 in expenses was incurred by them at the Funeraria Filipinas. The 9 days wake at Leyte also cost them about ₱56,712.00. With respect to the said expenses, she identified a summary that she prepared and the receipts on the above transportation and funeral expenses. She mentioned that her husband was a police officer in Manila earning about ₱14,000 a month. At the time of his death the victim was 33 years old. However, they did not have children at the time of his death. She felt sad about the killing of her husband and has not yet recovered from his death. To her, no amount can equal the pain she suffered due to the untimely demise of her husband. Still, she asks (sic) the payment of ₱100,000.00 in damages for the death of the victim. She insisted that the accused shot her husband as narrated by Mr. Perias. It was explained by him that Mr. Perias became known to her after he was pointed to by the police investigator as a witness to the incident.

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[6] *Id*. at 107-108.

When cross-examined, she admitted that the circumstances of her husband's death were only relayed to her. Also, the names of the accused were known to her from the investigator and the witness, Mr. Perias.[7]

The parties stipulated on the testimonies of SPO1 Abraham and Dr. Nulud, which the trial court also summarized as follows:

SPO1 Abraham

In his stipulated testimony, it as determined that SPO1 Abraham was the police officer who investigated the complaint of private complainant Anoya regarding the death of her husband PO2 Marlon Anoya pursuant to the account given by Mr. Perias. As such, he prepared an Investigation Report dated 14 December 2007. However, it was admitted that he has no personal knowledge about the shooting incident and the information that he obtained were only relayed to him by some other person.[8]

Dr. Nulud

With his stipulated testimony it was shown that Dr. Nulud that he was the one who conducted an autopsy on the body of victim PO2 Marlon Anoya that resulted in Medico Legal Report No. N-308-07 being prepared by him. Likewise, he prepared anatomical sketches and other documents regarding the autopsy that he did. Still, he did not witness the incident resulting in the death of the victim. x x x"[9]

Accused Dasmariñas

Accused Dasmariñas denied killing victim PO2 Marlon Anoya together with accused Polo. According to him, at around 9:00 in the evening last 15 June 2007 he was at the house of his live-in partner Erica Camille Pascua at Vicencio Street, Barangay Sta. Lucia, San Juan. At that time, he came from the house of his mother Anna Gonzales in San Juan where he was looking after his other siblings. He then slept around 10:00 in the evening last 15 June 2007 and woke about 5:00 in the morning of 16 June 2007 since his live-in partner was going to her school at Dominican College, San Juan.

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[7] *Id*. at 108-109.

[8] *Id*. at 109.

[9] *Id*.

After bringing his live-in partner to school he went back to the house of his mother to look after his siblings as his mother had to go to work as laundrywoman. He learned about the herein case when police officers went to his house last 29 June 2007. However, he alleged that he was arrested in connection with another case since a warrant was issued against him for robbery. He recalled being brought to the Molave Detention Center in Quezon City and Las Pinas police authorities then took him to their station. It was only then that he learned that he has a murder case filed against him. He met other accused Polo in court. As far as he was concerned, there was no preliminary investigation regarding the herein case and no witness was presented against him. Also, he was not charged before for murder and there is no reason why the instant case should be filed against him.

On cross-examination, he mentioned that he has been a prisoner at the Quezon City Jail since 25 July 2007. He denied his signatures in the minutes of the preliminary investigation before the Office of the City Prosecutor of Las Pinas last 9 January 2008. It was insisted by him that he had nothing to do with herein case as he was present at the place when the supposed killing of the victim happened. He could not recall when he was brought to the Quezon City Jail. Instead, he pointed out that he was detained at the San Juan, Molave Detention Center and Quezon City Jail. Mr. Perias then appeared at the Quezon City Jail whom he did not know at that time. To him, he saw Mr. Perias only at the courtroom and he has no knowledge why he would testify against him. Again, he pointed out that he met accused Polo only in court. What he knows is that accused Polo is a resident of Mandaluyong City and he is detained thereat. It was reiterated by him that he was arrested by virtue of warrant of arrest for robbery filed against him which is still pending. He confirmed that another case for homicide was filed against him."[10]

Ms. Pascua

When she testified Ms. Pascua confirmed that accused Dasmariñas is her live-in partner. They live together with her parents' house inside a compound. On the night of 15 June 2007 she alleged that she was with accused Dasmariñas, 2 of her aunts Ria Salvador and Sally Salvador and her grandfather Carlos Salvador. She recalled that they then slept at around 10:30 in the evening and she woke

[10] *Id*. at 109-110.

up at around 6:00 in the morning the following day. It was the accused who woke her up and they then ate breakfast. It was pointed out by her that the accused brought her to her school at around 8:00 in the morning. As far as she knows, the accused usually goes home to their house to attend to his siblings at Barangay Rivera, San Juan which was only a ride away from their house. The mother of the accused who is a laundrywoman usually leaves their house so the accused has to attend to his siblings. Her classes then end by 3:00 in the afternoon so she is fetched by the accused. She denied that the accused went to Las Pinas in the evening of 15 June 2007 as their gate was closed in the evening. Her grandfather usually holds the key to their gate which is quite high.
x x x

During her cross-examination, she mentioned that she was told that she will testify as a witness by the accused. As such she was not reluctant in testifying for the accused. She insisted that in 2007 she was already in college and her classes were held from 8:00 in the morning up to 3:00 in the afternoon. It was the accused who would bring her to school and then fetch her later. The accused was not then working at that time and he used to be employed with Mcdonald's restaurant for about 3 to 4 months. She alleged that Mr. Perias and accused Polo are not known to her. As far as she was concerned they slept at around 10:00 in the evening last 15 June 2007. Before testifying she was told about the case against the accused in Las Pinas City. Still, she did not execute a statement regarding what she testified on although she has a handwritten statement that she prepared last 19 April 2009. The said statement was executed by her after being asked by the counsel for the accused.[11]

The Prosecution presented Asst. City Prosecutor Azares as a rebuttal witness, and his testimony was summed up by the RTC, to wit:

Prosecutor Azares

Prosecutor Azares testified that he was the one who conducted a preliminary investigation regarding the case against accused Dasmariñas. With respect thereto, he recalled sending out subpoenas.

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[11] *Id*. at 110-111.

As such said accused appeared during the scheduled investigation per the minutes for the same. He remembered the accused waiving his right to submit a counter-affidavit. xxx

On cross-examination, he confirmed that there was no minutes involving accused Polo as he did not appear at the scheduled investigation. Also, no more subpoena was issued to accused Polo since the subpoena earlier sent to him was returned. As such, there was no preliminary investigation conducted on accused Polo.[12]

The Defense presented Dasmariñas on sur-rebuttal, and his testimony was encapsulated by the RTC thusly:

Accused Dasmariñas

Accused Dasmariñas insisted that he did not receive a subpoena from Prosecutor Azares for a preliminary investigation last 09 January 2008. Also, he was not yet detained at the Quezon City Jail at that time and was still free. The signature appearing in the subject minutes was denied by him as his. He then presented his Certificate of Detention dated 12 October 2009 showing that he was detained on 25 July 2007. x x x[13]

After trial, the RTC rendered its judgment dated January 10, 2011,[14] finding and pronouncing Dasmariñas guilty of murder but acquitting Polo, disposing:

WHEREFORE, the foregoing considered, the Court finds accused Jerson Dasmariñas GUILTY beyond reasonable doubt of the crime of murder for shooting to death victim PO2 Marlon Anoya and he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, as well as to suffer the accessory penalties provided for by law.

Likewise, accused Dasmariñas is hereby ordered to pay complainant Ms. Lourdes Anoya the following sums, thus:

₱98,393.70 as actual compensatory damages;

₱50,000.00 as indemnity for the death of the herein victim;

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[12] *Id*. at 111.

[13] *Id*.

[14] *Id*. at 120-121.

₱100,000.00 as moral damages; and
₱100,000.00 as exemplary damages.

With respect to accused Nino Polo, the Court finds him NOT GUILTY of the crime of murder for which he was herein charged. As such, he is hereby ACQUITTED of the instant case as his guilt was not proven beyond reasonable doubt.

With costs de officio as against accused Dasmariñas.

SO ORDERED.

On appeal, Dasmariñas submitted that:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS *OUT-OF-COURT* IDENTIFICATION WAS TAINTED WITH GRAVE INFIRMITIES

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

On May 28, 2012,[16] the CA affirmed the conviction with modification by declaring that Dasmariñas would not be eligible for parole, and by revising the civil liability, to wit:

WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated 10 January 2011 of the Regional Trial Court, National Capital Judicial Region, Branch 255, Las Pinas City in Criminal Case No. 08-0168 finding accused-appellant Jerson Dasmariñas y Gonzales guilty beyond reasonable doubt of the crime of murder under Article 245 of the Revised Penal Code, and sentencing him to suffer the penalty of imprisonment of reclusion perpetua is hereby **AFFIRMED** with **MODIFICATION** in that the accused-appellant, **in addition to his penalty**, is **NOT** eligible for parole and he is further ordered to indemnify the heirs of the victim the following amounts: (1) Php75,000.00 as civil indemnity; (2) Php50,000.00 as moral damages;

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[15] *Id*. at 86.

[16] *Rollo,* pp. 3-32.

(3) Php30,000.00 as exemplary damages; (4) Php43,231.70 as actual damages; (5) Php2,498,724.20 as loss of earning capacity; and (6) interest on **all** damages awarded at that rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.[17]

Hence, this appeal, with Dasmariñas insisting on his innocence. It is noted that he and the Office of the Solicitor General (OSG) have adopted and reiterated their respective briefs filed in the CA.

Ruling of the Court

The appeal lacks merit, but the Court holds that the conviction of Dasmariñas for murder cannot be upheld. He is properly liable only for homicide.

In its assailed decision, the CA noted the arguments posited by Dasmariñas, and the response to the arguments by the OSG, as follows:

> Accused-appellant contends, *inter alia*, that: the procedure conducted by the police officers in identifying the perpetrator of the crime is seriously flawed and gravely violated his right to due process, as it denied him his right to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions; beforehand, the police officers have already fixed in the mind of the witness Perias that accused-appellant was the assailant; the procedure of bringing a suspect alone to the witness, for the purpose of identification, is seriously flawed; only accused-appellant was brought before Perias for possible identification of the perpetrator; the narration of Perias failed the totality of circumstances test; Perias described the height of assailant as about 5'6 to 5'7" but accused-appellant is only 5'4"; Perias' position at the time of the incident does not demonstrate, with moral certainty, that he had an opportunity to view the face of the assailant; Perias identified accused-appellant only on 25 July 2007, thus, there was a sufficient lapse of time from the time the crime occurred up to the time of accused-appellant's purported identification; and the police investigators also suggested the identity of accused-appellant when it was only he who was showed to Perias.

[17] *Id*. at 31-32.

Plaintiff-appellee counters, *inter alia*, that: the prosecution had proven to a moral certainty accused-appellant's guilt for the crime of murder, thus his conviction is in order; Perias saw accused-appellant at close range, shoot PO2 Anoya; accused-appellant was facing Perias at the time of the shooting and the latter had an unobstructed view of accused-appellant's face at such short distance of only two (2) meters; accused-appellant failed to impute any sinister motive on the part of Perias why he would falsely testify against him; the out-of-court identification of accused-appellant bolsters the prosecution eyewitness' version of the incident; applying the totality of circumstances test, the out-of-court identification of accused-appellant (which is a show-up) is admissible and not in any way violative of his constitutional right; treachery attended PO2 Anoya's killing; accused-appellant's alibi is unavailing since he failed to prove the physical impossibility of his presence at the scene of the crime at the time of its commission; accused-appellant's corroborating witness was his girlfriend, who is obviously not a disinterested witness; the award of civil indemnity should be increased from Php50,000.00 to Php75,000.00 while the award of moral damages should be decreased from Php100,000.00 to Php75,000.00 in accordance with current jurisprudence; and since there is no aggravating circumstance, the award of exemplary damages has no basis and must be deleted.[18]

In ruling against Dasmariñas, the CA opined and concluded that his out-of-court identification by eyewitness Perias was "free from impermissible suggestions,"[19] pointing out as follows:

Accused-appellant merely argued that that procedure conducted by the police officers in identifying the perpetrator of the crime is seriously flawed and gravely violated the accused-appellant's right to due process, as it denied him of his right to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions.

Accused-appellant cited the rulings in People v. Rodrigo, GR No. 176159 September 11, 2008 and People v. Meneses, GR No. 111742 March 26, 1988. In People v. Rodrigo, the identification was done for the first time through a lone photograph shown (to witness) at police station and subsequently by personal confrontation at the same

[18] *Id*. at 12-13.

[19] *Id*. at 24.

police station at an undisclosed time. The Court said that the initial photographic identification carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification.

In People vs. Meneses, the Court doubted the identification process of the suspect in stabbing incident in view of the statement in the Advance Information prepared by Police Investigator that the witness (son of the victim) can identify the suspect if he can see him again. The suspect turned out to be the uncle-in-law of the witness and who is known to the witness before the incident. The Police investigator contradicted himself on whether the witness readily pinpointed the suspect during the confrontation. Thus, the Court said that the identification is dubious.

In the instant case, the eyewitness Aries Perias does not know the person of the accused-appellant but the eyewitness gave a description of the accused-appellant and the police prepared a cartographic sketch of the accused-appellant. The identification of the accused-appellant at the Quezon City Jail is only for the purpose of confirmation. The eyewitness at that time was behind a tinted glass. Thus, the identification of the accused-appellant in this case is free from impermissible suggestions. The rulings in People vs. Rodrigo and People vs. Meneses are not applicable in this case.

In this case, accused-appellant was positively identified as one of the assailants by the eyewitness. The eyewitness Aries Perias was only two (2) meters away from the accused-appellant when the crime was committed. The accused-appellant and his companion approached the victim PO2 Marlon Anoya from behind and accused-appellant with a 9mm pistol shoot twice hitting the victim's nape and below the right ear. The victim fell down and the companion of accused-appellant got the service pistol of the victim. Accused-appellant and his companion left and rode a jeepney. The victim was brought to a hospital but he was pronounced as dead on arrival.[20] (Emphasis ours)

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[20] *Id*. at 12-14.

We agree that the out-of-court identification of Dasmariñas by Perias as one of the two assailants did not result from any impermissible suggestion by the police or other external source; and that it could not have been influenced unfairly against Dasmariñas. It is notable that Perias repeated his identification in court during the trial. The reliability of the identification was based on Perias' having witnessed the shooting from the short distance of only two meters away. Also, although the shooting occurred at around 2:00 o'clock in the morning of June 16, 2007, there was adequate illumination because the scene of the crime was in front of the Sabnarra Beerhouse along Naga Road in Las Piñas City.[21] The proximity of his point of observation and the adequacy of the illumination provided to him the means to make the reliable identification of Dasmariñas.

Anent the attendance of the qualifying circumstance of treachery, the CA rendered the following finding, to wit:

> The killing of PO2 Anoya is attended by treachery. The victim was already drunk and he was shot at his back without any warning. The victim was defenseless and was not able to offer any resistance.The accused-appellant and his companion employed means for the easy commission of the crime. There is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure the execution, without risk to himself arising from the defense which the offended party might take.[22]

We cannot sustain the finding of the CA that the killing was attended by treachery. Although the information averred that:—

> x x x the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other without justifiable motive, with intent to kill and with treachery, abuse of superior strength, and evident premiditation (sic), did then and there knowingly, unlawfully and feloniously attack, assault and use personal violence upon one **PO2 MARLON N. ANOYA**, by then and there

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[21] *Id.* at 15.

[22] *Id.* at 27.

shooting him twice on his head, thereby inflicting upon the latter mortal wound which directly caused her (sic) death x x x.[23]

the acts constitutive of treachery were not thereby sufficiently averred. The mere usage of the term *treachery* in the information, without anything more, did not suffice for such term was a conclusion of law, not a factual averment.

The sufficiency of the information is judged by the rule applicable at the time of its filing. In this case, that rule is Section 9, Rule 110 of the *2000 Rules on Criminal Procedure*, which provides thusly:

> Section 9. Cause of the accusations.— The acts or omissions complained of as constituting the offense and **the qualifying and aggravating circumstances must be stated in ordinary and concise language** and not necessarily in the language used in the statute but in terms **sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment**. (9a) (Bold underscoring supplied for emphasis)

The text of the rule requires that the acts or omissions complained of as constituting the offense must be stated "in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances." In other words, the nature and character of the crime charged are determined not by the specification of the provision of the law alleged to have been violated but by the facts stated in the indictment, *that is*, the actual recital of the facts in the body of the information, and not the caption or preamble of the information or complaint nor the specification of the provision of law alleged to have been violated, they being conclusions of law.[24] Indeed, the facts

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[23] *Id*. at 3-4.

[24] *People v. Diaz*, G.R. No. 130210, December 8, 1999, 320 SCRA 168, 175; *People v. Juachon*, G.R. No. 111630, December 6, 1999, 319 SCRA 761, 770; *People v. Salazar*, G.R. No. 99355, August 11, 1997, 277 SCRA

alleged in the body of the information, not the technical name given by the prosecutor appearing in the title of the information, determine the character of the crime.[25]

Dasmariñas was presumed innocent of wrongdoing, and thus was unaware of having committed anything wrong in relation to the accusation. Hence, the information must sufficiently give him the knowledge of what he had allegedly committed. Justice Moreland suggested in *United States v. Lim San*[26] how this objective could be accomplished, *viz.*:

> x x x Notwithstanding apparent contradiction between caption and body, we believe that we ought to say and hold that **the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried**. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the requirements of plain justice.
>
> x x x x x x x x x
>
> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information**

67, 88; *People v. Sandoval*, G.R. Nos. 95353-54, March 7, 1996, 254 SCRA 436, 452.

[25] *People v. Escosio*, G.R. No. 101742, March 25, 1994, 220 SCRA 475, 488); citing *People v. Mendoza*, G.R. No. 67610, July 31, 1989, 175 SCRA 743.

[26] 17 Phil. 273 (1910).

from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. x x x.

In *People v. Dimaano*,[27] the Court has reiterated the foregoing guideline thuswise:

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the **acts or omissions complained of as constituting the offense;** the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense**.

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[27] G.R. No. 168168, September 14, 2005, 469 SCRA 647, 666-667; (the crimes involved 2 counts of rape and 1 count of attempted rape).

The consequences are dire for the State if the standards of sufficiency defined by Section 9, supra, are not followed because the accused should be found and declared guilty only of the crime properly and sufficiently charged in the information. The significance of the propriety and sufficiency of the charge made in the information is explained in *People v. Manalili*:[28]

x x x **an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right. Indeed, the accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him.**

Treachery, which both the CA and the RTC ruled to be attendant, has basic constitutive elements. Article 14, paragraph 16, of the *Revised Penal Code* states that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make." For treachery to be appreciated, therefore, two elements must be alleged and proved, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted,[29] that is, the means, methods or forms of execution must be shown to be deliberated upon or consciously adopted by the offender.[30]

The information herein did not make any factual averment on *how* Dasmariñas had deliberately employed means, methods or forms in the execution of the act – setting forth such means,

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[28] G.R. No. 121671, August 14, 1998, 294 SCRA 220, 252.

[29] *People v. Escarlos*, G.R. No. 148912, September 10, 2003, 410 SCRA 463, 480; *People v. Hugo*, G.R. No. 134604, August 28, 2003, 410 SCRA 62, 80-81.

[30] *People v. Punzalan*, No. 54562, August 6, 1987, 153 SCRA 1, 9.

methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged – that tended directly and specially to insure its execution without risk to the accused arising from the defense that the victim might make. As earlier indicated, to merely state in the information that *treachery* was attendant is not enough because the usage of such term is not a factual averment but a conclusion of law.

Consequently, Dasmariñas could not be properly convicted of murder, but only of homicide, which is defined and penalized under Article 249, *Revised Penal Code*, to wit:

> Article 249. *Homicide*. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

Dasmariñas is entitled to the benefits under the *Indeterminate Sentence Law*. In view of the absence of any modifying circumstance, the minimum of his indeterminate sentence is taken from *prision mayor*, and the maximum from the medium period of *reclusion temporal*. Accordingly, the indeterminate sentence is nine years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

The heirs of the late PO2 Marlon M. Anoya are entitled to recover civil liability. In that regard, the CA awarded civil indemnity of ₱75,000.00; ₱30,000.00 as exemplary damages; actual damages of ₱43,231.70; indemnity for loss of earning capacity in the amount of ₱2,498,724.10; and imposed interest of 6% *per annum* on all such damages from the finality of the judgment until full satisfaction. Conformably with *People v. Jugueta*,[31] however, we modify the awards by granting civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; actual damages of ₱43,231.70; and indemnity for loss of earning

[31] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

capacity in the amount of ₱2,498,724.10, plus 6% *per annum* interest on all such damages from the finality of the judgment until full satisfaction.

We further grant exemplary damages of ₱50,000.00 despite our finding that the crime was only homicide. This is because we uphold the conclusion of the CA that treachery was shown to have characterized the shooting of the victim. The averment in the information of the facts constituting treachery was not indispensable for this purpose considering that the recovery of exemplary damages by the heirs of the victim was a matter of the civil law, and would not implicate the right of the accused to be informed of the nature and cause of the accusation against him. We have held so in *People v. Catubig*:[32]

> The term *aggravating circumstances* used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. **Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code**. (Emphasis supplied)

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[32] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 28, 2012 by the Court of Appeals subject to the **MODIFICATION** that: (1) accused-appellant **JERSON DASMARIÑAS** is found and pronounced guilty beyond reasonable doubt of **HOMICIDE**, and, **ACCORDINGLY**, is punished with the indeterminate sentence of nine years of *prision mayo*r, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum; (2) accused-appellant **JERSON DASMARIÑAS y GONZALES** is **ORDERED TO PAY** to the heirs of the late PO2 Marlon N. Anoya, represented by his widow, Lourdes Anoya, civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; actual damages of ₱43,231.70; ₱50,000.00 as exemplary damages; and indemnity for loss of earning capacity in the amount of ₱2,498,724.10, plus 6% *per annum* interest on all such items of civil liability from the finality of the judgment until full satisfaction.

The accused-appellant shall further pay the costs of suit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Leonen, Martires,* and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 205539. October 4, 2017]

VELIA J. CRUZ, *petitioner, vs.* **SPOUSES MAXIMO and SUSAN CHRISTENSEN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; PROCEDURAL RULES OF EVEN THE MOST MANDATORY CHARACTER

MAY BE SUSPENDED WHERE MATTERS OF LIFE, LIBERTY, HONOR OR PROPERTY WARRANT ITS LIBERAL APPLICATION.— Procedural rules of even the most mandatory character may be suspended upon a showing of circumstances warranting the exercise of liberality in its strict application. x x x Rule 40, Section 7 of the Rules of Court states the procedure of appeal before the Regional Trial Court. x x x The rule requiring the filing of the memorandum within the period provided is mandatory. Failure to comply will result in the dismissal of the appeal. x x x Rule 40, Section 7 is likewise jurisdictional since the Regional Trial Court can only resolve errors that are specifically assigned and properly argued in the memorandum. Thus, dismissals based on this rule are premised on the *non-filing* of the memorandum. A trial court does not acquire jurisdiction over an appeal where the errors have not been specifically assigned. In this instance, a Memorandum of Appeal was filed late but was nonetheless given due course by the Regional Trial Court. Thus, the jurisdictional defect was cured since petitioner was able to specifically assign the Municipal Trial Court's errors, which the Regional Trial Court was able to address and resolve. This Court also notes that all substantial issues have already been fully litigated before the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals. Procedural defects should not be relied on to defeat the substantive rights of litigants. Even procedural rules of the most mandatory character may be suspended where "matters of life, liberty, honor or property" warrant its liberal application. x x x Liberality in the application of Rule 40, Section 7 is warranted in this case in view of the potential inequity that may result if the rule is strictly applied.

2. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; PRIOR DEMAND; A JURISDICTIONAL REQUIREMENT BEFORE AN ACTION FOR FORCIBLE ENTRY OR UNLAWFUL DETAINER MAY BE INSTITUTED.— Possession of a property belonging to another may be tolerated or permitted, even without a prior contract between the parties, as long as there is an implied promise that the occupant will vacate upon demand. Refusal to vacate despite demand will give rise to an action for summary ejectment. Thus, prior demand is a jurisdictional requirement before an action for forcible entry or unlawful detainer may be instituted.

3. ID.; ID.; ID.; UNLAWFUL DETAINER; PRIOR DEMAND; THE JURISDICTIONAL REQUIREMENT OF PRIOR DEMAND IS UNNECESSARY IF THE ACTION IS PREMISED ON THE TERMINATION OF LEASE DUE TO EXPIRATION OF THE TERMS OF THE CONTRACT.— Under Rule 70, Section 1 of the Rules of Civil Procedure, an action for unlawful detainer may be brought against a possessor of a property who unlawfully withholds possession after the termination or expiration of the right to hold possession. Rule 70, Section 2 of the Rules of Civil Procedure requires that there must first be a prior demand to pay or comply with the conditions of the lease and to vacate before an action can be filed x x x. The property in this case is owned by petitioner. Respondents had a month-to-month lease with petitioner's predecessor-in-interest. Petitioner contends that no prior demand was necessary in this case since her Complaint was premised on the expiration of respondents' lease, not on the failure to pay rent due or to comply with the conditions of the lease. The jurisdictional requirement of prior demand is unnecessary if the action is premised on the termination of lease due to expiration of the terms of contract. The complaint must be brought on the allegation that the lease has expired and the lessor demanded the lessee to vacate, not on the allegation that the lessee failed to pay rents. The cause of action which would give rise to an ejectment case would be the expiration of the lease. Thus, the requirement under Rule 70, Section 2 of a prior "demand to pay or comply with the conditions of the lease and to vacate" would be unnecessary.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

LEONEN, *J.*:

The prior service and receipt of a demand letter is unnecessary in a case for unlawful detainer if the demand to vacate is premised

on the expiration of the lease, not on the non-payment of rentals or non-compliance of the terms and conditions of the lease.

This is a Petition for Review on Certiorari[1] assailing the October 11, 2012 Decision[2] and January 21, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 117773. The assailed Decision reversed the Regional Trial Court Decision[4] dated December 29, 2010, which ordered respondents Maximo and Susan Christensen (the Spouses Christensen) to pay unpaid rentals and to vacate petitioner Velia J. Cruz's (Cruz) property. The Court of Appeals instead reinstated the Metropolitan Trial Court Decision[5] dated June 3, 2010, dismissing the complaint for unlawful detainer for Cruz's failure to prove that a demand letter was validly served on the Spouses Christensen.

Cruz alleged that she was the owner of a parcel of land located at A. Santos Street, Balong Bato, San Juan City, which she acquired through inheritance from her late mother, Ruperta D. Javier (Javier). She further alleged that Susan Christensen (Susan) had been occupying the property during Javier's lifetime, as they had a verbal lease agreement.[6]

Cruz claimed that ever since she inherited the property, she tolerated Susan's occupancy of the property. However, due to Susan's failure and refusal to pay rentals of ₱1,000.00 per month,

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[1] *Rollo*, pp. 3-32.

[2] *Id*. at 34-43. The Decision was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez of the Special Ninth Division, Court of Appeals, Manila.

[3] *Id*. at 44-45. The Resolution was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez of the Former Special Ninth Division, Court of Appeals, Manila.

[4] *Id*. at 145-147. The Decision, docketed as SCA No. 3468, was penned by Judge Myrna V. Lim-Verano of Branch 160, Regional Trial Court, Pasig City.

[5] *Id*. at 112-121. The Decision, docketed as Civil Case No. 9718, was penned by Presiding Judge Ronaldo B. Reyes of Branch 58, Metropolitan Trial Court of San Juan City.

[6] *Id*. at 112.

she was constrained to demand that Susan vacate the property and pay all unpaid rentals.[7]

The matter was referred to barangay conciliation in Barangay Balong Bato, San Juan, despite the parties being residents of different cities. The parties, however, were unable to settle into a compromise. As a result, the Punong Barangay issued a Certificate to File Action[8] on August 11, 2005.[9]

Three (3) years later, or on August 5, 2008, Cruz, through counsel, sent Susan a final demand letter,[10] demanding that she pay the unpaid rentals and vacate the property within 15 days from receipt.[11]

Cruz alleged that despite receipt of the demand letter, Susan refused to vacate and pay the accrued rentals from June 1989 to February 2009 in the amount of ₱237,000.00, computed at ₱1,000.00 per month. Thus, Cruz was constrained to file a Complaint[12] for unlawful detainer[13] on April 27, 2009.

In her Answer,[14] Susan admitted to occupying a portion of the property since 1969 on a month-to-month lease agreement. However, she denied that she failed to pay her rentals since 1989 or that she refused to pay them, attaching receipts of her rental payments as evidence. She alleged that Cruz refused to receive her rental payments sometime in 2002. Susan likewise denied receiving any demand letter from Cruz and claims that the signature appearing on the registry return card of the demand letter[15] was not her signature.[16]

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[7] *Id*. at 112-113.

[8] *Id*. at 68.

[9] *Id*. at 113.

[10] *Id*. at 69-70.

[11] *Id*. at 113.

[12] *Id*. at 60-65.

[13] *Id*. at 112-113.

[14] *Id*. at 72-74.

[15] *Id*. at 71.

[16] *Id*. at 113-114.

On June 3, 2010, Branch 58, Metropolitan Trial Court, San Juan City rendered a Decision[17] dismissing Cruz's Complaint. It found that for the registry receipts and registry return cards to serve as proof that the demand letter was received, it must first be authenticated through an affidavit of service by the person mailing the letter. It also found that Cruz failed to prove who received the demand letter and signed the registry return receipt, considering that Susan denied it.[18]

Cruz appealed to the Regional Trial Court.[19] On December 29, 2010, Branch 160, Regional Trial Court, Pasig City rendered a Decision[20] reversing the Metropolitan Trial Court Decision. It found that the bare denial of receipt would not prevail over the registry return card showing actual receipt of the demand letter.[21] The dispositive portion of this Decision read:

> WHEREFORE, premises considered, the lower court's decision is hereby REVERSED.
>
> Susan Christensen and all persons claiming rights under her are hereby ordered:
>
> 1. To vacate the premises A. Santos Street, Balong Bato, San Juan City, Metro Manila, and to surrender possession thereof to plaintiff;
> 2. To pay the accrued unpaid rentals in the amount of One Thousand Pesos (₱1,000.00) per month reckoned from April 2000 (based on the evidence presented) until such time defendant-appellee, and all persons claiming rights under her, actually vacated and surrendered peaceful possession of the subject real property in favor of the plaintiff-appellant;
> 3. To pay the sum of Twenty Thousand Pesos (₱20,000.00) as and by way of attorney's fees; and

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[17] *Id*. at 112-121.

[18] *Id*. at 119-120.

[19] *Id*. at 122-124.

[20] *Id*. at 145-147.

[21] *Id*. at 146.

4. The costs of suit.

Costs against appellee.

So ordered.[22]

The Spouses Christensen appealed to the Court of Appeals,[23] arguing that Cruz was unable to prove Susan's actual receipt of the demand letter.[24] They likewise alleged that Cruz's late filing of her Memorandum before the Regional Trial Court should have been ground to dismiss her appeal.[25]

On October 11, 2012, the Court of Appeals rendered a Decision[26] reversing the Regional Trial Court Decision and reinstating the Metropolitan Trial Court Decision. According to the Court of Appeals, the filing of a memorandum of appeal within 15 days from the receipt of order is mandatory under Rule 40, Section 7(b) of the Rules of Court and the failure to comply will result in the dismissal of the appeal.[27] It likewise concurred with the Metropolitan Trial Court's finding that registry receipts and return cards are insufficient proof of receipt.[28] The dispositive portion of this Decision read:

IN VIEW OF THE FOREGOING[,] the instant Petition for Review is GRANTED. The assailed Decision dated 29 December 2010 of the Regional Trial Court, Branch 160, Pasig City is hereby REVERSED and SET ASIDE. The Decision rendered by the Municipal [sic] Trial Court, San Juan City dated 3 June 2010 is hereby ORDERED REINSTATED.

SO ORDERED.[29]

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[22] *Id*. at 147.

[23] *Id*. at 148-167.

[24] *Id*. at 158-160.

[25] *Id*. at 159-162.

[26] *Id*. at 34-43.

[27] *Id*. at 38-41.

[28] *Id*. at 41-42.

[29] *Id*. at 42.

Cruz filed a Motion for Reconsideration[30] but it was denied by the Court of Appeals in a Resolution[31] dated January 21, 2013. Hence, this Petition[32] was filed.

Petitioner concedes that while the 15-day period for filing the memorandum of appeal is mandatory under the Rules of Court,[33] the Regional Trial Court nonetheless opted to resolve her appeal on its merits, showing that the issues and arguments raised in the appeal outweigh its procedural defect.[34]

Petitioner submits that other than respondent Susan's bare denial of signing the registry return card, respondents did not deny receipt of the demand letter at their known address or the authority of the signatory on the registry return card to receive registered mail.[35] She argues that notice by registered mail is considered service to the recipient, and this cannot be overcome simply by denying the signature appearing on the registry return card.[36] Petitioner points out that before receiving the demand letter, the matter was already the subject of a barangay conciliation proceeding, leading to the ejectment suit as the reasonable consequence of respondents' non-compliance with the demand to pay rentals and to vacate the property.[37]

Petitioner likewise submits that a prior demand is not required in an action for unlawful detainer since prior demand only applies

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[30] *Id.* at 46-59.

[31] *Id.* at 44-45. The Resolution was penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Ricardo R. Rosario and Mario V. Lopez of the Former Special Ninth Division, Court of Appeals, Manila.

[32] *Id.* at 3-32. The Comment (*rollo*, pp. 215-231) was filed on July 4, 2013 while the Reply (*rollo*, pp. 234-248) was filed on October 17, 2013. The parties were directed to submit their respective memoranda (*rollo*, pp. 251-276 and 277-296) on December 4, 2013 (*rollo*, pp. 250-250-A).

[33] *Id.* at 258-260.

[34] *Id.* at 261-262.

[35] *Id.* at 263-264.

[36] *Id.* at 265.

[37] *Id.*

if the grounds of the complaint are non-payment of rentals or non-compliance with the conditions of the lease. She points out that where the action is grounded on the expiration of the contract of lease, as in this instance where the lease was on a month-to-month basis, the failure to pay the rentals for the month terminates the lease. She argues that a notice or demand to vacate would be unnecessary[38] since "nothing in the law obligates . . . [the] owner-lessor to allow [the lessees] to stay forever in the leased property without paying any reasonable compensation or rental."[39]

Respondents counter that the Court of Appeals did not err in finding that the Regional Trial Court should have dismissed her appeal since petitioner admitted that she belatedly filed her memorandum of appeal before the trial court. They maintain that petitioner has not shown any justifiable reason for the relaxation of technical rules.[40] They insist that the demand to pay or to vacate is a jurisdictional requirement that must be complied with before an ejectment suit may be brought.[41]

Respondents maintain that registry receipts and registry return cards are not sufficient to establish that respondents received the demand letter considering that they must first be authenticated to serve as proof of receipt. They argue that the denial of receipt is sufficient since petitioner had the burden of proving that respondents actually received the demand letter.[42] They further contend that petitioner's complaint was grounded on the non-payment of the lease rentals and not, as petitioner belatedly claims, on the expiration lease; thus, petitioner must still comply with the jurisdictional requirement of prior demand.[43]

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[38] *Id*. at 268-271.

[39] *Id*. at 270.

[40] *Id*. at 284-287.

[41] *Id*. at 287-288.

[42] *Id*. at 289.

[43] *Id*. at 292-293.

The issues for resolution before this Court are the following:

First, whether or not the Regional Trial Court should have dismissed the appeal considering that petitioner Velia J. Cruz's Memorandum of Appeals was not filed within the required period; and

Finally, whether or not petitioner Velia J. Cruz was able to prove Spouses Maximo and Susan Christensen's receipt of her demand letter before filing her Complaint for unlawful detainer. In order to resolve the second issue, however, this Court must first address whether or not a demand was necessary considering that Maximo and Susan Christensen had a month-to-month lease on the property.

The Petition is granted.

I

Procedural rules of even the most mandatory character may be suspended upon a showing of circumstances warranting the exercise of liberality in its strict application.

Petitioner admits that her Memorandum of Appeal was filed nine (9) days beyond the 15-day period but that the Regional Trial Court opted to resolve her case on its merits in the interest of substantial justice.[44]

Rule 40, Section 7 of the Rules of Court states the procedure of appeal before the Regional Trial Court. It provides:

Section 7. Procedure in the Regional Trial Court.—

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) *Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court*, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum.

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[44] *Id*. at 262.

Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed. (Emphasis supplied)

The rule requiring the filing of the memorandum within the period provided is mandatory. Failure to comply will result in the dismissal of the appeal.[45] *Enriquez v. Court of Appeals*[46] explained:

Rule 40, Section 7 of the 1997 Rules of Civil Procedure is a new provision. Said section is based on Section 21 (c) and (d) of the Interim Rules Relative to the Implementation of the Judiciary Reorganization Act of 1980 (B.P. Blg. 129) with modifications. These include the following changes: (a) the appellant is required to submit a memorandum discussing the errors imputed to the lower court within fifteen (15) days from notice, and the appellee is given the same period counted from receipt of the appellant's memorandum to file his memorandum; (b) the failure of the appellant to file a memorandum is a ground for the dismissal of the appeal.

Rule 40, Section 7 (b) provides that, "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal." The use of the word "shall" in a statute or rule expresses what is mandatory and compulsory. Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge, requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement." Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.[47]

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[45] See *Ang v. Grageda*, 523 Phil. 830 (2006) [Per *J*. Callejo, Jr., First Division].

[46] 444 Phil. 419 (2003) [Per *J*. Quisumbing, Second Division].

[47] *Id*. at 427-428 *citing* 2 JOSE Y. FERIA AND MARIA CONCEPCION S. NOCHE, *CIVIL PROCEDURE ANNOTATED* 146 (2001) ; *Diokno v. Rehabilitation Finance Corp.*, 91 Phil. 608, 610 (1952) [Per *J*. Labrador, *En Banc*]; *Baranda*

Rule 40, Section 7 is likewise jurisdictional since the Regional Trial Court can only resolve errors that are specifically assigned and properly argued in the memorandum.[48] Thus, dismissals based on this rule are premised on the *non-filing* of the memorandum. A trial court does not acquire jurisdiction over an appeal where the errors have not been specifically assigned.

In this instance, a Memorandum of Appeal was filed late but was nonetheless given due course by the Regional Trial Court. Thus, the jurisdictional defect was cured since petitioner was able to specifically assign the Municipal Trial Court's errors, which the Regional Trial Court was able to address and resolve. This Court also notes that all substantial issues have already been fully litigated before the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals.

Procedural defects should not be relied on to defeat the substantive rights of litigants.[49] Even procedural rules of the most mandatory character may be suspended where "matters of life, liberty, honor or property"[50] warrant its liberal application. *Ginete v. Court of Appeals*[51] added that courts may also consider:

> (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory [, and that] (5) the other party will not be unjustly prejudiced thereby.[52]

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v. Gustilo, 248 Phil. 205 (1988) [Per *J*. Gutierrez, Jr., Third Division]; STATSKY, *LEGAL THESAURUS AND DICTIONARY* 263 (1986).

[48] See *Enriquez v. Court of Appeals*, 444 Phil. 419 (2003) [Per *J*. Quisumbing, Second Division].

[49] See *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998 [Per *J*. Romero, Third Division] citing *Carco Motor Sales v. Court of Appeals*, 78 SCRA 526 (1977).

[50] *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998 [Per *J*. Romero, Third Division].

[51] 357 Phil. 36 (1998) [Per *J*. Romero, Third Division].

[52] *Id*. at 54 citing *Paulino v. Court of Appeals*, 170 Phil. 308 (1977) [Per *J*. Teehankee, First Division].

Liberality in the application of Rule 40, Section 7 is warranted in this case in view of the potential inequity that may result if the rule is strictly applied. As will be discussed later, petitioner's meritorious cause would be unduly prejudiced if this case were to be dismissed on technicalities.

II

Possession of a property belonging to another may be tolerated or permitted, even without a prior contract between the parties, as long as there is an implied promise that the occupant will vacate upon demand.[53] Refusal to vacate despite demand will give rise to an action for summary ejectment.[54] Thus, prior demand is a jurisdictional requirement before an action for forcible entry or unlawful detainer may be instituted.

Under Rule 70, Section 1 of the Rules of Civil Procedure, an action for unlawful detainer may be brought against a possessor of a property who unlawfully withholds possession after the termination or expiration of the right to hold possession. Rule 70, Section 2 of the Rules of Civil Procedure requires that there must first be a prior demand to pay or comply with the conditions of the lease and to vacate before an action can be filed:

> Section 1. Who may institute proceedings, and when. — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

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[53] See *Yu v. De Lara*, 116 Phil. 1105 (1962) [Per *J*. Makalintal, *En Banc*].

[54] See *Yu v. De Lara*, 116 Phil. 1105 (1962) [Per *J*. Makalintal, *En Banc*].

Section 2. Lessor to proceed against lessee only after demand. — Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5) days in the case of buildings.

The property in this case is owned by petitioner. Respondents had a month-to-month lease with petitioner's predecessor-in-interest. Petitioner contends that no prior demand was necessary in this case since her Complaint was premised on the expiration of respondents' lease, not on the failure to pay rent due or to comply with the conditions of the lease.

The jurisdictional requirement of prior demand is unnecessary if the action is premised on the termination of lease due to expiration of the terms of contract. The complaint must be brought on the allegation that the lease has expired and the lessor demanded the lessee to vacate, not on the allegation that the lessee failed to pay rents.[55] The cause of action which would give rise to an ejectment case would be the expiration of the lease. Thus, the requirement under Rule 70, Section 2 of a prior "demand to pay or comply with the conditions of the lease and to vacate" would be unnecessary.[56]

In *Racaza v. Susana Realty,*[57] the lessee was asked by the lessor to vacate since the lessor needed the property. In *Labastida v. Court of Appeals*,[58] the month-to-month lease was deemed to have expired upon receipt of the notice to vacate at the end of the month. In *Tubiano v. Razo*,[59] the lessee was explicitly informed that her month-to-month lease would not be renewed.

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[55] See *Racaza v. Susana Realty*, 125 Phil. 307 (1966) [Per *J*. Regala, *En Banc*].

[56] See *Co Tiamco v. Diaz*, 78 Phil. 672 (1946) [Per *C.J*. Moran, *En Banc*].

[57] 125 Phil. 307 (1966) [Per *J*. Regala, *En Banc*].

[58] 351 Phil. 162 (1998) [Per *J*. Mendoza, Second Division].

[59] 390 Phil. 863 (2000) [Per *J*. Purisima, Third Division].

Admittedly, the Complaint[60] in this case alleges that petitioner's verbal consent and tolerance was withdrawn due to respondents' "continuous failure and adamant refusal to pay rentals"[61] and allegations of accrued unpaid rentals from June 1989 to February 2009.[62] The demand letter dated August 5, 2008 also specifies that it was premised on respondents' non-payment of the "reasonable compensation verbally agreed upon."[63] This would have been enough to categorize the complaint for unlawful detainer as one for non-payment of rentals, not one for expiration of lease.

However, respondents' Answer[64] to the Complaint is telling. Respondents admit that they only had a month-to-month lease since 1969. They contend that they had been continuously paying their monthly rent until sometime in 2002, when petitioner *refused to receive it*.[65] Thus, as early as 2002, petitioner, as the lessor, already refused to renew respondents' month-to-month verbal lease. Therefore, respondents' lease had already long expired before petitioner sent her demand letters.

Respondents cannot feign ignorance of petitioner's demand to vacate since the matter was brought to barangay conciliation proceedings in 2005. The barangay certification issued on August 11, 2005 shows that no compromise was reached between the parties.[66]

Therefore, respondents' insistence on the non-receipt of the demand letter is misplaced. Their verbal lease over the property had already expired sometime in 2002. They were explicitly told to vacate in 2005. They continued to occupy the property

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[60] *Rollo*, pp. 60-65.

[61] *Id*. at 61.

[62] *Id*. at 62.

[63] *Id*. at 69.

[64] *Id*. at 72-74.

[65] *Id*. at 62.

[66] *Id*. at 68.

until petitioner sent her final demand letter in 2008. The demand letter would have been unnecessary since respondents' continued refusal to vacate despite the expiration of their verbal lease was sufficient ground to bring the action.

Respondents have occupied the property since 1969, or for 48 years on a mere verbal month-to-month lease agreement and by sheer tolerance of petitioner and her late mother. All this time, respondents have failed to formalize their agreement in order to protect their right of possession. Their continued occupation of the property despite the withdrawal of the property owner's consent and tolerance deprived the property owner of her right to use and enjoy the property as she sees fit.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The Court of Appeals October 11, 2012 Decision and January 21, 2013 Resolution in CA-G.R. SP No. 117773 are **REVERSED** and **SET ASIDE**. Respondents Maximo and Susan Christensen and all persons claiming rights under them are ordered, upon finality of this Decision, to immediately **VACATE** the property and **DELIVER** its peaceful possession to petitioner Velia J. Cruz. Respondents Maximo and Susan Christensen are likewise ordered to **PAY** petitioner Velia J. Cruz 1,000.00 as monthly rental plus its interest at the rate of six percent (6%) per annum, to be computed from April 27, 2009, the date of judicial demand, until the finality of this Decision.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 205665. October 4, 2017]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **METRO CEBU PACIFIC[*] SAVINGS BANK and CORDOVA TRADING POST, INC.,** *respondents*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PROPERTY REGISTRATION DECREE (PD NO. 1529); SECTION 14 ON WHO MAY APPLY FOR ORIGINAL REGISTRATION OF TITLE.—** Section 14 of P.D. No. 1529 enumerates those who may apply for original registration of title to land, *viz.*: Section 14. *Who may apply.* The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier. (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws. (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws. (4) Those who have acquired ownership of land in any other manner provided for by law.

2. **ID.; ID.; ID.; ID.; SECTION 14(1) ON AN APPLICANT IN POSSESSION OF DISPOSABLE PUBLIC LAND UNDER A *BONA FIDE* CLAIM OF OWNERSHIP SINCE JUNE 12, 1945; CLAIM OF OWNERSHIP REQUIRES PROOF OF SPECIFIC ACTS; TAX DECLARATIONS MUST BE COUPLED WITH PROOF OF ACTUAL POSSESSION.—** Under Section 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a *bona fide* claim of ownership, by himself and/or through his

[*] The nameof the rspondent is Metro Cebu "Public" Saving Bank as mentioned in the Municipal Circuit Trial Court decision.

predecessors-in-interest since June 12, 1945, or earlier; and (2) that the property sought to be registered is already declared alienable and disposable at the time of the application. x x x It is settled that the applicant must present proof of specific acts of ownership to substantiate the claim and cannot just offer general statements, which are mere conclusions of law rather than factual evidence of possession. Actual possession consists in the manifestation of acts of dominion over it of such a nature as a party would actually exercise over his own property. x x x [On] the respondents' claim of ownership of the subject properties based on the tax declarations they presented x x x, [i]t is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.

3. ID.; ID.; ID.; ID.; ID.; THE APPLLICANT MUST PROVE THAT THE PROPERTY SOUGHT TO BE REGISTERED WAS ALREADY DECLARED INALIENABLE AND DISPOSABLE AT THE TIME OF THE APPLICATION.— The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant. The applicant for land registration must prove that the Department of Environment and Natural Resources (DENR) Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the Provincial Environment and Natural Resources Office (PENRO) or CENRO. In addition, **the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records**. These facts must be established to prove that the land is alienable and disposable. In *Valiao v. Republic*, the Court declared that "[t]here must be a positive act declaring land of public domain as alienable and disposable." The applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; and administrative action, investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Yvonne Marie A. Rivera for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated January 18, 2013 issued by the Court of Appeals (CA) in CA-G.R. CV No. 03296.

Facts

On November 7, 2006, Metro Cebu Public Savings Bank (Metro Cebu) and Cordova Trading Post, Inc. (Cordova Trading) (collectively, respondents) filed with the Municipal Circuit Trial Court (MCTC) of Consolacion-Cordova, Cebu separate applications for original registration of two parcels of land situated in Barangay Poblacion, Compostela, Cebu. Metro Cebu applied for the original registration of Lot No. 325-A, while Cordova Trading applied for Lot No. 325-B. Lot Nos. 325-A and 325-B (subject properties) are both covered by the Cordova Cad. 670 and contains an area of 933 square meters and 531 sq m, respectively.[3]

Cordova Trading claimed that it acquired Lot No. 325-B from Benthel Development Corporation (Benthel) through an exchange of properties, as regards 393-sq-m portion thereof, and by sale, as regards the remaining 118 sq m. In turn, Benthel bought the said parcels of land from Clodualdo Dalumpines (Dalumpines) as evidenced by two (2) Deeds of Absolute Sale executed on

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[1] *Rollo*, pp. 9-69.

[2] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan, concurring; *id*. at 71-80.

[3] *Id*. at 11; 156.

August 8, 1994, for the 393-sq-m parcel of land, and on April 3, 1996, for the remaining 118-sq-m parcel of land. Cordova Trading claimed that the parcels of land bought by Benthel from Dalumpines, which it eventually acquired, have been consolidated and is now denominated as Lot No. 325-B.[4]

On the other hand, Metro Cebu averred that Dalumpines, as security for his loan, mortgaged in its favor Lot No. 325-A; that the mortgage was subsequently foreclosed in favor of Metro Cebu as evidenced by an Affidavit of Consolidation of Ownership.[5]

The respondents further alleged that the entire Lot No. 325 was previously possessed and owned by Dalumpines since 1967; by Fausto Daro from 1966 until 1967; and by Pablo Daro (Pablo) from 1948 until 1966. They averred that an older tax declaration over the subject properties dates as far back as 1945 or earlier still exists in the records. They insist that they and their predecessors-in-interest have been in open, continuous, and peaceful possession of the subject properties for more than 30 years.[6]

The respondents attached the following documents in support of their respective applications for original registration: (1) tracing plan; (2) blue print copies; (3) technical description of the subject properties; (4) surveyor's certificate/exemption; (5) certified true copy of the latest tax declaration; (6) Clearance from the Regional Trial Court and Municipal Trial Court in Cities; and (7) Certification issued by the Community Environment and Natural Resources Office (CENRO) that the subject properties are alienable and disposable.[7]

The case was set for initial hearing by the MCTC on May 15, 2008. Meanwhile, on February 14, 2008, the Office of the Solicitor General (OSG) filed with the MCTC its Notice of

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[4] *Id*. at 157.

[5] *Id*. at 158.

[6] *Id*.

[7] *Id*. at 14.

Appearance, Letter of Deputation of the Provincial Prosecutor of Cebu City, and Opposition to the Application for Original Registration. On May 15, 2008, during the initial hearing, the MCTC issued an Order, which set the application for original registration for trial on the merits on June 4, 2008.[8]

During the trial, the respondents presented the testimonies of the following: (1) Gemma Sheila Cruz-Gonzaga (Gonzaga), an employee of Benthel; (2) Corazon G. Oliveras (Oliveras), an employee of Metro Cebu; (3) Roland R. Cotejo (Cotejo), Forester II at the CENRO, Cebu City; and (4) Cristino Indino (Indino), a relative of Dalumpines.[9]

Gonzaga affirmed that Cordova Trading acquired Lot No. 325-B from Benthel which, in turn, acquired the same from Dalumpines. She testified that the remaining portion of Lot No. 325 was mortgaged by Dalumpines to Metro Cebu; that the mortgage was subsequently foreclosed with Metro Cebu being the highest bidder during the public sale.[10] Oliveras echoed the testimony of Gonzaga insofar as Lot No. 325-A is concerned.

Cotejo testified that, as Forester II in CENRO, Cebu City, his duty includes the evaluation of lands, *i.e.*, the conduct of a projection to determine whether the same is within the alienable and disposable lands of the public domain. He claimed that Lot Nos. 325-A and 325-B, after a projection, was determined by him to be within the alienable and disposable lands of the public domain.[11] Lastly, Indino alleged that he is a distant relative of Dalumpines; that he personally knows that the subject properties are owned by Dalumpines and that the latter had been the owner and in possession of the same for more than 30 years.[12]

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[8] *Id*. at 17.

[9] *Id*. at 83-89.

[10] *Id*. at 85-86.

[11] *Id*. at 88.

[12] *Id*. at 89.

On June 29, 2009, the MCTC rendered a Decision,[13] the decretal portion of which reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered ordering for the registration and the conformation of the title of the applicant-corporation over LOT 335-A and 325-B, (sic) Cad 670, containing an area of NINE HUNDRED THIRTY-THREE (933) SQUARE METERS and FIVE HUNDRED THIRTY-ONE (531) SQUARE METERS, respectively, or a total of ONE THOUSAND FOUR HUNDRED SIXTY-FOUR (1,464) SQUARE METERS and that upon the finality of this decision let a corresponding decree of registration be issued in favor of the herein applicants in accordance with Section 39 of P.D. 1529.
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> SO ORDERED.[14]

In granting the respondents' application, the MCTC opined that:

> After a careful consideration of the evidence presented in the above-entitled application, the Court is convinced, and so holds, that the applicant-corporation[s] [were] able to establish [their] ownership and possession over the subject lot[s] which [are] within the area considered by the Department of Environment and Natural Resources as alienable and disposable land of the public domain.
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> x x x x x x x x x
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> It is to be noted that from the certification issued by the CENRO x x x, the parcel of land applied for was classified as alienable and disposable in 1974 and hence, has been open to private appropriation since that year. Since the applicant-corporation[s] and [their] predecessors-in-interest have been in open, continuous and exclusive possession of the land applied for more than thirty (30) years since 1948 when the same was classified as alienable and disposable, then it should be said that the said portion have been segregated from the mass of public land to become private property of the applicant[s].[15]

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[13] Issued by Presiding Judge Jocelyn G. Uy-Po; *id*. at 81-90.

[14] *Id*. at 90.

[15] *Id*. at 89-90.

Aggrieved, the OSG appealed the MCTC's Decision dated June 29, 2009 to the CA, claiming that the trial court erred in granting the respondents' application for original registration of the subject properties. The OSG maintained that the respondents failed to prove that the subject properties were occupied and possessed by the respondents, by themselves and/or their predecessors-in-interest, for the period required by law.[16]

On January 18, 2013, the CA rendered the herein assailed Decision,[17] which affirmed the MCTC's ruling. The CA opined that the evidence presented by the respondents reflect the twin requirements of ownership and possession over the subject properties for at least 30 years.[18] The CA pointed out that the respondents were able to prove that the subject properties form part of the alienable and disposable lands of the public domain since February 25, 1974, as evidenced by the Certification issued by the CENRO.[19]

In this petition for review on *certiorari*, the OSG maintains that the requirement under Section 14(1) of Presidential Decree (P.D.) No. 1529,[20] *i.e.*, open, continuous, exclusive and notorious possession and occupation of the subject properties under a *bona fide* claim of ownership since June 12, 1945, has not been complied with by the respondents.[21]

On the other hand, the respondents maintain that the subject properties form part of the alienable and disposable lands of the public domain as evidenced by the Certification issued by the CENRO, Cebu City.[22] They further insist that they were able to sufficiently prove their open, continuous and exclusive

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[16] *Id*. at 91-151.

[17] *Id*. at 71-80.

[18] *Id*. at 79.

[19] *Id*. at 78.

[20] The Property Registration Decree.

[21] *Rollo*, p. 31.

[22] *Id*. at 212.

possession of the subject properties, by themselves and their predecessors-in-interest, as evidenced by the tax declarations they presented, the earliest of which was issued sometime in 1947, and by the testimony of Indino.[23]

Issue

Essentially, the issue for the Court's resolution is whether the CA erred in granting the respondents' Application for Original Registration of the subject properties.

Ruling of the Court

The petition is granted.

The lower courts should have denied the respondents' applications for original registration of the subject properties since they miserably failed to prove their entitlement thereto. Section 14 of P.D. No. 1529 enumerates those who may apply for original registration of title to land, *viz.*:

> Section 14. *Who may apply.* The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.
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> x x x x x x x x x

[23] *Id.* at 213.

Contrary to the respondents' claim, their respective applications for original registration of the subject properties should be denied.

Under Section 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a *bona fide* claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (2) that the property sought to be registered is already declared alienable and disposable at the time of the application.[24]

The lower courts erred in ruling that the respondents were able to establish that they and their predecessors-in-interest have been in peaceful, open, continuous, exclusive, and notorious possession and occupation of the same in the concept of owners prior to June 12, 1945. It is settled that the applicant must present proof of specific acts of ownership to substantiate the claim and cannot just offer general statements, which are mere conclusions of law rather than factual evidence of possession.[25] Actual possession consists in the manifestation of acts of dominion over it of such a nature as a party would actually exercise over his own property.[26]

The CA, in concluding that the respondents met the required possession and occupation of the subject properties for original registration, opined that:

> To prove open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership, appellees presented evidence such as: tax declarations as far as 1947; and the testimony of witness [Indino], who claimed that he is a relative of Mr. Dalumpines and that Mr. Dalumpines has been in possession of the subject lot for a considerable period of time. Witness Mr. Indino likewise claimed

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[24] See *Heirs of Malabanan v. Republic of the Philippines*, 605 Phil. 244, 270 (2009).

[25] See *Republic of the Philippines v. Carrasco*, 539 Phil. 205, 216 (2006).

[26] See *Republic of the Philippines v. Candy Maker, Inc.*, 525 Phil. 358, 376-377 (2006).

that as soon as he reached the age of reason, he had already known that Mr. Dalumpines' family owned the subject lot for a period of forty (40) years.

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x x x Instead, **We find that the evidence presented shows compliance not only with the first requirement of Section 14(1) but also the second requirement thereof**.[27]

The Court does not agree.

Indeed, there is nothing in this case which would substantiate the respondents' claim that they have been in possession of the subject properties since June 12, 1945, or earlier. The earliest tax declaration that was presented in the name of Dalumpines was issued only in 1967.[28] Although the respondents presented a tax declaration over the subject property issued to Pablo in 1948,[29] they failed to establish the relationship of Pablo to Dalumpines.

In any case, the respondents' claim of ownership of the subject properties based on the tax declarations they presented will not prosper. It is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.[30] In this case, the respondents miserably failed to prove that they and their predecessors-in-interest actually possessed the properties since June 12, 1945 or earlier.

More importantly, the lower courts failed to consider that the respondents failed to sufficiently establish that the subject properties form part of the alienable and disposable lands of the public domain. The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The *onus* to overturn, by

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[27] *Rollo*, pp. 78-79.

[28] *Id*. at 52.

[29] *Id*.

[30] See *Cequeña v. Bolante*, 386 Phil. 419, 422 (2000).

incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.[31]

The applicant for land registration must prove that the Department of Environment and Natural Resources (DENR) Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the Provincial Environment and Natural Resources Office (PENRO) or CENRO. In addition, **the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records**. These facts must be established to prove that the land is alienable and disposable.[32]

In *Valiao v. Republic*,[33] the Court declared that "[t]here must be a positive act declaring land of public domain as alienable and disposable."[34] The applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order; and administrative action, investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

In this case, the respondents failed to present any evidence showing that the DENR Secretary had indeed approved a land classification and released the land of the public domain as alienable and disposable, and that the subject properties fall within the approved area per verification through survey by the PENRO or CENRO. They failed to establish the existence of a positive act from the government declaring the subject

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[31] *Republic of the Philippines v. T.A.N. Properties, Inc.*, 578 Phil. 441, 450 (2008).

[32] *Id.* at 452-453.

[33] 677 Phil. 318 (2011).

[34] *Id.* at 327.

properties as alienable and disposable. Absent the primary and preliminary requisite that the lands applied for are alienable and disposable, all other requisites allegedly complied with by the respondents becomes irrelevant and unnecessary.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **GRANTED**. The Decision dated January 18, 2013 issued by the Court of Appeals in CA-G.R. CV No. 03296 is hereby **REVERSED** and **SET ASIDE**. The respective applications for registration of original title to Lot Nos. 325-A and 325-B filed by respondents Metro Cebu Public Savings Bank and Cordova Trading Post, Inc. are hereby **DENIED** for lack of merit.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 209342. October 4, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISENTE PEPAÑO NUÑEZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EYEWITNESS IDENTIFICATION CONSIDERING THE TOTALITY OF CIRCUMSTANCES TEST.— The frailty of human memory is a scientific fact. The danger of inordinate reliance on human memory in criminal proceedings, where conviction results in the possible deprivation of liberty, property, and even life, is equally established. x x x Domestic jurisprudence recognizes that eyewitness identification is affected by "normal

human fallibilities and suggestive influences." *People v. Teehankee, Jr.* introduced in this jurisdiction the totality of circumstances test, x x x (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

2. ID.; ID.; ID.; ID.; WITNESS' ACCURACY OF ANY PRIOR DESCRIPTION IS ALSO VITAL AND WITNESS' DEGREE OF CERTAINTY AT THE MOMENT OF IDENTIFICATION IS CRITICAL.— Apart from the witness' opportunity to view the perpetrator during the commission of the crime and the witness' degree of attention at that time, the accuracy of any prior description given by the witness is equally vital. Logically, a witness' credibility is enhanced by the extent to which his or her initial description of the perpetrator matches the actual appearance of the person ultimately prosecuted for the offense. x x x The totality of circumstances test also requires a consideration of the degree of certainty demonstrated by the witness at the moment of identification. What is most critical here is the initial identification made by the witness during investigation and case build-up, not identification during trial.

3. ID.; ID.; ID.; ID.; CONSIDERATION REQUIRED ON THE LENGTH OF TIME BETWEEN THE CRIME AND THE IDENTIFICATION MADE BY THE WITNESS.— The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. "It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one." Ideally then, a prosecution witness must identify the suspect immediately after the incident. This Court has considered acceptable an identification made two (2) days after the commission of a crime, not so one that had an interval of five and a half (5½) months.

4. ID.; ID.; ID.; NOT AFFECTED BY INCONSISTENCIES ONLY WHEN THE INCONSISTENCIES ARE MINOR, ULTIMATELY INCONSEQUENTIAL TO THE CRIME ITSELF.— Jurisprudence holds that inconsistencies in the

testimonies of prosecution witnesses do not necessarily jeopardize the prosecution's case. This, however, is only true of minor inconsistencies that are ultimately inconsequential or merely incidental to the overarching narrative of what crime was committed; how, when, and where it was committed; and who committed it. "It is well-settled that inconsistencies on minor details do not affect credibility as they only refer to collateral matters which do not touch upon the commission of the crime itself."

5. ID.; ID.; WEIGHT AND SUFFICIENCY; CONVICTION IN CRIMINAL CASE DEMANDS PROOF BEYOND REASONABLE DOUBT.— Conviction in criminal cases demands proof beyond reasonable doubt. While this does not require absolute certainty, it calls for moral certainty. It is the degree of proof that appeals to a magistrate's conscience.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

To convict an accused, it is not sufficient for the prosecution to present a positive identification by a witness during trial due to the frailty of human memory. It must also show that the identified person matches the original description made by that witness when initially reporting the crime. The unbiased character of the process of identification by witnesses must likewise be shown.

Criminal prosecution may result in the severe consequences of deprivation of liberty, property, and, where capital punishment is imposed, life. Prosecution that relies solely on eyewitness identification must be approached meticulously, cognizant of the inherent frailty of human memory. Eyewitnesses who have previously made admissions that they could not identify the perpetrators of a crime but, years later and after a highly

suggestive process of presenting suspects, contradict themselves and claim that they can identify the perpetrator with certainty are grossly wanting in credibility. Prosecution that relies solely on these eyewitnesses' testimonies fails to discharge its burden of proving an accused's guilt beyond reasonable doubt.

This resolves an appeal from the assailed June 26, 2013 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 04474, which affirmed with modification the February 24, 2010 Decision[2] of Branch 67, Regional Trial Court, Binangonan, Rizal. This Regional Trial Court Decision found accused-appellant Crisente Pepaño Nuñez (Nuñez) guilty beyond reasonable doubt of robbery with homicide.

In an Information, George Marciales (Marciales), Orly Nabia (Nabia), Paul Pobre (Pobre), and a certain alias "Jun" (Jun) were charged with robbery with homicide, under Article 294(1) of the Revised Penal Code,[3] as follows:

> That on or about the 22nd of June 2000, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another, armed with handguns, by means of violence against or intimidation of the persons of Felix V. Regencia, Alexander C. Diaz and Byron G. Dimatulac, with intent to gain, did then and there, willfully, unlawfully and feloniously take and carry away the money amounting to ₱5,000.00 belonging to the Caltex gasoline station owned by the family of Felix

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[1] *Rollo*, pp. 2-17. The Decision was penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Noel G. Tijam and Romeo F. Barza of the Seventh Division, Court of Appeals, Manila.

[2] CA *rollo*, pp. 18-21. The Decision, docketed as Crim. Case No. 00-473, was penned by Presiding Judge Dennis Patrick Z. Perez.

[3] REV. PEN. CODE, Art. 294(1) provides:

> Article 294. Robbery with violence against or intimidation of persons– Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
>
> 1. The penalty of *reclusión perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

V. Regencia to their damage and prejudice; that on the occasion of the said robbery and to insure their purpose, the said accused, conspiring, confederating and mutually helping and aiding one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot said Felix V. Regencia, Alexander C. Diaz and Byron G. Dimatulac on the different parts of their bodies, thereby inflicting gunshot wounds which directly caused their deaths.[4]

At first, only Marciales and Nabia were arrested, arraigned, and tried. In its December 9, 2005 Decision,[5] the Regional Trial Court found the offense of robbery with homicide as alleged in the Information, along with Marciales and Nabia's conspiracy with Pobre and Jun to commit this offense, to have been established. Thus, it pronounced Marciales and Nabia guilty beyond reasonable doubt and sentenced them to death.[6] The case against Pobre and Jun was archived subject to revival upon their apprehension.[7]

On July 2, 2006, accused-appellant Nuñez was apprehended by the Philippine National Police Regional Intelligence Office on the premise that he was the same "Paul Pobre" identified in the Information. Upon arraignment, Nuñez moved that the case against him be dismissed as he was not the "Paul Pobre" charged in the Information. However, prosecution witnesses identified him as one (1) of the alleged robbers and his motion to dismiss was denied. The information was then amended to state Nuñez's name in lieu of "Paul Pobre."[8]

During trial, the prosecution manifested that it would be adopting the evidence already presented in the course of Marciales and Nabia's trial. Apart from this, it also recalled prosecution witnesses Ronalyn Cruz (Cruz) and Relen Perez

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[4] *Rollo*, p. 3.

[5] CA *rollo*, p. 73.

[6] *Id*. at 108 and *rollo*, pp. 3-4.

[7] *Rollo*, pp. 3-4.

[8] CA *rollo*, pp. 108-109.

(Perez). In their testimonies, they both positively identified Nuñez as among the perpetrators of the crime.[9]

Cruz's testimony recounted that in the evening of June 22, 2000, she was working as an attendant at the Caltex gasoline station mentioned in the Information. She was then sitting near the gasoline pumps with her co-employees, the deceased Byron G. Dimatulac (Dimatulac) and prosecution witness Perez. They noticed that the station's office was being held up. There were two (2) persons poking guns at and asking for money from the deceased Alex Diaz (Diaz) and Felix Regencia (Regencia). Regencia handed money to one (1) of the robbers while the other robber reached for a can of oil. Regencia considered this as enough of a distraction to put up a fight. Regencia and Diaz grappled with the robbers. In the scuffle, Diaz shouted. At the sound of this, two (2) men ran to the office. The first was identified to be Marciales and the second, according to Cruz, was Nuñez. Dimatulac also ran to the office to assist Regencia and Diaz. Marciales then shot Dimatulac while Nuñez shot Diaz. Cruz and Perez sought refuge in a computer shop. About 10 to 15 minutes later, they returned to the gasoline station where they found Diaz already dead, Dimatulac gasping for breath, and Regencia wounded and crawling. By then, the robbers were rushing towards the highway.[10]

Perez's testimony recounted that in the evening of June 22, 2000, she was working as a sales clerk in the Caltex gasoline station adverted to in the Information. While seated with Cruz near the gasoline pumps, she saw Nuñez, who was pointing a gun at Diaz, and another man who was pointing a gun at Regencia, inside the gasoline station's office. Diaz shouted that they were being robbed. Another man then rushed to the gasoline station's office, as did her co-employee Dimatulac. A commotion ensued where the robber identified as Marciales shot Dimatulac, Diaz, and Regencia. They then ran to their employer's house.[11]

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[9] *Rollo,* pp. 4-5.

[10] *Id.* and CA *rollo*, pp. 111-113.

[11] *Id.* at 5 and CA *rollo*, pp. 114-116.

Nuñez testified in his own defense and recalled the circumstances of his apprehension. He stated that when he was apprehended on July 2, 2006, he was on his way to his aunt's fish store where he was helping since 1999 when a man approached him. He was then dragged and mauled. With his face covered, he was boarded on a vehicle and brought to Camp Vicente Lim in Laguna. He further claimed that on June 22, 2000, he was in Muzon, Taytay, Rizal with his aunt at her fish store until about 5:00 p.m. before going home. At home, his aunt's son fetched him to get pails from the store and bring them to his aunt's house.[12]

On February 24, 2010, the Regional Trial Court rendered a Decision[13] finding Nuñez guilty beyond reasonable doubt of robbery with homicide. This four (4)-page Decision incorporated the original Regional Trial Court December 9, 2005 Decision and added the following singular paragraph in explaining Nuñez's supposed complicity:

> To convict Nuñez of robbery with homicide requires proof beyond reasonable doubt that he: (1) took personal property which belongs to another; (2) the taking is unlawful; (3) the taking is done with intent to gain; and (4) the taking was accomplished with the use of violence against or intimidation of persons or by using force upon things. Article 294(1) of the Revised Penal Code and (5) when by reason or on occasion of the robbery, the crime of homicide shall have been committed[.] The facts are simple. Nuñez along with Marciales and Nabia robbed the Tayuman Caltex gas station of ₱5,000.00 and some cans of oil. For such booty, he[,] along with his fellow thieves[,] shot and killed Felix Regencia, Alexander C. Diaz and Byron G. Dimatulac. He was positively and unequivocally identified by Renel Cruz and Ronalyn Perez as [one] of the perpetrators even as he tried to hide behind another name and was arrested later. He ran but could not hide as the long arm of the law finally caught up with him. As a defense, he can only offer his weak alibi which cannot offset the positive identification of the prosecution witnesses. His guilt was proven beyond reasonable doubt.[14]

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[12] *Id.* at 5-6.

[13] CA *rollo*, pp. 18-21.

[14] *Id.* at 19.

The Regional Trial Court rendered judgment, as follows:

> Based on the foregoing, we find accused Crisente Pepaño Nuñez GUILTY beyond reasonable doubt of the crime of Robbery with Homicide under Article 294 (1) of the Revised Penal Code and sentences (sic) him to suffer the penalty of *Reclusión Perpetua* and order him to pay:
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> 1. The heirs of Felix Regencia Php. 151,630.00 expenses for the wake, burial lot and funeral service; Php. 75,000.00 death indemnity; Php. 5,000.00 money stolen from the victim; exemplary damages of Php. 50,000.00; and Php. 2,214,000.00 unearned income;
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> 2. The heirs of Alexander Diaz Php. 20,000.00 expenses for funeral service; Php. 75,000.00 death indemnity; Php. 50,000.00 exemplary damages; and Php. 1,774,080.00 unearned income;
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> 3. The heirs of Byron Dimatulac Php. 18,000.00 for funeral service; Php. 75,000.00 death indemnity; Php. 50,000.00 exemplary damages; and Php. 966,240.00 unearned income[;] and
>
> 4. The costs.
>
> Let the case against alias "Jun" who remains at large be archived.
>
> SO ORDERED.[15]

On March 5, 2010, Nuñez filed his Notice of Appeal.[16]

On June 26, 2013, the Court of Appeals rendered its assailed Decision[17] affirming Nuñez's conviction, with modification to the awards of moral and exemplary damages, as follows:

> WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED for lack of merit. The Decision dated February 24, 2010 of the Regional Trial Court of Binangonan, Rizal, Branch 67, in Criminal Case No. 00-473 is hereby AFFIRMED with MODIFICATION. Accused-appellant Crisente Pepaño Nuñez is ordered to pay ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages each to the heirs of Felix Regencia, the heirs of Alexander Diaz and the heirs of Byron Dimatulac.

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[15] *Id.* at 21.

[16] *Rollo*, p. 6.

[17] *Id.* at 2-17.

SO ORDERED.[18]

Nuñez then filed his Notice of Appeal.[19]

The Court of Appeals elevated the records of this case to this Court on October 22, 2013 pursuant to its Resolution dated July 23, 2013. The Resolution gave due course to Nuñez's Notice of Appeal.[20]

In its Resolution[21] dated December 4, 2013, this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs. However, both parties manifested that they would no longer do so.[22]

The occurrence of the robbery occasioned by the killing of Regencia, Diaz, and Dimatulac is no longer in issue as it has been established in the original proceedings which resulted in the conviction of Marciales and Nabia.

All that remains in issue for this Court's resolution is whether or not accused-appellant Crisente Pepaño Nuñez is the same person, earlier identified as Paul Pobre, who acted in conspiracy with Marciales and Nabia.

Contrary to the conclusions of the Court of Appeals and Regional Trial Court, this Court finds that it has not been established beyond reasonable doubt that accused-appellant Crisente Pepaño Nuñez is the same person identified as Paul Pobre. Thus, this Court reverses the courts *a quo* and acquits accused-appellant Crisente Pepaño Nuñez.

The prosecution's case rises and falls on the testimonies of eyewitnesses Cruz and Perez. The necessity of their identification

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[18] *Id*. at 16.

[19] *Id*. at 19-20.

[20] *Id*. at 1.

[21] *Id*. at 24.

[22] *Id*. at 27-30, Manifestation of the Office of the Solicitor General on behalf of the People of the Philippines, and *rollo*, pp. 31–34, Manifestation of Nuñez.

of Nuñez is so manifest that the prosecution saw it fit to recall them to the stand, even as it merely adopted the evidence already presented in the trial of Marciales and Nabia. Cruz's and Perez's testimonies centered on their supposed certainty as to how it was Nuñez himself, excluding any other person, who participated in the robbery and homicide.

This Court finds this supposed certainty and the premium placed on it by the Court of Appeals and the Regional Trial Court to be misplaced.

I

There are two (2) principal witnesses who allegedly identified accused-appellant as the same Pobre who participated in the robbery hold-up. When Cruz, the first witness, was initially put on the witness stand, she asserted that she could not recall any of the features of Pobre. After many years, with the police presenting her with accused-appellant, she positively identified him as the missing perpetrator. The second principal witness' testimony on the alleged participation of accused-appellant is so fundamentally at variance with that of the other principal witness. The prosecution did not account for the details of the presentation of accused-appellant to the two (2) witnesses after he was arrested. Finally, these witnesses' alleged positive identification occurred almost eight (8) years, for the first witness, and almost nine (9) years, for the second witness, from the time of the commission of the offense.

The frailty of human memory is a scientific fact. The danger of inordinate reliance on human memory in criminal proceedings, where conviction results in the possible deprivation of liberty, property, and even life, is equally established.

Human memory does not record events like a video recorder. In the first place, human memory is more selective than a video camera. The sensory environment contains a vast amount of information, but the memory process perceives and accurately records only a very small percentage of that information. Second, because the act of remembering is reconstructive, akin to putting puzzle pieces together, human memory can change in dramatic and unexpected ways because

of the passage of time or subsequent events, such as exposure to "postevent" information like conversations with other witnesses or media reports. Third, memory can also be altered through the reconstruction process. Questioning a witness about what he or she perceived and requiring the witness to reconstruct the experience can cause the witness' memory to change by unconsciously blending the actual fragments of memory of the event with information provided during the memory retrieval process.[23]

Eyewitness identification, or what our jurisprudence commendably refers to as "positive identification," is the bedrock of many pronouncements of guilt. However, eyewitness identification is but a product of flawed human memory. In an expansive examination of 250 cases of wrongful convictions where convicts were subsequently exonerated by DNA testing, Professor Brandon Garett (Professor Garett) noted that as much as 190 or 76% of these wrongful convictions were occasioned by flawed eyewitness identifications.[24] Another observer has more starkly characterized eyewitness identifications as "the leading cause of wrongful convictions."[25]

Yet, even Professor Garrett's findings are not novel. The fallibility of eyewitness identification has been recognized and has been the subject of concerted scientific study for more than a century:

> This seemingly staggering rate of involvement of eyewitness errors in wrongful convictions is, unfortunately, no surprise. Previous studies have likewise found eyewitness errors to be implicated in the majority of cases of wrongful conviction. But Garrett's analysis went farther than these previous studies. He not only documented that eyewitness errors occurred in his cases. He also tried to determine why they

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[23] Elizabeth F. Loftus, *et al., Beyond the Ken-Testing Jurors' Understanding of Eyewitness Reliability Evidence*, 46 *Jurimetrics* 177 (2005).

[24] Deborah Davis and Elizabeth F. Loftus, *Dangers of Eyewitnesses for the Innocent: Learning from the Past and Projecting into the Age of Social Media*, 46 *New Eng. L. Rev*. 769, 769 (2012).

[25] Sandra Guerra Thompson, *Daubert Gatekeeping for Eyewitness Identifications*, 65 S.M.U. L. Rev. 593, 596 (2012).

occurred – an issue eyewitness science has investigated for over 100 years.[26]

The dangers of the misplaced primacy of eyewitness identification are two (2)-pronged: on one level, eyewitness identifications are inherently prone to error; on another level, the appreciation by observers, such as jurors, judges, and law enforcement officers of how an eyewitness identifies supposed culprits is just as prone to error:

> The problem of eyewitness reliability could not be more clearly documented. The painstaking work of the Innocence Project, Brandon Garrett, and others who have documented wrongful convictions, participated in the exonerations of the victims, and documented the role of flawed evidence of all sorts has clearly and repeatedly revealed the two–pronged problem of unreliability for eyewitness evidence: (1) eyewitness identifications are subject to substantial error, and (2) observer judgments of witness accuracy are likewise subject to substantial error.[27]

The bifurcated difficulty of misplaced reliance on eyewitness identification is borne not only by the intrinsic limitations of human memory as the basic apparatus on which the entire exercise of identification operates. It is as much the result of and is exacerbated by extrinsic factors such as environmental factors, flawed procedures, or the mere passage of time:

> More than 100 years of eyewitness science has supported other conclusions as well. First, the ability to match faces to photographs (even when the target is present while the witness inspects the lineup or comparison photo) is poor and peaks at levels far below what might be considered reasonable doubt. Second, eyewitness accuracy is further degraded by pervasive environmental characteristics typical of many criminal cases such as: suboptimal lighting; distance; angle of view; disguise; witness distress; and many other encoding conditions. Third, memory is subject to distortion due to a variety of influences

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[26] Deborah Davis and Elizabeth F. Loftus, *Dangers of Eyewitnesses for the Innocent: Learning from the Past and Projecting into the Age of Social Media*, 46 *NEW ENG. L. REV.* 769, 770 (2012).

[27] *Id*. at 808.

not under the control of law enforcement that occur between the criminal event and identification procedures and during such procedures. Fourth, the ability of those who must assess the accuracy of eyewitness testimony is poor for a variety of reasons. Witnesses' ability to report on many issues affecting or reflecting accuracy is flawed and subject to distortion (e.g., reports of duration of observation, distance, attention, confidence, and others), thereby providing a flawed basis for others' judgments of accuracy.[28]

Likewise, decision-makers such as jurists and judges, who are experts in law, procedure, and logic, may simply not know better than what their backgrounds and acquired inclinations permit:

> Additionally, the limits and determinants of performance for facial recognition are beyond the knowledge of attorneys, judges, and jurors. The traditional safeguards such as cross-examination are not effective and cannot be effective in the absence of accurate knowledge of the limits and determinants of witness performance among both the cross-examiners and the jurors who must judge the witness. Likewise, cross-examination cannot be effective if the witness reports elicited by cross-examination are flawed: for example, with respect to factors such as original witnessing conditions (e.g., duration of exposure), post-event influences (e.g., conversations with co-witnesses), or police suggestion (e.g., reports of police comments or behaviors during identification procedures).[29]

II

Legal traditions in various jurisdictions have been responsive to the scientific reality of the frailty of eyewitness identification.

In the United States, the Supreme Court "ruled for the first time that the Constitution requires suppression of some identification evidence"[30] in three (3) of its decisions, all rendered

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[28] *Id*.

[29] *Id*.

[30] Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99 (2016).

on June 12, 1967—*United States v. Wade*,[31] *Gilbert v. California,*[32] and *Stovall v. Denno*.[33] *Stovall* emphasized that such suppression, when appropriate, was "a matter of due process."[34]

Until the latter half of the twentieth century, the general rule in the United States was that any problems with the quality of eyewitness identification evidence went to the weight, not the admissibility, of that evidence and that the jury bore the ultimate responsibility for assessing the credibility and reliability of an eyewitness's identification. In a trilogy of landmark cases released on the same day in 1967, however, the Supreme Court ruled for the first time that the Constitution requires suppression of some identification evidence. In *United States v. Wade* and *Gilbert v. California*, the Court held that a post-indictment lineup is a critical stage in a criminal prosecution, and, unless the defendant waives his Sixth Amendment rights, defense counsel's absence from such a procedure requires suppression of evidence from the lineup. The court also ruled, however, that even when the lineup evidence itself must be suppressed, a witness would be permitted to identify the defendant in court if the prosecution could prove the witness had an independent source for his identification . . .

. . . . . .

In *Stovall v. Denno*, the Court held that, regardless of whether a defendant's Sixth Amendment rights were implicated or violated, some identification procedures are "so unnecessarily suggestive and conducive to irreparable mistaken identification" that eyewitness evidence must be suppressed as a matter of due process.[35] (Citations omitted)

In *Wade*, the United States Supreme Court noted that the factors judges should evaluate in deciding the independent source question include:

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[31] 388 U.S. 218 (1967).

[32] 388 U.S. 263 (1967).

[33] 388 U.S. 293 (1967).

[34] *Id.*

[35] Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99, 104-05 (2016).

[T]he prior opportunity to observe the alleged criminal act, the existence of any discrepancy between any pre-lineup description and the defendant's actual description, any identification prior to lineup of another person, the identification by picture of the defendant prior to the lineup, failure to identify the defendant on a prior occasion, and the lapse of time between the alleged act and the lineup identification."[36]

Nine (9) months later, in *Simmons v. United States*, the United States Supreme Court calibrated its approach by "focusing in that case on the overall reliability of the identification evidence rather than merely the flaws in the identification procedure."

Ultimately, the Court concluded there was no due process violation in admitting the evidence because there was little doubt that the witnesses were actually correct in their identification of Simmons. Scholars have frequently characterized *Simmons* as the beginning of the Court's unraveling of the robust protection it had offered in *Stovall*; while *Stovall* provided a per se rule of exclusion for evidence derived from flawed procedures, *Simmons* rejected this categorical approach in favor of a reliability analysis that would often allow admission of eyewitness evidence even when an identification procedure was unnecessarily suggestive.[37]

In more recent Supreme Court decisions, the United States has "reaffirmed its shift toward a reliability analysis, as opposed to a focus merely on problematic identification procedures" beginning in 1972 through *Neil v. Biggers*:[38]

The *Biggers* Court stated that, at least in a case in which the confrontation and trial had taken place before *Stovall*, identification evidence would be admissible, even if there had been an unnecessarily suggestive procedure, so long as the evidence was reliable under the totality of the circumstances. To inform its reliability analysis, the *Biggers* Court articulated five factors it considered relevant to the inquiry:

> [(1)] the opportunity of the witness to view the criminal at the time of the crime, [(2)] the witness' degree of attention, [(3)] the accuracy of the witness' prior description of the criminal,

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[36] *United States v. Wade*, 388 U.S. at 241 (1967).

[37] *Id*.

[38] 409 U.S. 188 (1972).

> [(4)] the level of certainty demonstrated by the witness at the confrontation, and [(5)] the length of time between the crime and the confrontation.

The *Biggers* Court clearly proclaimed that the "likelihood of misidentification," rather than a suggestive procedure in and of itself, is what violates a defendant's due process rights. However, the *Biggers* Court left open the possibility that per se exclusion of evidence derived from unnecessarily suggestive confrontations might be available to defendants whose confrontations and trials took place after Stovall.[39]

The *Biggers* standard was further affirmed in 1977 in *Manson v. Brathwaite*:[40]

The *Manson* Court made clear that the standard from *Biggers* would govern all due process challenges to eyewitness evidence, stating that judges should weigh the five factors against the "corrupting effect of the suggestive identification." Ultimately, the Court affirmed that "reliability is the linchpin in determining the admissibility of identification testimony." In rejecting the per se exclusionary rule, the Court acknowledged that such a rule would promote greater deterrence against the use of suggestive procedures, and it noted a "surprising unanimity among scholars" that the per se approach was "essential to avoid serious risk of miscarriage of justice." However, the Court concluded the cost to society of not being able to use reliable evidence of guilt in criminal prosecutions would be too high. The *Manson* Court also made clear that its new standard would apply to both pre-trial and in-court identification evidence, thus resulting in a unified analysis of all identification evidence in the wake of suggestive procedures. In contrast, the *Stovall* Court had not specified whether unnecessarily suggestive procedures would require per se exclusion of both pre-trial identification evidence and any in-court identification, or alternatively, whether witnesses who had viewed unnecessarily suggestive procedures might nonetheless be allowed to identify defendants in court after an independent source determination.[41]

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[39] Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 Ky. L.J. 99 (2016).

[40] 432 U.S. 98, 114 (1977).

[41] Nicholas A. Kahn-Fogel, *The Promises and Pitfalls of State Eyewitness Identification Reforms*, 104 KY. L.J. 99 (2016).

A 2016 article notes that *Manson* "remains the federal constitutional standard."[42] It also notes that "[t]he vast majority of states have also followed *Manson* in interpreting the requirements of their own constitutions."[43]

The United Kingdom has adopted the Code of Practice for the Identification of Persons by Police Officers.[44] It "concerns the principal methods used by police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records" and covers eyewitness identifications. This Code puts in place measures advanced by the corpus of research in enhancing the reliability of eyewitness identification, specifically by impairing the suggestive tendencies of conventional procedures. Notable measures include having a parade of at least nine (9) people, when one (1) suspect is included, to at least 14 people, when two (2) suspects are included[45] and forewarning the witness that he or she may or may not actually see the suspect in the line-up.[46] Additionally, there should be a careful recording of the witness' pre-identification description of the perpetrator[47] and explicit

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[42] *Id*.

[43] *Id*.

[44] Code of Practice for the Identification of Persons by Police Officers, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

[45] Code of Practice for the Identification of Persons by Police Officers, Annex B, par. 9. Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

[46] Code of Practice for the Identification of Persons by Police Officers, Annex B, par. 16. Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

[47] Code of Practice for the Identification of Persons by Police Officers, Sec. 3.2(a). Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

instructions for police officers to not "direct the witness' attention to any individual."[48]

III

Domestic jurisprudence recognizes that eyewitness identification is affected by "normal human fallibilities and suggestive influences."[49] *People v. Teehankee, Jr.*[50] introduced in this jurisdiction the totality of circumstances test, which relies on factors already identified by the United States Supreme Court in *Neil v. Biggers*:[51]

> (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[52]

A witness' credibility is ascertained by considering the first two factors, i.e., the witness' opportunity to view the malefactor at the time of the crime and the witness' degree of attention at that time, based on conditions of visibility and the extent of time, little and fleeting as it may have been, for the witness to

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[48] Code of Practice for the Identification of Persons by Police Officers, Sec. 3.2(b). Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181118/pace-code-d_2008.pdf> (last visited October 3, 2017).

[49] *People v. Teehankee, Jr.*, 319 Phil. 128, 179 (1995) [Per *J.* Puno, Second Division]. See also Dissenting Opinion of *J.* Leonen in *People v. Pepino,* G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per *J.* Brion, *En Banc*].

[50] 319 Phil. 128 (1995) [Per *J.* Puno, Second Division].

[51] 409 U.S. 188 (1972).

[52] *People v. Teehankee, Jr.*, 319 Phil. 128, 180, *citing Neil v. Biggers*, 409 US 188 (1973); *Manson v. Brathwaite*, 432 US 98 (1977); DEL CARMEN, *CRIMINAL PROCEDURE, LAW AND PRACTICE 346* (3rd ed.) [Per *J.* Puno, Second Division].

be exposed to the perpetrators, peruse their features, and ascertain their identity.[53] In *People v. Pavillare*:[54]

> Both witnesses had ample opportunity to observe the kidnappers and to remember their faces. The complainant had close contact with the kidnappers when he was abducted and beaten up, and later when the kidnappers haggled on the amount of the ransom money. His cousin met Pavillare face to face and actually dealt with him when he paid the ransom money. The two-hour period that the complainant was in close contact with his abductors was sufficient for him to have a recollection of their physical appearance. Complainant admitted in court that he would recognize his abductors if he s[aw] them again and upon seeing Pavillare he immediately recognized him as one of the malefactors as he remember[ed] him as the one who blocked his way, beat him up, haggled with the complainant's cousin and received the ransom money. As an indicium of candor the private complainant admitted that he d[id] not recognize the co-accused, Sotero Santos for which reason the case was dismissed against him.[55]

Apart from extent or degree of exposure, this Court has also appreciated a witness' specialized skills or extraordinary capabilities.[56] *People v. Sanchez*[57] concerned the theft of an armored car. The witness, a trained guard, was taken by this Court as being particularly alert about his surroundings during the attack.

The degree of a witness' attentiveness is the result of many factors, among others: exposure time, frequency of exposure,

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[53] See Dissenting Opinion of *J*. Leonen in *People v. Pepino*, G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per *J*. Brion, *En Banc*].

[54] 386 Phil. 126 (2000) [*Per Curiam, En Banc*].

[55] *Id*. at 144.

[56] See Dissenting Opinion of *J*. Leonen in *People v. Pepino,* G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html? file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per *J*. Brion, *En Banc*].

[57] 318 Phil. 547 (1995) [Per *J*. Kapunan, First Division].

the criminal incident's degree of violence, the witness' stress levels and expectations, and the witness' activity during the commission of the crime.[58]

The degree of the crime's violence affects a witness' stress levels. A focal point of psychological studies has been the effect of the presence of a weapon on a witness' attentiveness. Since the 1970s, it has been hypothesized that the presence of a weapon captures a witness' attention, thereby reducing his or her attentiveness to other details such as the perpetrator's facial and other identifying features.[59] Research on this has involved an enactment model involving two (2) groups: first, an enactment with a gun; and second, an enactment of the same incident using an implement like a pencil or a syringe as substitute for an actual gun. Both groups are then asked to identify the culprit in a lineup. Results reveal a statistically significant difference in the accuracy of eyewitness identification between the two (2) groups:[60]

> [T]he influence of [a weapon focus] variable on an eyewitness's performance can only be estimated post hoc. Yet the data here do offer a rather strong statement: To not consider a weapon's effect on eyewitness performance is to ignore relevant information. The weapon effect does reliably occur, particularly in crimes of short duration in which a threatening weapon is visible. Identification accuracy and feature accuracy of eyewitnesses are likely to be affected, although, as previous research has noted . . . there is not necessarily a concordance between the two.[61]

Our jurisprudence has yet to give due appreciation to scientific data on weapon focus. Instead, what is prevalent is the contrary

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[58] ELIZABETH F. LOFTUS, *Eyewitness Testimony* 23-51 (1996). See also Dissenting Opinion of *J*. Leonen in *People v. Pepino,* G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per *J*. Brion, *En Banc*].

[59] Nancy Mehrkens Steblay, *A Meta-Analytic Review of the Weapon Focus Effect*, 16 *Law and Human Behavior* 413, 414 (1992).

[60] *Id*. at 420.

[61] *Id*. at 421.

view which empirical studies discredit.[62] For instance, in *People v. Sartagoda*:

> [T]he most natural reaction for victims of criminal violence [is] to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot easily be erased from their memory.[63]

Rather than a sweeping approbation of a supposed natural propensity for remembering the faces of assailants, this Court now emphasizes the need for courts to appreciate the totality of circumstances in the identification of perpetrators of crimes.

Apart from the witness' opportunity to view the perpetrator during the commission of the crime and the witness' degree of attention at that time, the accuracy of any prior description given by the witness is equally vital. Logically, a witness' credibility is enhanced by the extent to which his or her initial description of the perpetrator matches the actual appearance of the person ultimately prosecuted for the offense.

Nevertheless, discrepancies, when properly accounted for, should not be fatal to the prosecution's case. For instance, in *Lumanog v. People*,[64] this Court recognized that age estimates cannot be made accurately:

> Though his estimate of Joel's age was not precise, it was not that far from his true age, especially if we consider that being a tricycle driver who was exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age. Moreover Alejo's description of Lumanog as dark-skinned was made two (2) months prior to the dates of the trial when he was again asked to identify

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[62] See Dissenting Opinion of *J.* Leonen in *People v. Pepino,* G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per *J.* Brion, *En Banc*].

[63] *People v. Sartagoda,* 293 Phil. 259, (1993) [Per *J.* Campos, Jr., Second Division].

[64] 644 Phil. 296 (2010) [Per *J.* Villarama, Jr., *En Banc*].

him in court. When defense counsel posed the question of the discrepancy in Alejo's description of Lumanog who was then presented as having a fair complexion and was 40 years old, the private prosecutor manifested the possible effect of Lumanog's incarceration for such length of time as to make his appearance different at the time of trial.[65]

The totality of circumstances test also requires a consideration of the degree of certainty demonstrated by the witness at the moment of identification. What is most critical here is the initial identification made by the witness during investigation and case build-up, not identification during trial.[66]

A witness' certainty is tested in court during cross-examination. In several instances, this Court has considered a witness' straight and candid recollection of the incident, undiminished by the rigors of cross-examination as an indicator of credibility.[67]

Still, certainty on the witness stand is by no means conclusive. By the time a witness takes the stand, he or she shall have likely made narrations to investigators, to responding police or barangay officers, to the public prosecutor, to any possible private prosecutors, to the families of the victims, other sympathizers, and even to the media. The witness, then, may have established certainty, not because of a foolproof cognitive perception and recollection of events but because of consistent reinforcement borne by becoming an experienced narrator. Repeated narrations before different audiences may also prepare a witness for the same kind of scrutiny that he or she will encounter during cross-examination. Again, what is more crucial is certainty at the onset or on initial identification, not in a relatively belated stage of criminal proceedings.

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[65] *Id.* at 400-401.

[66] See also Dissenting Opinion of *J.* Leonen in *People v. Pepino,* G.R. No. 174471, January 12, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/174471_leonen.pdf> [Per *J.* Brion, *En Banc*].

[67] See *People v. Ramos*, 371 Phil. 66, 76 (1999) [*Per Curiam, En Banc*]; and *People v. Guevarra*, 258-A Phil. 909, 916-918 (1989) [Per *J.* Sarmiento, Second Division].

The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. "It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one."[68] Ideally then, a prosecution witness must identify the suspect immediately after the incident. This Court has considered acceptable an identification made two (2) days after the commission of a crime,[69] not so one that had an interval of five and a half (5 ½) months.[70]

The passage of time is not the only factor that diminishes memory. Equally jeopardizing is a witness' interactions with other individuals involved in the event.[71] As noted by cognitive psychologist Elizabeth F. Loftus, "[p]ost[-]event information can not only enhance existing memories but also change a witness's memory and even cause nonexistent details to become incorporated into a previously acquired memory."[72]

Thus, the totality of circumstances test also requires a consideration of the suggestiveness of the identification procedure undergone by a witness. Both verbal and non-verbal information might become inappropriate cues or suggestions to a witness:

> A police officer may tell a witness that a suspect has been caught and the witness should look at some photographs or come to view a lineup and make an identification. Even if the policeman does not explicitly mention a suspect, it is likely that the witness will believe he is being asked to identify a good suspect who will be one of the members of the lineup or set of photos . . . If the officer should unintentionally stare a bit longer at the suspect, or change his tone

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[68] ELIZABETH F. LOFTUS, *Eyewitness Testimony* 53 (1996).

[69] *People v. Teehankee, Jr.*, 319 Phil. 128, 152 (1995) [Per *J.* Puno, Second Division].

[70] *People v. Rodrigo,* 586 Phil. 515, 536 (2008) [Per *J.* Brion, Second Division].

[71] ELIZABETH F. LOFTUS, *Eyewitness Testimony* 54-55 (1996).

[72] *Id.* at 55.

of voice when he says, "Tell us whether you think it is number one, two, THREE, four, five, or six," the witness's opinion might be swayed.[73]

In appraising the suggestiveness of identification procedures, this Court has previously considered prior or contemporaneous[74] actions of law enforcers, prosecutors, media, or even fellow witnesses.

In *People v. Baconguis*,[75] this Court acquitted the accused, whose identification was tainted by an improper suggestion.[76] There, the witness was made to identify the suspect inside a detention cell which contained only the suspect.[77]

People v. Escordial[78] involved robbery with rape. Throughout their ordeal, the victim and her companions were blindfolded.[79] The victim, however, felt a "rough projection"[80] on the back of the perpetrator. The perpetrator also spoke, thereby familiarizing the victim with his voice.[81] *Escordial* recounted the investigative process which resulted in bringing the alleged perpetrator into custody. After several individuals were interviewed, the investigating officer had an inkling of who to look for. He "found accused-appellant [in a] basketball court and 'invited' him to go to the police station for questioning."[82] When the suspect was brought to the police station, the rape victim was already there. Upon seeing the suspect enter, the rape victim

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[73] ELIZABETH F. LOFTUS, *Eyewitness Testimony* 73-74 (1996).

[74] *People v. Algarme, et al.,* 598 Phil. 423, 444 (2009) [Per *J.* Brion, Second Division].

[75] 462 Phil. 480 (2003) [Per *J.* Carpio Morales, *En Banc*].

[76] *Id*. at 495 to 496.

[77] *Id*. at 494.

[78] 424 Phil. 627 (2002) [Per *J.* Mendoza, *En Banc*].

[79] *Id*. at 633.

[80] *Id*. at 635.

[81] *Id*. at 639.

[82] *Id*.

requested to see the suspect's back. The suspect removed his shirt. When the victim saw a "rough projection" on the suspect's back, she spoke to the police and stated that the suspect was the perpetrator. The police then brought in the other witnesses to identify the suspect. Four (4) witnesses were taken to the cell containing the accused and they consistently pointed to the suspect even as four (4) other individuals were with him in the cell.[83]

This Court found the show-up, with respect to the rape victim, and the lineup, with respect to the four (4) other witnesses, to have been tainted with irregularities. It also noted that the out-of-court identification could have been the subject of objections to its admissibility as evidence although these objections were never raised during trial.[84]

Although these objections were not timely raised, this Court found that the prosecution failed to establish the accused's guilt beyond reasonable doubt and acquitted the accused.[85] It noted that the victim was blindfolded throughout her ordeal. Her identification was rendered unreliable by her own admission that she could only recognize her perpetrator through his eyes and his voice. It reasoned that, given the limited exposure of the rape victim to the perpetrator, it was difficult for her to immediately identify the perpetrator. It found the improper suggestion made by the police officer as having possibly aided in the identification of the suspect.[86] The Court cited with approval the following excerpt from an academic journal:

Social psychological influences. Various social psychological factors also increase the danger of suggestibility in a lineup confrontation. Witnesses, like other people, are motivated by a desire to be correct and to avoid looking foolish. By arranging a lineup, the police have evidenced their belief that they have caught the criminal; witnesses,

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[83] *Id*.

[84] *Id*. at 652-654.

[85] *Id*. at 665.

[86] *Id* at 659-662.

realizing this, probably will feel foolish if they cannot identify anyone and therefore may choose someone despite residual uncertainty. Moreover, the need to reduce psychological discomfort often motivates the victim of a crime to find a likely target for feelings of hostility.

Finally, witnesses are highly motivated to behave like those around them. This desire to conform produces an increased need to identify someone in order to show the police that they, too, feel that the criminal is in the lineup, and makes the witnesses particularly vulnerable to any clues conveyed by the police or other witnesses as to whom they suspect of the crime.[87] (Emphasis in the original)

People v. Pineda,[88] involved six (6) perpetrators committing robbery with homicide aboard a passenger bus.[89] A passenger recalled that one (1) of the perpetrators was referred to as "Totie" by his companions. The police previously knew that a certain Totie Jacob belonged to the robbery gang of Rolando Pineda (Pineda). At that time also, Pineda and another companion were in detention for another robbery. The police presented photographs of Pineda and his companion to the witness, who positively identified the two (2) as among the perpetrators.[90]

This Court found the identification procedure unacceptable.[91] It then articulated two (2) rules for out-of-court identifications through photographs:

The first rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect. The second rule directs that when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.[92]

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[87] *Id*. at 659, *citing* Frederic D. Woocher, *Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification*, 29 STAN L. REV 969 (1977).

[88] 473 Phil. 517 (2004) [Per *J.* Carpio, *En Banc*].

[89] *Id*. at 522.

[90] *Id*. at 536.

[91] *Id*. at 540.

[92] *Id*. at 540, *citing* PATRICK M. WALL, *EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 74 and 81 (1965).*

Non-compliance with these rules suggests that any subsequent corporeal identification made by a witness may not actually be the result of a reliable recollection of the criminal incident. Instead, it will simply confirm false confidence induced by the suggestive presentation of photographs to a witness.

Pineda further identified 12 danger signals that might indicate erroneous identification. Its list is by no means exhaustive, but it identifies benchmarks which may complement the application of the totality of circumstances rule. These danger signals are:

(1) the witness originally stated that he could not identify anyone;

(2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;

(3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;

(4) before identifying the accused at the trial, the witness erroneously identified some other person;

(5) other witnesses to the crime fail to identify the accused;

(6) before trial, the witness sees the accused but fails to identify him;

(7) before the commission of the crime, the witness had limited opportunity to see the accused;

(8) the witness and the person identified are of different racial groups;

(9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

(10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11) several persons committed the crime; and

(12) the witness fails to make a positive trial identification.[93]

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[93] *Id*. at 547-548, *citing* PATRICK M. WALL, *EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES* 90-130 (1965).

Pineda underscored that "[t]he more important duty of the prosecution is to prove the identity of the perpetrator and not to establish the existence of the crime."[94] Establishing the identity of perpetrators is a difficult task because of this jurisdiction's tendency to rely more on testimonial evidence rather than on physical evidence. Unlike the latter, testimonial evidence can be swayed by improper suggestions. Legal scholar Patrick M. Wall notes that improper suggestion "probably accounts for more miscarriages of justice than any other single factor[.]"[95] Marshall Houts, who served the Federal Bureau of Investigation and the American judiciary, concurs and considers eyewitness identification as "the most unreliable form of evidence[.]"[96]

People v. Rodrigo[97] involved the same circumstances as *Pineda*. The police presented a singular photograph for the eyewitness to identify the person responsible for a robbery with homicide. The witness identified the person in the photograph as among the perpetrators. This Court stated that, even as the witness subsequently identified the suspect in court, such identification only followed an impermissible suggestion in the course of the photographic identification. This Court specifically stated that a suggestive identification violates the right of the accused to due process, denying him or her of a fair trial:[98]

> The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

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[94] *Id*. at 548.

[95] PATRICK M. WALL, *EYE-WITNESS IDENTIFICATION IN CRIMINAL CASES 26 (1965)*.

[96] MARSHALL HOUTS, *FROM EVIDENCE TO PROOF* 10-11 (1956).

[97] 586 Phil. 515 (2008) [Per *J.* Brion, Second Division].

[98] *Id*. at 529.

. . . . . .

The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.[99] (Emphasis supplied)

IV

Applying these standards, this Court finds the identification made by prosecution witnesses Cruz and Perez unreliable. Despite their identification, there remains reasonable doubt if accused-appellant Nuñez is the same Pobre who supposedly committed the robbery with homicide along with Marciales and Nabia.

The prosecution banks on the following portion of Cruz's testimony.[100] The Court of Appeals heavily relies on the same portion, reproducing parts of it in its Decision:[101]

Q: Madam Witness, where were you on June 22, 2000 in the afternoon?
A: I was on duty at Tayuman Caltex station, Ma'am.

Q: And while you were on duty, what happened if any?
A: While we were on duty there was a pick-up which was getting gas and a person was in front and we were joking baka kami mahold-up yun pala, hinoholdup na kami sa opisina.

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[99] *Id*. at 528-530.

[100] CA *rollo*, pp. 111-113.

[101] *Rollo*, pp. 9-10.

Q: You mentioned that there was already hold-up happening?
A: Yes, Ma'am.

Q: What time was that when you noticed that holdup?
A: Around 8:00p.m.

Q: Where was the hold-up going on?
A: In the office, Ma'am.

Q: And how far is that office from where you were at that time, how many meters?
A: From here to the wall of the court.

Court:

Anyway, I have the reference.

Prosecutor Aragones:

Q: What happened after you saw that there was [a] hold[-up] going on inside the office of the Caltex Station?
A: After that me and my companions ran to the computer shop which is beside the office.

Q: By the way, why were you at the Caltex gasoline station?
A: I was an attendant, Ma'am.

Q: You mentioned that you proceeded to the computer shop which is beside the office?
A: Yes, Ma'am.

Q: Where did you run, inside or outside the computer shop?
A: Inside, Ma'am.

Q: Before you went inside, what did you witness after you saw that there was hold-up inside the office?
A: I saw that one of our companions, a gun was pointed to him and also to our employer.

Q: Who was your companion you saw who was pointed with a gun?
A: Alex Diaz, and Kuya Alex my employer.

Q: Who were those persons who pointed guns to your co-worker and to your employer?
A: The two accused who were first arrested.

Q: Aside from the two accused, do they have other companions?
A: Yes, Ma'am.

Q: Who was that person who was also with the two accused?
A: Paul Pobre.

Q: By the way, who were those two accused you are referring to according to you were arrested?
A: George Marciales and I cannot remember the other one.

Q: You mentioned of the name Paul Pobre, kindly look around if there is any Paul Pobre in court?
A: Yes, Ma'am, he is here.

Q: Can you point to him?
A: He is that one (pointing)

INTERPRETER:

Witness is pointing to a person wearing yellow shirt who when asked gave his name as Crisanto Pepaño.

PROSECUTOR ARAGONES:

Q: Who told you that the name of that person is Paul Pobre?
A: Kuya Rommel

Q: Who is Kuya Rommel?
A: Brother of my employer Kuya Alex.

Q: Who was apprehended in Laguna?
A: He is the one, Paul Pobre.

Q: What was the participation of that person you pointed to as being the companion of accused George Marciales and the other one?
A: He was the one who entered last and who shot.

COURT:

Q: Who did he shoot?
A: Kuya Alex.[102]

The prosecution similarly banks on the narration and identification made by Perez:

Q: Madam Witness when Alex, the accused you pointed a while ago, the other accused Marciales and your boss, all of them were inside the computer shop, the office of Caltex?

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[102] CA *rollo*, pp. 111-113.

A: At first no[,] ma'am[.] Nagsimula po kasi andoon po kami sa labas may lalaking nakatayo po doon sa malapit sa road, sya po yung na[-]identify before as George Marciales. Ang nakita po lang naming una sa loob apat po sila si boss, si Alex, that man (Nuñez) and the man identified before as Orly Nabia.

Q: Where were you at that time when these four persons were inside the office?
A: We were sitting in an island near the three pumps in front of the gas station[,] ma'am.

Q: The office in relation to that island is at the back, is that correct?
A: Yes[,] ma'am.

Q: There were no customers at that time?
A: None[,] ma'am.

Q: The cashier were (sic) Alex is positioned is facing you[.] [I]s that correct?
A: Yes[,] ma'am.

Q: So it was the back of the accused that you saw, is that correct?
A: No[,] ma'am. Sa pinto po kasi yung register namin e. So andito po si Alex nakatungo po sya andito po yung accused naka[-]ganito po sya, nakatutok pos a (sic) kanya. (Witness was standing while demonstrating the incident between the accused and Alex inside the office) very clear po yung itsura nya nung nakita po namin sya.

Q: How far is that island from the cashier, from the place you were seated right now?
A: Around 4 to 5 meters[,] ma'am.

Q: Were you able to hear the conversation considering that distance of 4 to 5 meters?
A: I heard nothing[,] ma'am[,] except when Alex shouted[,] "Byron tulong, hinoholdap tayo[.]"

Q: Alex was shouting while he was still inside the office?
A: Yes[,] ma'am.

Q: And it was Byron who ran towards the office?
A: The first one was George Marciales, Byron only followed him.

Q: Where was George Marciales before he entered that office?
A: He was near the road[,] ma'am.

Q: But that is not within the gas station's premises?
A: Bali eto po yung pinaka sementado, andito sya.
(Witness referring to the place where Marciales is)

Q: When you said the cemented area, you were referring to the National road?
A: Yes[,] ma'am.

Q: After Byron went inside the said office, were you able to see what happened inside?
A: Yes[,] ma'am. Nakasuntok po sya ng isa kay George tapos tinadyakan po siya sa tagiliran tsaka binaril po sya. Tapos bumagsak nap o (sic) sya.

Q: You were still outside your office at that time?
A: Yes[,] ma'am.

Q: Nobody was with you at that time aside from your co-employees, only the accused was inside at that time?
A: Yes[,] ma'am.

Q: You did not run or ask for help considering that Caltex is along the National road?
A: Honestly speaking[,] we were not able to say anything at that time[,] ma'am.

Q: Were you able to know how the accused went out of the office?
A: After po ng pag shoot sa kanila tumakbo po kami ni Rona doon sa may computer shop, sa bahay po nila. Pagkaraan po ng ilang minuto lumabas kami nakita po naming sila na nagtatakbuhan together with Kuya Lawrence. Nakita po naming (sic) sila na tumatakbo, yung dalawa papuntang Angono, yung isa hindi ko na po alam kung [saan] nagpunta. Nakita na lang po naming si boss na gumagapang asking for help.[103]

The Court of Appeals also favorably cited the following identification made by Perez:

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[103] CA *Rollo*, pp. 114-116.

Prosecutor Aragones

Q : Now can you look inside the court and tell us if there is anybody here who took part in that incident or involved in that incident?

Relen Perez

A : Him[,] ma'am. (witness pointing to the accused)

Q : What was the participation of that man whom you pointed today in that robbery with homicide incident in Caltex gasoline station?

A : He was the one who was pointing a gun to my co-employee Alexander Diaz[,] ma'am.[104]

V

These identifications are but two (2) of a multitude of circumstances that the Regional Trial Court and the Court of Appeals should have considered in determining whether or not the prosecution has surmounted the threshold of proof beyond reasonable doubt. Lamentably, they failed to give due recognition to several other factors that raise serious doubts on the soundness of the identification made by prosecution witnesses Cruz and Perez.

First and most glaringly, Cruz had previously admitted to not remembering the appearance of the fourth robber, the same person she would later claim with supposed certainty as Nuñez. In the original testimony she made in Marciales and Nabia's trial in 2002, she admitted to her inability to identify the fourth robber:

Fiscal Dela Cuesta

Q : *Can you describe the other holdupper during that date and time who were the companions of George Marciales?*

Ronalyn Cruz

A : *I cannot describe them[,] ma'am.*

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[104] *Rollo*, p. 10.

Q : *Why can you not describe the appearance of the other holdupper?*

A : *I cannot remember their appearances, ma'am.*

. . . . . .

Fiscal Dela Cuesta

Q : At what particular point in time that the 4th holdupper went inside the office?

Ronalyn Cruz

A : When they were wrestling with each other, ma'am.

Q : Was that before the shooting or after?

A : Before the shooting[,] ma'am.[105]

Second, by the time Cruz and Perez stood at the witness stand and identified Nuñez, roughly eight (8) years had passed since the robbery incident.

Third, as the People's Appellee's Brief concedes, witnesses' identification of Nuñez did not come until after he had been arrested. In fact, it was not until the occasion of his arraignment.[106] Nuñez was the sole object of identification, in an identification process that had all but pinned him as the perpetrator.

VI

Cruz's admission that she could not identify the fourth robber anathemized any subsequent identification. Moreover, the prosecution, the Court of Appeals, and the Regional Trial Court all failed to account for any intervening occurrence that explains why and how Cruz shifted from complete confusion to absolute certainty. Instead, they merely took her and Perez's subsequent identification as unassailable and trustworthy because of a demeanor apparently indicating certitude.

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[105] *Id*. at 7.

[106] CA *rollo*, pp, 108-109.

The conviction of an accused must hinge less on the certainty displayed by a witness when he or she has already taken the stand but more on the certainty he or she displayed and the accuracy he or she manifested at the initial and original opportunity to identify the perpetrator. Cruz had originally admitted to not having an iota of certainty, only to make an unexplained complete reversal and implicate Nuñez as among the perpetrators. She jeopardized her own credibility.

Cruz's and Perez's predicaments are not aided by the sheer length of time that had lapsed from the criminal incident until the time they made their identifications. By the time Cruz made the identification, seven (7) years and eight (8) months had lapsed since June 22, 2000. As for Perez, eight (8) years and nine (9) months had already lapsed.

In *People v. Rodrigo*,[107] this Court considered a lapse of five and a half (5 ½) months as unreliable. Hence, there is greater reason that this Court must exercise extreme caution for identifications made many years later. This is consistent with the healthy sense of incredulity expected of courts in criminal cases, where the prosecution is tasked with surmounting the utmost threshold of proof beyond reasonable doubt.

It is not disputed that Nuñez's identification by Cruz and Perez was borne only by Nuñez's arrest on July 2, 2006. The prosecution even acknowledged that his identification was initially done only to defeat his motion to have the case against him dismissed.[108] Evidently, Nuñez's identification before trial proper was made in a context which had practically induced witnesses to identify Nuñez as a culprit. Not only was there no effort to countervail the likelihood of him being identified, it even seemed that the prosecution and others that had acted in its behalf such as the apprehending officers, had actively designed a situation where there would be no other possibility than for him to be identified as the perpetrator of the crime.

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[107] 586 Phil. 515, 536 (2008) [Per *J*. Brion, Second Division].

[108] CA *rollo*, p. 109.

The dubiousness of Nuñez's presentation for identification is further exacerbated by the circumstances of his apprehension. In a Manifestation filed with the Court of Appeals, and which, quite notably, the prosecution never bothered repudiating, Nuñez recounted how his apprehension appeared to have been borne by nothing more than the crudeness and sloth of police officers:

> 6). That, the truth of the matter as far as the offended charged against me, I ha[ve] no any truthfulness (sic) nor having any reality as it was indeed only a mere strong manufactured, fabricated and unfounded allegations against me just to get even with me of my [untolerable] disciplinary actions of some individuals who had a personal grudge against me.
>
> . . . . . .
>
> 9). That, with all due respect, I ha[ve] nothing to do with the offensed (sic) charged and it is not true that the case was done was charged against me *it is Paul Borbe y Pipano it was wrong person pick-up by the police officer*, because the said Paul Borbe y [P]ipano was charged of several crimes, while me my record has no single offense against me.
>
> 10). That, with due respect, there was no truthfulness that I was the one who committed the said crime, *it was a big mistake because we have the [same] family name* they just pick up the wrong person which is innocent to the said crime.
>
> 11). That, with all due respect, it was not true, also that it was me who committed the said crime, it was Paul Borbe y Pipano is the one because he was habitual in doing crime in our community, in fact my record is clean never been committed any crime in my life, I am a concern citizen who can help our community well.[109] (Emphasis supplied)

The identification made during Nuñez's trial, where eyewitnesses vaunted certainty, was but an offshoot of tainted processes that preceded his trial. This Court finds Nuñez's identification prior to trial bothersome and his subsequent and contingent identification on the stand more problematic.

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[109] CA *rollo*, pp. 78-79.

Nuñez's identification, therefore, fails to withstand the rigors of the totality of circumstances test. First, the witnesses failed to even give any prior description of him. Second, a prosecution witness failed to exhibit even the slightest degree of certainty when originally given the chance to identify him as the supposed fourth robber. Third, a significantly long amount of time had lapsed since the criminal incident; the original witness' statement that none of his features were seen as to enable his identification; and the positive identification made of him when the case was re-opened. And finally, his presentation for identification before and during trial was peculiarly, even worrisomely, suggestive as to practically induce in prosecution witnesses the belief that he, to the exclusion of any other person, must have been the supposed fourth robber.

These deficiencies and the doubts over Cruz's and Perez's opportunity to peruse the fourth robber's features and their degree of attentiveness during the crime clearly show that this case does not manage to satisfy even one (1) of the six (6) factors that impel consideration under the totality of circumstances test.

VII

Recall that both prosecution witnesses Cruz and Perez acknowledged the extreme stress and fright that they experienced on the evening of June 22, 2000. As both Cruz and Perez recalled, it was enough for them to run and seek refuge in a computer shop. Their tension was so palpable that even Cruz's and Perez's recollections of what transpired and of how Nuñez supposedly participated in the crime are so glaringly different.

According to Cruz, two (2) other persons initiated the robbery, by pointing guns at Regencia and Diaz inside the gasoline station's office. It was supposedly only later, when Diaz shouted, that a third robber, Marciales, and a fourth robber, allegedly Nuñez, ran in, to assist the first two (2) robbers. In contrast, Perez claimed that Nuñez was one (1) of the two (2) robbers who were initially already in the office. Nuñez was then supposedly pointing a gun at Diaz while the other robber was pointing a gun at Regencia.

They both claim that after Diaz shouted, the first two (2) robbers received assistance. Cruz, however, claims that two (2) additional robbers came to the aid of the first two (2), while Perez claims that there was only one (1) additional robber.

In the scuffle that ensued in the office, Cruz claims that Marciales shot Dimatulac while Nuñez shot Diaz. For her part, Perez claims that Marciales was the only one who fired shots at Regencia, Diaz, and Dimatulac.

Jurisprudence holds that inconsistencies in the testimonies of prosecution witnesses do not necessarily jeopardize the prosecution's case.[110] This, however, is only true of minor inconsistencies that are ultimately inconsequential or merely incidental to the overarching narrative of what crime was committed; how, when, and where it was committed; and who committed it. "It is well-settled that inconsistencies on minor details do not affect credibility as they only refer to collateral matters which do not touch upon the commission of the crime itself."[111]

The inconsistencies here between Cruz and Perez are far from trivial. At issue is precisely the participation of an alleged conspirator whose name the prosecution did not even know for proper indictment. Yet, where the prosecution witnesses cannot agree is also precisely how the person who now stands accused actually participated in the commission of the offense. Their divergences are so glaring that they demonstrate the prosecution's failure to establish Nuñez's complicity.

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[110] Jurisprudence even holds that "minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility, but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony." *People v. Arcega*, G.R. No. 96319, March 31, 1992, 207 SCRA 681, 687 [Per *J.* Melencio-Herrera, Second Division], citing *People v. Payumo*, 265 Phil. 65 (1990) [Per *J.* Cortes, Third Division].

[111] *People v. Canada*, 228 Phil. 121, 128 (1986) [Per *J.* Gutierrez, Jr., Second Division] *citing People v. Pelias Jones,* 221 Phil. 535 (1985) [Per *J.* Gutierrez, Jr., First Division]; *People v. Balane*, 208 Phil. 537 (1983) [Per *J.* Gutierrez, Jr., *En Banc*]; *People v. Alcantara*, 144 Phil. 623 (1970) [Per *J.* Castro, *En Banc*]; *People v. Escoltero,* 223 Phil. 430 (1985) [Per *J.* Gutierrez, Jr., First Division].

VIII

These failings by the prosecution vis-à-vis the totality of circumstances test are also indicative of many of the 12 danger signals identified in *People v. Pineda*[112] to be present in this case. On the first, fifth, and twelfth danger signals, prosecution witness Cruz originally made an unqualified admission that she could not identify the fourth robber. On the third danger signal, there is not even an initial description with which to match or counter-check Nuñez. On the tenth danger signal, a considerable amount of time had passed since Cruz and Perez witnessed the crime and their identification of Nuñez. On the eleventh danger signal, several perpetrators committed the crime.

IX

Conviction in criminal cases demands proof beyond reasonable doubt. While this does not require absolute certainty, it calls for moral certainty. It is the degree of proof that appeals to a magistrate's conscience:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[113]

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[112] 473 Phil. 517 (2004) [Per *J.* Carpio, *En Banc*].

[113] *People v. Ganguso*, 320 Phil. 324, 335 (1995) [Per *J.* Davide, Jr., First Division], *citing* CONST., Art. III, Sec. 14(2); RULES OF COURT, Rule 133, Sec. 2; *People vs. Garcia*, 284-A Phil. 614 (1992) [Per *J.* Davide, Jr., Third Division]; *People vs. Aguilar,* 294 Phil. 389 (1993) [Per *J.* Davide,

This Court is unable to come to a conscientious satisfaction as to Nuñez's guilt. On the contrary, this Court finds it bothersome that a man of humble means appears to have been wrongly implicated, not least because of lackadaisical law enforcement tactics, and has been made to suffer the severity and ignominy of protracted prosecution, intervening detention, and potential conviction. Here, this Court puts an end to this travesty of justice. This Court acquits accused-appellant.

WHEREFORE, premises considered, the Decision dated June 26, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 04474 is **REVERSED and SET ASIDE**. Accused-appellant Crisente Pepaño Nuñez is **ACQUITTED** for reasonable doubt. He is ordered immediately **RELEASED** from detention, unless confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of Philippine National Police for his information.

Let entry of judgment be issued immediately.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

Jr., Third Division]; *People vs. Dramayo*, 149 Phil. 107 (1971) [Per *J.* Fernando, *En Banc*]; *People vs. Matrimonio,* 290 Phil. 96 (1992) [Per *J.* Davide, Jr., Third Division]; and *People vs. Casinillo*, 288 Phil. 688 (1992) [Per *J.* Davide, Jr., Third Division].

THIRD DIVISION

[G.R. No. 214073. October 4, 2017]

BICOL MEDICAL CENTER, represented by Dr. Efren SJ. Nerva, and the DEPARTMENT OF HEALTH, represented by HEALTH SECRETARY ENRIQUE T. ONA, *petitioners, vs.* **NOE B. BOTOR, CELJUN F. YAP, ISMAEL A. ALBAO, AUGUSTO S. QUILON, EDGAR F. ESPLANA II, and JOSEFINA F. ESPLANA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES THAT MUST BE PROVEN BEFORE A WRIT OF PRELIMINARY INJUNCTION MAY BE ISSUED.—** Jurisprudence has likewise established that the following requisites must be proven first before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued: (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury. In satisfying these requisites, the applicant for the writ need not substantiate his or her claim with complete and conclusive evidence since only *prima facie* evidence or a sampling is required "to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."

2. **ID.; ID.; ID.; ID.; RESPONDENT FAILED TO ESTABLISH PROOF OF THEIR CLEAR LEGAL RIGHT TO SUPPORT THEIR CLAIM OVER THE DISPUTED ROAD LOT; ABSENT A PARTICULAR LAW ESTABLISHING NAGA CITY'S OWNERSHIP OR CONTROL OVER THE SAID LOT, THE DEPARTMENT OF HEALTH'S TITLE MUST PREVAIL.—** A careful reading of the records convinces this Court that respondents failed to establish *prima facie* proof of their clear legal right to utilize Road Lot No. 3. Whatever right

they sought to establish by proving the public nature of Road Lot No. 3 was rebutted by the Department of Health's certificate of title and the City Engineer's categorical statement that "the road from Panganiban Drive up to the entrance and exit gate of [BMC] was not included in the list'' of city roads under Naga City's control. Instead of merely relying on a tax map and claims of customary use, Naga City or respondents should have presented a clear legal right to support their claim over Road Lot No. 3. *Executive Secretary v. Forerunner Multi Resources, Inc*. explained that a clear legal right which would entitle the applicant to an injunctive writ "contemplates a right 'clearly founded in or granted by law.' Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief." Absent a particular law or statute establishing Naga City's ownership or control over Road Lot No. 3, the Department of Health's title over the BMC compound must prevail over the unsubstantiated claims of Naga City and respondents. Department of Health's ownership over Road Lot No. 3, with the concomitant right to use and enjoy this property, must be respected.

3. ID.; ID.; ID.; NATURE OF THE ANCILLARY REMEDY OF A WRIT OF PRELIMINARY INJUNCTION AS AGAINST THE *EX PARTE* NATURE OF A TEMPORARY RESTRAINING ORDER, EXPLAINED; THE COURT OF APPEALS MISAPPRECIATED THE NATURE OF THE WRIT OF PRELIMINARY INJUNCTION WHEN IT FOCUSED SOLELY ON RESPONDENTS' EVIDENCE TO DETERMINE IF THERE WAS *PRIMA FACIE* EVIDENCE TO ISSUE THE WRIT.— Writs of preliminary injunction are granted only upon prior notice to the party sought to be enjoined and upon their due hearing. x x x Rule 58 requires "a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction," giving the applicant an opportunity to prove that great or irreparable injury will result if no writ is issued and allowing the opposing party to comment on the application. On the other hand, a temporary restraining order that is heard only with the evidence presented by its applicant is *ex parte*, but it is issued to preserve the status quo until the hearing for preliminary injunction can be conducted, x x x By focusing solely on Naga City and respondents' evidence to determine if there was

prima facie evidence to issue the writ of preliminary injunction while the case was being heard in the lower court, the Court of Appeals misappreciated the nature of a writ of preliminary injunction. To reiterate, a preliminary injunction is an ancillary remedy issued after due hearing where both parties are given the opportunity to present their respective evidence. Thus, both their evidence should be considered.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Botor Law Firm for respondents.

D E C I S I O N

LEONEN, *J.*:

Prima facie evidence is evidence that is not rebutted or contradicted, making it good and sufficient on its face to establish a fact constituting a party's claim or defense.[1]

This resolves the Petition for Review[2] filed by Bicol Medical Center and the Department of Health, assailing the February 28, 2014 Decision[3] and August 26, 2014 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 129806.

Camarines Sur Provincial Hospital (Provincial Hospital) was established in 1933 as a 25-bed provincial hospital located along Mabini Street, now Peñafrancia Avenue, Naga City. The

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[1] *Wa-acon v. People,* 539 Phil. 485, 494 (2006) [Per *J.* Velasco, Third Division].

[2] *Rollo,* pp. 9-34.

[3] *Id.* at 35-46. The Decision was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Amelita G. Tolentino and Leoncia Real-Dimagiba of the Fourth Division, Court of Appeals, Manila.

[4] *Id.* at 47-48. The Resolution was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jane Aurora C. Lantion and Leoncia Real-Dimagiba of the Special Former Fourth Division, Court of Appeals, Manila.

Camarines Sur Provincial Government eventually subsidized the operations of a private hospital located at Concepcion Pequeña, Naga City and transferred the Provincial Hospital there.[5]

Road Lot No. 3, which stretched from Panganiban Road to J. Miranda Avenue, is a service road which leads to the Provincial Hospital.[6]

The Provincial Hospital was eventually converted to the Bicol Regional Training and Teaching Hospital (Training and Teaching Hospital).[7]

Sometime in 1982, the Camarines Sur Provincial Government donated about five (5) hectares of land to the Ministry of Health, now the Department of Health,[8] as evidenced by Transfer Certificate of Title (TCT) No. 13693.[9] The Training and Teaching Hospital and Road Lot No. 3 were included in this donation.[10]

The Training and Teaching Hospital became the Bicol Medical Center (BMC) in 1995.[11]

Sometime in 2009, BMC constructed a steel gate along J. Miranda Avenue to control the flow of vehicle and pedestrian traffic entering the hospital premises.[12]

On March 21, 2012, Dr. Efren SJ. Nerva (Dr. Nerva), BMC Chief I, issued Hospital Memorandum No. 0310,[13] which ordered the rerouting of traffic inside the BMC Compound. Salient portions of this Memorandum read:

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[5] *About Bicol Medical Center,* available at <http://gwhs-stg02.i.gov.ph/~s2dohbmcgov/?q=about-bmc> (last accessed on September 11, 2017).

[6] *Rollo*, p. 36.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 49.

[10] *Id*. at 36.

[11] *Id*.

[12] *Id*. at 12 and 36.

[13] *Id*. at 51.

To: **All Officials and Employees**
This Center

Subject: Traffic Re-routing inside the BMC Compound

In line with the Traffic Re-routing of the Center, the exit gate at the MCC Quarters shall be closed and the OPD Exit Gate shall be used for the exit of pedestrians and motor vehicles effective **April 1, 2012.**

For information and dissemination purposes.[14]

This rerouting scheme closed the steel gate for vehicles and pedestrians along J. Miranda Avenue, relocating it from the eastern side of the hospital to the western side effective April 1, 2012.[15] The relocation of this gate was implemented for security reasons and to make way for "[m]assive development within the Complex."[16]

The gate closure drew a lot of criticism from the community, and on May 19, 2012, Atty. Noe Botor (Atty. Botor) wrote to Naga City Mayor John Bongat (Mayor Bongat), asking for the reopening or dismantling of the gate for being a public nuisance.[17]

The Sangguniang Panlungsod of Naga City passed a resolution authorizing Mayor Bongat to dismantle the gate.[18] However, instead of dismantling it, Mayor Bongat filed a Verified Petition with Prayer for a Writ of Preliminary Injunction against BMC. The case was docketed as Civil Case No. 2012-0073 and raffled to Branch 24, Regional Trial Court, Naga City.[19]

Atty. Botor, Celjun F. Yap, Ismael A. Albao, Augusto S. Quilon, Edgar F. Esplana II, and Josefina F. Esplana (Intervenors) were allowed to intervene and submit their complaint-in-intervention.[20]

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[14] *Id*. at 51.

[15] *Id*. at 12.

[16] *Id*.

[17] *Id*. at 37.

[18] *Id*.

[19] *Id*.

[20] *Id*.

A few months later, ground-breaking ceremonies for the construction of the Cancer Center Building[21] were conducted, with construction intended to begin in January 2013. When fully completed, the Cancer Center Building would take over "about three-fourths (¾) of the width of Road Lot No. 3."[22]

On December 21, 2012, the Regional Trial Court denied Naga City's application for injunctive relief, ruling that Naga City failed to prove a clear and unmistakable right to the writ prayed for.[23]

On February 22, 2013, the Regional Trial Court denied the motion for reconsideration filed by the Intervenors.[24]

Only the Intervenors filed a petition for certiorari before the Court of Appeals.[25]

On February 28, 2014, the Court of Appeals granted the petition and emphasized that only a *prima facie* showing of an applicant's right to the writ is required in an application for writ of injunctive relief.[26]

The Court of Appeals opined that the Intervenors were able to prove the public character of Road Lot No. 3, considering that "the general public had been using [it] since time immemorial," with even Dr. Nerva admitting that he passed through it when he was young. The Court of Appeals also gave due weight to the 1970s Revised Assessor's Tax Mapping Control Roll and its Identification Map, which support the Intervenors' assertion of the public nature of Road Lot No. 3.[27]

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[21] *Id*. at 54-58.

[22] *Id*. at 37-38.

[23] *Id*. at 38.

[24] *Id*. at 39.

[25] *Id*.

[26] *Id*. at 41.

[27] *Id*. at 41-42.

The Court of Appeals concluded that Naga City and the Intervenors were able to present *prima facie* evidence of their right to the writ. However, the Court of Appeals pointed out that whether or not the Revised Assessor's Tax Mapping Control Roll should prevail over BMC's title over the property is a factual matter that should be threshed out in the trial court.[28] The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE,** premises considered, the instant petition is hereby **GRANTED.** The court *a quo* is hereby **DIRECTED** to issue a writ of mandatory preliminary injunction in the case *a quo.*
>
> **SO ORDERED.**[29] (Emphasis in the original)

On August 26, 2014, the Court of Appeals[30] denied the motions for reconsideration filed by BMC and the Department of Health. However, the Court of Appeals emphasized that the injunction was not directed against the construction of the Cancer Center Building but against the relocation of the service road and gate closure.[31]

On September 29, 2014, petitioners BMC and the Department of Health filed this Petition for Review on Certiorari[32] before this Court. Petitioners claim that although Road Lot No. 3 has been open to vehicles and pedestrians as BMC's service road, it was never intended for use by the general public and was not owned by Naga City, as evidenced by the certification issued by the Office of the City Engineer of Naga City.[33]

Petitioners assert that they have set up a gate on Road Lot No. 3, which is closed at night, on weekends, and during holidays for security reasons and for the welfare of patients and hospital staff.[34]

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[28] *Id.* at 42.

[29] *Id.* at 46.

[30] *Id.* at 47-48.

[31] *Id.* at 48.

[32] *Id.* at 9-33.

[33] *Id.* at 11-12, 50.

[34] *Id.* at 12.

Petitioners maintain that Dr. Nerva's closure of the road and relocation of the gate was in preparation for the construction of the Cancer Center Building.[35] Thus, the preliminary mandatory injunction issued by the Court of Appeals had the effect of halting construction of a government project, a violation of Presidential Decree No. 1818[36] and this Court's Administrative Circular No. 11-2000, which reiterated the prohibition on the issuance of injunctions in cases involving government infrastructure projects.[37]

Petitioners claim that the ₱51,999,475.26 contract for the Cancer Center Building has been awarded to OCM Steel Corporation, the winning contractor, and the Notice to Proceed dated February 3, 2014 has been issued, signalling the mobilization stage of the construction of the Cancer Center Building.[38]

Petitioners emphasize that the Court of Appeals erred in holding that the injunction over the relocation of the service road and closure of the gate did not violate Presidential Decree No. 1818 because the Cancer Center Building, a government project, will be constructed right where the gate stands.[39]

Petitioners point out that the Cancer Center Building will be constructed along Road Lot No. 3; hence, there is a need to close this road due to the excavation and construction, which will make it dangerous for pedestrians and vehicles alike to pass through.[40]

Petitioners likewise underscore that the intervenors, now respondents, failed to support their claim that Road Lot No. 3

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[35] *Id*. at 16.

[36] Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by, the Government (1981).

[37] *Rollo,* pp. 17-18.

[38] *Id*. at 18.

[39] *Id*. at 20.

[40] *Id*. at 21.

was a public road[41] or that they had a clear right to the injunctive relief prayed for.[42] Furthermore, respondents also allegedly "failed to prove that the invasion of the[ir] right sought to be protected [was] material and substantial" and that there was an urgent necessity for the issuance of the writ to prevent serious damage.[43]

Finally, petitioners applied for a temporary restraining order and/or writ of preliminary injunction to prevent the reopening of the gate since doing so would affect the construction of the Cancer Center Building.[44]

On October 8, 2014, this Court issued two (2) Resolutions. The first Resolution[45] granted petitioners' motion for extension to file their petition. The second Resolution[46] issued a temporary restraining order enjoining the implementation of the Court of Appeals February 28, 2014 Decision and August 26, 2014 Resolution, which directed the Regional Trial Court to issue a writ of mandatory preliminary injunction on the closure of Road Lot No. 3. The second Resolution also required respondents to comment on the petition.[47]

On January 13, 2015, respondents filed their Comment on the Petition,[48] where they disputed petitioners' claim that Road Lot No. 3 was always a component or service road of BMC. Respondents contend that Road Lot No. 3 existed as a public road long before any hospital was constructed on it and assert that it remains to be a public road to this day.[49]

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[41] *Id*. at 21-22.

[42] *Id*. at 22-23.

[43] *Id*. at 25-26.

[44] *Id*. at 27-29.

[45] *Id*. at 64.

[46] *Id*. at 65-68.

[47] *Id*. at 65.

[48] *Id*. at 103-113.

[49] *Id*. at 104-105.

Respondents also dispute petitioners' claim that the road closure was for the construction of the Cancer Center Building since Dr. Nerva's memorandum was for no other purpose than to reroute traffic within the hospital complex.[50]

Respondents likewise point out that when they filed their intervention before the Regional Trial Court and their petition before the Court of Appeals, there were still no plans to construct the Cancer Center Building. Furthermore, BMC allegedly failed to support its claim that there were indeed plans to build the Cancer Center Building.[51] Nonetheless, respondents explain that they are not against its construction but are merely asking that it not be illegally built on a public road.[52]

Finally, respondents ask that this Court lift its issued temporary restraining order against the assailed Court of Appeals Decision and Resolution.[53]

In its Resolution[54] dated February 25, 2015, this Court noted respondents' comment and denied their prayer to lift the temporary restraining order. It likewise directed petitioners to file their reply to the comment.

In their Reply,[55] petitioners reiterate their stand that Road Lot No. 3 is a private property.[56] Petitioners also rebut respondents' assertion that they only belatedly brought up the construction of the Cancer Center Building because this project was nonexistent.[57]

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[50] *Id*. at 105.

[51] *Id*. at 106-07.

[52] *Id*. at 107.

[53] *Id*. at 110.

[54] *Id*. at 115-116.

[55] *Id*. at 132-142.

[56] *Id*. at 134.

[57] *Id*. at 135.

Petitioners attached photos[58] to prove that the construction of the Cancer Center Building was in progress.[59]

The single issue to be resolved by this Court is whether or not the Court of Appeals erred in directing the Regional Trial Court to issue a writ of preliminary injunction on the closure of Road Lot No. 3.

The Petition is meritorious.

I

Department of Public Works and Highways v. City Advertising Ventures Corp.[60] defined a writ of preliminary injunction as follows:

> [A] writ of preliminary injunction is an ancillary and interlocutory order issued as a result of an impartial determination of the context of both parties. It entails a procedure for the judge to assess whether the reliefs prayed for by the complainant will be rendered moot simply as a result of the parties' having to go through the full requirements of a case being fully heard on its merits. Although a trial court judge is given a latitude of discretion, he or she cannot grant a writ of injunction if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant. Even if this is present, the trial court must satisfy itself that the injury to be suffered is irreparable.[61]

A writ of preliminary injunction is issued to:

> [P]reserve the *status quo ante,* upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.[62]

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[58] *Id*. at 171-175.

[59] *Id*. at 138.

[60] G.R. No. 182944, November 9, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/182944.pdf> [Per *J*. Leonen, Second Division].

[61] *Id*. at 13.

[62] *Philippine National Bank v. Castalloy Technology Corporation,* 684 Phil 438, 445 (2012) [Per *J*. Reyes, Second Division] citing *Los Baños Rural*

Rule 58, Section 3 of the Rules of Court provides the instances when a writ of preliminary injunction may be issued:

Section 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Jurisprudence has likewise established that the following requisites must be proven first before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued:

(1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[63]

Bank, Inc. v. Africa, 433 Phil. 930, 935 (2002) [Per *J.* Panganiban, Third Division]. See also *Power Sites and Signs, Inc. v. United Neon*, 620 Phil. 205, 217 (2009) [Per *J.* Del Castillo, Second Division].

[63] *St. James College of Parañaque v. Equitable PCI Bank,* 641 Phil. 452, 466 (2010) [Per *J.* Velasco, Jr., First Division] citing *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703-704 (2002) [Per *J.* Corona, Third Division] and *Hutchison Ports Philippines Ltd. v. Subic Bay*

In satisfying these requisites, the applicant for the writ need not substantiate his or her claim with complete and conclusive evidence since only *prima facie* evidence[64] or a sampling is required "to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."[65]

Tan v. Hosana[66] defines *prima facie* evidence as evidence that is "good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense and which if not rebutted or contradicted, will remain sufficient."[67]

Spouses Nisce v. Equitable PCI Bank[68] then discussed the requisites and the proof required for the issuance of a writ of preliminary injunction:

> The plaintiff praying for a writ of preliminary injunction must further establish that he or she has a present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages. In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. Thus, *where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper.* The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction.

Metropolitan Authority, 393 Phil. 843, 859 (2000) [Per *J*. Ynares-Santiago, First Division].

[64] *Republic v. Evangelista*, 504 Phil. 115, 123 (2005) [Per *J*. Puno, Second Division], citing *Buayan Cattle Co., Inc. v. Quintillan*, 213 Phil. 244, 254 (1984) [Per *J*. Makasiar, Second Division].

[65] *Olalia v. Hizon*, 274 Phil. 66, 72 (1991) [Per *J*. Cruz, First Division].

[66] G.R. No. 190846, February 3, 2016, 783 SCRA 87 [Per *J*. Brion, Second Division].

[67] *Id*. at 101 citing *Wa-acon v. People,* 539 Phil. 485 (2006) [Per *J*. Velasco, Third Division].

[68] 545 Phil. 138 (2007) [Per *J*. Callejo, Sr., Third Division].

However, to establish the essential requisites for a preliminary injunction, the evidence to be submitted by the plaintiff need not be conclusive and complete. The plaintiffs are only required to show that they have an ostensible right to the final relief prayed for in their complaint. A writ of preliminary injunction is generally based solely on initial or incomplete evidence. Such evidence need only be a sampling intended merely to give the court an evidence of justification for a preliminary injunction pending the decision on the merits of the case, and is not conclusive of the principal action which has yet to be decided.[69] (Emphasis supplied, citations omitted)

To prove its clear legal right over the remedy being sought, Naga City presented before the trial court the 1970s Revised Assessor's Tax Mapping Control Roll and its Identification Map which both identified Road Lot No. 3 as being in the name of the Province of Camarines Sur.[70] Witnesses' testimonies were also presented to corroborate Naga City's claims of the public nature of Road Lot No. 3.[71]

Respondents claimed that as members of the general public, they had every right to use Road Lot No. 3, a public road.[72]

On the other hand, BMC presented TCT No. 13693,[73] which covered a total land area of 53,890m² within Barrio Concepcion, Naga City with the Ministry of Health, now Department of Health, as the registered owner. It is not disputed that Road Lot No. 3 is part of the property covered by TCT No. 13693.

BMC likewise presented a certification[74] from the City Engineer of Naga City which read:

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[69] *Id*. at 160-161.

[70] *Rollo,* p. 38.

[71] *Id*. at 39.

[72] *Id*. at 104.

[73] *Id*. at 49.

[74] *Id*. at 50.

This is to certify that the road from Panganiban Drive up to the entrance and exit gate of Bicol Medical Center is not included in the list of Inventory of City Road[s] of Naga City.

Given this 14th day of December 2012 for record and reference purposes.[75]

A careful reading of the records convinces this Court that respondents failed to establish *prima facie* proof of their clear legal right to utilize Road Lot No. 3. Whatever right they sought to establish by proving the public nature of Road Lot No. 3 was rebutted by the Department of Health's certificate of title and the City Engineer's categorical statement that "the road from Panganiban Drive up to the entrance and exit gate of [BMC] was not included in the list" of city roads under Naga City's control.[76]

Instead of merely relying on a tax map and claims of customary use, Naga City or respondents should have presented a clear legal right to support their claim over Road Lot No. 3.

Executive Secretary v. Forerunner Multi Resources, Inc.[77] explained that a clear legal right which would entitle the applicant to an injunctive writ "contemplates a right 'clearly founded in or granted by law.' Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief."[78]

Absent a particular law or statute establishing Naga City's ownership or control over Road Lot No. 3, the Department of Health's title over the BMC compound must prevail over the unsubstantiated claims of Naga City and respondents. Department of Health's ownership over Road Lot No. 3, with

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[75] *Id*.

[76] *Id*.

[77] 701 Phil. 64 (2013) [Per *J*. Carpio, Second Division].

[78] *Id*. at 69, citing *Boncodin v. National Power Corporation Employees Consolidated Union (NECU),* 534 Phil. 741, 754 (2006) [Per *C.J*. Panganiban, *En Banc*] and *Spouses Arcega v. Court of Appeals,* 341 Phil. 166 (1997) [Per *J*. Romero, Second Division].

the concomitant right to use and enjoy this property, must be respected.

Respondents likewise cannot rely on the supposed customary use of Road Lot No. 3 by the public to support their claimed right of unfettered access to the road because customary use is not one (1) of the sources of legal obligation;[79] hence, it does not ripen into a right.

II

This Court finds that the Court of Appeals erred in limiting *prima facie* evidence merely to the evidence presented by Naga City and respondents and in disregarding altogether petitioners' evidence,[80] which had the effect of squarely rebutting Naga City and respondents' assertions. The Court of Appeals failed to appreciate the nature of the ancillary remedy of a writ of preliminary injunction as against the *ex parte* nature of a temporary restraining order.

During the hearing for the application for writ of preliminary injunction, the trial court correctly weighed the evidence presented by both parties before dismissing Naga City's application:

> On 21 December 2012, the court *a quo* handed down the first assailed Order denying the application for injunctive relief. According to said court, Naga City failed to comply with the jurisprudential requirements for the issuance of said injunction, to wit: 1) the right of the complainant is clear and unmistakable; 2) the invasion of the right is material and substantial; and 3) urgent and permanent necessity for the writ to prevent serious damage.

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[79] CIVIL CODE, Art. 1157 provides:

Article 1157. Obligations arise from:

(1) Law;
(2) Contracts;
(3) Quasi-contracts;
(4) Acts or omissions punished by law; and
(5) Quasi-delicts.

[80] *Rollo,* pp. 42-43.

Anent the first requirement, the court *a quo* noted that even on the assumption that the 1970's Revised Assessor's Tax Mapping Control Roll and its Identification Map were both authentic documents, *the same would not overcome BMC's ownership of the property as evidenced by its title. BMC's title covers all property within its bounds, which naturally included Road Lot No. 3.*

The court *a quo* thereafter proceeded to conclude that since Naga City failed to clearly establish its right over the said road, then logically, it would not also be able to show compliance with the second requisite, which necessitates a material and substantial invasion of such right.

On the third requirement, the court *a quo* took into consideration the testimonies of two of the herein petitioners, Eliza M. Quilon (hereinafter Quilon) and Josefina F. Esplana (hereinafter Esplana), who both have businesses in the area and who said that their respective enterprises started suffering from losses after the closure of Road Lot No. 3. However, according to the court *a quo,* the losses of Quilon and Esplana hardly qualify as irreparable injury required by jurisprudence in granting the writ of preliminary injunction. This is so, as the court declared, because the alleged business losses that had been purportedly caused by the closure of Road Lot No. 3 were easily subject to mathematical computation.[81] (Emphasis supplied)

Writs of preliminary injunction are granted only upon prior notice to the party sought to be enjoined and upon their due hearing. Rule 58, Section 5 of the Rules of Court provides:

Section 5. Preliminary injunction not granted without notice; exception. – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within

[81] *Id*. at 38-39.

the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours (72) hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed, automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

Thus, Rule 58 requires "a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction,"[82] giving the applicant an opportunity to prove that great or irreparable injury will result if no writ is issued and allowing the opposing party to comment on the application.

On the other hand, a temporary restraining order that is heard only with the evidence presented by its applicant is *ex parte*,

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[82] *Spouses Lago v. Abul,* 654 Phil. 479, 490 (2011) [Per *J.* Nachura, Second Division].

but it is issued to preserve the status quo until the hearing for preliminary injunction can be conducted. *Miriam College Foundation, Inc v. Court of Appeals*[83] explained the difference between preliminary injunction and a restraining order as follows:

> Preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to perform to refrain from performing a particular act or acts. As an extraordinary remedy, injunction is calculated to preserve or maintain the status quo of things and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard. A preliminary injunction persists until it is dissolved or until the termination of the action without the court issuing a final injunction.
>
> The basic purpose of restraining order, on the other hand, is to preserve the status quo until the hearing of the application for preliminary injunction. Under the former Â§5, Rule 58 of the Rules of Court, as amended by Â§5, Batas Pambansa Blg. 224, a judge (or justice) may issue a temporary restraining order with a limited life of twenty days from date of issue. If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. In the instant case, no such preliminary injunction was issued; hence, the TRO earlier issued automatically expired under the aforesaid provision of the Rules of Court.[84] (Citations omitted)

It is true that some issues are better threshed out before the trial court, such as if the donation to the Department of Health by the Camarines Sur Provincial Government contained an encumbrance for the public to continue using Road Lot No. 3, or the validity of this donation.[85] The Court of Appeals, however, erred when it completely disregarded the evidence presented

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[83] 401 Phil. 431 (2000) [Per *J*. Kapunan, First Division].

[84] *Id*. at 447-448.

[85] *Rollo,* pp. 42-43.

by petitioners, reasoning out that the question of whether or not Naga City's evidence should prevail over BMC's title over the property was supposedly a factual matter that should be threshed out in the trial court.[86]

By focusing solely on Naga City and respondents' evidence to determine if there was *prima facie* evidence to issue the writ of preliminary injunction while the case was being heard in the lower court, the Court of Appeals misappreciated the nature of a writ of preliminary injunction. To reiterate, a preliminary injunction is an ancillary remedy issued after due hearing where both parties are given the opportunity to present their respective evidence. Thus, both their evidence should be considered.

As it is, absent a finding of grave abuse of discretion, there was no reason for the Court of Appeals to reverse the trial court's denial of respondents' application for the issuance of a writ of preliminary injunction. Respondents were unable to present *prima facie* evidence of their clear and unmistakable right to use Road Lot No. 3.

WHEREFORE, this Court resolves to **GRANT** the Petition. The assailed February 28, 2014 Decision and August 26, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 129806 are **REVERSED and SET ASIDE.**

The temporary restraining order issued by this Court in its October 8, 2014 Resolution is made **PERMANENT.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.* concur.

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[86] *Id*. a 42.

SECOND DIVISION

[G.R. No. 218575. October 4, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCIS URSUA *y* BERNAL,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** We accord high respect and conclusiveness on the trial court's calibration of the testimonies of the witnesses and the conclusions derived therefrom when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. Indeed, trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and observed their deportment and manner of testifying during trial, and the rule finds an even more stringent application where the trial court's findings are sustained by the CA.

2. **CRIMINAL LAW; QUALIFIED RAPE; PROPER PENALTY AND DAMAGES.—** As to the penalty for qualified rape under paragraph 1, Article 266-A of the RPC, Article 266-B (1) of the RPC provides that the death penalty shall be imposed if the victim is under eighteen (18) years of age and the offender is the parent. Applying R.A. No. 9346, the CA correctly imposed the penalty of *reclusion perpetua*, but it should be specified that it is without eligibility for parole. This is pursuant to A.M. No. 15-08-02-SC which states that "[w]hen circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification '*without eligibility for parole*' shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346." Meanwhile, the damages awarded by the RTC, as affirmed by the CA, should be modified in view of *People v. Jugueta* where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts

of civil indemnity, moral damages and exemplary damages shall be in the amount of ₱100,000.00 each.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; VARIANCE DOCTRINE; SEXUAL ABUSE UNDER SECTION 5(B), ARTICLE III OF RA NO. 7610; ALTHOUGH ACCUSED CANNOT BE HELD LIABLE FOR RAPE BY SEXUAL INTERCOURSE AS CHARGED, HE CAN STILL BE CONVICTED OF SEXUAL ABUSE UNDER SECTION 5(B), ARTICLE III OF RA NO. 7610 PURSUANT TO THE VARIANCE DOCTRINE BECAUSE THE SAME OFFENSE WAS PROVED AND IS NECESSARILY INCLUDED IN THE CRIME OF RAPE.— Since AAA merely testified that her father touched her breasts and vagina, and thereafter placed himself on top of her ("*pumatong siya*"), and there was no specific mention of a penetration of Ursua's penis or fingers into AAA's vagina, the CA correctly ruled that Ursua cannot be held liable for rape by sexual intercourse as charged in the Information in Criminal Case No. 134834-H. Be that as it may, Ursua can still be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610 pursuant to the variance doctrine under Sections 4 & 5, Rule 120 of the Rules of Court, because the same offense was proved during trial and is necessarily included in acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessaril included in the crime of rape. x x x This is consistent with the CA's discussion on the prosecution's failure to prove the fact of carnal knowledge in Criminal Case No. 134834-H: The elements of **sexual abuse** under Section 5(b), Article III of Republic Act No. 7610 are as follows: 1. The accused commit the act of sexual intercourse or lascivious conduct. 2. The said act is performed with a child exploited in prostitution or subjected to sexual abuse. 3. The child, whether male or female, is below 18 years of age. First, **accused-appellant's touching of AAA's breasts and vagina with lewd designs constitute lascivious conduct** defined in Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, to wit: x x x x Second, **appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse.** Third, **AAA is below 18 years old at the time of the commission of the offense, based on her**

testimony which was corroborated by her Birth Certificate presented during trial.

4. ID.; ID.; PENALTY IN CASE AT BAR.—Considering that the victim was 14 years old at the time of the commission of sexual abuse under Section 5(b) of R.A. No. 7610, and there being no mitigating circumstance to offset the alternative aggravating circumstance of (paternal) relationship, as alleged in the information and proved during the trial of Criminal Case No. 134834-H, Ursua is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay ₱15,000.00 as fine, pursuant to Section 31 (a) and (f) of R.A. No. 7610, as well as to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, in line with current jurisprudence. Finally, a legal interest at the rate of six percent (6%) *per annum* is imposed on all the monetary awards for damages from the date of finality of this judgment until fully paid.

5. CRIMINAL PROCEDURE; INFORMATION; FAILURE TO DESIGNATE THE OFFENSE BY STATUTE DOES NOT VITIATE THE INFORMATION IF THE FACTS ALLEGED CLEARLY RECITE THE FACTS CONSTITUTING THE CRIME CHARGED.— Concededly, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information. It bears emphasis, however, that the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the July 17, 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06105, which affirmed with modification the November 22, 2012 Decision[2] of the Regional Trial Court *(RTC)* Branch 261, Pasig City, convicting accused-appellant Francis Ursua *y* Bernal *(Ursua)* of qualified rape and acts of lasciviousness.

AAA was born on January 16, 1992[3] and is accused-appellant Ursua's biological daughter. Together with her father and elder brother, BBB, she lived in a small house with one room, but without kitchen and living room *(sala)*.

Around 12:00 midnight on January 17, 2006, Ursua, who was drunk, woke up AAA and instructed her to buy a porridge *(lugaw)*. After eating, he told her to turn off the light and close the door. As they were sleeping in one bed, he undressed her, touched her vagina, and held her breast. He then removed his short pants and brief, moved on top of her, pulled his penis, and inserted it into her vagina. He told her not to make any noise. Consequently, she merely cried and did not shout, resist, or ask her father to stop. After the acts were done, they went to sleep.

Early dawn the next day, Ursua repeated the dastardly acts on AAA. He held her vagina and breast and inserted his penis into her vagina. Again, she did not ask for any help. She did not shout because her father almost hit her *("muntik na po nya akong sapakin")*. He told her not to make any noise; hence, she just cried. Later in the evening, around 10 p.m., Ursua once

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Remedios A. Salazar-Fernando and Ramon R. Garcia concurring (*Rollo,* pp. 2-11; CA *rollo,* pp. 86-95).

[2] Records, pp. 162-174; CA *rollo*, pp. 11-23.

[3] TSN, November 22, 2007, p. 29. However, the Birth Certificate of AAA shows that she was born on January 16, 1994 (Records, p. 122).

more held AAA's breasts and vagina and placed himself on top of her (*"pinatong po nya uli yong, pumatong po uli sya sa akin"*).[4]

From January 17 to 18, 2006, BBB was in the street, selling in the market. On January 19, 2006, AAA left their house and went to her godfather *(ninong)*, CCC. She told him what happened between her and Ursua. She did not return to their house and stayed with her *ninong* and cousins in a place under the Pasig City Hall.

On November 14, 2006, AAA, assisted by a liaison officer of the Department of Social Welfare and Development (*DSWD*), executed a sworn statement before the Women and Children Concern Unit of the Pasig City Police Station.[5] Based on the Request for Genital Examination by the police station, PSI Marianne Ebdane, a Medico-Legal Officer of the Philippine National Police Crime Laboratory in Camp Crame, Quezon City, conducted a medical examination of AAA on November 9, 2006. After finding that there were deep healed laceration at 7 o'clock position and shallow healed lacerations at 2, 3 and 9 o'clock positions, she concluded that there is a clear evidence of remote history of blunt force or penetrating trauma to AAA's hymen.[6] She interviewed AAA, who disclosed that it was caused by her father who inserted his organ into her vagina.

Charges for qualified rape[7] were then filed against Ursua. The three Informations, all dated February 20, 2007, alleged:

Criminal Case No. 134832-H

On or about January 17, 2006, in Pasig City and within the jurisdiction of this Honorable Court, the accused, by means of force

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[4] TSN, November 22, 2007, pp. 22-23.

[5] Records, pp. 13, 121.

[6] *Id.* at 14, 123.

[7] Under Article 266-A in relation to 266-B, Paragraph 5(1) of the Revised Penal Code *(RPC)*, as amended by Republic Act *(R.A.)* No. 8353, and in further relation to Section 5(a) of R.A. No. 8369.

and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with one [AAA], 14 years old, a minor and his daughter, against her will and consent.

Contrary to law.[8]

Criminal Case No. 134833-H

On or about January 18, 2006, at about 5:00 a.m., in Pasig City and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with one [AAA], 14 years old, a minor and his daughter, against her will and consent.

Contrary to law.[9]

Criminal Case No. 134834-H

On or about January 18, 2006, at about 10:00 p.m., in Pasig City and within the jurisdiction of this Honorable Court, the accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had sexual intercourse with one [AAA], 14 years old, a minor and his daughter, against her will and consent.

Contrary to law.[10]

In his arraignment, Ursua pleaded not guilty. Trial ensued.

Ursua denied having any carnal knowledge of AAA. He recalled that around 9:00 p.m. to 10:00 p.m. on January 17, 2006 he arrived at the house after working at their neighbor's place. At that time, AAA and BBB were at the house. He was living only with them because he was already separated from his wife for a long time. He requested his children to buy *lugaw*. When they returned, he ate it and rested. He just heard that they closed the door and slept beside him. With lights on, BBB slept at the middle between him and AAA. While they were asleep, he did not notice anything.

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[8] Records, p. 1.

[9] *Id*. at 15.

[10] *Id*. at 17.

When Ursua woke up at 5:00 a.m. on January 18, 2006, BBB was already awake, while AAA was still asleep. He brought BBB to the market to work at his (Ursua) cousin's vegetable store. By 7:00 a.m., he returned to their house to pick up AAA and bring her to school. Afterwards, he went to work and arrived at their house around 12:00 midnight. By that time, his two children were already sleeping.

On January 19, 2006, AAA attended school and proceeded directly to CCC's store located under the Pasig City Hall. She stayed there from 12:00 p.m. until Ursua fetched her around 9:00 p.m. to 10:00 p.m. Subsequently, however, AAA did not return home anymore. Since September 2006, she had been staying in the DSWD.

Ursua claimed that AAA filed the cases against him because he prevented her from going to CCC. The reason being that she became especially close to her godfather. Whenever he fetched her, he oftentimes saw him embracing her and that sometimes she was sitting on his lap. Due to the prohibition, AAA would leave the house whenever they were asleep. They would wake up without AAA and just see her already at CCC's place.

Testifying for his father, BBB declared that on January 17, 2006, he was at home with AAA, while his father was working as a helper. Around 8:00 p.m. to 9:00 p.m., Ursua arrived and told them to buy food. After which, they all ate the *lugaw* and slept around 10:00 p.m. to 11:00 p.m. The house they were residing at was only small and with one bed. Ursua and AAA slept on his either side. While sleeping, he did not feel or notice anything unusual. They woke up at 5 a.m. Considering that the light was on, he did not notice if his father or sister was already awake. He does not know the reason why AAA would file a case against their father and why she would lie about it. Prior to the alleged incident on January 17, 2006, he did not notice any special treatment or any unusual behavior of his father against his sister. There was no misunderstanding between them. He affirmed that she frequented the shop of CCC.

On November 22, 2012, Ursua was convicted of three (3) counts of qualified rape. The *fallo* of the Decision reads:

> **WHEREFORE**, premises considered, there being proof beyond reasonable doubt that accused FRANCIS URSUA y Bernal has committed the crime of Qualified Rape (3 counts) under Article 266-A in relation to Article 266-B, par. 5(1) of the Revised Penal Code and in further relation to Sec. 5(a) of R.A. 8369 as charged, the Court hereby pronounces him GUILTY beyond reasonable doubt and, there being aggravating circumstances, hereby sentences him to suffer the penalty of 3 counts of RECLUSION PERPETUA. Accused is ordered to pay AAA the amount of Php150,000.00 by way of civil indemnity; Php75,000.00 as moral damages and Php60,000.00 as exemplary damages.
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> **SO ORDERED**.[11]

The trial court found AAA as a witness and her testimony credible. She positively identified her father as the one who raped her and testified consistently and convincingly on the material facts, including the dates and time, that transpired in the alleged incidents. In addition, PSI Ebdane presented and explained her medico-legal report to corroborate AAA's declaration that she was sexually molested. The court was unconvinced by the defense of alibi and denial of Ursua. Even if corroborated by his son, the defense was not given credence as it was unsubstantiated and there was no doubt that he could be at the scene of the crime at the time the alleged incidents happened.

On appeal, the CA ruled that Ursua's denial cannot overcome the positive testimony of AAA. She was spontaneous and credible as she gave clear and categorical narration of events and was firm and steadfast in her accusations. However, in view of the failure of the prosecution to prove the fact of penile penetration with regard to the alleged rape that occurred in the evening of January 18, 2006, the appellate court downgraded the offense to acts of lasciviousness.[12] It disposed:

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[11] Records, pp. 173-174; CA *rollo*, pp. 22-23. (Emphasis in the original)

[12] Defined and penalized under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The conviction of the Accused-Appellant Francis Ursua y Bernal for the two (2) counts of rape (Criminal Case No. 134832-H and Criminal Case No. 134833-H) is **AFFIRMED**. The third (Criminal Case No. 134834-H) count of rape is **MODIFIED** to **ACTS OF LASCIVIOUSNESS** and accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* as maximum period and ordered to pay AAA moral damages of ₱15,000.00; civil indemnity of ₱20,000.00 and exemplary damages of ₱15,000.00.

SO ORDERED.[13]

Before Us, the People, as represented by the Office of the Solicitor General, manifested that it would not file a Supplemental Brief as the Appellee's Brief filed before the CA adequately addressed the issues and arguments raised in this case.[14] Per the Court's Resolution dated March 16, 2016, Ursua was deemed to have waived the filing of the required brief. It appeared that he did not file a supplemental brief pursuant to the Resolution[15] dated July 27, 2015, within the period fixed therein which expired on October 17, 2015.

There is no reason to reverse the judgment of conviction, but a modification of the penalties imposed, the damages awarded, and the nomenclature of the offense committed, is in order.

We accord high respect and conclusiveness on the trial court's calibration of the testimonies of the witnesses and the conclusions derived therefrom when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. Indeed, trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and observed their deportment and manner of testifying during trial, and the rule finds an even more stringent application where the trial court's findings are sustained by the CA.[16]

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[13] *Rollo,* pp. 10-11; CA *rollo*, pp. 94-95.

[14] *Rollo,* pp. 21-24.

[15] *Id.* at 17-18.

[16] *People v. Altubar,* G.R. No. 207089, February 18, 2015. (Resolution)

However, the assailed CA decision is modified as to the penalty imposed and the damages awarded in Criminal Cases No. 134832-H and 134833-H. With respect to the two (2) counts of qualified rape by sexual intercourse, Ursua is sentenced to suffer the penalty of two (2) counts of *reclusion perpetua* without eligibility for parole,[17] and is ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages for each count, in line with current jurisprudence.[18]

As to the penalty for qualified rape under paragraph 1, Article 266-A of the RPC, Article 266-B (1) of the RPC provides that the death penalty shall be imposed if the victim is under eighteen (18) years of age and the offender is the parent. Applying R.A. No. 9346,[19] the CA correctly imposed the penalty of *reclusion perpetua,* but it should be specified that it is without eligibility for parole. This is pursuant to A.M. No. 15-08-02-SC which states that "[w]hen circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346, the qualification '*without eligibility for parole'* shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346." Meanwhile, the damages awarded by the RTC, as affirmed by the CA, should be modified in view of *People v. Jugueta*[20] where it was held that in cases of qualified rape where the imposable penalty is death but the same is reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts of civil indemnity, moral damages and exemplary damages shall be in the amount of ₱100,000.00 each.[21]

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[17] Pursuant to Article 266-B of the RPC, as amended by R.A. No. 8353, in relation to Section 3 of R.A. No. 9346.

[18] *People v. Jugueta,* G.R. No. 202124, April 5, 2016, 788 SCRA 331.

[19] Known as "*An Act Prohibiting the Imposition of Death Penalty in the Philippines.*"

[20] *Supra* note 18.

[21] *People v. Roger Galagati y Garduce*, G.R. No. 207231, June 29, 2016.

As regards Criminal Case No. 134834-H, the CA decision is likewise modified as to the nomenclature of the offense, the penalty imposed and the damages awarded.

Since AAA merely testified that her father touched her breasts and vagina, and thereafter placed himself on top of her ("*pumatong siya*"), and there was no specific mention of a penetration of Ursua's penis or fingers into AAA' vagina, the CA correctly ruled that Ursua cannot be held liable for rape by sexual intercourse as charged in the Information in Criminal Case No. 134834-H. Be that as it may, Ursua can still be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610[22] pursuant to the variance doctrine under Sections 4 and 5, Rule 120[23] of the Rules of Court, because the same offense was proved during trial and is necessarily included in acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence,[24] is necessarily included in the crime of rape.[25]

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[22] Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

[23] SEC. 4. *Judgment in case of variance between allegation and proof.*— When there is variance between the offense charge in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

SEC. 5. *When an offense includes or is included in another.*—An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[24] *People v. Pareja,* 724 Phil. 759 (2014); *People v. Rellota*, 640 Phil. 471 (2010) and *People v. Garcia*, 695 Phil. 576 (2012).

[25] See Separate Concurring Opinion in *People v. Noel Caoili alias "Boy Tagalog"*, G.R. Nos. 196342 and 196848, August 8, 2017, pp. 5-7.

x x x x x x x x x

> An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter, whereas an offense

Contrary to the CA's ruling that Ursua is, at the most, liable for one (1) count of acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610 due to the prosecution's failure to prove the fact of carnal knowledge, We rule that the proper nomenclature of the offense is sexual abuse under Section 5(b), Article III of R.A. No. 7610. This is consistent with the CA's discussion on the prosecution's failure to prove the fact of carnal knowledge in Criminal Case No. 134834-H:

The elements of **sexual abuse** under Section 5(b), Article III of Republic Act No. 7610 are as follows:

1. The accused commit the act of sexual intercourse or lascivious conduct.

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charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

x x x x x x x x x

A comparison of the essential elements or ingredients of sexual abuse under Section 5(b), Article III of R.A. No. 7610 and acts lasciviousness under Article 336 of the RPC barely reveals any material or substantial difference between them. The first element of sexual abuse under R.A. No. 7610, which includes lascivious conduct, lists the particular acts subsumed under the broad term "act of lasciviousness or lewdness" under Article 336. The second element of "*coercion and influence*" as appearing under R.A. No 7610 is likewise broad enough to cover "*force and intimidation*" as one of the circumstances under Article 336. Anent the third element, the offended party under R.A. No. 7610 and Article 336 may be of either sex, save for the fact that the victim in the former must be a child. I therefore posit that the sexual abuse under Section 5(b), Article III of R.A. No. 7610 is necessarily included the crime of acts of lasciviousness under Article 336 of the RPC.

Applying the variance doctrine in this case where the crime charged is rape by sexual intercourse, Caoili can still be convicted of sexual abuse under Section 5(b), Article III of R.A No. 7610. This is because the same crime was proved during trial and is necessarily included in the crime of acts of lasciviousness under Article 336 of the RPC which, under settled jurisprudence, is necessarily included in a complaint for rape.

2. The said act is performed with a child exploited in prostitution or subjected to sexual abuse.

3. The child, whether male or female, is below 18 years of age.

First, **accused-appellant's touching of AAA's breasts and vagina with lewd designs constitute lascivious conduct** defined in Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, to wit:

x x x x x x x x x

Second, **appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse**.

Third, **AAA is below 18 years old at the time of the commission of the offense, based on her testimony which was corroborated by her Birth Certificate presented during trial**. x x x[26]

Accordingly, Ursua should be convicted of sexual abuse under Section 5(b), Article III of R.A. No. 7610, and not just acts of lasciviousness under Article 336 of the RPC, in relation to the same provision of R.A. No. 7610.

Concededly, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information.[27] It bears emphasis, however, that the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.[28] Thus, the Court finds it necessary to stress its ruling in *Caoili:*[29]

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[26] CA *rollo*, pp. 93-94. (Emphasis added).

[27] *Malto v. People*, 560 Phil. 119, 135-136 (2007).

[28] *Id*. at 135.

[29] *Supra* note 25.

(1) that the crime of **acts of lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610,** can only be committed against a victim who is less than 12 years old; and (2) that when the victim is aged 12 years old but under 18, or is above 18 years old under special circumstances, the proper designation of the offense is **sexual abuse or lascivious conduct under Section 5(b) of R.A. No. 7610**:

Based on the language of Section 5(b) of R.A. No. 7610, however, the offense designated as **Acts of Lasciviousness under Article 336 of the RPC in relation to Section 4 of R.A. No. 7610** should be used when the victim is **under twelve (12) years of age** at the time the offense was committed. This finds support in the first *proviso* in Section 5(b) of R.A. No. 7610 which requires that "*when the victim is under twelve (12) years of age, **the perpetrators shall be prosecuted under** Article 335, paragraph 3, for rape and **Article 336 of Act No. 3815, as amended, the Revised Penal Code**, for rape or **lascivious conduct**, as the case may be.*" Thus, pursuant to this *proviso*, it has been held that before an accused can be convicted of child abuse through lascivious conduct on a minor below 12 years of age, the requisites for acts of lasciviousness under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5 of R.A. No. 7610.

Conversely, when the victim, at the time the offense was committed is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be **Lascivious Conduct under Section 5(b) of R.A. No. 7610**, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.

x x x x x x x x x

Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating the offense, and in determining the imposable penalty.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610. Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua.*[30]

Considering that the victim was 14 years old at the time of the commission of sexual abuse under Section 5(b) of R.A. No. 7610, and there being no mitigating circumstance to offset the alternative aggravating circumstance of (paternal) relationship,[31] as alleged in the information and proved during the trial of Criminal Case No. 134834-H, Ursua is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay ₱15,000.00 as fine, pursuant to Section 31(a)[32] and

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[30] Emphasis and italics in the original; citations omitted.

[31] Article 15 of the Revised Penal Code:

Art. 15. *Their concept.* — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party in the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

x x x x x x x x x

[32] R.A. No. 7610, Article XII, Section 31. *Common Penal Provisions.*—

x x x x x x x x x

(a) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or

(f)[33] of R.A. No. 7610, as well as to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, in line with current jurisprudence.[34]

Finally, a legal interest at the rate of six percent (6%) *per annum* is imposed on all the monetary awards for damages from the date of finality of this judgment until fully paid.[35]

WHEREFORE, premises considered, the July 17, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06105 is **AFFIRMED WITH MODIFICATION**. Accused-appellant Francis Ursua *y* Bernal is hereby found guilty beyond reasonable doubt of the following:

1. Two (2) counts of **Qualified Rape** in Criminal Cases No. 134832-H and 134833-H. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each count; and

2. One (1) count of **Sexual Abuse** in Criminal Case No. 134834-H. He is sentenced to suffer the penalty of *reclusion perpetua,* to pay a fine of ₱15,000.00, and to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

[33] (f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family, if the latter is the perpetrator of the offense.

[34] *People v. Noel Go Caoili alias "Boy Tagalog"*, G.R. Nos. 196342 and 196848, August 8, 2017.

[35] See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames, et al*. 716 Phil. 267 (2013).

All monetary awards for damages shall earn an interest rate of six percent (6%) *per annum* to be computed from the finality of the judgment until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222816. October 4, 2017]

ALLAN JOHN UY REYES, *petitioner, vs.* **GLOBAL BEER BELOW ZERO, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES, GENERALLY RESPECTED, EXCEPT WHERE THE FACTUAL FINDINGS ARE COMPLETELY DIFFERENT FROM THAT OF THE COURT OF APPEALS.— As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. x x x Since the factual findings of the Labor Arbiter and the NLRC are completely different from that of the CA, this case falls under one of the exceptions, therefore, this Court may now resolve the issues presented before it.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; FACT OF DISMISSAL SUBSTANTIALLY

EVINCED BY DIRECT SUPERVISOR'S VERBAL NOTICE OF TERMINATION AND CORROBORATIVE TEXT MESSAGES.— Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. x x x Verbal notice of termination can hardly be considered as valid or legal. To constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself. x x x In the present case, the one who verbally directed petitioner to no longer report for work was his immediate or direct supervisor, the Vice-President for Operations, who has the capacity and authority to terminate petitioner's services, x x x Furthermore, the "text" messages petitioner Reyes presented in evidence were corroborative. x x x It is well settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. Thus, the "text" messages may be given credence especially if they corroborate the other pieces of evidence presented. Again, while as a rule, the Court strictly adheres to the rules of procedure, it may take exception to such general rule when a strict implementation of the rules would cause substantial injustice to the parties.

3. ID.; ID.; JUST CAUSE; ABANDONMENT; NOT ESTABLISHED IN CASE AT BAR.— Having thus proven the fact of being dismissed, the burden to prove that such dismissal was not done illegally is now shifted to the employer. In illegal dismissal cases, the burden of proof is upon the employer to show by substantial evidence that the employee's termination from service is for a just and valid cause. x x x Abandonment requires the deliberate, unjustified refusal of the employee to resume his employment, without any intention of returning. For abandonment to exist, two factors must be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts. In this case, no such abandonment was proven by respondent Global. In fact, petitioner Reyes would not have filed a case for illegal dismissal if he really intended to abandon his work. Employees

who take steps to protest their dismissal cannot logically be said to have abandoned their work.

APPEARANCES OF COUNSEL

David & De Guia Law Offices for petitioner.
Quicho & Angeles for respondent.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court dated March 22, 2016 of petitioner Allan John Uy Reyes (*Reyes*) that seeks to reverse and set aside the Decision[2] dated August 27, 2015 of the Court of Appeals (*CA*) reversing the Decision[3] dated July 31, 2013 of the National Labor Relations Commission in NLRC LAC No. 01-000289-13 that found petitioner to be illegally dismissed by respondent Global Beer Below Zero, Inc. (*Global*).

The facts follow.

Petitioner Reyes was an employee of respondent Global as Operations Manager from January 2009 until January 2012. On January 18, 2012, petitioner Reyes, in accordance with his duties, reported to the main office of respondent Global in Makati instead of going to the Pasig warehouse in order to request for budget because there was a scheduled delivery the following day. The following day, January 19, 2012, petitioner Reyes ran late because according to him, his three-year-old son was sick. Around 10:30 a.m. of the same day, respondent Global's Vice-President for Operations, Vinson Co Say (*Co Say*), petitioner Reyes' immediate and direct superior at that time,

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[1] *Rollo*, pp. 17-50.

[2] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Rodil V. Zalameda and Pedro B. Corales; *id*. at 53-68.

[3] *Rollo*, pp. 101-108.

called petitioner Reyes and asked him why he was not yet at the office. Petitioner Reyes apologized and said that he was on his way. According to petitioner Reyes, he tried to explain why he was late, but Co Say did not listen and the latter shouted at the other end of the line and told petitioner Reyes not to report for work anymore. Petitioner Reyes further claimed that Co Say angrily retorted that he will talk to him the following week before Co Say hung up the phone. As instructed, petitioner did not report for work on the following days and waited for further instructions from Co Say. On January 24, 2012, petitioner Reyes received a text message from Co Say stating the following, "*Allan, let's meet thu, puno ako today, bukas.*" Around 1:28 p.m. of January 26, 2012, petitioner Reyes received a text message from Co Say which says, "*Allan, let's meet in Starbucks Waltermart around 3:00.*" During the said meeting, Co Say told petitioner Reyes to no longer report for work and insisted that he file a resignation letter which petitioner Reyes refused to do because he believed that he had not done anything that would warrant his dismissal from the company. Thus, petitioner Reyes instituted a complaint for constructive dismissal on February 22, 2012 and amended the same complaint on March 29, 2012, changing his cause of action to illegal dismissal.

Respondent Global, on the other hand, claimed that petitioner Reyes was not dismissed from service, but the latter stopped reporting for work on his own volition after repeatedly violating company rules and regulations. According to respondent Global, the following are petitioner Reyes' violations:

> 5. However, during his tenure as operations manager, complainant Reyes proved unequal to the responsibilities imposed upon him as operations manager. On the month of January 2012 alone, he has incurred a total of six (6) days of absences.
>
> 5.1 Without informing respondent GBZ and without its prior consent, complainant Reyes was absent on 02 and 03 January 2012. In violation of company policy and to the utter detriment of respondent GBZ, complainant Reyes only filed his leave application form on 04 January 2012 or after he has incurred the said absences. xxx

5.2 On 05 and 06 of January 2012, he was again absent from work and filed the leave application form on 04 January 2012. This is in violation of the company policy which requires seven (7) days prior written notice before the date of absence.

5.3 On 09 and 10 of January 2012, complainant Reyes was again absent. As before, he filed the necessary leave application form only after he has incurred the said absences. xxx

5.3 (sic) To make matters worse, he failed to comply with the company procedure as provided in the Company Personnel Policy in the filing of vacation leave. xxx

5.4 As a result of the use of unearned leaves, he was overpaid for a total of five (5) days worth of salary. xxx

6. Furthermore, complainant Reyes incurred a total balance of Seven Thousand Nine Hundred and Seventy-Seven Pesos and Ten Centavos [PhP7,977.10] for personal use of WAP services.

7. As a result of his frequent absences, several work has remained undone. A defective freezer that needed repair was not properly attended to by complainant Reyes. Furthermore, complainant Reyes lied about the true status of the work as well as the fact that he never supervised the repair being conducted. Respondent Co Say then reprimanded complainant Reyes on 19 January 2012 for such unfinished work as well as his untruthful statement.

7.1 To make matters worse, on 18 January 2012, complainant Reyes intentionally lied to respondent Co Say to try to conceal his misdeeds. He knowingly and deliberately told respondent Co Say that he was presently at the warehouse supervising the repair of a freezer that needed work, where in truth, he was not.

7.2 On 19 January 2012, respondent Co Say learned from Mr. Arman Valiente, warehouseman of GBZ, not from complainant Reyes, that the freezer was not ready. As operations manager, complainant Reyes had the duty to ensure that [the] deadline should be met, he also had the responsibility to inform respondent Co Say about the true status of pending works.

7.3 Furthermore, complainant Reyes was supposed to leave for Pampanga on 19 January 2012 at 10 a.m., but failed to do so. Upon inquiry of respondent Co Say, complainant Reyes

admitted that he woke up late. Respondent Co Say was then forced to send someone else.

8. On 20 January 2012, complainant Reyes failed and neglected to report for work despite the pending work that needed his attention.

9. On 26 January 2012, upon the initiative of complainant Reyes, respondent Co Say met with complainant Reyes.

10. In the said meeting, complainant Reyes explained and apologize (sic) to respondent Co Say about the lies and violation of company policies as well as the unfinished works. Upon hearing all this, respondent Co Say asked complainant Reyes to report back to work and reasonably explain his dishonesty, serious violation of company policies and absences.

11. Complainant Reyes failed to heed this request of respondent Co Say. In fact, 18 January 2012 was the last time he took steps on the premises of GBZ, despite notice to report for work.

12. On 22 February 2012, complainant Reyes, feeling perhaps that his work will soon be terminated by respondent, "jumped the gun," so to speak, and prematurely filed a Complaint for Constructive Dismissal for no apparent reason at all.[4]

The Labor Arbiter, on November 28, 2012, ruled in favor of petitioner Reyes. The dispositive portion of the decision reads as follows:

WHEREFORE, respondent Global Beer Zero, Inc. is hereby ordered to pay the complainant the following amounts:

1. Full backwages (₱18,000.00/mo. from 1-19-12 to 10-31-12)	₱180,950.00
2. Separation pay (one month's Salary per year from 1-12-09 to 10-31-12)	₱60,000.00
3. Ten percent (10%) attorney's fees	₱24,095.00
TOTAL JUDGMENT AWARD	₱265,045.00

[4] *Id.* at 56-58. (Citations omitted)

The computation of the judgment awards attached to this decision is hereby adopted as an integral part thereof.

SO ORDERED.[5]

According to the Labor Arbiter, petitioner Reyes had no intention of quitting his job as seen from his filing of applications of leaves of absences days before he supposedly abandoned his job and his texting Co Say about his work on the day he supposedly abandoned his job. It also found that the accusation that petitioner Reyes committed serious misconduct and was negligent in the performance of his duty is more consistent with a finding that there was dismissal than with a finding that there was an abandonment of employment. The Labor Arbiter further ruled that the word "turnover" in Co Say's last text message to petitioner Reyes indicates that on the date that it was sent, the latter was already expected to turnover his duties to his replacement and belies the claim of Co Say that he asked petitioner Reyes to return to work in order to possibly explain his numerous absences, negligence in performing his duties and serious misconduct.

On appeal, the NLRC affirmed the decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by the respondents is hereby DISMISSED for lack of merit.

Accordingly, the Decision of Labor Arbiter Cherry M. Ampil dated November 28, 2012 is AFFIRMED.

SO ORDERED.[6]

The NLRC ruled that petitioner Reyes sufficiently alleged the surrounding circumstances of his dismissal and was able to state, with the required particularities how he was terminated from his employment; thus, respondent Global should have proven that the dismissal was legally done. According to the NLRC, respondent Global failed to disprove petitioner Reyes'

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[5] *Id*. at 98-99.

[6] *Id*. at 107-108.

allegation that he was verbally dismissed twice by Co Say, hence, there is no evidence showing that petitioner Reyes was dismissed from his job for cause and that he was afforded procedural due process.

Respondent filed with the CA a petition for *certiorari* under Rule 65 and the latter reversed the decision of the NLRC, disposing the case as follows:

> WHEREFORE, in light of all the foregoing, the decision dated July 31, 2013 and resolution dated October 31, 2013 of public respondent National Labor Relations Commission NLRC, First Division, in NLRC LAC No. 01-000289-13 are hereby ANNULLED and SET ASIDE.
>
> RESULTANTLY, private respondent's complaint for illegal dismissal from employment is hereby DISMISSED.
>
> SO ORDERED.[7]

In finding merit to respondent Global's petition, the CA ruled that the "text" messages allegedly sent by Co Say and Tet Manares to petitioner could hardly meet the standard of clear, positive and convincing evidence to prove petitioner's dismissal from employment. It also held that aside from petitioner Reyes' bare assertion that he was verbally terminated from employment by Co Say, no corroborative and competent evidence was adduced by petitioner Reyes to substantiate his claim that he was illegally dismissed. The CA, instead, found that there was no overt or positive act on the part of respondent Global proving that it had dismissed petitioner.

Hence, the present petition, after the denial of petitioner Reyes' motion for reconsideration.

Petitioner Reyes assigns the following errors:

> (A)
> WHETHER OR NOT RESPONDENT ILLEGALLY DISMISSED PETITIONER.

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[7] *Id*. at 68.

(B)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN ANNULLING AND SETTING ASIDE THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WHICH AFFIRMED THE LABOR ARBITER IN FINDING THAT ILLEGAL DISMISSAL EXISTS

(C)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN DECIDING THE PETITION FOR CERTIORARI UNDER RULE 65, A SPECIAL CIVIL ACTION, BASED ON QUESTIONS OF FACT AND NOT OF LAW.

(D)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION IN AFFIRMING THE DECISION OF THE LABOR ARBITER THAT ILLEGAL DISMISSAL WAS APPARENT ON THE PART OF HEREIN RESPONDENT.

(E)
THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ACCEPTED SPECULATIONS AND POSTULATIONS BASED ON FACT AND NOT OF LAW TO IRREGULARLY RESOLVE THAT THERE WAS NO ILLEGAL TERMINATION BY HEREIN RESPONDENT.

(F)
THE COURT OF APPEALS [GRIEVOUSLY] ERRED IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY ALLOWING HEREIN RESPONDENT TO RAISE THE ISSUE ABOUT THE WORD "TURNOVER" A FINDING OF FACT AND OUTSIDE RESPONDENT'S PETITION FOR CERTIORARI AND BEYOND THE NATURE OF RULE 65

(G)
THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THE NATIONAL LABOR RELATIONS

COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT BELIED THE FACTUAL FINDING OF THE ADMINISTRATIVE AGENCIES A QUO AND INSTEAD MADE ITS OWN FACTUAL FINDING IN A PETITION FOR CERTIORARI UNDER RULE 65.

(H)

THE COURT OF APPEALS [GRIEVOUSLY] ERRED IN MAKING ITS OWN FINDING OF FACT AND IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THE LATTER CORRECTLY AFFIRMED IN TOTO, BASED IN FACT AND IN LAW, THE DECISION OF THE LABOR ARBITER IN AWARDING BACKWAGES, SEPARATION PAY, AND ATTORNEYS FEES.

(I)

THE COURT OF APPEALS GRIEVOUSLY ERRED IN FINDING THAT THE NATIONAL LABOR RELATIONS COMMISSION [COMMITTED] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INCLUDED HEREIN RESPONDENT'S OFFICER CO SAY AS LIABLE TO PETITIONER.[8]

In its Comment/Opposition dated June 27, 2016, respondent Global enumerates the following counter-arguments:

A.

PETITIONER REYES WAS COMPLETELY IN ERROR WHEN HE ALLEGED THAT THE PETITION FOR CERTIORARI DATED 30 NOVEMBER 2013 ("PETITION FOR CERTIORARI") FILED BY RESPONDENT GBZI IN THE COURT OF APPEALS WAS A MERE REHASH OF THE ARGUMENTS ALREADY ALLEGED IN THE POSITION PAPER BEFORE THE LABOR ARBITER.

B.

THE COURT OF APPEALS CORRECTLY RULED THAT THE "TEXT" MESSAGES AND THE OTHER FINDINGS OF FACTS

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[8] *Id*. at 29-30.

TAKEN ALTOGETHER DO NOT CONSTITUTE EVIDENCE TO ESTABLISH THAT THERE WAS ILLEGAL DISMISSAL.

C.

THE COURT OF APPEALS WAS CORRECT WHEN IT RULED THAT PETITIONER [REYES HAS] UTTERLY FAILED TO PRESENT AND ESTABLISH CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT HE WAS DISMISSED.

D.

THE COURT OF APPEALS WAS CORRECT WHEN IT RULED THAT THERE WAS NO ILLEGAL DISMISSAL OF PETITIONER REYES FROM HIS EMPLOYMENT WITH RESPONDENT GBZI.[9]

The petition is meritorious.

As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court[10]are reviewable by this Court.[11] Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[12] However, a relaxation of

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[9] *Id*. at 138.

[10] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[11] *Philippine Transmarine Carriers, Inc. v. Cristino,* G.R. No. 188638, December 9, 2015, 777 SCRA 114, 127, citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590 (2012).

[12] *Id*., citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al*., 620 Phil. 505, 512 (2009).

this rule is made permissible by this Court whenever any of the following circumstances is present:

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;'
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[13]

Since the factual findings of the Labor Arbiter and the NLRC are completely different from that of the CA, this case falls under one of the exceptions, therefore, this Court may now resolve the issues presented before it.

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[13] *Id*., citing *Co v. Vargas*, 676 Phil. 463, 471 (2011).

Before the employer must bear the burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service.[14] The CA ruled that petitioner Reyes was not able to prove by substantial evidence the fact that he was illegally dismissed. After a review of the records, this Court finds otherwise. It must be remembered that the degree of proof in labor cases is less than that of criminal cases as in the former; it is enough that substantial evidence is proven. As aptly found by the Labor Arbiter and the NLRC, petitioner was able to prove his dismissal from service. As held by the NLRC:

> In this case, the complainant sufficiently alleged the surrounding circumstances of his dismissal. He was able to state, with the required particularities how he was terminated from his employment. He stated in detail that on January 19, 2012, he was not able to report for work early due to his son's illness. He also alleged that respondent Co Say called him and angrily told him not to report for work anymore and that they will have to talk in a week's time. During their meeting held at Starbucks Waltermart, the complainant was detailed enough when he recounted how respondent Co Say reiterated that he can no longer return to his job and even sought his resignation which he refused. While the allegations of the complainant may not be taken as gospel truths at this point, the complainant was able to establish that he was dismissed from his employment contrary to the denials of the respondents. Thus, it is now incumbent upon the respondents to prove that the complainant was validly dismissed from his job in the light of the detailed and straightforward narration of the complainant.[15]

Verbal notice of termination can hardly be considered as valid or legal. To constitute valid dismissal from employment, two requisites must concur: (1) the dismissal must be for a just or authorized cause; and (2) the employee must be afforded an opportunity to be heard and to defend himself.[16] In justifying that such verbal command not to report for work from respondent

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[14] *Philippine Rural Reconstruction Movement (PRRM) v. Pulgar*, 637 Phil. 244, 256 (2010).

[15] *Rollo*, pp. 104-105.

[16] *Nacague v. Sulpicio Lines, Inc.*, 641 Phil. 377, 385 (2010).

Global's Vice-President for Operations Co Say as not enough to be construed as overt acts of dismissal, the CA cited the case of . *Noblejas v. Italian Maritime Academy Phils., Inc*.[17] In the said case, an employee filed an illegal dismissal case after the secretary of the company's Managing Director told him, "*No, you better pack up all your things now and go, you are now dismissed and you are no longer part of this office – clearly, you are terminated from this day on*." This Court then ruled in that case that there was no dismissal to speak of because the secretary's words were not enough to be construed as overt acts of dismissal. Be that as it may, the factual antecedents of that case is different in this case. In the present case, the one who verbally directed petitioner to no longer report for work was his immediate or direct supervisor, the Vice-President for Operations, who has the capacity and authority to terminate petitioner's services, while in *Noblejas*, the one who gave the instruction was merely the secretary of the company's Managing Director. Hence, in *Noblejas*, this Court found it necessary that the employee should have clarified the statement of the secretary from his superiors before the same employee instituted an illegal dismissal case. In the present case, Co Say's verbal instruction, being petitioner Reyes' immediate supervisor, was authoritative, therefore, petitioner Reyes was not amiss in thinking that his employment has indeed already been terminated.

Furthermore, the "text" messages petitioner Reyes presented in evidence were corroborative. The CA, however, held that those "text" messages could hardly meet the standard of clear, positive and convincing evidence to prove petitioner Reyes' dismissal from employment. It added that those conversations transpired more than ten (10) days after petitioner Reyes stopped reporting for work and that the Labor Arbiter and the NLRC took those messages out of context, the same having been lumped together for the purpose of supporting petitioner Reyes' claim of dismissal from employment. Such observation of the CA is more conjectural rather than factual. As rightly concluded by the NLRC, those "text" messages, viewed in connection with

[17] 735 Phil. 713 (2014).

the factual antecedents and the narration of the petitioner, prove that there was indeed a dismissal from employment. As held by the NLRC:

> In weighing the arguments of the parties in this case, it is important to examine the evidence presented. In support of his claim that he was illegally dismissed, the complainant submitted machine copies of the purported text messages he received from the respondents. These text messages tend to show that the complainant was actually dismissed from his work. The text message purportedly sent by respondent Co Say that: "Tet will contact you plus turnover" was clear enough. A literal interpretation of said text message leaves no doubt that the complainant's days with the respondent company was numbered. The wor[d] "turnover" simply connotes "to transfer", "to yield" or "to return." In employment parlance, the wor[d] "turnover" is associated with severance of employment. An employee makes proper "turnover" of pending work before he leaves his employment.
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> Interestingly, the text message of respondent Co Say was followed by another message from Ms. Tet Manares which stated that: "Kuya, pinaayos ko na kay gen salary mo." This is consistent with the first message that Tet will contact the complainant. True enough, Ms. Tet Manares contacted the complainant informing him that his salary was already being prepared. The two (2) text messages, when taken together, support complainant's insistence that he was actually dismissed from his work. Respondent Co Say's text message regarding "turnover" and Ms. Manares' text message regarding the preparation of the complainant's salary were quite consistent with the complainant's allegation that he was dismissed by respondent Co [Say] during their telephone conversation and during their meeting at Starbucks Waltermart.
>
> The respondents' assertion that the purported text messages submitted by the complainant should not be given credence as the complainant failed to authenticate the same in accordance with the Rules of Court, deserves scant consideration. It must be emphasized that in labor cases, the strict adherence to the rules of evidence may be relaxed consistent with the higher interest of substantial justice. In labor cases, rules of procedure should not be applied in a very rigid and technical sense. They are merely tools designed to facilitate the attainment of justice, and where their strict application would result in the frustration rather than promotion of substantial justice,

technicalities must be avoided. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed. (Tres Reyes v. Maxim's Tea House, G.R. No. 140853, February 27, 2003, 398 SCRA 288)[18]

It is well settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases.[19] Thus, the "text" messages may be given credence especially if they corroborate the other pieces of evidence presented. Again, while as a rule, the Court strictly adheres to the rules of procedure, it may take exception to such general rule when a strict implementation of the rules would cause substantial injustice to the parties.[20]

Having thus proven the fact of being dismissed, the burden to prove that such dismissal was not done illegally is now shifted to the employer. In illegal dismissal cases, the burden of proof is upon the employer to show by substantial evidence that the employee's termination from service is for a just and valid cause.[21] In this case, respondent Global asserts that there was no dismissal; instead, there was an abandonment on the part of petitioner Reyes of his employment. The Labor Arbiter, however, found that on the days that petitioner Reyes supposedly abandoned his employment according to respondent Global, no such indication was found as petitioner filed applications for leave and even sent "text" messages to his immediate or direct superior regarding his work, thus:

The applications for leaves filed by the complainant disclose the following information:

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[18] *Rollo*, pp. 105-106.

[19] *Anib v. Coca-Cola Bottlers Phils., Inc.,* 642 Phil. 516, 521 (2010).

[20] *Locsin v. Nissan Lease Phils., Inc*., 648 Phil. 596, 606 (2010).

[21] *Prudential Guarantee and Assurance Employee Labor Union, et al. v. National Labor Relations Commission*, 687 Phil. 351, 369 (2012).

Date Filed	Dates of Leave	Reason for Leave	No. of unused leave
1-4-12	Jan. 2, 3, 5, 6	(blank)	8
1-12-12	Jan. 9,10	(blank)	6

Outgoing text messages on the complainant's mobile phone show that on January 1, 2012 he sent Tet (Maria Teresa) Manares, the respondent corporation's Administrative and Human Resources Officer, a text message informing her that he would be absent on January 2 and January 3 because "Yuan" was sick and had no nanny, and that on January 9, 2012, he sent her another text message to inform her that he would be absent that day. Other messages recorded on the complainant's mobile phone reveal that on January 18 and 19, 2012, he sent respondent Co Say, the VP for Operations of the respondent corporation, five (5) text messages regarding his work; that on January 24, 2012, respondent Co Say sent him a text message asking him to meet him on January 26, 2012; that on January 26, 2012, respondent Co Say sent him a text message telling him to meet him at Starbucks Waltermart at 3:00; and, that on January 30, 2012, respondent Co Say sent him the following text message: "Tet will contact you plus the turnover." It is significant that respondent Co Say's last text message was discussed in the complainant's second affidavit, and that the respondents never impugned the genuineness and due execution of the text messages adduced in evidence by the complainant.

The complainant's actuations – filing applications for leaves of absence days before he supposedly abandoned his job and texting respondent Co Say about his work on the day he supposedly abandoned his job – are more consistent with the theory that his services were terminated by respondent Co Say than with the theory that he abandoned his job. Evidently, he had no intention of quitting his job.[22]

Abandonment requires the deliberate, unjustified refusal of the employee to resume his employment, without any intention of returning.[23] For abandonment to exist, two factors must be

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[22] *Rollo*, pp. 96-97.

[23] *Morales v. Harbour Centre Port Terminal, Inc.,* 680 Phil. 112, 125-126 (2012).

present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second element as the more determinative factor being manifested by some overt acts.[24] In this case, no such abandonment was proven by respondent Global. In fact, petitioner Reyes would not have filed a case for illegal dismissal if he really intended to abandon his work. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work.[25]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated March 22, 2016, of petitioner Allan John Uy Reyes is **GRANTED**. Consequently, the Decision dated August 27, 2015 of the Court of Appeals is **REVERSED** and **SET ASIDE,** and the Decision dated July 31, 2013 of the National Labor Relations Commission in NLRC LAC No. 01-000289-13 is **AFFIRMED** and **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 223730. October 4, 2017]

DOHLE PHILMAN MANNING AGENCY, INC., DOHLE (IOM) LIMITED and/or CAPT. MANOLO T. GACUTAN, *petitioners, vs.* **JULIUS REY QUINAL DOBLE,** *respondent.*

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[24] *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission*, 681 Phil. 299, 314 (2012).

[25] *JOSAN, JPS Santiago Cargo Movers v. Aduna*, 682 Phil. 641, 648 (2012).

[G.R. No. 223782. October 4, 2017]

JULIUS REY QUINAL DOBLE, *petitioner, vs.* **DOHLE PHILMAN MANNING AGENCY, INC., DOHLE (IOM) LIMITED and/or CAPT. MANOLO T. GACUTAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE REVIEWABLE; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES, GENERALLY RESPECTED.—** As a general rule, only questions of law raised *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court are reviewable by the Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. According to *Andrada v. Agemar Manning Agency, Inc. et al.*, this doctrine applies with greater force in labor case as questions of fact in labor cases are for the labor tribunals to resolve. Even more so, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on the Court. In exceptional cases, however, the Court may be urged to probe and resolve factual issues.

2. **LABOR AND SOCIAL LEGISLATION; OVERSEAS FILIPINO WORKERS; POEA-SEC; DISABILITY BENEFITS MANDATORY PROCEDURE; IF A DOCTOR APPOINTED BY THE SEAFARER DISAGREES WITH THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, THE REFERRAL OF THE CASE TO A THIRD DOCTOR IS NOW MANDATORY.—** [A]ccording to *Andrada v. Agemar Manning Agency, Inc. et al.*, the issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Section 20 thereof provides: Section 20

> [B]. Compensation and Benefits for Injury or Illness x x x x **If a doctor appointed by the seafarer disagrees with the assessment (of the company-designated physician), a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties**. x x x In the case at hand, there is no question that the company-designated physician and the respondent's personal physician had two very different assessment of the respondent's illness. On the one hand, the respondent was declared "*fit to work*" by the petitioners' doctor. x x x On the other hand, upon examination and evaluation of the respondent's own medical expert, Dr. Magtira opined that: x x x Mr. Doble is now permanently disabled and is therefore now permanently *UNFIT* in any capacity to resume his usual sea duties. However, contrary to the mandatory proceedings identified by the Court, the respondent herein did not demand for his re-examination by a third doctor, and instead opted to initiate the instant case. This, as the Court already ruled, is a fatal defect that militates against his claims. To reiterate, the referral to a third doctor is now a mandatory procedure, and that the failure to abide thereby is a breach of the POEA-SEC, and has the effect of consolidating the finding of the company designated physician as final and binding.

3. ID.; ID.; ID.; 240-DAY RULE; IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO IS GIVEN AN ADDITIONAL 120 DAYS, OR A TOTAL OF 240 DAYS FROM REPATRIATION, TO GIVE THE SEAFARER FURTHER TREATMENT AND THEREAFTER, MAKE A DECLARATION AS TO THE NATURE OF THE LATTER'S DISABILITY.— In the recent case of *Jebsens Maritime, Inc. v. Rapiz*, the Court had occasion to discuss that the company-designated physician is given an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability. x x x In the present case, while the company-designated physician did indeed exceed 120 days in declaring the respondent fit to work, the former made the final diagnosis prior to the expiration of the 240-day limit. x x x Two things must be said of this factual finding: first, the company-designated physician complied with the requirements of the law when the respondent's medical status was assessed

with finality prior to the expiration of the 240-day rule; and second, the 240-day rule applies only to the assessment provided by the company-designated physician, and not to the assessment of the seafarer's personal physician, such that, even if the latter found the seafarer unfit to work after the 240-day period, the law would not automatically transform the temporary total disability of the seafarer to a permanent total disability.

APPEARANCES OF COUNSEL

Retoriano & Olalia-Retoriano Law Offices for petitioners.
Bermejo Laurino-Bermejo and Luna Law Office for respondent.

D E C I S I O N

REYES, JR., *J.*:

It has been oft-repeated that overseas Filipino workers are the Philippines' modern-day heroes. They brave the waters of the seas to provide for their families and to help boost the country's economy. However, while this is so, they are not immune from the provisions of the POEA-SEC; in fact, the same contract was designed precisely for their protection. Thus, when any seafarer fails to adhere to the requirements of the contract as properly interpreted by the Court, the Court will not shirk from the responsibility of exacting enforcement of the same, even if it would mean finding for the employer and against the seafarer.

The Case

Consolidated in this case are the Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court filed (1) by DOHLE Philman Manning Agency, Inc., DOHLE (IOM), Ltd. and Capt. Manolo T. Gacutan (hereinafter collectively referred to as the "petitioners") against Julius Rey Quinal Doble (hereinafter referred to as the "respondent") in G.R. No. 223730, and (2) by herein respondent against the petitioners in G.R. No. 223782.

The petitions challenge before the Court the Decision[1] of the Court of Appeals (CA) in CA G.R. SP No. 141199, promulgated on October 8, 2015, which affirmed with modification the National Labor Relations Commission (NLRC) Resolution[2] dated March 18, 2015 in NLRC NCR Case No. (M) 02-02128-14/NLRC LAC No. 02-000109-15.

Likewise challenged is the subsequent Resolution[3] of the CA, promulgated on March 9, 2016, which upheld the earlier decision.

The Antecedent Facts

The respondent is a Filipino seafarer, who signed a Contract of Employment for the position of Ordinary Seaman with petitioner DOHLE (IOM) Ltd., through its manning agent in the Philippines, DOHLE Philman Manning Agency, Inc. The duration of the contract was for nine months, with a basic monthly salary of US$350.00. The contract specified a 44-hour work week with overtime and vacation leave with pay.[4]

On August 22, 2012, the respondent departed the Philippines on board the vessel "MVTS JAKARTA."

According to the respondent, on December of the same year, and while the vessel was approaching the port of Hong Kong, he accidentally stepped on the mooring line while preparing to heave the same. As a result, he "*twisted his right foot and he immediately fell on the floor.*"[5] He reported to the ship doctor, and was declared fit to return to work.

A few months after,[6] and, this time, while the vessel was docked at the port of Karachi, Pakistan, the respondent alleged

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan, concurring; *rollo* (G.R. No. 223782), pp. 8-23.

[2] *Rollo* (G.R. No. 223730), pp. 378-392.

[3] *Rollo* (G.R. No. 223782), pp. 25-27.

[4] *Rollo* (G.R. No. 223730), p. 139.

[5] *Id.* at 58.

[6] March 2013.

another incident. He stated that while he was pulling on the tug line, it suddenly moved causing his hands to get pulled, hitting the bitts bollard. Thereafter, he was referred for a medical consult upon arriving again at the port of Hong Kong.

On April 11, 2013, he was repatriated back to the Philippines for medical reasons.

A day after his arrival, medical tests were conducted upon the respondent, who was then eventually diagnosed with "*Right ankle sprain; Carpal Tunnel Syndrome, Bilateral; and Osteochondral Defect Femoral Trochlea, Right Knee.*"[7] He likewise underwent surgery for the injury, and physical therapy thereafter.

After a series of consultation, therapy, and treatment, the company-designated physician issued an interim disability grade in relation to the respondent's "*Carpal Tunnel Syndrome*" of both hands, which is "*2x(30% of Grade 10) due to ankylosed wrist in normal position*."[8]

On November 8, 2013, the company-designated physician eventually issued a medical report stating that, according to the respondent's surgeons, he is fit to work in relation to both his "*Carpal Tunnel Syndrome*" and his ankle sprain.[9]

Unsatisfied by this diagnosis, the respondent consulted his own medical expert and sought another opinion on his condition. Upon due examination and evaluation, Dr. Manuel Fidel Magtira issued a medical report, stating that the respondent "*has lost his [pre-injury] capacity and is no longer capable of working on his previous occupation because of the injuries sustained and the permanent sequelae of said injury*,"[10] and thus, he "*is now permanently disabled and is therefore now permanently UNFIT in any capacity to resume his usual sea duties*."[11]

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[7] *Rollo* (G.R. No. 223730), p. 174.

[8] *Id*. at 185.

[9] *Id*. at 192.

[10] *Id*. at 250.

[11] *Id*.

Considering that the petitioners have already terminated the respondent's treatment, and in light of the findings of his personal physician, the respondent insisted on his disability benefits, including expenses for medical treatment and transportation. The respondents refused.

Thus, the filing of the case before the Labor Arbiter (LA).

After due consideration, the LA rendered a Decision[12] dated November 27, 2014 in favor of the respondent, finding him to be permanently and totally disabled and thus entitled to disability compensation. The dispositive portion of the LA decision reads:

> WHEREFORE, premises considered, respondents DOHLE PHILMAN MANNING AGENCY INC., DOHLE (IOM) LIMITED, and CAPT. MANOLO T. GACUTAN are hereby ordered to pay, jointly and severally, complainant JULIUS REY QUINAL DOBLE the sum of *US$90,882.00,* by way of permanent total disability compensation benefit under the parties' CBA, plus 10% thereof as attorney's fees, or its peso equivalent at the time of payment.
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> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[13]

Aggrieved, herein petitioners appealed to the NLRC, which eventually affirmed *in toto* the LA decision. The *fallo* of the NLRC decision states:

> WHEREFORE, foregoing premises considered, the decision appealed from is hereby AFFIRMED in toto (sic).
>
> SO ORDERED.[14]

The petitioners elevated the case to the CA *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court. Once again, the case moved in favor of the respondent. The CA affirmed the NLRC decision, but modified the basis of the award of

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[12] *Id*. at 300-312.

[13] *Id*. at 312.

[14] *Id*. at 391.

damages from the Collective Bargaining Agreement to the POEA-SEC, to wit:

> WHEREFORE, in view of the foregoing, the instant Petition is hereby DENIED. Consequently, the assailed Resolutions dated March 18, 2015 and May 25, 2015 rendered by public respondent NLRC (Third Division) in NLRC NCR Case No. (M) 02-02128-14/NLRC LAC No. 02-000109-15 are hereby AFFIRMED with MODIFICATION by ordering petitioners to jointly and severally pay private respondent the following: a) permanent total disability benefits of US$60,000.00 at its peso equivalent at the time of actual payment; and b) attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.
>
> SO ORDERED.[15]

Both parties filed their respective motions for reconsideration, which were both denied by the CA *via* a Resolution dated March 9, 2016.[16]

Hence, this petition.

The Issues

The petitioners allege that the CA committed serious, reversible, and gross error in law and in fact based on the following grounds:

1. IN ADJUDGING THE PETITIONERS LIABLE FOR PAYMENT OF DISABILITY BENEFITS—(A) WHEN THE EVIDENCE PRIMARILY RECOGNIZED UNDER THE POEA SEC AS THE BASIS OF THE SEAFARER'S CLAIM FOR COMPENSATION EXPRESSLY DECLARES THAT RESPONDENT IS ALREADY CLEARED FROM HIS CONDITION, HENCE, NOT SUFFERING FROM DISABILITY; AND (B) NOTWITHSTANDING THE FACT THAT SUCH PRIMARY EVIDENCE HAS NOT BEEN EFFECTIVELY CONTROVERTED IN ACCORDANCE WITH THE MANNER PRESCRIBED UNDER THE RULES.

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[15] *Id*. at 70.

[16] *Id*. at 73-75.

2. IN HOLDING THE RESPONDENT ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS ON THE BASIS OF HIS ALLEGED INABILITY TO RESUME EMPLOYMENT FOR A PERIOD OF 120 DAYS, WHICH BASED ON EXISTING RULES AND THE POEA SEC, IS NO LONGER RECOGNIZED AS A VALID MEASURE OF A SEAFARER'S DEGREE OF DISABILITY.

3. THE COURT OF APPEALS COMMITTED A SERIOUS AND REVERSIBLE ERROR OF LAW AND OF FACT IN AWARDING ATTORNEY'S FEES TO THE RESPONDENT ABSENT ANY FACTUAL OR LEGAL SUBSTANTIATION THEREFOR.[17]

For his part, the respondent anchors his plea for the reversal of the assailed CA decision on the following ground:

8.1 WHETHER THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT MODIFIED THE DECISION AND RESOLUTION OF [HEREIN PETITIONERS] DECLARING [HEREIN RESPONDENT] NOT ENTITLED [TO] THE BETTER DISABILITY BENEFIT UNDER THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT.[18]

After a reading of the foregoing arguments, the issues presented before the Court could be summarized thus: (1) whether or not the respondent is fit to work, and thus, entitled to the disability benefits claimed; (2) whether or not the basis of the award of damages should be the CBA and not the POEA-SEC; and (3) whether or not the respondent is entitled to attorney's fees.

Ruling of the Court

The petitioners' contentions are impressed with merit.

As a general rule, only questions of law raised *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court

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[17] *Id*. at 14.

[18] *Rollo* (G.R. No. 223782), p. 43.

are reviewable by the Court. Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[19] According to *Andrada v. Agemar Manning Agency, Inc et al.*,[20] this doctrine applies with greater force in labor case as questions of fact in labor cases are for the labor tribunals to resolve. Even more so, findings of fact of quasi-judicial bodies like the NLRC, as affirmed by the CA, are generally conclusive on the Court.[21]

In exceptional cases, however, the Court may be urged to probe and resolve factual issues. This relaxation of the rule is made permissible by the Court whenever any of the following circumstances is present:

1.) when the findings are grounded entirely on speculations, surmises or conjectures;

2.) when the inference made is manifestly mistaken, absurd or impossible;

3.) when there is grave abuse of discretion;

4.) when the judgment is based on a misapprehension of facts;

5.) when the findings of fact are conflicting;

6.) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

7.) when the findings are contrary to that of the trial court;

8.) when the findings are conclusions without citation of specific evidence on which they are based;

9.) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent;

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[19] *De Leon v. Maunlad Trans, Inc.*, G.R. No. 215293, February 8, 2017.

[20] 698 Phil. 170 (2012).

[21] *Id.* at 180.

10.) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

11.) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[22]

While the first issue identified above—the issue of the relation of respondent's illness to his work as an ordinary seaman—is essentially factual, the Court herein exercises its power of review considering that the CA issued the assailed decision with grave abuse of discretion: (1) by failing to consider the mandatory procedure of referring conflicting medical assessments to a third doctor; and (2) by relying on the 120-day rule, and not on the findings of the company-designated physician, in declaring the respondent's permanent and total disability.

To be sure, the appellate court disregarded settled jurisprudence on the matter.

To elaborate, according to *Andrada*, the issue of whether the petitioner can legally demand and claim disability benefits from the respondents for an illness suffered is best addressed by the provisions of the POEA-SEC which incorporated the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. Section 20 thereof provides:

Section 20 [B]. Compensation and Benefits for Injury or Illness

x x x x x x x x x

2. x x x x x x x x x

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time as he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until

[22] *Supra* note 19.

he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.[23] (Emphasis Ours)

Thus, while it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment,[24] the same is not automatically final, binding or conclusive.[25]

According to *Andrada*, should the seafarer disagree with the assessment, he/she may dispute the same by seasonably exercising his/her prerogative to seek a second opinion and consult a doctor of his/her choice.[26] In case of disagreement between the findings of the company-designated physician and the seafarer's doctor of choice, the employer and the seafarer may agree jointly to refer the latter to a third doctor whose decision shall be final and binding on them. This is explicitly stated in Section 20 of the POEA-SEC.

In the seminal case of *Philippine Hammonia Ship Agency, et al. Inc. v. Dumadag*,[27] the Court had the opportunity to further

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[23] *Id*. at 181.

[24] *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 65-66, citing *German Marine Agencies, Inc. v. NLRC*, 403 Phil. 572, 588 (2001).

[25] *Andrada v. Agemar Manning Agency, Inc.*, *supra* note 20, at 182.

[26] *Id*. at 182, citing *Seagull Maritime Corp. v. Dee*, 548 Phil. 660, 669 (2007).

[27] 712 Phil. 507 (2013).

elaborate on this method of dispute resolution between two competing opinions of medical experts.

In asking how the foregoing should be resolved, the Court looked into the POEA-SEC and the Collecting Bargaining Agreement (CBA) of the parties as the binding documents which govern the employment relationship between them. The Court said that, while there is nothing inherently wrong in seeking a second opinion on the medical assessment of the seafarer, the latter should not pre-empt the mandated procedure provided for in Section 20 of the POEA-SEC "*by filing a complaint for permanent disability compensation on the strength of his chosen physicians' opinions, without referring the conflicting opinions to a third doctor for final determination*."[28]

In *Formerly INC Shipmanagement, Inc. v. Rosales*,[29] the Court further clarified the ruling in *Philippine Hammonia Ship Agency, Inc.*[30] by categorically saying that the referral to a third doctor is **mandatory,** and should the seafarer fail to abide by this method, he/she would be in breach of the POEA-SEC, and the assessment of the company designated physician shall be final and binding. Thus, the Court said:

> This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. In other words, **the company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for the referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.** We have followed this rule in a string of cases x x x.[31] (Emphasis Ours)

This is reiterated by the Court in the recent case of *Silagan v. Southfield Agencies, Inc.*,[32] to wit:

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[28] *Id*. at 521.

[29] G.R. No. 195832, October 1, 2014, 737 SCRA 438-439.

[30] *Supra* note 27.

[31] *Supra* note 29, at 440.

[32] G.R. No. 202808, August 24, 2016.

Second, petitioner failed to comply with the procedure laid down under Section 20 (B) (3) of the 2000 POEA-SEC with regard to the joint appointment by the parties of a third doctor whose decision shall be final and binding on them in case the seafarer's personal doctor disagrees with the company-designated physician's fit-to-work assessment. This referral to a third doctor has been held by this Court to be a **mandatory procedure** as a consequence of the provision that it is the company-designated doctor whose assessment should prevail. **In other words, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision is final and binding on the parties.** (Citations omitted and emphasis Ours)

Thus, it is on the basis of the foregoing cases that the Court hereby reverses the ruling of the CA.

In the case at hand, there is no question that the company-designated physician and the respondent's personal physician had two very different assessment of the respondent's illness. On the one hand, the respondent was declared "*fit to work*" by the petitioners' doctor. Thus, the medical report dated November 8, 2013 said that:

Patient was previously declared fit to work by the Hand Surgeon with regards to his bilateral Carpal Tunnel Syndrome.

Patient was seen by the Orthopedic Surgeon who opines patient is now declared fit to work as of November 8, 2013.[33]

On the other hand, upon examination and evaluation of the respondent's own medical expert, Dr. Magtira opined that:

On physical examination, the patient is conscious, coherent and oriented to time, place and person. There is atrophy of the thenar and hypothenar muscles of both hands with post-operative scar noted. There is limitation of motion of the digits of the hands. There is pain and tenderness of both hands noted. Numbness of both hands was noted. Swelling of his right ankle joint was also noted. There are no neurologic deficits, and range of motion is full. Manual muscle testing

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[33] *Rollo* (G.R. No. 223730), p. 192.

showed 4-5/5 muscle strength. He is unable to squat and can stand on tiptoe for a very limited period only.

Mr. Doble remains incapacitated. Despite his continuous physiotherapy, he continues to have limitation of flexion and difficulty in grasping object. He is still experiencing pain and numbness of his hands. He continues to have pain and discomfort on his right foot and ankle. He is unable to tolerate prolonged walking and standing. He is also unable to squat, especially is weight is borne on the right foot. He is therefore also not capable of working at his previous occupation from said impediment. As he lost his pre-injury capacity, he is now permanently disabled.

x x x x x x x x x

Mr. Doble has lost his pre injury (sic) capacity and is no longer capable of working on his previous occupation because of the injuries sustained and the permanent sequelae of said injury. It will be to his best interest to refrain from heavy labor as this is likely to cause him more harm than good. Mr. Doble is now permanently disabled and is therefore now permanently *UNFIT* in any capacity to resume his usual sea duties.[34]

However, contrary to the mandatory proceedings identified by the Court, the respondent herein did not demand for his re-examination by a third doctor, and instead opted to initiate the instant case.

This, as the Court already ruled, is a fatal defect that militates against his claims. To reiterate, the referral to a third doctor is now a mandatory procedure, and that the failure to abide thereby is a breach of the POEA-SEC, and has the effect of consolidating the finding of the company designated physician as final and binding.

Meanwhile, the CA, instead of reversing and setting aside the NLRC Decision in light of the foregoing pronouncements by the Court, upheld the same. This is grave abuse of discretion amounting to lack of jurisdiction. Thus, said the Court in *Philippine Hammonia Ship Agency, Inc.*:[35]

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[34] *Id*. at 249-250.

[35] *Philippine Hammonia Ship Agency, et al. Inc. v. Dumadag*, *supra* note 27.

We find the rulings of the labor authorities seriously flawed as they were rendered **in total disregard of the law between the parties** — the POEA-SEC and the CBA — on the prescribed procedure for the determination of disability compensation claims, particularly with respect to the resolution of conflicting disability assessments of the company-designated physician and Dumadag's physicians, without saying why it was disregarded or ignored; it was as if the POEA-SEC and the CBA did not exist. **This is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law. For affirming the labor tribunals, the CA committed the same jurisdictional error.**[36]

Finally, the CA also anchored its decision on the assertion that the respondent was "*incapable of discharging his usual functions and he was not able to return to the job that he was trained to do for more than 120 days already*,"[37] and as such, he was already considered totally and permanently disabled.

Again, the Court disagrees and finds for the petitioners.

In the recent case of *Jebsens Maritime, Inc. v. Rapiz*,[38] the Court had occasion to discuss that the company-designated physician is given an additional 120 days, or a total of 240 days from repatriation, to give the seafarer further treatment and, thereafter, make a declaration as to the nature of the latter's disability. *Jebsens* even cited the case of *Ace Navigation Company v. Garcia*,[39] where the Court ruled that:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or

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[36] *Id*. at 521-522.

[37] *Rollo* (G.R. No. 223782), p. 19.

[38] G.R. No. 218871, January 11, 2017.

[39] G.R. No. 207804, June 17, 2015, 759 SCRA 274.

his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA-Standard Employment Contract [(SEC)] and by applicable Philippine laws. **If the 120 days (sic) initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days,** subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. **The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.**

x x x x x x x x x

As we outlined above, a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, **the company-designated doctor duly made a declaration well within the extended 240-day period that the petitioner was fit to work.**[40] (Citations omitted and emphasis Ours)

In the present case, while the company-designated physician did indeed exceed 120 days in declaring the respondent fit to work, the former made the final diagnosis prior to the expiration of the 240-day limit. Thus, the CA found:

In the case at bench, records show that private respondent was given a fit to work clearance by the company-designated physicians on November 8, 2013 based on the respective declarations of Dr. Lao and Dr. Chuasuan, Jr. **The pronouncement that private respondent is already fit to work was made 210 days after he was first seen by company-designated physician on April 12, 2013.** Meanwhile, private respondent consulted his physician of choice on November 14, 2013 and was declared permanently disabled as his present condition renders him incapable of discharging his previous occupation.[41] (Emphasis Ours)

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[40] *Id*. at 283.

[41] *Rollo* (G.R. No. 223782), p. 19.

Two things must be said of this factual finding: first, the company-designated physician complied with the requirements of the law when the respondent's medical status was assessed with finality prior to the expiration of the 240-day rule; and second, the 240-day rule applies only to the assessment provided by the company-designated physician, and not to the assessment of the seafarer's personal physician, such that, even if the latter found the seafarer unfit to work after the 240-day period, the law would not automatically transform the temporary total disability of the seafarer to a permanent total disability.

This is especially more pronounced in this case considering that the respondent was declared by the company-designated physician as fit to work within 210 days from his initial medical attention, and, as earlier discussed, the respondent failed to avail of the mandatory procedure of referring the case to a third doctor.

Hence, for the foregoing reasons, the Court hereby reverses the appellate court's decision and declares the assessment of the company-designated physician as final and binding. Consequently, the respondent is considered fit to work, and thus not entitled to disability benefits.

On the basis of the discourse above, the other issues raised by the parties herein need not be discussed further.

WHEREFORE, premises considered, the Petition in G.R. No. 223730 is hereby **GRANTED,** while the Petition in G.R. No. 223782 is hereby **DISMISSED**. The Decision dated October 8, 2015, and the Resolution dated March 9, 2016 of the Court of Appeals, in CA-G.R. SP No. 141199, are hereby **REVERSED and SET ASIDE,** and a new judgment is rendered **DISMISSING** the Complaint in NLRC Case No. NLRC NCR Case No. (M) 02-02128-14.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-17-2507. October 9, 2017]
(Formerly OCA IPI No. 14-4329-RTJ)

RE: ANONYMOUS COMPLAINTS AGAINST HON. DINAH EVANGELINE B. BANDONG, FORMER PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 59, LUCENA CITY, QUEZON PROVINCE.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; THE QUANTUM OF EVIDENCE REQUIRED IS THAT OF SUBSTANTIAL EVIDENCE.—** "In administrative cases, the quantum of evidence required is that of substantial evidence." "Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the [respondent] is guilty of the act or omission complained of, even if the evidence might not be overwhelming."

2. **ID.; NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY; COMPETENCE AND DILIGENCE; VIOLATED BY JUDGE'S HABIT OF WATCHING TELEVISION DURING OFFICE HOURS.—** x x x [T]he Court agrees with the OCA that Judge Bandong violated Sections 1 and 2, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary which provide, *viz.*: CANON 6 **COMPETENCE AND DILIGENCE** Competence and diligence are prerequisites to the due performance of judicial office. SECTION 1. The judicial duties of a judge take precedence over all other activities. SECTION 2. Judges shall devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations. The Court has stressed time and again that "decision-making is the primordial x x x duty of a member of the [bench]." x x x [T]he conduct

of hearings is unquestionably an important component of their decision-making process and, conversely, all other official tasks must give way thereto. Hence, for a judge to allow an activity, and an unofficial one at that, to take precedence over the conduct of hearings is totally unacceptable. x x x Additionally, Judge Bandong's habit of watching television during office hours violates Section 7 of the same Canon 6 which requires Judges "not to engage in conduct incompatible with the diligent discharge of judicial duties." x x x For the afore-stated violations, the Court finds Judge Bandong guilty of conduct prejudicial to the best interest of the service. "Conduct prejudicial to the best interest of [the] service x x x pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result; it refers to acts or omissions that violate the norm of public accountability and diminish – or tend to diminish – the people's faith in the Judiciary."

3. ID.; ADMINISTRATIVE LAW; JUDGES; GRAVE MISCONDUCT; FLAGRANT DISREGARD OF THE RULES ON REFERRAL OF CASES FOR MEDIATION.— Mediation of cases can only be done by individuals who possess the basic qualifications for the position, have undergone relevant trainings, seminars-workshops, and internship programs and were duly accredited by the court as mediators. These are to ensure that the mediators have the ability to discharge their responsibility of seeing to it that the parties to a case consider and understand the terms of a settlement agreement. Unlike therefore when the mediation is facilitated by an accredited mediator, there is great danger that legal rights or obligations of parties may be adversely affected by an improper settlement if mediation is handled by an ordinary court employee. x x x [T]his wanton disregard and mockery of the proper procedure in mediation of cases, as correctly held by the OCA, was tantamount to misconduct. x x x Here, the misconduct committed by Judge Bandong was grave since the circumstances obtaining established her flagrant disregard of the rules on referral of cases for mediation. Judge Bandong committed a patent deviation from the rules when she wrongfully referred a non-mediatable case to her staff, a court stenographer, who was not an accredited mediator. This was despite the expectation that as a member of the bench, she not only knows the rules and regulations

promulgated by this Court but also faithfully complies with it. Indeed, Judge Bandong is guilty of grave misconduct.

4. ID.; ID.; ID.; VIOLATION OF SUPREME COURT CIRCULARS, RULES AND DIRECTIVES; COMMITTED WHEN THE JUDGE DELEGATED THE FUNCTIONS AND DUTIES OF CLERK III PERSONNEL TO THE PROCESS SERVER.— In *Executive Judge Apita v. Estanislao*, the Court had the occasion to explain that: While the [2002 Revised Manual for Clerks of Court which defines the general functions of all court personnel in the judiciary] provides that court personnel may perform other duties the presiding judge may assign from time to time, said additional duties **must be directly related to, and must not significantly vary from, the court personnel's job description**. x x x Section 7, Canon IV of the Code of Conduct for Court Personnel expressly states that court personnel shall not be required to perform any work outside the scope of their job description, x x x Clearly here, Judge Bandong violated Supreme Court circulars, rules and directives when she delegated to Atienza the duties of Febrer as Clerk III. As explained by the OCA, the duties of a Clerk III are not directly related to and significantly vary from those of a Process Server x x x[.]

5. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); RESPONDENT FOUND GUILTY OF TWO OR MORE CHARGES, THE PENALTY TO BE IMPOSED SHOULD BE THAT CORRESPONDING THE MOST SERIOUS CHARGE AND THE REST SHALL BE CONSIDERED AS AGGRAVATING CIRCUMSTANCES.— Under Sec. 50, Rule 10 of the RRACCS, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding the most serious charge and the rest shall be considered as aggravating circumstances. Here, the most serious charge against Judge Bandong is grave or gross misconduct. x x x [T]he Court deems it proper to impose upon her the penalty of fine in the amount of ₱40,000.00 to be deducted from her retirement benefits.

D E C I S I O N

DEL CASTILLO, *J.*:

On April 16, 2013, the Office of the Court Administrator (OCA) received two letters-complaints, one from an anonymous sender[1] (first letter-complaint) and the other under the pseudonym "Shirley Gomez"[2] (second letter-complaint), both narrating the difficulties encountered by the employees of, and litigants appearing before, the Regional Trial Court (RTC) of Lucena City, Branch 59 concerning then Presiding Judge Dinah Evangeline B. Bandong (Judge Bandong).

The first letter-complaint alleged, to wit: (1) Judge Bandong would rely on the legal researcher to resolve the cases; (2) she would not acquaint herself with the case status and would instead ask counsels about the same; (3) she would admit in open court that she could not resolve the case for failing to understand it; she would instead force her staff to mediate cases; (4) she would spend most of her time watching television inside her chambers; in fact, she would call for a recess in order to watch her favorite *telenovelas*; and, (5) Judge Bandong would unreasonably demand that all checks covering her salaries and allowances be immediately delivered to her upon release.

Further, Judge Bandong would unduly favor Criminal Case Clerk-in- Charge Eduardo Febrer (Febrer) thereby affecting the office dynamics negatively. Febrer, for his part, would always stay out of the office and delegate his tasks to his co-workers, on top of their respective assignments. Febrer would also look for records or process bail bonds only when given money by bonding companies or litigants. While obvious to all, Judge Bandong seemed not to mind Febrer's ways.

The second letter-complaint was of similar import. It claimed that Judge Bandong was not keen on studying cases, and would instead direct her staff, except the utility worker, to talk to the

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[1] *Rollo*, p. 12; docketed as UDK-A20130416-01.

[2] *Id.* at 15-16; docketed as UDK-A20130416-02.

parties to settle the case at the outset. If the parties disagreed, Judge Bandong would repeatedly postpone the hearing until such time that the parties would just opt to settle. In one instance, Judge Bandong even pursued the settlement of a rape case notwithstanding that it was already submitted for decision prior to her assumption as Presiding Judge of the branch. She ordered the accused to plead guilty to a lesser offense, and when the Public Attorney's Office lawyer refused to assist the accused, Judge Bandong appointed another lawyer to the prejudice of the private complainant whose efforts to obtain justice was put to naught.

Also, Judge Bandong would refrain from reading voluminous case records and would instead order her staff, usually the stenographers and clerks, to make a digest or orally narrate to her the circumstances of the case. Because of this, the stenographers could not attend to the transcription of stenographic notes, causing them to pile up.

In addition, the second letter-complaint mentioned that Judge Bandong was especially fond of Febrer, whose wife would also frequent the office and bring food for Judge Bandong. Because of these, Judge Bandong tolerated Febrer's act of receiving money from litigants.

On April 18, 2013, the OCA received another anonymous letter-complaint,[3] this time against Febrer and the Court Interpreter of the same branch, Francisco Mendioro (Mendioro). It similarly alleged that Judge Bandong would assign Febrer's duties to other staff members, leaving the latter with nothing to do. It also mentioned Febrer's scheme of demanding money from litigants before attending to follow-ups of cases. The letter-complaint likewise pointed to Mendioro as the person responsible for the missing records that would re-surface a few days later, a scheme on the part of Mendioro to make money.

Acting thereon, the OCA indorsed the two letters-complaints against Judge Bandong and the letter-complaint against Febrer

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[3] *Id*. at 45-47:

and Mendioro to the Executive Judge of RTC Lucena City for discreet investigation and report.[4]

Meanwhile, on November 20, 2013, the Court in A.M. No. 14889-Ret. approved the application of Judge Bandong for optional retirement effective at the close of office hours of September 30, 2013.[5] However, her retirement benefits, except for the money value of her accrued leave credits, were ordered withheld pending resolution of the two aforementioned letters-complaints against her and of two other administrative complaints, to wit: (1) OCA IPI No. 12-3944-RTJ entitled "*Liberty R. Beltran v. Presiding Judge Dinah Evangeline B. Bandong*";[6] and (2) OCA IPI No. 12-3963-RTJ entitled "*Yolanda G. Maniwang v. Presiding Judge Dinah Evangeline B. Bandong*."[7]

On February 26, 2014, the OCA received the separate reports[8] of then RTC Lucena City Executive Judge Eloida R. De Leon-Diaz (EJ De Leon-Diaz) on the discreet investigations she conducted. While EJ De Leon-Diaz recommended the dismissal of the charges against Febrer and Mendioro for want of concrete evidence, she opined otherwise with respect to Judge Bandong.

EJ De Leon-Diaz revealed that even before the discreet investigation was made, the staff members of Judge Bandong already requested detail to other branches on account of the

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[4] *Id.* at 10 and 41, respectively; the 1st Indorsements from the OCA addressed to Judge Adolfo V. Encomienda, former Executive Judge of RTC Lucena City, were in turned indorsed by him to the incumbent Executive Judge, Judge Eloida R. De Leon-Diaz, through separate 2nd Indorsements, *id.* at 30 and 40.

[5] *Id.* at 61.

[6] For Gross Ignorance of the Law, Gross Inefficiency and Grave Misconduct. In a Resolution dated January 29, 2014, the Court dismissed the complaint for involving issues which are judicial in nature and for lack of merit.

[7] For Conduct Prejudicial to the Best Interest of the Service. The charge was, however, declared baseless in the Report of the Investigating Judge which was approved by the OCA and adopted by this Court. Nevertheless, in the Court's Resolution of July 6, 2015, Judge Bandong was admonished for uttering improper statements during the mediation proceedings of a particular case.

[8] *Rollo*, pp. 24-29 and 36-39, respectively.

difficulties they experienced in dealing with the latter. Instead of acceding, EJ De Leon-Diaz advised Judge Bandong to settle the issues between her and her staff. Judge Bandong refused to heed EJ De Leon-Diaz' advice and even scolded her staff for discussing their problems with the Executive Judge. She allegedly told her staff not to listen to EJ De Leon-Diaz since it was her (Judge Bandong), as the Presiding Judge of Branch 59, who has the final say on matters concerning the branch. Because of the above-mentioned incident, EJ De Leon-Diaz claimed that she continued to monitor the activities in Branch 59.

EJ De Leon-Diaz further stated that when Judge Bandong assumed office as Presiding Judge of Branch 59, there were complaints from prosecutors, lawyers, and litigants regarding her failure to conduct formal hearings in her court; compelling parties to conciliate even in criminal cases; and admitting that she does not know how to conduct hearings and write decisions and resolutions. Because of these, Judge Bandong had become the laughing stock of lawyers appearing before the RTC Lucena City.

EJ De Leon-Diaz also confirmed the allegation that Judge Bandong pursued the settlement of a rape case even if the same was already submitted for decision. The said incident, according to the Executive Judge, even caused the prosecutor assigned at Judge Bandong's sala to request detail to another station due to her disappointment with the latter's actuation.

Moreover, EJ De Leon-Diaz recounted that while conducting an observation of the courts in RTC Lucena City, she noticed that no hearing was being conducted in the sala of Judge Bandong. When she went inside, she found Judge Bandong in her chambers watching television with feet on the table. Judge Bandong even invited EJ De Leon-Diaz to join her in watching but the latter declined and advised her to just turn off the television and attend to her cases instead. Later, the staff of Judge Bandong told EJ De Leon-Diaz that they were scolded by their boss for their failure to warn her of the Executive Judge's arrival. They also told her that the money used to buy the television set of Judge Bandong came from their own contributions.

EJ De Leon-Diaz likewise confirmed the following charges: (1) Judge Bandong would assign duties not commensurate to the plantilla positions of her staff, *i.e.*, the Process Server was assigned duties of a Clerk; the Utility Worker was assigned duties of a Process Server; and the Stenographers were required to summarize cases; (2) it was the Legal Researcher who would resolve cases; (3) Judge Bandong would unreasonably demand priority in the delivery of money and checks no matter how small the amount; and, (4) Judge Bandong would exhibit eccentricities and attitude problems. She disallowed her staff from talking to other court personnel and instructed them to prevent the entry of other persons inside their office; she also at one time padlocked their office and brought the keys with her to Infanta, Quezon, forcing her staff to engage a locksmith so they could enter their office.

In view of the above, EJ De Leon-Diaz recommended that administrative charges for gross ignorance of the law, incompetence, and conduct unbecoming of a member of the bench be filed against Judge Bandong.

In the Resolution[9] dated October 15, 2014, the Court, per recommendation of the OCA,[10] resolved as follows:

1. CONSIDER the two (2) anonymous complaints filed on 1 April 2013 and 16 April 2013 against Presiding Judge Dinah Evangeline B. Bandong, RTC, Br. 59, Lucena City, Quezon Province, and the Reports both dated 15 August 2013 of Executive Judge Eloida R De Leon-Diaz on her discreet investigation on the anonymous complaints as an ADMINISTRATIVE COMPLAINT against former Presiding Judge Dinah Evangeline B. Bandong;

2. DIRECT the Division Clerk of Court to FURNISH former Judge Bandong with copies of the two (2) anonymous complaints and the Reports both dated 15 August 2013 of Executive Judge Eloida R. De Leon-Diaz;

3. REQUIRE Judge Bandong to COMMENT on the charges against her within a period often (10) days from notice;

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[9] *Id*. at 62-64.

[10] See OCA Memorandum dated September 11, 2014, *id*. at 1-9.

4. DISMISS the charges against Clerk III Eduardo Febrer and Court Interpreter Francisco Mendioro, both of the RTC, Br. 59, Lucena City, Quezon Province for lack of merit; and

5. DIRECT the Office of the Court Administrator to CONDUCT a JUDICIAL AUDIT in the RTC, Br. 59, Lucena City, Quezon Province.

x x x x x x x x x [11]

In her Compliance[12] dated February 18, 2015, Judge Bandong vehemently denied the charges against her. She instead imputed "sinister delight and malevolent glee" upon EJ De Leon-Diaz in drafting the investigation report and even insinuated that EJ De Leon-Diaz could be responsible for the two anonymous letter-complaints.[13]

Relevant portions of Judge Bandong's comment to the charges against her are as follows:

That the entire staff of Branch 59 has come to her (EJ. De Leon-Diaz) personally to communicate their grievances against Judge Bandong and request that they be detailed to the other branches or offices of the court, leaving no support staff in Branch 59' is too absurd and far-fetched to be worthy of belief. First, while there may be at least a couple of 'bad eggs' in the staff of Branch 59, the rest are practical and sensible enough to recognize the irrationality of leaving the branch without a single member of its staff. Second, it is no secret that EJ De Leon-Diaz is generally known, at least within the courthouse in Lucena City and local legal circles, to be unapproachable to most, to the point of being fearsome.

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As to EJ. De Leon-Diaz' claim that she received complaints that respondent 'does not conduct any formal hearings in her court', the records will show otherwise. Information, though unconfirmed, has reached [the] respondent that EJ. De Leon-Diaz has been spreading rumors to that effect, all the way up to the Supreme Court. And because EJ. De Leon-Diaz is an absentee judge, being always out of the

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[11] *Id.* at 63; accordingly, the complaints against Judge Bandong were assigned OCA Informal Preliminary Inquiry [OCA IPI] No. 14-4329-RTJ.

[12] *Id.* at 144-159.

[13] *Id.* at 146.

courthouse, she has never seen how respondent has been working, sometimes staying in court up to 8:00 o'clock at night, to meet her self-imposed deadlines for court work.

There is simply no truth to EJ. De Leon-Diaz' finding that respondent's 'former prosecutor asked to be detailed in Laguna because she refused to conciliate criminal cases.' The truth is that former Prosecutor Alelie B. Garcia was already detailed in Laguna as early as April 2011 x x x concurrently serving as prosecutor for Branch 59, and acted in both capacities until her appointment as Presiding Judge of the Municipal Trial Court at Polillo Island on 09 September 2013.

EJ. De Leon-Diaz' story about finding respondent 'inside her chamber x x x, feet raised and very relaxed in watching her favorite telenovela' is a complete fabrication, a deliberate falsehood and a vicious lie. It must be stressed here that respondent previously underwent surgery on account of a complete fracture of her leg bone, and can neither walk long distances nor prop up her legs without experiencing disabling pain. Consequently[,] respondent would never raise her feet on a table, particularly one as high as that in her chambers at Branch 59, unless it was absolutely necessary. EJ. De Leon-Diaz seems to have forgotten that respondent walks with a limp, or it may have entirely escaped her notice. At any rate, it runs against respondent's moral fiber to watch a television show in lieu of hearing cases during the business hours of the court.

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About the television set: while other courts/branches have refrigerators, water dispensers and other electrical appliances, Branch 59 procured only a television set for use during lunch break which almost all members of the staff spent in court, to keep abreast of goings-on in the country and elsewhere as well as for entertainment. Worth some Php6,000.00, respondent paid the Php1,500.00 down payment while the balance was paid via contributions from the court employees. Respondent also shouldered the expenses for the installation of a cable TV service and the monthly subscription fees therefor while she was still presiding over Branch 59. The TV set is, as far as respondent knows, still in [the] court.

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It is not 'the Legal Researcher who resolves whatever is pending for the (respondent's) consideration'. That is the duty of respondent, which duty she discharges and fulfills by writing the drafts of her

own decisions, orders and other issuances, then affixing her signature to the finalized form thereof. The Legal Researcher, Shiela Amandy, is asked to check the citations of law and precedent, if any, that these drafts may contain, and proceed with the reduction of the drafts into typewritten or printed form for respondent's signature. Every decision or resolution respondent made and signed was the product of her study of the facts alleged, the evidence adduced, and the law and jurisprudence applicable to the case. Aware that such decisions/resolutions are subject to challenge by the parties, respondent takes care to carefully apply the law and precedent to the facts as shown by the evidence.

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Respondent did not and does not play favorites. An examination of her work in all the courts she served will show that she is a fair, just and humane judge and leader, who does not tolerate idleness and wrongdoing. She adheres to the principle that every member of the court staff represents a spoke in the wheel of justice. For the wheel to keep turning, each spoke must give its best and contribute its strength to the whole.

Branch 59's caseload consists of approximately eighty percent (80%) criminal cases and twenty percent (20%) civil and other cases. In view of the number of cases, the workload relative to criminal cases could not be accomplished singlehandedly by Criminal Docket Clerk Eduardo Febrer so that he was assisted by a provincial employee who was, however, appointed Process Server of the Municipal Trial Court at Lucban, Quezon, in March 2013. Process Server Eric Atienza was assigned to perform duties related to his position and functions, specifically the service of notices, orders, subpoenae, etc. by registered mail. Prior to March 2013 Atienza's workload was very light — he had much time on his hands that he could afford to attend to his bar/restaurant and construction contracting businesses as well as his functions as President of the Process Servers Association of the Philippines during office hours. When Atienza was given his new assignment of mailing notices, he became scarce, frequently absenting himself and when present refusing to work at the office, forcing his co-employees Sheriff Grace Armamento, Clerk III Madeleine Gaviola and OIC-Branch Clerk of Court Teodora Parfan to fill in for him. On hindsight, respondent should have filed a case or cases against Atienza.

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There is no truth whatsoever to EJ. De Leon-Diaz' report that respondent 'closed the entire office because she wanted her staff in San Pablo City as she was sick.' Respondent prefers to rest in private when she is under the weather or otherwise feels unwell, which preference is known to her staff in Branch 59 and the other courts she had served, to friends and relations.

The story laying responsibility, nay, culpability, upon respondent for the keys that went missing sometime in June 2013 while she was on official travel to Infanta, Quezon, is only for the gullible. Even EJ. De Leon-Diaz[, is] or should be aware that respondent is not the custodian of the keys to the offices of Branch 59, so that blaming respondent for their loss stretches logic and reason, and is certainly unjustified and unreasonable. EJ. De Leon-Diaz exaggerates when she reports that 'The staff members are not allowed to talk to other court personnel, [that] no one shall be allowed inside the office of Branch 59, even those court personnel who [have] important business with any member of her staff, like to secure x x x stenographic notes in consolidated cases pending before the other branches of the court'. [It was just that] the workplace was rationalized whereby the staff was housed in a lower staff room open to the court-going public and in the mezzanine which was off-limits to the public and non-Branch 59 personnel, the latter for security reasons.

On Demands for Priority in the Delivery of Checks and Moneys

There is a payroll for the eight (8) judges presiding over the different branches of the Regional Trial Court in Lucena City, which is prepared ahead of and apart from the payroll for the other court employees. As a natural consequence, respondent received her paychecks ahead of her staff, but she never demanded that the same be given ahead of the other judges.

EJ De Leon-Diaz' confirmation of the claim that respondent wants to be prioritized in the delivery of her checks appears to be a ploy on her part to cover or camouflage her own shortcomings regarding her pay. Unconfirmed reports have it that the EJ has a lot of loans. But it is a fact that there is a pending matter between Nedy Taringan and Lorelei Caranto, both employees of Branch 54. It is also a fact that the EJ has not investigated this matter until the present. Then there is talk that the EJ could not proceed with the investigation because she is in deep monetary debt to both employees.

At any rate, whether or not the reports are true, the issue on priority in check delivery is too petty to deserve any consideration. x x x[14]

In its Memorandum[15] dated August 19, 2015, the OCA informed the Court that in compliance with the Resolution dated October 15, 2014, it dispatched a team to RTC-Lucena City, Branch 59 to conduct a judicial audit. In the course thereof, the OCA likewise conducted a parallel investigation in connection with the complaints against Judge Bandong which yielded the following:

x x x Four (4) of the court personnel, namely, OIC-Legal Researcher Shiela May Amandy, Court Interpreter Francisco Mendioro, Clerk III Eduardo Febrer, and Process Server Eric Atienza gave their respective sworn statements. OIC-Legal Researcher Amandy narrated her initial non-designation by respondent Judge Bandong as OIC. Moreover, she confirmed the allegation that respondent Judge Bandong belatedly conducted court hearings due to her habit of watching Korean *telenovelas* and how she instructed her staff to give her a detailed update on the scenes she missed whenever she was constrained to conduct hearings. OIC-Legal Researcher Amandy stressed that respondent Judge Bandong practically delegated to her the duty of preparing court decisions without any significant output from the latter.

Court Interpreter Mendioro confirmed respondent Judge Bandong's obsession to watch Korean *telenovelas* and revealed the latter's peculiar manner of dressing up [in] public by wearing dusters, slippers, and other household clothes. He expressed incredulity over respondent Judge Bandong's propensity to delegate cases (including appealed ones) for mediation even to the lower-ranked employees such as the process server. On the other hand, Clerk III Febrer denied being the pet employee of respondent Judge Bandong as he also received some dressing-down from the latter. He also denied loafing around or looking for records only when there was money involved. He, however, validated respondent Judge Bandong's declaration that Process Server Atienza's frequent loitering prompted the magistrate to delegate to the latter the duty of releasing orders and notices.

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[14] *Id*. at 146-153.

[15] *Id*. at 180-200.

For his part, Process Server Atienza confirmed all the allegations against respondent Judge Bandong and Clerk III Febrer, without[,] however[,] giving specifics. He asserted that he was overloaded with tasks which are not part of his job description, including the mediation of cases, to the detriment of his own workload. x x x[16]

Interestingly, Process Server Atienza (Atienza) also stated that there were allegations that their former OIC, Stenographer Teodora Parfan (Parfan), was asking money in exchange of favorable orders or decisions. In fact, Atienza, for several times, saw litigants giving money to Parfan in their branch session hall. Later, the OCA investigating team came across a piece of paper which appeared to be a handwritten receipt issued and signed by Parfan on November 27, 2014 indicating as follows: "*Received the amount of ₱5,000.00 from Rowel Abella as partial settlement of case*." Apparently, the said receipt pertained to Criminal Case No. 2005-1127, a case for fiustrated homicide. The investigating team then tracked down the accused therein, Rowell Abella (Abella), and private complainant's father, Ruben de Ocampo (de Ocampo). They both confirmed that after a scheduled hearing, Judge Bandong referred the parties to Parfan for mediation.[17]

Considering the foregoing, the OCA evaluated the complaints as follows:

In the instant matter, respondent Judge Bandong is confronted with a considerable number of charges. After a careful evaluation of

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[16] *Id*. at 189-190.

[17] The respective sworn statements of Rowell Abella (Abella) and Ruben de Ocampo (de Ocampo) indicate that the parties agreed to the proposition that Abella would pay de Ocampo ₱72,000.00 by installments of ₱5,000.00 bi-monthly in exchange for the latter's withdrawal of the case. The first installment of ₱5,000.00 was given directly by Abella to de Ocampo while the succeeding installments were coursed through Parfan until the payment was completed. It turned out, however, that while Abella religiously gave Parfan the agreed amount of installment on time until payment was completed, Parfan failed to timely and completely remit the same to de Ocampo. Thus, upon the recommendation of the OCA, the Court resolved to treat the sworn statements of Abella and de Ocampo as a Separate Administrative Complaint against Parfan through a Resolution dated May 30, 2016, *id*. at 210.

the charges, this Office is convinced that most of them failed to surpass and transcend the required substantial evidence to prove her culpability on said allegations, either the charges against her were uncorroborated and inadequate, or because they were merely derived from second-hand information, or because they were just too inconsequential to merit the Court's attention, *viz.*:

a. Her alleged predisposition to keep favorite employees;

b. Her alleged public admission of ineptitude when conducting trials and hearings and/or propensity to compel litigants and lawyers to conciliate;

c. Her alleged failure to conduct trials and hearings;

d. Her alleged undue insistence for an immediate dispatch of her checks;

e. Her alleged proclivity to delegate her decision-making duty to her court personnel; and,

f. Her alleged eccentricities and/or peculiar directives to her personnel.

Some of the above allegations might have been considered as serious enough to have merited a deeper scrutiny had they been supported by additional evidence. Unfortunately, mere allegation without any proof of the supposed improprieties committed by respondent Judge Bandong in the anonymous letters and the report submitted by Executive Judge De Leon-Diaz is evidently not sufficient to make her accountable for such misfeasance.

Still, this Office believes that substantial evidence exists against respondent Judge Bandong on the following charges:

a. Her habit of watching TV programs during court trials and hearings;

b. Her predeliction to delegate mediation of cases to court personnel; and,

c. Her designation of Process Server Atienza to perform the functions and duties appertaining to Clerk III Febrer.[18]

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[18] *Id.* at 192-193.

As to Judge Bandong's habit of watching *telenovelas* during office hours, the OCA noted that (1) EJ De Leon-Diaz had a first-hand information on this as she herself witnessed it; and (2) the same was confirmed by Judge Bandong's staff, namely, Atienza, Amandy, Febrer and Mendioro in their respective sworn statements. For this, the OCA found Judge Bandong to have exhibited conduct prejudicial to the best interest of the service and violated Sections 1 and 2, Canon 6 of the New Code of Judicial Conduct which mandate a judge's strict devotion to judicial duties.

With respect to Judge Bandong's practice of delegating to her court staff the mediation of cases, this was confirmed by the sworn statements of Abella and de Ocampo which revealed that per instruction of Judge Bandong, Stenographer Parfan caused the parties in Criminal Case No. 2005-1127 to enter into monetary settlement in order to terminate the case. Per A.M. No. 01-10-5-SC-PHILJA dated October 16, 2001, cases where amicable settlement is possible should be referred to the Philippine Mediation Center (PMC) which shall assist the parties in selecting a duly accredited mediator. Judge Bandong therefore erred in not referring mediatable cases to the PMC and in letting her staff, who were not accredited mediators, handle the mediation of cases. This, according to the OCA, constituted grave misconduct

Anent Judge Bandong's designation of (Process Server) Atienza to perform the duties and functions pertaining to (Clerk III) Febrer, the OCA stressed that under Section 7, Canon IV of the Code of Conduct for Court Personnel, court personnel shall not be required to perform any work or duty outside the scope of their assigned job description. Here, the OCA noted the significant difference between the duties of a Clerk III, which are basically clerical in nature and require one to be always in the office, and the duties of a Process Server, which require the latter in the field to personally serve and/or mail court processes. The OCA opined that it is incongruent to assign a Process Server with duties pertaining to a Clerk since the same would tie down the former to the office to the detriment

of his own work, which as mentioned, requires him to be out of the office most of the time. While Judge Bandong might have had the best intention in wanting to lighten the workload of Febrer, her assignment to Atienza of the duties pertaining to Febrer, however, adversely affected another important aspect of court management, that is, the prompt service of court processes. This, according to OCA, was counter-productive and did not serve the ends of justice. Hence, it found Judge Bandong to have violated Supreme Court circulars, rules and directives.

The OCA summed up its report as follows:

Recapitulating the three (3) charges discussed above, this Office believes that respondent Judge Bandong is liable for (1) conduct prejudicial to the best interest of the service (for watching TV during court trials and hearings), (2) gross misconduct (for erroneously referring cases for mediation), and (3) violation of Supreme Court rules, directives, and circulars (for wrongful delegation of duties to court personnel). Under Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), if the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. In the instant case, the charge of gross misconduct is the most serious charge, making the charges of conduct prejudicial to the best interest of the service and violation of Supreme Court rules, directives and circulars as aggravating circumstances. Under Section 11, Rule 140 of the Rules of Court, gross misconduct is punishable by dismissal from the service.

Considering, however, that respondent Judge Bandong has already retired from the service, this Office finds wisdom in applying the principle laid down in *Santiago B. Burgos vs. Clerk of Court II Vicky A. Baes*. In lieu of dismissal that the offense carries but which can no longer be effectively imposed because of respondent Judge Bandong's retirement, this Office recommends the forfeiture of whatever benefits still due her from the government, except for the accrued leave credits, if any, that she had earned. It is also recommended that she be barred from reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

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IN VIEW OF THE FOREGOING, this Office respectfully recommends that:

(a) the instant complaint be RE-DOCKETED as a regular administrative matter;

(b) retired Judge Dinah Evangeline B. Bandong, formerly of Branch 59, Regional Trial Court, Lucena City, Quezon be found LIABLE for Gross Misconduct;

(c) considering that dismissal from the service can no longer be effectively imposed on respondent Judge Bandong in view of her optional retirement effective 30 September 2013, that whatever benefits still due her from the government, except for accrued leave credits, if any, be FORFEITED and that she be BARRED from re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

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The Court's Ruling

The Court partly adopts the findings and recommendations of the OCA.

Among the many charges against Judge Bandong, the OCA aptly found that only the following were supported by substantial evidence: (1) Judge Bandong's habit of watching television during office hours; (2) her predeliction to delegate mediation of cases to court personnel; and (3) her delegation to Process Server Atienza the performance of the functions and duties pertaining to Clerk III Febrer. "In administrative cases, the quantum of evidence required is that of substantial evidence."[20] "Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the [respondent] is guilty of the act or omission

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[19] *Id*. at 198-199.

[20] *Astorga and Repol Law Offices v. Villanueva*, 754 Phil. 534, 551 (2015).

complained of, even if the evidence might not be overwhelming."[21] Here, the other charges against Judge Bandong remain to be mere allegations and therefore did not meet the mandated quantum of evidence. Rightly so, Judge Bandong "should not be held responsible for allegations which were not proven."[22] However and as stated, it is otherwise with respect to the three charges specifically mentioned as will be discussed below.

Judge Bandong's habit of watching television programs during office hours

As noted by the OCA, Judge Bandong's habit of watching *telenovelas* during office hours was personally witnessed by EJ De Leon-Diaz. Aside from this, the staff of Branch 59 in their respective sworn statements[23] uniformly attested that Judge Bandong would watch Korean *telenovelas* during office hours thereby causing delay in the conduct of hearings. Lawyers and litigants were made to wait until she had finished watching. Indeed, the report of EJ De Leon-Diaz regarding this matter and the consistent statements of the staff of Branch 59 already constituted substantial evidence On the other hand, Judge Bandong did not categorically deny the charge and merely stated that "it runs against [her] moral fiber to watch a television show *in lieu* of hearing cases during the business hours of the court."[24]

Thus, the Court agrees with the OCA that Judge Bandong violated Sections 1 and 2, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary which provide, *viz.*:

CANON 6
COMPETENCE AND DILIGENCE

Competence and diligence are prerequisites to the due performance of judicial office.

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[21] *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 130 (2013).

[22] *Lim, Jr. v. Judge Magallanes*, 548 Phil. 566, 574 (2007).

[23] *Rollo*, pp. 205-209.

[24] *Id*. at 149.

SECTION 1. The judicial duties of a judge take precedence over all other activities.

SECTION 2. Judges shall devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

The Court has stressed time and again that "decision-making is the primordial x x x duty of a member of the [bench]."[25] "No other [task] can be more important than decision-making x x x."[26] In the case of trial courts, the conduct of hearings is unquestionably an important component of their decision-making process and, conversely, all other official tasks must give way thereto.[27] Hence, for a judge to allow an activity, and an unofficial one at that, to take precedence over the conduct of hearings is totally unacceptable. It is a patent derogation of Sections 1 and 2 of Canon 6 and a blatant disregard of the professional yardstick that "all judicial [officials and] employees must devote their official time to government service.[28]

Additionally, Judge Bandong's habit of watching television during office hours violates Section 7 of the same Canon 6 which requires Judges "not to engage in conduct incompatible with the diligent discharge of judicial duties." Watching *telenovelas* surely dissipates away Judge Bandong's precious time in the office, which, needless to say, has an adverse effect on the prompt administration of justice.[29] Such activity is by all means counter-productive to the due performance of judicial duties.

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[25] *Re: Complaint Against Justice Elvi John S. Asuncion of the Court of Appeals*, 547 Phil. 418, 436 (2007).

[26] *Re*: *Problem of delays in cases before the Sandiganbayan*, 426 Phil. 1, 15 (2002).

[27] *Id.* at 15-16.

[28] *Concerned Litigants v. Araya, Jr.*, 542 Phil. 8, 18 (2007).

[29] *Rollo*, p. 194.

For the afore-stated violations, the Court finds Judge Bandong guilty of conduct prejudicial to the best interest of the service. "Conduct prejudicial to the best interest of [the] service x x x pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result; it refers to acts or omissions that violate the norm of public accountability and diminish — or tend to diminish — the people's faith in the Judiciary."[30] As correctly stated by OCA, Judge Bandong's "audacity to delay — and even interrupt — court trials and hearings just to satisfy her obsession for soap operas [is w]ithout a doubt [a] reprehensible conduct [which] lowers the people's respect for the judiciary."[31]

Judge Bandong's predeliction to delegate mediation of cases to court personnel

Both the affidavits of De Ocampo and Abella confirmed that it was (Stenographer) Parfan who mediated between them in Criminal Case No. 2005-1127. This was supported by the handwritten receipt signed by Parfan (which the OCA investigating team came across in the course of its investigation) purportedly showing partial payment of the settlement amount in the said criminal case. Abella also categorically stated that it was Judge Bandong who referred them to Parfan. To the Court, these are substantial evidence to support the subject charge against Judge Bandong. Notably, Judge Bandong was silent about the matter. She totally failed to deny or proffer any explanation for the same.

To decongest court dockets and enhance access to justice, the Court through A.M. No. 01-10-05-SC-PHILJA approved the institutionalization of mediation in the Philippines through court-annexed mediation. Along with this, structures and guidelines for the implementation of court-annexed mediation were put in place. Trial courts, therefore, cannot just

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[30] *Executive Judge Contreras-Soriano v. Salamanca*, 726 Phil. 355, 361-362 (2014).

[31] *Rollo*, p. 194.

indiscriminately refer for mediation any case to just anybody. For one, there are cases which shall[32] and shall not[33] be referred to court-annexed mediation. For another, mediatable cases where amicable settlement is possible must be referred by the trial courts to the PMC, who in turn, shall assist the parties in selecting a mutually acceptable mediator from its list of duly accredited mediators. Here, Criminal Case No. 2005-1127 involving

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[32] Per A.M. No. 01-10-5-SC-PHILJA, the following cases are referable to mediation:

a. All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised;

b. Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law;

c. The civil aspect of BP 22 cases; x x x

d. The civil aspect of quasi-offenses under Title 14 of the Revised Penal Code; and

e. The civil aspect of theft (not qualified theft), estafa (not syndicated or large scale estafa), and libel [per the Philippine Judicial Academy Website <http://philja.judiciary.gov.ph/pfaq.html, last visited August 29, 2017>

[33] Per the Philippine Judicial Academy Website <http://philja. judiciary. gov.ph/pfaq.html, last visited August 29, 2017>, the following cases shall not be referred to [Court-Annexed Mediation] x x x:

1. Civil cases which by law cannot be compromised, as follows:

· The civil status of persons;

· The validity of a marriage or a legal separation;

· Any ground for legal separation;

· Future support;

· The jurisdiction of courts; and

· Future legitime.

2. Civil aspect of non-mediatable criminal cases;

3. Petitions for *Habeas Corpus*;

4. All cases under Republic Act No. 9262 (Violence against Women and Children); and

5. Cases with pending application for Restraining Orders/Preliminary Injunctions.

frustrated homicide is apparently not a mediatable case. Clearly on this score alone, Judge Bandong had already violated A.M. No. 01-10-05-SC-PHILJA. Worse, Judge Bandong entrusted the settlement of the case to Parfan, a Court Stenographer, who obviously was not a qualified, trained, or an accredited mediator. It must be emphasized that while courts and their personnel are enjoined to assist in the successful implementation of mediation, A.M. No. 01-10-05-SC-PHILJA does not authorize them to conduct the mediation themselves. Mediation of cases can only be done by individuals who possess the basic qualifications for the position, have undergone relevant trainings, seminars-workshops, and internship programs and were duly accredited by the court as mediators. These are to ensure that the mediators have the ability to discharge their responsibility of seeing to it that the parties to a case consider and understand the terms of a settlement agreement. Unlike therefore when the mediation is facilitated by an accredited mediator, there is great danger that legal rights or obligations of parties may be adversely affected by an improper settlement if mediation is handled by an ordinary court employee.

The above important points could not have been unwittingly missed out by Judge Bandong. As opined by the OCA, Judge Bandong could not feign ignorance of A.M. No. 01-10-05-SC-PHILJA since the Philippine Judicial Academy frequently conducts "conventions and seminars for judges and clerks of court nationwide regarding the implementation of court-annexed mediations and judicial dispute resolutions."[34] To the mind of the Court, Judge Bandong knowingly made the wrongful referral because her indolence got the better of her. Indeed, this wanton disregard and mockery of the proper procedure in mediation of cases, as correctly held by the OCA, was tantamount to misconduct.

Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The

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[34] *Rollo*, p. 195.

misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[35]

Here, the misconduct committed by Judge Bandong was grave since the circumstances obtaining established her flagrant disregard of the rules on referral of cases for mediation. Judge Bandong committed a patent deviation from the rules when she wrongfully referred a non-mediatable case to her staff, a court stenographer, who was not an accredited mediator. This was despite the expectation that as a member of the bench, she not only knows the rules and regulations promulgated by this Court but also faithfully complies with it. Indeed, Judge Bandong is guilty of grave misconduct.

Judge Bandong's delegation of the functions and duties of Clerk III Febrer to Process Server Atienza

The separate sworn statements[36] of Atienza and Febrer confirmed the fact that the former was assigned the duties and functions of the latter as Clerk III. Judge Bandong, on the other hand, did not directly confront the subject charge and simply stated that: (1) the number of workload relative to criminal cases could not be accomplished singlehandedly by Febrer as the Clerk-in-Charge of criminal cases; and, (2) that prior to March 2013, Atienza's workload was very light, allowing him to attend to his other businesses as well as to his functions as President of the Process Servers Association of the Philippines during office hours.[37] The consistent statements of the two personnel involved in this charge vis-a-vis Judge Bandong's

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[35] *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor*, 719 Phil. 96, 100-101 (2013).

[36] *Rollo*, pp. 205 and 208.

[37] *Id*. at 101.

ambivalent explanation on the matter lead this Court to sustain the charge.

In *Executive Judge Apita v. Estanislao*,[38] the Court had the occasion to explain that:

> While the [2002 Revised Manual for Clerks of Court which defines the general functions of all court personnel in the judiciary] provides that court personnel may perform other duties the presiding judge may assign from time to time, said additional duties **must be directly related to, and must not significantly vary from, the court personnel's job description**. x x x
>
> Section 7, Canon IV of the Code of Conduct for Court Personnel expressly states that court personnel shall not be required to perform any work outside the scope of their job description, thus:
>
> > Sec. 7. Court personnel shall not be required to perform any work or duty outside the scope of their assigned job description.[39]
>
> The rationale for this is as follows:
>
> This rule is rooted in the time-honored constitutional principle that public office is a public trust. Hence, all public officers and employees, including court personnel in the judiciary, must serve the public with utmost responsibility and efficiency. **Exhorting court personnel to exhibit the highest sense of dedication to their assigned duty necessarily precludes requiring them to perform any work outside the scope of their assigned job description, save for duties that are identical with or are subsumed under their present functions.**[40]

Clearly here, Judge Bandong violated Supreme Court circulars, rules and directives when she delegated to Atienza the duties of Febrer as Clerk III. As explained by the OCA, the duties of a Clerk III are not directly related to and significantly vary from those of a Process Server, *viz.*:

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[38] 661 Phil. 1 (2011).

[39] *Id*. at 7; emphasis supplied.

[40] *Id*. at 9-10; emphasis supplied.

The duties of a Clerk III differ significantly from those of a Process Server. A Clerk III's job is basically clerical in nature and requires him to be always in the office to assist the clerk of court in maintaining the integrity of the docket books of the court. A Process Server, on the other hand, has the primary duty of serving court processes such as subpoenas, summons, court orders and notices, thus, necessitating him to be mostly out of the office and in the field personally serving and/or mailing court processes. Hence, it would be incongruent to assign a Process Server with duties pertaining to that of a Clerk III since it would tie him down in the office to the detriment of his own work accomplishment Evidently, a Clerk III's duties are not directly related to, and significantly vary from, the functions of a Process Server. Such arrangement diminishes the court personnel's professional responsibility and peak efficacy in the performance of their respective roles in the administration of justice.[41]

Penalty

Under Sec. 46(B), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), the offense of conduct prejudicial to the best interest of the service is punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense.

The penalty for grave or gross misconduct under Sec. 11 in relation to Sec. 8, Rule 140 of the Rules of Court is any of the following: "(1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; *Provided, however*, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three (3) but not exceeding (6) months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00."

With respect to violation of Supreme Court rules, directives, and circulars, the same is sanctioned by any of the following

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[41] *Rollo*, p. 197.

under Sec. 11 in relation to Sec. 9 of the same Rule 140: "(1) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00."

Under Sec. 50, Rule 10 of the RRACCS, if the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding the most serious charge and the rest shall be considered as aggravating circumstances. Here, the most serious charge against Judge Bandong is grave or gross misconduct. As mentioned above, any of the three sanctions therefor provided under Sec. 11, Rule 140 of the Rules of Court may be imposed for the said charge. Considering Judge Bandong's service to the government spanning 46 years[42] and also the fact that she has not yet been previously penalized for an administrative offense, the Court deems it proper to impose upon her the penalty of fine in the amount of ₱40,000.00 to be deducted from her retirement benefits. It may be recalled, however, that the Court, in its Resolution of November 20, 2013, ordered the withholding of Judge Bandong's retirement benefits pending the outcome of this case and of the then two other pending administrative cases against her, to wit OCA IPI No. 12-3944-RTJ and OCA IPI No. 12-3963-RTJ. In view of this decision and also of the January 29, 2014 Resolution in OCA IPI No. 12-3944-RTJ (dismissing the complaint against Judge Bandong for involving issues that are judicial in nature and for lack of merit) and the July 6, 2015 Resolution in OCA IPI No. 12-3963-RTJ (merely admonishing Judge Bandong and directing her to refrain from further acts of impropriety), it is proper that Judge Bandong's retirement pay and other benefits be now ordered released after deducting the fine herein imposed, subject to the usual clearance requirements, unless withheld for some other lawful cause.

As a final note, it bears to emphasize that a judge's "high and exalted position in the Judiciary requires [her] to observe

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[42] Per Judge Bandong's Service Record on file with the Records Division, Office of Administrative Services of the Office of the Court Administrator.

exacting standards of x x x decency and competence. As the visible representation of the law and given [her] task of dispensing justice, a judge should conduct [herself] at all times in a manner that would merit the respect and confidence of the people."[43]

WHEREFORE, the instant complaints are **RE-DOCKETED** as a regular administrative matter. Retired Judge Dinah Evangeline B. Bandong, formerly of Branch 59, Regional Trial Court, Lucena City, Quezon is hereby found **GUILTY** of Gross Misconduct, Conduct Prejudicial to the Best Interest of the Service, and Violation of Supreme Court Rules, Directives and Circulars for which she is imposed a **FINE** of ₱40,000.00 to be deducted from whatever retirement pay and other benefits which may be due her. The Financial Management Office of the Office of the Court Administrator is directed to release Judge Bandong's retirement pay and other benefits after deducting the fine herein imposed, unless withheld for some other lawful purpose.

SO ORDERED.

Sereno, C.J.(Chairperson), Leonardo-de Castro, Jardeleza, and *Tijam, JJ.*, concur.

SECOND DIVISION

[G.R. No. 210612. October 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERVIN Y. MATEO, EVELYN E. MATEO, CARMELITA B. GALVEZ, ROMEO L. ESTEBAN, GALILEO J. SAPORSANTOS and NENITA S. SAPORSANTOS,** *accused.* **ERVIN Y. MATEO,** *accused-appellant.*

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[43] *Mercado v. Judge Salcedo (Ret.)*, 619 Phil. 3, 21 (2009).

SYLLABUS

1. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— The elements of estafa by means of deceit under Article 315 (2)(a) of the RPC are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.

2. ID.; ID.; ID.; FRAUD AND DECEIT; ELUCIDATED.— [F]raud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

3. ID.; DECREE INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA (PD 1689); SYNDICATED ESTAFA; ELEMENTS.— [T]he elements of syndicated estafa as defined under Section 1 of PD 1689 are: (a) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*," or farmers'

associations, or of funds solicited by corporations/associations from the general public.

4. ID.; CONSPIRACY; THE ACT OF ONE IS THE ACT OF ALL.— In the instant case, it was not necessary for the prosecution to still prove that accused-appellant himself "personally, physically and actually performed any 'false pretenses' and/or 'fraudulent representations' against the private complainants," given the findings of both the RTC and the CA of the existence of conspiracy among appellant and his co-accused. When there is conspiracy, the act of one is the act of all. It is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective.

5. ID.; SYNDICATED ESTAFA; PENALTY UNDER PD 1689 NOT AMENDED BY RA 10951 (ACT ADJUSTING THE AMOUNT OR VALUES OF THE PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED).— The amendments under RA 10951 were passed with the primary objective of **adjusting the amounts or the values of the property and damage on which a penalty is based** for various crimes committed under the RPC, including estafa. Section 85 of RA 10951 makes mention of PD 1689 as one of the laws which amends Article 315 of the RPC. On the other hand, it should be considered that PD 1689 is a special law which was enacted for the specific purpose of defining syndicated estafa and imposing a specific penalty for the commission of the said offense. x x x Notably, the first paragraph of PD 1689 penalizes offenders with life imprisonment to death **regardless of the amount or value of the property or damage involved**, provided that a syndicate committed the crime. Moreover, from the provisions of RA 10951, there appears no manifest intent to repeal or alter the penalty for syndicated estafa. If there was such an intent, then the amending law should have clearly so indicated because implied repeals are not favored. x x x As much as possible, effect must be given to all enactments of the legislature. A special law cannot be repealed, amended or altered by a subsequent general law by mere implication. Furthermore, for an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws. Absent an express repeal, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable

inconsistency or repugnancy exists in the terms of the new and old laws. The two laws, in brief, must be absolutely incompatible. In the instant case, the Court finds neither inconsistency nor absolute incompatibility in the existing provisions of PD 1689 and the amendatory provisions of RA 10951. As such, the amendatory provisions under RA 10951 are not applicable to the present case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

Sañez Taguinod Guia Caguioa Law Offices for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Ervin Y. Mateo (*Mateo*) assailing the Decision[1] of the Court of Appeals (*CA*), dated July 16, 2012, in CA-G.R. CR-H.C. No. 04001, which affirmed with modification the Judgment[2] of the Regional Trial Court (*RTC*) of Makati Cty, Branch 132, in Criminal Case Nos. 03-2936 and 03-2987, finding Mateo guilty beyond reasonable doubt of the crime of syndicated estafa, as defined and penalized under Article 315 of the Revised Penal Code (*RPC*) in relation to Presidential Decree No. 1689[3] (*PD 1689*), and imposing upon him the penalty of life imprisonment for each count and to pay actual damages to the private complainants.

The antecedents are as follows:

In March 2001, private complainant Herminio Alcid, Jr. (*Herminio, Jr.*) met a certain Geraldine Alejandro (*Geraldine*)

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting, concurring; *rollo*, pp. 2-19.

[2] Penned by Judge Rommel O. Baybay; records, pp. 330-340.

[3] A Decree Increasing the Penalty for Certain Forms of Swindling or Estafa.

who introduced herself as the head of the Business Center of MMG International Holdings Co., Ltd. (*MMG*). Geraldine was then soliciting investments and has shown a brochure showcasing the investments and businesses of the said entity. Herminio, Jr. was also shown Articles of Partnership to prove that MMG is registered with the Securities and Exchange Commission (*SEC*). The Articles of Partnership showed accused-appellant as a general partner who has contributed ₱49,750,000.00 to MMG. The other accused were shown to be limited partners who have contributed ₱50,000.00 each. Convinced by the representations of Geraldine, Herminio, Jr. invested ₱50,000.00 with MMG on April 20, 2002. Subsequently, all the interests and principal were promptly paid, which induced him to make a bigger investment. On May 2, 2002, Herminio, Jr. and his father, Herminio, Sr., made a joint investment of ₱200,000.00. Later, Geraldine was also able to convince Herminio, Jr.'s sister, Melanie, who made an investment of ₱50,000.00 with MMG. The private complainants' investments were covered by a notarized Memorandum of Agreement (*MOA*), signed by accused-appellant, which stipulated, among others, that MMG was being represented by its President, herein accused-appellant, and that the investors will be earning 2.5% monthly interest income from the capital they have invested. Subsequently, the complainants received several post-dated checks covering their investments. However, when they tried to deposit the checks, their banks informed them that these were dishonored because MMG's accounts in the bank from which the checks were drawn were already closed. The complainants then demanded from the accused the return of their money, but their demands were unheeded. The private complainants and other investors then went to the SEC to file a complaint, where they discovered that MMG was not a registered issuer of securities. The SEC forwarded their complaint to the City Prosecutor of Makati.

Subsequently, on April 11, 2003, the Assistant City Prosecutor of Makati City filed two separate Informations[4] with the RTC of Makati City charging accused-appellant, together with Evelyn

[4] Records, pp. 1-2; 15-16.

E. Mateo, Carmelita B. Galvez, Romeo L. Esteban, Galileo J. Saporsantos and Nenita S. Saporsantos with the crime of syndicated estafa. The Informations were similarly worded, except as to the dates of the commission of the crime, the names of the complainants, and the amounts obtained from them, as follows:

x x x x x x x x x

That on or about the 2nd day of May (09th day of July) 2002 prior or subsequent thereto, in Makati, Philippines, said accused, being officers, employees and/or agents of Mateo Management Group Holding Company, a corporation operating on funds solicited from the public, conspiring, or confederating with, and mutually helping one another, and operating as a syndicate, did then and there, wilfully, unlawfully and feloniously defraud complainants HERMINIO ALCID, SR. and HERMINIO ALCID, JR. (MELANIE ALCID) by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud to the effect that they have the business, property and power to solicit and accept investments and deposits from the general public and the capacity to pay the complainants guaranteed monthly returns (interest) on investment from two point five percent (2.5%) and lucrative commissions, and by means of other deceits of similar import, induced and succeeded in inducing complainants to invest, deposit, give and deliver as in fact the latter gave and delivered to said accused the total amount of ₱200,000.00 (₱50,000.00) as investment or deposit, accused knowing fully well that said pretenses and representations are a fraudulent scheme to enable them to obtain said amount, and thereafter, having in their possession said amount, with intent to gain and to defraud, misappropriated and converted the same to their own personal use and benefit to the damage and prejudice of said complainants in the said amount.

Contrary to law.

x x x x x x x x x[5]

On motion of the prosecution, and without objection on the part of the defense, the Informations were subsequently amended where the third and fourth lines of the Informations, as quoted

[5] *Id*. at 1 and 15.

above, were made to read as follows: "... being partners, officers, employees and/or agents of MMG, International Holdings Company, Ltd."[6]

The above cases were docketed as Criminal Case Nos. 03-2936 and 03-2987.

Similar cases for estafa and syndicated estafa, totalling 209, were also filed against the accused.

Among the accused, only accused-appellant was arrested and when arraigned on February 19, 2004, he pleaded not guilty to all the charges.[7]

Pre-trial[8] was then conducted. Thereafter, Criminal Case Nos. 03-2936 and 03-2987 were jointly tried.

After the prosecution rested its case, the defense, represented by private counsel, failed to present its evidence despite several re-settings made by the RTC.[9] Thus, upon motion of the prosecution, the case was deemed submitted for resolution.[10]

On October 22, 2008, the RTC rendered its Judgment finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

WHEREFORE, in Criminal Case No. 03-2936, the Court finds the accused, **Ervin Y. Mateo, GUILTY** beyond reasonable doubt of the crime of Syndicated Estafa penalized under Article 315 of the Revised Penal Code, in relation to Presidential Decree No. 1689 and hereby sentences him to suffer the penalty of life imprisonment. Likewise, Ervin Y. Mateo is held solidarily liable with MMG International Holdings Company, Ltd. to pay private complainant[s]

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[6] See RTC Order dated September 3, 2008, *id.* at 301.

[7] See RTC Order dated February 19, 2004, *id.* at 24-25.

[8] See Pre-Trial Order, *id.* at 32-34.

[9] See RTC Orders dated March 26, 2008, April 23, 2008 and September 17, 2008, *id.* at 283, 287 and 304, respectively.

[10] See RTC Order dated September 17, 2008, *id.* at 304.

Herminio Alcid, Jr. and Herminio Alcid, Sr. ₱206,000.00 as actual damages.

In Criminal Case No. 03-2987, the Court finds the accused, **Ervin Y. Mateo, GUILTY** beyond reasonable doubt of the crime of Syndicated Estafa penalized under Article 315 of the Revised Penal Code, in relation to Presidential Decree No. 1689 and hereby sentences him to suffer the penalty of life imprisonment. Likewise, Ervin Y. Mateo is held solidarily liable with MMG International Holdings Company, Ltd. to pay private complainant **Melanie Alcid** ₱59,702.61 as actual damages.

SO ORDERED.[11]

The RTC found that all the elements of the crime of syndicated estafa are present, to wit: (1) MMG was formed by accused-appellant, together with five (5) other persons; (2) accused-appellant, together with his co-accused, committed fraud in inducing private complainants to part with their money; and (3) the fraud resulted in the misappropriation of the money contributed by the private complainants.

Accused-appellant appealed the RTC Decision with the CA.[12]

On July 16, 2012, the CA promulgated its assailed Decision affirming the judgment of the RTC *in toto*.

The CA held, among others, that, contrary to accused-appellant's position, PD 1689 contemplates estafa as defined and penalized under Article 315, paragraph 2(a) of the RPC. The CA also held that all the elements of syndicated estafa are present in the instant case.

On August 8, 2013, accused-appellant, through counsel, filed a Notice of Appeal[13] manifesting his intention to appeal the CA Decision to this Court.

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[11] Records, p. 340.

[12] See Notice of Appeal, *id.* at 375.

[13] CA *rollo*, pp. 812-813.

In its Resolution dated August 29, 2013, the CA gave due course to accused-appellant's Notice of Appeal and ordered the elevation of the records of the case to this Court.[14]

Hence, this appeal was instituted.

In a Resolution[15] dated March 5, 2014, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation (In Lieu of Supplemental Brief)[16] dated May 6, 2014, the Office of the Solicitor General (*OSG*) informed this Court that it will no longer file a supplemental brief because it had already exhaustively addressed in its brief filed before the CA all the issues and arguments raised by accused-appellant in his brief.

On the other hand, accused-appellant filed a Supplemental Brief[17] on June 30, 2014, raising the following issues:

A. WHETHER OR NOT ACCUSED-APPELLANT MAY BE CONVICTED WITH ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(A) IN RELATION TO P.D. 1689.

B. WHETHER OR NOT THE ELEMENT OF DEFRAUDATION WAS PROVEN BEYOND REASONABLE DOUBT BY THE PROSECUTION.

C. WHETHER OR NOT THERE IS SUFFICIENT QUANTUM OF PROOF TO WARRANT THE CONVICTION OF APPELLANT BEYOND REASONABLE DOUBT AS FOUND BY THE TRIAL COURT IN THE CHALLENGED DECISION.

D. WHETHER OR NOT THE ACCUSED-[APPELLANT] MAY BE CONVICTED IN THE ABOVEMENTIONED CASES DESPITE THE STAY ORDER ISSUED BY THE COMMERCIAL COURT, RTC, BRANCH 256, MUNTINLUPA CITY, FOR THE CORPORATE

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[14] *Id*. at 818.

[15] *Rollo*, p. 23.

[16] *Id*. at 24-28.

[17] *Id*. at 32-70.

REHABILITATION OF MMG GROUP INCLUDING MMG HOLDINGS.

E. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERRORS IN DENYING THE MOTION FOR RECONSIDERATION AND THE SUPPLEMENTAL MOTION FOR RECONSIDERATION.[18]

The appeal lacks merit.

Anent the first issue raised, the Court does not agree with accused-appellant's contention that he may not be found guilty of violating PD 1689 in relation to estafa under Article 315 (2)(a)[19] of the RPC on the ground that the only kind of estafa contemplated under PD 1689 is that defined under Article 315 (1)(b)[20] of the RPC and not the kind of estafa falling under Article 315 (2)(a) of the same Code.

Section 1 of PD 1689 provides as follows:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, or of funds solicited by corporations/ associations from the general public.

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[18] *Id.* at 38-39.

[19] By using a fictitious name, or falsely pretending to possess power, influence, qualification, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

[20] By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

Suffice it to say that it has been settled in a number of cases[21] that estafa, as defined under Article 315 (2)(a) of the RPC, is one of the kinds of swindling contemplated under PD 1689.

Under the second and third issues raised by accused-appellant, he argues that, insofar as he is concerned, the element of defraudation was not proven beyond reasonable doubt because the prosecution failed to prove that he personally transacted or dealt with the private complainants. The Court is not persuaded.

The elements of estafa by means of deceit under Article 315 (2)(a) of the RPC are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[22]

In addition, fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[23] It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all

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[21] *People v. Balasa*, 356 Phil. 362, 382 (1998); *People v. Menil*, 394 Phil. 433, 450 (2000); *Galvez, et al. v. Court of Appeals, et al.,* 704 Phil. 463, 469 (2013); *People v. Tibayan, et al.*, 750 Phil. 910, 919 (2015).

[22] *Id*.

[23] *People v. Menil, supra*, note 21, at 452.

surprise, trick, cunning, dissembling and any unfair way by which another is cheated.[24] On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[25]

In relation to the above, the elements of syndicated *estafa* as defined under Section 1 of PD 1689 are: (a) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon(s)*," or farmers' associations, or of funds solicited by corporations/associations from the general public.[26]

With respect to the presence of the elements of fraud and deceit, the Court agrees with the arguments and conclusions of the OSG, to wit:

> In pursuit of their fraudulent investment scheme, appellant and his partners formed a partnership which, by its Amended Article of Partnership, had the end in view "to acquire, manage, own, hold, buy, sell, and/or encumber securities or equity participation of other persons, partnership, corporation, or any other entities, as permitted or may be authorized by law as well as to [purchase] or otherwise acquire the whole or any [part] of the property, assests, business and goodwill of any other persons, firm, corporation or association and to conduct in any lawful measures the business so acquired and to express all the powers necessary or [convenient] in and about the conduct, management and carrying on of such business. However, the [partnership] shall not engage in stock brokerage or dealership of securities."

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[24] *Id*.

[25] *Id*.

[26] *Galvez, et al. v. Court of Appeals, et al*., *supra* note 21, at 472.

In violation thereof, the people behind the partnership were effectively engaging in the sale of securites by enticing the public to "invest" funds with MMG International Holdings Co., Ltd. offering a promise of a two point five percent (2.5%) monthly compensation out of the capital on their investment. These investment activities were clearly *ultra vires* acts or acts beyond the partnership's authority.

In fact, Atty. Justine Callangan, Director of the Corporate Finance Division of the Securities and Exchange Commission, issued on February 10, 2003 a Certification that based on the records of the Commission, MMG International Holdings Co. Ltd. is not a registered issuer of securities. She explained in her testimony that the partnership has not been issued a permit or a secondary license or franchise to go to the public and offer to sell any form of securities which means that the partnership cannot offer or sell shares of stocks or equity, securities, investment contracts, debt instruments like short-term or long-term commercial papers to more than nineteen (19) people without any prior licensing from the Commission. In plain language, Atty. Callangan stated that soliciting funds from the public is a form of issuing securities, which MMG International Holdings Co. Ltd. was not authorized to do so.

Apparently, registration with the Securities and Exchange Commission was procured by MMG International Holdings Co. Ltd. only for the purpose of giving a semblance of legitimacy to the partnership; that the partnership's business was sanctioned by the government and that it was allowed by law to accept investments.

In carrying out the nefarious transactions, MMG International Holdings Co. Ltd. even published its own brochure entitled "*Alliance*" which was shown to potential investors showcasing that it had the following businesses to finance the promised earnings: a condotel (MMG Condotel), a realty company (Mateo Realty and Development Corporation), schools (MMG Academy, Mateo College and Technical Foundation, Inc., MMG Computer Learning Center, Mateo Institute of Computer Studies), consumer products manufacturing businesses (M-Power Enterprises, Inc.), an insurance firm (Mateo Pre-Need Plans), retail establishments (MMG International Trading Corporation), movie outfit (MMG Films International) and a shipping line (Mateo Maritime Management), among others. Be that as it may, there was no evidence presented by the partnership to bolster their representations of being engaged in these so-called bustling business endeavors.

Evidently, the testimonial evidence presented by the prosecution more than amply proved that appellant, together with his partners, employed fraud and deceit upon trusting individuals in order to convince them to invest in MMG International Holdings Co. Ltd. It may even be observed that there was a uniform pattern employed in selling their proposition as shown by how potential investors are ensnared by appellant and his partners, through MMG International Holdings Co. Ltd. Business Center Head Geralding Alejandro. First, they would make a presentation of the "Alliance" brochure featuring the businesses the company professes to own and combine with the misrepresentation that they had the technical know-how and false promise of two point five percent (2.5%) monthly compensation out of the capital on their investment.[27]

Thus, in the present case, it is clear that all the elements of syndicated estafa, are present, considering that: (a) the incorporators/directors of MMG comprising more than five (5) people, including herein accused-appellant, made false pretenses and representations to the investing public – in this case, the private complainants – regarding a supposed lucrative investment opportunity with MMG in order to solicit money from them; (b) the said false pretenses and representations were made prior to or simultaneous with the commission of fraud; (c) relying on the same, private complainants invested their hard-earned money into MMG; and (d) the incorporators/directors of MMG ended up running away with the private complainants' investments, obviously to the latter's prejudice.

Accused-appellant insists that the prosecution failed to prove the element of defraudation because no sufficient evidence was presented to prove that he "personally, physically and actually performed any 'false pretenses' and/or 'fraudulent representations' against the private complainants."[28] The Court does not agree. Accused-appellant should be reminded that he is being accused of syndicated estafa in conspiracy with the other co-accused. In this regard, the Court finds no error in the finding of the CA

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[27] CA *rollo*, pp. 162-165.

[28] *Id.* at. 51.

that herein appellant and his co-accused are guilty of conspiracy, to wit:

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The evidence adduced by the prosecution established the existence of conspiracy among the accused in committing the crime charged. They started by forming the partnership. All of them had access to MMG Holding's bank accounts. They composed the Members of the Board of Directors that manage and control the business transactions of MMG Holdings. Without the participation of each of the accused, MMG Holdings could not have solicited funds from the general public and succeeded to perpetrate their fraudulent scheme. Hence, each of them is a co-conspirator by virtue of indispensable cooperation in the fraudulent acts of the partnership.

x x x x x x x x x[29]

In the instant case, it was not necessary for the prosecution to still prove that accused-appellant himself "personally, physically and actually performed any 'false pretenses' and/or 'fraudulent representations' against the private complainants," given the findings of both the RTC and the CA of the existence of conspiracy among appellant and his co-accused. When there is conspiracy, the act of one is the act of all.[30] It is not essential that there be actual proof that all the conspirators took a direct part in every act.[31] It is sufficient that they acted in concert pursuant to the same objective.[32] In any case, appellant's direct participation in the conspiracy is evidenced by the findings of the CA that: (1) the Articles of Partnership of MMG named appellant as the sole general partner with a capital contribution of ₱49,750,000.00; (2) his signatures appear in the MOA entered into by the complainants and facilitated by his co-accused Geraldine Alejandro; (3) his signatures also appear in the Secretary's Certificate and Signature Cards which were submitted to Allied Bank when the partnership opened an account; (4)

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[29] *Id*. at 18.

[30] *People v. Daud, et al*., 734 Phil. 698, 717 (2014).

[31] *Id*. at 717-718.

[32] *Id*. at 718.

the MOA are notarized and it was only on appeal that he denied his signatures appearing therein or questioned the authenticity and due execution of the said documents. Indeed, it cannot be denied that accused-appellant, together with the rest of his co-accused, participated in a network of deception. The active involvement of each in the scheme of soliciting investments was directed at one single purpose – which is to divest complainants of their money on the pretext of guaranteed high return of investment. Without a doubt, the nature and extent of the actions of accused-appellant, as well as with the other persons in MMG show unity of action towards a common undertaking. Hence, conspiracy is evidently present.

As to accused-appellant's contention that his signatures appearing in the questioned documents are mere facsimile signatures, this Court has held that a facsimile signature, which is defined as a signature produced by mechanical means, is recognized as valid in banking, financial, and business transactions.[33] Besides, as earlier mentioned, the MOA where accused-appellant's signature appears, was notarized and that it was only on appeal that he denied authenticity of such signatures and questioned the due execution of the concerned documents. Also, the same facsimile signature, together with the other facsimile and stamped signatures of appellant's co-accused, were used in opening a bank account in the name of MMG where accused-appellant was one of the authorized signatories. As found by the CA, the bank used and recognized these facsimile and stamped signatures in transacting with appellant and his co-accused without any complaints from them. Thus, accused-appellant cannot deny the binding effect of the subject signatures.

With respect to the fourth issue raised, the matter to be resolved is whether the suspension of all claims as an incident to MMG Group of Companies' corporate rehabilitation also contemplate the suspension of criminal charges filed against herein accused-appellant as an officer of the distressed corporation.

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[33] *Heirs of Lourdes Saez Sabanpan v. Comorposa*, 456 Phil. 161, 170 (2003).

This Court rules in the negative.

Citing the case of *Rosario v. Co,*[34] the ruling of this Court in *Panlilio, et al. v. RTC, Branch 51, City of Manila, et al.,*[35] to wit:

x x x x x x x x x

x x x There is no reason why criminal proceedings should be suspended during corporate rehabilitation, more so, since the prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order. As correctly observed in *Rosario*, it would be absurd for one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer.

The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities. Such being the case, the purpose of the law for the issuance of the stay order is not compromised, since the appointed rehabilitation receiver can still fully discharge his functions as mandated by law. It bears to stress that the rehabilitation receiver is not charged to defend the officers of the corporation. If there is anything that the rehabilitation receiver might be remotely interested in is whether the court also rules that petitioners are civilly liable. Such a scenario, however, is not a reason to suspend the criminal proceedings, because as aptly discussed in *Rosario*, should the court prosecuting the officers of the corporation find that an award or indemnification is warranted, such award would fall under the category of claims, the execution of which would be subject to the stay order issued by the rehabilitation court. x x x

x x x x x x x x x.[36]

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[34] 585 Phil. 236 (2008).

[35] 656 Phil. 453 (2011).

[36] *Panlilio, et al. v. RTC, Branch 51, City of Manila, et al., supra,* at 461-462.

As to the last issue raised, accused-appellant insists that his acquittal of the same offense charged in several other cases only proves that he never committed the said crime of syndicated estafa. Accused-appellant's logic is skewed. The fact that he was acquitted in several other cases for the same offense charged does not necessarily follow that he should also be found innocent in the present case. His acquittal in the cases he mentioned was due to the prosecution's failure to present sufficient evidence to convict him of the offense charged. These cases involved different parties, factual millieu and sets of evidence. In the present case, both the RTC and the CA found that the evidence presented by the prosecution is enough to prove that accused-appellant is guilty beyond reasonable doubt of the crimes of syndicated estafa. After a review of the evidence presented, this Court finds no cogent reason to depart from the findings of the RTC and the CA.

Finally, the Court notes the recent passage into law of Republic Act No. 10951 (RA 10951), otherwise known as "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED. Consistent with the settled principle that an appeal in criminal cases throws the whole case open for review, the Court finds it proper to look into the applicability or non-applicability of the amendatory provisions of RA 10951 to the present case.

The amendments under RA 10951 were passed with the primary objective of **adjusting the amounts or the values of the property and damage on which a penalty is based** for various crimes committed under the RPC, including estafa. Section 85 of RA 10951 makes mention of PD 1689 as one of the laws which amends Article 315 of the RPC.

On the other hand, it should be considered that PD 1689 is a special law which was enacted for the specific purpose of defining syndicated estafa and imposing a specific penalty for

the commission of the said offense. Thus, the law emphatically states its intent in its "WHEREAS" clauses, to wit:

x x x x x x x x x

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, *"samahang nayon(s)"*, and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, *"samahang nayon(s)",* or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, *"samahang nayon(s)",* farmers' associations or corporations/ associations operating on funds solicited from the general public;

x x x x x x x x x ."

Notably, the first paragraph of PD 1689 penalizes offenders with life imprisonment to death **regardless of the amount or value of the property or damage involved**, provided that a syndicate committed the crime.[37]

Moreover, from the provisions of RA 10951, there appears no manifest intent to repeal or alter the penalty for syndicated estafa. If there was such an intent, then the amending law should have clearly so indicated because implied repeals are not favored.[38] Thus, unlike the specific amendments introduced by RA 10951 to the penalties on estafa committed by means of bouncing checks, as defined under Article 315 (2)(d) and

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[37] *Catiis v. Court of Appeals (17th Division)*, 517 Phil. 294, 303 (2006); *People v. Menil, supra* note 21, at 458; *People v. Balasa, supra* note 21, at 397.

[38] *Manzano v. Hon. Valera*, 354 Phil. 66, 75 (1998).

amended by Republic Act No. 4885[39] and Presidential Decree No. 818,[40] nowhere in RA 10951 was it clearly shown that the legislature intended to repeal or amend the provisions of PD 1689. As much as possible, effect must be given to all enactments of the legislature.[41] A special law cannot be repealed, amended or altered by a subsequent general law by mere implication.[42] Furthermore, for an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws.[43] Absent an express repeal, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws.[44] The two laws, in brief, must be absolutely incompatible.[45] In the instant case, the Court finds neither inconsistency nor absolute incompatibility in the existing provisions of PD 1689 and the amendatory provisions of RA 10951. As such, the amendatory provisions under RA 10951 are not applicable to the present case.

WHEREFORE, the Court **AFFIRMS** the Decision dated July 16, 2012 and Resolution dated July 1, 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 04001.

SO ORDERED.

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

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[39] AN ACT TO AMEND SECTION TWO, PARAGRAPH (d), ARTICLE THREE HUNDRED FIFTEEN OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND FIFTEEN, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE. (re: issuance of checks.)

[40] AMENDING ARTICLE 315 OF THE REVISED PENAL CODE BY INCREASING THE PENALTIES FOR ESTAFA COMMITTED BY MEANS OF BOUNCING CHECKS.

[41] *Manzano v. Hon. Valera, supra* note 38, at 75-76.

[42] *Id.* at 76.

[43] *Id.*

[44] *Id.*

[45] *Id.*

SECOND DIVISION

[G.R. No. 223556. October 9, 2017]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL LIM CHING**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW, AND IT IS THE DUTY OF THE REVIEWING TRIBUNAL TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.— [I]t must be stressed that appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records anew and revise the judgment appealed from, among others.

2. CRIMINAL LAW; REVISED PENAL CODE; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; VIOLATION OF ILLEGAL POSSESSION OF PARAPHERNALIA IS DEEMED CONSUMMATED THE MOMENT THE ACCUSED IS FOUND IN POSSESSION OF SAID ARTICLES WITHOUT THE NECESSARY LICENSE OR PRESCRIPTION.— [C]hing was charged with illegal possession of dangerous drugs, illegal possession of drug paraphernalia, and illegal sale of dangerous drugs, respectively defined and penalized under Sections 11, 12, and 5, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal possession of dangerous drugs, the prosecution must prove: (*a*) that the accused was in possession of an item or object identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Similarly, a violation of illegal possession of paraphernalia

is deemed consummated the moment the accused is found in possession of said articles without the necessary license or prescription.

3. ID.; ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— [T]he prosecution must establish the following elements to convict an accused charged with illegal sale of dangerous drugs; (*a*) the identity of the buyer and the seller, the object and the consideration; and (*b*) the delivery of the thing sold and the payment.

4. ID.; ID.; ID.; SECTION 21, ARTICLE II THEREOF; CHAIN OF CUSTODY RULE; PROCEDURE IN THE CUSTODY AND DISPOSITION OF SEIZED DRUGS/PARAPHERNALIA; THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY OVER THE DANGEROUS DRUG/PARAPHERNALIA FROM THE MOMENT OF SEIZURE UP TO ITS PRESENTATION IN COURT AS EVIDENCE OF THE *CORPUS DELICTI*.— Jurisprudence states that in these cases, it is essential that the identity of the seized drug/paraphernalia be established with moral certainty. Thus, in order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug/ paraphernalia from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. Pertinently, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs/paraphernalia, in order to preserve their integrity and evidentiary value. Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and **the seized items must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination**.

5. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21 OF RA 9165 AND THE IMPLEMENTING RULES AND REGULATIONS (IRR) DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide, among others, that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.

6. ID.; ID.; ID.; ID.; ID.; ID.; SUBSTANTIAL GAPS IN THE CHAIN OF CUSTODY OF THE SEIZED DANGEROUS DRUGS/PARAPHERNALIA WHICH WERE LEFT UNJUSTIFIED CAST REASONABLE DOUBT ON THEIR INTEGRITY.— [T]he Court finds substantial gaps in the chain of custody of the seized dangerous drugs/paraphernalia which were left unjustified, thereby casting reasonable doubt on their integrity x x x. While the fact of marking of the seized items was clear from [the] testimony and the inventory evidenced by the attached Receipt for Property Seized, the same was glaringly silent as to the taking of photographs and the conduct of an inventory in the presence of a representative from the media

> and the DOJ. x x x [T]he delivery of the seized items to the PNP Crime Laboratory was made way beyond the prescribed twenty four (24)-hour period from seizure. To reiterate, the drugs/paraphernalia were seized during the buy-bust operation on June 29, 2003, but were delivered to the PDEA and the PNP crime laboratory only ten (10) days later, or on **July 9, 2003**. x x x [T]he breaches of the procedure contained in Section 21, Article II of RA 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated June 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01724, which affirmed the Decision[3] dated June 17, 2013 of the Regional Trial Court of Catarman, Northern Samar, Branch 19 (RTC) in Criminal Case Nos. C-3522, C-3523, and C-3533 finding accused-appellant Manuel Lim Ching (Ching) guilty beyond reasonable doubt of violating Sections 11, 12, and 5 of Republic Act (RA) No. 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," respectively.

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[1] See Notice of Appeal dated August 5, 2015; *rollo*, pp. 20-22.

[2] *Id*. at 4-19. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Renato C. Francisco and Edward B. Contreras concurring.

[3] Records (Crim. Case No. C-3522), pp. 375-391. Penned by Judge Norma Megenio-Cardenas.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN

The Facts

This case stemmed from four (4) Informations filed before the RTC charging Ching of violating Sections 11, 12, 5, and 6, Article II of RA 9165, the accusatory portions of which respectively read:

Criminal Case No. C-3522

That on or about the 29th of June 2003, at about 4:00 o'clock in the afternoon, more or less, in Purok 4, Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the said provision of the law, did then and there, [willfully], unlawfully, and feloniously have in his possession, custody and control the following items, to wit[:]

1. One (1) sachet of "shabu" with estimated weight of (0.2) grams worth ₱300.00
2. One (1) sachet of "shabu" with an estimated weight of (0.2) grams worth ₱500.00
3. Five (5) sachets of "shabu" with an estimated weight of (5.3) grams

of methamphetamine hydrochloride popularly known as "shabu" a regulated drug without first securing the necessary permit or license to possess the same from competent authority which therefore is an open violation of Section 11, Article II of Republic Act No. 9165, in particular Possession of Dangerous Drugs.

CONTRARY TO LAW.[5]

Criminal Case No. C-3523

That on or about the 29th day of June 2003, at about 4:00 o'clock in the afternoon more or less, in Purok 4, Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the said provisions of the

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AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," APPROVED ON JUNE 7, 2002.

[5] Records (Crim. Case No. C-3522), pp. 22-23.

law, did then and there, [willfully], unlawfully, [and] feloniously have in his possession, custody and control the following drug paraphernalia, to wit:

1.) Twenty three (23) pcs. of aluminum foils;

2.) Six (6) pcs. improvised aluminum tooters;

3.) One (1) pc. plastic tooter;

4.) One (1) pc. alcohol lamp;

5.) One (1) pc. plastic case color blue;

6.) Seven (7) pcs. disposable lighters;

7.) One (1) pc. scissor;

8.) Two (2) pcs. cutter blade;

without first securing the necessary permit or license to possess the dangerous drugs' Paraphernalia, Tools and instruments the same from competent authority which therefore is an open violation of Section 12, Article II of Republic Act No. 9165.

CONTRARY TO LAW.[6]

Criminal Case No. C-3533

That on or about the 29th day of June, 2003 at about 4:00 o'clock in the afternoon, at Purok 4, Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the above provisions of the law, did then and there, [willfully], unlawfully and feloniously sold to police poseur-buyer PO1 Mauro Ubaldo Lim one (1) sachet of methamphetamine hydrochloride popularly known as "shabu" a regulated drug weighing 0.2 gram valued at Three Hundred (₱300.00) Pesos and other sachet of the same substance weighing 0.2 gram valued at Five Hundred (₱500.00) Pesos to a total of Eight Hundred (₱800.00) Pesos, Philippine Currency without first securing the necessary permit or license from any competent authority to do the same.

CONTRARY TO LAW. [7]

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[6] Records (Crim. Case No. C-3523), pp. 19-20.

[7] Records (Crim. Case No. C-3533), p. 29.

Criminal Case No. C-3524

That on or about the 29th day of June, 2003, at about 4:00 o'clock in the afternoon more or less, in Purok 4, Barangay Jose Abad Santos, Municipality of Catarman, Province of Northern Samar Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the said provision of the law, did then and there, intentionally, unlawfully and feloniously maintain and keep a drug den in his residence where methamphetamine hydrochloride popularly known as "shabu" are stored, distributed, traded and used by his visitors and where drug paraphernalia/tools/ instruments are kept without first securing the necessary permit or license to maintain and sell the same from competent authority which therefore is an open violation of Section 6, Article II of Republic Act No. 9165 or Maintenance of a Drug Den.

CONTRARY TO LAW.[8]

The prosecution alleged that on June 29, 2003, and after the conduct of surveillance on the suspected illegal drug activities of Ching, as well as a test-buy wherein a civilian asset purchased one (1) sachet of suspected *shabu* worth ₱300.00, Police Superintendent Isaias B. Tonog (P/Supt. Tonog), formed a buy-bust team composed of, among others, Police Officer 1 Mauro Ubaldo Lim (PO1 Lim), the designated poseur-buyer, with the rest of the members serving as backup officers.[9] At around four (4) o'clock in the afternoon of even date, the team proceeded to Ching's house located at Purok 4, Barangay Jose Abad Santos, Catarman, Northern Samar and upon arrival thereat, PO1 Lim approached Ching and bought a sachet of suspected *shabu* worth ₱500.00, handing as payment the marked money. As soon as PO1 Lim received the sachet, he gave the pre-arranged signal and the other team members, who were stationed more or less 15-20 meters from the target area, approached, causing Ching to run and hide in his room. The team followed Ching inside his house where he was eventually arrested for selling

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[8] CA *rollo*, p. 47.

[9] See *rollo*, p. 7.

shabu.[10] A subsequent search of the premises produced the following: two (2) sachets in a chicken cage outside the house, two (2) sachets on the wooden frames nailed to a wall inside the house, and one (1) sachet found in a pail outside the house. Similarly, the following drug paraphernalia were recovered in an adjacent makeshift structure outside the house: twenty-three (23) pieces of aluminum foil, six (6) pieces of improvised tooters, one (1) piece of plastic tooter, seven (7) pieces of disposable lighters, one (1) pair of scissors, two (2) pieces of cutter blade, one (1) piece of alcohol lamp and one (1) piece of color blue plastic case.[11] The sachets of *shabu* were sealed and labeled "MLC-1 to MLC-9" afterwhich, they were brought to the Northern Samar Police Provincial Office, Camp Carlos Delgado,[12] where P/Supt. Tonog signed four (4) Receipts for Property Seized[13] as witnessed by barangay officials Benito Calindong, Leon Rosales, and Felipe Aurel.[14]

Days after, at around 10:35 in the morning of **July 9, 2003**, P/Supt. Tonog delivered the drug specimens to the Philippine Drug Enforcement Agency (PDEA) office in Tacloban where it was received and acknowledged by a certain Police Officer 3 Bernardo Bautista (PO3 Bautista),[15] who, in turn, turned over the items on the same day to the Philippine National Police (PNP) Regional Crime Laboratory Office 8 and were received by Forensic Chemist Police Senior Inspector Benjamin Aguirre Cruto, Jr. (P/Sr. Insp. Cruto) for examination.[16] In Chemistry

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[10] See *id*. at 7-8. See also TSN, February 28, 2005, p. 7.

[11] *Id*. at 8.

[12] See Excerpt from the Police Blotter; records (Crim. Case No. C-3523), pp. 10-11.

[13] See records (Crim. Case No. C-3523), pp. 6-9.

[14] See *rollo*, p. 8. See also records (Crim. Case No. C-3523), pp. 6-9.

[15] See Acknowledgement Form dated July 9, 2003 signed by PO3 Bautista; records (Crim. Case No. C-3533), p. 22.

[16] See Certification dated July 9, 2003 signed by P/Sr. Insp. Cruto; records (Crim. Case No. C-3533), p. 23. See also *rollo*, p. 9.

Report No. D-300-2003,[17] P/Sr. Insp. Cruto confirmed that the substance inside eight (8) out of the nine (9) sachets (marked as MLC-1 through MLC-6, MLC-8 and MLC-9) were positive for methylamphetamine hyrdrochloride or *shabu*, an illegal drug.[18]

Upon arraignment, Ching pleaded not guilty[19] and proceeded to deny the charges leveled against him. He claimed that on said date, he was in his house with his nephews and was about to leave when policemen, including P/Supt. Tonog, together with some barangay officials, arrived and roamed around his residence. He later saw one of the men insert a plastic inside the chicken cage and thereafter, gathered some things and placed them on top of a table. Not long after, a *pedicab* arrived and he was brought to the police station and detained. Ching further claimed that he was very close with P/Supt. Tonog, but the latter bore personal grudges against him.[20]

The RTC Ruling

In a Decision[21] dated June 17, 2013, the RTC ruled as follows: (*a*) in Criminal Case No. C-3522, Ching was found guilty beyond reasonable doubt of illegal possession of *shabu* under Section 11 of RA 9165 and, accordingly, sentenced to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine in the amount of ₱100,000.00;[22] (*b*) in Criminal Case No. C-3523, Ching was

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[17] Records (Crim. Case No. C-3533), p. 24.

[18] See Chemistry Report No. D-300-2003 of P/Sr. Insp. Cruto stating that the sachets marked with: A-1 – ("MLC-1") –0.10gram; A-2- ("MLC-2")- 0.20gram; A-3- ("MLC-3") – 0.25gram; A-4 – ("MLC-4") – 1.00 gram; A-5 – ("MLC-5") – 0.06 gram; A-6 – ("MLC-6") – 0.08 gram; A-8 marked as "MLC-8"; and A-9 marked as "MLC-9" all tested positive for *shabu*, while the A-7 sachet marked with "MLC-7"- 3.40 grams tested negative for dangerous drugs. (*Id*. at 24. See also *rollo*, p. 9.)

[19] *Rollo*, p. 7.

[20] See *id*. at 9-11.

[21] Records (Crim. Case No. C-3522), pp. 375-391.

[22] *Id*. at 382.

found guilty beyond reasonable doubt of illegal possession of drug paraphernalia under Section 12 of RA 9165 and, accordingly, sentenced to suffer the penalty of imprisonment for a period of six (6) months and one (1) day to four (4) years, and to pay a fine of ₱10,000.00;[23] (*c*) in Criminal Case No. C-3533, Ching was found guilty beyond reasonable doubt of illegal sale of *shabu* under Section 5 of RA 9165 and, accordingly, sentenced to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000;[24] and (*d*) in Criminal Case No. C-3524, Ching was acquitted on reasonable doubt.[25]

The RTC found all the elements for the prosecution of illegal possession of dangerous drugs present as drugs were found within the premises of Ching's residence, *i.e.*, in the chicken cage, the wooden frames inside the house, and in a pail outside the house.[26] Moreover, the prosecution was able to show that the drug paraphernalia confiscated from the premises of Ching's residence were used in smoking, consuming, administering, ingesting or introducing dangerous drugs into the body.[27] Likewise, all the elements for the illegal sale of dangerous drugs were proven, noting that the sale of the *shabu* was consummated and Ching was positively identified as the seller.[28]

Aggrieved, Ching elevated his conviction before the CA.[29]

The CA Ruling

In a Decision[30] dated June 30, 2015, the CA upheld the RTC ruling, holding that all the elements of the crimes for which

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[23] *Id*. at 385.

[24] *Id*. at 390.

[25] *Id*.

[26] See *id*. at 380-382.

[27] See *id*. at 382-385.

[28] See *id*. at 385-390.

[29] See Notice of Appeal dated July 8, 2013; *id*. at 396-397.

[30] *Rollo*, pp. 4-19.

Ching was convicted were present. More importantly, it ruled that the apprehending officers duly complied with the chain of custody rule and the mandatory requirements under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, as P/Supt. Tonog narrated in detail the conduct of the buy-bust operation and the due diligence he exercised to ensure that the very same confiscated sachets of *shabu* were the ones submitted to the PDEA for examination and eventually presented in court.[31] The CA did not give credence to Ching's defenses of denial and frame-up, absent any ill-motive on the part of the police officers.[32]

The Issue Before the Court

The issue for the Court's resolution is whether or not Ching is guilty beyond reasonable doubt of violating Sections 11, 12, and 5, Article II of RA 9165.

The Court's Ruling

Preliminarily, it must be stressed that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records anew and revise the judgment appealed from, among others.[33]

In this case, Ching was charged with illegal possession of dangerous drugs, illegal possession of drug paraphernalia, and illegal sale of dangerous drugs, respectively defined and penalized under Sections 11, 12, and 5, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal possession of dangerous drugs, the prosecution must prove: (*a*) that the accused was in possession of an item or object

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[31] See *id*. at 13-18.

[32] See *id*. at 18.

[33] See *Gamboa v. People*, G.R. No. 220333, November 14, 2016; citations omitted.

identified as a dangerous drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[34] Similarly, a violation of illegal possession of paraphernalia is deemed consummated the moment the accused is found in possession of said articles without the necessary license or prescription.[35] Finally, the prosecution must establish the following elements to convict an accused charged with illegal sale of dangerous drugs: (*a*) the identity of the buyer and the seller, the object and the consideration; and (*b*) the delivery of the thing sold and the payment.[36]

Jurisprudence states that in these cases, it is essential that the identity of the seized drug/paraphernalia be established with moral certainty. Thus, in order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug/paraphernalia from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[37]

Pertinently, Section 21, Article II of RA 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs/paraphernalia, in order to preserve their integrity and evidentiary value.[38] Under the said section, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and **the seized**

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[34] *People v. Bio*, 753 Phil. 730, 736 (2015).

[35] See *People v. Bontuyan*, 742 Phil. 788, 799 (2014).

[36] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[37] See *People v. Viterbo*, 739 Phil. 598, 601 (2014).

[38] See *People v. Sumili*, *supra* note 36, at 349-350.

items must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[39]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of 9165 may not always be possible.[40] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[41] – provide, among others, that **non-compliance with**

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[39] See Section 21 (1) and (2), Article II of RA 9165.

[40] See *People v. Sanchez*, 590 Phil. 214, 232 (2008).

[41] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT No. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014, Section 1 of which states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under

the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.[42] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[43] In *People v. Almorfe*,[44] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved**.[45] Also, in *People v. De Guzman*,[46] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[47]

In this case, Ching prayed for his acquittal in view of the police officers' non-compliance with Section 21, Article II of RA 9165 and its Implementing Rules and Regulations (IRR) in that: (*a*) the sachets of drugs seized from his house were not properly identified as to which among them were connected to

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justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

[42] See Section 21 (a), Article II of the IRR of RA 9165.

[43] See *People v. Goco*, G.R. No. 219584, October 17, 2016.

[44] 631 Phil. 51 (2010).

[45] *Id.* at 60.

[46] 630 Phil. 637 (2010).

[47] *Id.* at 649.

his particular offense; (*b*) no photographs were taken of the items taken from his house; (*c*) no sealing of the seized drugs took place; and, (*d*) it was not established who was entrusted with the safekeeping of the specimens before their presentation in court and what precautions were taken to ensure their integrity and value.[48]

Guided by the foregoing, the Court finds substantial gaps in the chain of custody of the seized dangerous drugs/paraphernalia which were left unjustified, thereby casting reasonable doubt on their integrity, as will be explained hereunder.

First, after Ching's arrest, P/Supt. Tonog marked the seized *shabu*. His testimony on this matter is as follows:

Q: Before going to Tacloban City purposely to submit the shabu that were confiscated during the buy-bust operation at the place or residence of accused Manuel Lim Ching, did you exercise due diligence to see to it that the same specimen or shabu confiscated from Manuel Lim Ching were the same specimen that were submitted to the PDEA?

A: Yes, sir.

Q: In what way did you exercise due diligence and effort to see to it that the very same shabu that were submitted to the PDEA?

A: The sachet of shabu was placed in a plastic and it was sealed, then it was placed also in another brown envelope and together with the request and it was sealed and after that in the evening, we rode early for Tacloban and submitted it to the PDEA.

Q: Did you make any specific markings to see to it that the same shabu that you were able to confiscate from Manuel Lim Ching were the same shabu to be submitted at the PDEA?

A: Yes, sir because before we submitted it to the PDEA, we wrote a letter on the shabu, the name of the suspect for example, Manuel Lim Ching, we put it MLC 1 up to how many numbers of shabu confiscated, if for example MLC 1 MLC 2 up to MLC 9.[49]

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[48] See CA *rollo*, pp. 40-44.

[49] TSN, April 11, 2005, pp. 10-11.

While the fact of marking of the seized items was clear from such testimony and the inventory evidenced by the attached Receipt for Property Seized, the same was glaringly silent as to the taking of photographs and the conduct of an inventory in the presence of a representative from the media and the DOJ. In the case of *People v. Mendoza*,[50] the Court stresses that "**[w]ithout the insulating presence of the representative from the media [and] the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused**. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody."[51]

Second, it is well to note that the delivery of the seized items to the PNP Crime Laboratory was made way beyond the prescribed twenty four (24)-hour period from seizure. To reiterate, the drugs/paraphernalia were seized during the buy-bust operation on June 29, 2003, but were delivered to the PDEA and the PNP crime laboratory only ten (10) days later, or on **July 9, 2003.** In *People v. Gamboa*,[52] the Court explained that "[w]hen police officers do not turn over dangerous drugs to the laboratory within twenty-four (24) hours from seizure, they must identify its custodian, and the latter must be called to testify. The custodian must state the security measures in place to ensure that the integrity and evidentiary value of the confiscated items were preserved,"[53] which did not take place in this case.

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[50] 736 Phil. 749 (2014).

[51] *Id*. at 764.

[52] See G.R. No. 220333, November 14, 2016.

[53] See *id*.

All told, the breaches of the procedure contained in Section 21, Article II of RA 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised. Case law states that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. For indeed, however, noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[54]

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 30, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01724 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Manuel Lim Ching is **ACQUITTED** in Criminal Case Nos. C-3522, C-3523, and C-3533 for violations of Sections 11, 12, and 5, Article II of Republic Act No. 9165, respectively. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[54] See *id*.; citations omitted.

EN BANC

[A.M. No. P-12-3092. October 10, 2017]
(Formerly A.M. No. 12-7-54-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **REMEDIOS R. VIESCA, CLERK OF COURT II, MUNICIPAL TRIAL COURT OF SAN ANTONIO, NUEVA ECIJA,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS NEGLECT OF DUTY, GRAVE MISCONDUCT AND SERIOUS DISHONESTY; PENALTIES; THE ACTUAL PENALTIES MAY NOT BE IMPOSED BY THE COURT WHEN MITIGATING CIRCUMSTANCES ARE PRESENT; CASE AT BAR.— [T]he Court maintains that Viesca is administratively liable for her infractions and that her restitution of the shortages in judiciary collections does not exculpate her from liability. Clerks of court, as custodian of court funds and revenues, have the duty to immediately deposit the various funds received by them, as well as submit monthly financial reports therein as mandated under Office of the Court Administrator (OCA) Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004. Any shortages in the amounts to be remitted and delay in the remittance, coupled with misappropriation, render them administratively liable for Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty. These offenses are punishable by dismissal from service, together with the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations, as was properly imposed on Viesca. Be that as it may, the presence of several mitigating circumstances in this case urges this Court to reconsider and reduce the penalty it imposed. In several administrative cases, the Court has refrained from imposing the actual penalties in view of mitigating factors such as the respondent's length of service, acknowledgment of infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and advanced age, among others.

> x x x In the present case, records reveal that Viesca fully restituted the shortages in judicial collections after the meeting with the audit team. Moreover, the interests that could have been earned had she timely deposited the amounts have already been deducted from her withheld salaries, leaving no outstanding accountabilities. The Court also notes that she fully cooperated with the audit team during the investigation of her infractions and soon thereafter, submitted the financial records without any irregularities, tampering, or falsifications. x x x Furthermore, the Court considers Viesca's advanced age, her more than three (3) decades of service to the Judiciary, and the fact that this is her first administrative offense. Considering the circumstances of this case in light of the x x x jurisprudential pronouncements, the Court partially reconsiders the penalty of dismissal initially meted against Viesca and instead, imposes a fine of ₱50,000.00, deductible from her retirement benefits.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is the motion for reconsideration[1] filed by respondent Remedios R. Viesca (Viesca) of the Court's Decision[2] dated April 14, 2015.

The Court adjudged Viesca guilty of Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty and imposed on her the following penalties: (*i*) dismissal from service; (*ii*) forfeiture of all her retirement benefits, except accrued leave benefits; (*iii*) perpetual disqualification from re-employment in any government-owned and controlled corporation or government financial institution; (*iv*) cancellation of her civil service eligibility; and (*v*) disqualification from taking the civil service examination.[3]

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[1] Dated August 23, 2017. *Rollo*, pp. 114-119.

[2] *Id*. at 82-90. See also *Office of the Court Administrator v. Viesca*, 758 Phil. 16 (2015).

[3] *Id*. at 89. See also Court's Resolution dated August 30, 2016, modifying the dispositive portion of the April 14, 2015 Decision; *id*. at 112-113.

In her motion, Viesca begs for the Court's compassion and implores it to mitigate the penalty imposed on her by taking into account her full restitution of the total amount of shortage, her thirty-four (34) years of government service, the lack of irregularities in the receipts she submitted, and the fact that this is her first administrative case. She also alleges that she is already sixty-eight (68) years old and pleads that she be allowed to enjoy the fruit of her long years of service, which were all spent in the Judiciary.[4]

At the outset, the Court maintains that Viesca is administratively liable for her infractions and that her restitution of the shortages in judiciary collections does not exculpate her from liability. Clerks of courts, as custodian of court funds and revenues, have the duty to immediately deposit the various funds received by them, as well as submit monthly financial reports therein as mandated under Office of the Court Administrator (OCA) Circular Nos. 50-95[5] and 113-2004[6] and Administrative Circular No. 35-2004.[7] Any shortages in the amounts to be remitted and delay in the remittance, coupled with misappropriation, render them administratively liable for Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty.[8] These offenses are punishable by dismissal from service, together with the cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations,[9] as was properly imposed on Viesca.

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[4] See *id*. at 116-118.

[5] Entitled "COURT FIDUCIARY FUNDS" (November 1, 1995).

[6] Entitled "SUBMISSION OF MONTHLY REPORTS OF COLLECTIONS AND DEPOSITS" (September 16, 2004).

[7] Entitled "GUIDELINES IN THE ALLOCATION OF THE LEGAL FEES COLLECTED UNDER RULE 141 OF THE RULES OF COURT, AS AMENDED, BETWEEN THE SPECIAL ALLOWANCE FOR THE JUDICIARY FUND AND THE JUDICIARY DEVELOPMENT FUND" (August 12, 2004).

[8] See *OCA v. Acampado*, 721 Phil. 12, 29-30 (2013).

[9] See *OCA v. Chavez*, A.M. No. RTJ-10-2219, March 7, 2017, citing Rule 10, Section 46 (A) of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 18, 2011.

Be that as it may, the presence of several mitigating circumstances in this case urges this Court to reconsider and reduce the penalty it imposed.

In several administrative cases, the Court has refrained from imposing the actual penalties in view of mitigating factors such as the respondent's length of service, acknowledgment of infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and advanced age, among others.[10] Indeed, while the Court is duty-bound to sternly wield a corrective hand to discipline errant employees and weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy.[11]

Thus, in *In Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*,[12] the Court found therein respondent liable for serious misconduct when she remitted the court collections after more than three (3) years from the remittance date.[13] Taking into account respondent's health and her full restitution of the amount, the Court reduced the penalty from dismissal from service to a fine of ₱10,000.00.[14]

In Viesca's cited case, *Report on the Financial Audit Conducted on the Books of Accounts of the Municipal Circuit Trial Court, Mondragon-San Roque, Northern Samar*,[15] the clerk of court was found liable for gross neglect of duty punishable by dismissal from service due to delay in the deposit of judiciary collections and non-submission of monthly reports. Considering that respondent had subsequently remitted the amounts leaving no outstanding accountabilities, the Court

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[10] *Rayos v. Hernandez*, 558 Phil. 228, 230 (2007).

[11] See *Baguio v. Lacuna,* A.M. No. P-17-3709, June 19, 2017.

[12] 445 Phil. 220 (2003).

[13] *Id*. at 226.

[14] See *id*. at 226-227, citing *In Re: Gener C. Endona*, 311 Phil. 243 (1995) and *Lirios v. Oliveros*, 323 Phil. 318 (1996).

[15] 626 Phil. 425 (2010).

lowered the penalty to suspension for a period of one (1) month without pay.[16]

Further, in *OCA v. Jamora*,[17] the clerk of court was found liable for failure to timely deposit the judiciary collections. Observing that it was her first administrative case, that she fully restituted the amounts involved, and that she held two positions at the same time, the Court opted to reduce the penalty to a fine of ₱10,000.00.[18]

In *OCA v. Lizondra*,[19] the Court also imposed a fine of ₱10,000.00 on therein respondent who incurred delay in remitting court collections, after considering that it was her first offense and that she concurrently held more than one position in court.[20]

In the fairly recent case of *OCA v. Judge Chavez*,[21] the Court reconsidered its imposed penalties of forfeiture of retirement benefits in lieu of dismissal from service based on these mitigating factors: remorse in committing the infractions; length of government service; first offense; and health and age. Instead, it imposed a fine deductible from his retirement benefits.[22]

In the present case, the Court notes several mitigating circumstances that may reasonably justify the reduction of the penalty imposable on Viesca. Records reveal that she fully restituted the shortages in judicial collections after the meeting with the audit team. Moreover, the interests that could have been earned had she timely deposited the amounts have already been deducted from her withheld salaries,[23] leaving no

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[16] *Id*. at 444-445.

[17] 698 Phil. 610 (2012).

[18] *Id*. at 614.

[19] 762 Phil. 304 (2015).

[20] *Id*. at 313.

[21] See A.M. No. RTJ-10-2219, August 1, 2017.

[22] See *id*.

[23] See *rollo*, p. 4.

outstanding accountabilities. The Court also notes that she fully cooperated with the audit team during the investigation of her infractions and soon thereafter, submitted the financial records without any irregularities, tampering, or falsifications.[24] To the Court's mind, these acts amount to taking full responsibility for the infractions committed, and thus, may be duly appreciated in imposing the penalty.

Furthermore, the Court considers Viesca's advanced age, her more than three (3) decades of service to the Judiciary, and the fact that this is her first administrative offense. Considering the circumstances of this case in light of the above-stated jurisprudential pronouncements, the Court partially reconsiders the penalty of dismissal initially meted against Viesca and instead, imposes a fine of ₱50,000.00, deductible from her retirement benefits.

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED**. The Court's Decision dated April 14, 2015 is hereby **MODIFIED**. Accordingly, respondent Remedios R. Viesca is ordered to pay a **FINE** of ₱50,000.00, deductible from her retirement benefits.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, Jr., and *Gesmundo, JJ.*, concur.

Martires, J., on official leave.

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[24] See *id*. at 116.

EN BANC

[A.M. No. P-17-3756. October 10, 2017]
(Formerly OCA I.P.I. No.16-4634-P)

JUDGE LITA S. TOLENTINO-GENILO, *complainant, vs.* **ROLANDO S. PINEDA,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; MISCONDUCT; GROSS MISCONDUCT DIFFERENTIATED FROM SIMPLE MISCONDUCT.—** Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.

2. **ID.; ID.; DISHONESTY.—** Dishonesty, on the other hand, is the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. It is a malevolent act that makes people unfit to serve the judiciary.

3. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); SERIOUS DISHONESTY AND GRAVE MISCONDUCT; PENALTY IS DISMISSAL FROM SERVICE.—** Respondent, by committing the act of unauthorized withdrawal from complainant's ATM account, patently committed grave misconduct and dishonesty. Consequently, he does not deserve to stay a minute longer in the judicial service. Accordingly, Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 8, 2011,

provides that the penalty for grave offenses such as Serious Dishonesty and Grave Misconduct is dismissal from service. Also, Section 52 (a) of the same Rule states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for holding public office, and bar from taking civil service examinations.

D E C I S I O N

***PER CURIAM*:**

This refers to the sworn Complaint-Affidavit,[1] dated October 18, 2016, filed by complainant Judge Lita S. Tolentino-Genilo (complainant), Presiding Judge, Branch 91, Regional Trial Court of Quezon City (*RTC*), against Rolando S. Pineda (*respondent*), Court Aide of the same branch, filed before the Office of the Court Administrator (*OCA*), an administrative case for grave misconduct and dishonesty.

Complainant alleged that she owns a payroll account with the Landbank of the Philippines (*LBP*) Quezon City Hall branch with account number 1727-1197-24, and along with the said account was an Automated Teller Machine (*ATM*) card issued to her. Despite the issuance of the said ATM card, complainant prefers to make her withdrawals over the counter, every five (5) months, and usually by hundreds of thousands per withdrawal. She likewise alleged that she can no longer recall the Personal Identification Number (*PIN*) for her ATM card.

On September 28, 2016, complainant received an SMS or text message alert from LBP informing her that an amount of Fifty Thousand Pesos (*₱50,000.00*) has been withdrawn from her account on September 27, 2016. By reason thereof, complainant went to LBP Quezon City Hall branch on the same day to inquire on the matter. The LBP's staff confirmed the said withdrawal. Thus, complainant requested for the records

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[1] *Rollo*, pp. 3-5.

and surveillance footage to determine how the unauthorized withdrawal was made.

On September 29, 2016, respondent did not report for work. On the same day, another SMS or text message alert from LBP was received by complainant that an amount of ₱50,000.00 was again withdrawn from her account on September 28, 2016. This was also confirmed by the staff of LBP Quezon City Hall branch.

Thereafter, LBP issued a Transaction Journal,[2] indicating the withdrawals made on September 27, 2016. A copy of the Closed Circuit Television (*CCTV*) footage[3] was also secured by complainant, showing respondent wearing a yellow shirt, coming from Quezon City Hall's LBP ATM machine and counting the money he withdrew. The LBP also issued a Transaction Journal[4] exhibiting the withdrawals made on September 28, 2016, and the CCTV footage[5] of the LBP ATM, again showing respondent in a red shirt, making multiple withdrawals.

On October 1, 2016, complainant received a text message from respondent, admitting the unauthorized withdrawal. It was sent through respondent's mobile number at 0928-5656484. His exact text message reads:

> Maam di ko alm paano hihingi ng kapatawaran sa i[n]yo wala po akong balak kumuha o mgnakaw nalukso po ako at nalulong sa sugal. Sana po maam magbabayad 3thou kada buwan. ngsis[i] po ako sinira ko ang trabaho at kinabukasan ko at ng mga anak ko.[6]

Further investigation revealed that respondent was able to make about forty-nine (*49*) other withdrawals from complainant's account, amounting to more than Eight Hundred Ninety-Five

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[2] *Id.* at 6-7.

[3] *Id.* at 8.

[4] *Id.* at 12-13.

[5] *Id.* at 10-11

[6] *Id.* at 4, Complaint Affidavit.

Thousand Pesos (*₱895,000.00*) from August 2015 to September 2016, as shown in the Transaction Report[7] issued by LBP.

Complainant averred that proper criminal and administrative penalties should be imposed against respondent for unlawfully taking money through abuse of confidence, and for illegally using an access device (i.e. cloning the ATM card).

For his part, respondent denied the allegations against him. He however, admitted that he withdrew the amount of ₱50,000.00 on September 27, 2016.[8] He assured complainant that he will return the said amount when his loan application is approved by the Supreme Court Savings and Loan Association.

Respondent claimed that complainant was the one who instructed him to make the alleged withdrawals. He disclosed that the first time he was directed to withdraw was on August 20, 2015 when complainant called him to her chamber and gave her the PIN of her ATM card. Since then, respondent made several withdrawals with the instruction of complainant.

On December 28, 2015, respondent made another withdrawal in the amount of ₱10,000.00, when they had a brief stopover at Shell station, South Luzon Expressway, while serving as complainant's driver. He insisted that such withdrawal was made upon complainant's directive.

Respondent also claimed that he was the one who collected most of the checks or cash due from complainant's tenants whenever the payments were made at their office, and he then deposits the same to the bank.

Respondent stated that he has been working with complainant since 1998 and has always followed her directives. He asserted that there was a time when complainant vented her ire on him,

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[7] *Id*. at 14-45.

[8] *Id*. at 51, par. no.2, Respondent's Counter-Affidavit dated February 20, 2017.

apparently for the purpose of removing him from his post after he refused to be her full-time driver. It was also alleged that complainant was planning to give respondent's post to her regular driver. In 1998 to 1999, respondent was temporarily detailed at Branch 39 of Metropolitan Trial Court, Quezon City, but decided to return to Branch 91, RTC, when he felt that complainant had no plans to return him to the latter court.

Further, respondent averred that he accompanied complainant when the latter made an inquiry at LBP Quezon City Hall branch on September 29, 2016 regarding the alleged unauthorized withdrawal. On their way to LBP, respondent wanted to admit that he made the unauthorized withdrawals but he failed to gather the courage to do so. Thereafter, when respondent heard the conversation between a bank teller and the complainant, wherein the latter claimed that she never made any withdrawal thru an ATM, he felt scared and left the bank premises without informing complainant.

With respect to the text message that was received by complainant on October 1, 2016, the same was admitted by respondent. He confessed that he made the withdrawals because he has acquired an addiction for gambling.

In her Reply-Affidavit,[9] dated April 3, 2017, complainant emphasized that respondent already admitted withdrawing the amount of ₱50,000.00 on September 27, 2016 in his Counter-Affidavit,[10] and respondent's admission is sufficient proof that he cloned the card and he has made unlawful withdrawals therein since 2015.

Complainant denied giving her ATM card PIN to respondent and allowed him to make the withdrawals in her behalf. She dismissed respondent's claim that the withdrawal made on December 28, 2015 at Shell SLEX was with her consent.

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[9] *Id*. at 56-59.

[10] *Id*. at 51-52.

Further, she pointed out that respondent failed to offer an explanation as to the other withdrawals made, particularly on September 28, 2016, where he was caught on CCTV footage.

Moreover, complainant denied respondent's allegation that she started picking on him when he refused to be her full-time driver, stressing that she has a regular driver. She also highlighted that it is difficult to imagine respondent giving up his permanent job in the RTC to become her driver. Complainant also dismissed the claim that she asked respondent to collect cash or checks and deposit the same in her behalf.

In a Letter[11] dated January 6, 2017, complainant informed the OCA that respondent has not been reporting for work since September 28, 2016.

The OCA Recommendation

In its Report and Recommendation,[12] dated May 24, 2017, the OCA recommended that the administrative case be re-docketed as a regular administrative matter and that respondent be found guilty of Gross Misconduct and Dishonesty and be accordingly dismissed from the service, with forfeiture of all benefits, except accrued leave credits, if any, and perpetual disqualification from re-employment in any government instrumentality, including government-owned and controlled corporations. It found that respondent clearly admitted to the unauthorized withdrawal and owning up to the text message he sent to complainant asking for forgiveness. The OCA concluded that the unauthorized and deceitful withdrawals by respondent amounted to gross misconduct and dishonesty.

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[11] *Id*. at 50.

[12] *Id*. at 69-73.

Issue

WHETHER OR NOT RESPONDENT SHOULD BE HELD ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT AND DISHONESTY.

The Court's Ruling

The Court adopts and accepts the findings and recommendation of the OCA.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[13] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[14] In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[15]

Dishonesty, on the other hand, is the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. It is a malevolent act that makes people unfit to serve the judiciary.[16]

In the case at bench, respondent committed acts that clearly constitute grave misconduct and dishonesty.

As correctly found by the OCA, while respondent disputed the number of unauthorized withdrawals alleged to have been made by him, he admitted to making the withdrawal in the amount

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[13] *Judge Lagado and Clerk of Court Empuesto v. Leonida*, 741 Phil. 102, 106 (2014).

[14] *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013).

[15] *Echano, Jr. v. Toledo*, 645 Phil. 97, 101 (2010).

[16] *Supra* note 13, citing *OCA v. Musngi*, 691 Phil. 117, 122 (2012) and *OCA v. Acampado*, 721 Phil. 12, 30 (2013).

of ₱50,000.00 on September 27, 2016. He also acknowledged that he was the one who sent the text message to complainant, where he even sought forgiveness for his actuations.

Indubitably, respondent's admission that he made a withdrawal from the account of complainant, without the latter's consent, coupled with his apology that he did it because he has gambling addiction, indicates deliberate intent to commit serious infraction.

The foregoing undeniably shows that respondent deviated from the norm of conduct required of a court employee. Since the Court cannot and should not tolerate the wrongdoings of its employee, herein respondent must be sanctioned for the unlawful acts he committed. Verily, he should be dismissed from service.

There is no place in the judiciary for those who cannot meet the exacting standards of judicial conduct and integrity.[17] This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel. Thus, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice.[18]

Too, a public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves.[19]

The Court succinctly stated in the case of *Araza v. Sheriffs Garcia and Tonga*[20] that the conduct and behavior of every person connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, is

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[17] *Office of the Court Administrator v. Sumilang*, 338 Phil. 28, 38 (1997).

[18] *Sy v. Cruz*, 321 Phil. 236, 241 (1995).

[19] *Judiciary Planning Development and Implementation Office v. Calaguas*, 326 Phil. 703, 708 (1996).

[20] 381 Phil. 808, 818 (2000), citing *Banogon v. Arias*, 340 Phil. 179, 187 (1997).

circumscribed with a heavy burden of responsibility. His conduct, at all times, must not only be characterized by propriety and decorum but also, and above all else, be above suspicion.

Respondent, by committing the act of unauthorized withdrawal from complainant's ATM account, patently committed grave misconduct and dishonesty. Consequently, he does not deserve to stay a minute longer in the judicial service.[21]

Accordingly, Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 8, 2011, provides that the penalty for grave offenses such as Serious Dishonesty and Grave Misconduct is dismissal from service. Also, Section 52 (a) of the same Rule states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for holding public office, and bar from taking civil service examinations.

WHEREFORE, respondent Rolando S. Pineda is found **GUILTY** of Grave Misconduct and Dishonesty. He is hereby **DISMISSED** from service, with **FORFEITURE** of all benefits, except accrued leave credits, if any, and **PERPETUAL DISQUALIFICATION** from re-employment in any government instrumentality, including government-owned and controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, Jr., and *Gesmundo, JJ.*, concur.

Martires, J., on official leave.

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[21] *Prosecutor Mabini v. Raga*, 525 Phil. 1, 21 (2006).

EN BANC

[G.R. No. 213716. October 10, 2017]

JOSE S. RAMISCAL, JR., *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; LIMITED TO ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION.— The Constitution and the Rules of Court limit the permissible scope of inquiry in petitions under Rules 64 and 65 to errors of jurisdiction or grave abuse of discretion. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court. Rather, the general policy has been to accord weight and respect to the decisions of the COA. The limitation of the Court's power of review over the COA's rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of government (and, ultimately, the people's) property by vesting it with the power to: (1) determine whether government entities comply with the law and the rules in disbursing public funds; and (2) disallow illegal disbursements of these funds. The deference is also based on the doctrine of separation of powers and the COA's presumed expertise in the laws it is entrusted to enforce.

2. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; DOES NOT RUN AGAINST THE STATE AND ITS SUBDIVISIONS.— The right of the State, through the COA, to recover public funds that have been established to be irregularly and illegally disbursed does not prescribe. Article 1108 (4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions. This rule has been consistently adhered to in a long line of cases involving reversion of public lands, where

it is often repeated that when the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, there can, as a rule, be no defense grounded on laches or prescription. We find that this rule applies, regardless of the nature *of the government property*. Article 1108 (4) does not distinguish between real or personal properties of the State. There is also no reason why the logic behind the rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the Republic and a private party, the Court, citing Article 1108 (4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.

3. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS.— A cause of action arises when that which should have been done is not done, or that which should not have been done is done. A party's right of action accrues only when the confluence of the following elements is established: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of defendant to respect such right; and (c) an act or omission on the part of such defendant violative of the right of the plaintiff. It is only when the last element occurs or takes place can it be said in law that a cause of action has arisen. More, the aggrieved party must have either actual or presumptive knowledge of the violation by the guilty party of his rights either by an act or omission.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THREEFOLD LIABILITY RULE; THE ACTION THAT MAY RESULT FOR EACH LIABILITY UNDER THE RULE MAY PROCEED INDEPENDENTLY OF ONE ANOTHER, AS THE QUANTUM OF EVIDENCE REQUIRED IN EACH CASE IS DIFFERENT.— The "threefold liability rule" holds that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the

injured party. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions. The action that may result for each liability under the "threefold liability rule" may proceed independently of one another, as in fact, the quantum of evidence required in each case is different. Thus, in *Reyna v. Commission on Audit*, we held that a criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA. Furthermore, the right of the government to exercise administrative supervision over erring public officials is lost when they cease their functions in office. Consequently, the government must commence an administrative case while they are in office; otherwise, the disciplining body would no longer have any jurisdiction over them. The same is not true with civil and criminal cases. We have ruled in the past that even if an administrative case may no longer be filed against public officials who have already resigned or retired, criminal and civil cases may still be filed against them. The administrative case contemplated under the threefold liability rule is one that goes into the conduct of the public official and is intended to be disciplinary.

5. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; AUTHORITY OVER NATIONAL REVENUE TAXES; LIMITED TO THE DUTY TO ASCERTAIN WHETHER A GOVERNMENT AGENCY HAS PAID THE CORRECT TAXES AND IT DOES NOT CARRY THE CONCOMITANT DUTY TO COLLECT TAXES.— The COA has authority to ascertain whether a government agency has paid the correct taxes. Section 2, Article IX-D of the Constitution gives the Commission the broad power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities. This constitutional mandate is echoed in various provisions of PD No. 1445. x x x The authority of the Commission over national revenue taxes, however, appears to be limited. Section 28 of PD 1445 gives the Commission the authority to examine books, papers, and documents filed by individuals and corporations with, and which are in the custody

of, government offices in connection with government revenue collection operations, **for the sole purpose of ascertaining** that all funds determined by the appropriate agencies as collectible and due the government have actually been collected, except as otherwise provided in the Internal Revenue Code. This authority, in turn, is consistent with the duty of the Commission to establish that all obligations of the agency have been accurately recorded, and with its power, under such regulations as it may prescribe, to authorize and enforce the settlement of accounts subsisting between agencies of the government. This limited duty to ascertain under Section 28 expressly gives way to the Internal Revenue Code. It does not carry the concomitant duty to collect taxes. As it is, the BIR is the government agency vested with the power and duty to both assess and collect national internal revenue taxes.

6. ID.; ID.; ID.; NOTICE OF CHARGE; SHALL BE ISSUED SHOULD THERE BE ANY DEFICIENCIES BECAUSE OF UNDER-APPRAISAL, UNDER-ASSESSMENT OR UNDER-COLLECTION IF THE GOVERNMENT AGENCY OR UNIT BEING EXAMINED BY THE COMMISSION ON AUDIT IS ONE THAT HAS THE AUTHORITY TO FUNCTION TO COLLECT TAXES.— It is a different matter x x x if the government agency or unit being examined and audited by the COA is one that has the authority or function to collect taxes, such as the BIR itself or a local government unit. In such cases, the audit would not only cover the disbursements made, but also the revenues, receipts, and other incomes of the agency or unit. Should there be any deficiencies because of under-appraisal, under-assessment or under-collection, the COA shall issue a notice of charge. This is not the case here. The underpaid capital gains and documentary stamp taxes did not come from the account of the AFP-RSBS and did not form part of its revenues, receipts or other incomes. The COA therefore erred in issuing the NC against petitioner for the collection of these taxes. It is, in a sense, barking up the wrong tree. Quite tellingly, the SAT Report did not recommend that the AFP-RSBS be held accountable for the deficient taxes. Instead, it merely recommended the enforcement by the BIR for the collection of the deficiency on capital gains and documentary stamp taxes.

APPEARANCES OF COUNSEL

Eusebio H. Gatbonton for petitioner.
The Solicitor General for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court, assailing the Decision[2] dated September 13, 2012 and Resolution[3] dated May 6, 2014 of the Commission on Audit (COA) in COA Decision No. 2012-139. The Decision denied petitioner Jose S. Ramiscal's appeal for exclusion from liability in Notice of Disallowance (ND) No. 2010-07-084-(1996) and Notice of Charge (NC) No. 2010-07-001-(1996), while the Resolution denied petitioner's motion for reconsideration for lack of merit.

During the 11th Congress (1998 to 2001), the Senate's Committees on Accountability of Public Officers and Investigations (Blue Ribbon) and National Defense and Security held hearings to investigate the alleged anomalous acquisitions of land by the Armed Forces of the Philippines Retirement and Separation Benefits System (AFP-RSBS) in Calamba, Laguna and Tanauan, Batangas. Prompted by a series of resolutions by the Senate, the Deputy Ombudsman for the Military and other Law Enforcement Offices sent to the COA a request dated April 29, 2004 for the conduct of audit on past and present transactions of the AFP-RSBS. Thus, the COA constituted a special audit team (SAT)[4] to conduct the special audit/investigation.[5]

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[1] *Rollo*, pp. 3-18.

[2] *Id.* at 20-27.

[3] *Id.* at 28.

[4] By virtue of COA Legal And Adjudication Office Order No. 2004-125 dated December 29, 2004, as amended. *Id.* at 20-21.

[5] *Id.* at 20.

The SAT found, among others, that the AFP-RSBS, represented by petitioner, purchased from Concord Resources, Inc.[6] four parcels of land with a total area of 227,562 square meters in Calamba, Laguna (collectively, the Calamba properties). These lands were intended to serve as right-of-way to the 600-hectare property of the AFP-RSBS called the Calamba Land Banking project.[7] The SAT discovered that two deeds of sale containing different considerations were executed to cover the purchase. The deed of sale recorded with the Registry of Deeds of Calamba, Laguna disclosed that the total purchase price was ₱91,024,800. On the other hand, the records obtained by the audit team from the AFP-RSBS management revealed that another deed of sale was executed by Concord Resources, Inc. alone and has a purchase price of ₱341,343,000. The AFP-RSBS paid Concord Resources, Inc. this consideration as was recorded in its books of account.[8]

The SAT concluded that the deed of sale filed before the Registry of Deeds was the true deed of sale, considering that it was signed by both parties. It followed then that the true purchase price was ₱91,024,800 and as such, the government lost ₱250,318,200 when it allegedly paid Concord Resources, Inc. ₱341,343,000.[9]

The SAT also concluded that the execution of two deeds of sale covering the same parcels of land resulted in the underpayment of capital gains and documentary stamp taxes in the amount of ₱16,270,683. Based on the amount paid by the AFP-RSBS to Concord Resources, Inc., the total taxes that should have been paid was ₱22,187,295 and not ₱5,916,612.[10]

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[6] Represented by its President and Treasurer, Elizabeth Liang and Jesus Garcia, respectively. See *id*. at 6.

[7] *Id.* at 223.

[8] *Id.* at 37-38.

[9] *Id.* at 38.

[10] *Id.* at 38-39.

On October 10, 2005, the SAT issued Audit Observation Memorandum No. 2005-01 (AOM) to then AFP-RSBS President, Cesar Jaime for comment.[11]

On July 28, 2010, the SAT issued ND No. 2010-07-084-(1996)[12] and NC No. 2010-07-001-(1996).[13] The ND directed petitioner, Elizabeth Liang, Jesus Garcia, and Rosemarie Ragasa[14] to immediately settle the amount of ₱250,318,200 representing excess payment for the Calamba properties. The NC, on the other hand, directed petitioner, Oscar Martinez,[15] and Alma Paraiso[16] to immediately settle the amount of ₱16,270,683 representing the deficiency for capital gains and documentary stamp taxes.

Petitioner appealed the ND and the NC before the Commission Proper, but the same was denied for lack of merit.

Hence, this petition which raises the following issues:

1. Whether the action of the COA in issuing the ND and NC had already prescribed;
2. Whether the COA had already lost its jurisdiction over the case and on the person of petitioner when a criminal case, involving the same set of facts and circumstances, had already been filed with the Sandiganbayan;
3. Whether the COA is authorized to issue an NC involving the payment of capital gains and documentary stamp taxes which are national internal revenue taxes; and
4. Whether the COA has authority to institute an administrative complaint or proceedings against petitioner who had already resigned.

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[11] *Id.* at 202-205.

[12] *Id.* at 214-215.

[13] *Id.* at 216-217.

[14] Revenue District Officer, RR No.9, ROO No. 56, Calamba City.

[15] VP Comptroller of AFP-RSBS.

[16] Head Internal Audit of AFP-RSBS.

On March 27, 2017, petitioner also filed an Urgent Motion for Issuance of Temporary Restraining Order, praying that the COA be enjoined to suspend or recall its Order of Execution No. 2017-012 on the NC.

We partially grant the petition.

The Constitution and the Rules of Court limit the permissible scope of inquiry in petitions under Rules 64 and 65 to errors of jurisdiction or grave abuse of discretion.[17] There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[18] Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court.[19] Rather, the general policy has been to accord weight and respect to the decisions of the COA. The limitation of the Court's power of review over the COA's rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of government (and, ultimately, the people's) property by vesting it with the power to: (1) determine whether government entities comply with the law and the rules in disbursing public funds; and (2). disallow illegal disbursements of these funds.[20] The deference is also based on the doctrine of separation of powers and the COA's presumed expertise in the laws it is entrusted to enforce.[21]

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[17] *Fontanilla v. The Commission Proper, Commission on Audit*, G.R. No. 209714, June 21, 2016, 794 SCRA 213, 223-224.

[18] *City of General Santos v. Commission on Audit*, G.R. No. 199439, April 22, 2014, 723 SCRA 77, 86.

[19] *Fontanilla v. The Commission Proper, Commission on Audit, supra* note 17 at 223-224.

[20] Concurring and Dissenting Opinion of Justice Brion in *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, G.R. No. 204869, March 11, 2014, 718 SCRA 402, 429.

[21] See *Delos Santos v. Commission on Audit*, G.R. No. 198457, August 13, 2013, 703 SCRA 502, 513.

Bearing the foregoing principles in mind, we now proceed to determine whether the COA gravely abused its discretion in affirming the ND and NC issued against petitioner.

I

Petitioner argues that the ND and NC have already prescribed pursuant to Articles 1149 and 1153 of the Civil Code. Article 1149 provides that all other actions whose periods are not fixed in the Civil Code or in other laws must be brought within five (5) years from the time the right of action accrues. Article 1153, on the other hand, provides that the period for prescription of actions to demand accounting runs from the day the persons who should render the same cease in their functions. Petitioner explains that the transaction subject of the ND and NC occurred in 1997, a year before he resigned in 1998. He concluded that in accordance with Articles 1149 and 1153, the COA has until 2003 within which to issue an ND or NC. As it happened, however, it was only in 2004 when the audit investigation transpired. Consequently, the ND and NC issued against him in 2010 have already prescribed.

Petitioner is mistaken. The right of the State, through the COA, to recover public funds that have been established to be irregularly and illegally disbursed does not prescribe.

Article 1108 (4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions. This rule has been consistently adhered to in a long line of cases involving reversion of public lands, where it is often repeated that when the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, thee can, as a rule, be no defense grounded on laches or prescription.[22] We find that this rule applies, regardless of the nature *of the government property*. Article 1108 (4) does not distinguish between real or personal properties of the State. There is also no reason why the logic behind the

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[22] *Republic v. Heirs of Agustin L. Angeles*, G.R. No. 141296, October 7, 2002, 390 SCRA 502, 509.

rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the Republic and a private party, the Court, citing Article 1108 (4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.[23]

Moreover, the SAT was created by authority of COA Legal and Adjudication Office Order No. 2004-125. SATs may be created by the Legal and Adjudication Office of the COA based on complaints or audit findings indicating existence of fraud as contained in audit reports or audit observation memoranda.[24] This flows from the investigative and inquisitorial powers of the COA under Section 40 of Presidential Decree (PD) No. 1445, otherwise known as the General Auditing Code of the Philippines.[25] Thus, while ordinarily, under Section 52 of PD 1445, a settled account may only be reopened or reviewed within three years after the original settlement on the grounds that it is tainted with fraud, collusion, or error calculation, or when new and material evidence is discovered, a SAT is not constrained by this time limit. It may still reopen and review accounts that have already been post-audited and/or settled pursuant to Section 52. An Office Order directing the special audit is deemed sufficient authority to reopen the accounts.[26] As applied here,

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[23] *Republic v. Grijaldo*, G.R. No. L-20240, December 31, 1965, 15 SCRA 681, 687.

[24] COA Memorandum No. 2002-053.

[25] Presidential Decree No. 1445, Sec. 40. x x x

1. The Chairman or any Commissioner of the Commission, the central office managers, the regional directors, the auditors of any government agency, and any other official or employee of the Commission specially deputed in writing for the purpose by the Chairman shall, in compliance with the requirement of due process, have the power to summon the parties to a case brought before the Commission for resolution, issue *subpoena* and *subpoena duces tecum*, administer oaths, and otherwise take testimony in any investigation or inquiry on any matter within the jurisdiction of the Commission. x x x

[26] COA Circular No. 2009-006, Chapter III, Sec. 15.2.

however, there is as yet no settled account to speak of because it was only in 2003 when the nature of the AFP-RSBS as a government or public entity was decided with finality in *People v. Sandiganbayan, Jose S. Ramiscal, Jr., et al.*[27]

Even if we follow petitioner's argument that Articles 1149 and 1153 of the Civil Code apply here, the action of the COA is still not barred by the statute of limitations. Indeed, petitioner's actions occurred in 1997, after the consummated sale of the Calamba properties and its supposed inclusion in the account of the AFP-RSBS. However, the COA's cause of action would accrue later, for it was only in 2004 when it was informed of a possible irregularity of the sale when the Ombudsman requested it to conduct an audit of prior transactions of the AFP-RSBS.

A cause of action arises when that which should have been done is not done, or that which should not have been done is done. A party's right of action accrues only when the confluence of the following elements is established: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of defendant to respect such right; and (c) an act or omission on the part of such defendant violative of the right of the plaintiff. It is only when the last element occurs or takes place can it be said in law that a cause of action has arisen. More, the aggrieved party must have either actual or presumptive knowledge of the violation by the guilty party of his rights either by an act or omission.[28]

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[27] G.R. No. 145951, August 12, 2003, 408 SCRA 672.

[28] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 129227, May 30, 2000, 332 SCRA 241, 252. A similar principle operates in criminal cases involving violations of special laws. The Court has expounded on this in *Disini v. Sandiganbayan First Division*, G.R. Nos. 169823-24, September 11, 2013, 705 SCRA 459, 481-483:

> Generally, the prescriptive period shall commence to run on the day the crime is committed. That an aggrieved person "entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises," does not prevent the running of the prescriptive period. An exception to this rule is the "*blameless ignorance*" doctrine, incorporated in Section 2 of Act No. 3326. Under this doctrine, "the

To recall, the Ombudsman requested the COA to conduct an audit in view of *People v. Sandiganbayan, Jose Ramiscal, Jr., et al.*, where the Court ruled that the AFP is a government entity whose funds are public in nature. Petitioner argued in that case that the AFP-RSBS is a private entity. He, in fact, admitted in his Appeal Memorandum before the COA that prior to *People v. Sandiganbayan, Jose Ramiscal, Jr., et al.*, the AFP-RSBS has been operating as a private entity since its creation in 1973.[29] Thus, the special audit in 2004 was the first audit ever conducted over its funds.

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statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action." It was in this accord that the Court confronted the question on the running of the prescriptive period in *People v. Duque* which became the cornerstone of our 1999 Decision in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130149), and the subsequent cases which Ombudsman Desierto dismissed, emphatically, on the ground of prescription too. Thus, we held in a catena of cases, that if the violation of the special law was not known at the time of its commission, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.

Corollary, it is safe to conclude that the prescriptive period for the crime which is the subject herein, commenced from the date of its discovery in 1992 after the Committee made an exhaustive investigation. When the complaint was filed in 1997, only five years have elapsed, and, hence, prescription has not yet set in. The rationale for this was succinctly discussed in the 1999 Presidential Ad Hoc Fact-Finding Committee on Behest Loans, that "it was well-high impossible for the State, the aggrieved party, to have known these crimes committed prior to the 1986 EDSA Revolution, because of the alleged connivance and conspiracy among involved public officials and the beneficiaries of the loans." In yet another pronouncement, in the 2001 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (G.R. No. 130817), the Court held that during the Marcos regime, no person would have dared to question the legality of these transactions. (Italics in the original emphasis supplied.)

[29] *Rollo*, p. 224.

The COA immediately created the SAT in 2004 upon the request of Ombudsman. In 2005, the SAT had issued its AOM against the AFP-RSBS. At this point, however, an AOM is merely an initial step in the conduct of an investigative audit to determine the propriety of the disbursements made.[30] The AOM issued to the AFP-RSBS, in particular, merely requested it to explain: (1) why the AFP-RSBS paid Concord Resources, Inc. ₱341,343,000 based on a unilateral deed of sale instead of ₱91,024,800 pursuant to a bilateral deed of sale executed by the parties; (2) why the AFP-RSBS acquiesced on the execution of two (2) deeds of sale covering the same parcels of land that resulted in the underpayment of taxes; (3) which of the two (2) deeds of sale is genuine; and (4) why the AFP-RSBS paid a consideration which is 328% higher than the property's zonal valuation per Department of Finance Order No. 16-97 dated December 16, 1996.[31]

After the issuance of an AOM, there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the auditee.[32] As we have elaborated in *Corales v. Republic*:

> A perusal of COA Memorandum No. 2002-053, particularly Roman Numeral III, Letter A, paragraphs 1 to 5 and 9, reveals that any finding or observation by the Auditor stated in the AOM is not yet conclusive, as the comment/justification of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion. The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made. Subsequent thereto, the Auditor shall transmit the AOM, together with the comment or justification of the Auditee and the former's recommendation to the Director, Legal and Adjudication Office (DLAO), for the sector concerned in Metro Manila and/or the Regional

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[30] *Corales v. Republic*, G.R. No. 186613, August 27, 2013, 703 SCRA 623, 640-641.

[31] *Rollo*, pp. 202-205.

[32] *Corales v. Republic, supra.*

Legal and Adjudication Cluster Director (RLACD) in the case of regions. The transmittal shall be coursed through the Cluster Director concerned and the Regional Cluster Director, as the case may be, for their own comment and recommendation. The DLAO for the sector concerned in the Central Office and the RLACD shall make the necessary evaluation of the records transmitted with the AOM. When, on the basis is thereof: he finds that the transaction should be suspended or disallowed, he will then issue the corresponding Notice of Suspension (NS), Notice of Disallowance (ND) or Notice of Charge (NC), as the case may be, furnishing a copy thereof to the Cluster Director. Otherwise, the Director may dispatch a team to conduct further investigation work to justify the contemplated action. If after in-depth investigation, the DLAO for each sector in Metro Manila and the RLACD for the regions find that the issuance of the NS, ND, and NC is warranted, he shall issue the same and transmit such NS, ND or NC, as the case may be, to the agency head and other persons found liable therefor.[33]

From the foregoing, it would be from the issuance of an AOM in 2005 that the COA's right of action against petitioner, or its right to disallow or charge AFP-RSBS' accounts, would have only accrued. It was only then that the COA would have had actual or presumptive knowledge of any illegal or irregular disbursement of public funds. Hence, the COA would have had until 2010 within which to issue a notice of disallowance or charge, which is considered as an audit decision, recommendation or disposition.[34]

II

Petitioner argues that the audit proceedings may no longer proceed against him because of his prior retirement and the pendency of a criminal case involving the same facts before the Sandiganbayan. We disagree.

The "threefold liability rule" holds that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability.[35] This simply means that a public

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[33] *Id.*

[34] Revised Rules of Procedure of the Commission on Audit (2009), Rule IV, Sec. 4.

[35] *Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, July 27, 2011, 654 SCRA 539, 557.

officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions.[36]

The action that may result for each liability under the "threefold liability rule" may proceed independently of one another, as in fact, the quantum of evidence required in each case is different.[37] Thus, in *Reyna v. Commission on Audit*,[38] we held that a criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA.

Furthermore, the right of the government to exercise administrative supervision over erring public officials is lost when they cease their functions in office. Consequently, the government must commence an administrative case while they are in office; otherwise, the disciplining body would no longer have any jurisdiction over them. The same is not true with civil and criminal cases. We have ruled in the past that even if an administrative case may no longer be filed against public officials who have already resigned or retired, criminal and civil cases may still be filed against them.[39] The administrative case contemplated under the threefold liability rule is one that goes into the conduct of the public official and is intended to be disciplinary.

This is not the nature of the present case against petitioner. The audit proceedings before the COA may be characterized

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[36] *Tecson v. Sandiganbayan*, G.R. No. 123045, November 16, 1999, 318 SCRA 80, 88.

[37] See *Torredes v. Villamor*, G.R. No. 151110, September 11, 2008, 564 SCRA 492, 499-500; and *Ampil v. Office of the Ombudsman*, G.R. No. 192685, July 31, 2013, 703 SCRA 1, 39.

[38] G.R. No. 167219, February 8, 2011, 642 SCRA 210, 235.

[39] See *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City. Davao del Norte*, A.M. No. 10-2-41-RTC, February 27, 2013, 692 SCRA 8, 15; *Tecson v. Sandiganbayan, supra* note 36.

as administrative, but only in the sense that the COA is an administrative body. Essentially, though, the conduct of the audit was not an exercise of the government's administrative supervision over petitioner where he may be meted out with a penalty of suspension or dismissal from office, with an order of restitution a mere accessory penalty. What was being determined through the COA audit proceedings was his civil liability and accountability over the excess in the disbursement of public funds and the underpaid taxes.[40] The audit proceedings not being an administrative case against him, petitioner's resignation in 1998 does not serve to bar the present case.

III

Petitioner maintains that the COA has no jurisdiction to issue the NC involving the payment of capital gains and documentary stamp taxes because these are national revenue taxes, the assessment and collection of which fall within the jurisdiction of the Bureau of Internal Revenue (BIR).

Petitioner's argument is partially correct.

The COA has authority to ascertain whether a government agency has paid the correct taxes. Section 2, Article IX-D of the Constitution gives the Commission the broad power, authority, and duty to examine, audit, and settle all accounts

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[40] See *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, October 12, 2006, 504 SCRA 528, 540-541, where the Court held that:

[T]he civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it. It should be borne in mind that the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute. The payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. **Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer.** Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. (Emphasis supplied; citations omitted.)

pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities. This constitutional mandate is echoed in various provisions of PD No. 1445. Section 26, in part, specifically provides that the general jurisdiction of the Commission includes the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. Additionally, paragraph 2, Section 25 of PD No. 1445 provides that, as a primary objective, the Commission shall develop and implement a comprehensive audit program that shall encompass an examination of financial transactions, accounts, and reports, including evaluation of compliance with applicable laws and regulations.

The authority of the Commission over national revenue taxes, however, appears to be limited. Section 28 of PD 1445 gives the Commission the authority to examine books, papers, and documents filed by individuals and corporations with, and which are in the custody of government offices in connection with government revenue collection operations, **for the sole purpose of ascertaining** that all funds determined by the appropriate agencies as collectible and due the government have actually been collected, except as otherwise provided in the Internal Revenue Code. This authority, in turn, is consistent with the duty of the Commission to establish that all obligations of the agency have been accurately recorded,[41] and with its power, under such regulations as it may prescribe, to authorize and enforce the settlement of accounts subsisting between agencies of the government.[42] This limited duty to ascertain under Section 28 expressly gives way to the Internal Revenue Code. It does not carry the concomitant duty to collect taxes. As it is, the BIR is the government agency vested with the power and duty to both assess and collect national internal revenue taxes

We disagree with the argument of the COA that it was merely performing its duty to ensure that all government revenues are

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[41] Presidential Decree No. 1445, Sec. 59.

[42] Presidential Decree No. 1445, Sec. 34.

collected when it issued the NC. Again, Section 28 of PD 1445 is clear that the only purpose of the examination is to ascertain. Even under Section 35 of PD 1445, which COA cited in its assailed Decision, its authority to assist in the collection and enforcement of all debts and claims due the government shall be done **through proper channels**.[43] The COA's duty to collect or settle taxes, it appears, is done only in a facilitative manner.

It is a different matter, however, if the government agency or unit being examined and audited by the COA is one that has the authority or function to collect taxes, such as the BIR itself or a local government unit. In such cases, the audit would not only cover the disbursements made, but also the revenues, receipts, and other incomes of the agency or unit. Should there be any deficiencies because of under-appraisal, under-assessment or under-collection, the COA shall issue a notice of charge.[44]

This is not the case here. The underpaid capital gains and documentary stamp taxes did not come from the account of the AFP-RSBS and did not form part of its revenues, receipts or other incomes. The COA therefore erred in issuing the NC against petitioner for the collection of these taxes. It is, in a sense, barking up the wrong tree. Quite tellingly, the SAT Report did not recommend that the AFP-RSBS be held accountable for

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[43] See Presidential Decree No. 1445. Sec. 35. *Collection of indebtedness due the government*. The Commission shall,through proper channels assist in the collection and enforcement of all debts and claims, and the restitution of all funds or the replacement or payment at a reasonable price of property, found to be due the Government, or any of its subdivisions, agencies or instrumentalities, or any government-owned or controlled corporation or self-governing board, commission or agency of the government, in the settlement and adjustment of its accounts. If any legal proceeding is necessary to that end, the Commission shall refer the case to the Solicitor General, the Government Corporate Counsel, or the legal staff of the creditor government office or agency concerned to institute such legal proceeding. The Commission shall extend full support in the litigation. All such moneys due and payable shall bear interest at the legal rate from the date of written demand by the Commission.

[44] Revised Rules of Procedure of the Commission on Audit (2009), Rule 1, Sec. 4(8); See *Demaala v. Commission on Audit*, G.R. No. 199752, February 17, 2015, 750 SCRA 612.

the deficient taxes. Instead, it merely recommended the enforcement by the BIR for the collection of the deficiency on capital gains and documentary stamp taxes.[45]

Moreover, the deed of sale between the AFP-RSBS and Concord Resources, Inc. specifically provided that all taxes such as withholding tax, documentary stamp tax and other costs and expenses covering transfer tax, documentation and notarial and registration fees, shall be for the sole and exclusive account of Concord Resources, Inc.[46] In fact, both the SAT Report and the AOM noted that the Certificate Authorizing Registration No. 615456 dated August 27, 1996 issued by the Revenue District Officer of Calamba, Laguna disclosed that it was Concord Resources, Inc. which paid the capital gains and documentary stamp taxes.[47]

Finally, we find it incongruent to disallow the difference of ₱250,318,200 but, at the same time, charge ₱16,270,683 against petitioner for the alleged underpaid taxes. Considering that the amount of ₱91,024,800 is being held as the correct purchase price of the sale, the correct taxes in the amount of ₱5,916,612 have already been settled. To demand more on the ground that all income from whatever sources is taxable would unjustly enrich the government.

WHEREFORE, the instant petition is hereby **PARTIALLY GRANTED**. COA Decision No. 2012-139 dated September 13, 2012 and Resolution dated May 6, 2014 are hereby **AFFIRMED** with the **MODIFICATION** that petitioner is **NOT LIABLE** under Notice of Charge No. 2010-07-001-(1996).

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Tijam, and *Reyes, Jr., JJ.*, concur.

Leonardo-de Castro, Peralta, and *Gesmundo, JJ.*, no part.

Martires, J., on official leave.

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[45] *Rollo*, p. 45.

[46] *Id.* at 60.

[47] *Id.* at 39, 203.

EN BANC

[G.R. No. 229781. October 10, 2017]

SENATOR LEILA M. DE LIMA, *petitioner, vs.* **HON. JUANITA GUERRERO, in her capacity as Presiding Judge, Regional Trial Court of Muntinlupa City, Branch 204, PEOPLE OF THE PHILIPPINES, P/DIR. GEN. RONALD M. DELA ROSA, in his capacity as Chief of the Philippine National Police, PSUPT. PHILIP GIL M. PHILIPPS, in his capacity as Director, Headquarters Support Service, SUPT. ARNEL JAMANDRON APUD, in his capacity as Chief, PNP Custodial Service Unit, and ALL PERSONS ACTING UNDER THEIR CONTROL, SUPERVISION, INSTRUCTION OR DIRECTION IN RELATION TO THE ORDERS THAT MAY BE ISSUED BY THE COURT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; WITHOUT THE PRESENCE OF THE NOTARY PUBLIC UPON THE SIGNING OF THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING, THERE IS NO ASSURANCE THAT THE PETITIONER WHO SWORE UNDER OATH THAT THE ALLEGATIONS IN THE PETITION HAVE BEEN MADE IN GOOD FAITH ARE TRUE AND CORRECT AND NOT MERELY SPECULATIVE; DISMISSAL OF PETITION IS PROPER IN CASE AT BAR.— In this case, when petitioner De Lima failed to **sign** the Verification and Certification against Forum Shopping **in the presence of the notary**, she has likewise failed to properly **swear under oath** the contents thereof, thereby rendering false and null the *jurat* and invalidating the Verification and Certification against Forum Shopping. x x x Without the presence of the notary upon the signing of the Verification and Certification against Forum Shopping, there is no assurance that the petitioner swore under oath that the allegations in the petition have been made in good faith or are true and correct,

and not merely speculative. It must be noted that verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice, as what apparently happened in the present case. Similarly, the absence of the notary public when petitioner allegedly affixed her signature also negates a proper attestation that forum shopping has not been committed by the filing of the petition. Thus, the petition is, for all intents and purposes, an unsigned pleading that does not deserve the cognizance of this Court.

2. ID.; ID.; ID.; RULE ON HIERARCHY OF COURTS; THE SUPREME COURT WILL NOT ENTERTAIN DIRECT RESORT TO IT WHEN RELIEF CAN BE OBTAINED IN THE LOWER COURTS; PETITIONER'S ALLEGATION THAT HER CASE HAS SPARKED NATIONAL AND INTERNATIONAL INTEREST IS NOT COVERED BY THE EXCEPTIONS TO THE RULES ON HIERARCHY OF COURTS.— Trifling with the rule on hierarchy of courts is looked upon with disfavor by this Court. It will not entertain direct resort to it when relief can be obtained in the lower courts. The Court has repeatedly emphasized that the rule on hierarchy of courts is an important component of the orderly administration of justice and not imposed merely for whimsical and arbitrary reasons. x x x Nonetheless, there are recognized exceptions to this rule and direct resort to this Court were allowed in some instances. These exceptions were summarized in a case of recent vintage, *Aala v. Uy* x x x Unfortunately, none of these exceptions were sufficiently established in the present petition so as to convince this court to brush aside the rules on the hierarchy of courts. Petitioner's allegation that her case has sparked national and international interest is obviously not covered by the exceptions to the rules on hierarchy of courts. The notoriety of a case, without more, is not and will not be a reason for this Court's decisions. Neither will this Court be swayed to relax its rules on the bare fact that the petitioner belongs to the minority party in the present administration. A primary hallmark of an independent judiciary is its political neutrality.

3. ID.; ID.; ID.; THE PETITIONER'S REQUEST FOR THE COURT TO ISSUE A WRIT OF PROHIBITION "UNTIL AND UNLESS THE MOTION TO QUASH IS RESOLVED WITH FINALITY" IS AN UNMISTAKABLE ADMISSION

THAT THE REGIONAL TRIAL COURT (RTC) HAS YET TO RULE ON THE MOTION TO QUASH AND THE EXISTENCE OF THE RTC'S AUTHORITY TO RULE ON THE SAID MOTION, WHICH MAKES THE SUBJECT PETITION PREMATURE; CASE AT BAR.— More importantly, her request for the issuance of a writ of prohibition under paragraph (b) of the prayer "until and unless the Motion to Quash is resolved with finality," is **an unmistakable admission that the RTC has yet to rule on her Motion to Quash and the existence of the RTC's authority to rule on the said motion**. This admission against interest binds the petitioner; an admission against interest being the best evidence that affords the greatest certainty of the facts in dispute. It is based on the presumption that "no man would declare anything against himself unless such declaration is true." It can be presumed then that the declaration corresponds with the truth, and it is her fault if it does not. x x x Indeed, the prematurity of the present petition cannot be over-emphasized considering that petitioner is actually asking the Court to rule on some of the grounds subject of her Motion to Quash. The Court, if it rules positively in favor of petitioner regarding the grounds of the Motion to Quash, will be pre-empting the respondent Judge from doing her duty to resolve the said motion and even prejudge the case. This is clearly outside of the ambit of orderly and expeditious rules of procedure. x x x In the palpable absence of a ruling on the Motion to Quash — which puts the jurisdiction of the lower court in issue — there is no controversy for this Court to resolve; there is simply no final judgment or order of the lower court to review, revise, reverse, modify, or affirm.

4. ID.; ID.; ID.; FORUM SHOPPING; WILLFUL AND DELIBERATE FORUM SHOPPING SHALL BE A GROUND FOR SUMMARY DISMISSAL OF THE CASE WITH PREJUDICE AND SHALL CONSTITUTE DIRECT CONTEMPT AS WELL AS A CAUSE FOR ADMINISTRATIVE SANCTIONS.— It is settled that forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. It is considered an act of malpractice as it trifles with the courts and abuses their

processes. The acts committed and described herein can possibly constitute direct contempt. This policy echoes the last sentence of Section 5, Rule 7 of the Rules of Court, which states that "[i]f the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions."

5. ID.; ID.; ID.; ID.; ELEMENTS.— The test to determine the existence of forum shopping is whether the elements of *litis pendentia*, or whether a final judgment in one case amounts to *res judicata* in the other. Forum shopping therefore exists when the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

6. CRIMINAL LAW; FELONIES; CONSPIRACY; WHERE THE ACCUSED, IN ONE WAY OR ANOTHER, HELPED AND COOPERATED IN THE CONSUMMATION OF A FELONY, HE/SHE IS LIABLE AS A CO-PRINCIPAL; CASE AT BAR.— On this score, that it has not been alleged that petitioner actually participated in the actual trafficking of dangerous drugs and had simply allowed the NBP inmates to do so is *non sequitur* given that the allegation of *conspiracy* makes her liable for the acts of her co-conspirators. As this Court elucidated, it is not indispensable for a co-conspirator to take a direct part in every act of the crime. A conspirator need not even know of all the parts which the others have to perform, as conspiracy is the common design to commit a felony; **it is not participation in all the details of the execution of the crime**. As long as the accused, in one way or another, helped and cooperated in the consummation of a felony, she is liable as a co-principal. As the Information provides, De Lima's participation and cooperation was instrumental in the trading of dangerous drugs by the NBP inmates. The minute details of this participation and cooperation are matters of evidence that need not be specified in the Information but presented and threshed out during trial.

7. ID.; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG TRADING; ACTS OF ILLEGAL TRADING MAY BE COMMITTED THROUGH ILLEGAL TRAFFICKING USING ELECTRONIC DEVICES OR ACTING AS A BROKER IN ANY TRANSACTIONS INVOLVED IN THE ILLEGAL TRAFFICKING OF DANGEROUS DRUGS; ELUCIDATED.— The elements of "Illegal Sale" will necessary differ from the elements of Illegal Trading under Section 5, in relation to Section 3(jj), of RA 9165. x x x In fact, an *illegal sale* of drugs may be considered as only one of the possible component acts of *illegal trading* which may be committed through two modes: (1) illegal trafficking using electronic devices; or (2) acting as a broker in any transactions involved in the illegal trafficking of dangerous drugs. On this score, the crime of "illegal trafficking" embraces various other offenses punishable by RA 9165. x x x With the complexity of the operations involved in Illegal Trading of drugs, as recognized and defined in RA 9165, it will be quite myopic and restrictive to require the elements of Illegal Sale — a mere component act—in the prosecution for Illegal Trading. x x x By "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms," the *Illegal Trading* can be remotely perpetrated away from where the drugs are actually being sold; away from the subject of the illegal sale. With the proliferation of digital technology coupled with ride sharing and delivery services, Illegal Trading under RA 9165 can be committed without getting one's hand on the substances or knowing and meeting the seller or buyer. To require the elements of Illegal Sale (the identities of the buyer, seller, the object and consideration, in Illegal Trade) would be impractical. x x x In some cases, this Court even acknowledged persons as brokers even "where they actually took no part in the negotiations, never saw the customer." For the Court, the primary occupation of a broker is simply bringing "the buyer and the seller together, *even if* ***no sale*** *is eventually made*." Hence, **in indictments for *Illegal Trading*, it is illogical to require the elements of *Illegal Sale* of drugs, such as the identities of the buyer and the seller, the object and consideration**. For the prosecution of Illegal Trading of drugs to prosper, proof that the accused "act[ed] as a broker" or brought together the buyer and seller of illegal

drugs "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms" is sufficient.

8. ID.; ID.; THE REGIONAL TRIAL COURT (RTC) HAS EXCLUSIVE, ORIGINAL JURISDICTION OVER VIOLATIONS OF RA 9165 AND NO OTHER; THE EXCLUSIVE ORIGINAL JURISDICTION OF THE RTC OVER VIOLATIONS OF RA 9165 IS NOT TRANSFERRED TO THE SANDIGANBAYAN WHENEVER THE ACCUSED OCCUPIES A POSITION CLASSIFIED AS GRADE 27 OR HIGHER, REGARDLESS OF WHETHER THE VIOLATION IS ALLEGED AS COMMITTED IN RELATION TO OFFICE; EXPLAINED.— The pertinent special law governing drug-related cases is RA 9165, which updated the rules provided in RA 6425, otherwise known as the Dangerous Drugs Act of 1972. A plain reading of RA 9165, as of RA 6425, will reveal that jurisdiction over drug-related cases is exclusively vested with the **Regional Trial Court** and no other. x x x The exclusive original jurisdiction over violations of RA 9165 is not transferred to the Sandiganbayan whenever the accused occupies a position classified as Grade 27 or higher, regardless of whether the violation is alleged as committed in relation to office. The power of the Sandiganbayan to sit in judgment of high-ranking government officials is not omnipotent. The Sandiganbayan's jurisdiction is circumscribed by law and its limits are currently defined and prescribed by RA 10660, which amended Presidential Decree No. (PD) 1606. x x x To reiterate for emphasis, **Section 4(b) of PD 1606, as amended by RA 10660, is the general law** on jurisdiction of the Sandiganbayan over crimes and offenses committed by high-ranking public officers in relation to their office; **Section 90, RA 9165 is the special law** excluding from the Sandiganbayan's jurisdiction violations of RA 9165 committed by such public officers. In the latter case, jurisdiction is vested upon the RTCs designated by the Supreme Court as drugs court, regardless of whether the violation of RA 9165 was committed in relation to the public officials' office. x x x The clear import of the new paragraph introduced by RA 10660 is to streamline the cases handled by the Sandiganbayan by delegating to the RTCs some cases involving high-ranking public officials. With the dissents' proposition, opening the Sandiganbayan to the influx of drug-related cases, RA 10660 which was intended to unclog the dockets of the Sandiganbayan

would all be for naught. Hence, sustaining the RTC's jurisdiction over drug-related cases despite the accused's high-ranking position, as in this case, is all the more proper.

9. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRECTION; ISSUING A WAIVER OF ARREST EVEN BEFORE RESOLVING PETITIONER'S MOTION TO QUASH; NOT A CASE OF; CASE AT BAR.— Grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to an evasion of *positive duty* or a virtual refusal to act at all in contemplation of the law. In the present case, the respondent judge had no *positive duty* to first resolve the *Motion to Quash* before issuing a warrant of arrest. There is no rule of procedure, statute, or jurisprudence to support the petitioner's claim. Rather, Sec.5(a), Rule 112 of the Rules of Court required the respondent judge to evaluate the prosecutor's resolution and its supporting evidence within a limited period of only ten (10) days, x x x Undoubtedly, contrary to petitioner's postulation, there is no rule or basic principle requiring a trial judge to first resolve a motion to quash, whether grounded on lack of jurisdiction or not, before issuing a warrant of arrest. As such, respondent judge committed no grave abuse of discretion in issuing the assailed February 23, 2017 Order even before resolving petitioner's *Motion to Quash*. There is certainly no indication that respondent judge deviated from the usual procedure in finding probable cause to issue the petitioner's arrest.

LEONARDO-DE CASTRO, *J.*, *concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; A MOTION FOR RECONSIDERATION OF THE QUESTIONED ORDER OR RESOLUTION CONSTITUTES PLAIN, SPEEDY, AND ADEQUATE REMEDY, AND A PARTY'S FAILURE TO FILE SUCH A MOTION RENDERS THE PETITION FOR *CERTIORARI* FATALLY DEFECTIVE; CASE AT BAR.— Rule 65 petitions for *certiorari* and prohibition are discretionary writs, and the handling court possesses the authority to dismiss them outright for failure to comply with the form and substance requirements. The requirement under Sections 1 and 2 of Rule 65 of the Rules of Court on petitions for *certiorari* and prohibition, respectively,

that "there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law[,]" is more than just *pro-forma*. The Court had ruled that a motion for reconsideration of the questioned Order or Resolution constitutes plain, speedy, and adequate remedy, and a party's failure to file such a motion renders its petition for *certiorari* fatally defective. A motion for reconsideration allows the public respondent an opportunity to correct its factual and legal errors. The Court has reiterated in numerous decisions that a motion for reconsideration is mandatory before the filing of a petition for *certiorari*. While the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari* is not iron-clad, none of the recognized exceptions applies to petitioner's case.

2. LEGAL ETHICS; 2004 RULES ON NOTARIAL PRACTICE; IT IS A REQUIREMENT UNDER THE 2004 RULES ON NOTARIAL PRACTICE THAT THE *JURAT* BE MADE BY THE INDIVIDUAL IN PERSON BEFORE THE NOTARY PUBLIC; VIOLATION IN CASE AT BAR.— It is not disputed that while the *jurat* states that the said Verification and Certification were "SUBSCRIBED AND SWORN to before [the Notary Public]," this is not what had actually happened. Petitioner did not appear personally before the Notary Public, Atty. Maria Cecile C. Tresvalles-Cabalo (Tresvalles-Cabalo). The Petition and the attached Verification and Certification against Forum Shopping, which was already signed purportedly by petitioner, were merely brought and presented by petitioner's staff to Atty. Tresvalles-Cabalo, together with petitioner's passport, for notarization. This contravenes the requirement under the 2004 Rules on Notarial Practice that the "*jurat*" be made by the individual in person before the notary public. Verification is required to secure an assurance that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative; and certification against forum shopping is required based on the principle that a party-litigant should not be allowed to pursue simultaneous remedies in different fora. The important purposes behind these requirements cannot be simply brushed aside absent any sustainable explanation justifying their relaxation. Indeed, such requirements may be relaxed under justifiable circumstances or under the rule on substantial compliance. Yet, petitioner did not give a satisfactory explanation as to why she failed to

personally see Atty. Tresvalles-Cabalo for the proper execution of her Verification and Certification against Forum Shopping, when Atty. Tresvalles-Cabalo was already right there at Camp Crame, where petitioner was detained, exactly for the purpose of providing notarization services to petitioner. Neither can it be said that there had been substantial compliance with such requirements because despite Atty. Tresvalles-Cabalo's subsequent confirmation that petitioner herself signed the Verification and Certification against Forum Shopping, still, petitioner has not complied at all with the requisite of a *jurat* that she personally appears before a notary public to avow, under penalty of law, to the whole truth of the contents of her Petition and Certification against Forum Shopping.

3. REMEDIAL LAW; RULES OF COURT; RULES OF PROCEDURE MUST BE FAITHFULLY COMPLIED WITH AND SHOULD NOT BE DISREGARDED WITH BY THE MERE EXPEDIENCY OF CLAIMING SUBSTANTIAL MERIT.— Petitioner's numerous procedural lapses overall reveal a cavalier attitude towards procedural rules, which should not be so easily countenanced based on petitioner's contention of substantial justice. In *Manila Electric Company v. N.E. Magno Construction, Inc.*, the Court decreed that no one has a vested right to file an appeal or a petition for *certiorari*. These are statutory privileges which may be exercised only in the manner prescribed by law. Rules of procedure must be faithfully complied with and should not be discarded with by the mere expediency of claiming substantial merit.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); TRADING OF DANGEROUS DRUGS; THE TRADING OF DANGEROUS DRUGS EVIDENTLY COVERS MORE THAN JUST THE SALE OF SUCH DRUGS AND A SINGULAR BUSINESS TRANSACTION, IT CONNOTES THE CONDUCT OF BUSINESS INVOLVING SERIES OF TRANSACTIONS, OFTEN FOR A SUSTAINED PERIOD OF TIME.— "Trading of dangerous drugs" refers to "transactions involving illegal trafficking." "Illegal trafficking" is broadly defined under Section 3(r) of Republic Act No. 9165 as "[t]he illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any

dangerous drug and/or controlled precursor and essential chemical." The trading of dangerous drugs evidently covers more than just the sale of such drugs and a singular buy-and-sell transaction. It connotes the conduct of a business involving a series of transactions, often for a sustained period of time. It may be committed by various ways, or even by different combinations of ways.

5. ID.; ID.; ID.; ID.; THE INFORMATION ONLY NEEDS TO ALLEGE THE ULTIMATE FACTS CONSTITUTING THE CRIME CHARGED; DETAILS THAT DO NOT GO INTO THE CORE OF THE CRIME MAY BE PROVIDED DURING TRIAL.— It may also do us well to remember that the Information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial. The purpose of an Information is to afford an accused his/her right to be informed of the nature and cause of the accusation against him/her. For this purpose, the Rules of Court require that the Information allege the ultimate facts constituting the elements of the crime charged. Details that do not go into the core of the crime need not be included in the Information, but may be presented during trial. The rule that evidence must be presented to establish the existence of the elements of a crime to the point of moral certainty is only for purposes of conviction. It finds no application in the determination of whether or not an Information is sufficient to warrant the trial of an accused. Moreover, if indeed the Information is defective on the ground that the facts charged therein do not constitute an offense, the court may still order the prosecution to amend the same. x x x Even if the Information suffers from vagueness, the proper remedy may still not be a motion to quash, but a motion for a bill of particulars.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; THERE WILL BE NO DOUBLE JEOPARDY WHEN A SINGLE CRIMINAL ACT GIVE RISE TO MULTIPLICITY OF OFFENSES AND THERE ARE VARIANCES IN THE ELEMENTS OF SUCH OFFENSES. — It cannot be denied that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law and the accused may be prosecuted for more than one offense. The only limit to this rule is the prohibition under Article III, Section 21 of the Constitution that no person shall

be twice put in jeopardy of punishment for "the same offense." When a single criminal act may give rise to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law, there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two offenses.

PERALTA, *J.*, *separate opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOCTRINE OF HIERARCHY OF COURTS; THE DOCTRINE OF HIERARCHY OF COURTS IS NOT AN IRON-CLAD RULE AND THE SUPREME COURT HAS FULL DISCRETIONARY POWER TO TAKE COGNIZANCE AND ASSUME JURISDICTION OVER SPECIAL CIVIL ACTIONS FOR *CERTIORARI*; RECOGNIZED EXCEPTIONS TO THE DOCTRINE, ENUMERATED; APPLICATION IN CASE AT BAR.— In *The Diocese of Bacolod v. Commission on Elections*, the Court stressed that the doctrine of hierarchy of courts is not an iron-clad rule, and that it has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. Recognized exceptions to the said doctrine are as follows: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter; (d) the constitutional issues raised are better decided by the Court; (e) where exigency in certain situations necessitate urgency in the resolution of the cases; (f) the filed petition reviews the act of a constitutional organ; (g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities,

or the appeal was considered as clearly an inappropriate remedy. The petition at bench raises an issue of transcendental importance and a novel question of law, if not a case of first impression, namely: whether the Sandiganbayan has exclusive original jurisdiction over drug cases under R.A. No. 9165 committed by public officers or employees in relation to their office, pursuant to Presidential Decree No. 1606, Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "SANDIGANBAYAN" and for other purposes, as amended by R.A. No. 10660, revising Presidential Decree No. 1486 Creating a Special Court to be known as "SANDIGANBAYAN" and for other purposes. An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor. It bears emphasis that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint or information, and cannot be granted by agreement of the parties, acquired through, or waived, enlarged or diminished by any act or omission of the parties, or conferred by acquiescence of the court. Considering that lack of jurisdiction over the subject matter of the case can always be raised anytime, even for the first time on appeal, I see no reason for Us not to directly entertain a pure question of law as to the jurisdiction of the Sandiganbayan over drug-related cases, if only to settle the same once and for all. A decision rendered by a court without jurisdiction over the subject matter, after all, is null and void. It would be detrimental to the administration of justice and prejudicial to the rights of the accused to allow a court to proceed with a full-blown trial, only to find out later on that such court has no jurisdiction over the offense charged.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; ISSUANCE OF WARRANT OF ARREST; NO GRAVE ABUSE OF DISCRETION MAY BE IMPUTED AGAINST THE RESPONDENT JUDGE FOR ISSUING A WARRANT OF ARREST DESPITE A PENDING MOTION TO QUASH SINCE THERE IS NO LAW, JURISPRUDENCE OR PROCEDURAL RULE WHICH REQUIRES THE JUDGE TO ACT FIRST ON THE MOTION TO QUASH BEFORE ISSUING AN ARREST WARRANT.— It is well settled that grave abuse of discretion

is the capricious or whimsical exercise of judgment equivalent to lack of jurisdiction; the abuse of discretion being so patent and gross as to amount to an evasion of positive duty or virtual non-performance of a duty enjoined by law. As aptly pointed out by the *ponencia*, since Section 5, Rule 112 gives the judge ten (10) days within which to determine probable cause to issue warrant of arrest by personally evaluating the resolution of the prosecutor and its supporting evidence, petitioner cannot fault the respondent judge for issuing a warrant of arrest within three (3) days from receipt of the case records. There is no law, jurisprudence or procedural rule which requires the judge to act first on the motion to quash, whether or not grounded on lack of jurisdiction, before issuing an arrest warrant. No grave abuse discretion may be, therefore, imputed against the respondent judge for issuing a warrant of arrest despite a pending motion to quash. x x x At any rate, to sustain the contention that a judge must first act on a pending motion to quash the information before she could issue a warrant of arrest would render nugatory the 10-day period to determine probable cause to issue warrant of arrest under Section 5, Rule 112. This is because if such motion to quash appears to be meritorious, the prosecution may be given time to comment, and the motion will have set for hearing. Before the court could even resolve the motion, more than 10 days from the filing of the complaint or information would have already passed, thereby rendering ineffectual Section 5(a), Rule 112.

3. ID.; ID.; ID.; PROBABLE CAUSE; THE JUDGE DOES NOT HAVE TO PERSONALLY EXAMINE THE COMPLAINANT AND HIS WITNESSES, AND THAT THE EXTENT OF HER PERSONAL EXAMINATION OF THE FISCAL'S REPORT AND ITS ANNEXES DEPENDS ON THE CIRCUMSTANCES OF EACH CASE.— It bears emphasis that Section 5, Rule 112 only requires the judge to personally evaluate the resolution of the prosecutor and its supporting evidence, and if she finds probable cause, she shall issue such arrest warrant or commitment order. In *Allado v. Diokno*, citing *Soliven v. Judge Makasiar*, the Court stressed that the judge shall personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or, if on the basis thereof she finds no probable cause, may disregard the fiscal's report and require the submission of supporting affidavits

of witnesses to aid him in arriving at a conclusion on the existence of probable cause. x x x The Court added that the judge does not have to personally examine the complainant and his witnesses, and that the extent of her personal examination of the fiscal's report and its annexes depends on the circumstances of each case. Moreover, "[t]he Court cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require.

4. ID.; ID.; PROSECUTION OF OFFENSES; SUFFICIENCY OF INFORMATION; THE ALLEGATIONS OF FACTS CONSTITUTING THE OFFENSE CHARGED ARE SUBSTANTIAL MATTERS AND THE RIGHT OF AN ACCUSED TO QUESTION HIS/HER CONVICTION BASED ON FACTS NOT ALLEGED IN THE INFORMATION CANNOT BE WAIVED.— Section 6, Rule 110 of the Rules of Court states that a complaint of information is sufficient if it states: (1) the name of the accused; (2) the designation of the offense given by the statute; (3) the acts or omissions complained of as constituting the offense; (4) the name of the offended party; (5) the approximate date of the commission of the offense; and (6) the place where the offense was committed. x x x Section 8, Rule 110 provides that the complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its qualifying and aggravating circumstances. Section 9, Rule 110 states that the acts or omissions complained of as constituting the offense and the qualifying circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged, as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. As held in *Quimvel v. People*, the information must allege clearly and accurately the elements of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of specific crimes. Moreover, the main purpose of requiring the elements of a crime to be set out in the information is to enable the accused to suitably prepare her defense because she is presumed to have no independent knowledge of the facts that

constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question her conviction based on facts not alleged in the information cannot be waived.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CONSPIRACY TO COMMIT ILLEGAL DRUG TRADING; PERSONS WHO MAY BE HELD LIABLE, ENUMERATED.— The Information charging petitioner with conspiracy to commit illegal drug trading, or violation of Section 5, in relation to Section 3 (jj), Section 26(b) and Section 28 of R.A. No. 9165, x x x Significant note must be taken of Section 5, R.A. No. 9165 because it provides for the penalties for the various offenses covered, including "conspiracy to commit illegal drug trading," and identifies the persons who may be held liable for such offenses. x x x As can be gleaned from the foregoing provisions, the following persons may be held liable of conspiracy to commit illegal drug trading under Section 5 of R.A. No. 9165, namely: 1. Pusher — defined under Section 3(ff) as any person who sells, trades, administers, dispenses or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transaction, in violation of the law; 2. Organizer; 3. Manager; 4. Financier — defined under Section 3(q) as any person who pays for, raises or supplies money for, or underwrites any of the illegal activities prescribed under the law; and 5. Protector or coddler — defined under Section 3(ee) as any person who knowingly or willfully consents to the unlawful acts provided for in under the law and uses his/her influence, power or position in shielding, harboring, screening or facilitating the escape of any person who he/she knows, or has reasonable grounds to believe on or suspects, has violated the provisions of the law in order to prevent the arrest, prosecution and conviction of the violator.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; IN DETERMINING WHICH COURT HAS JURISDICTION OVER THE OFFENSE CHARGED, THE BATTLEGROUND SHOULD BE LIMITED WITHIN THE FOUR CORNERS OF THE INFORMATION.— Respondent judge would also do well to bear in mind that jurisdiction of a court over a criminal case is determined by

the allegations of the complaint or information. In resolving a motion to dismiss based on lack of jurisdiction, the general rule is that the facts contained in the complaint or information should be taken as they are, except where the Rules of Court allow the investigation of facts alleged in a motion to quash such as when the ground invoked is the extinction of criminal liability, prescriptions, double jeopardy, or insanity of the accused. In these instances, it is incumbent upon the trial court to conduct a preliminary trial to determine the merit of the motion to dismiss. Considering that petitioner's arguments do not fall within any of the recognized exceptions, respondent judge should remember that in determining which court has jurisdiction over the offense charged, the battleground should be limited within the four corners of the information. This is consistent with the rule that the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic to the information are not to be considered, and the defect in the information, which is the basis of the motion to quash, must be evident on its face.

DEL CASTILLO, *J., concurring opinion*:

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); TRADING OF ILLEGAL DRUGS; IT IS NOT THE SALARY GRADE THAT DETERMINES WHICH COURT SHOULD HEAR OR HAS JURISDICTION OVER THE CASE, BUT THE NATURE OF THE CASE AND THE ALLEGATIONS IN THE INFORMATION; CASE AT BAR.— It is clear from the x x x allegations that petitioner is being charged with conspiring to engage in trading of illegal drugs, a case that is cognizable by and within the jurisdiction of the RTC. The mention in the Information of the phrases "taking advantage of public office" and "with the use of their power, position, and authority", vis-a-vis the rest of the allegations in the Information, does not wrest from the RTC its jurisdiction over the case. To my mind, said phrases were mentioned specifically to highlight the fact that some of the personalities involved are public officials, in view of the fact that **Section 28** of RA 9165 specifically deals with the "criminal

liability of government officials and employees" and provides for the imposition of the maximum penalties if the violators were government officials and employees. By their being government officials and employees, their liability is aggravated and would necessitate the imposition of the maximum penalty, pursuant to Section 28. It could therefore be construed that said phrases were mentioned in the Information precisely in view of Section 28. Similarly, the mention of the phrases "offense in connection with official duties" in Section 3, RA 3019, and "in relation to office" in Section 4(sub- paragraph b) of RA 8249 (An Act Further Amending the Jurisdiction of the *Sandiganbayan*) would not wrest from the RTC its jurisdiction over the case. x x x It must be stressed that it is not the salary grade that determines which court should hear or has jurisdiction over the case; it is the nature thereof and the allegations in the Information. RA 9165 specifically vested with the RTC the jurisdiction over illegal drugs cases. On the other hand, the *Sandiganbayan* was specially constituted as the anti-graft court. And since petitioner is being charged with conspiring in trading of illegal drugs, and not with any offense involving graft, it is crystal clear that it is the RTC which has jurisdiction over the matter as well as over the person of the petitioner.

MARTIRES, *J.*, *concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; FORUM SHOPPING; THE MOST IMPORTANT FACTOR TO CONSIDER IN DETERMINING WHETHER A PARTY VIOLATED THE RULE AGAINST FORUM SHOPPING IS WHETHER THE ELEMENTS OF *LITIS PENDENTIA* CONCUR; ELEMENTS, CITED.— In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: "(a) [there is] identity of parties, or at least such parties who represent the same interests in both actions; (b) [there is] identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) [that] the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case."

2. ID.; ID.; ID.; ID.; THE RULES OF COURT PRESCRIBE THE SPECIFIC SEQUENCE AND HIERARCHICAL ORDER BY WHICH RELIEFS MAY BE AVAILED OF BY THE PARTIES; VIOLATION IN CASE AT BAR.— In relation to forum shopping, the Rules of Court prescribes the specific sequence and hierarchical order by which reliefs may be availed of by the parties x x x The rules and jurisprudence dictate that petitioner should have allowed the lower courts to resolve the issues she brought forth before them prior to the filing of this petition. It is thus beyond comprehension how the petitioner, who describes herself as a "sitting Senator of the Republic, a former Secretary of Justice and Chairperson of the Commission on Human Rights, and a prominent member of the legal profession" would tread on a precarious situation and risk to squander the remedies which the law accorded her by trifling with the orderly administration of justice unless she is trying to give us the impression that the lofty positions she claims to occupy or to have held has covered her with the habiliments of a privileged litigant.

3. ID.; CRIMINAL PROCEDURE; TO DETERMINE THE JURISDICTION OF THE COURT IN CRIMINAL CASES, THE COMPLAINT MUST BE EXAMINED FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE FACTS SET OUT THEREIN AND THE PUNISHMENT PROVIDED BY LAW FALL WITHIN THE JURISDICTION OF THE COURT WHERE THE COMPLAINT WAS FILED; CASE AT BAR.— The general rule is that jurisdiction is vested by law and cannot be conferred or waived by the parties. Simply put, jurisdiction must exist as a matter of law. To determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information, and not by the findings the court may make after the trial. Section 6, Rule 110 of the Rules of Court, provides that an information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the

commission of the offense; and the place where the offense was committed. The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense. The information must allege clearly and accurately the elements of the crime charged. Likewise, it is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried. Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.

4. ID.; REPUBLIC ACT NO. 10660 (AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN); REQUISITES FOR AN OFFENSE TO FALL UNDER THE EXCLUSIVE ORIGINAL JURISDICTION OF THE SANDIGANBAYAN; ENUMERATED.— Through R.A. No. 7975 and R.A. No. 8249, the jurisdiction of the Sandiganbayan was further defined. At present, the exclusive original jurisdiction of the anti-graft court is specified in R.A. No. 10660 x x x Noteworthy, the then exclusive and original jurisdiction of the Sandiganbayan as provided for in P.D. 1606, i.e., violations of R.A. Nos. 3019 and 1379, and in Chapter II, Sec. 2, Title VII, Book II of the RPC, had expanded. At present, for an offense to fall under the exclusive original jurisdiction of the Sandiganbayan, the following requisites must concur: the offense committed is a violation of: (1)(a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act); (b) R.A. 1379 (the law on ill-gotten wealth); (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery); (d) Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986 (sequestration cases); or (e) Other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of Sec. 4; (3) the **offense committed is in relation to the office**; and, the Information contains an allegation as to: (a) any damage to the government or any bribery; or (b) damage

to the government or bribery arising from the same or closely related transactions or acts in an amount exceeding One million pesos (₱1,000,000.00).

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG TRADING; IN CASE AT BAR, THE AVERMENTS IN THE INFORMATION ENUMERATING SOME OF THE ELEMENTS OF BRIBERY MERELY FORMED PART OF THE DESCRIPTION ON HOW ILLEGAL DRUG TRADING TOOK PLACE IN THE NATIONAL BILIBID PRISON.— It is significant to state that there are averments in the information in Criminal Case No. 17-165 that conceivably conform to the other elements of bribery, i.e., (1) that the accused is a public officer; (2) that he received directly or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer. As it is, the averments on some of the elements of bribery in the information merely formed part of the description on how illegal drug trading took place at the NBP. Irrefragably, the elements of bribery, as these are found in the information, simply completed the picture on the manner by which De Lima, Ragos, and Dayan conspired in violating Section 5 in relation to Sections 3(jj), 26(b) and 28 of R.A. No. 9165. x x x Readily apparent is that the elements of bribery are equally present in Sec. 27 of R.A. No. 9165. By benefiting from the proceeds of drug trafficking, an elective official, whether local or national, regardless of his salary grade, and whether or not the violation of Sec. 27 of R.A. No. 9165 was committed in relation to his office, automatically brings him to the fold of R.A. No. 9165; thus, within the exclusive jurisdiction of the RTC.

6. ID.; ID.; THE REGIONAL TRIAL COURT IS CONFERRED WITH THE EXCLUSIVE JURISDICTION OVER VIOLATION OF THE ACT; APPLICATION IN CASE AT BAR.— It must be emphasized that the Sandiganbayan, whose present exclusive original jurisdiction is defined under R.A. No. 10660, is unquestionably an anti-graft court, x x x On the one hand, by explicit provision of R.A. No. 9165, the RTC

had been conferred with the exclusive jurisdiction over violations of the Act. Only the specially designated RTC, to the exclusion of other trial courts, has been expressly vested with the exclusive authority to hear and decide violations of R.A. No. 9165. Even the Sandiganbayan, which is likewise a trial court, has not been conferred jurisdiction over offenses committed in relation to the Comprehensive Drugs Act of 2002. The rationale in designating certain RTCs as drug courts is easily discernible – it would enable these courts to acquire and thereafter apply the expertise apposite to drug cases; thus, prompting the effective dispensation of justice and prompt resolution of cases.

TIJAM, *J.*, *separate concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT IS A PLEADING LIMITED TO CORRECTION OF ERRORS OF JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; REQUIREMENTS. — A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. x x x To be sure, *certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is

tantamount to lack or in excess of jurisdiction, not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact. A contrary rule would lead to confusion, and seriously hamper the administration of justice.

2. ID.; ID.; ID.; FORUM SHOPPING; FORUM SHOPPING IS A PRACTICE WHICH RIDICULES THE JUDICIAL PROCESS, PLAYS HAVOC WITH THE RULES OF ORDERLY PROCEDURE, AND IS VEXATIOUS AND UNFAIR TO OTHER PARTIES TO THE CASE; CASE AT BAR.— That the trial court has yet to rule directly on the jurisdictional issue also highlights the forum shopping committed by petitioner. Should respondent judge grant the motion to quash, then it fundamentally makes the instant petition moot and academic, as the underlying premise of the instant case is the "implied" denial of the RTC of petitioner's motion to quash. On the other hand, should this Court grant the instant petition, then the RTC is left with no option but to comply therewith and dismiss the case. It is also possible that this Court confirms the respondent judge's actions, but the latter, considering the time period provided under Section 1(g) of Rule 116, grants petitioner's prayer for the quashal of the information. Any permutation of the proceedings in the RTC and this Court notwithstanding, I find that filing the instant petition to this Court is clear forum shopping. It should have been outrightly dismissed if this Court is indeed keen in implementing the policy behind the rule against forum shopping. Verily, forum shopping is a practice which ridicules the judicial process, plays havoc with the rules of orderly procedure, and is vexatious and unfair to the other parties to the case. Our justice system suffers as this kind of sharp practice opens the system to the possibility of manipulation; to uncertainties when conflict of rulings arise; and at least to vexation for complications other than conflict of rulings.

3. ID.; ID.; ID.; PRINCIPLE OF HIERARCHY OF COURTS; WHERE THE ISSUANCE OF AN EXTRAORDINARY WRIT IS ALSO WITHIN THE COMPETENCE OF THE COURT OF APPEALS OR A REGIONAL TRIAL COURT, IT IS EITHER OF THESE COURTS THAT THE SPECIFIC ACTION FOR THE WRIT'S PROCUREMENT MUST BE PRESENTED; SUSTAINED IN CASE AT BAR.— [T]he

failure of petitioner's to await the RTC's ruling on her motion to quash, and her direct resort to this Court violates the principle of hierarchy of courts. Other than the personality of the accused in the criminal case, nothing is exceptional in the instant case that warrants relaxation of the principle of hierarchy of courts. I am of the view that the instant case is an opportune time for the Court to implement strict adherence to the principle of hierarchy of courts, if only to temper the trend in the behaviour of litigants in having their applications for the so-called extraordinary writs and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.

4. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; PERSONAL DETERMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST REQUIRES A PERSONAL REVIEW OF THE RECOMMENDATION OF THE INVESTIGATING PROSECUTOR TO SEE TO IT THAT THE SAME IS SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— Undisputably, before the RTC judge issues a warrant of arrest under Section 6, Rule 112 of the Rules of Court, in relation to Section 2, Article III of the 1987 Constitution, the judge must make a personal determination of the existence or non-existence of probable cause for the arrest of the accused. The duty to make such determination is personal and exclusive to the issuing judge. He cannot abdicate his duty and rely on the certification of the investigating prosecutor that he had conducted a preliminary investigation in accordance with law and the Rules of Court. Personal determination of

probable cause for the issuance of a warrant of arrest, as jurisprudence teaches, requires a personal review of the recommendation of the investigating prosecutor to see to it **that the same is supported by substantial evidence**. The judge should consider not only the report of the investigating prosecutor but also the affidavits and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information. In this case, the fact that respondent judge relied on the "*Information and all the evidence during the preliminary investigation*", as stated in the February 27, 2017 Order, does not invalidate the resultant warrant of arrest just because they are not exactly the same as the documents mentioned in Section 6 of Rule 112, *viz*: prosecutor's resolution and its supporting documents.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BY VIRTUE OF A SPECIAL GRANT OF JURISDICTION UNDER R.A. 9165, DRUG CASES SHOULD BE TRIED BY THE REGIONAL TRIAL COURT, DESPITE THE INVOLVEMENT OF A HIGH-RANKING PUBLIC OFFICIAL; RATIONALE.— Conspiracy to commit illegal trading under Section 5, in relation to Section 3(jj), Section 26 (b) and Section 28 of Republic Act (R.A.) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002" is within the jurisdiction of the RTC. This is plain from the text of the first paragraph of Section 90 of R.A. No. 9165, x x x [T]he specific grant of authority to RTCs to try violations of the Comprehensive Dangerous Drugs Act is categorical. Section 90 thereof explicitly provides that, "*The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to* ***exclusively try and hear cases*** *involving violations of this Act.*" By virtue of such special grant of jurisdiction, drugs cases, such as the instant case, despite the involvement of a high-ranking public official, should be tried by the RTC. The broad authority granted to the Sandiganbayan cannot be deemed to supersede the clear intent of Congress to grant RTCs exclusive authority to try drug-related offenses. The Sandiganbayan Law is a general law encompassing various offenses committed by high-ranking officials, while R.A. No

9165 is a special law specifically dealing with drug-related offenses. A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all. Neither does the amendment in the Sandiganbayan Law, introduced in 2015, through R.A. No. 10660, affect the special authority granted to RTCs under R.A. No. 9165. It is a well-settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law. *Generalia specialibus non derogant* (a general law does not nullify a specific or special law).

6. ID.; ID.; CONSPIRACY TO COMMIT ILLEGAL TRADING; MERE CONSPIRACY TO COMMIT ILLEGAL DRUG TRADING IS PUNISHABLE IN ITSELF; ELEMENTS.— Under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition. In this case, mere conspiracy to commit illegal drug trading is punishable in itself. This is clear from Section 26 of R.A. No. 9165, x x x When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. x x x [I]n order to prosecute the offense of conspiracy to commit illegal trading, only the following elements are necessary: 1. that two or more persons come to an agreement; 2. the agreement is to commit drug trading, as defined in R.A. No. 9165, which refers to *any transaction involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, email, mobile*

or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration. 3. That the offenders decide to commit the offense.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE DETERMINATION OF PROBABLE CAUSE DURING PRELIMINARY INVESTIGATION OR REINVESTIGATION IS RECOGNIZED AS AN EXECUTIVE FUNCTION EXCLUSIVELY OF THE PROSECUTOR, THUS, COURTS MUST RESPECT THE EXERCISE OF SUCH DISCRETION WHEN THE INFORMATION FILED AGAINST THE ACCUSED IS VALID ON ITS FACE, AND NO MANIFEST ERROR, GRAVE ABUSE OF DISCRETION OR PREJUDICE CAN BE IMPUTED TO THE PUBLIC PROSECUTOR.— The court's review of the executive's determination of probable cause during preliminary investigation is not broad and absolute. The determination of probable cause during a preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor. In our criminal justice system, the public prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. **Courts must respect the exercise of such discretion when the information filed against the accused is valid on its face, and no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor.** In this case, the fact that the primary basis of the Information was the testimonies of convicts in the National Bilibid Prison does not, of itself, indicate grave abuse of discretion, nor negate the existence of probable cause. Considering that the illegal trading was alleged to have been committed in the country's main penal institution, as well as the peculiar nature of the crime alleged to have been committed, the logical source of information as to the system and process of illegal trading, other than petitioner and her co-accused, are the prisoners thereof, who purportedly participated and benefitted from the scheme. x x x Verily, the credibility and weight of the testimonies of the convicts are matters which are properly subject to the evaluation of the judge during trial of the instant case. For the purpose of determining whether the petitioner should be charged with Conspiracy to Commit Illegal Drug Trading, the statements of the witnesses, as discussed in the

majority opinion, suffice. Further, whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information. Hence, it is not incumbent upon this Court to rule thereon, otherwise, this Court might as well sit as a trier of facts.

PERLAS-BERNABE, *J.*, *separate concurring and dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG TRADING; TRADING MAY BE CONSIDERED EITHER AS (1) AN ACT OF ENGAGING IN A TRANSACTION INVOLVING ILLEGAL TRAFFICKING OF DANGEROUS DRUGS USING ELECTRONIC DEVICES; OR (2) ACTING AS BROKER IN ANY OF SAID TRANSACTIONS; ELUCIDATED.— Illegal Drug Trading is penalized under Section 5, Article II of RA 9165, x x x Although the said crime is punished under the same statutory provision together with the more commonly known crime of Illegal Sale of Dangerous Drugs, it is incorrect to suppose that their elements are the same. This is because the concept of "trading" is considered by the same statute as a distinct act from "selling." Section 3 (jj), Article I of RA 9165 defines "trading" x x x Based on its textual definition, it may be gleaned that "trading" may be considered either as (**1**) an act of engaging in a transaction involving **illegal trafficking** of dangerous drugs ***using electronic devices***; or (2) acting as a ***broker*** in any of said transactions. x x x Accordingly, it is much broader than the act of "selling," which is defined under Section 3 (ii), Article I x x x However, in order to be considered as a form of trading under the first act, it is essential that the mode of illegal trafficking must be done through the use of an electronic device. Meanwhile, in its second sense, trading is considered as the act of brokering transactions involving illegal trafficking. x x x Essentially, a broker is a middleman whose occupation is to only bring parties together to bargain *or* bargain for them in matters of trade or commerce. He negotiates contracts relative to property with the custody of which he has no concern. In this sense, the act of brokering is therefore clearly separate and distinct from the transaction being brokered. As such, it

may be concluded that brokering is already extant regardless of the perfection or consummation of the ensuing transaction between the parties put together by the broker. As applied to this case, it is then my view that when a person brings parties together in transactions involving the various modes of illegal trafficking, then he or she may already be considered to be engaged in Illegal Drug Trading per Section 3 (jj), Article I of RA 9165. In this regard, he or she need not be a party to the brokered transaction.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; IF THE INFORMATION ALLEGES THE CLOSE RELATION BETWEEN THE OFFENSE CHARGED AND THE OFFICE OF THE ACCUSED, THE CASE FALLS WITHIN THE JURISDICTION OF THE SANDIGANBAYAN. — Case law holds that "as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, **there being no personal motive to commit the crime and had the accused would not have committed it had he not held the aforesaid office**, the accused is held to have been indicted for 'an offense committed in relation' to his office." In *Crisostomo v. Sandiganbayan* (*Crisostomo*), this Court illumined that "**a public officer commits an offense in relation to his office if he perpetrates the offense while performing, though in an improper or irregular manner, his official functions and he cannot commit the offense without holding his public office**. In such a case, there is an intimate connection between the offense and the office of the accused. **If the information alleges the close connection between the offense charged and the office of the accused, the case falls within the jurisdiction of the Sandiganbayan.**"

3. ID.; ID.; ID.; SANDIGANBAYAN; IT IS NOT NECESSARY FOR PUBLIC OFFICE TO BE A CONSTITUENT ELEMENT OF A PARTICULAR OFFENSE FOR THE CASE TO FALL WITHIN THE JURISDICTION OF THE SANDIGANBAYAN AS LONG AS THERE IS AN INTIMATE CONNECTION BETWEEEN THE SAID OFFENSE AND THE ACCUSED'S PUBLIC OFFICE; CASE AT BAR.— Presidential Decree No. (PD) 1606, [As amended,] is clear as to the composition of the original jurisdiction of the *Sandiganbayan*. Under **Section**

4 (a), the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the *Sandiganbayan* to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. Those that are classified as Grade 26 and below may still fall within the jurisdiction of the *Sandiganbayan* provided that they hold the positions thus enumerated by the same law. x x x **In connection therewith, Section 4 (b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the *Sandiganbayan***." In *People v. Sandiganbayan*, this Court distinguished that "[i]n the offenses involved in Section 4 (a), it is not disputed that public office is essential as an element of the said offenses themselves, **while in those offenses and felonies involved in Section 4 (b), it is enough that the said offenses and felonies were committed in relation to the public officials or employees' office**." Hence, it is not necessary for public office to be a constituent element of a particular offense for the case to fall within the jurisdiction of the *Sandiganbayan*, for as long as an intimate connection exists between the said offense and the accused's public office. x x x [I]ndeed, it cannot be denied that petitioner could not have committed the offense of Illegal Drug Trading as charged without her office as DOJ Sectretary. **Her alleged complicity in the entire drug conspiracy hinges on no other than her supposed authority to provide high-profile inmates in the NBP protections and/or special concessions which enabled them to carry out illegal drug trading inside the national penitentiary**. x x x Tested against the standards set by jurisprudence, petitioner evidently stands charged of an offense which she allegedly committed in relation to her office.

4. ID.; ID.; ID.; ID.; ID.; THE CONFERMENT OF SPECIAL JURISDICTION TO DESIGNATED DRUG COURTS SHOULD YIELD WHEN THERE IS A MORE SPECIAL PROVISION OF LAW THAT WOULD APPLY TO MORE PECULIAR SITUATIONS; ELUCIDATED.— It is the

position of the OSG that only the RTCs have jurisdiction over drug cases regardless of the position and circumstances of the accused public officer. As basis, it mainly cites Sections 28 and 90 of RA 9165: x x x Section 28, however, only provides for the penalties against a government official found guilty of the unlawful acts provided in RA 9165. As it only relates to the imposition of penalties, Section 28 has nothing to do with the authority of the courts to acquire jurisdiction over drugs cases. x x x More apt to the issue of jurisdiction, however, is Section 90 of RA 9165 as also cited by the OSG. Section 90 states that specially designated courts among the existing RTCs are empowered "to exclusively try and hear cases involving violations of this Act", *i.e.*, RA 9165. Thus, as a general rule, these designated drug courts have exclusive jurisdiction to take cognizance of drugs cases. **The conferment of special jurisdiction to these drug courts should, however, yield when there is a more special provision of law that would apply to more peculiar situations.** Our legal system subscribes to "[t]he principle of *lex specialis derogat generali* — general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail." In this case, it is my view that PD 1606, as amended, is the more special provision of law which should prevail over Section 90 of RA 9165. Petitioner's case does not only pertain to a regular violation of the Dangerous Drugs Act, which falls under the jurisdiction of the RTCs acting as special drugs courts. **Rather, it is a dangerous drugs case that is alleged to have been particularly committed by a public official with a salary grade higher than 27, in relation to her office.** This unique circumstance therefore relegates Section 90 as the general provision of law that should therefore give way to the application of Section 4 of PD 1606, as amended.

5. ID.; ID.; ID.; IT IS WELL-SETTLED THAT A COURT WHICH HAS NO JURISDICTION OVER THE SUBJECT MATTER HAS NO CHOICE BUT TO DISMISS THE CASE.— It is well-settled that a court which has no jurisdiction over the subject matter has no choice but to dismiss the case. Also, whenever it becomes apparent to a reviewing court that

jurisdiction over the subject matter is lacking, then it ought to dismiss the case, as all proceedings thereto are null and void. Case law states that: Jurisdiction over subject matter is essential in the sense that erroneous assumption thereof may put at naught whatever proceedings the court might have had. Hence, even on appeal, and even if the parties do not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. It is elementary that jurisdiction is vested by law and cannot be conferred or waived by the parties or even by the judge. It is also irrefutable that a court may at any stage of the proceedings dismiss the case for want of jurisdiction.

SERENO, *C.J., dissenting opinion*:

1. REMEDIAL LAW; REPUBLIC ACT NO. 8249 (AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, ETC.); IT IS THE INTENTION OF CONGRESS TO FOCUS THE EXPERTISE OF THE SANDIGANBAYAN NOT ONLY ON HIGH-RANKING PUBLIC OFFICIALS, BUT ALSO ON HIGH-PROFILE CRIMES COMMITTED IN RELATION TO PUBLIC OFFICE.—In *Lacson v. Executive Secretary*, the requisites for a case to fall under the exclusive original jurisdiction of the Sandiganbayan under R.A. 8249 were enumerated as follows: 1. The offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act); (b) R.A. 1379 (the law on ill-gotten wealth); (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery); (d) E.O. 1, 2, 14, and 14-A, issued in 1986; or (e) some other offense or felony whether simple or complexed with other crimes. 2. The offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of Section 4. 3. The offense is committed in relation to office.x xx Indeed, the jurisdiction of the Sandiganbayan contemplates not only an offense against the people, as in an ordinary crime, but an offense against the people committed precisely by their very defenders or representatives. It involves an additional dimension – abuse of power - considered over and above all the other elements of the offense or felony committed. The delineation of public officials who fall within the original and exclusive jurisdiction

of the Sandiganbayan indicates the intention to focus on high-ranking officials, x xxIn *Serana v. Sandiganbayan*, this Court clarified that while the first part of Section 4(a) covers only officials classified as Grade '27' and higher, its second part specifically includes other executive officials whose positions may not fall under that classification, but who are by express provision of the law placed under the jurisdiction of the anti-graft court. Therefore, more than the salary level, the focus of the Sandiganbayan's jurisdiction and expertise is on the nature of the position held by the public officer. To put it simply, public officials whose ranks place them in a position of marked power, influence, and authority are within the exclusive original jurisdiction of the Sandiganbayan. While all government employees are public officers as defined by law, those with Grade '27' and higher and other officials enumerated are recognized as holding more concentrated amounts of power that enable them to commit crimes in a manner that lower-ranked public officers cannot. As clearly explained by this Court in *Rodrigo v. Sandiganbayan*, the delineation of the jurisdiction of the Sandiganbayan in this manner frees it from the task of trying cases involving lower-ranking government officials and allows it to focus its efforts on the trial of those who occupy higher positions in government. x xx It is the intention of Congress to focus the expertise of the Sandiganbayan not only on high-ranking public officials, but also on high--profile crimes committed in relation to public office. At the outset, the fact that the crime was committed by a high-ranking public official as defined by the Sandiganbayan law makes it a high-profile crime in itself. However, the most succinct display of the legislative intention is the recent passage of R.A. 10660, which transfers so-called minor cases to the regional trial courts. These minor cases refer to those in which the Information does not allege any damage to the government or any bribery, or alleges damage to the government or bribery in an amount not exceeding one million pesos.

2. ID.; CRIMINAL PROCEDURE; JURISDICTION; DOCTRINE OF HIERARCHY OF COURTS; WHILE IT IS CONCEDED THAT THE COURT MUST ENJOIN THE OBSERVANCE OF THE HIERARCHY OF COURTS, IT IS LIKEWISE ACKNOWLEDGED THAT THIS POLICY IS NOT INFLEXIBLE IN LIGHT OF SEVERAL WELL–ESTABLISHED EXCEPTIONS THAT ARE PRESENT IN

CASE AT BAR.—While it is conceded that the Court must enjoin the observance of the hierarchy of courts, it is likewise acknowledged that this policy is not inflexible in light of several well-established exceptions. *The Diocese of Bacolod v. Commission on Elections* enumerates and explains the different exceptions that justify a direct resort to this Court as follows:*First*, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. x xx**A *second* exception is when the issues involved are of transcendental importance. x xx*Third*, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. x xx*Eighth*, the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice**, or the *orders complained of were found to be patent nullities*, **or the appeal was considered as clearly an inappropriate remedy**." x xx The instant petition presents several exceptions to the doctrine of hierarchy of courts, which justifies the direct resort to this Court. The issue involved is one of transcendental importance. There is an urgent necessity to resolve the question of whether it is the DOJ or the Ombudsman that should investigate offenses defined and penalized under R.A. 9165 in view of the government's declared platform to fight illegal drugs. This avowed fight has predictably led to a spike in drug-related cases brought before the courts involving public officers. The President has already identified a large number of public officers allegedly involved in the drug trade. Our investigating and prosecutorial bodies must not be left to guess at the extent of their mandate. As shown above, the offense charged falls under the jurisdiction of the Sandiganbayan, because it was allegedly committed by petitioner in relation to her public office as Secretary of Justice, which is classified as Grade '27' or higher. Lastly, as the issue raised affects public welfare and policy, its resolution is ultimately demanded by the broader interest of justice. The difficulties in reading the various statutes in light of the 84,908 pending drug-related cases that are foreseen to sharply increase even more in the near future demands a clarification of the parameters of jurisdiction that will guide the DOJ, the Ombudsman, the Sandiganbayan, and the lower courts in

addressing these cases. This clarification will lead to a speedy and proper administration of justice.

3. ID.; ID.; ID.; ID.; REQUISITES WHEN A COURT ACQUIRES JURISDICTION TO TRY A CRIMINAL CASE, ENUMERATED; CONSIDERING THAT THE WARRANT OF ARREST HAS ALREADY BEEN IMPLEMENTED AND THAT PETITIONER HAS ALREADY BEEN BROUGHT INTO CUSTODY, THE PETITION FOR CERTIORARI BEFORE THE SUPREME COURT IS NOT ENTIRELY PREMATURE.—In the petition before us, petitioner is assailing the RTC's acquisition of jurisdiction to try the charge against her on two fronts. In assailing the trial court's finding of probable cause for the issuance of a warrant of arrest and the resulting issuance thereof, she is questioning the validity of the grounds on which she was brought before the RTC for trial. In insisting that the trial court resolve her motion to quash, she is saying that its resolution thereof will lead it to the conclusion that the offense with which she is charged is not one that it is authorized by law to take cognizance of. Considering that the warrant of arrest has already been implemented and that she has already been brought into custody, it cannot be said that the instant petition is entirely premature. Her alleged "**unmistakable admission that the RTC has yet to rule on her Motion to Quash and the existence of the RTC's authority to rule on the said motion**"relates to only one of the aspects of the trial court's assailed jurisdiction. As regards the alleged failure of petitioner to move for reconsideration of the Orders dated 23 February 2017 and 24 February 2017 before filing the instant petition for certiorari, it is my opinion that her situation falls under the recognized exceptions. x xxIn that case, we recognized that the resolution of the question raised was of urgent necessity, considering its implications on similar cases filed and pending before the Sandiganbayan. In this case, the primordial interest, which is the observance of the rule of law and the proper administration of justice, requires this Court to settle once and for all the question of jurisdiction over public officers accused of violations of R.A. 9165.

CARPIO, *J.*; *dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG TRADE; WITHOUT THE IDENTITIES OF THE SELLER AND BUYER, AND WITHOUT AN ALLEGATION ON THE KIND AND QUANTITY OF THE DRUGS AND THE CONSIDERATION OF THE SALE, AS WELL AS THE DELIVERY OF THE OBJECT OF THE SALE AND THE PAYMENT, THERE IS NO SALE OR TRADE OF DANGEROUS DRUGS THAT CAN BE ESTABLISHED DURING TRIAL.— [T]he Information in Criminal Case No. 17-165, as filed against petitioner, clearly and egregiously does not specify any of the essential elements necessary to prosecute the crime of illegal sale of drugs under Section 5, or of illegal trade of drugs under Section 5 in relation to Section 3(jj). **Indisputably, the Information does not identify the buyer, the seller, the object, or the consideration of the illegal sale or trade. The Information also does not make any allegation of delivery of the drugs illegally sold or traded nor of their payment. The Information does not state the kind and quantity of the drugs subject of the illegal sale or trade.**Without these essential elements alleged in the Information, the actual sale or trade of dangerous drugs can never be established. For without the identities of the seller and buyer, and without an allegation on the kind and quantity of the drugs and the consideration of the sale, as well as the delivery of the object of the sale and the payment, there is no sale or trade of dangerous drugs that can be established during the trial. As this Court has repeatedly held:x xx. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.**In illegal sale of drugs, the *corpus delicti* is "**the actual sale**" of the dangerous drugs, which must be alleged in the Information. This can be done only if the Information alleges the identities of the seller and buyer, the kind and quantity of the drugs which constitute the object of the sale, the consideration, the delivery of the dangerous drugs and the payment.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; FAILURE TO

ALLEGE ANY OF THE ESSENTIAL ELEMENTS OF THE OFFENSE INVARIABLY MEANS THAT PROBABLE CAUSE CANNOT BE DETERMINED ON THE BASIS OF THE INFORMATION, BOTH IN THE COMMISSION OF THE OFFENSE AND AS TO THE ISSUANCE OF THE WARRANT OF ARREST; CASE AT BAR.— Failure to allege any of the essential elements of the offense invariably means that probable cause cannot be determined on the basis of the Information, both as to the commission of the offense and as to the issuance of the warrant of arrest. x xx Clearly, it is impossible for the presiding judge to determine the existence of probable cause for the issuance of a warrant of arrest where the Information does not allege any of the essential elements of the offense. Under Section 5 of Rule 112 of the Revised Rules of Criminal Procedure, the Regional Trial Court judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. As held in *People v. Sandiganbayan*, "[t]he absence of probable cause for the issuance of a warrant of arrest is not a ground for the quashal of the Information but is a ground for the dismissal of the case." Here, the present Information against petitioner does **not** allege any of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs. In short, the Information does not charge the offense of illegal sale or illegal trade of drugs. Ineluctably, the present Information against petitioner is patently **void** to charge petitioner of illegal sale or illegal trade of dangerous drugs. The trial court's only recourse is to dismiss the Information with respect to the charge of trade of dangerous drugs.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THE ESSENTIAL ELEMENTS OF "ILLEGAL SALE" OF DRUGS ARE THE SAME AS THE ESSENTIAL ELEMENTS OF "ILLEGAL TRADE" AND "ILLEGAL TRAFFICKING" OF DRUGS; THE USE OF ELECTRONIC DEVICES DOES NOT CREATE A SEPARATE CRIME OR EVEN QUALIFY THE CRIME OF ILLEGAL SALE OF DRUGS.—**Section 3(jj) does not penalize "illegal trade" of drugs; it is Section 5 that penalizes "illegal trade" of drugs. Section 3(jj) has the same status as the other terms defined in Section 3 - they are mere definitions and do not prescribe the essential elements of an act that constitutes a crime to which

a penalty is attached by law for the commission of such act. No person can be charged and convicted for violating a term defined in Section 3 separate and distinct from the provision of law prescribing the essential elements of the offense and penalizing such offense. Clearly, the essential elements of "illegal sale" of drugs are the same as the essential elements of "illegal trade" x xx[N]o person can be charged and convicted for violating a definition in the law separate and distinct from the provision of law prescribing the essential elements of the crime and its penalty. x xx*Nullumcrimen sine lege.* No crime without a law. To repeat, there is no provision in R.A. No. 9165 defining and penalizing the circumstance of "use of electronic devices" in the sale or trade of dangerous drugs as a separate and distinct offense from Section 5. **To charge petitioner, as the *ponencia* does, under Section 3(jj) for "illegal trade," *separate and distinct from the offense under Section 5*, is to charge petitioner with a non-existent crime.** Section 3(jj) merely defines the "trading" of dangerous drugs. x x x **Thus, the Information charging the accused of "illegal trade" must allege all the essential elements of the offense of "illegal sale,"** and if the prosecution wants to be more specific, the Information can also allege the circumstance that there was "use of electronic devices" to facilitate the illegal sale. The absence of an allegation of "use of electronic devices" will not take the offense out of Section 5. The circumstance of "use of electronic devices" is not an essential element of the crime under Section 5. **There is also no provision whatsoever in R.A. No. 9165 that makes this circumstance a separate crime or qualifies the crime of illegal sale under Section 5.**

4. ID.; ID.; ID.; CONSPIRACY; IN CONSPIRACY TO ILLEGALLY SELL OR ILLEGALLY TRADE DANGEROUS DRUGS, THE IDENTITY OF THE ACTUAL SELLERS OR TRADERS MUST NOT ONLY BE ALLEGED IN THE INFORMATION, BUT SUCH SELLERS OR TRADERS MUST ALSO BE CHARGED IN THE INFORMATION; RATIONALE.— Certainly, an allegation of conspiracy in the Information does not do away with the constitutional requirement that the accused must be "informed of the nature and cause of the accusation" against her. The fundamental requirement that the Information must allege each and every essential element of the offense charged applies whether or not there is a charge of conspiracy. x xxIn

the present case, petitioner cannot be held liable for conspiracy in the illegal sale or illegal trade of dangerous drugs where none of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs is alleged in the Information. Besides, the Information does not even allege that petitioner **actually participated in the commission of acts constituting illegal sale or illegal trade of dangerous drugs** to make her liable as a co-principal and co-conspirator. Petitioner's alleged co-conspirators and co-principals who actually conducted and performed the illegal sale or illegal trade of dangerous drugs are not even charged as John Does or Jane Does in the Information. Without the inclusion in the Information of the co-principals and co-conspirators who allegedly actually conducted and performed the illegal sale or illegal trade of dangerous drugs, petitioner cannot be charged with conspiracy. In conspiracy to illegally sell or illegally trade dangerous drugs, the identity of the actual sellers or traders must not only be alleged in the Information, but such actual sellers or traders must also be charged in the Information, either by name or as John Does or Jane Does. Without an actual seller or trader of the dangerous drugs identified in the Information, the petitioner cannot properly prepare for her defense.

5. ID.; REVISED PENAL CODE; DIRECT BRIBERY; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of direct bribery are: 1. The offender is a public officer; 2. The offender accepts an offer or a promise or receives a gift or present by himself or through another; 3. Such offer or promise is accepted, or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an unjust act which does not constitute a crime, or to refrain from doing something which is his official duty to do; and 4. The act which the offender agrees to perform or which he executes is connected to the performance of his official duties.The Information stated that: (1) The accused petitioner was the DOJ Secretary and the Officer-in-Charge of the Bureau of Corrections at the time of the alleged crime; (2) Petitioner demanded, solicited and extorted money from the high profile inmates; (3) Petitioner took advantage of her public office and used her power, position and authority to solicit money from the high profile inmates; (4) Petitioner received more than ₱10,000,000 (ten million pesos) from the high profile inmates; (5) "By reason of which" – referring to the payment of extortion

money, the unnamed inmates were able to unlawfully trade in drugs. Thus, based on the allegations in the Information, the crime allegedly committed is direct bribery and not illegal sale or illegal trade of drugs.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; AMENDMENT OF INFORMATION; A DEFECTIVE INFORMATION CAN BE CURED IF IT ALLEGES SOME, BUT NOT ALL, OF THE ESSENTIAL ELEMENTS OF THE OFFENSE, HOWEVER, IF THE INFORMATION DOES NOT ALLEGE ANY OF THE ESSENTIAL ELEMENTS AT ALL, THE INFORMATION IS VOID *AB INITIO* AND NOT MERELY DEFECTIVE.— The trial court can only order the prosecution to amend the Information as provided under Section 4 of Rule 117 if the trial court finds that there is a defect in the Information which "**can be cured by amendment**." An amendment of the Information to vest jurisdiction upon a court is not allowed. x xx*Dio v. People* allowed the correction of the defect in the Information of failure to allege venue. In the present case, however, the defect lies in the failure to allege even at least one of the elements of the crime. There was no allegation of any element of the crime of illegal trade of dangerous drugs. There was no specified seller, no specified buyer, no specified kind of dangerous drug, no specified quantity of dangerous drugs, no specified consideration, no specified delivery, and no specified payment. All that the Information alleged was the use of cellular phones, which is not even an essential element of the crime of illegal trade of dangerous drugs. If, as in the present case, the Information failed to mention even one element of the alleged crime, then the defect is so patent that it cannot ever be cured. There is complete and utter absence of the essential elements of the crime. Section 4 of Rule 117 allows an amendment of the Information if the defect "**can be cured by amendment**." A defective Information can be cured if it alleges some, but not all, of the essential elements of the offense. However, if the Information does not allege any of the essential elements at all, the Information is void *ab initio* and is not merely defective. x xx An amendment that cures a defective Information is one that supplies a missing element to complete the other essential elements already alleged in the Information. But when none of the other elements is alleged in the Information, there is nothing to complete because not a single essential element is alleged in the Information.

7. ID.; ID.; ID.; THE INFORMATION CHARGING TWO CRIMES, DIRECT BRIBERY AND ILLEGAL TRADE OF DRUGS, IS VOID AND MAY NOT BE AMENDED; CASE AT BAR.— The Court is also precluded from ordering an amendment of the present Information under Section 4 of Rule 117. The amendment under this section applies only when the defect in the Information can be cured by amendment, such as when the facts charged do not constitute any offense at all. **In the present case, the Information already charges an offense, which is direct bribery.** Thus, even if the prosecution specifies the seller, the buyer, the kind of dangerous drugs, the quantity of dangerous drugs, the consideration, the delivery, and the payment, the Information charging illegal trade of drugs would still be void. The Information would be void for **duplicity of offense**, because it would then charge petitioner with two crimes: direct bribery and illegal trade of drugs. Duplicity of offense is prohibited under Rule 110, Section 13 of the Revised Rules of Criminal Procedure, which states that "[a] **complaint or information must charge only one offense**, except when the law prescribes a single punishment for various offenses." There is nothing in our laws which states that there should be a single punishment for the two offenses of direct bribery and illegal trade of drugs.

8. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE AGGRIEVED PARTY MAY FILE THE APPROPRIATE SPECIAL CIVIL ACTION AS PROVIDED BY THE RULES TO ASSAIL AN INTERLOCUTORY ORDER, IN THIS CASE THE WARRANT OF ARREST ISSUED BY THE RESPONDENT JUDGE IS AN INTERLOCUTORY ORDER SINCE IT DOES NOT DISPOSE OF A CASE COMPLETELY BUT LEAVES SOMETHING MORE TO BE DONE, THAT IS, THE DETERMINATION OF GUILT OR INNOCENCE OF THE ACCUSED.— A petition for *certiorari* under this Section as provided in Rule 65 is an **original action** that waits for no final judgment or order of a lower court because what is assailed is the lower court's absence of jurisdiction over the subject matter or its grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner is assailing an error of jurisdiction, not an error of judgment or order. Absence, lack or excess of jurisdiction is the very basis for a petition for certiorari under Rule 65. What the *ponencia* wants is for petitioner, who is being held for a non-bailable offense,

to wait for the final judgment or order of the trial court on the merits of the case before resorting to this Court on the fundamental and purely legal issue of jurisdiction. That obviously would not be a plain, speedy and adequate remedy as petitioner would be detained during the entire duration of the trial of the case. *Certiorari* under Rule 65 is properly available when "there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law." There can be no appeal because there is still no final judgment or order of the RTC. Unless there is resort to *certiorari* under Rule 65, petitioner will continue to be deprived of her liberty for the duration of the trial. The situation of petitioner in this case is precisely why the *certiorari* under Rule 65 was created.**In fact, Section 1 of Rule 41 expressly provides that the "aggrieved party may file an appropriate special civil action as provided in Rule 65" to assail "[a]n interlocutory order" of a regional trial court.** The Warrant of Arrest issued by respondent Judge Guerrero, like a search warrant, is an interlocutory order since it does not dispose of a case completely but leaves something more to be done in the criminal case, that is, the determination of the guilt or innocence of the accused.There can be no prematurity when petitioner assails in the present petition for *certiorari* under Rule 65 that the Warrant of Arrest issued against her was a grave abuse of discretion on the part of Judge Guerrero.

9. ID.; ID.; ID.; ISSUANCE OF A WARRANT OF ARREST DESPITE FAILURE OF THE INFORMATION TO ALLEGE ANY OF THE ESSENTIAL ELEMENTS OF THE OFFENSE CONSTITUTES GRAVE ABUSE OF DISCRETION; CASE AT BAR.— By issuing the Warrant of Arrest, Judge Guerrero found probable cause that petitioner most likely committed the offense of illegal trade of dangerous drugs. This means that Judge Guerrero believed that the Information alleged all the essential elements of the offense charged, her court had jurisdiction over the offense charged, the DOJ Panel had authority to file the Information, and the Information does not charge more than one offense. **In effect, Judge Guerrero already ruled on the merits of petitioner's Motion To Quash.**Thus, Judge Guerrero's issuance of the Warrant of Arrest is an effective denial of petitioner's Motion To Quash. Issuance of the Warrant of Arrest means that the trial court judge accepted the contents of the Information as well as the evidence supporting it, and found probable cause.

However, it is a legal impossibility for the judge to find probable cause when the Information does not allege any of the essential elements of the offense charged. It is an oxymoron to say that the Information does not allege any of the essential elements of the offense charged and yet there is probable cause that the accused committed the offense charged, justifying the issuance of the Warrant of Arrest. Clearly, there was an effective denial of petitioner's Motion To Quash when Judge Guerrero issued the Warrant of Arrest. The rule is that any order of an amendment of a defective Information must be contained in the same order as the denial of the Motion To Quash.Thus, there is no longer any room for the amendment of the Information at Judge Guerrero's level since she already effectively denied the Motion To Quash. x xx As Justice Peralta held in *People v. Pangilinan*, an Information that fails to allege the essential elements of the offense is **void**. A judge who finds probable cause, and issues a warrant of arrest, based on such void Information certainly commits grave abuse of discretion amounting to lack or excess of jurisdiction. **For Judge Guerrero to issue the Warrant of Arrest despite the failure of the Information to allege *any of the essential elements of the offense* is an *extreme case* of grave abuse of discretion that must be struck down by this Court in the appropriate case, and that appropriate case is the present petition for *certiorari* under Rule 65.**

LEONEN, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; JURISDICTION OF THE TRIAL COURT OVER CRIMINAL CASES, EXPLAINED.— Jurisdiction in a criminal case is acquired over the subject matter of the offense, which should be committed within the assigned territorial competence of the trial court. Jurisdiction over the person of the accused, on the other hand, is acquired upon the accused's arrest, apprehension, or voluntary submission to the jurisdiction of the court. Jurisdiction over the offense charged "is and may be conferred *only by law*." It requires an inquiry into the provisions of law under which the offense was committed and an examination of the facts as alleged in the information. An allegation of lack of jurisdiction over the subject matter is primarily a question of law. Lack of jurisdiction may be raised at any stage of the proceedings, even on appeal. Jurisdiction

over a criminal case "is determined by the allegations of the complaint or information," and not necessarily by the designation of the offense in the information.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG TRADING; REGARDLESS OF THE ADDITIONAL ELEMENT, THE FACT REMAINS THAT THE ESSENTIAL ELEMENT IN ALL VIOLATIONS OF REPUBLIC ACT NO. 9165 IS THE DANGEROUS DRUG ITSELF.— In illegal sale of drugs, it is necessary to identify the buyer and the seller, *as well as the dangerous drug involved*. Illegal trading, being a different crime, does not only require the identities of the buyer and seller but also requires the identity of the broker: Regardless of the additional element, the fact remains that the essential element in all violations of Republic Act No. 9165 is the dangerous drug itself. The failure to identify the *corpus delicti* in the Information would render it defective.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; THE SANDIGANBAYAN HAS JURISDICTION OVER ALL OTHER PENAL OFFENSES PROVIDED THAT IT WAS COMMITTED IN RELATION TO THE ACCUSED'S OFFICIAL FUNCTIONS.— The question of whether the amended jurisdiction of the Sandiganbayan included all other offenses was settled in *Lacson v. Executive Secretary*, where this Court stated that **the Sandiganbayan would have jurisdiction over all other penal offenses, "provided it was committed in relation to the accused's official functions,"** x x x The Sandiganbayan's jurisdiction, however, was recently amended in Republic Act No. 10660. x x x Republic Act No. 10660 retained the Sandiganbayan's exclusive original jurisdiction over offenses and felonies committed by public officers in relation to their office. It contained, however, a new proviso: x x x Inversely stated, *Regional Trial Courts do not have exclusive original jurisdiction over offenses where the information alleges damage to the government or bribery, or where the damage to the government or bribery exceeds ₱1,000,000.00*.

4. ID.; ID.; DESIGNATION OF SPECIAL COURTS DOES NOT VEST ORIGINAL JURISDICTION OVER A PARTICULAR SUBJECT MATTER TO THE EXCLUSION OF ANY OTHER COURTS; CASE AT BAR.— Designation of special

courts does not vest exclusive original jurisdiction over a particular subject matter to the exclusion of any other court. It is Congress that has the power to define and prescribe jurisdiction of courts. This power cannot be delegated even to the Supreme Court. x x x Thus, the Congress passed Batas Pambansa Blg. 129, which grants the Regional Trial Courts exclusive original jurisdiction over criminal cases that do not fall under the exclusive concurrent jurisdiction of the Sandiganbayan. The Sandiganbayan has exclusive original jurisdiction over all other offenses committed by public officers in relation to their office. Moreover, Regional Trial Courts may have exclusive original jurisdiction where the Information does not allege damage to the government or bribery, or where damage to the government or bribery does not exceed ₱1,000,000.00. The ponencia's invocation of Section 27 of Republic Act No. 9165 is *non sequitur*. The mention of the phrase "public officer or employee" does not automatically vest exclusive jurisdiction over drugs cases to the Regional Trial Courts. x x x Simply put, ***there is no law which gives the Regional Trial Court exclusive and original jurisdiction over violations of Republic Act No. 9165***. The Sandiganbayan, therefore, is not prohibited from assuming jurisdiction over drug offenses under Republic Act No. 9165. The determination of whether the Sandiganbayan has jurisdiction depends on whether the offense committed is intimately connected to the offender's public office. In *Lacson*, this Court stated that it is the specific factual allegation in the Information that should be controlling in order to determine whether the offense is intimately connected to the discharge of the offender's functions: x x x Even when holding public office is not an essential element of the offense, the offense would still be considered intimately connected to the public officer's functions if it "was perpetrated while they were in the performance, though improper or irregular, of their official functions:"

5. ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; TWO (2) TYPES OF DETERMINATION OF PROBABLE CAUSE; EXECUTIVE DETERMINATION ANSWERS THE QUESTION OF WHETHER THERE IS SUFFICIENT GROUND TO ENGENDER A WELL-FOUNDED BELIEF THAT A CRIME HAS BEEN COMMITTED, AND THE RESPONDENT IS PROBABLY GUILTY, AND SHOULD BE HELD FOR TRIAL, WHILE JUDICIAL DETERMINATION PERTAINS TO THE ISSUE

OF WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT A WARRANT MUST BE ISSUED FOR THE ARREST OF THE ACCUSED, SO AS NOT TO FRUSTRATE THE ENDS OF JUSTICE.— There are two (2) types of determination of probable cause: (i) executive; and (ii) judicial. Executive determination of probable cause answers the question of whether there is "sufficient ground to engender a well-founded belief that a crime has been committed, and the respondent is probably guilty, and should be held for trial." It is determined by the public prosecutor after preliminary investigation when the parties have submitted their affidavits and supporting evidence. If the public prosecutor determines that there is probable cause to believe that a crime was committed, and that it was committed by the respondent, it has the quasi-judicial authority to file a criminal case in court. On the other hand, judicial determination of probable cause pertains to the issue of whether there is probable cause to believe that a warrant must be issued for the arrest of the accused, so as not to frustrate the ends of justice. It is determined by a judge after the filing of the complaint in court. In this instance, the judge must evaluate the evidence showing the facts and circumstances of the case, and place himself or herself in the position of a "reasonably discreet and prudent man [or woman]" to assess whether there is a lawful ground to arrest the accused. There need not be specific facts present in each particular case. But there must be sufficient facts to convince the judge that the person to be arrested is the person who committed the crime. x x x [I]n determining probable cause for the issuance of a warrant of arrest, there are two (2) Constitutional requirements: (i) the judge must make the determination, and (ii) the determination must be personal, after examining under oath or affirmation the complainant and his witnesses. Jurisprudence affirms that the judge alone determines the existence of probable cause for the issuance of a warrant of arrest. x x x The powers granted to the judge are discretionary, but not arbitrary. Verily, there is grave abuse of discretion when the judge fails to personally examine the evidence, refuses to further investigate despite "incredible accounts" of the complainant and the witnesses, and merely relies on the prosecutor's certification that there is probable cause. x x x *Ho v. People* reiterated the rule that the objective of the prosecutor in determining probable cause is different from the objective of the judge. The prosecutor determines

whether there is cause to file an Information against the accused. The judge determines whether there is cause to issue a warrant for his arrest. Considering this difference in the objectives, the judge cannot rely on the findings of the prosecutor, and instead must make his own conclusion. Moreover, while the judge need not conduct a new hearing and look at the entire record of every case all the time, his issuance of the warrant of arrest must be based on his independent judgment of sufficient, supporting documents and evidence.

6. ID.; ID.; ID.; ID.; THE DETERMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST DIFFERS FROM THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE FOR THE FILING OF A CRIMINAL COMPLAINT OR INFORMATION; EXPLAINED.— The determination of the existence of probable cause for the issuance of a warrant of arrest is different from the determination of the existence of probable cause for the filing of a criminal complaint or information. The first is a function of the judge and the latter is a function of the prosecutor. x x x Given this difference, this Court has explicitly ruled that the findings of the prosecutor do not bind the judge. x x x Thus, the determination of probable cause by the judge is not inferior to the public prosecutor. In fact, this power of the judge is constitutionally guaranteed. The Constitution clearly mandates that the judge must make a personal determination of probable cause, and jurisprudence has expounded that it must be made independently from the conclusion of the prosecutor. While the basis of their findings may be the same in that they can consider the same evidences and documents in coming to their conclusions, their conclusions must be separate and independently made. The finding of the public prosecutor may only aid the judge in the latter's personal determination, but it cannot be the basis, let alone be the limitation, of the judge in his finding of the existence or absence of probable cause. x x x The judge's basis for the grant of the arrest warrant depends on whatever is necessary to satisfy him on the existence of probable cause. Thus, what will satisfy the judge on the existence of probable cause will differ per case. The circumstances of the case, the nature of the proceedings, and the weight and sufficiency of the evidence presented, may affect the judge's conclusion.

7. ID.; ID.; MOTION TO QUASH; THE RELIEF SOUGHT BY PETITIONER IN THE QUASHAL OF THE INFORMATION IS RENDERED MOOT ONCE THE TRIAL COURT DETERMINED THAT IT HAD THE COMPETENCE TO ISSUE A WARRANT OF ARREST.— If the trial court grants the Motion to Quash and finds that it had no jurisdiction over the offense charged, the court cannot, as the ponencia states, "simply order that another complaint or information be filed without discharging the accused from custody" under Rule 117, Section 5, unless the order is contained in the same order granting the motion. x x x Thus, if the trial court has no jurisdiction, any subsequent order it issues would be void. It is for this reason that lack of jurisdiction can be raised at any stage of the proceedings, even on appeal. In a criminal case, any subsequent order issued by a court not having jurisdiction over the offense would amount to a harassment suit and would undoubtedly violate the constitutional rights of the accused. x x x Issues raised in previous pleadings but not raised in the memorandum are deemed abandoned. The memorandum, "[b]eing a summation of the parties' previous pleadings . . . alone may be considered by the Court in deciding or resolving the petition." Thus, it is inaccurate for the ponencia to insist that petitioner's prayer in the Petition was "an unmistakable admission that the RTC has yet to rule on her Motion to Quash." Petitioner's Memorandum does not mention the relief cited by the ponencia in her Petition, and thus, should be considered abandoned. Petitioner, therefore, does not admit that the Regional Trial Court must first rule on her Motion to Quash before seeking relief with this Court. In any case, by issuing the Warrant of Arrest, the trial court already acted on the Motion to Quash by assuming jurisdiction over the offense charged. It would have been baffling for the trial court to find probable cause, issue the warrant of arrest, and then subsequently find the Information defective and grant the Motion to Quash. The relief sought by petitioner in the quashal of the Information would have been rendered moot once the trial court determined that it had the competence to issue the Warrant of Arrest.

8. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FORUM SHOPPING; THE RATIONALE FOR THE RULE ON FORUM SHOPPING IS TO PREVENT CONFLICTING DECISIONS BY DIFFERENT TRIBUNALS, HENCE, THERE WOULD BE NO CONFLICTING DECISIONS IF THE SUPREME COURT DECIDES WITH FINALITY

THAT THE TRIAL COURT HAD NO JURISDICTION OVER THE OFFENSE CHARGED IN THE INFORMATION. — There is forum shopping when "there is identity of parties, rights or causes of action, and reliefs sought." This Court, as discussed, is not precluded from entertaining a pure question of law, especially in this instance where the issue is a novel one. The rationale for the rule on forum shopping is to prevent conflicting decisions by different tribunals. There would be no conflicting decisions if this Court decides with finality that the trial court had no jurisdiction over the offense charged in the Information. It would be unjust to allow the trial court to proceed with the hearing of this case if, at some point, this Court finds that it did not have jurisdiction to try it in the first place.

9. ID.; ID.; ID.; VERIFICATION; THE REQUIREMENT OF VERIFICATION IS MERELY FORMAL, NOT JURISDICTIONAL, AND IN PROPER CASES, THIS COURT MAY SIMPLY ORDER THE CORRECTION OF A DEFECTIVE VERIFICATION; CASE AT BAR.— Rule 7, Section 4 of the Rules of Court requires all pleadings to be verified. A pleading which lacks proper verification is treated as an unsigned pleading and shall, thus, be the cause for the dismissal of the case. The requirement of verification is merely formal, not jurisdictional, and in proper cases, this Court may simply order the correction of a defective verification. "Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith." The ponencia insists on an unreasonable reading of the Rules, stating that petitioner's failure to sign the Verification in the presence of the notary invalidated her Verification. x x x No one is questioning petitioner's identification or signature in the Petition. No one alleges that she falsified her signature in the Petition or that the notary public was unauthorized to notarize the Petition. The evil sought to be prevented by the defective verification, therefore, is not present in this case. The ponencia's insistence on its view of strict compliance with the requirements of the *jurat* in the verification is a hollow invocation of an ambiguous procedural ritual bordering on the contrived. Substantial justice should always prevail over procedural niceties without any clear rationale.

10. ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; THE DOCTRINE IS NOT APPLICABLE WHEN THE ISSUE BEFORE THE SUPREME COURT IS A NOVEL ONE; CASE AT BAR.— *Diocese of Bacolod*, however, clarified that the doctrine of hierarchy of courts is not iron-clad. There are recognized exceptions to its application. Thus, in *Aala v. Uy*: Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy. The doctrine of hierarchy of courts does not apply in this case. The issue before this Court is certainly a novel one. This Court has yet to determine with finality whether the regional trial court exercises exclusive jurisdiction over drug offenses by public officers, to the exclusion of the Sandiganbayan. Likewise, the question of jurisdiction pertains to a pure question of law; thus, allowing a direct resort to this Court. Also, a direct resort to this Court is also allowed to "prevent the use of the strong arm of the law in an oppressive and vindictive manner." This Court would be in the best position to resolve the case as it presents exceptional circumstances indicating that it may be "a case of persecution rather than prosecution."

JARDELEZA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; BILL OF RIGHTS; DUE PROCESS; AS APPLIED TO CRIMINAL PROCEEDINGS, DUE PROCESS IS SATISFIED IF THE ACCUSED IS INFORMED AS TO WHY HE IS PROCEEDED AGAINST AND WHAT CHARGE HE HAS TO MEET, WITH HIS CONVICTION BEING MADE TO REST ON EVIDENCE THAT IS NOT TAINTED WITH FALSITY AFTER FULL OPPORTUNITY FOR HIM TO REBUT IT AND THE

SENTENCE BEING IMPOSED IN ACCORDANCE WITH A VALID LAW.— One of the fundamental guarantees of the Constitution is that no person shall be deprived of life, liberty, or property without due process of law. With particular reference to an accused in a criminal prosecution, Section 14(1) of Article III x x x As applied to criminal proceedings, due process is satisfied if the accused is informed as to why he is proceeded against and what charge he has to meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being imposed in accordance with a valid law. x x x For clarity, the criminal due process clause of the Bill of Rights refers to procedural due process. It simply requires that the procedure established by law or the rules be followed. "Criminal due process requires that the accused must be proceeded against under the orderly processes of law. In all criminal cases, the judge should follow the step-by-step procedure required by the Rules. The reason for this is to assure that the State makes no mistake in taking the life or liberty except that of the guilty." It applies from the inception of custodial investigation up to rendition of judgment. The clause presupposes that the penal law being applied satisfies the substantive requirements of due process. In this regard, the procedure for one of the early stages of criminal prosecution, *i.e.*, arrests, searches and seizure, is laid down by the Constitution itself. Article III, Section 2 provides that a search warrant or warrant of arrest shall only be issued upon a judge's personal determination of probable cause after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; WARRANT OF ARREST; THE ISSUANCE OF A WARRANT OF ARREST BY A COURT UPON WHICH AUTHORITY IS VESTED BUT HAVING NO JURISDICTION OVER OFFENSE CHARGED CANNOT BE PREEMPTORILY BE DECLARED AS VOID FOR BEING *ULTRA VIRES*, HOWEVER, SUCH ISSUANCE MAY BE ANNULLED IF IT CONTRAVENES THE RULES BECAUSE THAT WOULD RESULT IN A VIOLATION OF THE ACCUSED'S DUE PROCESS RIGHTS.— An arrest warrant is a preliminary legal process, issued at an initial stage of the criminal procedure,

in which a judge finds probable cause that a person committed a crime and should be bound over for trial. The principal purpose of the warrant procedure laid down by the rules is to satisty the requirements of Article III, Section 2. Its placement in Rule 112 (preliminary investigation) reflects an assumption that the probable cause determination/issuance of arrest warrant precedes the criminal action proper which begins with arraignment. Prior to arraignment, we have held that the specific rights of the accused enumerated under Article III, Section 14(2), as reiterated in Rule 115, do not attach yet because the phrase "criminal prosecutions" in the Bill of Rights refers to proceedings before the trial court from arraignment (Rule 116) to rendition of the judgment (Rule 120). Following Justice Regalado's analysis in *Malaloan*, it may be concluded that the criminal action proper formally begins with arraignment. The distinction between the warrant process and the criminal action leads me to conclude that there is no stand-alone right that criminal jurisdiction be determined prior to the issuance of a warrant of arrest. For one, the Constitution does not textually prescribe such procedure; for another, such statement would not have been universally true, dependent as it is upon prevailing procedural rules. Moreover, since the power to issue a warrant of arrest is conferred by substantive law, such as the Constitution and the Judiciary Reorganization Act, its issuance by a court upon which such authority is vested but having no jurisdiction over offense charged cannot be peremptorily be declared as void for being *ultra vires*. However, the issuance of the warrant may be annulled if it contravenes the Rules because that would result in a violation of the accused's due process rights.

3. ID.; ID.; ID.; THE DETERMINATION OF PROBABLE CAUSE AND RESOLUTION OF THE MOTION TO QUASH ON THE GROUND OF LACK OF JURISDICTION OVER THE OFFENSE CHARGED SHOULD BE MADE BY THE JUDGE SIMULTANEOUSLY WITHIN THE 10-DAY PERIOD AS PRESCRIBED BY THE RULES; CASE AT BAR.— Considering that, under the present Rules, the court where the information is filed cannot proceed to trial if it has no jurisdiction over the offense charged, any delay between the issuance of the warrant of arrest and the resolution of the issue of jurisdiction, regardless of the length of time involved, is *per se* unreasonable. The delay and concomitant prejudice to the accused is avoidable and would serve no other purpose

than to restrain the liberty of the accused for a period longer than necessary. Liberty is "too basic, too transcendental and vital in a republican state, like ours" to be prejudiced by blunders of prosecutors. Society has no interest in the temporary incarceration of an accused if the prosecution's ability proceed with the case in accordance with the processes laid down by the Rules is in serious doubt. The generalized notion of the sovereign power's inherent right to self-preservation must yield to the paramount objective of safeguarding the rights of an accused at all stages of criminal proceedings, and to the interest of orderly procedure adopted for the public good. Indeed, societal interests are better served if the information is filed with the proper court at the first instance. In practical terms, I submit that the determination of probable cause and resolution of the motion to quash on the ground of lack of jurisdiction over the offense charged should be made by the judge simultaneously within the 10-day period prescribed by Rule 112, Section 5(a). In resolving the question of jurisdiction, the judge only needs to consider the allegations on the face of the information and may proceed *ex parte*. As opposed to other grounds for quashal of the information, jurisdiction may easily be verified by looking at the imposable penalty for the offense charged, the place where the offense was committed, and, if the offender is a public officer, his salary grade and whether the crime was alleged to have been committed in relation to his office. If the motion to quash filed by the accused raises grounds other than lack of jurisdiction over the offense charged, then the court may defer resolution of these other grounds at any time before arraignment. This procedure in no way impinges the right of the State to prosecute because the quashal of the information is not a bar to another prosecution for the same offense.

CAGUIOA, *J.*, *dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL DRUG TRADING; IN THIS JURISDICTION, CONSPIRACY EMBRACES EITHER ONE OF TWO FORMS — AS A CRIME BY ITSELF OR AS A MEANS TO COMMIT A CRIME; DISTINGUISHED.— [T]he gravamen of conspiracy as a distinct crime is the agreement itself. In this jurisdiction, conspiracy embraces either one of

two forms — as a crime by itself or as a means to commit a crime. In the first instance, the mere act of agreeing to commit a crime and deciding to commit it is already punishable, but only in cases where the law specifically penalizes such act and provides a penalty therefor. In the latter instance, conspiracy assumes importance only with respect to determining the liability of the perpetrators charged with the crime. Under this mode, once conspiracy is proved, then all the conspirators will be made liable as co-principals regardless of the extent and character of their participation in the commission of the crime: "the act of one is the act of all." Here, the Information clearly charges Petitioner with illegal drug "trading" *per se* under Section 5 of RA 9165, and **not** for conspiracy to commit the same under Section 26(b). While the phrase "conspiring and confederating" appears in the Information, such phrase is, as explained above, used merely to describe the means or the mode of committing the consummated offense so as to ascribe liability to all the accused as co-principals. x x x By constitutional mandate, a person who stands charged with a criminal offense has the right to be informed of the nature and cause of the accusation against him. As a necessary adjunct of the right to be presumed innocent and to due process, the right to be informed was enshrined to aid the accused in the intelligent and effective preparation of his defense. In the implementation of such right, trial courts are authorized under the Rules of Court to dismiss an Information upon motion of the accused, should it be determined that, *inter alia*, such Information is defective for being in contravention of the said right.

2. ID.; ID.; ID.; THE INFORMATION IS FATALLY DEFECTIVE WHEN IT DOES NOT ALLEGE THE SPECIFIC ACTS COMMITTED TO CONSTITUTE "ILLEGAL TRADING" OR "ILLEGAL TRAFFICKING" OF DANGEROUS DRUGS AS DEFINED BY LAW; CASE AT BAR.— While the Information employs the terms "drug trading" and "trade and traffic dangerous drugs," **it does not, however, contain a recital of the facts constituting the illegal "trade" or "traffic" of dangerous drugs**. Since "trading" and "illegal trafficking" are defined terms under RA 9165, their use in the Information will carry with them their respective definitions. Viewed in the foregoing light, the Information is ***fatally defective*** because it does not allege the specific acts

committed by Petitioner that constitute illegal "trading" or "illegal trafficking" of dangerous drugs as defined in Section 3(jj) and Section 3(r) of the Act. Rather, it relies only on conclusionary phrases of "drug trading" and "trade and traffic of dangerous drugs." x x x Without doubt, the Information did not mention if Petitioner cultivated, cultured, delivered, administered, dispensed, manufactured, sold, transported, distributed, imported, exported, possessed or brokered in any transaction involving the illegal trafficking of any dangerous drug. Accordingly, while the word "trading" is attributed to Petitioner in the Information, ***the essential acts committed by Petitioner from which it can be discerned that she did in fact commit illegal "trading" of dangerous drugs as defined in RA 9165 are not alleged therein***. Since the Information does not mention the constitutive acts of Petitioner which would translate to a specific drug trafficking transaction or unlawful act pursuant to Section 3(r), then it is fatally defective on its face. Thus, it was improvident for the respondent Judge to issue a warrant of arrest against Petitioner.

3. **ID.; ID.; ID.; WHILE IT MAY BE TRUE THAT A PERSON ACCUSED OF ILLEGAL "TRADING" BY ACTING AS A BROKER NEED NOT GET HIS HANDS ON THE SUBSTANCE OR KNOW THE MEETING OF THE SELLER AND THE BUYER, STILL, THE TRANSACTION THAT HE PURPORTEDLY BROKERED SHOULD BE ALLEGED IN THE INFORMATION FOR THE LATTER TO BE VALID, AND THEREAFTER PROVED BEYOND REASONABLE DOUBT, FOR THE ACCUSED TO BE CONVICTED; NOT PRESENT IN CASE AT BAR.—** The *ponencia*, while it enumerates the purported two modes of committing illegal trading: (1) illegal trafficking using electronic devices; and (2) acting as a broker in any transaction involved in the illegal trafficking of dangerous drugs, and as it correctly points out that the crime of illegal trading has been written in strokes much broader than that for illegal sale of dangerous drugs, **still conveniently avoids specifying and enumerating the elements of illegal trading**. x x x As to the purported first mode of committing illegal trading, the Information is thus void as it fails to identify the illegal trafficking transaction involved in this case, and fails to sufficiently allege the factual elements thereof. As to the purported second mode — acting as a broker in any transactions involved in the illegal trafficking of dangerous drugs — this requires the **existence** of an illegal trafficking

transaction. Without a **predicate transaction**, an individual cannot be accused of acting as its broker. While it may be true that a person accused of illegal "trading" by acting as a broker need not get his hands on the substance or know the meeting of the seller and the buyer, **still, the transaction that he purportedly brokered should be alleged in the Information for the latter to be valid, and thereafter proved beyond reasonable doubt, for the accused to be convicted. The seller and the buyer or the persons the broker put together must be identified. If he brokered an illegal sale of dangerous drugs, then the identities of the buyer, seller, the object and consideration are essential**. x x x In fine, while the *ponencia* indulges in hypotheticals as to what transactions can or cannot be covered by "illegal trading" by "brokering," it fails miserably to identify the elements of "illegal trading" committed by acting as a broker. There is nothing in the Information against Petitioner from which it can reasonably be inferred that she acted as a broker in an illegal trafficking of dangerous drugs transaction — the Information does not even identify the seller/s and buyer/s of dangerous drugs that Petitioner supposedly brought together through her efforts. If Petitioner was supposedly the broker, then who were the NBP high-profile inmates supposed to be? Sellers? Buyers? Likewise, the Information is dead silent on the specific dangerous drugs consisting of the object of the transaction.

4. ID.; ID.; ID.; ELEMENTS OF ILLEGAL TRADE OR TRADING OF DANGEROUS DRUGS, ENUMERATED; WITHOUT THE AVERMENT OF THE *CORPUS DELICTI*, THE INFORMATION IS DEFICIENT BECAUSE AN ELEMENT OF THE OFFENSE IS MISSING; CASE AT BAR.— Well-entrenched is the rule that for the prosecution of illegal sale of drugs, the following elements must be proved: (1) the identity of the buyer and seller, the object and the consideration; and (2) the delivery of the thing sold and its payment. Bearing in mind these elements, the elements of illegal trade or trading of dangerous drugs are thus: (1) the identity of the trader or merchant and purchaser or customer, the object and the consideration (money or other consideration per Section 3[jj]); (2) delivery of the thing traded and its consideration; and (3) the use of electronic devices such as text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms to facilitate the transaction. If the

accused acted as a broker, then such fact must be alleged as an additional element. The object of the trade or trading is a specific dangerous drug that is included in the definition under Section 3(j) of RA 9165 and described with specificity in the Information. In cases involving dangerous drugs, the *corpus delicti* is the presentation of the dangerous drug itself. **Without the averment of the *corpus delicti*, the Information is deficient because an element of the offense is missing.** x x x Thus, when the majority finds, as it has so found, that the Information against Petitioner is sufficient for illegal "trading" of dangerous drugs, **then this case goes down in history as the ONLY criminal case involving dangerous drugs where the Information is totally silent on the *corpus delicti* of the illegal trading and yet is still held sufficient by its mere averment of the phrase "dangerous drugs"**. This farce now opens the floodgates to the unparalleled filing of criminal cases on the mere allegation in the Information that the accused had sold or traded "dangerous drugs", and will indubitably lead to an endless string of prosecutions — **in blatant violation of an accused's constitutionally guaranteed rights to not be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against him**, the strict requirements of Section 21 of RA 9165 having been effectively repealed.

5. ID.; ID.; ID.; ID.; BY OMITTING TO MENTION THE SPECIFIC TYPE AND AMOUNT OF THE ALLEGED DRUGS INVOLVED, THE SPECIFIC ACTS CONSTITUTIVE OF TRADING AND TRAFFICKING BY BOTH THE PETITIONER AND THE SO-CALLED HIGH PROFILE INMATES WHERE ALL THE ELEMENTS OF THOSE UNLAWFUL ACTS ARE DESCRIBED, THE INFORMATION AGAINST THE PETITIONER IS PERFORCE FATALLY DEFECTIVE.— By omitting to mention the specific type and amount of the alleged drugs involved, the specific acts constitutive of trading and trafficking by both Petitioner and the so-called high-profile inmates where all the elements of those unlawful acts are described, the Information against Petitioner for illegal trading of drugs under Section 5 in relation to Section 3(r) is perforce ***fatally defective***. Accordingly, Petitioner is effectively deprived of the fair opportunity to prepare her defense against the charges mounted by the Government as she is left to rely on guesswork and

hypotheticals as to the subject matter of the offense. Under these circumstances, by no means is Petitioner properly equipped to face the awesome power and resources of the State, there being no sufficient factual allegations of the specific, actual offense that she is charged with and its *corpus delicti*. Petitioner was no doubt deprived of her right to be informed of the nature and cause of the accusation against her. She has been deprived her liberty without due process and to be presumed innocent. x x x Thus, an Information which fails the sufficiency requirement of Section 8, Rule 110 of the Rules of Court is ***null and void*** for being violative of the accused's right to be informed of the nature and cause of the accusation against him. The constitutionally-guaranteed right of the accused to be informed of the nature and cause of the accusation against him is assured and safeguarded under Sections 6, 8 and 9 of Rule 110 of the Rules of Court. Under Section 6, on the sufficiency of information, [a] complaint or information is sufficient if it states [among others,] x x x the designation of the offense given by the statute[, and] the acts or omissions complained of as constituting the offense. Section 8, on the designation of the offense, mandates that "[t]he complaint or information shall state the designation of the offense given by the statute[; and] aver the acts or omissions constituting the offense x x x."

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PRINCIPLE OF HIERARCHY OF COURTS; THE PRINCIPLE IS NOT AN IRON-CLAD RULE, ACCORDINGLY, THE COURT HAS FULL DISCRETIONARY POWER TO TAKE COGNIZANCE AND ASSUME JURISDICTION OVER SPECIAL CIVIL ACTIONS FOR *CERTIORARI* FILED DIRECTLY WITH IT IF WARRANTED BY THE NATURE OF THE ISSUES RAISED IN THEREIN; CASE AT BAR.— The principle of hierarchy of courts is not an iron-clad rule. Accordingly, the Court has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it if warranted by the nature of the issues raised in therein. In this connection, the Court ruled in *The Diocese of Bacolod v. Commission on Elections:* x x x ***Third*****, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter** x x x The Petition, having presented, at the very least, a question of first impression and

a genuine constitutional issue, is exempted from the rule on hierarchy of courts. Hence, it is indeed lamentable that the majority of the Court has shirked its duty to resolve the Petition to determine whether Petitioner's rights to due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her had in fact been violated in the face of apparent defects plaguing the Information. ***To uphold the technical rules of procedure without due deference to these fundamental constitutional rights would be to defeat the very purpose for which such rules, including the hierarchy of courts, were crafted.***

7. ID.; ID.; ID.; RULE AGAINST FORUM SHOPPING; THERE IS NO FORUM SHOPPING WHERE THE SUITS INVOLVE DIFFERENT CAUSES OF ACTION OR DIFFERENT RELIEFS.— In the recent case of *Ient v. Tullett Prebon (Philippines), Inc.*, the Court had the occasion to determine whether petitioners therein committed forum shopping, as they resolved to file a petition for *certiorari* before this Court during the pendency of their motion to quash with the RTC. Ruling in the negative, the Court held: x x x **There is no forum shopping where the suits involve different causes of action or different reliefs.** On such basis, no forum shopping was committed in this case for two primary reasons. *First*, the criminal case pending with the RTC, on the one hand, and the Petition on the other, involve different causes of action. The former is a criminal action which seeks to establish criminal liability, while the latter is a special civil action that seeks to correct errors of jurisdiction. *Second*, the two cases seek different reliefs. The RTC case seeks to establish Petitioner's culpability for the purported acts outlined in the Information, while the Petition seeks to correct the grave abuse of discretion allegedly committed by the respondent Judge when she proceeded to issue a warrant of arrest against Petitioner despite the pendency of the latter's Motion to Quash, which, in turn, assailed the respondent Judge's very jurisdiction to take cognizance of the case. x x x Notwithstanding the foregoing disquisition, it is necessary to stress that the Rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts are promulgated by the Court under Section 5(5) of Article VIII of the Constitution. It cannot diminish or modify substantive rights, much less be used to derogate against constitutional rights. The Rules itself provides it must be construed liberally to promote

the just, speedy and inexpensive disposition of every action and proceeding and thus must always yield to the primary objective of the Rules, that is, to enhance fair trials and expedite justice. Time and again, this Court has decreed that rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. This principle finds emphatic application in this case.

APPEARANCES OF COUNSEL

Alexander A. Padilla, Rigoroso Galindez & Rabino Law Offices, Sanidad Law Office and *former Senator Wigberto E. Tañada* for petitioner.

The Solicitor General for respondents,

D E C I S I O N

VELASCO, JR., *J.*:

For consideration is the Petition for *Certiorari* and Prohibition with Application for a Writ of Preliminary Injunction, and Urgent Prayer for Temporary Restraining Order and Status Quo Ante Order[1] under Rule 65 of the Rules of Court filed by petitioner Senator Leila De Lima. In it, petitioner assails the following orders and warrant issued by respondent judge Hon. Juanita Guerrero of the Regional Trial Court (RTC) of Muntinlupa City, Branch 204, in Criminal Case No. 17-165, entitled "*People vs. Leila De Lima, et al.*:" (1) the *Order* dated February 23, 2017 finding probable cause for the issuance of warrant of arrest against petitioner De Lima; (2) the *Warrant of Arrest* against De Lima also dated February 23, 2017; (3) the *Order* dated February 24, 2017 committing the petitioner to the custody of the PNP Custodial Center; and finally, (4) the supposed omission of the respondent judge to act on petitioner's *Motion to Quash*, through which she questioned the jurisdiction of the RTC.[2]

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[1] *Rollo*, pp. 3-300.

[2] *Id.* at 8-9.

Antecedents

The facts are undisputed. The Senate and the House of Representatives conducted several inquiries on the proliferation of dangerous drugs syndicated at the New Bilibid Prison (NBP), inviting inmates who executed affidavits in support of their testimonies.[3] These legislative inquiries led to the filing of the following complaints with the Department of Justice:

a) NPS No. XVI-INV-16J-00313, entitled "*Volunteers against Crime and Corruption (VACC), represented by Dante Jimenez vs. Senator Leila M. De Lima, et al.*;"

b) NPS No. XVI-INV-16J-00315, entitled "*Reynaldo Esmeralda and Ruel Lasala vs. Senator Leila De Lima, et al.*;"

c) NPS No. XVI-INV-16K-00331, entitled "*Jaybee Niño Sebastian, represented by his wife Roxanne Sebastian, vs. Senator Leila M. De Lima, et al.*;" and

d) NPS No. XVI-INV-16K-00336, entitled "*National Bureau of Investigation (NBI) vs. Senator Leila M. De Lima, et al.*"[4]

Pursuant to DOJ Department Order No. 790, the four cases were consolidated and the DOJ Panel of Prosecutors (DOJ Panel),[5] headed by Senior Assistant State Prosecutor Peter Ong, was directed to conduct the requisite preliminary investigation.[6]

The DOJ Panel conducted a preliminary hearing on December 2, 2016,[7] wherein the petitioner, through her counsel, filed an *Omnibus Motion to Immediately Endorse the Cases to the Office*

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[3] *Id.* at 338.

[4] *Id.* at 15.

[5] The members of the DOJ Panel are: Senior Assistant State Prosecutor Peter L. Ong, and Senior Assistant City Prosecutors Alexander P. Ramos, Leilia R. Llanes, Evangeline P. Viudez-Canobas, and Editha C. Fernandez.

[6] *Rollo*, p. 339.

[7] *Id.* at 16.

of the Ombudsman and for the Inhibition of the Panel of Prosecutors and the Secretary of Justice ("*Omnibus Motion*").[8] In the main, the petitioner argued that the Office of the Ombudsman has the exclusive authority and jurisdiction to hear the four complaints against her. Further, alleging evident partiality on the part of the DOJ Panel, the petitioner contended that the DOJ prosecutors should inhibit themselves and refer the complaints to the Office of the Ombudsman.

A hearing on the *Omnibus Motion* was conducted on December 9, 2016,[9] wherein the complainants, VACC, Reynaldo Esmeralda (Esmeralda) and Ruel Lasala (Lasala), filed a *Joint Comment/ Opposition to the Omnibus Motion*.[10]

On December 12, 2016, petitioner, in turn, interposed a *Reply to the Joint Comment/Opposition* filed by complainants VACC, Esmeralda and Lasala. In addition, petitioner submitted a *Manifestation with Motion to First Resolve Pending Incident and to Defer Further Proceedings*.[11]

During the hearing conducted on December 21, 2016, petitioner manifested that she has decided not to submit her counter-affidavit citing the pendency of her two motions.[12] The DOJ Panel, however, ruled that it will not entertain belatedly filed counter-affidavits, and declared all pending incidents and the cases as submitted for resolution. Petitioner moved for but was denied reconsideration by the DOJ Panel.[13]

On January 13, 2017, petitioner filed before the Court of Appeals a *Petition for Prohibition and Certiorari*[14] assailing

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[8] *Id*. at 92-142. Annex "D" to Petition.

[9] *Id*. at 16.

[10] *Id*. at 17.

[11] *Id*.

[12] *Id*.

[13] *Id.* at 18.

[14] *Id*. at 18 and 144-195. Annex "E" to Petition.

the jurisdiction of the DOJ Panel over the complaints against her. The petitions, docketed as CA-G.R. No. 149097 and CA-G.R. No. SP No. 149385, are currently pending with the Special 6th Division of the appellate court.[15]

Meanwhile, in the absence of a restraining order issued by the Court of Appeals, the DOJ Panel proceeded with the conduct of the preliminary investigation[16] and, in its Joint Resolution dated February 14, 2017,[17] recommended the filing of Informations against petitioner De Lima. Accordingly, on February 17, 2017, three *Informations* were filed against petitioner De Lima and several co-accused before the RTC of Muntinlupa City. One of the Informations was docketed as Criminal Case No. 17-165[18] and raffled off to Branch 204, presided by respondent judge. This Information charging petitioner for violation of Section 5 in relation to Section (jj), Section 26(b), and Section 28 of Republic Act No. (RA) 9165, contained the following averments:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position, and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and

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[15] *Id*.

[16] *Id*. at 340.

[17] *Id*. at 18 and 203-254. Annex "G" to Petition.

[18] *Id*. at 197- 201. Annex "F" to Petition.

thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.[19]

On February 20, 2017, petitioner filed a *Motion to Quash*,[20] mainly raising the following: the RTC lacks jurisdiction over the offense charged against petitioner; the DOJ Panel lacks authority to file the Information; the Information charges more than one offense; the allegations and the recitals of facts do not allege the *corpus delicti* of the charge; the Information is based on testimonies of witnesses who are not qualified to be discharged as state witnesses; and the testimonies of these witnesses are hearsay.[21]

On February 23, 2017, respondent judge issued the presently assailed *Order*[22] finding probable cause for the issuance of warrants of arrest against De Lima and her co-accused. The *Order* stated, *viz.*:

> After a careful evaluation of the herein Information and all the evidence presented during the preliminary investigation conducted in this case by the Department of Justice, Manila, the Court finds sufficient probable cause for the issuance of Warrants of Arrest against all the accused LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN.
>
> WHEREFORE, let Warrants of Arrest be issued against the above-mentioned accused.
>
> SO ORDERED.[23]

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[19] *Id*. at 197-198.

[20] *Id*. at 20 and 256-295. Annex "H" to Petition.

[21] *Id*.

[22] *Id*. at 20-21. Annex "A" to Petition.

[23] *Id*. at 85.

Accordingly, the questioned *Warrant of Arrest* dated February 23, 2017,[24] which contained no recommendation for bail, was issued against petitioner.

On February 24, 2017, the PNP Investigation and Detection Group served the *Warrant of Arrest* on petitioner and the respondent judge issued the assailed February 24, 2017 Order,[25] committing petitioner to the custody of the PNP Custodial Center.

On February 27, 2017, petitioner repaired to this court via the present petition, praying for the following reliefs:

a. Granting a writ of *certiorari* annulling and setting aside the *Order* dated 23 February 2017, the *Warrant of Arrest* dated the same date, and the *Order* dated 24 February 2017 of the Regional Trial Court – Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled *People of the Philippines versus Leila M. De Lima, et al.*;

b. Granting a writ of prohibition enjoining and prohibiting respondent judge from conducting further proceedings until and unless the Motion to Quash is resolved with finality;

c. Issuing an order granting the application for the issuance of temporary restraining order (TRO) and a writ of preliminary injunction to the proceedings; and

d. Issuing a Status Quo Ante Order restoring the parties to the status prior to the issuance of the Order and Warrant of Arrest, both dated February 23, 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.[26]

On March 9, 2017, the Office of the Solicitor General (OSG), on behalf of the respondents, interposed its Comment to the petition.[27] The OSG argued that the petition should be dismissed as De Lima failed to show that she has no other plain, speedy, and adequate remedy. Further, the OSG posited that the petitioner

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[24] *Id*. at 20 and 87. Annex "B" to Petition.

[25] *Id*. at 300.

[26] *Id*. at 66.

[27] *Id*. at 336-431.

did not observe the hierarchy of courts and violated the rule against forum shopping. On substantive grounds, the OSG asserted *inter alia* that the RTC has jurisdiction over the offense charged against the petitioner, that the respondent judge observed the constitutional and procedural rules, and so did not commit grave abuse of discretion, in the issuance of the assailed orders and warrant.[28]

On petitioner's motion, the Court directed the holding of oral arguments on the significant issues raised. The Court then heard the parties in oral arguments on March 14, 21, and 28, 2017.[29]

In the meantime, the OSG filed a Manifestation dated March 13, 2017,[30] claiming that petitioner falsified the *jurats* appearing in the: (1) Verification and Certification against Forum Shopping page of her petition; and (2) Affidavit of Merit in support of her prayer for injunctive relief. The OSG alleged that while the adverted *jurats* appeared to be notarized by a certain Atty. Maria Cecille C. Tresvalles-Cabalo on February 24, 2017, the guest logbook[31] in the PNP Custodial Center Unit in Camp Crame for February 24, 2017 does not bear the name of Atty. Tresvalles-Cabalo. Thus, so the OSG maintained, petitioner De Lima did not actually appear and swear before the notary public on such date in Quezon City, contrary to the allegations in the *jurats.* For the OSG, the petition should therefore be dismissed outright for the falsity committed by petitioner De Lima.

In compliance with an Order of this Court, petitioner filed the *Affidavit* of Atty. Maria Cecille C. Tresvalles-Cabalo dated March 20, 2017[32] to shed light on the allegations of falsity in petitioner's *jurats*.

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[28] *Id*. at 344-346.

[29] *Id*. at 302- 306. *Urgent Motion and Special Raffle and to Set the Case for Oral Argument* dated February 27, 2017.

[30] *Id*. at 436-442.

[31] *Id*. at 446-606.

[32] *Id*. at 8689-8690.

The parties simultaneously filed their respective Memoranda on April 17, 2017.[33]

The Issues

From the pleadings and as delineated in this Court's Advisory dated March 10, 2017[34] and discussed by the parties during the oral arguments, the issues for resolution by this Court are:

Procedural Issues:

A. Whether or not petitioner is excused from compliance with the doctrine on hierarchy of courts considering that the petition should first be filed with the Court of Appeals.

B. Whether or not the pendency of the Motion to Quash the Information before the trial court renders the instant petition premature.

C. Whether or not petitioner, in filing the present petition, violated the rule against forum shopping given the pendency of the Motion to Quash the Information before the Regional Trial Court of Muntinlupa City in Criminal Case No. 17-165 and the Petition for *Certiorari* filed before the Court of Appeals in C.A. G.R. SP No. 149097, assailing the preliminary investigation conducted by the DOJ Panel.

Substantive Issues:

A. Whether the Regional Trial Court or the Sandiganbayan has the jurisdiction over the violation of Republic Act No. 9165 averred in the assailed Information.

B. Whether or not the respondent gravely abused her discretion in finding probable cause to issue the Warrant of Arrest against petitioner.

C. Whether or not petitioner is entitled to a Temporary Restraining Order and/or *Status Quo Ante* Order in the interim until the instant petition is resolved or until the trial court rules on the Motion to Quash.

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[33] *Id*. at 8706-8769 and 8928-9028, for petitioner and respondents, respectively.

[34] *Id*. at 433-435.

OUR RULING

Before proceeding to a discussion on the outlined issues, We shall first confront the issue of the alleged falsification committed by petitioner in the *jurats* of her Verification and Certification against Forum Shopping and Affidavit of Merit in support of her prayer for injunctive relief.

In her Affidavit, Atty. Tresvalles-Cabalo disproves the OSG's allegation that she did not notarize the petitioner's Verification and Certification against Forum Shopping and Affidavit of Merit in this wise:

> 4. On February 24, 2017 at or around nine in the morning (9:00 AM), I went to PNP, CIDG, Camp Crame, Quezon City to notarize the Petition as discussed the previous night.
>
> 5. I met Senator De Lima when she was brought to the CIDG at Camp Crame and **I was informed that the Petition was already signed** and ready for notarization.
>
> 6. I was then provided the Petition by her staff. I examined the signature of Senator De Lima and confirmed that **it was signed** by her. I have known the signature of the senator given our personal relationship. Nonetheless, I still requested from her staff a photocopy of any of her government-issued valid Identification Cards (ID) bearing her signature. A photocopy of her passport was presented to me. I compared the signatures on the Petition and the Passport and I was able to verify that the Petition was in fact signed by her. Afterwards, I attached the photocopy of her Passport to the Petition which I appended to my Notarial Report/Record.
>
> 7. Since I already know that Sen. De Lima caused the preparation of the Petition and that it was her who signed the same, I stamped and signed the same.
>
> 8. To confirm with Senator De Lima that I have already notarized the Petition, I sought entry to the detention facility at or around three in the afternoon (3:00 PM). x x x
>
> x x x x x x x x x

11. Since I was never cleared after hours of waiting, I was not able to talk again to Senator De Lima to confirm the notarization of the Petition. I then decided to leave Camp Crame.[35]

At first glance, it is curious that Atty. Tresvalles-Cabalo who claims to have "stamped and signed the [Verification and Certification and Affidavit of Merit]" inside Camp Crame, presumably in De Lima's presence, still found it necessary to, hours later, "confirm with Senator De Lima that [she had] already notarized the Petition." Nonetheless, assuming the veracity of the allegations narrated in the Affidavit, it is immediately clear that petitioner De Lima did not sign the Verification and Certification against Forum Shopping and Affidavit of Merit in front of the notary public. This is contrary to the *jurats* (*i.e.*, the certifications of the notary public at the end of the instruments) signed by Atty. Tresvalles-Cabalo that the documents were "**SUBSCRIBED** AND SWORN to **before me**."

Such clear breach of notarial protocol is highly censurable[36] as Section 6, Rule II of the 2004 Rules on Notarial Practice requires the affiant, petitioner De Lima in this case, to sign the instrument or document in the presence of the notary, *viz.*:

SECTION 6. Jurat. — "Jurat" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) **signs the instrument or document in the presence of the notary**; and

(d) takes an oath or affirmation before the notary public as to such instrument or document.(Emphasis and underscoring supplied.)

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[35] *Id*. at 8689-8690.

[36] *Bides-Ulaso v. Noe-Lacsamana*, 617 Phil. 1, 15 (2009).

While there is jurisprudence to the effect that "an irregular notarization merely reduces the evidentiary value of a document to that of a private document, which requires proof of its due execution and authenticity to be admissible as evidence,"[37] the same cannot be considered controlling in determining compliance with the requirements of Sections 1 and 2, Rule 65 of the Rules of Court. Both Sections 1 and 2 of Rule 65[38] require that the petitions for *certiorari* and prohibition must be **verified** and accompanied by a "sworn certificate of non-forum shopping."

In this regard, Section 4, Rule 7 of the Rules of Civil Procedure states that "[a] pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records." "**A pleading required to be verified which x x x lacks a proper verification, shall be treated as an unsigned**

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[37] *Camcam v. Court of Appeals*, 588 Phil. 452, 462 (2008).

[38] RULE 65. *Certiorari*, Prohibition and *Mandamus*.

SECTION 1. Petition for *Certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a **verified petition** in the proper court, xxx.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and **a sworn certification of non-forum shopping** as provided in the paragraph of Section 3, Rule 46.

SECTION 2. Petition for Prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a **verified petition** in the proper court, x x x.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and **a sworn certification of non-forum shopping** as provided in the third paragraph of Section 3, Rule 46. (2a)

pleading." Meanwhile, Section 5, Rule 7 of the Rules of Civil Procedure provides that "[t]he plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed." "**Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided x x x**."

In this case, when petitioner De Lima failed to **sign** the Verification and Certification against Forum Shopping **in the presence of the notary**, she has likewise failed to properly **swear under oath** the contents thereof, thereby rendering false and null the *jurat* and invalidating the Verification and Certification against Forum Shopping. The significance of a proper *jurat* and the effect of its invalidity was elucidated in *William Go Que Construction v. Court of Appeals*,[39] where this Court held that:

> In this case**, it is undisputed that the Verification/Certification against Forum Shopping attached to the petition for *certiorari* in CA-G.R. SP No. 109427 was not accompanied with a valid affidavit/ properly certified under oath. This was because the *jurat* thereof was defective** in that it did not indicate the pertinent details regarding the affiants' *(i.e.*, private respondents) competent evidence of identities.
>
> Under Section 6, Rule II of A.M. No. 02-8-13-SC 63 dated July 6, 2004, entitled the "2004 Rules on Notarial Practice" (2004 Rules

[39] G.R. No. 191699, April 19, 2016, 790 SCRA 309.

on Notarial Practice), a *jurat* refers to an act in which an individual on a single occasion:

x x x x x x x x x

In *Fernandez v. Villegas* (Fernandez), the Court pronounced that non-compliance with the verification requirement or a defect therein "does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby." "Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct." **Here, there was no substantial compliance with the verification requirement as it cannot be ascertained that any of the private respondents actually swore to the truth of the allegations in the petition for *certiorari* in CA-G.R. SP No. 109427** given the lack of competent evidence of any of their identities. **Because of this, the fact that even one of the private respondents swore that the allegations in the pleading are true and correct of his knowledge and belief is shrouded in doubt.**

For the same reason, neither was there substantial compliance with the certification against forum shopping requirement. In *Fernandez*, the Court explained that "**non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof**, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'" Here, the CA did not mention — nor does there exist — any perceivable special circumstance or compelling reason which justifies the rules' relaxation. At all events**, it is uncertain if any of the private respondents certified under oath that no similar action has been filed or is pending in another forum.**

x x x x x x x x x

Case law states **that "[v]erification is required to secure an assurance that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative." On the other hand, "[t]he certification against forum shopping is required based on the principle that a party-litigant should**

not be allowed to pursue simultaneous remedies in different fora." The important purposes behind these requirements cannot be simply brushed aside absent any sustainable explanation justifying their relaxation. In this case, proper justification is especially called for in light of the serious allegations of forgery as to the signatures of the remaining private respondents, *i.e.*, Lominiqui and Andales. Thus, by simply treating the insufficient submissions before it as compliance with its Resolution dated August 13, 2009 requiring anew the submission of a proper verification/certification against forum shopping, the CA patently and grossly ignored settled procedural rules and, hence, gravely abused its discretion. All things considered, **the proper course of action was for it to dismiss the petition.**[40] (Emphasis and underscoring supplied.)

Without the presence of the notary upon the signing of the Verification and Certification against Forum Shopping, there is no assurance that the petitioner swore under oath that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative. It must be noted that verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice,[41] as what apparently happened in the present case. Similarly, the absence of the notary public when petitioner allegedly affixed her signature also negates a proper attestation that forum shopping has not been committed by the filing of the petition. Thus, the petition is, for all intents and purposes, an unsigned pleading that does not deserve the cognizance of this Court.[42] In *Salumbides, Jr. v. Office of the Ombudsman*,[43] the Court held thus:

> The Court has distinguished the effects of non-compliance with the requirement of verification and that of certification against forum shopping. **A *defective verification* shall be treated as an unsigned pleading** and thus produces no legal effect, subject to the discretion

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[40] *Id*. at 321-326.

[41] *Kilosbayan Foundation v. Janolo, Jr.*, 640 Phil. 33, 46 (2010).

[42] *Id*.

[43] 633 Phil. 325, 331 (2010).

of the court to allow the deficiency to be remedied, while the ***failure to certify against forum shopping*** **shall be cause for dismissal without prejudice, unless otherwise provided, and is not curable by amendment of the initiatory pleading.** (Emphasis and italicization from the original.)

Notably, petitioner has not proffered any reason to justify her failure to sign the Verification and Certification Against Forum Shopping in the presence of the notary. There is, therefore, no justification to relax the rules and excuse the petitioner's non-compliance therewith. This Court had reminded parties seeking the ultimate relief of *certiorari* to observe the rules, since non-observance thereof cannot be brushed aside as a "mere technicality."[44] Procedural rules are not to be belittled or simply disregarded, for these prescribed procedures ensure an orderly and speedy administration of justice.[45] Thus, as in *William Go Que Construction,* **the proper course of action is to dismiss outright the present petition.**

Even if We set aside this procedural infirmity, the petition just the same merits denial on several other grounds.

PETITIONER DISREGARDED THE HIERARCHY OF COURTS

Trifling with the rule on hierarchy of courts is looked upon with disfavor by this Court.[46] It will not entertain direct resort to it when relief can be obtained in the lower courts.[47] The Court has repeatedly emphasized that the rule on hierarchy of courts is an important component of the orderly administration of justice and not imposed merely for whimsical and arbitrary reasons.[48]

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[44] *Ramirez v. Mar Fishing Co., Inc.*, 687 Phil. 125, 137 (2012), citing *Lanzaderas v. Amethyst Security and General Services*, 452 Phil. 621 (2003).

[45] *Id.* at 137, citing *Bank of the Philippine Islands v. Dando*, G.R. No. 177456, September 4, 2009, 598 SCRA 378.

[46] *Barroso v. Omelio*, 771 Phil. 199, 204 (2015).

[47] *Aala v. Uy*, G.R. No. 202781, January 10, 2017, citing *Santiago v. Vasquez*, 291 Phil 664, 683 (1993).

[48] *Supra* note 46.

In *The Diocese of Bacolod v. Commission on Elections*,[49] the Court explained the reason for the doctrine thusly:

> The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. **The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time for the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it.** The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and mandamus only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.
>
> x x x x x x x x x
>
> **The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner**. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the "actual case" that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent

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[49] 751 Phil. 301, 328-330 (2015); *Barroso v. Omelio*, *id.* at 205.

to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusion of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[50] (Emphasis supplied.)

Nonetheless, there are recognized exceptions to this rule and direct resort to this Court were allowed in some instances. These exceptions were summarized in a case of recent vintage, *Aala v. Uy*, as follows:

In a fairly recent case, we summarized other well-defined exceptions to the doctrine on hierarchy of courts. Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[51]

Unfortunately, none of these exceptions were sufficiently established in the present petition so as to convince this court to brush aside the rules on the hierarchy of courts.

Petitioner's allegation that her case has sparked national and international interest is obviously not covered by the exceptions to the rules on hierarchy of courts. The notoriety of a case, without more, is not and will not be a reason for this Court's

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[50] *Id*.

[51] G.R. No. 202781, January 10, 2017.

decisions. Neither will this Court be swayed to relax its rules on the bare fact that the petitioner belongs to the minority party in the present administration. A primary hallmark of an independent judiciary is its political neutrality. This Court is thus loath to perceive and consider the issues before it through the warped prisms of political partisanships.

That the petitioner is a senator of the republic does not also merit a special treatment of her case. The right to equal treatment before the law accorded to every Filipino also forbids the elevation of petitioner's cause on account of her position and status in the government.

Further, contrary to her position, the matter presented before the Court is not of first impression. Petitioner is not the first public official accused of violating RA 9165 nor is she the first defendant to question the finding of probable cause for her arrest. In fact, stripped of all political complexions, the controversy involves run-of-the mill matters that could have been resolved with ease by the lower court had it been given a chance to do so in the first place.

In like manner, petitioner's argument that the rule on the hierarchy of court should be disregarded as her case involves pure questions of law does not obtain. One of the grounds upon which petitioner anchors her case is that the respondent judge erred and committed grave abuse of discretion in finding probable cause to issue her arrest. By itself, this ground removes the case from the ambit of cases involving pure questions of law. It is established that the issue of whether or not probable cause exists for the issuance of warrants for the arrest of the accused is a question of fact, determinable as it is from a review of the allegations in the Information, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.[52] This matter, therefore, should have first been brought before the appellate court, which is in the better position to review and determine factual matters.

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[52] *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 720-721 (2005). See also *Ocampo v. Abando*, 726 Phil. 441, 465 (2014).

Yet, petitioner harps on the supposed judicial efficiency and economy of abandoning the rule on the hierarchy of courts in the present case. Indeed, the Court has considered the practical aspects of the administration of justice in deciding to apply the exceptions rather than the rule. However, it is all the more for these practical considerations that the Court must insist on the application of the rule and not the exceptions in this case. As petitioner herself alleges, with the President having declared the fight against illegal drugs and corruption as central to his platform of government, there will be a spike of cases brought before the courts involving drugs and public officers.[53] As it now stands, there are **232,557** criminal cases involving drugs, and around 260,796 criminal cases involving other offenses pending before the RTCs.[54] This Court cannot thus allow a precedent allowing public officers assailing the finding of probable cause for the issuance of arrest warrants to be brought directly to this Court, bypassing the appellate court, without any compelling reason.

THE PRESENT PETITION IS PREMATURE

The prematurity of the present petition is at once betrayed in the reliefs sought by petitioner's Prayer, which to restate for added emphasis, provides:

> WHEREFORE, premises considered, and in the interest of substantial justice and fair play, Petitioner respectfully prays the Honorable Court that judgment be rendered:
>
> a. Granting a writ of *certiorari* annulling and setting aside the *Order* dated 23 February 2017, the *Warrant of Arrest* dated the same date, and the Order dated 24 February 2017 of the Regional Trial Court-Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled *People of the Philippines versus Leila M. De Lima et al.*;
>
> b. Granting a writ of prohibition enjoining and prohibiting respondent judge from conducting further proceedings **until and unless the Motion to Quash is resolved with finality**;

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[53] *Rollo*, p. 8761. *Memorandum for Petitioner*, p. 56.

[54] Data from the Statistical Reports Division, Court Management Office, Supreme Court on Pending Cases as of June 30, 2017.

c. Issuing an order granting the application for the issuance of temporary restraining order (TRO) and a writ of preliminary injunction to the proceedings; and

d. Issuing a Status Quo Ante Order restoring the parties to the status prior to the issuance of the Order and Warrant of Arrest, both dated February 23, 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.[55] (Emphasis supplied)

Under paragraph (a), petitioner asks for a writ of *certiorari* annulling the Order dated February 23, 2017 finding probable cause, the warrant of arrest and the Order dated February 24, 2017 committing petitioner to the custody of the PNP Custodial Center. Clearly petitioner seeks the recall of said orders to effectuate her release from detention and restore her liberty. She did not ask for the dismissal of the subject criminal case.

More importantly, her request for the issuance of a writ of prohibition under paragraph (b) of the prayer "until and unless the Motion to Quash is resolved with finality," is **an unmistakable admission that the RTC has yet to rule on her Motion to Quash and the existence of the RTC's authority to rule on the said motion.** This admission against interest binds the petitioner; an admission against interest being the best evidence that affords the greatest certainty of the facts in dispute.[56] It is based on the presumption that "no man would declare anything against himself unless such declaration is true."[57] It can be presumed then that the declaration corresponds with the truth, and it is her fault if it does not.[58]

Moreover, petitioner under paragraphs (c) and (d) prayed for a TRO and writ of preliminary injunction and a status quo

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[55] *Rollo*, p. 66.

[56] *Taghoy v. Spouses Tigol, Jr.*, 640 Phil. 385, 394 (2010), citing *Heirs of Miguel Franco v. Court of Appeals*, 463 Phil. 417, 428 (2003); *Yuliongsiu v. PNB*, 130 Phil. 575, 580 (1968).

[57] *Id*., citing *Republic v. Bautista*, G.R. No. 169801, September 11, 2007, 532 SCRA 598, 609; *Bon v. People*, 464 Phil. 125, 138 (2004).

[58] *Id*., citing *Rufina Patis Factory v. Alusitain,* 478 Phil. 544, 558 (2004).

ante order which easily reveal her real motive in filing the instant petition—to restore to "petitioner her liberty and freedom."

Nowhere in the prayer did petitioner explicitly ask for the dismissal of Criminal Case No. 17-165. What is clear is she merely asked the respondent judge to rule on her Motion to Quash before issuing the warrant of arrest.

In view of the foregoing, there is no other course of action to take than to dismiss the petition on the ground of prematurity and allow respondent Judge to rule on the Motion to Quash according to the desire of petitioner.

This Court, in *Solid Builders Inc. v. China Banking Corp.*, explained why a party should not pre-empt the action of a trial court:

> Even Article 1229 of the Civil Code, which SBI and MFII invoke, works against them. Under that provision, the equitable reduction of the penalty stipulated by the parties in their contract will be based on a finding by the court that such penalty is iniquitous or unconscionable. **Here, the trial court has not yet made a ruling** as to whether the penalty agreed upon by CBC with SBI and MFII is unconscionable. Such finding will be made by the trial court only after it has heard both parties and weighed their respective evidence in light of all relevant circumstances. **Hence**, for SBI and MFII **to claim any right or benefit under that provision at this point is premature.**[59] (Emphasis supplied)

In *State of Investment House, Inc. v. Court of Appeals*,[60] the Court likewise held that a petition for *certiorari* can be resorted to only after the court *a quo* has already and actually rendered its decision. It held, *viz.*:

> We note, however, that **the appellate court never actually ruled** on whether or not petitioner's right had prescribed. It merely declared that it was in a position to so rule and thereafter required the parties to submit memoranda. In making such a declaration, did the CA commit grave abuse of discretion amounting to lack of jurisdiction? It did not.

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[59] 708 Phil. 96, 117 (2013).

[60] *State Investment House, Inc. v. Court of Appeals*, 527 Phil. 443 (2006). See also *Diaz v. Nora*, 268 Phil. 433 (1990).

x x x x x x x x x

All things considered, this petition is *premature*. The CA has decided nothing and whatever petitioner's vehement objections may be (to any eventual ruling on the issue of prescription) should be raised only after such ruling shall have actually been promulgated.

The situation evidently does not yet call for a recourse to a petition for certiorari *under Rule 65*.[61] (Italicization from the original. Emphasis supplied.)

An analogous ruling was made by this Court in *Diaz v. Nora*, where it ruled in this wise:

x x x In the case of the respondent labor arbiter, **he has not denied the motion** for execution filed by the petitioner. **He merely did not act on the same. Neither had petitioner urged the immediate resolution of his motion** for execution by said arbiter. In the case of the respondent NLRC, **it was not even given the opportunity to pass upon the question raised by petitioner as to whether or not it has jurisdiction** over the appeal, so the records of the case can be remanded to the respondent labor arbiter for execution of the decision.

Obviously, petitioner had a plain, speedy and adequate remedy to seek relief from public respondents but he failed to avail himself of the same before coming to this Court. To say the least, **the petition is premature and must be struck down.**[62] (Emphasis supplied.)

The dissents would deny the applicability of the foregoing on the ground that these were not criminal cases that involved a pending motion to quash. However, it should be obvious from the afore-quoted excerpts that the nature of the cases had nothing to do with this Court's finding of prematurity in those cases. Instead, what was stressed therein was that the lower courts had not yet made, nor was not given the opportunity to make, a ruling before the parties came before this forum.

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[61] *Id*. at 4540-451.

[62] *Diaz v. Nora*, 268 Phil. 433, 437-438 (1990).

Indeed, the prematurity of the present petition cannot be over-emphasized considering that petitioner is actually asking the Court to rule on some of the grounds subject of her Motion to Quash. The Court, if it rules positively in favor of petitioner regarding the grounds of the Motion to Quash, will be pre-empting the respondent Judge from doing her duty to resolve the said motion and even prejudge the case. This is clearly outside of the ambit of orderly and expeditious rules of procedure. This, without a doubt, causes an inevitable delay in the proceedings in the trial court, as the latter abstains from resolving the incidents until this Court rules with finality on the instant petition.

Without such order, the present petition cannot satisfy the requirements set before this Court can exercise its review powers. Section 5 (2)(C) of Article VIII of the 1987 Constitution explicitly requires the existence of "final judgments and orders of lower courts" before the Court can exercise its power to "review, revise, reverse, modify, or affirm on appeal or *certiorari*" in "all cases in which the jurisdiction of any lower court is in issue," *viz.*:

SECTION 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, **final judgments and orders of lower courts** in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved. (Emphasis supplied.)

In the palpable absence of a ruling on the Motion to Quash — which puts the jurisdiction of the lower court in issue — there is no controversy for this Court to resolve; there is simply no final judgment or order of the lower court to review, revise, reverse, modify, or affirm. As per the block letter provision of the Constitution, this Court cannot exercise its jurisdiction in a vacuum nor issue a definitive ruling on mere suppositions.

Succinctly, the present petition is immediately dismissible for this Court lacks jurisdiction to review a non-existent court action. It can only act to protect a party from a real and actual ruling by a lower tribunal. Surely, it is not for this Court to negate "uncertain contingent future event that may not occur as anticipated, or indeed may not occur at all," as the lower court's feared denial of the subject Motion to Quash.[63]

The established rule is that courts of justice will take cognizance only of controversies "wherein actual and not merely hypothetical issues are involved."[64] The reason underlying the rule is "to prevent the courts through avoidance of premature adjudication from entangling themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire."[65]

Even granting *arguendo* that what is invoked is the original jurisdiction of this Court under Section 5 (1) of Article VIII, the petition nonetheless falls short of the Constitutional

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[63] *Lozano v. Nograles*, 607 Phil. 334, 341 (2009).

[64] *Albay Electric Cooperative, Inc. v. Santelices*, 603 Phil. 104, 121 (2009).

[65] *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, G.R. Nos. 185320 & 185348, April 19, 2017, citing *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

requirements and of Rule 65 of the Rules of Court. In the absence of a final judgment, order, or ruling on the Motion to Quash challenging the jurisdiction of the lower court, there is no occasion for this Court to issue the extraordinary writ of *certiorari*. Without a judgment or ruling, there is nothing for this Court to declare as having been issued without jurisdiction or in grave abuse of discretion.

Furthermore, it is a basic requirement under Rule 65 that there be "[no] other plain, speedy and adequate remedy found in law."[66] Thus, the failure to exhaust all other remedies, as will be later discussed, before a premature resort to this Court is fatal to the petitioner's cause of action.

Petitioner even failed to move for the reconsideration of the February 23 and 24, 2017 Orders she is currently assailing in this Petition. As this Court held in *Estrada v. Office of the Ombudsman*, "[a] motion for reconsideration allows the public respondent an opportunity to correct its factual and legal errors x x x [it] is mandatory before the filing of a petition for *certiorari*."[67] The reasons proffered by petitioner fail to justify her present premature recourse.

Various policies and rules have been issued to curb the tendencies of litigants to disregard, nay violate, the rule enunciated in Section 5 of Article VIII of the Constitution to allow the Court to devote its time and attention to matters within its jurisdiction and prevent the overcrowding of its docket. There is no reason to consider the proceedings at bar as an exception.

PETITIONER VIOLATED THE RULE AGAINST FORUM SHOPPING

It is settled that forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either

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[66] Rules of Court, Rule 65, Section 1.

[67] *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 877-878 (2015).

pending in, or already resolved adversely by, some other court. It is considered an act of malpractice as it trifles with the courts and abuses their processes.[68] Thus, as elucidated in *Luzon Iron Development Group Corporation v. Bridgestone Mining and Development Corporation*,[69] forum shopping warrants the immediate dismissal of the suits filed:

> Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different fora, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. **The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.**
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> **What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.**
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> We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions. **To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case**.

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[68] *Fontana Development Corporation v. Vukasinovic*, G.R. No. 222424, September 21, 2016.

[69] G.R. No. 220546. December 7, 2016.

The acts committed and described herein can possibly constitute direct contempt.[70]

This policy echoes the last sentence of Section 5, Rule 7 of the Rules of Court, which states that "[i]f the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions."

The test to determine the existence of forum shopping is whether the elements of *litis pendentia*, or whether a final judgment in one case amounts to *res judicata* in the other. Forum shopping therefore exists when the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[71]

Anent the first requisite, there is an identity of parties when the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action litigating for the same thing and under the same title and in the same capacity.[72]

Meanwhile, the second and third requisites obtain where the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both,

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[70] *Id*., citing *Spouses Arevalo v. Planters Development Bank*, 68 Phil. 236 (2012).

[71] *Id*.

[72] *Chu v. Cunanan*, G.R. No. 156185, September 12, 2011, 657 SCRA 379, 392, citing *Taganas v. Emuslan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237.

the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.[73]

All these requisites are present in this case.

The presence of the first requisite is at once apparent. The petitioner is an accused in the criminal case below, while the respondents in this case, all represented by the Solicitor General, have substantial identity with the complainant in the criminal case still pending before the trial court.

As for the second requisite, even a cursory reading of the petition and the *Motion to Quash* will reveal that **the arguments and the reliefs prayed for are essentially the same**. In both, petitioner advances the RTC's supposed lack of jurisdiction over the offense, the alleged multiplicity of offenses included in the Information; the purported lack of the *corpus delicti* of the charge, and, basically, the non-existence of probable cause to indict her. And, removed of all non-essentials, she essentially prays for the same thing in both the present petition and the *Motion to Quash*: the nullification of the Information and her restoration to liberty and freedom. Thus, our ruling in *Ient v. Tullet Prebon (Philippines), Inc.*[74] does not apply in the present case as the petition at bar and the motion to quash pending before the court a quo involve similar if not the same reliefs. What is more, while Justice Caguioa highlights our pronouncement in *Ient* excepting an "appeal or special civil action for *certiorari*" from the rule against the violation of forum shopping, the good justice overlooks that the phrase had been used with respect to forum shopping committed through *successive* actions by a "party, against whom an adverse judgment or order has [already] been rendered in one forum."[75] The exception with respect to an "appeal or special civil action for *certiorari*" does not apply

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[73] *Benedicto v. Lacson*, 634 Phil. 154, 177-178 (2010), citing *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 342.

[74] *Ient v. Tullett Prebon (Philippines), Inc.*, G.R. Nos. 189158 & 189530, January 11, 2017.

[75] *Id*.

where the forum shopping is committed by *simultaneous* actions where no judgment or order has yet been rendered by either forum. To restate for emphasis, **the RTC has yet to rule on the Motion to Quash**. Thus, the present petition and the motion to quash before the RTC are *simultaneous* actions that do not exempt petitions for *certiorari* from the rule against forum shopping.

With the presence of the first two requisites, the third one necessarily obtains in the present case. Should we grant the petition and declare the RTC without jurisdiction over the offense, the RTC is bound to grant De Lima's *Motion to Quash* in deference to this Court's authority. In the alternative, if the trial court rules on the *Motion to Quash* in the interim, the instant petition will be rendered moot and academic.

In situations like the factual milieu of this instant petition, while nobody can restrain a party to a case before the trial court to institute a petition for *certiorari* under Rule 65 of the Rules of Court, still such petition must be rejected outright because petitions that cover simultaneous actions are anathema to the orderly and expeditious processing and adjudication of cases.

On the ground of forum shopping alone, the petition merits immediate dismissal.

THE REGIONAL TRIAL COURT HAS JURISDICTION

Even discounting the petitioner's procedural lapses, this Court is still wont to deny the instant petition on substantive grounds.

Petitioner argues that, based on the allegations of the Information in Criminal Case No. 17-165, the Sandiganbayan has the jurisdiction to try and hear the case against her. She posits that the Information charges her not with violation of RA 9165 but with Direct Bribery—a felony within the exclusive jurisdiction of the Sandiganbayan given her rank as the former Secretary of Justice with Salary Grade 31. For the petitioner, even assuming that the crime described in the Information is a violation of RA 9165, the Sandiganbayan still has the exclusive jurisdiction to try the case considering that the acts described

in the Information were intimately related to her position as the Secretary of Justice. Some justices of this Court would even adopt the petitioner's view, declaring that the Information charged against the petitioner is Direct Bribery.

The respondents, on the other hand, maintain that the RTC has exclusive jurisdiction to try violations of RA 9165, including the acts described in the Information against the petitioner. The Sandiganbayan, so the respondents contend, was specifically created as an anti-graft court. It was never conferred with the power to try drug-related cases even those committed by public officials. In fact, respondents point out that the history of the laws enabling and governing the Sandiganbayan will reveal that its jurisdiction was streamlined to address specific cases of graft and corruption, plunder, and acquisition of ill-gotten wealth.

Before discussing the issue on jurisdiction over the subject matter, it is necessary to clarify the crime with which the petitioner is being charged. For ease of reference, the Information filed with the RTC is restated below:

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Versus

LEILA M. DE LIMA (66 Laguna de Bay corner Subic Bay Drive, South Bay Village, Parañaque City and/or Room 502, GSIS Building, Financial Center, Roxas Boulevard, Pasay City), RAFAEL MARCOS Z. RAGOS (c/o National Bureau of Investigation, Taft Avenue, Manila) and RONNIE PALISOC DAYAN, (Barangay Galarin, Urbiztondo, Pangasinan),
Accused.

Criminal Case No. 17-165
(NPS No. XVI-INV-16J-0315 and NPS No. XVI-INV-16K-00336)
For: ***Violation of the Comprehensive Dangerous Drugs Act of 2002*, Section 5, in relation to Section 3(jj), Section 26 (b), and Section 28, Republic Act No. 9165 (*Illegal Drug Trading*)**

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INFORMATION

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, **for violation of Section 5, in relation to Section 3 (jj), Section 26 (b) and Section 28, Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Act of 2002*,** committed as follows:

That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then the employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, **did then and there commit illegal drug trading**, in the following manner: De Lima and Ragos, with the use of their power, position, and authority demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there **willfully and unlawfully trade and traffic dangerous drugs**, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of **illegal drug trading** amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly *"tara"* each from the high profile inmates in the New Bilibid Prison.

CONTRARY TO LAW.[76]

Notably, **the designation, the prefatory statements and the accusatory portions of the Information repeatedly provide that the petitioner is charged with "Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5, in**

[76] *Rollo*, pp. 197-198.

relation to Section 3(jj), Section 26(b), and Section 28, Republic Act No. 9165." From the very designation of the crime in the Information itself, it should be plain that the crime with which the petitioner is charged is a violation of RA 9165. As this Court clarified in *Quimvel v. People*,[77] the designation of the offense in the Information is a critical element required under Section 6, Rule 110 of the Rules of Court in apprising the accused of the offense being charged, *viz.*:

> The offense charged can also be elucidated by consulting the designation of the offense as appearing in the Information. **The designation of the offense is a critical element required under Sec. 6, Rule 110 of the Rules of Court for it assists in apprising the accused of the offense being charged.** Its inclusion in the Information is imperative to avoid surprise on the accused and to afford him of the opportunity to prepare his defense accordingly. Its import is underscored in this case where the preamble states that the crime charged is of "*Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610.*"[78] (Emphasis supplied.)

Further, a reading of the provisions of RA 9165 under which the petitioner is prosecuted would convey that De Lima is being charged as a conspirator in the crime of *Illegal Drug Trading*. The pertinent provisions of RA 9165 read:

> SECTION 3. *Definitions*. — As used in this Act, the following terms shall mean:
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> (jj) Trading. — Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.
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[77] G.R. No. 214497, April 18, 2017.

[78] *Id.*

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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SECTION 26. *Attempt or Conspiracy*. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

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(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

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SECTION 28. Criminal Liability of Government Officials and Employees. — The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

While it may be argued that some facts may be taken as constitutive of some elements of Direct Bribery under the Revised Penal Code (RPC), these facts taken together with the other allegations in the Information portray a much bigger picture, Illegal Drug Trading. The latter crime, described by the United Nations Office on Drugs and Crime (UNODC) as "a global illicit trade involving the cultivation, manufacture, distribution and sale of substances,"[79] necessarily involves various component

[79] Legal Framework for Drug Trafficking <https://www.unodc.org/unodc/en/drug-trafficking/legal-framework.html> (visited October 5, 2017).

crimes, not the least of which is the bribery and corruption of government officials. An example would be reports of recent vintage regarding billions of pesos' worth of illegal drugs allowed to enter Philippine ports without the scrutiny of Customs officials. Any money and bribery that may have changed hands to allow the importation of the confiscated drugs are certainly but trivial contributions in the furtherance of the transnational illegal drug trading — the offense for which the persons involved should be penalized.

Read as a whole, and not picked apart with each word or phrase construed separately, the Information against De Lima goes beyond an indictment for Direct Bribery under Article 210 of the RPC.[80] As Justice Martires articulately explained, the averments on solicitation of money in the Information, which may be taken as constitutive of bribery, form "part of the description on how illegal drug trading took place at the NBP."

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[80] ARTICLE 210. *Direct Bribery*. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision correccional* in its minimum and medium periods and a fine of not less than the value of the gift and not more than three times such value, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *arresto mayor* in its maximum period and a fine of not less than the value of the gift and not more than twice such value.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *arresto mayor* in its medium and maximum periods and a fine of not less than the value of the gift and not more than three times such value.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

The averments on how petitioner asked for and received money from the NBP inmates simply complete the links of conspiracy between her, Ragos, Dayan and the NBP inmates in willfully and unlawfully trading dangerous drugs through the use of mobile phones and other electronic devices under Section 5, in relation to Section 3(jj), Section 26(b), and Section 28, of RA 9165.

On this score, that it has not been alleged that petitioner actually participated in the actual trafficking of dangerous drugs and had simply allowed the NBP inmates to do so is *non sequitur* given that the allegation of *conspiracy* makes her liable for the acts of her co-conspirators. As this Court elucidated, it is not indispensable for a co-conspirator to take a direct part in every act of the crime. A conspirator need not even know of all the parts which the others have to perform,[81] as conspiracy is the common design to commit a felony; **it is not participation in all the details of the execution of the crime**.[82] As long as the accused, in one way or another, helped and cooperated in the consummation of a felony, she is liable as a co-principal.[83] As the Information provides, De Lima's participation and cooperation was instrumental in the trading of dangerous drugs by the NBP inmates. The minute details of this participation and cooperation are matters of evidence that need not be specified in the Information but presented and threshed out during trial.

Yet, some justices remain adamant in their position that the Information fails to allege the necessary elements of Illegal Drug Trading. Justice Carpio, in particular, would cite cases supposedly enumerating the elements necessary for a valid Information for Illegal Drug Trading. However, it should be noted that the subject of these cases was "Illegal **Sale**" of dangerous drugs — a crime separate and distinct from "Illegal **Trading**" averred in the Information against De Lima. The elements of "Illegal Sale" will necessary differ from the elements of Illegal Trading under Section 5, in relation to Section 3(jj),

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[81] *People v. Peralta*, 134 Phil. 703 (1968).

[82] *Id*.

[83] *Id*.

of RA 9165.The definitions of these two separate acts are reproduced below for easy reference:

SECTION 3. *Definitions*. — As used in this Act, the following terms shall mean:

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(ii) Sell. — Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.

(jj) Trading. — Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

It is obvious from the foregoing that the crime of *illegal trading* has been written in strokes much broader than that for *illegal sale*. In fact, an *illegal sale* of drugs may be considered as only one of the possible component acts of *illegal trading* which may be committed through two modes: (1) illegal trafficking using electronic devices; or (2) acting as a broker in any transactions involved in the illegal trafficking of dangerous drugs.

On this score, the crime of "illegal trafficking" embraces various other offenses punishable by RA 9165. Section 3(r) of RA 9165 provides:

(r) Illegal Trafficking. — The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.

In turn, the crimes included in the definition of Illegal Trafficking of drugs are defined as follows*:*

(a) Administer. — Any act of introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any

act of indispensable assistance to a person in administering a dangerous drug to himself/herself unless administered by a duly licensed practitioner for purposes of medication.

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(d) Chemical Diversion. — The sale, distribution, supply or transport of legitimately imported, in-transit, manufactured or procured controlled precursors and essential chemicals, in diluted, mixtures or in concentrated form, to any person or entity engaged in the manufacture of any dangerous drug, and shall include packaging, repackaging, labeling, relabeling or concealment of such transaction through fraud, destruction of documents, fraudulent use of permits, misdeclaration, use of front companies or mail fraud.

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(i) Cultivate or Culture. — Any act of knowingly planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug.

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(k) Deliver. — Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.

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(m) Dispense. — Any act of giving away, selling or distributing medicine or any dangerous drug with or without the use of prescription.

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(u) Manufacture. — The production, preparation, compounding or processing of any dangerous drug and/or controlled precursor and essential chemical, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of such substances, design or configuration of its form, or labeling or relabeling of its container; except that such terms do not include the preparation, compounding, packaging or labeling of a drug or other substances by a duly authorized practitioner as an incident to his/her administration or dispensation of such drug or substance in the course of his/her professional practice including research, teaching and chemical analysis

of dangerous drugs or such substances that are not intended for sale or for any other purpose.

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(kk) Use. — Any act of injecting, intravenously or intramuscularly, of consuming, either by chewing, smoking, sniffing, eating, swallowing, drinking or otherwise introducing into the physiological system of the body, any of the dangerous drugs.

With the complexity of the operations involved in Illegal Trading of drugs, as recognized and defined in RA 9165, it will be quite myopic and restrictive to require the elements of Illegal Sale—a mere component act—in the prosecution for Illegal Trading.

More so, that which qualifies the crime of Illegal Trafficking to Illegal Trading may make it impossible to provide the details of the elements of Illegal Sale. By "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms," the *Illegal Trading* can be remotely perpetrated away from where the drugs are actually being sold; away from the subject of the illegal sale. With the proliferation of digital technology coupled with ride sharing and delivery services, Illegal Trading under RA 9165 can be committed without getting one's hand on the substances or knowing and meeting the seller or buyer. To require the elements of Illegal Sale (the identities of the buyer, seller, the object and consideration, in Illegal Trade) would be impractical.

The same may be said of the second mode for committing Illegal Trading, or trading by "acting as a broker" in transactions involved in Illegal Trafficking. In this instance, the accused may neither have physical possession of the drugs nor meet the buyer and seller and yet violate RA 9165. As pointed out by Justice Perlas-Bernabe, as early as 1916, jurisprudence has defined a broker as one who is simply a middleman, negotiating contracts relative to property with which he has no custody, *viz.*:

A broker is generally defined as one who is engaged, for others, on a commission, **negotiating contracts relative to property with**

the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties.[84] (Emphasis and underscoring supplied.)

In some cases, this Court even acknowledged persons as brokers even "where they actually took no part in the negotiations, never saw the customer."[85] For the Court, the primary occupation of a broker is simply bringing "the buyer and the seller together, *even if* ***no sale*** *is eventually made.*"[86] Hence**, in indictments for Illegal *Trading,* it is illogical to require the elements of Illegal *Sale* of drugs, such as the identities of the buyer and the seller, the object and consideration**.[87] For the prosecution of Illegal Trading of drugs to prosper, proof that the accused "act[ed] as a broker" or brought together the buyer and seller of illegal drugs "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms" is sufficient.

The DOJ's designation of the charge as one for Illegal Drug Trading thus holds sway. After all, the prosecution is vested with a wide range of discretion—including the discretion of whether, **what**, and whom to charge.[88] The exercise of this discretion depends on a smorgasboard of factors, which are best appreciated by the prosecutors.[89]

As such, with the designation of the offense, the recital of facts in the Information, there can be no other conclusion than

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[84] *Behn, Meyer & Co. v. Nolting*, 35 Phil. 274 (1916). See also *Collector of Internal Revenue v. Tan Eng Hong*, 124 Phil. 1002 (1966).

[85] *Medrano v. Court of Appeals*, 492 Phil. 222, 234-235 (2005), citing *Wickersham v. T. D. Harris*, 313 F.2d 468 (1963).

[86] *Id*. at 234, citing *Tan v. Spouses Gullas*, 441 Phil. 622, 633 (2002).

[87] *People v. Marcelino, Jr.*, 667 Phil. 495, 503 (2011).

[88] *People v. Peralta*, 435 Phil. 743, 765 (2002). See also *Gonzales v. Hongkong and Shanghai Bank*, G.R. No. 164904, October 19, 2007; *People v. Sy*, 438 Phil. 383 (2002).

[89] *Id*.

that petitioner is being charged not with Direct Bribery but with violation of RA 9165.

Granting without conceding that the information contains averments which constitute the elements of Direct Bribery or that more than one offence is charged or as in this case, possibly bribery and violation of RA 9165, still the prosecution has the authority to amend the information at any time before arraignment. Since petitioner has not yet been arraigned, then the information subject of Criminal Case No. 17-165 can still be amended pursuant to Section 14, Rule 110 of the Rules of Court which reads:

> SECTION 14. Amendment or Substitution. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

Now the question that irresistibly demands an answer is whether it is the Sandiganbayan or the RTC that has jurisdiction over the subject matter of Criminal Case No. 17-165, *i.e.*, violation of RA 9165.

It is basic that jurisdiction over the subject matter in a criminal case is given only by law in the manner and form prescribed by law.[90] It is determined by the statute in force at the time of the commencement of the action.[91] Indeed, Congress has the plenary power to define, prescribe and apportion the jurisdiction of various courts. It follows then that Congress may also, by law, provide that a certain class of cases should be exclusively heard and determined by one court. Such would be a special law that is construed as an exception to the general law on jurisdiction of courts.[92]

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[90] *U.S. v. Castañares*, 18 Phil. 210, 214 (1911); *Yusuke Fukuzume v. People*, 511 Phil. 192, 208 (2005); *Treñas v. People*, 680 Phil. 368, 385 (2012).

[91] *Dela Cruz v. Moya*, 243 Phil. 983, 985 (1988).

[92] *Morales v. Court of Appeals*, 347 Phil. 493, 506 (1997).

The pertinent special law governing drug-related cases is RA 9165, which updated the rules provided in RA 6425, otherwise known as the Dangerous Drugs Act of 1972. A plain reading of RA 9165, as of RA 6425, will reveal that jurisdiction over drug-related cases is exclusively vested with the **Regional Trial Court** and no other. The designation of the RTC as the court with the exclusive jurisdiction over drug-related cases is apparent in the following provisions where it was expressly mentioned and recognized as the only court with the authority to hear drug-related cases:

Section 20. ***Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals.*** — x x x x

After conviction in the Regional Trial Court in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income:

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During the pendency of the case in the Regional Trial Court, no property, or income derived therefrom, which may be confiscated and forfeited, shall be disposed, alienated or transferred and the same shall be in *custodia legis* and no bond shall be admitted for the release of the same.

x x x x x x x x x

Section 61. ***Compulsory Confinement of a Drug Dependent Who Refuses to Apply Under the Voluntary Submission Program.*** — x x x

A petition for the confinement of a person alleged to be dependent on dangerous drugs to a Center may be filed by any person authorized by the Board **with the Regional Trial Court** of the province or city where such person is found.

x x x x x x x x x

Section 62. ***Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation.*** — If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.

In the event the Board determines, after medical examination, that public interest requires that such drug dependent be committed to a center for treatment and rehabilitation, **it shall file a petition for his/her commitment with the regional trial court** of the province or city where he/she is being investigated or tried: x x x

x x x x x x x x x

Section 90. ***Jurisdiction***. – The Supreme Court shall designate special courts from among the existing **Regional Trial Courts** in each judicial region **to exclusively try and hear cases involving violations of this Act.** The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act.

Notably, **no other trial court was mentioned in RA 9165 as having the authority to take cognizance of drug-related cases.** Thus, in *Morales v. Court of Appeals*,[93] this Court categorically named the RTC as the court with jurisdiction over drug related-cases, as follows:

Applying by analogy the ruling in *People v. Simon*, *People v. De Lara*, *People v. Santos*, and *Ordoñez v. Vinarao*, the imposable penalty in this case which involves 0.4587 grams of shabu should not exceed *prision correccional*. We say by analogy because these cases involved marijuana, not methamphetamine hydrochloride (shabu). In Section 20 of RA. No. 6425, as amended by Section 17 of R.A. No. 7659, the maximum quantities of marijuana and methamphetamine

[93] *Id.* See also *In re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, 567 Phil. 103 (2008).

hydrochloride for purposes of imposing the maximum penalties are not the same. For the latter, if the quantity involved is 200 grams or more, the penalty of *reclusion perpetua* to death and a fine ranging from ₱500,000 to ₱10 million shall be imposed. Accordingly, if the quantity involved is below 200 grams, the imposable penalties should be as follows:

x x x x x x x x x

Clearly, the penalty which may be imposed for the offense charged in Criminal Case No. 96-8443 would at most be only *prision correccional* duration is from six (6) months and one (1) day to six (6) years. **Does it follow then that, as the petitioner insists, the RTC has no jurisdiction thereon in view of the amendment of Section 32 of B.P. Blg. 129 by R.A. No. 7691, which vested upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine and regardless of other imposable accessory or other penalties?** This Section 32 as thus amended now reads:

x x x x x x x x x

The exception in the opening sentence is of special significance which we cannot disregard. x xx The aforementioned exception refers not only to Section 20 of B.P. Blg. 129 providing for the jurisdiction of Regional Trial Courts in criminal cases, but also to **other laws which specifically lodge in Regional Trial Courts exclusive jurisdiction over specific criminal case**s, e. g., (a) Article 360 of the Revised Penal Code, as amended by R.A. Nos. 1289 and 4363 on written defamation or libel; (b) Decree on Intellectual Property (P. D. No. 49, as amended), which vests upon Courts of First Instance exclusive jurisdiction over the cases therein mentioned regardless of the imposable penalty; and (c) more appropriately for the case at bar, Section 39 of R.A. No. 6425, as amended by P.D. No. 44, which vests on Courts of First Instance, Circuit Criminal Courts, and the Juvenile and Domestic Relations Courts concurrent exclusive original jurisdiction over all cases involving violations of said Act.

x x x x x x x x x

That Congress indeed did not intend to repeal these special laws vesting exclusive jurisdiction in the Regional Trial Courts over certain cases is clearly evident from the exception provided for in the opening

sentence of Section 32 of B.P. Blg. 129, as amended by R.A. No. 7691. These special laws are not, therefore, covered by the repealing clause (Section 6) of R.A. No. 7691.

Neither can it be successfully argued that Section 39 of RA. No. 6425, as amended by P.D. No. 44, is no longer operative because Section 44 of B.P. Blg. 129 abolished the Courts of First Instance, Circuit Criminal Courts, and Juvenile and Domestic Relations Courts. While, indeed, Section 44 provides that these courts were to be "deemed automatically abolished" upon the declaration by the President that the reorganization provided in B.P. Blg. 129 had been completed**, this Court should not lose sight of the fact that the Regional Trial Courts merely replaced the Courts of First Instance as clearly borne out by the last two sentences of Section 44**, to wit:

x x x x x x x x x

Consequently, **it is not accurate to state that the "abolition" of the Courts of First Instance carried with it the abolition of their exclusive original jurisdiction in drug cases vested by Section 39 of R.A. No. 6425, as amended by P. D. No. 44**. If that were so, then so must it be with respect to Article 360 of the Revised Penal Code and Section 57 of the Decree on Intellectual Property. On the contrary, in the resolution of 19 June 1996 in Caro v. Court of Appeals and in the resolution of 26 February 1997 in *Villalon v. Baldado*, this Court expressly ruled that Regional Trial Courts have the exclusive original jurisdiction over libel cases pursuant to Article 360 of the Revised Penal Code. In Administrative Order No. 104-96 this Court mandates that:

x x x x x x x x x

The same Administrative Order recognizes that violations of R.A. No. 6425, as amended, regardless of the quantity involved, are to be tried and decided by the Regional Trial Courts therein designated as special courts.[94] (Emphasis and underscoring supplied)

Yet, much has been made of the terminology used in Section 90 of RA 9165. The dissents would highlight the provision's departure from Section 39 of RA 6425 — the erstwhile drugs law, which provides:

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[94] *Morales v. Court of Appeals*, *id*. at 504-508.

SECTION 39. Jurisdiction of the Circuit Criminal Court. — The Circuit Criminal Court shall have exclusive original jurisdiction over all cases involving offenses punishable under this Act.

For those in the dissent, the failure to reproduce the phrase "exclusive original jurisdiction" is a clear indication that no court, least of all the RTC, has been vested with such "exclusive original jurisdiction" so that even the Sandiganbayan can take cognizance and resolve a criminal prosecution for violation of RA 9165.

As thoroughly discussed by Justice Peralta in his Concurring Opinion, such deduction is unwarranted given the clear intent of the legislature not only to retain the "exclusive original jurisdiction" of the RTCs over violations of the drugs law but to segregate from among the several RTCs of each judicial region some RTCs that will "**exclusively try and hear cases involving violations of [RA 9165]**." If at all, **the change introduced by the new phraseology of Section 90, RA 9165 is not the deprivation of the RTCs' "exclusive original jurisdiction" but the further restriction of this "exclusive original jurisdiction" to select RTCs of each judicial region.** This intent can be clearly gleaned from the interpellation on House Bill No. 4433, entitled "An Act Instituting the Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, as amended:"

Initially, Rep. Dilangalen referred to the fact sheet attached to the Bill which states that the measure will undertake a comprehensive amendment to the existing law on dangerous drugs — RA No. 6425, as amended. Adverting to Section 64 of the Bill on the repealing clause**, he then asked whether the Committee is in effect amending or repealing the aforecited law.**

Rep. Cuenco replied that **any provision of law which is in conflict with the provisions of the Bill is repealed and/or modified accordingly.**

In this regard, Rep. Dilangalen suggested that if the Committee's intention was only to amend RA No. 6425, then the wording used should be "to amend" and not "to repeal" with regard to the provisions that are contrary to the provisions of the Bill.

Adverting to Article VIII, Section 60, on Jurisdiction Over Dangerous Drugs Case, which provides that "the Supreme Court shall designate regional trial courts to have original jurisdiction over all offenses punishable by this Act," **Rep. Dilangalen inquired whether it is the Committee's intention that certain RTC salas will be designated by the Supreme Court to try drug-related offenses, although all RTCs have original jurisdiction over those offenses.**

Rep. Cuenco replied in the affirmative. He pointed that at present, the Supreme Court's assignment of drug cases to certain judges is not exclusive because the latter can still handle cases other than drug-related cases. He added that the Committee's intention is to assign drug-related cases to judges who will handle exclusively these cases assigned to them.

In this regard, Rep. Dilangalen stated that, at the appropriate time, he would like to propose the following amendment; "The Supreme Court shall designate **specific salas of the RTC to try exclusively offenses related to drugs.**"

Rep. Cuenco agreed therewith, adding that the Body is proposing **the creation of exclusive drug courts** because at present, almost all of the judges are besieged by a lot of drug cases some of which have been pending for almost 20 years.[95] (Emphasis and underscoring supplied.)

Per the "Records of the Bilateral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1858 and House Bill No. 4433," the term "designation" of RTCs that will exclusively handle drug-related offenses was used to skirt the budgetary requirements that might accrue by the "creation" of exclusive drugs courts. It was never intended to divest the RTCs of their exclusive original jurisdiction over drug-related cases. The Records are clear:

THE CHAIRMAN (REP. CUENCO). x x x [W]e would like to propose **the *creation* of drug courts to handle exclusively drug cases**; the imposition of a 60-day deadline on courts within which to decide

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[95] Journal No. 72, 12th Congress, 1st Regular Session (March 6, 2002) <http://www.congress.gov.ph/legisdocs/journals_12/72.pdf> (visited August 8, 2017).

drug cases; and No. 3, provide penalties on officers of the law and government prosecutors for mishandling and delaying drugs cases.

We will address these concerns one by one.

1. The possible ***creation*** of drugs courts to handle exclusively drug cases. Any comments?

x x x x x x x x x

THE CHAIRMAN (SEN. BARBERS). We have no objection to this proposal, Mr. Chairman. As a matter of fact, this is one of the areas where we come into an agreement when we were in Japan. However, I just would like to add a paragraph after the word "Act" in Section 86 of the Senate versions, Mr. Chairman. And this is in connection with the designation of special courts by "The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of court designated in each judicial region shall be based on the population and the number of pending cases in their respective jurisdiction." That is my proposal, Mr. Chairman.

THE CHAIRMAN (REP. CUENCO). We adopt the same proposal.

x x x x x x x x x

THE CHAIRMAN (SEN. BARBERS). I have no problem with that, Mr. Chairman, but I'd like to call your attention to the fact that **my proposal is only for *designation* because if it is for a creation that would entail another budget, Mr. Chairman.** And almost always, the Department of Budget would tell us at the budget hearing that we lack funds, we do not have money. So that might delay the very purpose why we want the RTC or the municipal courts to handle exclusively the drug cases. **That's why my proposal is designation not creation.**

THE CHAIRMAN (REP. CUENCO). Areglado. No problem, designation. Approved.[96]

The exclusive original jurisdiction over violations of RA 9165 is not transferred to the Sandiganbayan whenever the

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[96] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1858 and House Bill No. 4433 (Comprehensive Dangerous Drugs Act of 2002) April 29, 2002.

accused occupies a position classified as Grade 27 or higher, regardless of whether the violation is alleged as committed in relation to office. The power of the Sandiganbayan to sit in judgment of high-ranking government officials is not omnipotent. The Sandiganbayan's jurisdiction is circumscribed by law and its limits are currently defined and prescribed by RA 10660,[97] which amended Presidential Decree No. (PD) 1606.[98] As it now stands, the Sandiganbayan has jurisdiction over the following:

SEC. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x x x x x x

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

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[97] Entitled *An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, As Amended, And Appropriating Funds Therefor*. Approved on April 16, 2015.

[98] Entitled *Revising Presidential Decree No. 1486 Creating A Special Court To Be Known as "Sandiganbayan" And For Other Purposes*, December 10, 1978.

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One Million pesos (₱1,000,000.00).

The foregoing immediately betrays that the Sandiganbayan primarily sits as a special **anti-graft court** pursuant to a specific injunction in the 1973 Constitution.[99] Its characterization and continuation as such was expressly given a constitutional fiat under Section 4, Article XI of the 1987 Constitution, which states:

SECTION 4. The present **anti-graft court** known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

It should occasion no surprise, therefore, that the Sandiganbayan is without jurisdiction to hear drug-related cases. Even Section 4(b) of PD 1606, as amended by RA 10660, touted by the petitioner and the dissents as a catch-all provision, does not operate to strip the RTCs of its exclusive original jurisdiction over violations of RA 9165. As pointed out by Justices Tijam and Martires, a perusal of the drugs law will reveal that public

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[99] Section 5, Article XIII of the 1973 Constitution: SECTION 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over 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 as may be determined by law.

officials were never considered excluded from its scope. Hence, Section 27 of RA 9165 punishes government officials found to have benefited from the trafficking of dangerous drugs, while Section 28 of the law imposes the maximum penalty on such government officials and employees. The adverted sections read:

SECTION 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any **elective local or national official** found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be **removed from office and perpetually disqualified from holding any elective or appointive positions in the government**, its divisions, subdivisions, and intermediaries, including government-owned or-controlled corporations.

SECTION 28. *Criminal Liability of Government Officials and Employees.* — The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are **government officials and employees**. (Emphasis supplied)

Section 4(b) of PD 1606, as amended by RA 10660, provides but the *general rule*, couched in a "broad and general

phraseology."[100] **Exceptions abound**. Besides the jurisdiction on written defamations and libel, as illustrated in *Morales*[101] and *People v. Benipayo*,[102] the RTC is likewise given "exclusive original jurisdiction to try and decide any criminal action or proceedings for violation of the Omnibus Election Code,"[103] regardless of whether such violation was committed by public officers occupying positions classified as Grade 27 or higher in relation to their offices. In fact, offenses committed by members of the Armed Forces in relation to their office, *i.e.*, in the words of RA 7055,[104] "service-connected crimes or offenses," are not cognizable by the Sandiganbayan but by court-martial.

Certainly, jurisdiction over offenses and felonies committed by public officers is not determined solely by the pay scale or by the fact that they were committed "in relation to their office." In determining the forum vested with the jurisdiction to try and decide criminal actions, the laws governing the subject matter of the criminal prosecution must likewise be considered.

In this case, RA 9165 specifies the **RTC as the court with the jurisdiction to** "***exclusively* try and hear cases involving violations of [RA 9165].**" **This is an exception, couched in the special law on dangerous drugs, to the general rule under Section 4(b) of PD 1606, as amended by RA 10660**. It is a canon of statutory construction that a special law prevails over

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[100] *People v. Benipayo*, 604 Phil. 317 (2009).

[101] *Supra* note 92.

[102] *Supra* note 100.

[103] Section 268, Omnibus Election Code of the Philippines. Published in the Official Gazette, Vol. 81, No. 49, Page 5659 on December 9, 1985.

[104] Entitled *An Act Strengthening Civilian Supremacy Over the Military Returning To The Civil Courts The Jurisdiction Over Certain Offenses Involving Members Of The Armed Forces Of The Philippines, Other Persons Subject To Military Law, And The Members Of The Philippine National Police, Repealing For The Purpose Certain Presidential Decrees*, June 20, 1991.

a general law and the latter is to be considered as an exception to the general.[105]

Parenthetically, it has been advanced that RA 10660 has repealed Section 90 of RA 9165. However, a closer look at the repealing clause of RA 10660 will show that there is no express repeal of Section 90 of RA 9165 and well-entrenched is the rule that an implied repeal is disfavored. It is only accepted upon the clearest proof of inconsistency so repugnant that the two laws cannot be enforced.[106] The presumption against implied repeal is stronger when of two laws involved one is special and the other general.[107] The mentioned rule in statutory construction that a special law prevails over a general law applies regardless of the laws' respective dates of passage. Thus, this Court ruled:

> x x x [I]t is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general.
>
> So also, every effort must be exerted to avoid a conflict between statutes. If reasonable construction is possible, the laws must be reconciled in that manner.
>
> Repeals of laws by implication moreover are not favored, and the mere repugnancy between two statutes should be very clear to warrant the court in holding that the later in time repeals the other.[108]

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[105] *Phil. Amusement and Gaming Corp. v. Bureau of Internal Revenue*, G.R. No. 215427, December 10, 2014.

[106] *Lim v. Gamosa*, G.R. No. 193964, December 2, 2015; *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483 (2013); *Remo v. Secretary of Foreign Affairs*, 628 Phil. 181 (2010).

[107] *Republic v. Court of Appeals*, 409 Phil. 695 (2001).

[108] *Lopez, Jr. v. Civil Service Commission*, 273 Phil. 147, 152 (1991). See also *Valera v. Tuason, Jr.*, 80 Phil. 823 (1948); *RCBC Savings Bank v. Court of Appeals*, G.R. No. 226245 (Notice), November 7, 2016; *Remo v. Secretary of Foreign Affairs*, 628 Phil. 181 (2010), citing *Sitchon v. Aquino*, 98 Phil. 458, 465 (1956); *Laxamana v. Baltazar*, 92 Phil. 32, 35 (1952); *De Joya v. Lantin*, 126 Phil. 286, 290 (1967); *Nepomuceno v. RFC*, 110 Phil. 42, 47 (1960); *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948); *Republic v.*

To reiterate for emphasis, **Section 4(b) of PD 1606, as amended by RA 10660, is the general law** on jurisdiction of the Sandiganbayan over crimes and offenses committed by high-ranking public officers in relation to their office; **Section 90, RA 9165 is the special law** excluding from the Sandiganbayan's jurisdiction violations of RA 9165 committed by such public officers. In the latter case, jurisdiction is vested upon the RTCs designated by the Supreme Court as drugs court, regardless of whether the violation of RA 9165 was committed in relation to the public officials' office.

The exceptional rule provided under Section 90, RA 9165 relegating original exclusive jurisdiction to RTCs specially designated by the Supreme Court logically follows given the technical aspect of drug-related cases. With the proliferation of cases involving violation of RA 9165, it is easy to dismiss them as common and untechnical. However, narcotic substances possess unique characteristics that render them not readily identifiable.[109] In fact, they must first be subjected to scientific analysis by forensic chemists to determine their composition and nature.[110] Thus, judges presiding over designated drugs courts are specially trained by the Philippine Judicial Academy (PhilJa) and given scientific instructions to equip them with the proper tools to appreciate pharmacological evidence and give analytical insight upon this esoteric subject. After all, the primary consideration of RA 9165 is the fact that the substances involved are, in fact, dangerous drugs, their plant sources, or their controlled precursors and essential chemicals. **Without a doubt, not one of the Sandiganbayan justices were provided with knowledge and technical expertise on matters relating to prohibited substances.**

Asuncion, 231 SCRA 211, 231 (1994), citing *Gordon v. Veridiano II*, No. 55230, November 8, 1988, 167 SCRA 51, 58-59; *People v. Antillon*, 200 Phil. 144, 149 (1982).

[109] *Mallillin y Lopez v. People*, 576 Phil. 576, 588 (2008).

[110] *Id*.

Hard figures likewise support the original and exclusive jurisdiction of the RTCs over violations of RA 9165. As previously stated, as of June 30, 2017, there are **232,557 drugs cases pending before the RTCs**. On the other hand, **not even a single case filed before the Sandiganbayan from February 1979 to June 30, 2017 dealt with violations of the drugs law**. Instead, true to its designation as an anti-graft court, the bulk of the cases filed before the Sandiganbayan involve violations of RA 3019, entitled the "Anti-Graft and Corrupt Practices Act" and malversation.[111] With these, it would not only be unwise but reckless to allow the tribunal uninstructed and inexperienced with the intricacies of drugs cases to hear and decide violations of RA 9165 solely on account of the pay scale of the accused.

Likewise of special significance is the *proviso* introduced by RA 10660 which, to reiterate for emphasis, states:

> Provided, That **the Regional Trial Court shall have exclusive original jurisdiction where the information**: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

The clear import of the new paragraph introduced by RA 10660 is to streamline the cases handled by the Sandiganbayan by delegating to the RTCs some cases involving high-ranking public officials. With the dissents' proposition, opening the Sandiganbayan to the influx of drug-related cases, RA 10660 which was intended to unclog the dockets of the Sandiganbayan would all be for naught. Hence, sustaining the RTC's jurisdiction over drug-related cases despite the accused's high-ranking position, as in this case, is all the more proper.

Even granting *arguendo* that the Court declares the Sandiganbayan has jurisdiction over the information subject of Criminal Case No. 17-165, still it will not automatically

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[111] <http://sb.judiciary.gov.ph/libdocs/statistics/filed_Pending_Disposed_June_30,_2017.pdf> (visited August 9, 2017).

result in the release from detention and restore the liberty and freedom of petitioner. The RTC has several options if it dismisses the criminal case based on the grounds raised by petitioner in her Motion to Quash.

Under Rule 117 of the Rules of Court, the trial court has three (3) possible alternative actions when confronted with a Motion to Quash:

1. Order the amendment of the Information;
2. Sustain the Motion to Quash; or
3. Deny the Motion to Quash.

The first two options are available to the trial court where the motion to quash is meritorious. Specifically, as to the first option, this court had held that should the Information be deficient or lacking in any material allegation, the trial court can **order the amendment of the Information** under Section 4, Rule 117 of the Rules of Court, which states:

SECTION 4. Amendment of Complaint or Information. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

The failure of the trial court to order the correction of a defect in the Information curable by an amendment amounts to an arbitrary exercise of power. So, this Court held in *Dio v. People*:

This Court has held that **failure to provide the prosecution with the opportunity to amend is an arbitrary exercise of power**. In *People v. Sandiganbayan (Fourth Division)*:

When a motion to quash is filed challenging the validity and sufficiency of an Information, and the defect may be cured by amendment, courts must deny the motion to quash and order the prosecution to file an amended Information. Generally, a defect

pertaining to the failure of an Information to charge facts constituting an offense is one that may be corrected by an amendment. In such instances, courts are mandated not to automatically quash the Information; rather, it should grant the prosecution the opportunity to cure the defect through an amendment. This rule allows a case to proceed without undue delay. By allowing the defect to be cured by simple amendment, unnecessary appeals based on technical grounds, which only result to prolonging the proceedings, are avoided.

More than this practical consideration, however, is the due process underpinnings of this rule. As explained by this Court in People v. Andrade, the State, just like any other litigant, is entitled to its day in court. Thus, a court's refusal to grant the prosecution the opportunity to amend an Information, where such right is expressly granted under the Rules of Court and affirmed time and again in a string of Supreme Court decisions, effectively curtails the State's right to due process.[112]

Notably, the defect involved in *Dio* was the Information's failure to establish the venue — a matter of jurisdiction in criminal cases. Thus, in the case at bar where petitioner has not yet been arraigned, the court a quo has the power to order the amendment of the February 17, 2017 Information filed against the petitioner. This power to order the amendment is not reposed with this Court in the exercise of its *certiorari* powers.

Nevertheless, should the trial court sustain the motion by actually ordering the quashal of the Information, the prosecution is not precluded from filing another information. An order sustaining the motion to quash the information would neither bar another prosecution[113] or require the release of the accused from custody. Instead, under Section 5, Rule 117 of the Rules of Court, the trial court can simply order that another complaint or information be filed **without discharging the accused from custody**. Section 5, Rule 117 states, thus:

Section 5. *Effect of sustaining the motion to quash*. **— If the motion to quash is sustained, the court may order that another complaint**

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[112] *Dio v. People*, G.R. No. 208146, June 8, 2016, 792 SCRA 646, 659; citation omitted.

[113] See *Los Baños v. Pedro*, 604 Phil. 215 (2009).

or information be filed except as provided in Section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.

Section 6, Rule 117, adverted to in the foregoing provision, prevents the re-filing of an information on only two grounds: that the criminal action or liability has already been extinguished, and that of double jeopardy. Neither was invoked in petitioner's *Motion to Quash* filed before the court *a quo*.

The third option available to the trial court is the **denial of the motion to quash**. Even granting, for the nonce, the petitioner's position that the trial court's issuance of the warrant for her arrest is an implied denial of her Motion to Quash, **the proper remedy against this court action is to proceed to trial, not to file the present petition for *certiorari***. This Court in *Galzote v. Briones* reiterated this established doctrine:

> A preliminary consideration in this case relates to the propriety of the chosen legal remedies availed of by the petitioner in the lower courts to question the denial of his motion to quash. In the usual course of procedure, **a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused**. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error committed by the trial court but as an added ground to overturn the latter's ruling.
>
> In this case, the petitioner did not proceed to trial but opted to immediately question the denial of his motion to quash via a special civil action for *certiorari* under Rule 65 of the Rules of Court.
>
> As a rule, **the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1 (b), Rule 41 of the Rules of Court. Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy. The plain and speedy remedy**

upon denial of an interlocutory order is to proceed to trial as discussed above.[114] (Emphasis and underscoring supplied)

At this juncture, it must be stressed yet again that the trial court has been denied the opportunity to act and rule on petitioner's motion when the latter jumped the gun and prematurely repaired posthaste to this Court, thereby immobilizing the trial court in its tracks. Verily, De Lima should have waited for the decision on her motion to quash instead of prematurely filing the instant recourse.

In the light of the foregoing, the best course of action for the Court to take is to dismiss the petition and direct the trial court to rule on the Motion to Quash and undertake all the necessary proceedings to expedite the adjudication of the subject criminal case.

RESPONDENT JUDGE DID NOT ABUSE HER DISCRETION IN FINDING PROBABLE CAUSE TO ORDER THE PETITIONER'S ARREST

The basis for petitioner's contention that respondent judge committed grave abuse of discretion in issuing the February 23, 2017 Order[115] finding probable cause to arrest the petitioner is two-pronged: respondent judge should have first resolved the pending *Motion to Quash* before ordering the petitioner's arrest; and there is no probable cause to justify the petitioner's arrest.

Grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to an evasion of *positive duty* or a virtual refusal to act at all in contemplation of the law.[116]

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[114] 673 Phil. 165, 172 (2011), citing *Santos v. People*, G.R. No. 173176, August 26, 2008, 563 SCRA 341. See also *Gamboa v. Cruz*, 245 Phil. 598 (1988); *Acharon v. Purisima*, 121 Phil. 295 (1965). See also *Lalican v. Vergara*, 342 Phil. 485 (1997).

[115] *Rollo*, p. 85.

[116] *Yang Kuong Yong v. People*, G.R. No. 213870 (Notice), July 27, 2016.

In the present case, the respondent judge had no *positive duty* to first resolve the *Motion to Quash* before issuing a warrant of arrest. There is no rule of procedure, statute, or jurisprudence to support the petitioner's claim. Rather, Sec.5(a), Rule 112 of the Rules of Court[117] required the respondent judge to evaluate the prosecutor's resolution and its supporting evidence within a limited period of only ten (10) days, *viz.*:

> SEC. 5. When warrant of arrest may issue. —
> (a) By the Regional Trial Court. — **Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence**. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

It is not far-fetched to conclude, therefore, that had the respondent judge waited longer and first attended to the petitioner's *Motion to Quash*, she would have exposed herself to a possible administrative liability for failure to observe Sec. 5(a), Rule 112 of the Rules of Court. Her exercise of discretion was sound and in conformity with the provisions of the Rules of Court considering that a *Motion to Quash* may be filed and, thus resolved by a trial court judge, at any time before the accused petitioner enters her plea.[118] What is more, it is in accord with this Court's ruling in *Marcos v. Cabrera-Faller*[119] that "[a]s the presiding judge, it was her task, upon the filing of the

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[117] Formerly Section 6. The former Sec. 5 (Resolution of Investigating Judge and its Review) was deleted per A.M. No. 05-8-26-SC, October 3, 2005.

[118] Section 1, Rule 117 of the Rules of Court. *Time to move to quash.* – At any time before entering his plea, the accused may move to quash the complaint or information. (Underscoring supplied)

[119] A.M. No. RTJ-16-2472, January 24, 2017.

Information, to first and foremost determine the existence or non-existence of probable cause for the arrest of the accused."

This Court's ruling in *Miranda v. Tuliao*[120] does not support the petitioner's position. *Miranda* does not prevent a trial court from ordering the arrest of an accused even pending a motion to quash the information. At most, it simply explains that an accused can seek judicial relief even if he has not yet been taken in the custody of law.

Undoubtedly, contrary to petitioner's postulation, there is no rule or basic principle requiring a trial judge to first resolve a motion to quash, whether grounded on lack of jurisdiction or not, before issuing a warrant of arrest. As such, respondent judge committed no grave abuse of discretion in issuing the assailed February 23, 2017 Order even before resolving petitioner's *Motion to Quash*. There is certainly no indication that respondent judge deviated from the usual procedure in finding probable cause to issue the petitioner's arrest.

And yet, petitioner further contends that the language of the February 23, 2017 Order violated her constitutional rights and is contrary to the doctrine in *Soliven v. Makasiar.*[121] Petitioner maintains that respondent judge failed to personally determine the probable cause for the issuance of the warrant of arrest since, as stated in the assailed Order, respondent judge based her findings on the evidence presented during the preliminary investigation and not on the report and supporting documents submitted by the prosecutor.[122] This hardly deserves serious consideration.

Personal determination of the existence of probable cause by the judge is required before a warrant of arrest may issue. The Constitution[123] and the Revised Rules of Criminal

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[120] 520 Phil. 907 (2006).

[121] 249 Phil. 394 (1988).

[122] *Rollo*, pp. 38-39.

[123] Article III, Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures

Procedure[124] command the judge "to refrain from making a mindless acquiescence to the prosecutor's findings and to conduct his own examination of the facts and circumstances presented by both parties."[125] This much is clear from this Court's ruling in *Soliven* cited by the petitioner, *viz.*:

> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[126]

It must be emphasized, however, that in determining the probable cause to issue the warrant of arrest against the petitioner, respondent judge evaluated the Information and "**all the evidence presented during the preliminary investigation conducted in this case.**" The assailed February 23, 2017 Order is here restated for easy reference and provides, thusly:

> After a careful evaluation of the herein **Information and all the evidence presented during the preliminary investigation conducted in this cas**e by the Department of Justice, Manila, the Court finds sufficient probable cause for the issuance of Warrants of Arrest against all the accused LEILA M. DE LIMA x x x.[127] (Emphasis supplied.)

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of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[124] See Section 5(a), Rule 112, *infra*.

[125] *Hao v. People*, 743 Phil. 204, 213 (2014).

[126] *Soliven v. Makasiar*, *supra* note 121, at 399.

[127] *Rollo*, p. 85.

As **the prosecutor's report/resolution precisely finds support from the evidence presented during the preliminary investigation,** this Court cannot consider the respondent judge to have evaded her duty or refused to perform her obligation to satisfy herself that substantial basis exists for the petitioner's arrest. "All the evidence presented during the preliminary investigation" encompasses a broader category than the "supporting evidence" required to be evaluated in *Soliven*. It may perhaps even be stated that respondent judge performed her duty in a manner that far exceeds what is required of her by the rules when she reviewed all the evidence, not just the supporting documents. At the very least, she certainly discharged a judge's duty in finding probable cause for the issuance of a warrant, as described in *Ho v. People*:

> The above rulings in *Soliven*, *Inting* and *Lim, Sr.* were iterated in *Allado v. Diokno*, where we explained again what probable cause means. Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. Hence, the judge, before issuing a warrant of arrest, 'must satisfy himself that **based on the evidence submitted**, there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof.' At this stage of the criminal proceeding, the judge is not yet tasked to review in detail the evidence submitted during the preliminary investigation. It is sufficient that he personally evaluates such evidence in determining probable cause. In *Webb v. De Leon* we stressed that the judge merely determines the probability, not the certainty, of guilt of the accused and, in doing so, he need not conduct a *de novo* hearing. He simply personally reviews the prosecutor's initial determination finding probable cause to see if it is supported by substantial evidence."
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> x x x [T]he judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused for an offense and hold him for trial. However, **the judge must decide independently.** Hence, **he must have supporting**

evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or non-existence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. **We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcript of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause**. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer. [128] (Emphasis supplied.)

Notably, for purposes of determining the propriety of the issuance of a warrant of arrest, the judge is tasked to merely determine the probability, not the certainty, of the guilt of the accused.[129] She is given wide latitude of discretion in the determination of probable cause for the issuance of warrants

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[128] 345 Phil. 597, 608-612 (1997) (citations omitted).

[129] *Supra* note 125.

of arrest.[130] A finding of probable cause to order the accused's arrest does not require an inquiry into whether there is sufficient evidence to procure a conviction.[131] It is enough that it is believed that the act or omission complained of constitutes the offense charged.[132]

Again, per the February 23, 2017 Order, respondent judge evaluated all the evidence presented during the preliminary investigation and on the basis thereof found probable cause to issue the warrant of arrest against the petitioner. This is not surprising given that **the only evidence available on record are those provided by the complainants** and **the petitioner**, in fact, **did not present any counter-affidavit or evidence to controvert this**. Thus, there is nothing to disprove the following preliminary findings of the DOJ prosecutors relative to the allegations in the Information filed in Criminal Case No. 17-165:

> Thus, from November 2012 to March 2013, De Lima[,] Ragos and Dayan should be indicted for violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, of R.A. 9165, owing to the delivery of ₱5 million in two (2) occasions, on 24 November 2012 and 15 December 2012, to Dayan and De Lima. The monies came inmate Peter Co [were] proceeds from illicit drug trade, which were given to support the senatorial bid of De Lima.
>
> Also in the same period, Dayan demanded from Ragos money to support the senatorial bid of De Lima. Ragos demanded and received ₱100,000 *tara* from each of the high-profile inmates in exchange for privileges, including their illicit drug trade. Ablen collected the money for Ragos who, in turn, delivered them to Dayan at De Lima's residence.[133]

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[130] *Ocampo v. Abando*, 726 Phil. 441, 465 (2014), citing *Sarigumba v. Sandiganbayan*, *supra* note 52.

[131] *Marcos v. Cabrera-Faller*, A.M. No. RTJ-16-2472, January 24, 2017.

[132] *Id*.

[133] *Rollo*, pp. 241-242. *Joint Resolution*, pp. 39-40.

The foregoing findings of the DOJ find support in the affidavits and testimonies of several persons. For instance, in his Affidavit dated September 3, 2016, NBI agent Jovencio P. Ablen, Jr. narrated, *viz.*:

> 21. On the morning of 24 November 2012, I received a call from Dep. Dir. Ragos asking where I was. I told him I was at home. He replied that he will fetch me to accompany him on a very important task.
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> 22. Approximately an hour later, he arrived at my house. I boarded his vehicle, a Hyundai Tucson, with plate no. RGU910. He then told me that he will deliver something to the then Secretary of Justice, Sen. Leila De Lima. He continued and said "*Nior confidential 'to. Tayong dalawa lang ang nakakaalam nito. Dadalhin natin yung quota kay Lola. 5M 'yang nasa bag. Tingnan mo.*"
>
> 23. The black bag he was referring to was in front of my feet. It [was a] black handbag. When I opened the bag, I saw bundles of One Thousand Peso bills.
>
> 24. At about 10 o'clock in the morning, we arrived at the house located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City.
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> 25. Dep. Dir. Ragos parked his vehicle in front of the house. We both alighted the vehicle but he told me to stay. He then proceeded to the house.
>
> 26. From our parked vehicle, I saw Mr. Ronnie Dayan open the gate. Dep. Dir. Ragos then handed the black handbag containing bundles of one thousand peso bills to Mr. Dayan.
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> 27. At that time, I also saw the then DOJ Sec. De Lima at the main door of the house. She was wearing plain clothes which is commonly known referred to as "*duster.*"
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> 28. The house was elevated from the road and the fence was not high that is why I was able to clearly see the person at the main door, that is, Sen. De Lima.
>
> 29. When Dep. Dir. Ragos and Mr. Dayan reached the main door, I saw Mr. Dayan hand the black handbag to Sen. De Lima, which she received. The three of them then entered the house.

30. After about thirty (30) minutes, Dep. Dir. Ragos went out of the house. He no longer has the black handbag with him.

31. We then drove to the BuCor Director's Quarters in Muntinlupa City. While cruising, Dep. Dir. Ragos told me "*Nior 'wag kang maingay kahit kanino at wala kang nakita ha*," to which I replied "*Sabi mo e. e di wala akong nakita.*"

32. On the morning of 15 December 2012, Dep. Dir. Ragos again fetched me from my house and we proceeded to the same house located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City.

33. That time, I saw a plastic bag in front of my feet. I asked Dep. Dir. Ragos "*Quota na naman Sir?*" Dep. Dir. Ragos replied "*Ano pa nga ba, 'tang ina sila lang meron.*"[134]

Petitioner's co-accused, Rafael Ragos, recounted in his own Affidavit dated September 26, 2016 a similar scenario:

8. One morning on the latter part of November 2012, I saw a black handbag containing a huge sum of money on my bed inside the Director's Quarters of the BuCor. I looked inside the black handbag and saw that it contains bundles of one thousand peso bills.

9. I then received a call asking me to deliver the black handbag to Mr. Ronnie Dayan. The caller said the black handbag came from Peter Co and it contains "*Limang Manok*" which means Five Million Pesos (Php5,000,000.00) as a "*manok*" refers to One Million Pesos (Php1,000,000.00) in the vernacular inside the New Bilibid Prison.

10. As I personally know Mr. Dayan and knows that he stays in the house of the then DOJ Sec. Leila M. De Lima located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City, I knew I had to deliver the black handbag to Sen. De Lima at the said address.

11. Before proceeding to the house of Sen. De Lima at the above[-] mentioned address, I called Mr. Ablen to accompany me in delivering the money. I told him we were going to do an important task.

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[134] *Rollo*, pp. 3843-3844.

12. Mr. Ablen agreed to accompany me so I fetched him from his house and we proceeded to the house of Sen. De Lima at the above-mentioned address.

13. While we were in the car, I told Mr. Ablen that the important task we will do is deliver Five Million Pesos (Php5,000,000.00) "Quota" to Sen. De Lima. I also told him that the money was in the black handbag that was on the floor of the passenger seat (in front of him) and he could check it, to which Mr. Ablen complied.

14. Before noon, we arrived at the house of Sen. De Lima located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City.

15. I parked my vehicle in front of the house. Both Mr. Ablen and I alighted from the vehicle but I went to the gate alone carrying the black handbag containing the Five Million Pesos (Php5,000,000.00).

16. At the gate, Mr. Ronnie Dayan greeted me and opened the gate for me. I then handed the handbag containing the money to Mr. Dayan.

17. We then proceeded to the main door of the house where Sen. De Lima was waiting for us. At the main door, Mr. Dayan handed the black handbag to Sen. De Lima, who received the same. We then entered the house.

18. About thirty minutes after, I went out of the house and proceeded to my quarters at the BuCor, Muntinlupa City.

19. One morning in the middle part of December 2012, I received a call to again deliver the plastic bag containing money from Peter Co to Mr. Ronnie Dayan. This time the money was packed in a plastic bag left on my bed inside my quarters at the BuCor, Muntinlupa City. From the outside of the bag, I could easily perceive that it contains money because the bag is translucent.

20. Just like before, I fetched Mr. Ablen from his house before proceeding to the house of Sen. De Lima located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City, where I know I could find Mr. Dayan.

21. In the car, Mr. Ablen asked me if we are going to deliver "quota." I answered yes.

22. We arrived at the house of Sen. De Lima at the above[-]mentioned address at noontime. I again parked in front of the house.

23. I carried the plastic bag containing money to the house. At the gate, I was greeted by Mr. Ronnie Dayan. At that point, I handed the bag to Mr. Dayan. He received the bag and we proceeded inside the house.[135]

The source of the monies delivered to petitioner De Lima was expressly bared by several felons incarcerated inside the NBP. Among them is Peter Co, who testified in the following manner:

6. *Noong huling bahagi ng* 2012, *sinabi sa akin ni Hans Tan na nanghihingi ng kontribusyon sa mga* Chinese *sa* Maximum Security Compound *ng* NBP *si dating* DOJ Sec. De Lima *para sa kanyang planong pagtakbo sa senado sa* 2013 Elections. *Dalawang beses akong nagbigay ng tig-*P5 Million *para tugunan ang hiling ni Sen. De Lima, na dating* DOJ Secretary;

7. *Binigay ko ang mga halagang ito kay* Hans Tan *para maibigay kay* Sen. Leila De Lima *na dating* DOJ Secretary. *Sa parehong pagkakataon, sinabihan na lang ako ni* Hans Tan *na naibigay na ang pera kay* Ronnie Dayan *na siyang tumatanggap ng pera para kay dating* DOJ Sec. De Lima. *Sinabi rin ni* Hans Tan *na ang nagdeliver ng pera ay si dating* OIC *ng* BuCor *na si* Rafael Ragos.

8. *Sa kabuuan, nakapagbigay ang mga* Chinese *sa loob ng* Maximum *ng* ₱10 Million *sa mga huling bahagi ng taong* 2012 *kay dating* DOJ Sec. De Lima *para sa kanyang planong pagtakbo sa senado sa* 2013 Elections. ***Ang mga perang ito ay mula sa pinagbentahan ng illegal na droga.***[136]

All these, at least preliminarily, outline a case for illegal drug trading committed in conspiracy by the petitioner and her co-accused. Thus, the Court cannot sustain the allegation that

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[135] *Id*. at 3854-3856.

[136] *Id*. at 3793.

respondent judge committed grave abuse of discretion in issuing the assailed Order for petitioner's arrest.

Petitioner would later confine herself to the contention that the prosecution's evidence is inadmissible, provided as they were by petitioner's co-accused who are convicted felons and whose testimonies are but hearsay evidence.

Nowhere in *Ramos v. Sandiganbayan*[137] — the case relied upon by petitioner — did this Court rule that testimonies given by a co-accused are of no value. The Court simply held that said testimonies should be received with great caution, but not that they would not be considered. The testimony of Ramos' co-accused was, in fact, admitted in the cited case. Furthermore, this Court explicitly ruled in *Estrada v. Office of the Ombudsman*[138] that hearsay evidence is admissible during preliminary investigation. The Court held thusly:

> Thus, **probable cause can be established with hearsay evidence**, as long as there is substantial basis for crediting the hearsay. **Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely preliminary,** and does not finally adjudicate rights and obligations of parties.[139] (Emphasis supplied.)

Verily, the admissibility of evidence,[140] their evidentiary weight, probative value, and the credibility of the witness are matters that are best left to be resolved in a full-blown trial,[141] not during a preliminary investigation where the technical rules of evidence are not applied[142] nor at the stage of the determination

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[137] G.R. No. 58876, November 27, 1990, 191 SCRA 671.

[138] *Supra* note 67, at 874.

[139] *Id*.

[140] *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016, citing *Atty. Paderanga v. Hon. Drilon*, 273 Phil. 290 (1991)

[141] *Andres v. Cuevas*, 499 Phil. 36, 50 (2005), citing *Drilon v. Court of Appeals*, 258 SCRA 280, 286 (1996).

[142] *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 99, 104 (2015), citing *De Chavez v. Ombudsman*, 543 Phil. 600,

of probable cause for the issuance of a warrant of arrest. Thus, the better alternative is to proceed to the conduct of trial on the merits for the petitioner and the prosecution to present their respective evidence in support of their allegations.

With the foregoing disquisitions, the provisional reliefs prayed for, as a consequence, have to be rejected.

WHEREFORE, the instant petition for prohibition and *certiorari* is **DISMISSED** for lack of merit. The Regional Trial Court of Muntinlupa City, Branch 204 is ordered to proceed with dispatch with Criminal Case No. 17-165.

SO ORDERED.

Bersamin, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Leonardo-de Castro, Peralta, del Castillo, Martires, and *Tijam, JJ.,* see separate concurring opinions.

Perlas-Bernabe, J., see separate concurring and dissenting opinion.

Sereno, C.J., Carpio, Leonen, Jardeleza, and *Caguioa, JJ.*, see dissenting opinions.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur that the instant Petition for *Certiorari* and Prohibition with Application for a Writ of Preliminary Injunction, and Urgent Prayer for Temporary Restraining Order and *Status Quo Ante* Order filed by petitioner, Senator Leila M. De Lima, suffers from procedural defects and unmeritorious substantial arguments which warrant its dismissal.

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620 (2007); *Reyes v. Ombudsman*, G.R. Nos. 212593-94, 213163-78, 213540-41, *et al.*, March 15, 2016, 787 SCRA 354.

Based on the Joint Resolution dated February 14, 2017 of the Department of Justice (DOJ) in NPS Nos. XVI-INV-16J-00313,[1] XVI-INV-16J-00315,[2] XVI-INV-16K-00331,[3] XVI-INV-16K-00336,[4] and XVI-INV-16L-00384,[5] three Informations were filed on February 17, 2017 against petitioner and several other co-accused before the Regional Trial Court (RTC) of Muntinlupa City. One of the Informations was docketed as Criminal Case No. 17-165 and raffled to RTC-Branch 204 presided by respondent Judge Juanita T. Guerrero.

The Information in Criminal Case No. 17-165 charges petitioner and her co-accused, Rafael Marcos Z. Ragos (Ragos) and Ronnie Palisoc Dayan (Dayan), with "violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*."

On February 20, 2017, petitioner filed a Motion to Quash said Information based on the following arguments: the RTC has no jurisdiction over the offense charged; it is the Office of the Ombudsman, not the DOJ Panel, that has authority to file the case; the Information charges more than one offense; the allegations and recital of facts in the Information and the DOJ Joint Resolution do not allege the *corpus delicti* of the charge; the Information is solely based on the testimonies of witnesses who are not even qualified to be discharged as state witnesses;

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[1] For: Violation of Section 5, in relation to Section 26(b) of Republic Act No. 9165.

[2] For: Violation of Section 5, in relation to Section 26(b) of Republic Act No. 9165.

[3] For: Violation of Section 3(e)(k) of Republic Act No. 3019, Section 5(a) of Republic Act No. 6713, Republic Act No. 9745, Presidential Decree No. 46 and Article 211 of the Revised Penal Code.

[4] For: Violation of Section 5, in relation to Section 26(b) of Republic Act No. 9165 in relation to Article 211-A of the Revised Penal Code, Section 27 of Republic Act No. 9165, Section 3(e) of Republic Act No. 3019, Presidential Decree No. 46, Section 7(d) of Republic Act No. 6713, and Article 210 of the Revised Penal Code.

[5] For: Violation of Section 5, in relation to Section 26 of Republic Act No. 9165.

and at any rate, the witnesses' testimonies, which constitute the sole evidence against the accused, are inadmissible as hearsay evidence and have no probative value.

In an Order dated February 23, 2017, respondent Judge found sufficient probable cause for the issuance of Warrants of Arrest against petitioner, Ragos, and Dayan. Respondent Judge issued the Warrant of Arrest against petitioner on the same day.

The Warrant of Arrest was served upon petitioner on February 24, 2017 and by virtue of respondent Judge's Order of even date, petitioner was committed to the Custodial Service Unit at Camp Crame, Quezon City.

In this Petition, petitioner imputes grave abuse of discretion on the part of respondent Judge for:

(a) The *Order* dated 23 February 2017 wherein respondent judge found probable cause for issuance of arrest warrant against all accused, including Petitioner Leila M. de Lima;

(b) The *Warrant of Arrest* against Petitioner Leila M. de Lima also dated 23 February 2017 issued by respondent judge pursuant to the Order dated the same day;

(c) The *Order* dated 24 February 2017, committing Petitioner to the custody of the PNP Custodial Center; and

(d) The omission of respondent judge in failing or refusing to act on Petitioner's Leila M. de Lima (sic) *Motion to Quash*, through which Petitioner seriously questions the jurisdiction of the lower court.

Petitioner prays that the Court render judgment:

a. Granting a writ of certiorari annulling and setting aside the *Order* dated 23 February 2017, the *Warrant of Arrest* dated the same date, and the Order dated 24 February 2017 of the Regional Trial Court-Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled *People of the Philippines versus Leila M. de Lima et al.*;

b. Granting a writ of prohibition enjoining and prohibiting the respondent judge from conducting further proceedings until and unless the Motion to Quash is resolved with finality;

c. Issuing an order granting the application for the issuance of temporary restraining order (TRO) and a writ of preliminary injunction to the proceedings; and

d. Issuing a Status Quo Ante Order restoring the parties to the status prior to the issuance of the Order and Warrant of Arrest both dated February 23, 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.

I

In filing the present Petition, petitioner displayed patent disregard of several procedural rules. Petitioner filed this Petition for *Certiorari* and Prohibition prematurely, without first filing a motion for reconsideration, in violation of the hierarchy of courts, and lacking proper verification and certification of non-forum shopping.

Notably, there is a glaring inconsistency in petitioner's fundamental arguments in her Petition. Petitioner attributes grave abuse of discretion on respondent Judge's part for not acting on her Motion to Quash, yet, at the same time, argues that respondent Judge's issuance of the Order dated February 23, 2017, finding probable cause for issuance of warrants of arrest, and the corresponding Warrant of Arrest of even date against petitioner, should already be deemed a denial of the very same Motion.

Petitioner maintains that respondent Judge should not have issued the Warrant of Arrest against her without resolving first her Motion to Quash the Information. However, petitioner failed to present legal basis to support her position that it was mandatory for respondent Judge to resolve her Motion to Quash prior to issuing the Warrant of Arrest against her.

Respondent Judge's prompt issuance of a Warrant of Arrest on February 23, 2017, seven days after the filing of Information against petitioner, is only in compliance with Rule 112, Section 5(a) of the Rules of Court, which provides:

Sec. 5. *When warrant of arrest may issue. — (a) By the Regional Trial Court.* — Within **ten (10) days** from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Given the aforementioned 10-day period, it behooves respondent Judge to forthwith personally evaluate the evidence on record and determine the existence of probable cause for the issuance of warrants of arrest. Hence, the swiftness by which respondent Judge issued the Warrant of Arrest against petitioner, by itself, does not constitute grave abuse of discretion. As the Court cited in one of its cases, "[s]peed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste."[6]

It also bears to remember that petitioner's Motion to Quash does not raise the question of jurisdiction alone, but also brings up several other issues, including factual ones, such as the admissibility and probative value of the testimonies of witnesses against petitioner and her co-accused, the resolution of which would have entailed more time. If respondent Judge acted on the Motion to Quash first, she risked failing to comply with the 10-day mandatory period set in Rule 112, Section 5(a) of the Rules of Court for determining probable cause for the issuance of warrants of arrest against petitioner and her co-accused.

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[6] *Napoles v. De Lima*, G.R. No. 213529, July 13, 2016, citing *Santos-Concio v. Department of Justice*, 567 Phil. 70, 89 (2008).

In addition, respondent Judge ordered the issuance of the warrants of arrest against petitioner and her co-accused only "[a]fter a careful evaluation of the herein Information and all the evidence presented during the preliminary investigation conducted in this case by the Department of Justice, Manila," and "find[ing] sufficient probable cause against all the accused x x x." This is sufficient compliance with the requirement under Article III, Section 2[7] of the Constitution of personal determination of probable cause by the judge for the issuance of a search warrant or warrant of arrest. Respondent Judge's issuance of the Warrant of Arrest against petitioner enjoys the presumption of regularity in the performance of her duties, and petitioner utterly failed to show capriciousness, whimsicality, arbitrariness, or any despotic exercise of judgment by reason of passion and hostility on respondent Judge's part.[8]

In contrast, there is no particular law, rule, or jurisprudence which sets a specific time period for a judge to resolve a motion to quash in a criminal case. Rule 117, Section 1 of the Rules of Court states that "[a]t any time before entering his plea, the accused may move to quash the complaint or information[;]" and Rule 116, Section 1(g) reads that "[u]nless a shorter period is provided by special law or Supreme Court Circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period." It may be reasonably inferred from the foregoing rules that a motion to quash must be filed by the accused **and** resolved by the judge before arraignment of the accused.

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[7] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[8] *Napoles v. De Lima*, *supra* note 6.

Petitioner herein has not been arraigned in Criminal Case No. 17-165. Petitioner filed her Motion to Quash on February 20, 2017; respondent Judge issued the Warrant of Arrest against petitioner on February 23, 2017; and petitioner was arrested on February 24, 2017. Given petitioner's pending Motion to Quash, the thirty (30)-day period for petitioner's arraignment is deemed suspended for the meantime. Petitioner filed this Petition on February 27, 2017.

In the instant Petition, petitioner ascribes grave abuse of discretion on respondent Judge's part for failing or refusing to act on petitioner's Motion to Quash, but petitioner filed said Petition before this Court just seven days after filing her Motion to Quash before the RTC. There is absolutely no showing that respondent Judge had breached the time period for acting on petitioner's Motion to Quash or that respondent Judge has no intention to act on said Motion at all. Respondent Judge should be accorded reasonable time to resolve petitioner's Motion to Quash, which is still pending before respondent Judge's court. Clearly, the present Petition, insofar as it relates to petitioner's Motion to Quash, had been prematurely filed.

Akin to the instant case is *Aguas v. Court of Appeals*,[9] in which therein petitioner resorted to the filing of a petition for *certiorari*, prohibition, and *mandamus*, before the Court of Appeals even before the trial court could act on therein private respondents' motion to dismiss petitioner's complaint. The Court adjudged in *Aguas* that:

> It should be obvious that the petition for *certiorari*, prohibition and *mandamus* filed before respondent appellate court was premature, insofar as it relates to the motion to dismiss which has yet to be resolved. There was no order denying or granting the motion. Thus, there was really nothing to review insofar as the presence or absence of petitioner's cause of action is concerned. Petitioner's apprehension that it will be granted does not alone make it ripe for review by the Court of Appeals. There was no justiciable issue yet. Thus, it was error for the Court of Appeals to rule that the complaint, from the

[9] 348 Phil. 417, 425 (1998).

facts alleged by petitioner and hypothetically admitted by private respondents, does not state a cause of action.

In another case, *Tano v. Socrates*,[10] one set of petitioners was apprehended and criminally charged before the Municipal Circuit Trial Court (MCTC) for violating the ordinances of the City of Puerto Princesa and the Province of Palawan, which were enacted for the protection of marine life within their jurisdiction. Without seeking redress from the concerned local government units, the prosecutor's office, and other courts, the petitioners directly invoked the original jurisdiction of this Court by filing a petition for *certiorari*, essentially assailing the constitutionality of the ordinances for depriving petitioners of their means of livelihood without due process of law and seeking the dismissal of the criminal cases against them for violations of the said ordinances. The Court, in *Tano*, dismissed the petition for *certiorari* for being premature as therein petitioners had not even filed before the MCTC motions to quash the informations against them; and the Court then declared that even in the event that petitioners had filed such motions, the remedy of special civil action of *certiorari* would still be unavailing to them, thus:

> The primary interest of the first set of petitioners is, of course, to prevent the prosecution, trial and determination of the criminal cases until the constitutionality or legality of the Ordinances they allegedly violated shall have been resolved. x x x
>
> As to the first set of petitioners, this special civil [action] for *certiorari* must fail on the ground of prematurity amounting to a lack of cause of action. There is no showing that said petitioners, as the accused in the criminal cases, have filed motions to quash the informations therein and that the same were denied. The ground available for such motions is that the facts charged therein do not constitute an offense because the ordinances in question are unconstitutional. It cannot then be said that the lower courts acted without or in excess of jurisdiction or with grave abuse of discretion to justify recourse to the extraordinary remedy of *certiorari* or prohibition. It must further be stressed that **even if petitioners did**

[10] 343 Phil. 670 (1997).

file motions to quash, the denial thereof would not forthwith give rise to a cause of action under Rule 65 of the Rules of Court. The general rule is that where a motion to quash is denied, the remedy therefrom is not *certiorari*, but for the party aggrieved thereby to go to trial without prejudice to reiterating special defenses involved in said motion, and if, after trial on the merits an adverse decision is rendered, to appeal therefrom in the manner authorized by law. And, even where in an exceptional circumstance such denial may be the subject of a special civil action for *certiorari*, a motion for reconsideration must have to be filed to allow the court concerned an opportunity to correct its errors, unless such motion may be dispensed with because of existing exceptional circumstances. Finally, even if a motion for reconsideration has been filed and denied, the remedy under Rule 65 is still unavailable absent any showing of the grounds provided for in Section 1 thereof. For obvious reasons, the petition at bar does not, and could not have, alleged any of such grounds.[11] (Emphasis ours.)

Although not on all fours with the case at bar, the aforequoted ruling in *Tano* significantly presents several variables arising from the denial of a motion to quash which will determine the appropriate remedy the affected party may avail under each circumstance, and which may not necessarily be a petition for *certiorari* under Rule 65 of the Rules of Court. It highlights even more the prematurity of the instant Petition wherein, as of yet, respondent Judge has not even granted or denied petitioner's Motion to Quash.

Petitioner prays in her Petition that the Court annul and set aside the Order dated February 23, 2017, finding probable cause to issue a warrant of arrest, as well as the Warrant of Arrest of even date, issued by respondent Judge against her. Petitioner, however, did not previously file a motion for reconsideration of said Order before respondent Judge's trial court.

Rule 65 petitions for *certiorari* and prohibition are discretionary writs, and the handling court possesses the authority to dismiss them outright for failure to comply with the form and substance requirements. The requirement under Sections

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[11] *Id*. at 697-698.

1 and 2 of Rule 65 of the Rules of Court on petitions for *certiorari* and prohibition, respectively, that "there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law[,]" is more than just *pro-forma*.[12]

The Court had ruled that a motion for reconsideration of the questioned Order or Resolution constitutes plain, speedy, and adequate remedy, and a party's failure to file such a motion renders its petition for *certiorari* fatally defective.[13] A motion for reconsideration allows the public respondent an opportunity to correct its factual and legal errors. The Court has reiterated in numerous decisions that a motion for reconsideration is mandatory before the filing of a petition for *certiorari*.[14]

While the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari* is not iron-clad, none of the recognized exceptions[15] applies to petitioner's case. Petitioner's averment of lack of jurisdiction

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[12] *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.,* G.R. No. 207132, December 6, 2016.

[13] *Metro Transit Organization, Inc. v. PIGLAS NFWU-KMU,* 574 Phil. 481, 491-492 (2008).

[14] *Estrada v. Office of the Ombudsman,* 751 Phil. 821, 877 (2015).

[15] The recognized exceptions are: (a) where the order is a patent nullity, as where the court *a quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. (*Saint Louis University, Inc. v. Olairez,* 730 Phil. 444, 458-459 [2014]).

of the RTC over her case is baseless. Equally groundless is petitioner's claim that a motion for reconsideration is useless or that it is improbable for respondent Judge to grant such a relief. In the absence of clear and convincing evidence, respondent Judge's issuance of the Order dated February 23, 2017 and Warrant of Arrest against petitioner in the regular performance of her official duties can hardly qualify as "political persecution." In addition, the present Petition does not involve pure questions of law as petitioner herself calls upon the Court to look into the evidence considered by the DOJ Panel in finding probable cause to file the Information against her in Criminal Case No. 17-165, as well as by respondent Judge in finding probable cause to issue the Warrant of Arrest against her.

Petitioner also filed directly before this Court her Petition for *Certiorari* and Prohibition assailing respondent Judge's actuations and/or inaction, bypassing the Court of Appeals and disregarding the hierarchy of courts. In *Tano,*[16] the Court stressed the need for strict compliance with the hierarchy of courts:

> Even granting *arguendo* that the first set of petitioners have a cause of action ripe for the extraordinary writ of *certiorari*, there is here a clear disregard of the hierarchy of courts, and no special and important reason or exceptional and compelling circumstance has been adduced why direct recourse to us should be allowed. While we have concurrent jurisdiction with Regional Trial Courts and with the Court of Appeals to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, such concurrence gives petitioners no unrestricted freedom of choice of court forum, so we held in *People v. Cuaresma*:
>
> > This concurrence of jurisdiction is not . . . to be taken as according to parties seeking any of the writs an absolute unrestrained freedom of choice of the court to which application therefor will be directed. There is after all hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that

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[16] *Tano v. Socrates*, *supra* note 10 at 699-700.

> petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. . . .
>
> The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land . . . .

In *Santiago v. Vasquez*, this Court forcefully expressed that the propensity of litigants and lawyers to disregard the hierarchy of courts must be put to a halt, not only because of the imposition upon the precious time of this Court, but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court, the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We reiterated "the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of [its] primary jurisdiction."

I fail to appreciate any exceptional or compelling circumstance in petitioner's case to justify her direct resort to this Court or would constitute as an exception to the well-established judicial policy of hierarchy of courts.

Petitioner's utter lack of regard for procedural rules is further demonstrated by her improperly executed Verification and Certification against Forum Shopping. It is not disputed that while the *jurat* states that the said Verification and Certification

were "SUBSCRIBED AND SWORN to before [the Notary Public]," this is not what had actually happened. Petitioner did not appear personally before the Notary Public, Atty. Maria Cecile C. Tresvalles-Cabalo (Tresvalles-Cabalo). The Petition and the attached Verification and Certification against Forum Shopping, which was already signed purportedly by petitioner, were merely brought and presented by petitioner's staff to Atty. Tresvalles-Cabalo, together with petitioner's passport, for notarization. This contravenes the requirement under the 2004 Rules on Notarial Practice that the "*jurat*"[17] be made by the individual in person before the notary public.

Verification is required to secure an assurance that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative; and certification against forum shopping is required based on the principle that a party-litigant should not be allowed to pursue simultaneous

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[17] Rule II, Section 6 of the 2004 Rules on Notarial Practice reads:

Sec. 6. *Jurat*. – "*Jurat*" refers to an act in which an individual on a single occasion:

(a) **appears in person before the notary public** and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

(d) takes an **oath or affirmation** before the notary public as to such instrument or document. (Emphases ours.)

Rule II, Section 2 of the 2004 Rules on Notarial Practice defines "affirmation" or "oath" as follows:

Sec. 2. *Affirmation or Oath*. – The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) **appears in person before the notary public**;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

remedies in different fora. The important purposes behind these requirements cannot be simply brushed aside absent any sustainable explanation justifying their relaxation.[18] Indeed, such requirements may be relaxed under justifiable circumstances or under the rule on substantial compliance. Yet, petitioner did not give a satisfactory explanation as to why she failed to personally see Atty. Tresvalles-Cabalo for the proper execution of her Verification and Certification against Forum Shopping, when Atty. Tresvalles-Cabalo was already right there at Camp Crame, where petitioner was detained, exactly for the purpose of providing notarization services to petitioner. Neither can it be said that there had been substantial compliance with such requirements because despite Atty. Tresvalles-Cabalo's subsequent confirmation that petitioner herself signed the Verification and Certification against Forum Shopping, still, petitioner has not complied at all with the requisite of a *jurat* that she personally appears before a notary public to avow, under penalty of law, to the whole truth of the contents of her Petition and Certification against Forum Shopping.

Petitioner's numerous procedural lapses overall reveal a cavalier attitude towards procedural rules, which should not be so easily countenanced based on petitioner's contention of substantial justice. In *Manila Electric Company v. N.E. Magno Construction, Inc.*,[19] the Court decreed that no one has a vested right to file an appeal or a petition for *certiorari*. These are statutory privileges which may be exercised only in the manner prescribed by law. Rules of procedure must be faithfully complied with and should not be discarded with by the mere expediency of claiming substantial merit. The Court was even more emphatic in its judgment in *William Go Que Construction v. Court of Appeals*,[20] thus:

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[18] *William Go Que Construction v. Court of Appeals,* G.R. No. 191699, April 19, 2016, 790 SCRA 309, 326.

[19] G.R. No. 208181, August 31, 2016.

[20] *Supra* note 18 at 326-327.

As a final word, it is well to stress that "procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party x x x Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality." Resort to the liberal application of procedural rules remains the exception rather than the rule; it cannot be made without any valid reasons underpinning the said course of action. To merit liberality, the one seeking such treatment must show reasonable cause justifying its noncompliance with the Rules, and must establish that the outright dismissal of the petition would defeat the administration of substantial justice. Procedural rules must, at all times, be followed, save for instances when a litigant must be rescued from an injustice far graver than the degree of his carelessness in not complying with the prescribed procedure. The limited exception does not obtain in this case.

II

Granting *arguendo* that the Court can take cognizance of the substantive issues raised in the instant Petition, the same should still be dismissed for lack of merit.

The alleged defects of the Information in Criminal Case No. 17-165 do not warrant its quashal.

The Information in Criminal Case No. 17-165 fully reads:

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence

> over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.

Petitioner challenges the Information on the grounds that the facts therein do not constitute an offense; and that it fails to precisely designate the offense with which petitioner and her co-accused are charged, and to particularly describe the actions or omissions complained of as constituting the offense. Petitioner disputes respondents' contention that petitioner and her co-accused are being charged with conspiracy to commit drug trading, and insists that they are being accused of consummated drug trading.

The relevant provisions of Republic Act No. 9165 expressly mentioned in the Information are reproduced below:

> Sec. 3. *Definitions.* — As used in this Act, the following terms shall mean:
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> x x x x x x x x x
>
> (jj) ***Trading.*** – Transactions involving the **illegal trafficking** of dangerous drugs and/or controlled precursors and essential chemicals **using electronic devices** such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.
>
> Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or*

Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, **trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Sec. 26. *Attempt or Conspiracy.* — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

Sec. 28. *Criminal Liability of Government Officials and Employees.* — The **maximum penalties** of the unlawful acts provided for in this Act shall be imposed, in addition to **absolute perpetual disqualification from any public office**, if those found guilty of such unlawful acts are **government officials and employees**. (Emphases ours.)

"Trading of dangerous drugs" refers to "transactions involving illegal trafficking." "Illegal trafficking" is broadly defined under Section 3(r) of Republic Act No. 9165 as "[t]he illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical." The trading of dangerous drugs evidently covers more than just the sale of such drugs and a singular buy-and-sell transaction. It connotes the conduct of a business involving a series of transactions, often for a sustained period of time. It may be committed by various ways, or even by different combinations of ways.

The respondents aptly contended that the Information contains all the elements of conspiracy to commit illegal trading, *viz.*, "*first*, two or more persons come to an agreement; *second*, the

agreement is to commit drug trading by using electronic devices such as mobile or landlines, two-way radios, internet, *etc.*, whether for money or any other consideration in violation of Republic Act No. 9165; and *third*, the offenders had decide[d] to commit the offense."

On the imprecise designation of the offense charged against petitioner and her co-accused, we may be guided accordingly by the pronouncements of the Court in *People v. Valdez*,[21] citing *United States v. Lim San:*[22]

> To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*:
>
> > From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits x x x. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion**

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[21] 679 Phil. 279, 294-296 (2012).

[22] 17 Phil. 273 (1910).

> **of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder." If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named x x x**.

A practical consequence of the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail. The allegations in the information are controlling in the ultimate analysis. Thus, when there is a variance between the offense charged in the information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved. In that regard, an offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the information, constitute the latter; an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

It may also do us well to remember that the Information only needs to state the ultimate facts; the evidentiary and other details can be provided during the trial.[23] The purpose of an Information is to afford an accused his/her right to be informed of the nature and cause of the accusation against him/her. For this purpose, the Rules of Court require that the Information allege the ultimate facts constituting the elements of the crime charged. Details that do not go into the core of the crime need not be included in the Information, but may be presented during trial. The rule that evidence must be presented to establish the existence of the elements of a crime to the point of moral certainty

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[23] *People v. Romualdez*, 581 Phil. 462, 484 (2008).

is only for purposes of conviction. It finds no application in the determination of whether or not an Information is sufficient to warrant the trial of an accused.[24]

Moreover, if indeed the Information is defective on the ground that the facts charged therein do not constitute an offense, the court may still order the prosecution to amend the same. As the Court ratiocinated in *People v. Sandiganbayan (Fourth Division)*:[25]

Outright quashal of the Information not proper

Even assuming for the sake of argument that the Information was defective on the ground that the facts charged therein do not constitute an offense, outright quashal of the Information is not the proper course of action.

Section 4, Rule 117 of the Rules of Court gives clear guidance on this matter. It provides —

> Sec. 4. *Amendment of complaint or information.* — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> **If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment.** The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

When a motion to quash is filed challenging the validity and sufficiency of an Information, and the defect may be cured by amendment, courts must deny the motion to quash and order the prosecution to file an amended Information. Generally, a defect pertaining to the failure of an Information to charge facts constituting an offense is one that may be corrected by an amendment. In such instances, courts are mandated not to automatically quash the

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[24] *People v. Sandiganbayan (Fourth Division),* G.R. No. 160619, September 9, 2015, 770 SCRA 162, 174-175.

[25] *Id.* at 176-177.

Information; rather, it should grant the prosecution the opportunity to cure the defect through an amendment. This rule allows a case to proceed without undue delay. By allowing the defect to be cured by simple amendment, unnecessary appeals based on technical grounds, which only result to prolonging the proceedings, are avoided.

More than this practical consideration, however, is the due process underpinnings of this rule. As explained by this Court in *People v. Andrade*, the State, just like any other litigant, is entitled to its day in court. Thus, a court's refusal to grant the prosecution the opportunity to amend an Information, where such right is expressly granted under the Rules of Court and affirmed time and again in a string of Supreme Court decisions, effectively curtails the State's right to due process.

Even if the Information suffers from vagueness, the proper remedy may still not be a motion to quash, but a motion for a bill of particulars. The Court declared in *Enrile v. People*[26] that if the Information charges an offense and the averments are so vague that the accused cannot prepare to plead or prepare for trial, then a motion for a bill of particulars is the proper remedy. The Court further expounded in *Enrile* that:

> ***In general, a bill of particulars is the further specification of the charges or claims in an action***, which an accused may avail of by motion before arraignment, to enable him to properly **plead and prepare for trial**. x x x
>
> In criminal cases, a bill of particulars details items or specific conduct not recited in the Information but nonetheless pertain to or are included in the crime charged. Its purpose is to enable an accused: to know the theory of the government's case; to prepare his defense and to avoid surprise at the trial; to plead his acquittal or conviction in bar of another prosecution for the same offense; and to compel the prosecution to observe certain limitations in offering evidence.

In criminal proceedings, the motion for a bill of particulars is governed by Section 9 of Rule 116 of the Revised Rules of Criminal Procedure which provides:

> Section 9. *Bill of particulars*. — The accused may, before arraignment, move for a bill of particulars to enable him properly

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[26] 766 Phil. 75 (2015).

to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

The rule requires the information to describe the offense with sufficient particularity to apprise the accused of the crime charged with and to enable the court to pronounce judgment. ***The particularity must be such that persons of ordinary intelligence may immediately know what the Information means***.

The general function of a bill of particulars, whether in civil or criminal proceedings, is ***to guard against surprises during trial***. It is not the function of the bill to furnish the accused with the evidence of the prosecution. Thus, the prosecutor shall *not* be required to include in the bill of particulars matters of evidence relating to how the people intend to prove the elements of the offense charged or how the people intend to prove any item of factual information included in the bill of particulars.[27]

It cannot be denied that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law and the accused may be prosecuted for more than one offense. The only limit to this rule is the prohibition under Article III, Section 21 of the Constitution that no person shall be twice put in jeopardy of punishment for "the same offense."[28] When a single criminal act may give rise to a multiplicity of offenses and where there is variance or differences between the elements of an offense in one law and another law, there will be no double jeopardy because what the rule on double jeopardy prohibits refers to identity of elements in the two offenses.[29]

While arguably, the same acts or incidents described in the Information in Criminal Case No. 17-165 may also constitute corruption or bribery, which is criminally punishable under other laws, said Information is sufficiently clear that petitioner and her co-accused are being charged therein for a drug-related offense. Both the heading and opening paragraph of the

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[27] *Id*. at 105-106.

[28] *Loney v. People*, 517 Phil. 408, 424 (2006).

[29] *Nierras v. Dacuycuy*, 260 Phil. 6, 13 (1990).

Information explicitly indicate that the offense charged is that penalized under Republic Act No. 9165.[30] The allegations in the Information that petitioner and her co-accused demanded and received certain amounts of money from high-profile inmates at the New Bilibid Prison are merely descriptive of their alleged participation in the conspiracy. The following declarations of the Court in *People v. Lava,*[31] which involved a charge for rebellion, is instructive on how the Information should be read in this case:

> The appellants also contend that the informations against them charge more than one offense, in violation of Section 12, Rule 106 of the old Rules of Court (now Section 12, Rule 117 of the new Rules of Court). This contention has no merit. A reading of the informations reveals the theory of the prosecution that the accused had committed the complex crime of rebellion with murders, robbery and arsons, enumerating therein eight counts regarding specific acts of murder, robbery and arson. These acts were committed, to quote the information, "to create and spread terrorism in order to facilitate the accomplishment of the aforesaid purpose", that is, to overthrow the Government. The appellants are not charged with the commission of each and every crime specified in the counts as crimes separate and distinct from that of rebellion. **The specific acts are alleged merely to complete the narration of facts, thereby specifying the way the crime of rebellion was allegedly committed, and to apprise the defendants of the particular facts intended to be proved as the basis for a finding of conspiracy and/or direct participation in the commission of the crime of rebellion. An information is not duplicitous if it charges several related acts, all of which constitute a single offense, although the acts may in themselves be distinct offenses.** Moreover, this Court has held that acts of murder, arson, robbery, physical injuries, *etc.* are absorbed by, and form part and parcel of, the crime of rebellion if committed as a means to or in furtherance of the rebellion charged. (Emphasis ours.)

There is no need for us to belabor the question of why the DOJ would rather prosecute petitioner and her co-accused for violation of Republic Act No. 9165, but not for corruption or

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[30] *Ramos, Jr. v. Pamaran*, 158 Phil. 536, 541 (1974).

[31] 138 Phil. 77, 110 (1969).

bribery. Who to charge with what crime or none at all is basically the prosecutor's call.[32] Public prosecutors under the DOJ have a wide range of discretion, the discretion of whether, what, and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by public prosecutors; and this Court has consistently adhered to the policy of non-interference in the conduct of preliminary investigations, and to leave to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against the supposed offender.[33]

As has been extensively discussed by the *ponente* and Associate Justices Diosdado M. Peralta, Samuel R. Martires, and Noel Gimenez Tijam in their respective opinions, exclusive jurisdiction over drug-related cases still exclusively resides in the RTCs. On one hand, there is Article XI, Section 90 of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002, which specifically provides, under the heading of "*Jurisdiction*," that "[t]he Supreme Court shall designate special courts from **among the existing Regional Trial Courts** in each judicial region to **exclusively try and hear cases** involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction." The designation by the Supreme Court of special courts among existing RTCs for drug-related cases is more than just an administrative matter. From a plain reading of Article XI, Section 90, it is clear that the jurisdiction to try and hear violations of Republic Act No. 9165 are presently not only exclusive to RTCs, but even made further exclusive only to RTCs specially designated by the Supreme Court.

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[32] *Elma v. Jacobi*, 689 Phil. 307, 341 (2012).

[33] *Aguirre v. Secretary of the Department of Justice*, 571 Phil. 138, 161 (2008).

On the other hand, the jurisdiction of the Sandiganbayan is set forth in Section 4 of Presidential Decree No. 1606, as amended by Republic Act No. 10660:[34]

Sec. 4. *Jurisdiction*. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x x x x x x

(2) Members of Congress and officials thereof classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

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[34] An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as Amended, and Appropriating Funds Therefor.

***Provided*, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).** (Emphasis ours.)

Despite the amendments to its jurisdiction, the Sandiganbayan primarily remains an anti-graft court, as it is expressly recognized in the Constitution.[35] Arguments that Republic Act No. 10660 expanded the jurisdiction of the Sandiganbayan are unfounded and contrary to the expressed intentions of the lawmakers in amending Section 4 of Presidential Decree No. 1606 through Republic Act No. 10660.

The lawmakers took note of the dismal rate of disposition reflected in the heavily clogged docket of the Sandiganbayan; and to streamline the jurisdiction and decongest the dockets of the anti-graft court, they included in Republic Act No. 10660 the proviso giving the RTC exclusive jurisdiction over minor cases, *i.e.*, information which (a) does not allege any damage to the government or bribery; or (b) alleges damage to the government or bribery in an amount not exceeding One Million Pesos, regardless of the position or rank of the public official involved. By reason of said proviso, jurisdiction over minor cases involving high-ranking public officials is transferred from the Sandiganbayan to the RTC.[36] Therefore, said proviso cannot be invoked in reverse — to transfer jurisdiction over more cases from the RTC to the Sandiganbayan — in contravention of the express intent of the lawmakers.

To emphasize, the goal of the amendments to the jurisdiction of the Sandiganbayan under Republic Act No. 10660 is to lessen, not add even more, to the caseload of the said anti-graft court.

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[35] Article XI, Section 4 of the 1987 Constitution provides that "[t]he present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law."

[36] LIX JOURNAL, SENATE 16TH CONGRESS 1ST REGULAR SESSION 32-33 (February 26, 2014).

In any case, the proviso on damage to the government or bribery under Section 4 of Presidential Decree No. 1606, as amended by Republic Act No. 10660, finds no application to the Petition at bar since the Information in Criminal Case No. 17-165 charges petitioner with conspiracy to commit drug trading, and not bribery.

More importantly, I am in complete accord with the *ponente* who points out that Section 4(b) of Presidential Decree No. 1606, as amended, is a catch-all provision, of "broad and general phraseology," referring in general to "all other offenses or felonies whether simple or complexed with other crimes" committed by particular public officials. It cannot take precedence over Article XI, Section 90 of Republic Act No. 9165 which specifically pertains to drug-related cases, regardless of the identity of the accused. Republic Act No. 10660, expanding the jurisdiction of the Sandiganbayan, is of general character, and even though it is a later enactment, it does not alter Article XI, Section 90 of Republic Act No. 9165, a law of special nature. The decisions of the Court in *Manzano v. Valera*[37] and *People v. Benipayo*,[38] affirming the exclusive jurisdiction of RTCs over libel cases under Article 360 of the Revised Penal Code, may be applied by analogy to the case at bar.

The Court pronounced in *Manzano* that:

> Conformably with these rulings, we now hold that public respondent committed an error in ordering that the criminal case for libel be tried by the MTC of Bangued.
>
> For, although R.A. 7691 was enacted to decongest the clogged dockets of the Regional Trial Courts by expanding the jurisdiction of first level courts, said law is of a general character. Even if it is a later enactment, it does not alter the provision of Article 360 of the RPC, a law of a special nature. "Laws vesting jurisdiction exclusively with a particular court, are special in character, and should prevail over the Judiciary Act defining the jurisdiction of other courts (such as the Court of First Instance) which is a general law." A later enactment

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[37] 354 Phil. 66 (1998).

[38] 604 Phil. 317 (2009).

like R.A. 7691 does not automatically override an existing law, because it is a well-settled principle of construction that, in case of conflict between a general law and a special law, the latter must prevail regardless of the dates of their enactment. Jurisdiction conferred by a special law on the RTC must therefore prevail over that granted by a general law on the MTC.

Moreover, from the provisions of R.A. 7691, there seems to be no manifest intent to repeal or alter the jurisdiction in libel cases. If there was such intent, then the amending law should have clearly so indicated because implied repeals are not favored. As much as possible, effect must be given to all enactments of the legislature. A special law cannot be repealed, amended or altered by a subsequent general law by mere implication. Furthermore, for an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws. Absent an express repeal, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and the old laws. The two laws, in brief, must be absolutely incompatible. In the law which broadened the jurisdiction of the first level courts, there is no absolute prohibition barring Regional Trial Courts from taking cognizance of certain cases over which they have been priorly granted special and exclusive jurisdiction. Such grant to the RTC (previously CFI) was categorically contained in the first sentence of the amended Sec. 32 of B.P. 129. The inconsistency referred to in Section 6 of R.A. 7691, therefore, does not apply to cases of criminal libel.[39]

In *Benipayo*, the Court upheld the jurisdiction of the RTC, as against that of the Sandiganbayan, over a libel case committed by a public official, reasoning as follows:

As we have constantly held in *Jalandoni, Bocobo, People v. Metropolitan Trial Court of Quezon City, Br. 32, Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations shall be filed simultaneously or separately with the RTC to the exclusion of all other courts. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, in the absence of an express

[39] *Manzano v. Valera*, *supra* note 37 at 75-76.

repeal or modification, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means. The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to (public) office, similar to the expansion of the jurisdiction of the MTCs, did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.[40]

The phrase in the Information that petitioner and her co-accused committed the offense charged by "taking advantage of their public office" is not sufficient to bring the offense within the definition of "offenses committed in relation to public office" which are within the jurisdiction of the Sandiganbayan. Such an allegation is to be considered merely as an allegation of an aggravating circumstance that petitioner and her co-accused are government officials and employees which will warrant the imposition of the maximum penalties, as provided under Section 28 of Republic Act No. 9165:

> Sec. 28. *Criminal Liability of Government Officials and Employees.* – The **maximum penalties** of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are **government officials and employees**. (Emphases ours.)

For the foregoing reasons, I vote to dismiss the Petition.

SEPARATE OPINION

PERALTA, *J.*:

I concur with the *ponencia* that the instant Petition for *Certiorari* and Prohibition should be denied on the grounds of prematurity, forum shopping, for being improperly verified, and for lack of merit.

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[40] *People v. Benipayo*, *supra* note 38 at 330-331.

However, in light of the novelty and the transcendental importance of the jurisdictional issue raised by petitioner Senator Leila M. De Lima, I find it necessary to go over the records of the deliberation in the Congress to verify if the exclusive original jurisdiction of Regional Trial Courts (*RTCs*) under Section 39 of Republic Act (*R.A.*) No. 6425, or the *Dangerous Drugs Act of 1972*, was carried over to Section 90 of R.A. No. 9165, as amended, or the *Comprehensive Dangerous Drugs Act of 2002*. Since the legislature clearly intended to confer to Regional Trial Courts exclusive original jurisdiction over drug cases under R.A. No. 9165, respondent judge, the Hon. Juanita T. Guerrero, should be ordered to resolve the motion to quash, taking into account the discussion on the definition of conspiracy to commit illegal drug trading, the principles in determining the sufficiency of an information, and the remedies relative to motion to quash under Sections 4, 5 and 6, Rule 117 of the Rules of Court.

I also submit that respondent judge did not commit grave abuse of discretion, amounting to lack or excess of jurisdiction, when she issued the warrant of arrest against petitioner despite the pendency of her motion to quash, because there is no law, jurisprudence or rules of procedure which requires her to first resolve a motion to quash before issuing a warrant of arrest. Respondent judge should be ordered to resolve the pending motion to quash in order to give her opportunity to correct the errors raised by petitioner.

On procedural grounds, I agree with the *ponencia* that the Petition for *Certiorari* and Prohibition must be dismissed on the grounds of prematurity and forum shopping, as well as for being improperly verified.

For one, petitioner Senator Leila M. De Lima failed to avail of the plain, speedy and adequate remedies before the DOJ and the respondent judge. During the Oral Arguments, it was conceded that before filing the petition at bar, petitioner failed to avail of a wide array of remedies before the DOJ and the respondent judge, such as: (1) filing of counter-affidavit with an alternative prayer for referral of the case to the Ombudsman; (2) filing a motion for re-investigation before the information

is filed in court; (3) filing of a motion for leave of court to file a motion for re-investigation if an information has been filed; (4) filing of a motion for judicial determination of probable cause; (5) motion for bill of particulars; and (6) motion to quash warrant of arrest. Thus:

JUSTICE PERALTA:

Okay. Now, I was looking at your petition, and you missed out [on] a lot of remedies that should have been undertaken by Senator De Lima. **In the conduct of the preliminary investigation before the DOJ, she did not file a counter-affidavit**. Because if there was lack of jurisdiction from the very beginning, she should have filed a counter-affidavit presenting her countervailing evidence. **And alternatively, ask for the dismissal of the case because the DOJ has no jurisdiction, because a motion to dismiss is not allowed**. You have to file a counter-affidavit, thus, she waived it. That should have been the best time to argue that the DOJ has no jurisdiction. Then after that, x x x if there was a resolution by the DOJ, then you can file a motion for re-investigation.

ATTY. HILBAY:

Your Honor, according to the lawyers down below they filed an Omnibus Motion.

JUSTICE PERALTA:

Now, therefore, there was an Omnibus Motion

ATTY. HILBAY:

Yes.

JUSTICE PERALTA:

There was a resolution, but she did not do anything. **She should have filed a motion for re-investigation before the Information is filed before the court and ask the court to suspend the proceedings.** And then, require the panel of the prosecutors to resolve the motion for re-investigation which she did not do.

ATTY. HILBAY:

I think, Your Honor, given the lawyers' experience with the panel of prosecutors in that case because they realized that it was pointless…

JUSTICE PERALTA:

Yeah, the other thing is that. Assuming that there was already an information filed, and she was not given a chance to file her countervailing evidence with the DOJ, then, **Senator De Lima could**

have filed a motion for leave of court to file a motion for re-investigation so that the judge could have required the panel of the prosecutors to reinvestigate or to reconsider the resolution, which she did not. There were remedies, so many remedies available under the rules.

ATTY. HILBAY

You're correct, Your Honor, that there are lot of abstract options that are available to petitioner in this case.

JUSTICE PERALTA:

Yeah.

ATTY. HILBAY:

But I think on the part of the lawyers, who handled the case down below, their reading of the situation was that it was already pointless.

JUSTICE PERALTA:

They may not act favorably, okay. But the case, well the court is already judicial in character because when the information is filed nobody can touch the information except the judge. Therefore, **if the information was already filed before the court, Senator De Lima could have filed a motion for leave of court to file motion for reconsideration.** So that the court should have required the public prosecutor to conduct a re-investigation upon orders of the court.

ATTY. HILBAY:

Again, pleading have been filed, we don't even know whether the court obliged…

x x x x x x x x x

JUSTICE PERALTA:

Let's go further. If the information was already filed, this has always been the practice but sometimes they say, this is not an available remedy. Senator De Lima could have filed a motion for judicial determination of probable cause and invoke paragraph (a) of Rule 112, Section 6 [now Sec. 5]. Because the judge is mandated within ten (10) days to determine the existence of probable cause. And if he or she is not satisfied, then he could have required the prosecution to present additional evidence. If she is not yet satisfied, that would have caused for the dismissal of the case for lack of probable cause.

ATTY. HILBAY:

Yes.

JUSTICE PERALTA:
Which she did not do.

ATTY. HILBAY:
Again, Your Honor, there's so many channels by which this case…

JUSTICE PERALTA:
Yes, it's already judicial, you cannot already claim that the judge is bias, because the remedy is already judicial in character. So anyway…

ATTY. HILBAY:
You are correct, Your Honor.

x x x x x x x x x

JUSTICE PERALTA:
I'll go to another point. Is it not? If there is a defect in the Information, because according to you, it's not clear. If they are charged with illegal trading or charged with attempt or conspiracy, is it not that the [proper] remedy should have been Rule 116, Section 9 of the Rules of Court, a **motion for bill of particulars**?

ATTY. HILBAY:
No, Your Honor, in fact, Your Honor, it is rather clear what the prosecutors intended to charge the petitioner. It is the OSG that has a new interpretation of the charge.

x x x x x x x x x

JUSTICE PERALTA:

x x x x x x x x x

So I'll go to another point. Now, why did you not file a **motion to quash the warrant of arrest on the ground of lack of probable cause** before coming to court? Is that a valid remedy under the rules?

ATTY. HILBAY:
Your Honor, the lawyers down below say that that was placed on record, those arguments, Your Honor.

JUSTICE PERALTA:
That was placed on record. Was there a motion actually, a motion to quash the warrant of arrest on the ground of lack of probable cause? Was there any made…?

ATTY. HILBAY:

I am told, Your Honor, that there were observations placed on record.

JUSTICE PERALTA:

And the problem observations because…

ATTY. HILBAY:

We are questioning the jurisdiction in the first place.

x x x x x x x x x[1]

The OSG is correct that there are available plain, speedy and adequate remedies for petitioner to assail the questioned orders of the respondent judge, as well as the DOJ. Direct resort before the Court through a Petition for *Certiorari* and Prohibition cannot be justified with a mere speculation that all the remedies available to petitioner before the DOJ or the respondent judge are pointless, and that they acted with bias and undue haste.

For another, petitioner violated the rules against forum shopping, and the pendency of her Motion to Quash the information before respondent judge renders her petition premature. In *Villamor, Jr. v. Judge Manalastas*,[2] the Court explained the concept of forum shopping as follows:

> As a rule, forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court other than by appeal or the special civil action of *certiorari*. Conceptually, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.
>
> Forum shopping also exists when, as a result of an adverse decision in one forum or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than an appeal or *certiorari*.

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[1] TSN, Oral Arguments – *En Banc*, G.R. No. 229781, Tuesday, March 14, 2017, pp. 64-74.

[2] 764 Phil. 456, 465-467 (2015).

There is likewise forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.

Litis pendentia is a Latin term meaning "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.

There is *litis pendentia* when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.

Otherwise stated, the test is whether the two (or more) pending cases have identity of parties, of rights or causes of action, and of the reliefs sought. Willful and deliberate violation of the rule against it is a ground for summary dismissal of the case; it may also constitute direct contempt.

Appeals and petitions for *certiorari* are normally outside the scope of forum shopping because of their nature and purpose; they grant a litigant the remedy of elevating his case to a superior court for review.

It is assumed, however, that the filing of the appeal or petition for *certiorari* is properly or regularly invoked in the usual course of judicial proceedings, and not when the relief sought, through a petition for *certiorari* or appeal, is still pending with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority, *e.g.*, a still pending motion for reconsideration of the order assailed via a petition for *certiorari* under Rule 65.

I agree with the *ponencia* that all the elements of forum shopping are present. *First*, there is substantial identity of parties in the criminal case before the respondent judge where the People of the Philippines is the complainant, while petitioner is one of the accused, and the petition at bar where the People is the respondent, while Sen. De Lima is the petitioner. *Second*, petitioner's prayers in her motion to quash and in this petition

are essentially the same, *i.e.*, the nullification of the information and restoration of her liberty, on the grounds of lack of jurisdiction over the offense, the duplicity and insufficiency of the information, and the lack of probable cause to issue an arrest warrant against her. *Third*, due to the identity of issues raised in both cases, the Court's decision in this petition would amount to *res judicata* in the criminal case before the respondent judge with respect to the issues of jurisdiction over the offense and of the existence of probable cause to issue an arrest warrant against petitioner.

I further stress that what is also pivotal in determining whether forum shopping exists is the vexation caused the courts by a party who asks different courts to rule on the same or related issues and grant the same or similar reliefs, thereby creating the possibility of conflicting decisions being rendered by different courts upon the same issues.[3] The possibility of conflicting decisions between the Court and the respondent judge is real because Section 7 of Rule 65, as amended by A.M. No. 07-7-12-SC, requires the latter to proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court, absent a temporary restraining order or preliminary injunction, failing which may be a ground of an administrative charge. Section 1, Rule 116 pertinently provides that the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, and that the pendency of a motion to quash shall be excluded in computing the period. Considering that petitioner was arrested on February 24, 2017 and that no restraining order has yet been issued since the filing of her Petition on February 27, 2017, respondent judge is expected to resolve the motion to quash; hence, the possibility that her resolution would be in conflict with the Court's decision.

Apropos to this case is *Estrada v. Office of the Ombudsman*[4] where petitioner Senator Jinggoy Ejercito Estrada raised in his

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[3] *Bandillon v. La Filipina Uygongco Corporation*, G.R. No. 202446, September 16, 2015, 770 SCRA 624, 649.

[4] 751 Phil. 821 (2015)

Petition for *Certiorari* the same issues he raised in his Motion for Reconsideration of the Joint Resolution of the Ombudsman finding probable cause. While his motion for reconsideration was pending, Sen. Estrada did not wait for the resolution of the Ombudsman and instead proceeded to file his Petition. The Court ruled that Sen. Estrada's Petition is not only premature, but also constitutes forum shopping, because he resorted to simultaneous remedies by filing the Petition alleging violation of due process by the Ombudsman even as his motion for reconsideration raising the very same issue remained pending with the Ombudsman.

In this case, petitioner raised in her Petition for *Certiorari* and Prohibition the same issues she raised in her Motion to Quash, namely: (1) lack of jurisdiction over the offense charged; (2) the DOJ Panel's lack of authority to file the information; (3) the information charges more than one offense; (4) the allegations and the recitals of the facts do not allege the *corpus delicti* of the charge; (5) the information is based on testimonies of witnesses who are not qualified to be discharged as state witness; and (6) the testimonies of the witnesses are hearsay. Without waiting for the respondent judge's resolution of her motion to quash, petitioner filed her Petition. As in *Estrada*,[5] petitioner resorted to simultaneous remedies by filing her Petition raising the same issues still pending with the RTC, hence, the same must be dismissed outright on the grounds of prematurity and forum shopping.

The prematurity of the Petition at bar was further underscored during the Oral Arguments, considering that petitioner's motion to quash is still pending before the respondent judge:

JUSTICE PERALTA:

If an Information is filed, you determine the existence of probable cause from the allegations of the Information, that's the first thing that the judge will do. If the allegations are properly alleged as to jurisdiction, it took place in Muntinlupa, so the place of the commission of the crime is there, the allegations of 9165 under Section 90 she says that is jurisdiction, so what's the problem?

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[5] *Id.*

ATTY. HILBAY:
No subject matter, jurisdiction. Again, Your Honor, my point is…

JUSTICE PERALTA:
But that's not the basis of an issuance of a warrant of arrest precisely there is a motion to quash. **If you do not agree and there's no jurisdiction, your remedy is to file a motion to quash the Information…**

ATTY. HILBAY:
We did, Your Honor, file a motion to quash…

JUSTICE PERALTA:
That's the problem, it is pending, you come here. Why not wait for the RTC to determine as to whether or not there is jurisdiction over the person of the accused or over the subject matter? Because what you are saying is that, first determine jurisdiction. It is already there eh. The determination of probable cause will already include jurisdiction because that's alleged in the… she will not go beyond what's alleged in the Information. There is an allegation of jurisdiction eh. The crime is within the City of Muntinlupa, oh that's the jurisdiction over the place where the crime is committed.

ATTY. HILBAY:
Yeah, Your Honor, that's…

JUSTICE PERALTA:
You have the allegation in the Information, violation of Dangerous Drugs Act under Section 90, you have the accused, there is an allegation of relation to office. What's the problem?

ATTY. HILBAY:
She has subject matter jurisdiction, Your Honor.

JUSTICE PERALTA:
Yeah. In all the cases that came here on lack of probable cause, what happened in those cases is that the RTC first answered the queries posited by the accused that there is no probable cause. In the case of *Allado v. Diokno*, they filed a motion to determine probable cause. In the case of Senator Lacson, they filed a motion, and there were all hearings. Here, in this particular case, there is no hearing. So, how can we review the factual issues if in the first place these were not brought up in the RTC?

ATTY. HILBAY:

Your Honor, there are no factual issues here. The only issue is jurisdiction. There's no need…

JUSTICE PERALTA:

So, your issue is not lack of probable cause for the issuance of a warrant of arrest, but lack of jurisdiction. So if you go, if your position now is lack of jurisdiction, then go to the RTC. And then, file a motion to quash. That's what she was asking. That should have been heard in the RTC.

ATTY. HILBAY:

Your Honor…

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JUSTICE PERALTA:

So to me, the procedure should have been to go first to the RTC. And then, come, if you cannot get a favorable decision, to Court. Justice Jardeleza was saying there's no due process. I mean he did not say due process, but due process has been observed. The problem is she all waived her remedies. Hindi siya nag-file ng counter-affidavit. She did not file a counter-affidavit. She was given due process.

ATTY. HILBAY:

Yes.

JUSTICE PERALTA:

But she did not invoke all those remedies to comply with due process.

ATTY. HILBAY:

If I may, Your Honor, just clarify what happened so that we can now have full favor of the context of petitioner. She did not file a counter-affidavit precisely because she was questioning the jurisdiction of the Department of Justice. And yet, the Department of Justice, proceeded with undue haste, and filed the case before the court without jurisdiction. She filed a motion to quash before a court that has no jurisdiction. The court decided again with undue haste to issue warrant of arrest. What do you expect, Your Honor, the petitioner to do?

JUSTICE PERALTA:

That wouldn't have been a good basis of coming here because… That wouldn't have been a good basis of coming here.

ATTY. HILBAY:
Your Honor.

JUSTICE PERALTA:
… she was only speculating. She should have availed of the remedies and all of these have denied because they are biased and then, come here and then, release her. But this one, she did not follow.

ATTY. HILBAY:
Your Honor, what we're saying is that, we are now here, we have made out a very strong and clear case for an application of the exemptions of the procedures of this Court. Those exemptions are clearly stated in the jurisprudence of this Honorable Court.[6]

While petitioner also failed to justify that her case falls under the exceptions to the doctrine on hierarchy of courts, I posit that the issue of jurisdiction over the offense should still be addressed due to its transcendental importance.

In *The Diocese of Bacolod v. Commission on Elections,*[7] the Court stressed that the doctrine of hierarchy of courts is not an iron-clad rule, and that it has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. Recognized exceptions to the said doctrine are as follows:

(a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
(b) when the issues involved are of transcendental importance;
(c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter;
(d) the constitutional issues raised are better decided by the Court;
(e) where exigency in certain situations necessitate urgency in the resolution of the cases;
(f) the filed petition reviews the act of a constitutional organ;

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[6] TSN, Oral Arguments – *En Banc*, G.R. No. 229781, Tuesday, March 21, 2017. (Emphasis added)

[7] 751 Phil. 301, 330 (2015).

(g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and
(h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[8]

The petition at bench raises an issue of transcendental importance and a novel question of law, if not a case of first impression, namely: whether the Sandiganbayan has exclusive original jurisdiction over drug cases under R.A. No. 9165 committed by public officers or employees in relation to their office, pursuant to Presidential Decree No. 1606, Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "SANDIGANBAYAN" and for other purposes, as amended by R.A. No. 10660, revising Presidential Decree No. 1486 Creating a Special Court to be known as "SANDIGANBAYAN" and for other purposes. An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor.

It bears emphasis that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint or information, and cannot be granted by agreement of the parties, acquired through, or waived, enlarged or diminished by any act or omission of the parties, or conferred by acquiescence of the court.[9] Considering that lack of jurisdiction over the subject matter of the case can always be raised anytime, even for the first time on appeal,[10] I see no reason for Us not to directly entertain a pure question of law as to the jurisdiction of the Sandiganbayan over drug-related

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[8] *Diocese of Bacolod v. Commission on Elections, supra,* at 331-335.

[9] *Republic v. Bantigue Point Development Corporation,* 684 Phil. 192, 199 (2012).

[10] *Tumpag Jr. v. Tumpag*, 744 Phil. 423, 433 (2014).

cases, if only to settle the same once and for all. A decision rendered by a court without jurisdiction over the subject matter, after all, is null and void. It would be detrimental to the administration of justice and prejudicial to the rights of the accused to allow a court to proceed with a full-blown trial, only to find out later on that such court has no jurisdiction over the offense charged.

I take judicial notice of the Sandiganbayan Statistics on Cases Filed, Pending and Disposed of from February 1979 to May 31, 2017 which shows that out of the 34,947 cases filed and 33,101 cases disposed of, no case has yet been filed or disposed of involving violation of the Dangerous Drugs Law either under R.A. Nos. 6425 or 9165, thus:

NUMBER OF CASES FILED and DISPOSED OF ACCORDING TO NATURE OF OFFENSE (FEBRUARY, 1979 TO MAY 31, 2017)[11]

NATURE OF OFFENSE	TOTAL [Filed]	PERCENT DISTRIBUTION [Filed]	TOTAL [Disposed]	PERCENT DISTRIBUTION [Disposed]
Crimes Against Religious Worship	1	0.003	1	0.003
Arbitrary Detention	72	0.206	69	0.208
Violation of Domicile	18	0.051	20	0.061
Assault Resistance and Disobedience	10	0.029	13	0.040
Perjury	116	0.332	76	0.230
Falsification Cases	6096	17.444	6215	18.776
Mal/Misfeasance	7	0.020	7	0.021
Bribery	365	1.044	347	1.048
Malversation Cases	10336	29.576	10376	31.346
Infidelity of Public Officers in the Custody of Prisoners/ Documents	552	1.580	548	1.656
Other Offense Committed by Public Officers	582	1.665	544	1.643
Murder	317	0.907	350	1.057
Homicide	203	0.581	220	0.665

[11] http://sb.judiciary.gov.ph/statistics_report.html. Last visited on July 3, 2017.

Physical Injuries	169	0.484	170	0.514
Threats and Coercions	98	0.280	88	0.266
Kidnapping	2	0.006	2	0.006
Estafa Cases	4700	13.449	4974	15.027
Robbery	123	0.352	132	0.399
Theft	511	1.462	549	1.659
Malicious Mischief	20	0.057	16	0.048
Rape and Acts of Lasciviousness	21	0.060	18	0.054
Slander	16	0.046	17	0.051
Illegal Marriage	2	0.006	2	0.006
Violation of R.A. 3019	8322	23.813	6564	19.830
Violation of Presidential Decrees	476	1.362	381	1.151
Qualified Seduction	5	0.014	8	0.024
Unlawful Arrest	4	0.011	4	0.012
Adultery and Concubinage	1	0.003	1	0.003
Plunder	11	0.032	4	0.012
Others	1344	3.846	989	2.988
Special Civil Action	94	0.269	74	0.224
Civil Cases (including PCGG cases)	217	0.621	200	0.604
Appealed Cases	135	0.386	121	0.365
Special Proceedings	1	0.003	1	0.003
Total	34947	100.00	33101	100.00

Granted that petitioner is neither the first public official accused of violating R.A. No. 9165 nor is she the first defendant to question the finding of probable cause for her arrest, she is foremost in raising a valid question of law on the jurisdiction of the Sandiganbayan over drug-related cases committed by a public servant in relation to her office.

On substantive grounds, I find that the Regional Trial Court has exclusive original jurisdiction over the violation of Republic Act No. 9165 averred in the assailed Information. "Exclusive jurisdiction" refers to that power which a court or other tribunal exercises over an action or over a person to the exclusion of all other courts, whereas "original jurisdiction" pertains to

jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts.[12]

In support of my view that the RTC has exclusive original jurisdiction over dangerous drugs cases committed by public officials and employees in relation to their office, I found it conducive to consult other special cases within the RTC's exclusive and original jurisdiction, namely: libel and violations of the Intellectual Property Code (R.A. No. 8293), and the Dangerous Drugs Act of 1972 (R.A. No. 6425).

In *People of the Philippines v. Benipayo*,[13] the Court held that libel cases are within the RTC's exclusive original jurisdiction:

> As we have constantly held in *Jalandoni*, *Bocobo*, *People v. Metropolitan Trial Court of Quezon City, Br. 32*, *Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations shall be filed simultaneously or separately with the RTC **to the exclusion of all other courts**. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, **in the absence of an express repeal or modification**, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means. **The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to (public) office**, similar to the expansion of the jurisdiction of the MTCs, **did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office**. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.

In *Samson v. Daway*,[14] the Court ruled that certain violations of the Intellectual Property Code fall under the jurisdiction of the RTCs regardless of the imposable penalty:

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[12] *Black's Law Dictionary*, Fifth Edition (1979).

[13] 604 Phil. 317, 330-332 (2009). (Emphasis added; citations omitted)

[14] 478 Phil. 784, 794 (2004).

Section 163 of the same Code [R.A. No. 8293] states that actions (including criminal and civil) under Sections 150, 155, 164, 166, 167, 168 and 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws, thus —

> SEC. 163. *Jurisdiction of Court*. — All actions under Sections 150, 155, 164 and 166 to 169 shall be brought before the *proper courts with appropriate jurisdiction under existing laws*. (Emphasis supplied)

The existing law referred to in the foregoing provision is Section 27 of R.A. No. 166 (The Trademark Law) which provides that jurisdiction over cases for infringement of registered marks, unfair competition, false designation of origin and false description or representation, is lodged with the Court of First Instance (now Regional Trial Court)—

> SEC. 27. *Jurisdiction of Court of First Instance*. — All actions under this Chapter [V — Infringement] and Chapters VI [Unfair Competition] and VII [False Designation of Origin and False Description or Representation], hereof shall be brought before the Court of First Instance.

We find no merit in the claim of petitioner that R.A. No. 166 was expressly repealed by R.A. No. 8293. The repealing clause of R.A. No. 8293, reads —

> SEC. 239. *Repeals*. — 239.1. All Acts and *parts of Acts inconsistent herewith*, more particularly Republic Act No. 165, as amended; *Republic Act No. 166*, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed. (Emphasis added)

Notably, the aforequoted clause did not expressly repeal R.A. No. 166 in its entirety, otherwise, it would not have used the phrases "parts of Acts" and "inconsistent herewith;" and it would have simply stated "Republic Act No. 165, as amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended are hereby repealed." It would have removed all doubts that said specific laws had been rendered without force and effect. The use of the phrases "parts of Acts" and "inconsistent herewith" only means that the repeal pertains only to provisions which are repugnant or not susceptible of harmonization with R.A. No. 8293. Section 27

of R.A. No. 166, however, is consistent and in harmony with Section 163 of R.A. No. 8293. Had R.A. No. 8293 intended to vest jurisdiction over violations of intellectual property rights with the Metropolitan Trial Courts, it would have expressly stated so under Section 163 thereof.

Moreover, the settled rule in statutory construction is that in case of conflict between a general law and a special law, the latter must prevail. **Jurisdiction conferred by a special law to Regional Trial Courts must prevail over that granted by a general law to Municipal Trial Courts.**

In the case at bar, **R.A. No. 8293 and R.A. No. 166 are special laws conferring jurisdiction over violations of intellectual property rights to the Regional Trial Court. They should therefore prevail over R.A. No. 7691, which is a general law. Hence, jurisdiction over the instant criminal case for unfair competition is properly lodged with the Regional Trial Court even if the penalty therefor is imprisonment of less than 6 years, or from 2 to 5 years and a fine ranging from ₱50,000.00 to ₱200,000.00.**[15]

In *Morales v. CA*,[16] the Court held that the RTCs have exclusive jurisdiction over specific criminal cases, namely: (a) Art. 360 of the Revised Penal Code, as amended by R.A. Nos. 1289 and 4363 on written defamations or libel; (b) violations of the Presidential Decree on Intellectual Property (P.D. No. 49, as amended), and (c) Section 39 of R.A No. 6425, as amended by P.D. No. 44:

Jurisdiction is, of course, conferred by the Constitution or by Congress. Outside the cases enumerated in Section 5(2) of Article VIII of the Constitution, Congress has the plenary power to define, prescribe and apportion the jurisdiction of various courts. Accordingly, Congress may, by law, provide that a certain class of cases should be exclusively heard and determined by one court. Such would be a special law and must be construed as an exception to the general law on jurisdiction of courts, namely, the Judiciary Act of 1948 as amended, or the Judiciary Reorganization Act of 1980. In short, the special law prevails over the general law.

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[15] Emphasis added and citations omitted.

[16] 347 Phil. 493, 506-507 (1997). (Emphasis ours)

R.A. No. 7691 can by no means be considered another special law on jurisdiction but merely an amendatory law intended to amend specific sections of the Judiciary Reorganization Act of 1980. Hence, it does not have the effect of repealing or modifying Article 360 of the Revised Penal Code; Section 57 of the Decree on Intellectual Property; and Section 39 of R.A. No. 6425, as amended by P.D. No. 44. In a manner of speaking, R.A. No. 7691 was absorbed by the mother law, the Judiciary Reorganization Act of 1980.

That Congress indeed did not intend to repeal these special laws vesting exclusive jurisdiction in the Regional Trial Courts over certain cases is clearly evident from the exception provided for in the opening sentence of Section 32 of B.P. Blg. 129, as amended by R.A. No. 7691. These special laws are not, therefore, covered by the repealing clause (Section 6) of R.A. No. 7691.[17]

Having in mind the foregoing jurisprudence, I submit that R.A. No. 10660 cannot be considered as a special law on jurisdiction but merely an amendatory law intended to amend specific provisions of Presidential Decree No. 1606, the general law on the jurisdiction of the Sandiganbayan. Hence, Section 90 of R.A. No. 9165, which specifically named RTCs designated as special courts to exclusively hear and try cases involving violation thereof, must be viewed as an exception to Section 4 (b) of P.D. No. 1606, as amended by R.A. No. 10660, which is a mere catch-all provision on cases that fall under the exclusive original jurisdiction of the Sandiganbayan. In other words, even if a drug-related offense was committed by public officials and employees in relation to their office, jurisdiction over such cases shall pertain exclusively to the RTCs. The broad and general phraseology of Section 4 (b), P.D. No. 1606, as amended by R.A. No. 10660, cannot be construed to have impliedly repealed, or even simply modified, such exclusive jurisdiction of the RTC to try and hear dangerous drugs cases pursuant to Section 90 of R.A. No 9165.

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[17] Emphases added.

Be that as it may, full reliance on the 1997 case of *Morales*[18] cannot be sustained because the prevailing law then was the Dangerous Drugs Act of 1972 (R.A. No. 6425), which clearly vests exclusive original jurisdiction over all cases involving said law upon the Circuit Criminal Court or the present day Regional Trial Court. R.A. No. 6425 was expressly repealed by Section 100 of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165), as amended:

> Sec. 100. Repealing Clause – **Republic Act No. 6425, as amended, is repealed** and all other laws, administrative orders, rules and regulations, or parts thereof inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.[19]

The appropriate question of law that ought to be resolved is whether pursuant to Section 90 of R.A. No. 9165, the RTC still has exclusive original jurisdiction over drug-related cases similar to the express grant thereof under Section 39 of R.A. No. 6425:

Article X Jurisdiction Over Dangerous Drugs Cases	Article XI Jurisdiction Over Dangerous Drugs Cases
Section 39. Jurisdiction of the Circuit Criminal Court. – The Circuit Criminal Court shall have **exclusive original jurisdiction** over all cases involving offenses punishable under this Act.x x x	Section 90. Jurisdiction. – The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to **exclusively try and hear cases** involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction. x x x

That the exclusive original jurisdiction of RTCs over drug cases under R.A. No. 6425 was not intended to be repealed is revealed in the interpellation during the Second Reading of House Bill

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[18] *Supra.*

[19] Emphasis added.

No. 4433, entitled "An Act Instituting the Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, as amended":

Initially, Rep. Dilangalen referred to the fact sheet attached to the Bill which states that the measure will undertake a comprehensive amendment to the existing law on dangerous drugs — RA No. 6425, as amended. Adverting to Section 64 of the Bill on the repealing clause, he then asked whether the Committee is in effect amending or repealing the aforecited law.

Rep. Cuenco replied that any provision of law which is in conflict with the provisions of the Bill is repealed and/or modified accordingly.

In this regard, Rep. Dilangalen suggested that if the Committee's intention was only to amend RA No. 6425, then the wording used should be "to amend" and not "to repeal" with regard to the provisions that are contrary to the provisions of the Bill.

Adverting to Article VIII, Section 60, on Jurisdiction Over Dangerous Drugs Case, which provides that the Supreme Court shall designate regional trial courts to have original jurisdiction over all offenses punishable by this Act, Rep. Dilangalen inquired whether it is the Committee's intention that certain RTC salas will be designated by the Supreme Court to try drug-related offenses, although all RTCs have original jurisdiction over those offenses.

Rep. Cuenco replied in the affirmative. He pointed that at present, the Supreme Court's assignment of drug cases to certain judges is not exclusive because the latter can still handle cases other than drug-related cases. He added that the Committee's intention is to assign drug-related cases to judges who will handle exclusively these cases assigned to them.

In this regard, Rep. Dilangalen stated that, at the appropriate time, he would like to propose the following amendment: "The Supreme Court shall designate specific salas of the RTC to try exclusively offenses related to drugs.

Rep. Cuenco agreed therewith, adding that the Body is proposing the creation of exclusive drug courts because at present, almost all of the judges are besieged by a lot of drug cases some of which have been pending for almost 20 years.

Whereupon, Rep. Dilangalen adverted to Section 60, Article VIII, lines 7 to 10 of the Bill, to wit: "Trial of the case under this section

shall be finished by the court not later than ninety (90) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case. He then asked whether the Committee intends to make this particular provision merely directory or compulsory.

Rep. Cuenco answered that said provision is mandatory because if the case is not finished within 90 days, the Supreme Court can impose administrative sanctions on the judge concerned.

However, Rep. Dilangalen pointed out that the Constitution specifically provides that the Supreme Court shall decide certain cases from the time they are submitted for resolution within a specific period. The same is true with the Court of Appeals, RTC and MTC. Rep. Cuenco affirmed this view.

In line with the pertinent provision of the Constitution, Rep. Dilangalen pointed out that if the aforementioned provision of the Bill is made mandatory and those judges fail to finish their assigned cases within the required period, he asked whether they would be criminally charged.

In response, Rep. Cuenco explained that the power to penalize belongs to the Supreme Court and Congress has no power to punish erring judges by sending them to jail for the reason that they have not finished their assigned cases within the prescribed period. He stressed that administrative sanctions shall be imposed by the Supreme Court on the erring judges.[20]

Records of the Bilateral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1858 and House Bill No. 4433 (Comprehensive Dangerous Drugs Act of 2002) also show that Section 90 of R.A. No. 9165 does not repeal, but upholds the exclusive original jurisdiction of Regional Trial Court similar to that provided under Section 39 of R.A. No. 6425:

The CHAIRMAN (REP. CUENCO). xxx On other matters, we would like to propose the creation of drug courts to handle exclusively drug cases; the imposition of a 60-day deadline on courts within which to decide drug cases; and No. 3, provide penalties on officers

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[20] JOURNAL NO. 72, Wednesday and Thursday, March 6 and 7, 2002, 12th Regular Congress, 1st Session. http://www.congress.gov.ph/legisdocs/printjournal.php?congnum=12&id=104, last visited July 10, 2017.

of the law and government prosecutors for mishandling and delaying drug cases.

We will address these concerns one by one.

1. The possible **creation of drug courts to handle exclusively drug cases**. Any comments?

Congressman Ablan. Ah, first, the Chairman, the Chairman of the Senate Panel would like to say something.

THE CHAIRMAN (SEN. BARBERS). We have no objection to this proposal, Mr. Chairman. As a matter of fact, this is one of the areas where we come into an agreement when we were in Japan. However, I just would like to add a paragraph after the word "Act" in Section 86 of the Senate versions, Mr. Chairman. And this is in connection with the designation of special courts by "The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of court designated in each judicial region shall be based on the population and the number of pending cases in their respective jurisdiction." That is my proposal, Mr. Chairman.

THE CHAIRMAN (REP. CUENCO). We adopt the same proposal.

SEN. CAYETANO. Comment, comment.

THE CHAIRMAN (REP. CUENCO). Puwede ba 'yan. Okay, Sige, Senator Cayetano.

SEN. CAYETANO. Mr. Chairman, first of all, there is already an Administrative Order 104, if I'm not mistaken in 1996 designating special courts all over the country that handles heinous crimes, which includes, by the way, violations of the present Drugs Act, where the penalty is life to death.

Now, when it comes to crimes where the penalty is six years or below, this is the exclusive jurisdiction not of the RTC, not of the Regional Trial Court, but of the municipal courts.

So my observation, Mr. Chairman, I think, since there are already special courts, we need not created that anymore or ask the Supreme Court. And number two, precisely, because there are certain cases where the penalties are only six years and below. These are really handles by the municipal trial court.

As far as the 60-day period, again, in the Fernan law, if I'm not mistaken, there is also a provision there that all heinous crimes will have to be decided within 60 days. But if you want to emphasize as far as the speedy which all these crimes should be tried and decided, we can put it there. But as far as designated, I believe this may be academic because there are already special courts. And number two, we cannot designate special court as far as the municipal courts are concerned. In fact, the moment you do that, then you may limit the number of municipal courts all over the country that will only handle that to the prejudice of the other or several other municipal court that handles many of these cases.

THE CHAIRMAN (REP. CUENCO). Just briefly, a rejoinder to the comments made by Senator Cayetano. It is true that the Supreme Court has designated certain courts to handle exclusively heinous crimes, okay, but our proposal here is confined exclusively to drug cases, not all kinds of heinous crimes. There are many kinds of heinous crimes: murder, piracy, rape, et cetera. The idea here is to focus the attention of the court, that court and to handle only purely drug cases.

Now, in case the penalty provided for by law is below six years wherein the regional trial court will have no jurisdiction, then the municipal courts may likewise be designated as the trial court concerning those cases. The idea hear really is to assign exclusively a sala of a regional trial court to handle nothing else except cases involving illegal drug trafficking.

Right now, there are judges who have been so designated by the Supreme Court to handle heinous crimes, but then they are not exclusive to drugs eh. And aside from those heinous crimes, they also handle other cases which are not even heinous. So the idea here is to create a system similar to the traffic courts which will try and hear exclusively traffic cases. So — in view of the gravity of the situation and in view of the urgency of the resolution of these drug cases because — the research that we have made on the drug cases filed is that, the number of decided cases is not even one percent of those filed. There have been many apprehensions, thousands upon thousands apprehensions, thousands upon thousands of cases filed in court but only one percent have been disposed of. The reason is that there is no special attention made or paid on these drug cases by our courts.

So that is my humble observation, we have no problem.

THE CHAIRMAN (SEN. BARBERS). **I have no problem with that, Mr. Chairman, but I'd like to call your attention to the fact that my proposal in only for a designation because if it is for a creation that would entail another budget, Mr. Chairman. And almost always, the Department of Budget would tell us at the budget hearing that we lack funds, we do not have money. So that might delay the very purpose why we want the RTC or the municipal courts to handle exclusively the drug cases. That's why my proposal is designation not creation.**

THE CHAIRMAN (REP. CUENCO). Areglado. No problem, designation. Approved.[21]

Contrary to petitioner's claim that Section 90 of R.A. No. 9165 merely grants the Supreme Court administrative authority to designate particular branches of RTCs to exclusively try drug cases, records of deliberation in Congress underscore the intention to confer to the RTCs exclusive original jurisdiction over drug cases. Section 90 of R.A. No. 9165 was worded to give emphasis on the Court's power to designate special courts to exclusively handle such cases, if only to avoid creation of drug courts which entails additional funds, the lack of which would defeat the very purpose of the law to prioritize prosecution of drug cases.

Meanwhile, the *ponencia* cannot rely on the *per curiam en banc* decision[22] in an administrative case, which named the RTC as having the authority to take cognizance of drug-related cases. This is because the Court did not declare definitively therein that the RTC's jurisdiction is exclusive and original, so as to preclude the Sandiganbayan from acquiring jurisdiction over such cases when committed by a public servant in relation to office. One of the issues in the said case is whether the respondent judge of a Municipal Trial Court in Cities (MTCC) has jurisdiction to order confinement and rehabilitation of drug dependents from the drug rehabilitation center. The Court held

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[21] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1858 and House Bill No. 4433 (Comprehensive Dangerous Drugs Act of 2002), April 29, 2002. (Emphasis supplied)

[22] *In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Br. 1, Cebu City*, 567 Phil. 103 (2009).

that if the drug dependent was a minor, his confinement, treatment and rehabilitation in a center would be upon order, after due hearing, by the RTC in accordance with Section 30 of R.A. No. 6425, and that pursuant to Section 54, in relation to Section 90 of R.A. No. 9165, the RTC similarly has jurisdiction over drug-related cases.

I also take exception to the *ponencia's* statement to the effect that petitioner's alleged solicitation of money from the inmates does not remove the charge from the coverage of R.A. No. 9165 as Section 27 thereof punishes government officials found to have benefited from the trafficking of dangerous drugs. Section 27 applies only to "**any elective local or national official**" found to have benefitted from the proceeds of the trafficking of such drugs or have received any financial or material contributions from natural or juridical person found guilty of trafficking of such drugs. In view of the principle that penal statutes should be liberally construed in favor of the accused and strictly against the State, Section 27 cannot be held to apply to appointive officials like petitioner, who was the Secretary of the Department of Justice at the time of the commission of the alleged crime.

On the issue of whether respondent Judge gravely abused her discretion in finding probable cause to issue a warrant of arrest against petitioner despite her pending motion to quash the information, I resolve the issue in the negative.

It is well settled that grave abuse of discretion is the capricious or whimsical exercise of judgment equivalent to lack of jurisdiction; the abuse of discretion being so patent and gross as to amount to an evasion of positive duty or virtual non-performance of a duty enjoined by law. As aptly pointed out by the *ponencia*, since Section 5,[23] Rule 112 gives the judge

[23] Sec. 5. When warrant of arrest may issue. — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order

ten (10) days within which to determine probable cause to issue warrant of arrest by personally evaluating the resolution of the prosecutor and its supporting evidence, petitioner cannot fault the respondent judge for issuing a warrant of arrest within three (3) days from receipt of the case records. There is no law, jurisprudence or procedural rule which requires the judge to act first on the motion to quash, whether or not grounded on lack of jurisdiction, before issuing an arrest warrant. No grave abuse discretion may be, therefore, imputed against the respondent judge for issuing a warrant of arrest despite a pending motion to quash.

It may not be amiss to point out that there used to be a period within which to resolve a motion to quash under Section 6, Rule 117 of the 1964 Rules of Court, which was a reproduction of Section 6, Rule 113 of the 1940 Rules of Court to wit: "**The motion to quash shall be heard immediately on its being made unless, for good cause, the court postpone the hearing**. All issues whether of law or fact, which arise on a motion to quash shall be tried by the court." However, the said provision no longer found its way in the subsequent rules on criminal procedure, *i.e.*, the 1985 Rules on Criminal Procedure and the present 2000 Revised Rules of Criminal Procedure. Considering that Section 1, Rule 117 of the present Rules provides that the accused may move to quash the information before entering his plea, while Section 1(g), Rule 116 thereof, states that the pendency of a motion to quash or other causes justifying suspension of the arraignment shall be excluded in computing the period to arraign the accused, I conclude that the motion to quash should, at the latest, be resolved before the arraignment, without prejudice to the non-waivable grounds to quash under

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if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Section 9,[24] Rule 117, which may be resolved at any stage of the proceeding.

At any rate, to sustain the contention that a judge must first act on a pending motion to quash the information before she could issue a warrant of arrest would render nugatory the 10-day period to determine probable cause to issue warrant of arrest under Section 5, Rule 112. This is because if such motion to quash appears to be meritorious, the prosecution may be given time to comment, and the motion will have set for hearing. Before the court could even resolve the motion, more than 10 days from the filing of the complaint or information would have already passed, thereby rendering ineffectual Section 5(a), Rule 112.[25]

On petitioner's claim that respondent judge did not determine personally the existence of probable cause in issuing the warrant of arrest, I agree with the affirmative ruling of the *ponencia* on this issue. It bears emphasis that Section 5, Rule 112 only requires the judge to personally evaluate the resolution of the prosecutor and its supporting evidence, and if she finds probable cause, she shall issue such arrest warrant or commitment order.

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[24] Sec. 9. *Failure to move to quash or to allege any ground therefor.* – The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of Section 3 of this Rule.

[25] Sec. 5. *When warrant of arrest may issue .— (a) By the regional Trial Court.* — **Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.** He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by a judge who conducted the preliminary investigation or when the complaint of information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis added)

In *Allado v. Diokno*,[26] citing *Soliven v. Judge Makasiar*,[27] the Court stressed that the judge shall personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or, if on the basis thereof she finds no probable cause, may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion on the existence of probable cause. "Sound policy dictates this procedure, otherwise, judges would be unduly laden with preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their court."[28]

The Court added that the judge does not have to personally examine the complainant and his witnesses, and that the extent of her personal examination of the fiscal's report and its annexes depends on the circumstances of each case.[29] Moreover, "[t]he Court cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be sure, the judge must go beyond the Prosecutor's certification and investigation report whenever necessary. [S]he should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require."[30]

No clear and convincing evidence was presented by petitioner to overturn the disputable presumptions that official duty has been regularly performed and that a judge acting as such, was acting in the lawful exercise of jurisdiction,[31] when respondent judge issued

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[26] 302 Phil. 213, 233 (1994).

[27] 249 Phil. 394 (1988).

[28] *Soliven v. Judge Makasiar, supra*, at 399-400.

[29] *Allado v. Judge Diokno, supra* note 26, at 234.

[30] *Id*. at 234-235, citing *Lim v. Felix*, 272 Phil. 122 (1991).

[31] Rule 131, Section 3 (m) and (n).

the assailed Order, which appears to have complied with Section 5, Rule 112, as well as the doctrines in *Allado* and *Soliven*, thus:

> After a careful evaluation of the herein Information and all the evidence presented during the preliminary investigation conducted in this case by the Department of Justice, Manila, the Court finds sufficient probable cause for the issuance of Warrants of Arrest against all accused x x x LEILA M. DE LIMA x x x.

There being no grave abuse of discretion on the part of the respondent judge in issuing a warrant of arrest despite the pendency of petitioner's motion to quash, it is my view that respondent judge should be ordered to resolve the same motion in order to give her opportunity to correct the errors raised by petitioner. After all, in exercise of its power of review, the Court is not a trier of facts,[32] and the issue of whether probable cause exists for the issuance of a warrant for the arrest of an accused is a question of fact, determinable as it is from a review of the allegations in the information, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the information.[33]

On the issue of whether the information sufficiently charges the crime of conspiracy to trade illegal drugs, petitioner argues in the negative thereof, thus: (1) the information only mentions that she allegedly demanded, solicited and extorted money from the NBP inmates; (2) the absence of any allegation of her actual or implied complicity with or unity of action and purpose between her and the NBP inmates in the illegal trade; (3) the proper designation of the offense would be direct bribery under Art. 210 of the RPC in view of the allegation that money was given in exchange for special consideration and/or protection inside the NBP; (4) there is no allegation of *corpus delicti*; and (5) the violation remains to be intimately connected with the office of the accused because she could have only collected money from convicts if she had influence, power, and position to shield

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[32] *Navaja v. Hon. De Castro*, 761 Phil. 142, 155 (2015).

[33] *Ocampo v. Abando*, 726 Phil. 441, 465 (2014).

and protect those who sell, trade, dispense, distribute dangerous drugs, from being arrested, prosecuted and convicted.

Section 6, Rule 110 of the Rules of Court states that a complaint of information is sufficient if it states: (1) the name of the accused; (2) the designation of the offense given by the statute; (3) the acts or omissions complained of as constituting the offense; (4) the name of the offended party; (5) the approximate date of the commission of the offense; and (6) the place where the offense was committed.

In relation to petitioner's arguments which revolve around the defect in the second and third requisites, Section 8, Rule 110 provides that the complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its qualifying and aggravating circumstances. Section 9, Rule 110 states that the acts or omissions complained of as constituting the offense and the qualifying circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged, as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

As held in *Quimvel v. People,*[34] the information must allege clearly and accurately the elements of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of specific crimes. Moreover, the main purpose of requiring the elements of a crime to be set out in the information is to enable the accused to suitably prepare her defense because she is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question her conviction based on facts not alleged in the information cannot be waived.

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[34] G.R. No. 214497, April 18, 2017.

The Information charging petitioner with conspiracy to commit illegal drug trading, or violation of Section 5, in relation to Section 3 (jj), Section 26(b) and Section 28 of R.A. No. 9165, reads:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position, and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election, by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from high profile inmates in the New Bilibid Prison.

In determining whether the afore-quoted acts or omissions constituting conspiracy to commit illegal drug trading are sufficiently alleged in the information, the respondent judge should carefully consider the definition of such crime under Section 5, in relation to Section 3(jj), Section 26(b) and Section 28 of R.A. No. 9165.

The crime of "illegal drug trading" is defined under Section 3(jj), while conspiracy to commit such crime is dealt with under Section 26(b):

> (jj) Trading. — Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages,

e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

x x x x x x x x x

SECTION 26. Attempt or Conspiracy. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

Significant note must be taken of Section 5, R.A. No. 9165 because it provides for the penalties for the various offenses covered, including "conspiracy to commit illegal drug trading," and identifies the persons who may be held liable for such offenses.

SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For **drug pushers** who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any **person who organizes**, **manages** or acts as a **"financier"** of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a **"protector/coddler"** of any violator of the provisions under this Section.[35]

As can be gleaned from the foregoing provisions, the following persons may be held liable of conspiracy to commit illegal drug trading under Section 5 of R.A. No. 9165, namely:

1. Pusher — defined under Section 3(ff) as any person who sells, trades, administers, dispenses or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transaction, in violation of the law;
2. Organizer;
3. Manager;

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[35] Emphasis added.

4. Financier — defined under Section 3(q) as any person who pays for, raises or supplies money for, or underwrites any of the illegal activities prescribed under the law; and

5. Protector or coddler — defined under Section 3(ee) as any person who knowingly or willfully consents to the unlawful acts provided for in under the law and uses his/her influence, power or position in shielding, harboring, screening or facilitating the escape of any person who he/she knows, or has reasonable grounds to believe on or suspects, has violated the provisions of the law in order to prevent the arrest, prosecution and conviction of the violator.

Respondent judge would also do well to bear in mind that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information.[36] In resolving a motion to dismiss based on lack of jurisdiction, the general rule is that the facts contained in the complaint or information should be taken as they are, except where the Rules of Court allow the investigation of facts alleged in a motion to quash such as when the ground invoked is the extinction of criminal liability, prescriptions, double jeopardy, or insanity of the accused.[37] In these instances, it is incumbent upon the trial court to conduct a preliminary trial to determine the merit of the motion to dismiss.[38]

Considering that petitioner's arguments do not fall within any of the recognized exceptions, respondent judge should remember that in determining which court has jurisdiction over the offense charged, the battleground should be limited within the four corners of the information. This is consistent with the rule that the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law.[39]

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[36] *Macasaet v. People of the Philippines,* 492 Phil. 355, 373 (2005)

[37] *Id.*

[38] *Id.*

[39] *People v. Odtuhan*, 714 Phil. 349, 356 (2013).

Evidence *aliunde* or matters extrinsic to the information are not to be considered, and the defect in the information, which is the basis of the motion to quash, must be evident on its face.[40]

Moreover, in resolving the issue of whether the information filed against petitioner is sufficient or defective, respondent judge should recall *United States v. Ferrer*[41] where the Court ruled that when the complaint describes two acts which combined constitute but one crime, the complaint is not necessarily defective. "If the two or more acts are so disconnected as to constitute two or more separate and distinct offenses or crimes, then it would not be error to charge each of said acts in different complaints; but where the acts are so related as to constitute, in fact, but one offense, then the complaint will not be defective if the crime is described by relating the two acts in the description of the one offense."[42]

Also on point is *United States v. Cernias*[43] where it was held that while it is true that each of those acts charged against the conspirators was itself a crime, the prosecutor in setting them out in the information did no more than to furnish the defendants with a bill of particulars of the facts which it intended to prove at the trial, not only as a basis upon which to found an inference of guilt of the crime of conspiracy but also as evidence of the extremely dangerous and wicked nature of that conspiracy.

In resolving the motion to quash, respondent judge should further be mindful of the following remedies under Sections 4, 5 and 6 of Rule 117 of the Rules of Court that the RTC may exercise with sound discretion as the court with exclusive original jurisdiction over drug cases:

SEC. 4. ***Amendment of complaint or information***. — If the motion to quash is based on an alleged defect of the complaint or information

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[40] *Id.*

[41] 34 Phil. 277 (1916).

[42] *United States v. Ferrer, supra,* at 279.

[43] 10 Phil. 682, 690 (1908), cited in *People v. Camerino, et al.,* 108 Phil. 79, 83 (1960).

which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

SEC. 5. ***Effect of sustaining the motion to quash***. — If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this Rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.

SEC. 6. ***Order sustaining the motion to quash not a bar to another prosecution; exception***. — An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 3 (g) and (i) of this Rule.

All told, the Petition for *Certiorari* and Prohibition must be denied on the grounds of prematurity, forum shopping and for being improperly verified. Going over the records of Congressional deliberations due to the transcendental importance of the jurisdictional issue raised by petitioner, however, I found that the RTC, not the Sandiganbayan, has exclusive original jurisdiction over all drug cases even if they were committed by public officials or employees in relation to their office. There being no grave abuse of discretion committed by the respondent judge in issuing a warrant of arrest despite the pendency of petitioner's motion to quash, the Court should order the respondent judge to resolve the motion to quash the information, taking into account the definition of conspiracy to commit illegal drug trading, the principles in determining the sufficiency of an information, and the remedies relative to a motion to quash under Sections 4, 5 and 6, Rule 117 of the Rules of Court.

WHEREFORE, I vote to **DENY** the Petition for *Certiorari* and Prohibition.

SEPARATE CONCURRING OPINION

DEL CASTILLO, *J.*:

On February 17, 2017, an Information was filed against petitioner Senator Leila M. De Lima before the Regional Trial Court (RTC) of Muntinlupa City which reads:

INFORMATION

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position, and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five

Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly *"tara"* each from the high profile inmates in the New Bilibid Prison.

CONTRARY TO LAW.

Docketed as Criminal Case No. 17-165, the case was raffled off to Branch 204 presided over by respondent Judge Juanita Guerrero.

On February 23, 2017, the RTC issued an Order finding probable cause for the issuance of warrant of arrest against all the accused including petitioner. On even date, a warrant of arrest was issued. On February 24, 2017, the RTC issued an Order directing the commitment of petitioner at the PNP Custodial Center.

Aggrieved by the foregoing issuances, and by the RTC's alleged failure or refusal to act on her motion to quash Information whereby petitioner questions the jurisdiction of the RTC, petitioner instituted the instant Petition for *Certiorari* and Prohibition directly before this Court.

The issue that now confronts the Court is whether the RTC has jurisdiction over Crim. Case No. 17-165.

An examination of the Information reveals that petitioner was charged with violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Section 5 refers to x x x ***trading*** *x x x of dangerous drugs x x x.* Here, the Information specifically alleged petitioner of having engaged in trading and trafficking of dangerous drugs.

Meanwhile, **Section 3(jj)** defines **trading** as *transactions involving illegal trafficking of dangerous drugs x x x* ***using electronic devices*** *x x x.* Again, the subject Information specifically alleged that petitioner and co-accused used mobile phones and other electronic devices in trading and drug trafficking.

On the other hand, **Section 26(b)** punishes "attempt or **conspiracy**" to **trade** illegal drugs. The Information specifically stated that petitioner conspired with Dayan and Ragos in trading in illegal drugs.

And lastly, **Section 28** provides for the imposition of the **maximum penalties** if those found guilty are **government officials** and employees.

It is clear from the foregoing allegations that petitioner is being charged with conspiring to engage in trading of illegal drugs, a case that is cognizable by and within the jurisdiction of the RTC.

The mention in the Information of the phrases "taking advantage of public office" and "with the use of their power, position, and authority", vis-à-vis the rest of the allegations in the Information, does not wrest from the RTC its jurisdiction over the case. To my mind, said phrases were mentioned specifically to highlight the fact that some of the personalities involved are public officials, in view of the fact that **Section 28** of RA 9165 specifically deals with the "criminal liability of government officials and employees" and provides for the imposition of the maximum penalties if the violators were government officials and employees. By their being government officials and employees, their liability is aggravated and would necessitate the imposition of the maximum penalty, pursuant to Section 28.

It could therefore be construed that said phrases were mentioned in the Information precisely in view of Section 28.

Similarly, the mention of the phrases "offense in connection with official duties" in Section 3, RA 3019, and "in relation to office" in Section 4(sub-paragraph b) of RA 8249 (An Act Further Amending the Jurisdiction of the *Sandiganbayan*) would not wrest from the RTC its jurisdiction over the case. As held in *Barriga v. Sandiganbayan*:[1]

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[1] 496 Phil. 764, 773 (2005).

x x x There are two classes of public office-related crimes under subparagraph (b) of Section 4 of Rep. Act No. 8249: first, those crimes or felonies in which the public office is a constituent element as defined by statute and the relation between the crime and the offense is such that, in a legal sense, the offense committed cannot exist without the office; second, such offenses or felonies which are intimately connected with the public office and are perpetrated by the public officer or employee while in the performance of his official functions, through improper or irregular conduct.

It is my opinion that that the offense with which petitioner was charged, that is, trading and trafficking of illegal drugs in conspiracy with her co-accused, can exist whether she holds public office or not, and regardless of the public position she holds, for the reason that public office is not a constituent element of the crime; otherwise stated, the offense of trading and trafficking of illegal drugs can exist independently of petitioner's public office. Moreover, the offense of trading in illegal drugs could not be said to be intimately connected to petitioner's office or that the same was done in the performance of her official functions.

The mere fact that the salary grade corresponding to the position of a Secretary of Justice is within the ambit of the *Sandiganbayan* jurisdiction does not necessarily mean that said court should take cognizance of the case. It must be stressed that it is not the salary grade that determines which court should hear or has jurisdiction over the case; it is the nature thereof and the allegations in the Information. RA 9165 specifically vested with the RTC the jurisdiction over illegal drugs cases. On the other hand, the *Sandiganbayan* was specially constituted as the anti-graft court. And since petitioner is being charged with conspiring in trading of illegal drugs, and not with any offense involving graft, it is crystal clear that it is the RTC which has jurisdiction over the matter as well as over the person of the petitioner.

Incidentally, it must be mentioned at this juncture that in the case of *People v. Morilla*[2] decided by the Court on February 5, 2014, a case involving transportation of illegal drugs by a town mayor, the same was heard by the RTC although his salary grade was within the ambit of the *Sandiganbayan*.

Finally, the Petition for *Certiorari* and Prohibition suffers from several infirmities.

First, petitioner has several available remedies to take before resort is made to this Court. As enumerated in the Separate Concurring Opinion of Justice Peralta, the following options were available to petitioner: "1) filing of counter-affidavit with an alternative prayer for referral of the case to the Ombudsman; 2) filing a motion for re-investigation before the information is filed in court; 3) filing of a motion for leave of court to file a motion for re-investigation if an information has been filed; 4) filing of a motion for judicial determination of probable cause; 5) motion for bill of particulars; and 6) motion to quash warrant of arrest."[3] Unfortunately, petitioner did not opt to avail of any of these remedies before bringing her suit to the Court of last resort. Petitioner's claim, that it was pointless for her to avail of any of these remedies, not only lacks basis but also strikes at the very core of our judicial system. Rules are basically promulgated for the orderly administration of justice. The remedies chosen by the parties must be in accordance with the established rules and should not depend on their whims.

Second, petitioner is guilty of forum shopping; the petition suffers from prematurity. The instant Petition was filed before this Court despite the pendency of the motion to quash before respondent Judge. Suffice it to say that between the motion to quash and the instant Petition, there is identity of parties; the prayers in the two suits are similar; and the resolution of one will result in *res judicata* to the other.

Third, the Petition suffers from defective verification, a ground for outright dismissal pursuant to Rule 7 of the Rules of Court.

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[2] 726 Phil. 244 (2014).

ACCORDINGLY, I vote to **DISMISS** the Petition.

CONCURRING OPINION

MARTIRES, *J.*:

Glaring in this petition is petitioner's violation of the rule against forum shopping and the cavalier manner in which she flaunts her disregard of the law.

THE PETITION

After the surprising revelations made during the inquiries separately conducted by the Senate and the House of Representatives on the proliferation of drug syndicates at the New Bilibid Prison (*NBP*), the Volunteers Against Crime and Corruption *(VACC)* filed a complaint on 11 October 2016, against petitioner Leila M. de Lima (*De Lima*), among others, for violation of Section 5, in relation to Sec. 26(b) of Republic Act *(R.A.)* No. 9165[1] before the Department of Justice *(DOJ)*; and later filed with the DOJ its supplemental complaint, docketed as NPS No. XVI-INV-16J-00313.

Subsequently, Reynaldo Esmeralda and Ruel M. Lasala, former National Bureau of Investigation *(NBI)* Deputy Directors, filed their complaint for violation of Sec. 5, in relation to Sec. 26(b) of R.A. No. 9165, docketed as NPS No. XVI-INV-16J-00315, against De Lima and former Bureau of Corrections *(BuCor)* Officer-in-Charge, Rafael Marcos Ragos *(Ragos)*.

Another complaint, docketed as NPS No. XVI-INV-16K-00331, was filed by Jaybee Niño Sebastian against De Lima, among others, for violation of Sec. 3(e) and (k) of R.A. No. 3019, Sec. 5(a) of R.A. No. 6713, R.A. No. 9745, Presidential

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[1] Entitled "*An Act Instituting The Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes*." Also known as the "*Comprehensive Dangerous Drugs Act Of 2002*."

Decree *(P.D.)* No. 46, and Article 211 of the Revised Penal Code *(RPC)*.

On 10 November 2016, the NBI also filed a complaint, docketed as NPS No. XVI-INV-16-K-00336, against De Lima, among others, for violation of Sec. 5, in relation to Sec. 26(b) of R.A. No. 9165, Arts. 210 and 211-A of the RPC, Sec. 27 of R.A. No. 9165, Sec. 3(e) of R.A. No. 3019, Sec. 7(d) of R.A. No. 6713, and P.D. No. 46.

The four cases having been consolidated, the DOJ Panel of Investigators *(DOJ Panel)*, created pursuant to Department Order No. 706, proceeded with the conduct of the preliminary investigation which De Lima questioned by filing her *Omnibus Motion to Immediately Endorse the Cases to the Office of the Ombudsman and for the Inhibition of the Panel of Prosecutors and the Secretary of Justice.* De Lima asserted that the Office of the Ombudsman has the exclusive authority and sole jurisdiction to conduct the preliminary investigation. Corollary thereto, De Lima, during the hearing on 21 December 2016, manifested that she would not submit any counter-affidavit; hence, the DOJ Panel, in order to expedite the proceedings, declared the pending incidents and the complaints submitted for resolution.

In the meantime, another complaint, docketed as NPS No. XVI-INV-16-L-00384, was filed by the NBI against De Lima, among others, for violation of Sec. 5, in relation to Sec. 26, R.A. No. 9165.

On 13 January 2017, De Lima filed before the Court of Appeals *(CA)* a Petition for Prohibition and a Petition for Certiorari, docketed as CA-G.R. SP Nos. 149097, and 149358 respectively, assailing the jurisdiction of the DOJ Panel.

On 17 February 2017, the DOJ Panel filed three Informations against De Lima and several other accused before the Regional Trial Court *(RTC)* of Muntinlupa City. One of these informations, docketed as Criminal Case No. 17-165, and raffled to RTC, Branch 204, charged De Lima, Ragos, and Ronnie Palisoc Dayan

(Dayan) with violation of Sec. 5 in relation to Sec. 3 (jj), 26(b) and 28 of R.A. No. 9165, viz:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high-profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there wilfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.[2]

As a result of the filing of the information, De Lima, on 20 February 2017, filed a Motion to Quash raising, among other issues, the RTC's lack of jurisdiction over the offense charged against her and the DOJ's lack of authority to file the information.

On 23 February 2017, respondent Judge Juanita Guerrero *(Judge Guerrero)*[3] issued an Order finding probable cause for the issuance of a warrant of arrest against De Lima, Ragos, and Dayan. The following day, the warrant, which recommended no bail, was served by the Philippine National Police *(PNP)* Investigation and Detection Group on De Lima. Corollary thereto,

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[2] *Rollo,* pp. 197-201.

[3] Presiding Judge of the RTC, Branch 204, Muntinlupa City.

Judge Guerrero issued an Order committing De Lima to the custody of the PNP Custodial Center.

De Lima now comes before the Court with this Petition for Certiorari and Prohibition with Application for a Writ of Preliminary Injunction, and Urgent Prayer for Temporary Restraining Order and Status Quo Ante Order under Rule 65 of the Rules of Court raising the following issues:

I. Whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned Order and Warrant of Arrest both dated 23 February 2017, despite the pendency of petitioner's Motion to Quash that seriously questions the very jurisdiction of the court.

II. Whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed Order and Warrant of Arrest in clear violation of constitutional and procedural rules on issuing an arrest warrant.

III. Whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when, without basis in fact and in law, respondent judge found probable cause against petitioner and thereby issued an arrest warrant against her.[4]

and pleading for the following reliefs:

a. Granting a writ of certiorari annulling and setting aside the Order dated 23 February 2017, the Warrant of arrest dated the same, and the Order dated 24 February 2017 of the Regional Trial Court, Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled *People of the Philippines versus Leila M. de Lima, et al*.;

b. Granting a writ of prohibition enjoining and prohibiting the respondent judge from conducting further proceedings until and unless the Motion to Quash is resolved with finality;

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[4] *Rollo*, p. 22.

c. Issuing an Order granting the application for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction to the proceedings; and

d. Issuing a Status Quo Ante Order restoring the parties to the status prior to the issuance of the Order and Warrant of Arrest, both dated 23 February 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.[5]

If only on the ground of forum shopping, the petition should have been dismissed outright.

I. The rule against forum shopping was violated by petitioner.

In *Heirs of Marcelo Sotto v. Palicte*,[6] the Court, consistent with its ruling on forum shopping, declared the following:

> There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.[7]

In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: "(a) [there is] identity of parties, or at least such parties who represent the same interests in both actions; (b) [there is] identity of rights asserted and relief prayed for, the relief being founded on the same facts;

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[5] *Id.* at 66.

[6] 726 Phil. 651 (2014).

[7] *Id.* at 653-654.

and (c) [that] the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case."[8]

The parties in the present petition and the pending motion to quash[9] in Criminal Case No. 17-165 before the RTC, Branch 204, Muntinlupa City, are the same, viz: De Lima is the petitioner in the case before the Court and the accused in Criminal Case No. 17-165; while the respondents in this case have substantial identity with the plaintiff before the trial court.

There is identity of the arguments on which De Lima anchored her motion to quash and her present petition, viz: the RTC has no jurisdiction over the offense charged; it is the Office of the Ombudsman and not the DOJ Panel that has authority to file the case; and the allegations in the information do not allege the *corpus delicti* of the charge of Violation of R.A. No. 9165. Consequently, the reliefs prayed for in the petition and the motion to quash are basically the same, i.e., the information in Crim. Case No. 17-165 should be nullified and that her liberty be restored.

Predictably, the decision by the Court of the petition renders academic the motion to quash, while a resolution of the motion to quash moots the petition.

In *Brown-Araneta v. Araneta*,[10] the Court laid down the following teaching:

> The evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum

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[8] *Daswani v. Banco de Oro Universal Bank*, G.R. No. 190983, 29 July 2015, 764 SCRA 160, 169-170.

[9] *Rollo*, pp. 256-295.

[10] 719 Phil. 293 (2013).

shopping, and a breach of these rules results in the dismissal of the case.[11] (underlining supplied)

Applying this teaching to the present case, the Court has no option but to dismiss this petition considering the blatant breach by De Lima of the rules against forum shopping.

Notably, in the *Verification And Certification Against Forum Shopping* which De Lima attached to her present petition, she stated:

x x x x x x x x x

3. I hereby certify that I have not commenced any actions or proceedings involving the same issues as this Petition before the Supreme Court, the Court of Appeals, or any divisions thereof, or before any other courts, tribunals or agencies, aside from the following, the pendency of which is part of the basis for filing this *Petition*:

a. The *Motion to Quash* I filed before Branch 204 of the Regional Trial Court of Muntinlupa City last 20 February2017 in Criminal Case No. 17-165, entitled "*People v. De Lima, et al.*" and

b. The Petition for Prohibition and Certiorari I filed before the Court of Appeals (currently pending before its Sixth Division) last 13 January 2017, docketed as CA G.R. No. 149097, entitled *"De Lima v. Panel of Prosecutors of DOJ, et al*."[12]

By De Lima's own admission, she has a pending motion to quash before the RTC and a petition[13] before the CA which formed part of her bases in filing her petition before the Court. For sure, by declaring her pending motion to quash before the RTC and petition before the CA, De Lima was complying with Circular No. 28-91,[14] which requires that a certification

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[11] *Id*. at 316-317.

[12] *Rollo*, pp. 69-70.

[13] *Id*. at 144-195.

[14] The subject of the Circular reads: "Additional requisites for petitions filed with the Supreme Court and the Court of Appeals to prevent forum-shopping or multiple filing of petitions and complaints."

on forum shopping be attached to a petition filed with the Court. But the equally significant truth is that she has resorted to forum shopping by taking advantage of a variety of competent tribunals, and trying her luck in several different fora until she obtains a favorable result; thus, a ground for the outright dismissal of the present petition.

In relation to forum shopping, the Rules of Court prescribes the specific sequence and hierarchical order by which reliefs may be availed of by the parties, viz:

> The Rules of Court, the code governing judicial procedure, prescribes the remedies (actions and special proceedings) that may be availed of for the myriad reliefs that persons may conceivably have need of and seek in this jurisdiction. But that the adjective law makes available several remedies does not imply that a party may resort to them simultaneously or at his pleasure or whim. There is a sequence and a hierarchical order which must be observed in availing of them. Impatience at what may be felt to be the slowness of the judicial process, or even a deeply held persuasion in the rightness of one's cause, does not justify short-cuts in procedure, or playing fast and loose with the rules thereof.[15]

The rules and jurisprudence dictate that petitioner should have allowed the lower courts to resolve the issues she brought forth before them prior to the filing of this petition. It is thus beyond comprehension how the petitioner, who describes herself as a "sitting Senator of the Republic, a former Secretary of Justice and Chairperson of the Commission on Human Rights, and a prominent member of the legal profession"[16] would tread on a precarious situation and risk to squander the remedies which the law accorded her by trifling with the orderly administration of justice unless she is trying to give us the impression that the lofty positions she claims to occupy or to have held has covered her with the habiliments of a privileged litigant.

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[15] *Gatmaytan v. CA*, 335 Phil. 155, 168 (1997).

[16] *Rollo,* p. 5.

II. The RTC has jurisdiction over Criminal Case No. 17-165.

a. RTC has jurisdiction over crimes involving illegal drugs.

Under R.A. No. 6425,[17] or the Dangerous Drugs Act of 1972, the Circuit Criminal Courts *(CCCs)* were vested with the exclusive original jurisdiction over all cases involving offenses punishable under the Act. However, with the abolition of the CCCs as a result of the enactment of Batas Pambansa *(B.P.)* Blg. 129,[18] the Court issued Circular No. 20[19] designating certain branches of the RTCs as special criminal courts to exclusively try, among other cases, "Violations of RA 6425 of the Dangerous Drugs Act of 1972, as amended, cognizable by Regional Trial Courts under Batas Pambansa Blg. 129."

With the passage of R.A. No. 9165, the Court was tasked to designate special courts from among the existing RTCs in each judicial region to exclusively try and hear cases involving breaches of the Act or, to be specific, on the violations of the Comprehensive Dangerous Drugs Law of 2002, viz:

> Section 90. *Jurisdiction*. — The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction. (underlining supplied)

Pertinently, in A.M. No. 05-9-03-SC, the Court declared that the jurisdiction of the RTCs designated as special drug courts shall be exclusive of all other courts not so designated.

Indeed, a reading of R.A. No. 9165 will confirm that only the RTC is empowered to hear and decide violations of the Act, viz:

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[17] Approved on 4 April 1972.

[18] Entitled "An Act Reorganizing the Judiciary, Appropriating funds Therefor, and For Other Purposes."

[19] Dated 7 August 1987.

Section 20. *Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals. —*

After conviction in the Regional Trial Court in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income: *Provided, however*, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.

During the pendency of the case in the Regional Trial Court, no property, or income derived therefrom, which may be confiscated and forfeited, shall be disposed, alienated or transferred and the same shall be in *custodia legis* and no bond shall be admitted for the release of the same. (underlining supplied)

Evidently, the legislature would not have taken great pains in including Sec. 90 in R.A. No. 9165, which explicitly specified the RTC as having exclusive jurisdiction over drug cases; and Sec. 20, that distinctly recognized RTC's authority to try these cases, if its intent was likewise to confer jurisdiction to the Sandiganbayan or other trial courts the cases involving violations of the Act.

That the exclusive jurisdiction of the RTC relative to violation of R.A. No. 9165 extends not only to private individuals but also to government officials and employees is readily verified by the following provisions:

Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual

disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any elective local or national official found to have **benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act**, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or controlled corporations.

Section 28. *Criminal Liability of Government Officials and Employees.* — The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees. (emphasis and underlining supplied)

It is noteworthy that Secs. 27 and 28 did not qualify that the public officer or employee referred to therein excludes those within the exclusive jurisdiction of the Sandiganbayan as enumerated in R.A. No. 8249, the law enforced at the time of the approval of R.A. No. 9165. Elsewise stated, conspicuously absent in R.A. No. 9165 is the distinction between a public officer covered by the exclusive original jurisdiction of the Sandiganbayan and those of the other trial courts. The absence of this distinction is significant — it settles the issue that violations of the provisions of R.A. No. 9165 by a public officer or employee, regardless of his position, brings him to the exclusive jurisdiction of the RTC. *Ubi lex non distinguit nec nos distinguire debemus.* Where the law does not distinguish, courts should not distinguish.[20]

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[20] *Amores v. House of Representatives,* 636 Phil. 600, 609 (2010).

Moreover, Secs. 27 and 28 are clear and therefore must be given their literal meaning. Jurisprudence[21] instructs as follows:

> The plain meaning rule or *verba legis,* derived from the maxim *index animi sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum.* From the words of a statute there should be no departure.[22]

Considering therefore that the charge in Criminal Case No. 17-165 is for violation of the provisions of R.A. No. 9165, it is beyond the shadow of doubt that this case, notwithstanding the position and salary grade of De Lima during the time material to the crime charged, falls within the exclusive jurisdiction of the RTC.

b. Crim. Case No. 17-165 involves the charge of violation of R.A. No. 9165.

Jurisprudence[23] provides for the definition of jurisdiction, viz:

> Jurisdiction is the basic foundation of judicial proceedings. The word "jurisdiction" is derived from two Latin words "*juris*" and "*dico*" — "I speak by the law" — which means fundamentally the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies. Bouvier's own definition of the term "jurisdiction" has found judicial acceptance, to wit: "Jurisdiction is the right of a Judge to pronounce a sentence of the law in a case or issue before him, acquired through due process of law;" it is "the authority by which judicial officers take cognizance of and decide cases."

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[21] *Philippine Amusement and Gaming Corp. v. Philippine Gaming Jurisdiction, Inc.,* 604 Phil. 547 (2009).

[22] *Id.* at 553.

[23] *People v. Mariano,* 163 Phil. 625 (1976).

In *Herrera v. Barretto*, x x x this Court, in the words of Justice Moreland, invoking American jurisprudence, defined "jurisdiction" simply as the authority to hear and determine a cause the right to act in a case. "Jurisdiction" has also been aptly described as the *right to put the wheels of justice in motion* and to proceed to the final determination of a cause upon the pleadings and evidence.

"Criminal Jurisdiction" is necessarily the authority to hear and try a particular offense and impose the punishment for it.

The conferment of jurisdiction upon courts or judicial tribunals is derived exclusively from the constitution and statutes of the forum.[24]
x x x

The general rule is that jurisdiction is vested by law and cannot be conferred or waived by the parties.[25] Simply put, jurisdiction must exist as a matter of law.[26]

To determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information, and not by the findings the court may make after the trial.[27]

Section 6, Rule 110 of the Rules of Court, provides that an information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether

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[24] *Id*. at 629-630.

[25] *Garcia v. Ferro Chemicals, Inc.*, 744 Phil. 590, 605 (2014).

[26] *People v. Sandiganbayan,* 482 Phil. 613, 626 (2004).

[27] *Buaya v. Polo*, 251 Phil. 422, 425 (1989).

the facts alleged therein, if hypothetically admitted, constitute the elements of the offense.[28] The information must allege clearly and accurately the elements of the crime charged.[29]

Likewise, it is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried.[30] Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.[31]

With the above jurisprudence and the provision of the Rules of Court as yardstick, we now evaluate the information in Criminal Case No. 17-165.

The information charges that, *sometime from November 2012 to March 2013*, in *Muntinlupa City*, *De Lima, Ragos, and Dayan*, in *conspiracy with each other*, *committed illegal drug trading*, *a violation of Sec. 26(b)*[32] *in relation to Secs. 5,*[33]

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[28] *Enrile v. Manalastas,* 746 Phil. 43, 54 (2014).

[29] *Guinhawa v. People,* 505 Phil. 383, 399-400 (2005).

[30] *Buaya v. Polo*, *supra* note 27.

[31] *Consigna v. People*, 731 Phil. 108, 119 (2014).

[32] Section 26. *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x x x x x x

[33] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver,

3(jj),[34] *and 28*[35] *of R.A. No. 9165.*

The information further provides that offense was committed as follows: "*De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high-profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there wilfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00)*

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give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

[34] Section 3. *Definitions.* As used in this Act, the following terms shall mean:

(jj) Trading. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

[35] Section 28. *Criminal Liability of Government Officials and Employees.* – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

Pesos weekly 'tara' each from the high profile inmates in the New Bilibid Prison."

Since it is axiomatic that jurisdiction is determined by the averments in the information,[36] the evident sufficiency of the allegations supporting the charge against De Lima for violation of Sec. 5 in relation to Secs. 3 (jj), 26(b) and 28 of R.A. No. 9165, firmly secures the exclusive jurisdiction of the RTC over the case pursuant to Sec. 90 of the same Act.

c. The jurisdiction of the Sandiganbayan.

Section 5, Article XIII of the 1973 Constitution directed the creation of the Sandiganbayan, viz:

> Section 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over 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 as may be determined by law.

On 11 June 1978, President Ferdinand E. Marcos *(Pres. Marcos)* issued P.D. No. 1486[37] creating the Sandiganbayan. By virtue of

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[36] *Serana v. Sandiganbayan*, 566 Phil. 224, 250 (2008).

[37] Entitled "Creating A Special Court To Be Known As Sandiganbayan And For Other Purposes." The jurisdiction of the Sandiganbayan under this P.D. were as follows:

Section 4. *Jurisdiction.* Except as herein provided, the Sandiganbayan shall have original and exclusive jurisdiction to try and decide:

(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act and Republic Act No. 1379;

(b) Crimes committed by public officers or employees, including those employed in government- owned or controlled corporations, embraced in Title VII of the Revised Penal Code;

(c) Other crimes or offenses committed by public officers or employees including those employed in government-owned or controlled corporations in relation to their office; Provided, that, in case private individuals are accused as principals, accomplices or accessories in the commission of the crimes hereinabove mentioned, they shall be tried jointly with the public officers or employees concerned.

P.D. No. 1606[38] issued by Pres. Marcos on 10 December 1978, the jurisdiction of the Sandiganbayan was modified as follows:

Section 4. *Jurisdiction.* The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

(b) Crimes committed by public officers and employees including those employed in government-owned or-controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c) Other crimes or offenses committed by public officers or employees, including those employed in government-owned or-controlled corporations, in relation to their office.

The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than prision correccional, or its equivalent, except as herein provided; in other offenses, it shall be concurrent with the regular courts.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees.

Where the accused is charged of an offense in relation to his office and the evidence is insufficient to establish the offense so charged, he may nevertheless be convicted and sentenced for the offense included in that which is charged.

(d) Civil suits brought in connection with the aforementioned crimes for restitution or reparation of damages, recovery of the instruments and effects of the crimes, or forfeiture proceedings provided for under Republic Act No. 1379;

(e) Civil actions brought under Articles 32 and 34 of the Civil Code.

Exception from the foregoing provisions during the period of material law are criminal cases against officers and members of the Armed Forces of the Philippines, and all others who fall under the exclusive jurisdiction of the military tribunals.

[38] Entitled "Revising Presidential Decree No. 1486 Creating a Special Court to be known as Sandiganbayan and For Other Purposes."

Where an accused is tried for any of the above offenses and the evidence is insufficient to establish the offense charged, he may nevertheless be convicted and sentenced for the offense proved, included in that which is charged.

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such action shall be recognized; Provided, however, that, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had therefore been filed separately with a regular court but judgment therein has not yet been rendered and the criminal case is hereafter filed with the Sandiganbayan, said civil action shall be transferred to the Sandiganbayan for consolidation and joint determination with the criminal action, otherwise, the criminal action may no longer be filed with the Sandiganbayan, its exclusive jurisdiction over the same notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction; Provided, further, that, in cases within the concurrent jurisdiction of the Sandiganbayan and the regular courts, where either the criminal or civil action is first filed with the regular courts, the corresponding civil or criminal action, as the case may be, shall only be filed with the regular courts of competent jurisdiction.

Excepted from the foregoing provisions, during martial law, are criminal cases against officers and members of the armed forces in the active service.

With the passage of B.P. Blg. 129, the exclusive original jurisdiction of the Sandiganbayan over the offenses enumerated in Sec. 4 of P.D. No. 1606 expanded to embrace all such offenses irrespective of the imposable penalty.

On 14 January 1983, Pres. Marcos signed P.D. No. 1860[39] conferring original and exclusive jurisdiction upon the

[39] Entitled "Amending the Pertinent Provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 Relative to the Jurisdiction of the Sandiganbayan and For Other Purposes."

Sandiganbayan for offenses enumerated in Sec. 4 of P.D. No. 1606 if punishable by a penalty higher than *prision correccional* or its equivalent, and original and exclusive jurisdiction with the appropriate court in accordance with the provisions of B.P. Blg. 129[40] for other offenses.

By virtue of P.D. No. 1861,[41] which was signed by Pres. Marcos on 23 March 1983, the Sandiganbayan was vested with exclusive appellate from the final judgments, resolutions or orders of the RTCs in cases originally decided by them in their respective territorial jurisdiction, and by way of petition for review, from the final judgments, resolutions or orders of the RTCs in the exercise of their appellate jurisdiction over cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, in their respective jurisdiction.

Under the 1987 Constitution, the Sandiganbayan was mandated to continue to function and exercise its jurisdiction.[42] With the issuance of Executive Order *(E.O.)* Nos. 14[43] and 14-A, the Sandiganbayan exercised exclusive original jurisdiction over civil and criminal cases filed by the Presidential Commission on Good Government *(PCGG)*, and under R.A. No. 7080,[44] the plunder cases.

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[40] Judiciary Reorganization Act of 1980.

[41] Entitled "Amending The Pertinent Provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 Relative to the Jurisdiction of the Sandiganbayan and For Other Purposes."

[42] Article XI, Section 4.

[43] Entitled "Defining the Jurisdiction over cases involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees, Effective on May 7, 1986."

[44] Entitled "An Act Defining and Penalizing the Crime of Plunder" approved on 12 July 1991.

Through R.A. No. 7975[45] and R.A. No. 8249,[46] the jurisdiction of the Sandiganbayan was further defined. At present, the exclusive original jurisdiction of the anti-graft court is specified in R.A. No. 10660[47] as follows:

Section 4. *Jurisdiction.* — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads:

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city

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[45] Entitled "An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended" approved on 30 March 1995.

[46] Entitled "An Act Further Defining the Jurisdiction of the Sandiganbayan, amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and For Other Purposes" approved on 5 February 1997.

[47] Entitled "An Act Strengthening further the Functional and Structural Organization of the Sandiganbayan, further amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor" approved 16 April 2015.

treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the *writs* of *mandamus,* prohibition, *certiorari, habeas corpus,* injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including *quo warranto,* arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: *Provided,* That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: *Provided, however,* That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.

Noteworthy, the then exclusive and original jurisdiction of the Sandiganbayan as provided for in P.D. 1606, i.e., violations of R.A. Nos. 3019 and 1379,[48] and in Chapter II, Sec. 2, Title VII, Book II of the RPC, had expanded. At present, for an offense to fall under the exclusive original jurisdiction of the Sandiganbayan, the following requisites must concur:

(1) the offense committed is a violation of:

   (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act);
   (b) R.A. 1379 (the law on ill-gotten wealth);
   (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery);
   (d) Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986 (sequestration cases); or

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[48] Entitled "An Act Declaring Forfeiture in Favor of the State any property found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor" approved on 18 June 1955.

(e) Other offenses or felonies whether simple or complexed with other crimes;

(2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of Sec. 4;

(3) the **offense committed is in relation to the office**;[49] and,

(4) the Information contains an allegation as to:

(a) any damage to the government or any bribery; or

(b) damage to the government or bribery arising from the same or closely related transactions or acts in an amount exceeding One million pesos (₱1,000,000.00).[50]

Evaluated against the above enumeration, the charge against De Lima for Violation of Sec. 5,[51] in relation to Secs. 3(jj),[52]

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[49] *Adaza v. Sandiganbayan,* 502 Phil. 702, 714 (2005).

[50] Pursuant to R.A. No. 10660.

[51] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

[52] Section 3. *Definitions*. As used in this Act, the following terms shall mean:

(jj) *Trading*. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a

26(b)[53] and 28[54] of R.A. No. 9165 does not fall within the jurisdiction of the Sandiganbayan. Although De Lima, as earlier stated, was a high-ranking public officer with salary grade 31 during the time material to the acts averred in the information, the charge against her, however, does not involve a violation of the Anti-Graft and Corrupt Practices Act, the law on ill-gotten wealth, the law on bribery or the sequestration cases.

Jurisprudence dictates the stringent requirement that the charge be set forth with such particularity as will reasonably indicate the exact offense which the accused is alleged to have committed in relation to his office.[55] For sure, the mere allegation that the offense was committed by the public officer in relation to his office would not suffice. That phrase is merely a conclusion of law, not a factual averment that would show the close intimacy between the offense charged and the discharge of the accused's official duties.[56]

The information in this case proves that the crime for which De Lima is charged was not committed in relation to her office. The glaring absence of an allegation in the information that the violation of the pertinent provisions of R.A. No. 9165 was

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broker in any of such transactions whether for money or any other consideration in violation of this Act.

[53] Section 26. *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x x x x x x

[54] Section 28. *Criminal Liability of Government Officials and Employees.*– The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

[55] *Lacson v. Executive Secretary,* 361 Phil. 251, 282 (1999).

[56] *Id.*

in relation to De Lima's office ***underscores the fact that she is being charged under this Act and not for any other offense based on the same facts***. Moreover, nothing from the information can judiciously show the relationship between the offense charged and the discharge by De Lima of her official duties. To stress, for an offense to be committed in relation to the office, the relation between the crime and the office must be direct and not accidental, such that the offense cannot exist without the office.[57]

The phrase "in relation to their office" as used in Sec. 4 of R.A. No. 8249, the precursor of R.A. No. 10660, had been explained by the Court as follows:

> As early as *Montilla vs. Hilario,* this Court has interpreted the requirement that an offense be committed in relation to the office to mean that "the offense cannot exist without the office "or" that the office must be a constituent element of the crime" as defined and punished in Chapter Two to Six, Title Seven of the Revised Penal Code (referring to the crimes committed by the public officers). *People vs. Montejo* enunciated the principle that the offense must be intimately connected with the office of the offender and perpetrated while he was in the performance, though improper or irregular of his official functions. The Court, speaking through Chief Justice Concepcion said that although public office is not an element of the crime of murder in (the) abstract, the facts in a particular case may show that —
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> > x x x the offense therein charged is intimately connected with (the accused's) respective offices and was perpetrated while they were in the performance though improper or irregular, of their official functions. Indeed (the accused) had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. The co-defendants of respondent Leroy S. Brown obeyed his instructions because he was their superior officer, as Mayor of Basilan City.
>
> The cited rulings in *Montilla vs. Hilario* and in *People vs. Montejo* were reiterated in *Sanchez vs. Demetriou, Republic vs. Asuncion,* and *Cunanan vs. Arceo.* The case of *Republic vs. Asuncion* categorically

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[57] *Adaza v. Sandiganbayan, supra* note 49 at 715.

pronounced that the fact that offense was committed in relation to the office must be alleged in the information:

> That the public officers or employees committed the crime in relation to their office, must, however, be alleged in the information for the Sandiganbayan to have jurisdiction over a case under Section 4(a)(2). This allegation is necessary because of the unbending rule that jurisdiction is determined by the allegations of the information.
>
> For this purpose what is controlling is not whether the phrase "committed in violation to public office" appears in the information; what determines the jurisdiction of the Sandiganbayan is the specific factual allegation in the information that would indicate close intimacy between the discharge of the accused's official duties and the commission of the offense charged in order to qualify the crime as having been committed in relation to public office.[58] (underlining supplied)

For sure, the crime of Violation of R.A. No. 9165 can be committed by De Lima even if she is not a public officer. A review of R.A. No. 9165 validates that the acts involved therein can be committed by both private individuals and government officers and employees. ***In the same vein, the respective offices of De Lima, Ragos, and Dayan, as DOJ Secretary, BuCor OIC, and employee of the DOJ, respectively, were not constituent elements of the crime of illegal drug trading. True, there was a mention in the information relative to the offices held by De Lima, Ragos, and Dayan, and allegations as to their taking advantage of their office and use of their positions, but these were palpably included by the DOJ Panel for the purpose of applying Sec. 28 of R.A. No. 9165 relative to the imposition of the maximum penalties of the unlawful acts provided for in the law and the absolute perpetual disqualification from any public office of the accused.***

d. The ruling in *Photokina v. Benipayo* as it is applied in the present petition.

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[58] *Soller v. Sandiganbayan*, 409 Phil. 780, 791-792 (2001).

Of utmost significance at this point is the case of *People and Photokina Marketing Corp. v. Benipayo.*[59] Alfredo Benipayo *(Benipayo)*, then Chairman of the Commission on Elections *(COMELEC)*, delivered a speech at the University of the Philippines which the Manila Bulletin subsequently published. Believing that it was the one being alluded to in the speech, Photokina Marketing Corporation *(Photokina)* filed through its representative a libel case against Benipayo before the Office of the City Prosecutor of Quezon City *(OCP-QC)*. Finding probable cause for libel against Benipayo, the OCP-QC filed an information, docketed as Crim. Case No. Q-02-109407, with the RTC of Quezon City *(RTC-QC)*. Subsequently, Photokina filed another complaint against Benipayo before the OCP-QC relative to the statements he made in a talk show. This led to the filing by the OCP-QC of an information for libel, docketed as Criminal Case No. Q-02-109406, before the RTC-QC.

Benipayo moved for the dismissal of the two cases against him. He asserted that the RTC-QC had no jurisdiction over his person as he was an impeachable officer; thus, he could not be criminally prosecuted before any court during his incumbency. Likewise, he posited that even if he can be criminally prosecuted, it was the Office of the Ombudsman that should investigate him, and that the case should be filed with the Sandiganbayan.

Albeit Benipayo was no longer an impeachable officer since his appointment was not confirmed by Congress, the RTC dismissed Crim. Case No. Q-02-109407 for lack of jurisdiction. It ruled that it was the Sandiganbayan that had jurisdiction over the case to the exclusion of all other courts because the alleged libel was committed by Benipayo in relation to his office, i.e., the speech was delivered in his official capacity as COMELEC Chairman. In the same vein, the RTC ordered the dismissal of Criminal Case No. Q-02-109406 on the ground that it had no jurisdiction over the person of Benipayo. Aggrieved with the dismissal of these cases, the People and Photokina repaired to the Court.

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[59] 604 Phil. 317 (2009).

The Court took note of the fact that both the People and Photokina, on one hand, and Benipayo, on the other, were harping on the wrong premise as to which between the RTC and the Sandiganbayan had jurisdiction over the offense by extensively arguing on whether the offense of libel was committed by Benipayo in relation to his office. The Court declared that the parties and the trial court failed to primarily ascertain whether the current laws confer on both the Sandiganbayan and the RTC jurisdiction over libel cases; otherwise if the said courts do not have concurrent jurisdiction to try the offense, it would be pointless to still determine whether the crime was committed in relation to office.

The Court ruled that Art. 360 of the RPC, as amended by R.A. No. 4363,[60] is explicit on which court has jurisdiction to try cases of written defamations, thus:

> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance [now, the Regional Trial Court] of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense x x x.

In addition thereto, on 21 October 1996, the Court issued Administrative Order *(AO)* No. 104-96 which conferred exclusive jurisdiction with the RTC to try libel cases, viz:

> RE: DESIGNATION OF SPECIAL COURTS FOR KIDNAPPING, ROBBERY, CARNAPPING, DANGEROUS DRUGS CASES AND OTHER HEINOUS CRIMES; INTELLECTUAL PROPERTY RIGHTS VIOLATIONS AND JURISDICTION IN LIBEL CASES.
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> x x x x x x x x x
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> C
>
> LIBEL CASES SHALL BE TRIED BY THE REGIONAL TRIAL COURTS HAVING JURISDICTION OVER THEM TO THE

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[60] Entitled "An Act to Further Amend Article Three Hundred Sixty of the Revised Penal Code," which was approved on 19 June 1965.

EXCLUSION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS. (underlining supplied)

Hence, in granting the petition and in ordering that Criminal Cases Nos. Q-02-109406 and Q-02-109407 be reinstated and remanded to the RTC-QC for further proceedings, the Court judiciously resorted to the provisions of Article 360 of the RPC and AO No. 104-96, as these explicitly provided for the exclusive jurisdiction of the RTC over libel cases, and the catena of cases that breathe life to these laws.

With the legal teaching in *Benipayo*, there is neither rhyme nor reason to still establish whether De Lima committed the charge against her in relation to her office considering that by explicit provision of R.A. No. 9165, it is the RTC that has exclusive original jurisdiction over violations of the Act. **Simply put, the exclusive original jurisdiction of the RTC over breaches of R.A. No. 9165 extends to any government officer or employee, regardless of his position and salary grade, and whether or not the same was committed in relation to his office**.

It is a basic tenet in statutory construction that a special law prevails over a general law.[61] In *Benipayo,*[62] the Court pronounced that "[l]aws vesting jurisdiction exclusively with a particular court, are special in character and should prevail over the Judiciary Act defining the jurisdiction of other courts (such as the Court of First Instance) which is a general law." Applying this pronouncement to the present petition, it is unquestionable that, relevant to the present charge against De Lima, it is R.A. No. 9165 as it vests exclusive original jurisdiction with the RTC to try drug cases, which is the special law and thus should prevail over R.A. No. 10660.

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[61] *Remo v. The Hon. Secretary of Foreign Affairs,* 628 Phil. 181, 191 (2010).

[62] *Supra* note 59 at 329.

e. **The offense of bribery vis-à-vis the violation of the provisions of R.A. No. 9165.**

An innovation brought about by the passage of R.A. No. 10660 is that, in the desire of Congress to improve the disposition of cases of the anti-graft court, it streamlined the jurisdiction of the Sandiganbayan by vesting in the RTC exclusive original jurisdiction where the information (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding ₱1,000,000.00.

It is unmistakable that in the case at bar, there was no allegation in the information as to any damage to the government.

On "bribery," in his co-sponsorship speech[63] for the immediate approval of Senate Bill No. 2138 or the "Act Further Amending Presidential Decree No. 1606," Senate President Franklin Drilon *(Sen. Drilon)* stated that the bill seeks to introduce three innovations in the Sandiganbayan, viz: first, the introduction of the "justice-designate" concept; second, the transfer of so-called minor cases to the RTCs; and last, a modification of the voting requirement in rendering decision. Specifically as to the second, Sen. Drilon expressed the following:

> The second modification under the bill involves the streamlining of the anti-graft court's jurisdiction, which will enable the Sandiganbayan to concentrate its resources on resolving the most significant cases filed against public officials. The bill seeks to amend Section 4 of the law by transferring jurisdiction over cases that are classified as "minor" to the regional trial courts, which have the sufficient capability and competence to handle these cases. Under this measure, the so-called "minor cases," although not really minor, shall pertain to those where the information does not allege any damage or **bribe**; those that allege damage or **bribe** that are unquantifiable; or those that allege damage or **bribe** arising from the same or closely

[63] Session No. 59, 26 February 2014, pp. 32-33.

related transactions or acts not exceeding One Million Pesos.[64] (emphasis supplied)

The interpellation[65] of the bill yielded the following pertinent discussion:

> On line 33 of page 3, Sen. Angara asked what cases would still fall under the Metropolitan Trial Court (MTC) and the Metropolitan Circuit Trial Court (MCTC) as he noted that cases would still be referred to the RTC if the damages do not exceed ₱1 million. Senator Pimentel replied that the officials enumerated under PD 1606 will be tried before the Sandiganbayan, and the bill seeks to divide the cases into the following: 1) if the information does not allege any damage or **bribe**, it would go to the RTC; 2) if the information alleges damage or **bribe** that is not quantifiable it would go to the RTC; and 3) if there is an allegation of damage or **bribe** but the amount is not more than ₱1 million, it would go to the RTC. He pointed out that the amendment only concerns the RTC and Sandiganbayan. (emphasis supplied)

Clearly, what is contemplated in R.A. No. 10660 is the giving of bribe and not necessarily the offenses on Bribery enumerated in Chapter II, Section 2, Title VII, Book II of the Revised Penal Code. "Bribe" is defined as "[a]ny money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity. A gift, not necessarily of pecuniary value, is bestowed to influence the conduct of the receiver."[66]

The position that the "bribery" referred to in R.A. No. 10660 pertains to the "bribe" and not necessarily to Bribery as penalized under Art. 210 to 211-A of the RPC finds support in the truth that there are likewise corrupt acts under R.A. No. 3019 where bribe is involved and thus may fall under the exclusive original jurisdiction of the RTC, viz:

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[64] *Id*. at 33.

[65] Session No. 62, 5 March 2014, pp. 72-73.

[66] *Black's Law Dictionary*, Sixth Ed., p. 191.

Section 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 x x x x x

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

x x x x x x x x x

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

While the information in Criminal Case No. 17-165 states that De Lima and Ragos demanded, solicited, and extorted money from the high-profile inmates in the NBP to support her senatorial bid in the 2016 elections, appreciation of all the whole allegations therein points towards an accusation for Violation of Sec. 26(b) in relation to Secs. 5, 3(jj) and 28 of R.A. No. 9165; hence, within the original exclusive jurisdiction of the RTC. To stress, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the

case.[67] Jurisdiction cannot be based on the findings the court may make after the trial.[68]

It is significant to state that there are averments in the information in Criminal Case No. 17-165 that conceivably conform to the other elements of bribery, i.e., (1) that the accused is a public officer; (2) that he received directly or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer.[69] As it is, the averments on some of the elements of bribery in the information merely formed part of the description on how illegal drug trading took place at the NBP. Irrefragably, the elements of bribery, as these are found in the information, simply completed the picture on the manner by which De Lima, Ragos, and Dayan conspired in violating Section 5 in relation to Sections 3(jj), 26(b) and 28 of R.A. No. 9165.

On this point, Sec. 27 of R.A. No. 9165 is again quoted:

> Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* – x x x
>
> Any elective local or national official found to have **benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act**, shall be removed from office and perpetually disqualified from holding any

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[67] *Navaja v. De Castro,* 761 Phil. 142, 150-151 (2015), citing *Foz, Jr. v. People*, 618 Phil. 120, 129 (2009).

[68] *Buaya v. Polo, supra* note 27.

[69] *Balderama v. People,* 566 Phil. 412, 419 (2008).

elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or – controlled corporations. (emphasis supplied)

Readily apparent is that the elements of bribery are equally present in Sec. 27 of R.A. No. 9165. By benefiting from the proceeds of drug trafficking, an elective official, whether local or national, regardless of his salary grade, and whether or not the violation of Sec. 27 of R.A. No. 9165 was committed in relation to his office, automatically brings him to the fold of R.A. No. 9165; thus, within the exclusive jurisdiction of the RTC.

But notwithstanding the charge against De Lima before the RTC for Violation of Sec. 5 in relation to Secs. 3(jj), 26(b) and 28 of R.A. No. 9165, there is nothing that would bar the DOJ Panel to recommend to the Office of the Ombudsman the filing of an information before the Sandiganbayan involving the same facts covered by Crim. Case No. 17-165, if the evidence so warrants. The legal teaching in *Soriano v. People*[70] finds its significance, viz:

> Jurisprudence teems with pronouncements that a single act or incident might offend two or more entirely distinct and unrelated provisions of law, thus justifying the filing of several charges against the accused.
>
> In *Loney v. People*, this Court, in upholding the filing of multiple charges against the accused, held:
>
> > As early as the start of the last century, this Court had ruled that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law thus justifying the prosecution of the accused for more than one offense. The only limit to this rule is the Constitutional prohibition that no person shall be twice put in jeopardy of punishment for "the same offense."In *People v. Doriquez*, we held that two (or more) offenses arising from the same act are not "the same" —
> >
> > > x x x if one provision [of law] requires proof of an additional fact or element which the other does not, x x x. Phrased elsewise,

[70] 609 Phil. 31 (2009).

> where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other.
>
> x x x x x x x x x

Consequently, the filing of the multiple charges against petitioners**,** although based on the same incident, is consistent with settled doctrine.[71] (underscoring supplied)

It must be emphasized that the Sandiganbayan, whose present exclusive original jurisdiction is defined under R.A. No. 10660, is unquestionably an anti-graft court, viz:

> Section 4. The present **anti-graft court** known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.[72] (emphasis supplied)

On the one hand, by explicit provision of R.A. No. 9165,[73] the RTC had been conferred with the exclusive jurisdiction over violations of the Act. Only the specially designated RTC, to the exclusion of other trial courts, has been expressly vested with the exclusive authority to hear and decide violations of R.A. No. 9165. Even the Sandiganbayan, which is likewise a trial court, has not been conferred jurisdiction over offenses committed in relation to the Comprehensive Drugs Act of 2002.

The rationale in designating certain RTCs as drug courts is easily discernible – it would enable these courts to acquire and thereafter apply the expertise apposite to drug cases; thus, prompting the effective dispensation of justice and prompt resolution of cases.

Parenthetically, a relevant issue that arises is which between the Office of the Ombudsman or the DOJ would have jurisdiction to conduct the preliminary investigation in this case. De Lima posits that it should be the Office of the Ombudsman.

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[71] *Id*. at 42-43.

[72] 1987 Constitution, Article XI.

[73] Section 90.

Since the complaint against De Lima is for violation of R.A. No. 9165, there is a need to review the provisions of the Act.

Section 90 of R.A. No. 9165 pertinently provides that "[t]he DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act." While De Lima was a high-ranking public officer during the time material to the charge against her, this however was not a valid justification to remove her from the authority of the DOJ which has been vested by R.A. No. 9165 with exclusive jurisdiction to handle the drug case, i.e., inclusive of the conduct of preliminary investigation and the filing of information with the RTC.

To put more emphasis on the jurisdiction of the DOJ to conduct preliminary investigation in this case, we note Sec. 2 of R.A. No. No. 6770,[74] otherwise known as "The Ombudsman Act of 1989," that provides:

> Section 2. Declaration of Policy. — The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.
>
> 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, efficiency, act with patriotism and justice and lead modest lives. (underscoring supplied)

From this quoted provision of the law, it is evident that the intent in creating the Office of the Ombudsman was to prevent and eradicate graft and corruption in government. Understandably, the cases handled by the Office of the Ombudsman pertain mainly to graft and corruption.

To a certain extent, violations of R.A. No. 9165 may likewise constitute an infringement by a public officer or employee, if it is committed in relation to his office, of the provisions of the RPC or special laws, specifically R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. Consequently, a public officer or employee, in addition to being charged for

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[74] Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and For Other Purposes."

violation of R.A. No. 9165, may likewise be prosecuted for the offenses committed under the RPC or other special laws. At that instance, concurrent jurisdiction is vested with the DOJ and the Office of the Ombudsman to conduct preliminary investigation. But if it is the Sandiganbayan, pursuant to R.A. No. 10660, that has jurisdiction over the person of the accused, the Office of the Ombudsman shall have primary jurisdiction over the complaint and, in the exercise of its primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of the case.[75]

To the point of being repetitive, the charge against De Lima was beyond doubt for violation of R.A. No. 9165; hence, by applying Sec. 90 of the Act, it was clearly within the realm of DOJ to conduct the preliminary investigation of the complaint against her and to file the corresponding information.

To recapitulate, R.A. No. 9165 is explicit that only the RTCs designated by the Court to act as special courts shall have exclusive jurisdiction to hear and try cases involving violations of the Act.

By applying our ruling in *Benipayo*, it is firmly settled that only the specially designated courts of the RTC shall have exclusive original jurisdiction over violations of R.A. No. 9165 committed by a public officer or employee, regardless of his position or salary grade, and whether or not he committed this in relation to his office. Since R.A. No. 9165 does not distinguish as to the position of the public officer or employee involved, or whether or not he committed the violation in relation to his office, so shall the Court not distinguish. It cannot be gainsaid therefore that the charge against De Lima, regardless of her rank and salary grade at the time material to the case, and whether or not she committed the charge of violation of R.A No. 9165 in relation to her office, is within the exclusive jurisdiction of the RTC.

In the same vein, Sec. 90 of R.A. No. 9165 categorically states it is the DOJ that shall exclusively handle cases involving violations of the Act. As it has been established that the complaint

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[75] R.A. No. 6770, Sec. 15(1).

against De Lima is for violation of R.A. No. 9165, it was only appropriate that the DOJ handled the preliminary investigation of the case and filed the corresponding information. It would be procedurally infirm for the Office of the Ombudsman to invade the exclusive jurisdiction of the DOJ.

In addition to the charge under R.A. No. 9165, should the evidence against a public officer or employee, **regardless of his position and salary grade**, support a finding for probable cause for violation of other laws committed in relation to his office, he should be prosecuted accordingly. In that instance, his position and salary grade would be of primordial consideration in determining the office that should conduct the preliminary investigation and the court that should hear and try the case.

In relation thereto, if the public officer or employee holds a position enumerated in R.A. No. 10660 or falls within the exclusive jurisdiction of the Sandiganbayan, the Office of the Ombudsman shall have primary jurisdiction over the complaint; and in the exercise of its jurisdiction, it may take over at any stage from any investigatory office the investigation of the case. Should there be a finding of probable cause by the Office of the Ombudsman, the information should be filed with the Sandiganbayan.

If the position of the public officer or employee is not included in the enumeration in R.A. No. 10660, the Office of the Ombudsman and the DOJ shall have concurrent jurisdiction over the complaint, and the information should be filed with the proper trial court.

De Lima asserted in her petition that based on the findings of the DOJ Panel, the crime she had committed was Direct Bribery. Whether or not she can be held liable for Direct Bribery or for violation of other laws, in addition to violation of R.A. No. 9165, is best left to the determination of the DOJ.

I therefore vote to dismiss the petition.

SEPARATE CONCURRING OPINION

TIJAM, *J.*:

It is settled that social and public interest demand the punishment of the offender.[1] It is likewise equally true that in a criminal prosecution, the accused has at stake interests of immense importance, both because of the possibility that he may lose his liberty or even his life upon conviction and because of the certainty that he would be stigmatized by the conviction.[2] With the public position of the accused being a Senator of the Philippines, and a former Secretary of Justice, it is easy to fall into the temptation of extremely scrutinizing the events that led to the instant quandary. It bears to keep in mind, however, that the instant case is one under Rule 65, a Petition for *Certiorari*. Hence, the facts of the case should be examined with a view of determining whether the respondents committed grave abuse of discretion in filing the charges against petitioner, and eventually ordering her arrest.

In this petition, Senator De Lima seeks to correct the grave abuse of discretion purportedly committed by respondent Judge Juanita Guerrero, presiding judge of the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 in connection with the criminal action for alleged illegal drug trading docketed as Criminal Case No. 17-165, and entitled, "*People of the Philippines v. Leila M. de Lima, Rafael Marcos Z. Ragos, Ronnie Palisoc Dayan*."

Specifically assailed in this petition are the following:

1. The Order dated February 23, 2017 wherein respondent judge found probable cause for the issuance of arrest warrants against all the accused, including Petitioner Leila M. De Lima;

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[1] *Binay v. Sandiganbayan*, G.R. Nos. 120681-83 & G.R. No. 128136, October 1, 1999.

[2] *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003.

2. The Warrant of Arrest against Petitioner also dated February 23, 2017, issued by respondent judge pursuant to the Order dated the same day;
3. The Order dated February 24, 2017, committing Petitioner to the custody of the PNP Custodial Center; and
4. The omission of respondent judge in failing or refusing to act on Petitioner's Motion to Quash, through which Petitioner seriously questions the jurisdiction of the lower court.

Petitioner prays that this Court annul the aforesaid orders and restore the parties to the *status quo* prior to the issuance of the said orders. Petitioner also prays that the respondent judge be compelled to resolve the motion to quash.

For their part, respondents maintain the validity of their actions insofar as petitioner's case is concerned. They claim that there is probable cause to charge petitioner with the offense of Conspiracy to Commit Illegal Drug Trading. They also affirm the RTC's jurisdiction to try the case. Also, respondents claim that respondent judge observed the constitutional and procedural rules in the issuance of the questioned orders and warrants of arrest.

With the foregoing in mind, and for reasons hereafter discussed, I concur with the vote of the majority that the instant petition should be denied. Petitioner was unable to establish that grave abuse of discretion attended the proceedings a quo.

The petition is procedurally infirm

A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such

tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[3]

In this case, the last two requisites are lacking. As will be discussed hereafter, petitioner was not able to discharge the burden of establishing that there was grave abuse of discretion on the part of respondent judge. Neither did she establish that there was no other remedy available to her in the ordinary course of law.

What is peculiar with the instant case is that it imputes grave abuse of discretion to an act of omission. Petitioner ultimately questions respondent judge's failure to act on her motion to quash. I am of the view that the circumstances sorrounding the respondent judge's inaction are not sufficient to justify resort to a petition for *certiorari* directly with this court.

For one, there is no showing that petitioner gave the trial court an opportunity to rule on the motion to quash. Without an actual denial by the Court, it would seem that the basis for petitioner's prayed reliefs are conjectures. To my mind, the trial court's inaction is an equivocal basis for an extraordinary writ of *certiorari*, and petitioner has failed to establish that such inaction requires immediate and direct action on the part of this Court. On this note, I agree with Justice Velasco that a petition for mandamus is available to compel the respondent judge to resolve her motion. Assuming further that the issuance of a warrant of arrest constituted as an implied denial of petitioner's motion to quash, jurisprudence[4] is consistent that the remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision

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[3] *Tan v. Spouses Antazo*, G.R. No. 187208, February 23, 2011.

[4] See *Enrile vs. Judge Manalastas,* G.R. No. 166414; *Soriano vs. People*, G.R. Nos. 159517-18, June 30, 2009.

be adverse, reiterate on appeal from the final judgment and assign as error the denial of the motion to quash.

That the trial court has yet to rule directly on the jurisdictional issue also highlights the forum shopping committed by petitioner. Should respondent judge grant the motion to quash, then it fundamentally makes the instant petition moot and academic, as the underlying premise of the instant case is the "implied" denial of the RTC of petitioner's motion to quash. On the other hand, should this Court grant the instant petition, then the RTC is left with no option but to comply therewith and dismiss the case. It is also possible that this Court confirms the respondent judge's actions, but the latter, considering the time period provided under Section 1(g)[5] of Rule 116, grants petitioner's prayer for the quashal of the information. Any permutation of the proceedings in the RTC and this Court notwithstanding, I find that filing the instant petition to this Court is clear forum shopping. It should have been outrightly dismissed if this Court is indeed keen in implementing the policy behind the rule against forum shopping. Verily, forum shopping is a practice which ridicules the judicial process, plays havoc with the rules of orderly procedure, and is vexatious and unfair to the other parties to the case.[6] Our justice system suffers as this kind of sharp practice opens the system to the possibility of manipulation; to uncertainties when conflict of rulings arise; and at least to vexation for complications other than conflict of rulings.[7]

In the same vein, the failure of petitioner's to await the RTC's ruling on her motion to quash, and her direct resort to this Court violates the principle of hierarchy of courts. Other than the

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[5] (g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.

[6] *Heirs of Penaverde v. Heirs of Penaverde*, G.R. No. 131141, October 20, 2000.

[7] See *Madara, et al. v. Judge Perello*, G.R. No. 172449, August 20, 2008.

personality of the accused in the criminal case, nothing is exceptional in the instant case that warrants relaxation of the principle of hierarchy of courts. I am of the view that the instant case is an opportune time for the Court to implement strict adherence to the principle of hierarchy of courts, if only to temper the trend in the behaviour of litigants in having their applications for the so-called extraordinary writs and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land.[8] The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.[9] Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[10]

Even if we disregard such procedural flaw, the substantial contentions of the petitioner fail to invite judgment in her favor.

The warrant of arrest was validly issued

The argument that respondent judge did not make a personal determination of probable cause based on the wordings of the February 23, 2017 Order is inaccurate and misleading.

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[8] See *Quesada v. Department of Justice*, G.R. No. 150325, August 31, 2006, citing *People of the Philippines v. Cuaresma*, G.R. No. 67787, April 18, 1989.

[9] *Banez v. Concepcion*, G.R. No. 159508, August 29, 2012.

[10] *Id.*

Undisputably, before the RTC judge issues a warrant of arrest under Section 6, Rule 112[11] of the Rules of Court, in relation to Section 2, Article III[12] of the 1987 Constitution, the judge must make a personal determination of the existence or non-existence of probable cause for the arrest of the accused. The duty to make such determination is personal and exclusive to the issuing judge. He cannot abdicate his duty and rely on the certification of the investigating prosecutor that he had conducted a preliminary investigation in accordance with law and the Rules of Court.[13]

Personal determination of probable cause for the issuance of a warrant of arrest, as jurisprudence teaches, requires a personal review of the recommendation of the investigating prosecutor to see to it **that the same is supported by substantial evidence.** The judge should consider not only the report of the investigating prosecutor but also the affidavits and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the

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[11] Sec. 6. *When warrant of arrest may issue.* — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

[12] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[13] *Okabe v. Gutierrez*, G.R. No. 150185, May 27, 2004.

preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.[14]

In this case, the fact that respondent judge relied on the "*Information and all the evidence during the preliminary investigation*", as stated in the February 27, 2017 Order, does not invalidate the resultant warrant of arrest just because they are not exactly the same as the documents mentioned in Section 6 of Rule 112, *viz*: prosecutor's resolution and its supporting documents. As aptly discussed in the majority decision, citing relevant jurisprudence, the important thing is that the judge must have sufficient supporting documents other than the recommendation of the prosecutor, upon which to make his independent judgment.

Contrary to petitioner's argument, the wordings of the February 27, 2017 Order reveal that respondent judge reviewed the available evidence and evaluated whether the same corresponds to the allegations in the Information. On this note, I agree with Justice Velasco that the respondent judge can be said to have even exceeded what is required of her under our procedural rules. In reviewing the evidence presented during the preliminary investigation and the Information, the respondent judge made a *de novo* determination of whether probable cause exists to charge petitioner in court.

Neither can respondent judge be held to have committed grave abuse of discretion when she issued a warrant of arrest against petitioner before resolving her motion to quash. There is simply no urgency that justifies overriding the 10-day period set forth in Section 5(a) of Rule 112 of the Rules of Court for judicial determination of probable cause. It bears to be reminded that under Section 9[15] of Rule 117 of the Rules of Court, the court's

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[14] *Id*.

[15] Sec. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed

lack of jurisdiction over the offense charged is a non-waivable ground to quash the information, which may be raised by the accused and resolved by the court even after the accused enters his plea.[16] Neither has petitioner presented a legal principle or rule which requires the court to resolve the motion to quash before issuance of the warrant of arrest.

The dissenting opinions posit that the judge should have resolved the issue of the RTC's jurisdiction of the case simultaneously with determining probable cause to order the arrest of the accused. It is interesting, however, to note that the dissenting opinions also recognize that **there is no written rule or law which requires the judge to adopt such course of action**. To my mind, the absence of an express rule that specifically requires the judge to resolve the issue of jurisdiction before ordering the arrest of an accused, highlights the lack of grave abuse of discretion on the part of respondent judge. To be sure, *certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact. A contrary rule would lead to confusion, and seriously hamper the administration of justice.[17]

The RTC has jurisdiction to try the case against petitioner

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a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

[16] See *Marcos v. Sandiganbayan*, G.R. Nos. 124680-81, February 28, 2000; *Madarang and Kho vs. Court of Appeals,* G.R. No. 143044, July 14, 2005.

[17] *Heirs of Bilog v. Melicor*, G.R. No. 140954, April 12, 2005.

Conspiracy to commit illegal trading under Section 5,[18] in relation to Section 3(jj),[19] Section 26 (b)[20] and Section 28[21] of Republic Act (R.A.) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002" is within the jurisdiction of the RTC. This is plain from the text of the first paragraph of Section 90 of R.A. No. 9165, to wit:

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[18] Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions. x x x

[19] (jj) *Trading*. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

[20] Sec. 26. Attempt or Conspiracy. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

[21] Sec. 28. *Criminal Liability of Government Officials and Employees*. – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

Sec. 90. ***Jurisdiction.*** – The Supreme Court shall designate special courts from among **the existing Regional Trial Courts** in each judicial region **to exclusively try and hear cases involving violations of this Act.** The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

x x x x x x x x x

(Emphasis ours)

Confusion as to the court which should properly take cognizance of petitioner's case is understandable. Truly, under Presidential Decree No. 1606, as amended by R.A. No. 8249 and R.A. No. 10660 (otherwise known as the Sandiganbayan Law), the law grants Sandiganbayan a broad authority to try high-ranking public officials. Further, Section 4(b) of the said law grants Sandiganbayan jurisdiction over "*b. Other offenses or felonies committed by public officials and employees mentioned in subsection (a) of this section in relation to their office.*" In *Lacson v. Executive Secretary, et al.,*[22] this Court declared that the phrase "*other offenses or felonies*" is too broad as to include the crime of murder, provided it was committed in relation to the accused's official functions. Thus, under said paragraph "b", what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender that is, whether he is one of those public officers or employees enumerated in paragraph "a" of Section 4. Petitioner's argument espousing that the Sandiganbayan has jurisdiction, is therefore, not totally unfounded.

However, the specific grant of authority to RTCs to try violations of the Comprehensive Dangerous Drugs Act is categorical. Section 90 thereof explicitly provides that, "*The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to* ***exclusively try and hear cases*** *involving violations of this Act.*"

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[22] G.R. No. 128096, January 20, 1999, 301 SCRA 298.

By virtue of such special grant of jurisdiction, drugs cases, such as the instant case, despite the involvement of a high-ranking public official, should be tried by the RTC. The broad authority granted to the Sandiganbayan cannot be deemed to supersede the clear intent of Congress to grant RTCs exclusive authority to try drug-related offenses. The Sandiganbayan Law is a general law encompassing various offenses committed by high-ranking officials, while R.A. No. 9165 is a special law specifically dealing with drug-related offenses. A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.[23] Neither does the amendment[24] in the Sandiganbayan Law, introduced in 2015, through R.A. No. 10660, affect the special authority granted to RTCs under R.A.

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[23] *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007.

[24] Sec. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

x x x x x x x x x

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

No. 9165. It is a well-settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law. *Generalia specialibus non derogant* (a general law does not nullify a specific or special law).[25]

Also, R.A. No. 10660, in giving the RTC jurisdiction over criminal offenses where the information does not allege any damage to the government, or alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (PhP 1 Million), cannot be used as a basis to remove from the RTC its jurisdiction to try petitioner's case just because the information alleges an amount involved exceeding PhP1 Million.

It is useful to note that R.A. No. 10660 contains a transitory provision providing for the effectivity of the amendment, as follows:

SEC. 5. *Transitory Provision*. — This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun: Provided, That: (a) **Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on "Jurisdiction";** and (b) Section 3, amending Section 5 of Presidential Decree No. 1606, as amended, on "Proceedings, How Conducted; Decision by Majority Vote" **shall apply to cases arising from offenses committed after the effectivity of this Act**. (Emphasis ours)

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

x x x x x x x x x

(Emphasis ours)

[25] *Social Justice Society v. Atienza*, G.R. No. 156052, February 13, 2008.

Based from the provisions of R.A. No. 10660, it is clear that the changes introduced therein, particularly on jurisdiction, were made to apply to acts committed **after** the law's effectivity. Considering that the information alleges that the offense was committed on various occasions from November 2012 to March 2013, or two years before the effectivity of R.A. No. 10660 on May 5, 2015, said law cannot be applied to clothe Sandiganbayan jurisdiction over petitioner's case by virtue of the amount alleged in the Information.

The conclusion that the RTC has jurisdiction over the subject matter of petitioner's case is also supported by related provisions in R.A. No. 9165. Perusal of the said law reveals that public officials were never considered excluded from its scope. This is evident from the following provisions:

Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or –controlled corporations.

Section 28. *Criminal Liability of Government Officials and Employees.* – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from **any public office**, if those found guilty of such unlawful acts are **government officials and employees.** (Emphasis supplied)

Taken with Section 90 of the same law, which states that RTCs are to **"exclusively try and hear cases"** involving violations of the Dangerous Drugs Act, it becomes apparent that public officials, so long as they are charged for the commission of the unlawful acts stated in R.A. No. 9165, may be charged in the RTC.

As to petitioner's allegation that her position as former Justice Secretary at the time the offense was purportedly committed removes the case from the RTC's jurisdiction, We agree with the discussion of the majority that since public or government position is not an element of the offense, it should not be deemed to be one committed in relation to one's office. Hence, the offense cannot be deemed as one sufficient to transfer the case to the Sandiganbayan.

Further, petitioner's insistence that the crime charged is Direct Bribery, instead of Conspiracy to Commit Illegal Trading, springs from a piecemeal reading of the allegations in the Information.

Under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition.[26] In this case, mere conspiracy to commit illegal drug trading is punishable in itself. This is clear from Section 26 of R.A. No. 9165, to wit:

Sec. 26. *Attempt or Conspiracy.* — **Any** attempt or **conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same** as provided under this Act:

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[26] *Lazarte v. Sandiganbayan*, G.R. No. 180122, March 13, 2009.

x x x x x x x x x

(b) Sale, **trading,** administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x x x x x x.

When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information.[27] For example, the crime of "conspiracy to commit treason" is committed when, in time of war, two or more persons come to an agreement to levy war against the Government or to adhere to the enemies and to give them aid or comfort, and decide to commit it. The elements of this crime are: (1) that the offender owes allegiance to the Government of the Philippines; (2) that there is a war in which the Philippines is involved; (3) that the offender and other person or persons come to an agreement to: (a) levy war against the government, or (b) adhere to the enemies, to give them aid and comfort; and (4) that the offender and other person or persons decide to carry out the agreement. These elements must be alleged in the information.[28]

Applying the foregoing to the case at bar, in order to prosecute the offense of conspiracy to commit illegal trading, only the following elements are necessary:

1. that two or more persons come to an agreement;
2. the agreement is to commit drug trading, as defined in R.A. No. 9165, which refers to *any transaction involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting*

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[27] See *People of the Philippines v. Ara*, G.R. No. 185011, December 23, 2009.

[28] See *Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002.

as a broker in any of such transactions whether for money or any other consideration.

3. That the offenders decide to commit the offense.

A cursory reading of the Information charged against petitioner shows the aforesaid elements. To quote the Information:

INFORMATION

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

That within the period from **November 2012 to March 2013**, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, **by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison,** did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the new Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; **by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs**, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "tara" each from the high profile inmates in the New Bilibid Prison.

CONTRARY TO LAW. (Emphasis ours)

The agreement to commit illegal drug trading is clear from the allegation that petitioner, along with her co-accused, solicited money from the inmates, and "by reason of which" the inmates were able to deal illegal drugs through the use of electronic devices inside NBP. Petitioner's assent to the said agreement is also apparent from the allegation that she received or collected from the inmates, through her co-accused, the proceeds of illegal trading on various occasions. Clearly, the information alleges that illegal drug trading inside the New Bilibid prison was facilitated or tolerated because of, or "by reason" of the money delivered to then Secretary of Justice, petitioner.

Necessarily, I disagree with the point raised by Justice Carpio as to the necessity of including in the Information the elements of illegal sale of dangerous drugs. As stated above, **what is punished in case of conspiracy is not the sale of the drugs itself, but the agreement itself to commit the offense of illegal trading.** The gist of the crime of conspiracy is unlawful agreement, and where conspiracy is charged, it is not necessary to set out the criminal object with as great a certainty as is required in cases where such object is charged as a substantive offense.[29] Note must be taken of the definition used in R.A. No. 9165 that trading refers to all transactions involving "*illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals x x x.*" Under Section 3(r) of R.A. No. 9165, trafficking covers "*the illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.*" To my mind, the aforesaid provisions highlight the Congress' intent to punish the illegal system or scheme of peddling illegal drugs, different or distinct from the component act of selling drugs. Hence, there is no need to treat the offense of conspiracy to commit illegal trading in the same way as illegal sale of drugs. The allegation of conspiracy in the Information should not be confused with the adequacy of

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[29] *Estrada v. Sandiganbayan, supra* note 28.

evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of the evidence on the conspiracy is not necessary in the Information.[30]

Further, I am also wary of the practical repercussions of requiring specific details of the component illegal transactions in an Information charging conspiracy of illegal drug trading. If allegations of the identities of the buyer, seller, consideration, delivery of the drugs or mode of payment thereof are to be required in the Information, it will be too unduly burdensome, if not outright unlikely, for the government to prosecute the top level officials or "big fish" involved in organizations or groups engaged in illegal drug operations. This is because top level officials would not be concerned with the day-to-day or with the minute details in the transactions at the grassroots level. In any case, the lack of knowledge on the part of the top persons in the drug operation organizations as to the individual transactions concerning the group, does not necessarily equate to their lack of assent to the illegal agreement.

No reason to reverse the preliminary recommendation of the DOJ Panel of Prosecutors

Petitioner also attacks the purported irregularities during the preliminary investigation and alleges that the filing of a criminal charge against her is mere political harassment. She also claims that her constitutional rights have been violated throughout the conduct of preliminary investigation, citing the cases of *Salonga v. Paño*,[31] *Allado v. Diokno*[32] and *Ladlad v. Velasco.*[33]

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[30] *Lazarte v. Sandiganbayan*, *supra* note 26.

[31] G.R. No. 59524, February 18, 1985.

[32] G.R. No. 113630, May 5, 1994.

[33] G.R. Nos. 172070-72, June 1, 2007.

Petitioner failed to establish merit to the aforesaid contentions.

The court's review of the executive's determination of probable cause during preliminary investigation is not broad and absolute. The determination of probable cause during a preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor.[34] In our criminal justice system, the public prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. **Courts must respect the exercise of such discretion when the information filed against the accused is valid on its face, and no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor.**[35]

In this case, the fact that the primary basis of the Information was the testimonies of convicts in the National Bilibid Prison does not, of itself, indicate grave abuse of discretion, nor negate the existence of probable cause. Considering that the illegal trading was alleged to have been committed in the country's main penal institution, as well as the peculiar nature of the crime alleged to have been committed, the logical source of information as to the system and process of illegal trading, other than petitioner and her co-accused, are the prisoners thereof, who purportedly participated and benefitted from the scheme.

Petitioner's clamour to apply the rules on evidence is misplaced. This is because preliminary investigation is not part of the trial. In *Artillero v. Casimiro*,[36] citing *Lozada v. Hernandez*,[37] this Court explained the nature of a preliminary investigation in relation to the rights of an accused, as follows:

> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, **its only purpose being to determine whether a crime has**

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[34] *Dupasquier v. Court of Appeals*, G.R. Nos. 112089 & 112737, January 24, 2001.

[35] *Id*.

[36] G.R. No. 190569, April 25, 2012.

[37] 92 Phil. 1051 (1953).

been committed and whether there is probable cause to believe the accused guilty thereof. (U.S. vs. Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law". (U.S. vs. Grant and Kennedy, 18 Phil. 122). (Emphasis ours)

Verily, the credibility and weight of the testimonies of the convicts are matters which are properly subject to the evaluation of the judge during trial of the instant case. For the purpose of determining whether the petitioner should be charged with Conspiracy to Commit Illegal Drug Trading, the statements of the witnesses, as discussed in the majority opinion, suffice. Further, whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information. Hence, it is not incumbent upon this Court to rule thereon, otherwise, this Court might as well sit as a trier of facts.

Neither can We reverse the DOJ's determination by the invocation of this Court's ruling in *Allado, Salonga,* and *Ladlad* and declare that petitioner is politically persecuted for the simple reason that there are glaring factual differences between the said cases and the one at bar.

In the case of Allado, the Presidential Anti-Crime Commission operatives who investigated the murder of therein victim, claimed that petitioners were not the mastermind of the crime, and it was actually another person.

Meanwhile, in the case of *Salonga*, this Court invalidated the resolutions of therein respondent judge finding probable cause against Salonga because the prosecution's evidence miserably failed to establish Salonga's specific act constituting subversion. In that case, Salonga was tagged as a leader of

subversive organizations because: 1) his house was used as a "contactpoint"; and (2) "*he mentioned some kind of violent struggle in the Philippines being most likely should reforms be not instituted by President Marcos immediately*." The alleged acts do not obviously constitute subversion.

Similarly, in the case of *Ladlad*, majority of the prosecution witnesses did not name Crispin Beltran as part of a rebellion plot against the government.

Certainly, the aforesaid circumstances do not obtain in the case of petitioner. Her co-accused, along with the NBP inmates, uniformly name her as the "big fish", in the scheme to trade illegal drugs in prison. Such statements, which petitioner failed to rebut by countervailing evidence, suffice to establish a *prima facie* case against her. The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction.[38]

Owing primarily to the nature of preliminary investigation, and being cognizant of the stage at which the case is currently in, it would be baseless, not to mention unfair, to examine every single piece of evidence presented by the prosecution under the same rules observed during trial. Petitioner is surely familiar with the legal principle that during preliminary investigation, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.[39]

Indeed, courts are bound to respect the prosecution's preliminary determination of probable cause absent proof of manifest error, grave abuse of discretion and prejudice. The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of what and whom to charge, the

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[38] *Bautista v. Court of Appeals*, G.R. No. 143375, July 6, 2001.

[39] *People v. Castillo and Mejia*, G.R. No. 171188, June 19, 2009.

exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.[40]

For sure, the conclusion herein reached merely touches on the preliminary issue of the propriety of the course of action taken by the DOJ Panel of Prosecutors and by respondent judge in petitioner's case. It has no relation nor bearing to the issue of petitioner's innocence or guilt on the offense charged. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper.[41] In any case, as discussed above, the circumstances of the instant case fails to establish that respondents' acts were exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility.

WHEREFORE, I vote to **DENY** the petition.

SEPARATE CONCURRING and DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I.

Petitioner Leila M. De Lima (petitioner) is charged as a conspirator for the crime of Illegal Drug Trading, defined and penalized under Section 5 in relation to Section 3 (jj), Section 26 (b), and Section 28 of Republic Act No. (RA) 9165.[1] This much is clear from the caption, the prefatory, and accusatory portions of the Information,[2] which read:

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[40] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010.

[41] *United Coconut Planters Bank v. Looyuko and Go*, G.R. No. 156337, September 28, 2007.

[1] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT of 2002, REPEALING REPUBLIC ACT NO. 6425, Otherwise Known as THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (June 7, 2002).

[2] *Rollo*, pp. 197-201.

PEOPLE OF THE PHILIPPINES, Plaintiff,	**Criminal Case No.** 17-165 (NPS No. XVI-INV-16J-00315 and NPS No. XVI-INV-16K-00336)
versus	**For:** ***Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5 in relation to Section 3(jj), Section 26(b), and Section 28, Republic Act No. 9165 (Illegal Drug Trading)***
LEILA M. DE LIMA x x x Accused.	

x————————————————————————————————x

INFORMATION

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, [accused] LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, in relation to Section 3(jj), Section 26(b) and **Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002**, committed as follows:

That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit **illegal drug trading,** in the following manner: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high

profile inmates in the New Bilibid Prison.[3] (Emphases and underscoring supplied)

Illegal Drug Trading is penalized under Section 5, Article II of RA 9165, which reads in part:

> **Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals**. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, **trade**, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphases and underscoring supplied)

Although the said crime is punished under the same statutory provision together with the more commonly known crime of Illegal Sale of Dangerous Drugs, it is incorrect to suppose that their elements are the same. This is because the concept of "trading" is considered by the same statute as a distinct act from "selling." Section 3 (jj), Article I of RA 9165 defines "trading" as:

> (jj) Trading. — Transactions involving the **illegal trafficking** of dangerous drugs and/or controlled precursors and essential chemicals **using electronic devices** such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms **or acting as a broker** in any of such transactions whether for money or any other consideration in violation of this Act. (Emphases supplied)

Based on its textual definition, it may be gleaned that "trading" may be considered either as (**1**) an act of engaging in a transaction involving **illegal trafficking** of dangerous drugs ***using electronic devices***; or (**2**) acting as a ***broker*** in any of said transactions.

"Illegal trafficking" is defined under Section 3 (r), Article I as:

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[3] *Id.*; emphases and underscoring supplied.

> (r) Illegal Trafficking. — The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.

Accordingly, it is much broader than the act of "selling," which is defined under Section 3 (ii), Article I as:

> (ii) Sell. — Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.

However, in order to be considered as a form of trading under the first act, it is essential that the mode of illegal trafficking must be done through the use of an electronic device.

Meanwhile, in its second sense, trading is considered as the act of brokering transactions involving illegal trafficking. According to case law:

> **A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern**; **the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties**. **A broker is one whose occupation it is to bring parties together to bargain or to bargain for them, in matters of trade**, commerce or navigation. Judge Storey, in his work on Agency, defines a broker as an agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation for a compensation commonly called brokerage.[4] (Emphasis and underscoring supplied)

Essentially, a broker is a middleman whose occupation is to only bring parties together to bargain *or* bargain for them in matters of trade or commerce. He negotiates contracts relative to property with the custody of which he has no concern. In this sense, the act of brokering is therefore clearly separate

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[4] *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp.*, 248 Phil. 727, 736 (1988), citations omitted.

and distinct from the transaction being brokered. As such, it may be concluded that brokering is already extant regardless of the perfection or consummation of the ensuing transaction between the parties put together by the broker.

As applied to this case, it is then my view that when a person brings parties together in transactions involving the various modes of illegal trafficking, then he or she may already be considered to be engaged in Illegal Drug Trading per Section 3 (jj), Article I of RA 9165. In this regard, he or she need not be a party to the brokered transaction.

In the Joint Resolution[5] dated February 14, 2017 of the Department of Justice (DOJ) Panel of Prosecutors (DOJ Resolution), the prosecution resonated the foregoing, to wit:

> In our criminal justice system, jurisprudence is replete with cases involving *illegal possession* and *selling* of prohibited drugs where the accused are caught *in flagrante delicto* during buy bust or entrapment operations.
>
> That is not so, however, in the instant cases of *illicit drug trade* where the foundation or substance of the crime was clearly established by clear and unequivocal testimonies of inmates who admitted that they took part in the illicit activities, instead of the usual buy bust or entrapment operations.
>
> **These testimonies point to the fact that orders for drugs were transacted inside NBP while deliveries and payments were done outside. These transactions were done with the use of electronic devices. This is typical of drug *trading* as distinguished from illegal *possession* or *sale* of drugs**.
>
> **At any rate, the recovery of several sachets of *shabu* from the *kubols* of Peter Co, Jojo Baligad and Clarence Dongail during the raid on 15 December 2014, strongly suggests the existence of**

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[5] *Rollo*, pp. 203-254. Signed by Senior Assistant State Prosecutor Peter L. Ong, Senior Assistant City Prosecutors Alexander P. Ramos and Evangeline P. Viudez-Canobas, Assistant State Prosecutor Editha C. Fernandez, and Associate Prosecution Attorney Roxanne F. Cu and approved by Prosecutor General Victor C. Sepulveda.

the objects of drug *trading*. These drugs as well as the sums of money and cellular phones confiscated from inmates are pieces of evidence that would prove that illegal transactions involving *shabu* through the use of mobile phones were consummated.[6]

As will be elaborated upon below, the Information reflects the charge of Illegal Drug Trading in the sense that it pins against herein petitioner (acting in conspiracy with her other co-accused, Rafael Marcos Z. Ragos and Ronnie Palisoc Dayan) her failure to exercise her duties as DOJ Secretary, which failure effectively allowed the illegal drug trade to exist in the National Bilibid Prison (NBP). Although petitioner was not alleged to have directly engaged as a broker for the sale, distribution or delivery of dangerous drugs, the prosecution basically theorizes that her knowledge of the existence of such scheme, and her failure to quell the same under her watch make her a co-conspirator in the crime of Illegal Drug Trading. In this relation, it is relevant to state that:

> It is common design which is the essence of conspiracy — conspirators may act separately or together in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by looking at it as a whole — acts done to give effect to conspiracy may be, in fact, wholly innocent acts.[7]

Ultimately, it is incumbent upon the prosecution to present evidence to prove that their allegations against petitioner make her part of the conspiracy. As to what evidence will be adduced by the prosecution to this end is not yet relevant at this stage of the proceedings. Providing the details of the conspiracy — take for instance, what drugs were the objects of the trade inside the NBP — is clearly a matter of evidence to be presented at the trial. Therefore, the Information's absence of such detail does not negate the charge as one for Illegal Drug Trading.

In addition, it should be pointed out that all the incidents leading to the filing of the foregoing Information consistently

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[6] See DOJ Resolution, p. 39; emphases and underscoring supplied.

[7] *Yongco v. People*, 740 Phil. 322, 335 (2014).

revolved around the crime of Illegal Drug Trading: the complaints[8] (except that filed by Jaybee Sebastian [Sebastian]), the conduct of preliminary investigation,[9] and the DOJ Resolution against petitioner all pertain to the same crime. Accordingly, the DOJ, in the exercise of its prosecutorial function as an agency of the executive department, found probable cause and thus, decided to file the case before the Regional Trial Court (RTC) for the crime of Illegal Drug Trading. The discretion of what crime to charge a particular accused is a matter that is generally within the prerogative of the Executive Department, which this Court should not unduly interfere with. Jurisprudence states that:

> The prosecution of crimes pertains to the Executive Department of the Government whose principal power and responsibility are to see to it that our laws are faithfully executed. A necessary component of the power to execute our laws is the right to prosecute their violators. **The right to prosecute vests the public prosecutors with a wide range of discretion — the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors that are best appreciated by the public prosecutors**. **The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent**. Theirs is also the quasi-judicial discretion to determine whether or not criminal cases should be filed in court.
>
> Consistent with the principle of separation of powers enshrined in the Constitution, the Court deems it a sound judicial policy **not to interfere** in the conduct of preliminary investigations, and to allow the Executive Department, through the Department of Justice, **exclusively to determine** what constitutes sufficient evidence to

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[8] See NPS No. XVI-INV-16J-00313 filed by Volunteers Against Crime and Corruption, NPS No. XVI-INV-16J-00315 filed by Reynaldo O. Esmeralda and Ruel M. Lasala, and NPS No. XVI-INV-16K-00336 and NPS No. XVI-INV-16L-00384 filed by National Bureau of Investigation; DOJ Resolution, pp. 1-2 and 4-5.

[9] See NPS No. XVI-INV-16K-00331; DOJ Resolution, pp. 1 and 4. See also *rollo*, pp. 339-340.

establish probable cause for the prosecution of supposed offenders.[10] (Emphases and underscoring supplied)

In light of the foregoing, it cannot therefore be said that petitioner was charged for a different crime, such as of Direct Bribery under Article 210 of the Revised Penal Code (RPC) although — as the Office of the Solicitor General (OSG) itself admits — "some of the elements of direct bribery may be present in the Information, *i.e.*, the accused are public officers and received drug money from the high-profile inmates."[11] Verily, the charge of Illegal Drug Trading is not only apparent from the language of the Information vis-à-vis the nature of the crime based on its statutory definition; it may also be deduced from the surrounding circumstances for which probable cause was found against the accused. As above-mentioned, the choice of what to charge a particular accused is the prerogative of the Executive, to which this Court must generally defer.

The peculiarity, however, in the foregoing Information is that while petitioner stands accused of the crime of Illegal Drug Trading, she is alleged to have committed the same "**in relation to her office**." As will be discussed below, because of this attending peculiarity, the case against petitioner falls within the jurisdiction of the *Sandiganbayan* and not the RTC, which is where the case was filed. Since the RTC has no jurisdiction over the subject matter, the case against petitioner, therefore, should be dismissed.

II.

On its face, the Information states that petitioner, "**being then the Secretary of the Department of Justice**," "**by taking advantage of [her] public office**," "did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority, **demand, solicit and extort money** from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De

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[10] *Ampatuan, Jr. v. De Lima*, 708 Phil. 158, 163 (2013).

[11] See OSG's Memorandum dated April 12, 2017, p. 61.

Lima in the May 2016 [E]lection; **by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices**, did then and there willfully and unlawfully trade and traffic dangerous drugs, and **thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million [(₱]5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison."[12] Based on these allegations, the crux of the Information is therefore petitioner's utilization of her Office to commit the subject crime vis-à-vis her failure to perform her official duties as DOJ Secretary to regulate the illegal activities within the NBP, which effectively paved the way for the said drug scheme to prosper without restriction. This is consistent with and more particularized in the DOJ Resolution, from which the present Information arose.

In the DOJ Resolution, petitioner is alleged to have demanded various amounts of money (which includes weekly/monthly *tara*)[13] from high-profile inmates (among others, Sebastian, Wu Tuan Yuan a.ka. Peter Co, and Hans Anton Tan)[14] in the NBP **in exchange for protections and/or special concessions** (among others, feigning ignorance about the *kubols*, the transfer of the *Bilibid* 19 to the National Bureau of Investigation (NBI) which helped Sebastian centralize the drug trade in the NBP, the bringing in of liquors and other prohibited items in the NBP, the use of *Bilibid* TV Channel 3 as Sebastian's office).[15] ***These protections and/or special concessions are intimately related to petitioner's office as she had no power or authority to provide the same were it not for her functions as DOJ Secretary***. Under

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[12] *Rollo*, pp. 197-198; emphases and underscoring supplied.

[13] See DOJ Resolution; pp. 39-42.

[14] See *id*. at 8, 20-22, and 23-24.

[15] See *id*. at 15.

Section 8[16] of RA 10575,[17] the DOJ — of which petitioner was the head of[18] — shall exercise administrative supervision over

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[16] Sec. 8. *Supervision of the Bureau of Corrections*. – The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38 (2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

[17] Entitled "An Act Strengthening the Bureau of Corrections (BuCor) and Providing Funds Therefor," otherwise known as "The Bureau of Corrections Act of 2013," approved on May 24, 2013.

[18] Section 7, Chapter 2, Book IV of the Administrative Code of 1987 state the powers and functions of a Department Secretary, among others:

Sec. 7. *Powers and Functions of the Secretary*. — The Secretary shall:

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, However, that where the Department is regionalized on a department-wide basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

(7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;

the Bureau of Corrections (BuCor). For its part, the BuCor "shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years."[19] Thus, being the head of the DOJ — the government agency exercising administrative supervision over the BuCor which is, in turn, in charge of the NBP — petitioner allegedly refused to properly exercise her functions to accommodate the various illicit activities in the NBP in exchange for monetary considerations and in ultimate fruition of the drug trade.

Case law holds that "as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, **there being no personal motive to commit the crime and had the accused would not have committed it had he not held the aforesaid office**, the accused is held to have been indicted for 'an offense committed in relation' to his office."[20]

In *Crisostomo v. Sandiganbayan*[21] (*Crisostomo*), this Court illumined that "**a public officer commits an offense in relation to his office if he perpetrates the offense while performing, though in an improper or irregular manner, his official functions and he cannot commit the offense without holding his public office**. In such a case, there is an intimate connection between the offense and the office of the accused. **If the information alleges the close connection between the offense charged and the office of the accused, the case falls within the jurisdiction of the *Sandiganbayan***."[22]

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(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and

(9) Perform such other functions as may be provided by law.

[19] RA 10575, Section 4.

[20] *Rodriguez v. Sandiganbayan*, 468 Phil. 374, 387 (2004), citing *People v. Montejo*, 108 Phil. 613, 622 (1960); emphasis supplied.

[21] 495 Phil. 718 (2005).

[22] *Id.* at 729, citing *People v. Montejo*, *supra* note 20; emphases and underscoring supplied.

III.

Presidential Decree No. (PD) 1606,[23] as amended,[24] states:

Section 4. *Jurisdiction*. — **The *Sandiganbayan* shall exercise exclusive original jurisdiction** in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads:

(b) City mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

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[23] Entitled "REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS 'SANDIGANBAYAN' AND FOR OTHER PURPOSES" (December 10, 1978).

[24] Amended by RA 8249, entitled "AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (FEBRUARY 5, 1997), AND FURTHER AMENDED BY RA 10660 ENTITLED "AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR," (April 16, 2015).

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. **Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office**.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

x x x x x x x x x

(Emphases and underscoring supplied)

"The above law is clear as to the composition of the original jurisdiction of the *Sandiganbayan*. Under **Section 4 (a)**, the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the *Sandiganbayan* to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However,

the law is not devoid of exceptions. Those that are classified as Grade 26 and below may still fall within the jurisdiction of the *Sandiganbayan* provided that they hold the positions thus enumerated by the same law. x x x **In connection therewith, Section 4 (b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the *Sandiganbayan*.**"[25]

In *People v. Sandiganbayan,*[26] this Court distinguished that "[i]n the offenses involved in Section 4 (a), it is not disputed that public office is essential as an element of the said offenses themselves, **while in those offenses and felonies involved in Section 4 (b), it is enough that the said offenses and felonies were committed in relation to the public officials or employees' office**."[27] Hence, it is not necessary for public office to be a constituent element of a particular offense for the case to fall within the jurisdiction of the *Sandiganbayan*, for as long as an intimate connection exists between the said offense and the accused's public office.

This Court's disquisition in the case of *Crisostomo* is highly instructive on this matter:

> Indeed, murder and homicide will never be the main function of any public office. No public office will ever be a constituent element of murder. When then would murder or homicide, committed by a public officer, fall within the exclusive and original jurisdiction of the *Sandiganbayan*? *People v. Montejo* provides the answer. The Court explained that a public officer commits an offense in relation to his office if he perpetrates the offense while performing, though in an improper or irregular manner, his official functions and he cannot commit the offense without holding his public office. In such a case, there is an intimate connection between the offense and the office of the accused. If the information alleges the close connection

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[25] *People v. Sandiganbayan*, 645 Phil. 53, 63-64 (2010); emphases and underscoring supplied.

[26] *Id.*

[27] *Id.* at 67; underscoring supplied.

between the offense charged and the office of the accused, the case falls within the jurisdiction of the *Sandiganbayan*. *People v. Montejo* is an exception that *Sanchez v. Demetriou* recognized.[28]

"**Thus, the jurisdiction of the *Sandiganbayan* over this case will stand or fall on this test: Does the Information allege a close or intimate connection between the offense charged and [the accused]'s public office?**"[29]

The Information against petitioner clearly passes this test. For indeed, it cannot be denied that petitioner could not have committed the offense of Illegal Drug Trading as charged without her holding her office as DOJ Secretary. **Her alleged complicity in the entire drug conspiracy hinges on no other than her supposed authority to provide high-profile inmates in the NBP protections and/or special concessions which enabled them to carry out illegal drug trading inside the national penitentiary**. As the OSG itself acknowledges, "during her tenure as Secretary of Justice, [petitioner] allowed the drug trade to fester and flourish inside the walls of the *Bilibid* so she can profit from the illicit commerce and finance her political aspirations."[30] The OSG even labels petitioner's participation as a form of "indispensable cooperation," without which the "inmates could not have plied their nefarious trade:"

> [Petitioner], Ragos, Dayan, petitioner's admitted lover, confabulated with the high-profile inmates of the national penitentiary to commit illegal drug trading through the use of mobile phones and other electronic devices. These inmates could not have plied their nefarious trade without the indispensable cooperation of [petitioner] and her DOJ factotums.[31]

Tested against the standards set by jurisprudence, petitioner evidently stands charged of an offense which she allegedly

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[28] *Crisostomo*, *supra* note 21, at 729; citations omitted.

[29] *Id*.; emphasis and underscoring supplied.

[30] See OSG's Comment with Opposition dated March 3, 2017, p. 2.

[31] See *id*. at 44.

committed in relation to her office. Contrary to the OSG's assertions, this conclusion is not merely derived from the generic phrases "as Secretary of Justice" or "taking advantage of their public office,"[32] but rather, from the Information read as a whole, the overall context of the determination of the probable cause against her, and even the OSG's own characterization of petitioner's role in the entire conspiracy.

IV.

At this juncture, it deserves pointing out that under the most recent amendment to PD 1606, it is not enough that the accused, who should occupy any of the public positions specified therein, be charged of an offense either under Section 4 (a) or (b) of the same for the case to fall under the *Sandiganbayan's* jurisdiction. Under RA 10660, entitled "An Act Strengthening Further the Functional and Structural Organization of the *Sandiganbayan*, Further Amending Presidential Decree No. 1606, as Amended, and Appropriating Funds Therefor," approved on April 16, 2015, the *Sandiganbayan's* special jurisdiction has now been limited to cases which (**a**) involve **damage to the government** and/or (**b**) allege **any bribery**,[33] and **in both cases**, should involve **an amount of not less than ₱1,000,000.00**. If any of these conditions are not satisfied, then the case should

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[32] See *id*. at 40.

[33] Notably, the *proviso* makes it clear that an allegation of "any bribery" would suffice. The word "any" literally and ordinarily means "whichever of a specified class might be chosen" (<https://www.google.com/search?q=any+define&ie=utf-8&oe=utf-8&client=firefox-b-ab&gfe_rd=cr&dcr=0&ei=V1bcWbrdL6nH8Ae06KW4DA> [last visited October 10, 2017]). The word "any" is used to generally qualify the succeeding term "bribery," which means that the allegation of bribery spoken of in the *proviso* does not necessarily pertain to Direct Bribery or any of the forms of bribery as defined and penalized under the RPC (under Chapter II, Section 2, Title VII, Book II of the Revised Penal Code). Thus, "any bribery" as used in Section 4 of PD 1606, as amended by RA 10660, should then be read in its common and non-technical acceptation – that is, any form of "corrupt payment, receipt, or solicitation of a private favor for official action." (*Black's Law Dictionary*, 8th Edition, p. 204).

now fall under the jurisdiction over the proper RTCs. The limiting *proviso* reads:

> Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: **(a) does not allege any damage to the government or any bribery**; or **(b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00)**.[34] (Emphasis supplied)

The intent behind this provision, *i.e.*, to streamline the anti-graft court's jurisdiction by making it concentrate on the "most significant cases filed against public officials," can be gleaned from the co-sponsorship speech of Senator Franklin Drilon during the deliberations of RA 10660:

> The second modification under the bill involves the streamlining of the anti-graft court's jurisdiction, which will enable the *Sandiganbayan* to concentrate its resources in resolving the most significant cases filed against public official. **The bill seeks to amend Section 4 of the law by transferring jurisdiction over cases which are classified as "minor" to the regional trial courts**, which have sufficient capability and competence to handle these cases. **Under this measure, the so-called "minor cases," although not really minor, shall pertain to those where the information does not allege any damage or bribe; those that allege damage or bribe that are unquantifiable**; **or those that allege damage or bribe arising from the same or closely related transactions or acts not exceeding One Million Pesos**. As of the last quarter of 2013, about 60% of the cases before the *Sandiganbayan* constitute what we call "minor cases." With this amendment, such court will be empowered to focus on the most notorious cases and will be able to render judgment in a matter of months.[35] (Emphases supplied)

Thus, as it now stands, an Information against a particular accused should not merely charge him or her of an offense in

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[34] See Section 2 of RA 10660, amending Section 4 of PD 1606; emphasis supplied.

[35] Record of the Senate, Vol. I, No. 59, February 26, 2014, pp. 22-23; emphases and underscoring supplied.

relation to his or her office, but moreover, should show that the offense involves some damage to the government or any bribe in an amount not less than ₱1,000,000.00 so as to place the case within the jurisdiction of the *Sandiganbayan*. Otherwise, the case falls within the jurisdiction of the proper RTCs.

Relatedly, the damage to the government and/or bribe should be "quantifiable." This was not only the Congressional intent as revealed in the deliberations, but this interpretation also logically squares with the ₱1,000,000.00 monetary threshold. Hence, an allegation of non-pecuniary damage, such as the besmirchment of the public service, would not be enough to satisfy the condition.

While this amendment would have clearly applied to petitioner's case (as explained in the note below[36]), Section 5 of RA 10660 qualifies that the same shall apply to "cases arising from offenses committed after the effectivity of this Act." Given that the

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[36] In this case, the Information against petitioner alleges that she had committed some form of bribery in an amount exceeding ₱1,000,000.00. On its face, the Information states that petitioner, together with her co-accused, "with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New *Bilibid* Prison" (see *rollo*, p. 198). As above-discussed, petitioner, in her capacity as DOJ Secretary, provided protections and/or special concessions to high-profile inmates, which paved the way for the illegal drug trade to flourish and fester inside the NBP. Petitioner, however, did not betray her official duties as DOJ Secretary for free, as she instead, demanded a price for her misfeasance. As the Information reads, in exchange for such protections and/or special concessions, high-profile inmates "g[a]ve and deliver[ed] to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million [(₱]5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New *Bilibid* Prison" (*id.*). These monetary considerations were intended "to support [her] Senatorial bid in the May 2016 [E]lection" (*id.*). The gravamen of bribery is basically, the demand of a public officer from another of money or any other form of consideration in exchange for the performance or non-performance of a certain act that is related to the public officer's official functions. Petitioner's acts of bribery are clearly attendant to the charge against her in the Information and, in fact, are more vivid when parsing through the DOJ Resolution.

Information situates the alleged crime "within the period from November 2012 to March 2013,"[37] Section 4 of PD 1606, as amended by RA 8249, prior to its amendment by RA 10660, should apply.

V.

It is the position of the OSG that only the RTCs have jurisdiction over drug cases regardless of the position and circumstances of the accused public officer.[38] As basis, it mainly cites Sections 28 and 90 of RA 9165:

> Section 28. *Criminal Liability of Government Officials and Employees*. — The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.
>
> Section 90. *Jurisdiction*. — The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

Section 28, however, only provides for the penalties against a government official found guilty of the unlawful acts provided in RA 9165. As it only relates to the imposition of penalties, Section 28 has nothing to do with the authority of the courts to acquire jurisdiction over drugs cases. In fact — as it is the case here — the *Sandiganbayan* has jurisdiction over cases involving violations of RA 9165, provided that they are committed in relation to the qualified official's public office. Only that if said public official is found guilty, the *Sandiganbayan* is mandated to impose the maximum penalties provided for in RA 9165, including the accessory penalty of absolute perpetual disqualification from any public office. Hence, Section 28 is only relevant on the matter of what penalty would be imposed, which comes only at the end of the proceedings after a proper

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[37] *Id*. at 197.

[38] See OSG's Comment with Opposition, p. 36.

determination of guilt, and not as to the matter of which court should acquire jurisdiction over the case.

More apt to the issue of jurisdiction, however, is Section 90 of RA 9165 as also cited by the OSG. Section 90 states that specially designated courts among the existing RTCs are empowered "to exclusively try and hear cases involving violations of this Act", *i.e.*, RA 9165. Thus, as a general rule, these designated drug courts have exclusive jurisdiction to take cognizance of drugs cases.

The conferment of special jurisdiction to these drug courts should, however, yield when there is a more special provision of law that would apply to more peculiar situations. Our legal system subscribes to "[t]he principle of *lex specialis derogat generali* — general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail."[39]

In this case, it is my view that PD 1606, as amended, is the more special provision of law which should prevail over Section 90 of RA 9165. Petitioner's case does not only pertain to a regular violation of the Dangerous Drugs Act, which falls under the jurisdiction of the RTCs acting as special drugs courts. **Rather, it is a dangerous drugs case that is alleged to have been particularly committed by a public official with a salary grade higher than 27, in relation to her office**. This unique circumstance therefore relegates Section 90 as the general provision of law that should therefore give way to the application of Section 4 of PD 1606, as amended.

In fact, Section 4 (b) of PD 1606, as amended by RA 8249, is clear that **all** "**offenses**," apart from felonies, that are committed by public officials within the law's ambit fall under the exclusive jurisdiction of the *Sandiganbayan*:

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[39] *Jalosjos v. Commission on Elections*, 711 Phil. 414, 431 (2013).

b. **Other offenses** or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office. (Emphasis supplied)

Article 3 of the RPC states that "[a]cts and omissions punishable by law are felonies." "The phrase 'punished by law' should be understood to mean 'punished by the Revised Penal Code' and not by special law. That is to say, the term 'felony' means acts and omissions punished in the revised Penal Code, **to distinguish it from the words 'crime' and 'offense' which are applied to infractions of the law punishable by special statutes**."[40]

Thus, may it be for a felony under the RPC, or any other offense under any other special penal law — for instance, RA 9165 — the *Sandiganbayan* has jurisdiction over the case for as long as the offense is committed by a public official under the limiting conditions set forth in Section 4 of PD 1606, as amended.

It should be remembered that the *Sandiganbayan* is a special court whose authority stems from no less than the Constitution's mandate to hold certain public officials accountable. To recount, "[t]he creation of the *Sandiganbayan* was mandated by Section 5, Article XIII of the 1973 Constitution. By virtue of the powers vested in him by the Constitution and pursuant to Proclamation No. 1081, dated September 21, 1972, former President Ferdinand E. Marcos issued [PD] 1486. The decree was later amended by [PD] 1606, Section 20 of *Batas Pambansa* Blg. [(BP)] 129, [PD] 1860, and [PD] 1861."[41] "**It was promulgated to attain the highest norms of official conduct required of public officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty**

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[40] Reyes, L. B., *The Revised Penal Code,* Eighteenth Edition, p. 36; emphasis supplied.

[41] *Duncano v. Sandiganbayan*, 764 Phil. 67, 72-73 (2015).

and efficiency and shall remain at all times accountable to the people."[42]

"With the advent of the 1987 Constitution, the special court was retained as provided for in Section 4, Article XI[43] thereof. Aside from Executive Order Nos. 14 and 14-a, and [RA] 7080, which expanded the jurisdiction of the *Sandiganbayan*, [PD] 1606 was further modified by [RA] 7975, [RA] 8249, and just [in 2015], [RA] 10660."[44] "To speed up trial in the *Sandiganbayan*, [RA] 7975 was enacted for that Court to concentrate on the 'larger fish' and leave the 'small fry' to the lower courts. x x x [Thus, it] divested the *Sandiganbayan* of jurisdiction over public officials whose salary grades were at Grade '26' or lower, devolving thereby these cases to the lower courts, and retaining the jurisdiction of the *Sandiganbayan* only over public officials whose salary grades were at Grade '27' or higher and over other specific public officials holding important positions in government regardless of salary grade."[45]

Overall, it may be gathered from history that the overarching denominator which triggers the *Sandiganbayan*'s specialized competence is the necessity to properly hold high officials in government accountable for their misdeeds. In fact, the *Sandiganbayan*'s *raison d'être* is none other than its authority to try and hear criminal cases against **an exclusive set of public officials, for select acts that bear on their public office**. **This exclusivity, as impelled itself by Constitutional force, constitutes a greater specialty which demands sole cognizance by this special court**. Hence, for as long as these public officials are charged for offenses in relation to their office, and provided

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[42] *Serana v. Sandiganbayan*, 566 Phil. 224, 240 (2008); emphasis and underscoring supplied.

[43] Section 4. The present anti-graft court known as the *Sandiganbayan* shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

[44] *Duncano v. Sandiganbayan*, *supra* note 41, at 73-74.

[45] *Id*. at 76-77, citing Record of the Senate, Vol. I, No. 24, September 25, 1996, p. 799.

that the limiting conditions of the current amendments are satisfied, these cases should be considered as special cases that fall under the jurisdiction over the *Sandiganbayan*, to the exclusion of other courts, including the RTCs designated as special drugs courts. The conferment of jurisdiction over these special cases to the *Sandiganbayan* is further amplified by the express exclusion of such cases from the jurisdiction of all RTCs. Section 20 of BP 129[46] clearly states:

> Section 20. *Jurisdiction in criminal cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, **except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter**. (Emphasis and underscoring supplied)

As a final point, allow me to express my reservations with the Court's ruling in *People v. Benipayo*,[47] wherein it was held that libel cases, although alleged to have been committed in relation to one's public office, should nonetheless fall within the jurisdiction of the RTCs, and not the *Sandiganbayan*. The Court, applying the implied repeal rule, reasoned in this wise:

> As we have constantly held in *Jalandoni, Bocobo, People v. Metropolitan Trial Court of Quezon City, Br. 32*, *Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations shall be filed simultaneously or separately with the RTC to the exclusion of all other courts. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, in the absence of an express

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[46] Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980" (August 14, 1981). This provision was modified accordingly to reflect the amendment in Presidential Decree No. 1860, entitiled "AMENDING THE PERTINENT PROVISIONS OF PRESIDENTIAL DECREE NO. 1606 AND *BATAS PAMBANSA BLG.* 129 RELATIVE TO THE JURISDICTION OF THE *SANDIGANBAYAN* AND FOR OTHER PURPOSES" (January 14, 1983).

[47] 604 Phil. 317 (2009).

repeal or modification, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means. The grant to the *Sandiganbayan* of jurisdiction over offenses committed in relation to (public) office, similar to the expansion of the jurisdiction of the MTCs, did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.[48]

In so ruling, the Court relied on past cases which consistently held that libel cases should fall under the jurisdiction of the RTC. However, as will be explicated below, it is my view that these cases are improper authorities to arrive at this conclusion.

To contextualize, the cases cited in *Benipayo* largely revolved around the seeming conflict between (***a***) the expanded jurisdiction of the Municipal Trial Courts (MTC) to try criminal cases within an increased range of penalties, of which that provided for libel would then fall; and (***b***) the jurisdiction of the RTCs over libel cases as provided under Article 360 RPC.[49] These cases are:

(**1**) In *Jalandoni v. Endaya* (*Jalandoni*),[50] the amendment to the Judiciary Act by RA 3828[51] was cited by therein respondent to support his argument that the MTC had jurisdiction:

[Respondent MTC Judge] did base his action on what for him was the consequence of the Judiciary Act as amended by **Republic Act**

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[48] *Id*. at 330-332; citations omitted.

[49] Article 360 of the RPC provides in part: "[t]he criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense[.]"

[50] 154 Phil. 246 (1974).

[51] Entitled "An Act to Amend Certain Sections of Republic Act Numbered Two Hundred Ninety-Six, Otherwise Known as 'The Judiciary Act Of 1948,' and for Other Purposes" (June 22, 1963).

No. 3828, Section 87 of which would confer concurrent jurisdiction on municipal judges in the capital of provinces with the court of first instance where the penalty provided for by law does not exceed *prision correccional* or imprisonment for not more than six years or fine not exceeding six thousand pesos or both. Libel is one of those offenses included in such category. He would thus conclude that as the amendatory act came into effect on June 22, 1963, the provisions of Article 360 as last amended by Republic Act No. 1289 conferring exclusive jurisdiction on courts of first instance, was thus repealed by implication.[52] (Emphasis and underscoring supplied)

(**2**) In *Bocobo v. Estanislao* (*Bocobo*)[53] (which, in turn, cited the ruling in *Jalandoni*), therein respondents also invoked RA 3828 in a similar light:

The further point was raised by respondents that under **Republic Act No. 3828**, concurrent jurisdiction was conferred on municipal judges in the capitals of provinces with a court of first instance, in which the penalty provided for by law does not exceed *prision correccional* or imprisonment for not more than six years or a fine of ₱6,000.00 or both, such fine or imprisonment being the penalty for libel by means of radio broadcast as provided under Article 355 of the Revised Penal Code. For then that would mean that there was an implied repeal of the earlier amendatory act, Republic Act No. 1289 vesting exclusive jurisdiction on courts of first instance. Such a point was raised and rejected in the *Jalandoni* opinion x x x.[54] (Emphasis and underscoring supplied)

(**3**) Later, in *People v. MTC of Quezon City and Red* (*Red*),[55] citing *Caro v. Court of Appeals* (*Caro*),[56] it was contended that RA 7691,[57] which similarly expanded the jurisdiction of the

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[52] *Jalandoni*, *supra* note 50, at 250-251.

[53] 164 Phil. 516 (1976).

[54] *Id.* at 522.

[55] 333 Phil. 500 (1996).

[56] See Court's Resolution dated June 19, 1996 in G.R. No. 122126.

[57] Entitled "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa, Blg. 129, Otherwise Known as the 'Judiciary Reorganization Act of 1980,'" approved on March 25, 1994.

MTCs, divested the RTCs of their jurisdiction over libel cases. Notably, *Caro* also cited both the cases of *Bocobo* and *Jalandoni*:

> Anent the question of jurisdiction, [we find] no reversible error committed by public respondent Court of Appeals in denying petitioner's motion to dismiss for lack of jurisdiction. The [contention that] **R.A. No. 7691** divested the Regional Trial Courts of jurisdiction to try libel cases cannot be sustained. While libel is punishable by imprisonment of six months and one day to four years and two months (Art. 360, Revised Penal Code) which imposable penalty is lodged within the Municipal Trial Courts' jurisdiction under **R.A. No. 7691** (Sec. 32 [21]), said law, however, excludes [therefrom cases] falling within the exclusive original jurisdiction of the Regional Trial [Courts.] The Court in [*Bocobo vs. Estanislao*, and *Jalandoni vs. Endaya*,] correctly cited by the Court of Appeals, has laid down the rule that Regional Trial Courts have the exclusive jurisdiction over libel cases, hence, the expanded jurisdiction conferred by R.A. 7691 to inferior courts cannot be applied to libel cases.[58] (Emphases and underscoring supplied)

(**4**) And finally, in *Manzano v. Hon. Valera*[59] (*Manzano*), in turn, citing *Red*:

> The applicable law is still Article 360 of the Revised Penal Code, which categorically provides that jurisdiction over libel cases are lodged with the Courts of First Instance (now Regional Trial Courts).
>
> This Court already had the opportunity to rule on the matter in G.R. No. 123263, *People vs. MTC of Quezon City, Branch 32 and Isah V. Red* wherein a similar question of jurisdiction over libel was raised. In that case, the MTC judge opined that it was the first level courts which had jurisdiction due to the enactment of **R.A. 7691**.[60] (Emphasis and underscoring supplied)

In all of these cases, this Court essentially held that the provisions expanding the MTCs' jurisdiction, by virtue of a

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[58] *Red*, *supra* note 55, at 505; citations omitted.

[59] 354 Phil. 66 (1998).

[60] *Id*. at 74.

general increase of penalty range, could not have meant an implied repeal of Article 360 of the RPC, whose clear and categorical language should prevail over the latter. In fact, it was observed that RA 7691, invoked in *Red*, *Caro*, and *Manzano*, excluded from the MTCs' jurisdiction "cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the *Sandiganbayan*."[61]

The foregoing factual milieu is clearly different from that in *Benipayo*. In those cases (*Jalandoni, et al.*), this Court was tasked to decide whether or not an expansion of jurisdiction would be enough to impliedly repeal a special provision of law specifically conferring jurisdiction over libel cases to the RTC. Such expansion of jurisdiction was merely a result of a general increase in penalty range, which did not, in any manner, take into account the peculiar nature of the case, or the need for special competence to try such case. In the end, it was not difficult to discern why the Court ruled that said special provision (*i.e.*, Article 360 of the RPC) had not been impliedly repealed. On the contrary, the Court in *Benipayo* should have taken into account that the contending provision in Section 4, PD 1606, as amended by RA 8249, vests unto the *Sandiganbayan* an even more special jurisdiction over "other offenses or felonies [(such as libel)] whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office." This latter provision, in contrast to the jurisdictional provisions in *Jalandoni*, *et al.*, does not merely connote a general increase in penalty range but rather, precisely takes into account the *Sandiganbayan*'s distinct competence to hear a peculiar class of cases, *i.e.*, felonies and offenses committed in relation to certain public offices. Accordingly, the Court, in *Benipayo*, should have addressed this substantial disparity, which, thus, renders suspect its application of the implied repeal rule.

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[61] See Section 2, RA 7691.

In any event, it is my submission that Section 4 of PD 1606, as amended, did not impliedly repeal provisions specifically vesting unto the RTCs special jurisdiction over certain criminal cases. The rule on implied repeals, as articulated in *Benipayo*, is that:

> [F]or an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws. Absent an express repeal, a subsequent law cannot be construed as repealing a prior one **unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws**. The two laws, in brief, must be **absolutely incompatible**.[62] (Emphases and underscoring supplied)

Here, Section 90 of RA 9165, (and even Article 360 on libel) is not absolutely repugnant or incompatible with Section 4 of PD 1606, as amended. The special jurisdiction of the RTCs over drugs and libel cases still remain. However, when these offenses fall under the more specific scenarios contemplated under Section 4 of PD 1606, as amended, then it is the *Sandiganbayan* which has jurisdiction over the case. In other words, **if it is a normal drugs or libel case, which was not committed by any of the public officers mentioned in Section 4, PD 1606, in relation to their office, and (under RA 10660) that no damage to the government and/or bribery involving an amount of not less than ₱1,000,000.00 was alleged, then clearly the said case falls within the jurisdiction of the RTCs; otherwise, under these very limited conditions, then the case falls within the jurisdiction of the *Sandiganbayan***. Accordingly, the various provisions can be reconciled relative to the specificity of context, which means that there is really no implied repeal. Again, "[i]mplied repeal by irreconcilable inconsistency takes place when the two statutes [that] cover the same subject matter x x x are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one

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[62] *Benipayo*, *supra* note 47, at 330.

law cannot be enforced without nullifying the other."[63] As herein demonstrated, harmony can be achieved.

To my mind, this harmonization is, in fact, not only possible but is also reasonable. Cases that involve high-ranking public officials, who are alleged to have abused their public office, and in such manner, have caused substantial pecuniary damage to the government, may be considered as cases of greater public interest. Due to the heightened public interest attendant to these cases, it is therefore reasonable that the same be decided by a collegial body as compared to a singular judge of an RTC, which must not only function as a drugs court, but must also devote its attention to ordinary cases falling under its general jurisdiction. Jurisprudence exhibits that "[t]he *Sandiganbayan*, which functions in divisions of three Justices each, is a collegial body which arrives at its decisions only after deliberation, the exchange of view and ideas, and the concurrence of the required majority vote."[64] The collegiality between justices (who – not to mention – hold the same rank as that of the justices of the Court of Appeals[65]) is a key feature of adjudication in the *Sandigabayan* that precisely meets the heightened public interest involved in cases cognizable by it. More significantly, as already intimated, the *Sandiganbayan* was created for one, sole objective: "to attain the highest norms of official conduct required of public officers and employees."[66] As such, no other court has undivided and exclusive competence to handle cases related to public office. Despite statistics[67] allegedly showing that no drug case has been yet filed before the *Sandiganbayan*,[68] its exclusive competence

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[63] *Mecano v. Commission on Audit*, G.R. No. 103982, December 11, 1992, 216 SCRA 500, 506.

[64] *Flores v. People*, 705 Phil. 119 (2013).

[65] See Section 1 of PD 1606.

[66] See second *Whereas* clause of PD 1606.

[67] See *Sandiganbayan*'s Statistics on Cases Filed, Pending and Disposed Of as of June 30, 2017 <http://sb.judiciary.gov.ph/libdocs/statistics/filed_Pending_Disposed_June_30_2017.pdf> (last accessed on October 10, 2017).

[68] See *Ponencia*, p. 40.

to deal with these special cases involving high-ranking public officials must prevail. These statistics only reflect matters of practice which surely cannot supplant statutory conferment.

Conclusion

In fine, for the reasons discussed above, petitioner's case falls within the jurisdiction of the *Sandiganbayan*. This finding therefore necessitates the dismissal of the case against her as it was erroneously filed with the RTC, which holds no jurisdiction over the same. It is well-settled that a court which has no jurisdiction over the subject matter has no choice but to dismiss the case. Also, whenever it becomes apparent to a reviewing court that jurisdiction over the subject matter is lacking, then it ought to dismiss the case, as all proceedings thereto are null and void. Case law states that:

> Jurisdiction over subject matter is essential in the sense that erroneous assumption thereof may put at naught whatever proceedings the court might have had. Hence, even on appeal, and even if the parties do not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. It is elementary that jurisdiction is vested by law and cannot be conferred or waived by the parties or even by the judge. It is also irrefutable that a court may at any stage of the proceedings dismiss the case for want of jurisdiction.[69]

With this fundamental lack of authority, it is unnecessary and, in fact, even inapt to resolve the other procedural issues raised herein.

WHEREFORE, I vote to **GRANT** the petition.

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[69] *Andaya v. Abadia*, G.R. No. 104033, December 27, 1993, 228 SCRA 705, 717.

DISSENTING OPINION

SERENO, *C.J.*:

The *lis mota* in this case is whether the offenses alleged to have been committed by the petitioner, an official with a Salary Grade level of 30, were committed in relation to her office such that it is the Sandiganbayan, and not the Regional Trial Court (RTC) that has jurisdiction over the criminal case against her that was lodged in the respondent court. The Solicitor General claims that regional trial courts, despite the language of the laws creating the Sandiganbayan, and thereafter amending it, cannot be ousted of their exclusive jurisdiction over the same.

Offenses Defined and Penalized Under R.A. 9165

An analysis of the offenses under Republic Act No. (R.A.) 9165 (Comprehensive Dangerous Drugs Act of 2002) would show the myriad ways through which public officers can commit a drug crime in relation to their office. This, together with the announcement that thousands of public officials are in the government's drug list, underscores the transcendental importance of resolving the issue of jurisdiction of courts over offenses committed by public officials with a salary grade level of at least 27, when the offenses are penalized under R.A. 9165, and when, as in this case, the petition alleges that they could not have been committed unless in relation to their office.

There are a total of 49 drug offenses defined in R.A. 9165. The following six offenses specifically provide for public office as an element:

1. Misappropriation, misapplication. or failure to account for the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment, including the proceeds or properties obtained from the unlawful

act, committed by a public officer or employee under Section 27;[1]

2. Violation of the confidentiality of records under Section 72;[2]
3. Failure to testify as prosecution witnesses in dangerous drugs cases under Section 91;[3]

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[1] Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Corifiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

[2] Section 72. *Liability of a Person Who Violates the Confidentiality of Records.* — The penalty of imprisonment ranging from six (6) months and one (1) day to six (6) years and a fine ranging from One thousand pesos (₱1,000.00) to Six thousand pesos (₱6,000.00), shall be imposed upon any person who, having official custody of or access to the confidential records of any drug dependent under voluntary submission programs, or anyone who, having gained possession of said records, whether lawfully or not, reveals their content to any person other than those charged with the prosecution of the offenses under this Act and its implementation. The maximum penalty shall be imposed, in addition to absolute perpetual disqualification from any public office, when the offender is a government official or employee. Should the records be used for unlawful purposes, such as blackmail of the drug dependent or the members of his/her family, the penalty imposed for the crime of violation of confidentiality shall be in addition to whatever crime he/she may be convicted of.

[3] Section 91. *Responsibility and Liability of Law Enforcement Agencies and Other Government Officials and Employees in Testing as Prosecution Witnesses in Dangerous Drugs Cases.* — Any member of law enforcement agencies or any other government official and employee who, after due notice, fails or refuses intentionally or negligently, to appear as a witness for the prosecution in any proceedings, involving violations of this Act,

4. Failure of the immediate superior of a public officer who failed to testify as prosecution witness in dangerous drugs cases, if the former does not exert reasonable effort to present the latter to the court, under Section 91;[4]
5. Failure of the immediate superior to notify the court of an order to transfer or re-assign the public officer who failed to testify under Section 91;[5] and
6. Delay and bungling in the prosecution of drug cases under Section 92.[6]

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without any valid reason, shall be punished with imprisonment of not less than twelve (12) years and one (1) day to twenty (20) years and a fine of not less than Five hundred thousand pesos (₱500,000.00), in addition to the administrative liability he/she may be meted out by his/her immediate superior and/or appropriate body.

The immediate superior of the member of the law enforcement agency or any other government employee mentioned in the preceding paragraph shall be penalized with imprisonment of not less than two (2) months and one (1) day but not more than six (6) years and a fine of not less than Ten thousand pesos (₱10,000.00) but not more than Fifty thousand pesos (₱50,000.00) and in addition, perpetual absolute disqualification from public office if despite due notice to them and to the witness concerned, the former does not exert reasonable effort to present the latter to the court.

The member of the law enforcement agency or any other government employee mentioned in the preceding paragraphs shall not be transferred or re-assigned to any other government office located in another territorial jurisdiction during the pendency of the case in court. However, the concerned member of the law enforcement agency or government employee may be transferred or re-assigned for compelling reasons: Provided, That his/her immediate superior shall notifY the court where the case is pending of the order to transfer or re-assign, within twenty-four (24) hours from its approval: Provided, further, That his/her immediate superior shall be penalized with imprisonment of not less than two (2) months and one (1) day but not more than six (6) years and a fine of not less than Ten thousand pesos (₱10,000.00) but not more than Fifty thousand pesos (₱50,000.00) and in addition, perpetual absolute disqualification from public office, should he/she tail to notify the court of such order to transfer or re-assign.

Prosecution and punishment under this Section shall be without prejudice to any liability for violation of any existing law.

[4] *Id*.

[5] *Id*.

[6] Section 92. *Delay and Bungling in the Prosecution of Drug Cases.*— Any government officer or employee tasked with the prosecution of drug-

Since public office is an element of the foregoing offenses, these offenses are necessarily committed in relation to office.

Meanwhile, **other offenses under R.A. 9165 do not specify public office as an essential element, but the means by which they can be committed are closely connected with the power, influence, resources, or privileges attached to a public office, so that public officers cannot commit those offenses unless aided by their position.**

Section 4,[7] which penalizes the importation of dangerous drugs and/or controlled precursors and essential chemicals, refers to

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related cases under this Act, who, through patent laxity, inexcusable neglect, unreasonable delay or deliberately causes the unsuccessful prosecution and/or dismissal of the said drug cases, shall suffer the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years without prejudice to his/her prosecution under the pertinent provisions of the Revised Penal Code.

[7] Section 4. *Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall import or bring into the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived therefrom even for floral, decorative and culinary purposes.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall import any controlled precursor and essential chemical.

The maximum penalty provided for under this Section shall be imposed upon any person, who, unless authorized under this Act, shall import or bring into the Philippines any dangerous drug and/or controlled precursor and essential chemical through the use of a diplomatic passport, diplomatic facilities or any other means involving his/her official status intended to facilitate the unlawful entry of the same. In addition, the diplomatic passport shall be confiscated and canceled.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

an offense that may be committed in relation to office through the use of a diplomatic passport, diplomatic facilities or any other means involving one's official status and intended to facilitate the unlawful entry of the dangerous drug and/or controlled precursor and essential chemical into the Philippines. It may also be committed by public customs officials who use their authority to facilitate and prevent the inspection of any parcel or cargo containing a dangerous drug and/or controlled precursor and essential chemical.

Section 5[8] penalizes the sale, trading, administration, dispensation, delivery, distribution, and transportation of

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The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[8] SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

dangerous drug and/or controlled precursors, as well as the act of being a broker in the aforementioned transactions. While public office is not an element of these offenses, they may be committed in relation to office in the case of conspiracy, where public officers use their influence, power, or position in coercing others to engage in the prohibited transactions. The nature of the office involved may also facilitate the commission of the offense as in the case of public health officials in charge of the care of patients and who have access to dangerous drugs, essential chemicals, or controlled precursors. Further, the law imposes the maximum penalty upon any person who uses minors or mentally incapacitated individuals as runners, couriers, and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade. This offense may be committed in relation to office by a public official in charge of institutions caring for minors or mentally incapacitated individuals.

Section 6[9] makes the maintenance of a den, dive, or resort a punishable offense under the law. Public office is not an element

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If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[9] Section 6. *Maintenance of a Den, Dive or Resort.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive or resort where any dangerous drug is used or sold in any form.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand

of the offense, but it can be committed in relation to office by public officers who use the power and influence of their office to maintain a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold, or used in any form. The offense may also be committed in relation to public office if the den, dive, or resort was maintained in a public facility or property under the authority of the public official involved.

Section 8[10] penalizes the manufacture of dangerous drugs and/or controlled precursors and essential chemicals and does

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pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive, or resort where any controlled precursor and essential chemical is used or sold in any form.

The maximum penalty provided for under this Section shall be imposed in every case where any dangerous drug is administered, delivered or sold to a minor who is allowed to use the same in such a place.

Should any dangerous drug be the proximate cause of the death of a person using the same in such den, dive or resort, the penalty of death and a fine ranging from One million (₱1,000,000.00) to Fifteen million pesos (₱15,000,000.00) shall be imposed on the maintainer, owner and/or operator.

If such den, dive or resort is owned by a third person, the same shall be confiscated and escheated in favor of the government: Provided, That the criminal complaint shall specifically allege that such place is intentionally used in the furtherance of the crime: Provided, further, That the prosecution shall prove such intent on the part of the owner to use the property for such purpose: Provided, finally, That the owner shall be included as an accused in the criminal complaint.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[10] Section 8. *Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person,

not include public office as an element. Nevertheless, Section 8(e) provides that the employment of a public official in the clandestine laboratory shall be considered as an aggravating circumstance to be appreciated against the manufacturer. Further, the offense may be committed in relation to office by a public health official engaged in the research and development of medicines.

Under Section 9,[11] illegal chemical diversion of controlled precursors and essential chemicals is penalized. This offense

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who, unless authorized by law, shall engage in the manufacture of any dangerous drug.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall manufacture any controlled precursor and essential chemical.

The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a *prima facie* proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:

(a) Any phase of the manufacturing process was conducted in the presence or with the help of minor/s;

(b) Any phase or manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;

(c) Any clandestine laboratory was secured or protected with booby traps;

(d) Any clandestine laboratory was concealed with legitimate business operations; or

(e) Any employment of a practitioner, chemical engineer, public official or foreigner.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[11] Section 9. *Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals*. — The penalty of imprisonment ranging from twelve

includes the sale, distribution, supply, or transport of legitimately imported, in-transit, manufactured, or procured controlled precursors and essential chemicals in diluted, mixtures, or in concentrated form to any person or entity engaged in the manufacture of any dangerous drug. It can be committed in relation to office by a public official engaged in the legitimate procurement of controlled precursors and essential chemicals.

Section 10[12] penalizes the manufacture, delivery, possession with intent to deliver, and use of equipment, instrument, apparatus, and other paraphernalia used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal dangerous drugs and/or controlled precursors and essential chemicals. Section 10 imposes the maximum penalty

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(12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall illegally divert any controlled precursor and essential chemical.

[12] Section 10. *Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person who shall deliver, possess with intent to deliver, or manufacture with intent to deliver equipment, instrument, apparatus and other paraphernalia for dangerous drugs, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal any dangerous drug and/or controlled precursor and essential chemical in violation of this Act.

The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed if it will be used to inject, ingest, inhale or otherwise introduce into the human body a dangerous drug in violation of this Act.

The maximum penalty provided for under this Section shall be imposed upon any person, who uses a minor or a mentally incapacitated individual to deliver such equipment, instrument, apparatus and other paraphernalia for dangerous drugs.

upon any person who uses a minor or a mentally incapacitated individual to deliver such equipment or instrument. Again, this offense may be committed in relation to office by a public official in charge of institutions caring for minors or mentally incapacitated individuals. With respect to the use of the illegal equipment or instrument in order to inject, ingest, inhale or otherwise introduce into the human body a dangerous drug, this offense may be committed in relation to office by a public health official in charge of the care of patients.

Section 11[13] penalizes the unauthorized possession of dangerous drugs. Public office is not an element of the offense, but there are numerous ways through which the offense can be committed by public officials in relation to their office. Using the influence, power, privileges, or resources attached to their office, they can easily gain access to or evade apprehension for the possession of dangerous drugs.

Likewise under Section 12,[14] public office is not specified as an element in the offense of unauthorized possession of an

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[13] Section 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug x x x, regardless of the degree of purity thereof.

[14] Section 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs*. — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous dtug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

equipment, instrument, apparatus, and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body. But, as in Section 11, the influence, power, privileges, or resources attached to the office can be used by a public officer to gain access to or evade apprehension for the possession of the equipment or instrument identified in Section 12.

Sections 13[15] and 14[16] penalize the unauthorized possession of dangerous drugs and equipment or instruments for the consumption or administration of those drugs during parties, social gatherings or meetings. Public office is not an element of the offenses, but they can be committed in relation to office by public officers who are able to access and possess the dangerous drugs or the equipment or instrument by virtue of their office as described above. Further, public officers may be able to bring the illegal items to a party, social gathering, or meeting without any apprehension by virtue of the power or influence of their office.

The use of dangerous drugs is penalized in Section 15[17] of the law. While use is inherently personal, the commission of the

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[15] Section 13. *Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings*. — Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section II of this Act, regardless of the quantity and purity of such dangerous drugs.

[16] Section 14. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings*. — The maximum penalty provided for in Section 12 of this Act shall be imposed upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons.

[17] Section 15. *Use of Dangerous Drugs*. — A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject

offense may be facilitated by the public officer's power, influence, or authority, without which the use would not have been possible.

Section 16[18] penalizes the cultivation or culture of plants classified either as dangerous drugs or sources thereof. The offense can be committed in relation to office by public officers who use public lands or properties under their power or jurisdiction for these illegal activities. Further, they may

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to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

[18] Section 16. *Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who shall plant, cultivate or culture marijuana, opium poppy or any other plant regardless of quantity, which is or may hereafter be classified as a dangerous drug or as a source from which any dangerous drug may be manufactured or derived: Provided, That in the case of medical laboratories and medical research centers which cultivate or culture marijuana, opium poppy and other plants, or materials of such dangerous drugs for medical experiments and research purposes, or for the creation of new types of medicine, the Board shall prescribe the necessary implementing guidelines for the proper cultivation, culture, handling, experimentation and disposal of such plants and materials.

The land or portions thereof and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated in favor of the State, unless the owner thereof can prove lack of knowledge of such cultivation or culture despite the exercise of due diligence on his/her part. If the land involved is part of the public domain, the maximum penalty provided for under this Section shall be imposed upon the offender.

The maximum penalty provided for under this Section shall be imposed upon any person, who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

personally engage in planting, cultivating, or culturing dangerous drugs without interference by law enforcement agencies by virtue of the power and influence of their office.

Section 17[19] penalizes the offense of failure to maintain and keep original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals in accordance with Section 40.[20] The offender under this section refers to the

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[19] Section 17. *Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of imprisonment ranging from one (1) year and one (1) day to six (6) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any practitioner, manufacturer, wholesaler, importer, distributor, dealer or retailer who violates or fails to comply with the maintenance and keeping of the original records of transactions on any dangerous drug and/or controlled precursor and essential chemical in accordance with Section 40 of this Act.

An additional penalty shall be imposed through the revocation of the license to practice his/her profession, in case of a practitioner, or of the business, in case of a manufacturer, seller, importer, distributor, dealer or retailer.

[20] Section 40. *Records Required for Transactions on Dangerous Drugs and Precursors and Essential Chemicals*. —

a) Every pharmacist dealing in dangerous drugs and/or controlled precursors and essential chemicals shall maintain and keep an original record of sales, purchases, acquisitions and deliveries of dangerous drugs, indicating therein the following information:

(l) License number and address of the pharmacist;
(2) Name, address and license of the manufacturer, importer or wholesaler from whom the dangerous drugs have been purchased;
(3) Quantity and name of the dangerous drugs purchased or acquired;
(4) Date of acquisition or purchase;
(5) Name, address and community tax certificate number of the buyer;
(6) Serial number of the prescription and the name of the physician, dentist, veterinarian or practitioner issuing the same;
(7) Quantity and name of the dangerous drugs sold or delivered; and
(8) Date of sale or delivery.

A certified true copy of such record covering a period of six (6) months, duly signed by the pharmacist or the owner of the drugstore, pharmacy or chemical establishment, shall be forwarded to the Board within fifteen (15) days following the last day of June and December of each year, with a copy thereof furnished the city or municipal health officer concerned.

practitioner, manufacturer, wholesaler, importer, distributor, dealer, or retailer who deals with dangerous drugs and/or controlled precursors and essential chemicals. The offense may be committed in relation to office by public physicians or other government medical workers who are required to maintain original records of transactions on dangerous drugs.

Section 18[21] penalizes the unnecessary prescription of

(b) A physician, dentist, veterinarian or practitioner authorized to prescribe any dangerous drug shall issue the prescription therefor in one (1) original and two (2) duplicate copies. The original, after the prescription has been filled, shall be retained by the pharmacist for a period of one (1) year from the date of sale or delivery of such drug. One (1) copy shall be retained by the buyer or by the person to whom the drug is delivered until such drug is consumed, while the second copy shall be retained by the person issuing the prescription.

For purposes of this Act, all prescriptions issued by physicians, dentists, veterinarians or practitioners shall be written on forms exclusively issued by and obtainable from the DOH. Such forms shall be made of a special kind of paper and shall be distributed in such quantities and contain such information and other data as the DOH may, by rules and regulations, require. Such forms shall only be issued by the DOH through its authorized employees to licensed physicians, dentists, veterinarians and practitioners in such quantities as the Board may authorize. In emergency cases, however, as the Board may specify in the public interest, a prescription need not be accomplished on such forms. The prescribing physician, dentist, veterinarian or practitioner shall, within three (3) days after issuing such prescription, inform the DOH of the same in writing. No prescription once served by the drugstore or pharmacy be reused nor any prescription once issued be refilled.

(c) All manufacturers, wholesalers, distributors, importers, dealers and retailers of dangerous drugs and/or controlled precursors and essential chemicals shall keep a record of all inventories, sales, purchases, acquisitions and deliveries of the same as well as the names, addresses and licenses of the persons from whom such items were purchased or acquired or to whom such items were sold or delivered, the name and quantity of the same and the date of the transactions. Such records may be subjected anytime for review by the Board.

[21] Section 18. *Unnecessary Prescription of Dangerous Drugs*. - The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) and the additional penalty of the revocation of his/her license to practice shall be imposed upon the practitioner, who shall prescribe any dangerous drug to any person whose

dangerous drugs, while Section 19[22] penalizes the unlawful prescription thereof. These offenses may be committed in relation to office by public officers, especially public physicians or medical workers, whose positions authorize or require them to prescribe drugs to patients.

Section 26 penalizes a mere attempt or conspiracy to commit the following offenses:

a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and
e) Cultivation or culture of plants that are sources of dangerous drugs.

With respect to an attempt to commit the enumerated offenses, since the included offenses can be committed in relation to public office, the mere commencement of their commission, as described above, directly by overt acts will also hold the public officer liable.

Conspiracy to commit the enumerated offenses can be committed in relation to office by public officers who use the

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physical or physiological condition does not require the use or in the dosage prescribed therein, as determined by the Board in consultation with recognized competent experts who are authorized representatives of professional organizations of practitioners, particularly those who are involved in the care of persons with severe pain.

[22] Section 19. *Unlawful Prescription of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall make or issue a prescription or any other writing purporting to be a prescription for any dangerous drug.

power, influence, or moral ascendancy of their office to convince the co-conspirators to come into an agreement regarding the commission of the offense.

Penalized under Section 29[23] is the planting of evidence constituting any dangerous drug and/or controlled precursor and essential chemical — regardless of quantity and purity — in the person, house, effects or in the immediate vicinity of an innocent individual. The offense may be committed in relation to office by public officers whose position or job description enables them to plant evidence on innocent individuals.

Penalized under Section 30[24] is a juridical entity's partner, president, director, manager, trustee, estate administrator, or officer who knowingly authorizes, tolerates, or consents to the use of the vehicle, vessel, aircraft, equipment, or other facility of the juridical entity as an instrument in the importation, sale, trading, administration, dispensation, delivery, distribution, transportation, or manufacture of dangerous drugs, or chemical diversion. While public office is not an element thereof, the offense may be committed by public officers in relation to their office if they are employed in a government-owned or -controlled corporation.

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[23] Section 29. *Criminal Liability for Planting of Evidence*. — Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

[24] Section 30. *Criminal Liability of Officers of Partnerships, Corporations, Associations or Other Juridical Entities*. — In case any violation of this Act is committed by a partnership, corporation, association or any juridical entity, the partner, president, director, manager, trustee, estate administrator, or officer who consents to or knowingly tolerates such violation shall be held criminally liable as a co-principal.

The penalty provided for the offense under this Act shall be imposed upon the partner, president, director, manager, trustee, estate administrator, or officer who knowingly authorizes, tolerates or consents to the use of a vehicle, vessel, aircraft, equipment or other facility, as an instrument in the importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of dangerous drugs, or chemical diversion, if such vehicle, vessel, aircraft, equipment or other instrument is owned by or under the control or supervision of the partnership, corporation, association or juridical entity to which they are affiliated.

Section 37[25] penalizes the issuance of false or fraudulent drug test results. It can be committed in relation to office by a public physician authorized, licensed, or accredited to conduct drug tests in a government hospital, clinic, or health center. The public officer may also be a technician or an assistant in a government drug-testing center who is able to facilitate the issuance, or acts in conspiracy with the physician in the issuance, of a false or fraudulent drug test result.

The financing and protecting or coddling of persons involved in specific drug offenses are also penalized under R.A. 9165. Penalized specifically are the financing and protecting or coddling of those who import dangerous drugs; enter into sale and other transaction; maintain dens, dives, or resorts; manufacture dangerous drugs; manufacture equipment for dangerous drugs; and cultivate dangerous drugs.

Being a financier in these offenses can be committed in relation to office if public funds are used therefor. Being a protector or coddler — an offense that can be committed by public officers only in relation to their office — refers to the use of influence, power, or position in shielding, harboring, screening, or facilitating the escape of any person in order to prevent the latter's arrest, prosecution and conviction for the offenses enumerated above.

From the above recital of drug offenses, it can be seen that depending on the particular allegations in the charge, most of the offenses under R.A. 9165 can be committed by a public officer in relation to office.

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[25] Section 37. *Issuance of False or Fraudulent Drug Test Results.* — Any person authorized, licensed or accredited under this Act and its implementing rules to conduct drug examination or test, who issues false or fraudulent drug test results knowingly, willfully or through gross negligence, shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00).

An additional penalty shall be imposed through the revocation of the license to practice his/her profession in case of a practitioner, and the closure of the drug testing center.

The thousands of public officers included in the President's drug list vis-a-vis the numerous means through which a drug offense can be committed in relation to public office foreshadow chaos in the process of determining which prosecutorial body or tribunal has jurisdiction. This is not a question that we can leave for determination by the Department of Justice (DOJ) and the Office of the Ombudsman (Ombudsman) alone, as proposed by the Solicitor General during the oral arguments on 28 March 2017, to wit:

CHIEF JUSTICE SERENO:

x x x In fact, are you now trying to tell us that assuming that the President is correct, that there are thousands and thousands of government officials involved, that the Court is not going to decide on the question of jurisdiction now, while we have the opportunity to do so?

SOLICITOR GENERAL CALIDA:

Well, Your Honor, this case arose from the acts of De Lima in directly going to this Court, despite the pendency of the motion to quash, before Judge Guerrero, that is forum shopping at the very least, Your Honor. So, let's first, my humble submission is, Your Honor, let's decide the petition on its face, Your Honor, and not dig into substantive or evidentiary data, Your Honor, because this is not yet the time to do so. There will be a time for that, Your Honor, during the trial of this case before the RTC.

CHIEF JUSTICE SERENO:

Precisely, the timeliness is already being put forth before us, Justice Leonen already told you what will [happen] to all those thousands of officials. You're basically saying that the DOJ or the Ombudsman will decide which will assume jurisdiction over the investigation and they will on their own decide whether to file it before the RTC and the [Sandiganbayan], is that basically the effect of what you're saying, when you're saying, that we should dismiss this petition?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor. First, of all, there is a defective *jurat*, the formal requisites of Section 1, Rule 65 of the Rules of Court was not complied

with, this just a scrap of paper that deserves to be put in the trash can, Your Honor.[26]

It behooves this Court to clarify and settle the question of jurisdiction over drug crimes committed in relation to public office.

Alleged Acts of the Petitioner Could not Have Been Committed Unless in Relation to Her Office

The Court has held that an offense is deemed to be committed in relation to the public office of the accused when that office is an element of the crime charged.[27] However, even if public office is not an element of the offense, the jurisdiction of the Sandiganbayan obtains when the relation between the crime and the office is direct and not accidental such that, in the legal sense, the offense cannot exist without the office.[28]

Petitioner argues that the acts allegedly committed by her constitute an offense exclusively cognizable by the Sandiganbayan, because (1) the inculpatory allegations in the Information constitute no offense other than direct bribery,[29] which is an offense defined and punished under Chapter II, Section 2, Title VII, Book II[30] of the Revised Penal Code; (2) petitioner, at the time of the alleged commission of the crime, was an official in the executive branch occupying a position classified as Grade 27 or higher;[31] and (3) the crime alleged is clearly in relation to the office of petitioner as former Secretary of Justice.[32]

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[26] TSN, Oral Arguments for G.R. No. 229781, 28 March 2017, pp. 120-121.

[27] *Alarilla v. Sandiganbayan*, 393 Phil. 143 (2000).

[28] *Montilla v. Hilario*, 90 Phil. 49 (1951).

[29] Memorandum for Petitioner, pp. 28-30.

[30] Revised Penal Code, Article 210 (direct bribery), Article 211 (indirect bribery), Article 211-A (qualified bribery) and Article 212 (corruption of public officials).

[31] Memorandum for Petitioner, p. 30.

[32] *Id*. at 30-33.

On the other hand, respondents allege that although some elements of direct bribery may be present in the Information,[33] petitioner is ultimately being charged with violation of R.A. 9165.[34]

Regardless of whether the Information charges the crime of bribery or illegal drug trading, or regardless of how the Court classifies the crime, there is only one conclusion — the crime could not have been committed if not for petitioner's position as Secretary of Justice.

Inmates in the national prisons are classified into three security groups. Maximum security inmates are those who are highly dangerous or pose high security risk that requires a high degree of control and supervision.[35] Medium security inmates are those who cannot be trusted in less-secure areas, but whose conduct or behavior requires mmtmum supervision.[36] Minimum security

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[33] Office of the Solicitor General's Memorandum, pp. 63-65.

[34] *Id.* at 57-60.

[35] Bureau of Corrections Operating Manual, Book I, Part II, Chapter 3, Section 3(a).

Under this category are the following:

1. Those sentenced to death;
2. Those whose minimum sentence is 20 years imprisonment;
3. Remand inmates or detainees whose sentence is 20 years and above, and those whose sentences are under review by this Court or the CA;
4. Those with pending cases;
5. Recidivists, habitual delinquents and escapees;
6. Those confined at the Reception and Diagnostic center;35
7. Those under disciplinary punishment or safekeeping; and
8. Those who are criminally insane or those with severe personality or emotional disorders that make them dangerous to fellow inmates or the prison staff.

[36] *Id.* at Section 3(b).

Under this category are the following:

1. Those whose minimum sentence is less than 20 year-imprisonment;
2. Remand inmates or detainees whose sentences are below 20 years;
3. Those who are 18 years of age and below, regardless of the case and sentence;

inmates are those who can be reasonably trusted to serve their sentences under less restricted conditions.[37]

Inmates are also classified as follows according to their entitlement to privileges:

1. Detainee;
2. Third-class inmates or those who have either been previously committed for three or more times as a sentenced inmate, except those imprisoned for nonpayment of a fine and those who have been reduced from a higher class;
3. Second-class inmates or those who have newly arrived, demoted from the first class, or promoted from the third class;
4. First-class inmates or those whose known character and credit for work while in detention earned assignment to this class upon commencement of sentence, or who have been promoted from the second class; and
5. Colonist.[38]

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4. Those who have two or more records of escape, who can be classified as medium security inmates if they have served eight years since their recommitment. Those with one record of escape must have served five years; and

5. First offenders sentenced to life imprisonment, who may be classified as medium security inmates if they have served five years in a maximum security prison or less, upon the recommendation of the Superintendent. Those who were detained in a city and/or provincial jail shall not be entitled to this classification.

[37] *Id.* at Section 3(c).

Under this category are the following:

1. Those with a severe physical handicap as certified by the chief medical officer of the prison;

2. Those who are 65 years old and above, without any pending case, and whose convictions are not on appeal;

3. Those who have served one-half of their minimum sentence or one-third of their maximum sentence, excluding good conduct time allowance (GCTA); and

4. Those who have only six months more to serve before the expiration of their maximum sentence.

[38] *Id.* at Section 5.

Colonists are the highest class of inmates entitled to special privileges.[39] They are those who were first-class inmates and has served one year immediately preceding the completion with good conduct of one-fifth of the maximum term of their prison sentence, or seven years in the case of a life sentence.[40]

Under the Bureau of Corrections (BuCor) Operating Manual issued on 30 March 2000, the transfer of inmates to another prison is done by the BuCor Director upon the recommendation of the Superintendent of the prison facility concemed.[41] On the other hand, the transfer to a prison and penal farm of inmates not eligible to be colonists is done by the Director upon the recommendation of the Classification Board.[42]

On 3 June 2011, petitioner, as then Secretary of Justice, issued Department Circular No. 025 ordering that all transfers of inmates

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[39] Bureau of Corrections Operating Manual, Book I, Part II, Chapter 3, Section 7.

The following are the special privileges:

1. Credit of an additional GCTA of five days for each calendar month while retaining their classification, aside from the regular GCTA authorized under Article 39 of the Revised Penal Code;

2. Automatic reduction of the life sentence imposed to a sentence of 30 years;

3. Subject to the approval of the Director, having their respective wives and children, or the women they desire to marry, live with them in the prison and penal farm.

4. As a special reward to deserving colonists, the issuance of a reasonable amount of clothing and ordinary household supplies from the government commissary in addition to free subsistence; and

5. The wearing of civilian clothes on such special occasions as may be designated by the Superintendent.

[40] *Id*. at Section 6.

[41] *Id*. at Chapter 5, Section 1.

[42] *Id*. at Section 4. The Classification Board is composed of the following: the Superintendent as Chairman; the Chief of the Reception and Diagnostic Center as Vice-Chairman; the Medical Officer, the Chief of the Education Section, the Chief of the Agro-lndustries Section as members; and the Chief Overseer as Secretary. (*Id*. at Chapter 3, Section 1)

to any of the penal colonies or penal farms shall bear the prior approval of the Secretary of Justice.

As alleged in the affidavits, the issue of transferring detainees as well as the grant of privileges became the modus by which petitioner influenced the proliferation of the drug trade inside the NBP. We will relate some of their allegations here. Assuming all of these allegations to be true, it can only be concluded that petitioner could not have participated in any way in the drug trade unless she used her office for that purpose.

According to most of the inmate-witnesses, Jaybee Sebastian (Sebastian) wanted to monopolize the drug trade inside the National Bilibid Prison (NBP). He instructed them to deal drugs, the proceeds of which would supposedly be given to petitioner, who had demanded that the inmates contribute money for her candidacy for senator in the May 2016 elections. They were forced to follow his instruction for fear of certain repercussions. Among these was the possibility that they would be transferred to another detention center or a far-flung penal colony and taken away from their families.

In his affidavit, Wu Tuan Yuan a.k.a. Peter Co narrated that his *kubol* was searched and he was transferred, together with others, to the National Bureau of Investigation (NBI). Sebastian supposedly wanted them to understand that those who would not follow would be transferred to a penal colony.[43] In his affidavit, Jojo Baligad stated that he was transferred to the NBI, because his name was included in the list of people that Sebastian furnished petitioner, so that the latter could monopolize the

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[43] Affidavit of Wu Tuan Yuan a.k.a. Peter Co, page 4:

Hindi ko na ikinagulat na hindi nasali ang "kubol" ni Jaybee sa paggalugad. Hindi rin siya dinala sa NBI. Alam ko na dahil malakas siya kay dating Secretary De Lima. Alam ko rin na ang paggalugad sa aming mga "kubol" at pagdala sa amin sa NBI ay kanyang paraan na pagpaparating ng mensahe sa amin na ang hindi sumunod sa gusto niya na idaan ang lahat ng operasyon ng negosyo ng droga sa kanya ay kaya niyang ipalipat at ipatanggal ang espesyal na pribilehiyong tinatamasa sa loob ng Bilibid;

drug trade.[44] Joel Capones also stated that Sebastian assured him that those who would fund petitioner's candidacy would be protected. At any rate, they had no choice but to follow, because Sebastian had the influence to have them killed or be transferred.[45] His word was law, according to Noel Martinez, because those who did not follow would be the victim of planted drugs or be transferred or killed.[46] Despite his belief that he would not be touched because he gave ₱3 million to petitioner and ₱1.2 million to BuCor Officer-in-Charge Rafael Z. Ragos (Ragos) monthly, Herbert Colanggo was transferred when he did not agree to centralize the drug trade through Sebastian.[47] According to Rodolfo Magleo, Sebastian was ultimately able to monopolize the drug trade after the Bilibid 19

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[44] Affidavit of Jojo Baligad, page 3:

Ayon sa mga naririnig ko, pinalipat daw kami ni Secretary *DE LIMA kasi may ibinigay sa kanya si JAYBEE SEBASTIAN na lista ng mga pangalan namin. Gusto daw kasi ni JAYBEE na ma-solo ang sistema ng droga sa loob ng Bilibid at, sa aming pag-alis o paglipat, magagawa niya na ito na wala di-umanong kakumpitensya sa kalakal na ito.*

[45] Affidavit of Joel Capones *y* Duro, page 1:

Ipinaliwanag niya rin sa amin na ang mga tutulong sa paglikom ng pondo para kay Sec. De Lima ay sagot niya at mapupruteksyunan at walang anumang magiging problema o panganib, samantalang ang babangga o sasalungat ay may paglalagyan. Ganunpaman, wala naman talaga kaming ibang mapagpipilian dahil kaya ni Jaybee na magpapatay at magpalipat sa malalayong piitan.

[46] Affidavit of Noel Martinez *y* Golloso, page 1:

Sa katunayan, alam ng lahat dito sa Bilibid na ang salita ni Jaybee ay parang batas. Ang sinumang hindi sasang-ayon sa gusto niya ay maaaring mamatay o taniman ng droga o itapon sa malalayong kolonya na tunay na kinatatakutan naming mga bilanggo dito sa Bilibid.

[47] Affidavit of Herbert Colanggo, page 1:

*Noong buwan ng November 2014, kinausap muli ako ni Joenel Sanchez upang i-*centralize *ang operasyon at inatasan din niya ako na kuhanan ko ang mga* bigtime drug lords *ng droga ng may timbang na hindi bababa sa 30 to 50 kilos at pagkatapos ko makuha ang droga ay huwag na itong bayaran at sabihin na lang sa kanya ang pangalan ng mga drug lords na aking nakuhanan upang ang mga ito ay ipatapon nila sa ibang Iugar.*

had been transferred to the NBI. Allegedly, Sebastian gave ₱10 million to petitioner in order to effect the transfer.[48]

For his part, Sebastian denied that he was "untouchable" in the national penitentiary, but he confirmed that petitioner meddled in the administration of the prison by ordering the transfers of inmates to other detention facilities.[49]

Money was also alleged to have exchanged hands in order to prevent the transfers of inmates to a penal colony. Froilan "Poypoy" Trestiza narrated that he had been threatened with transfer to a penal colony, so he was compelled to pay ₱10,000 for this not to happen.[50] He also testified that when he was placed

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Hindi ako pumayag na estapahin ang mga drug lords dahil naisip ko paano na kung wala na si Sec. De Lima o ang Director *ng Bilibid. Hindi ko rin naisip na ako ay ipapatapon dahil nagbibigay naman ako ng payola kay Sec. De Lima ng* 3-Million *at sa Director ng* 1.2-Million *kada buwan.*

[48] Affidavit of Rodolfo Magleo *y* Tamayo, page 4:

Binigyan niya (Jaybee Sebastian) ng SAMPUNG MILYON (Php10,000,000.00) si DE LIMA para sa paglipat ng BILIBID 19 na kanyang kakumpitensiya at nagbibigay siya ng karagdagang ISANG MILYON (Php1,000,000.00) kada buwan.

Ang solo drug trading *ni JB Sebastian sa loob ng Bilibid ay naging matagumpay sa loob ng walong (8) buwan at nagtapos noong nagbitiw si DE LIMA bilang* DOJ Secretary *sa kanyang paghahanda sa pagtakbo bilang senador.*

[49] Affidavit of Jaybee Sebastian, page 5:

*Dahil sa lagayan o corruption sa opisina ng BUCOR sa panahon na ito, wala ng disiplina at hustisya ang kapwa ko bilanggo. Dagdag pa nito ay ang pakikialam ni Secretary De Lima katulad ng pag*transfer *ng Brigada 9A at paraan ng pagdidisiplina namin sa mga kakosa at ang pagbartolina sa amin na mga* commander *tuwing kami ay magrereklamo upang ayusin ang pagkain naming mga* inmates*. Kapag hindi sipsip kay* Secretary *De Lima ang* Director*, tulad ng nangyari kay* Director *Pangilinan, ay tanggal kaagad pero kapag sipsip sa kanya kahit anong palpak andiyan pa rin.*

Page 9:

Na kinausap din ng aking abogado si Superintendent *Richard Schwarzcopf ngunit sinabi ni Super sa aking abogado na tanging si* Secretary *De Lima lamang ang pwedeng makapigil sa aking paglipat sa Building 14.*

[50] Affidavit of Froilan "Poypoy" Lacson Trestiza, page 2:

in the medium security compound of the NBP and he later wanted to be transferred back to the maximum security compound, he was told that petitioner could do so if he paid ₱200,000 to Jun Ablen and Ragos.[51]

Based on the affidavits, the transfers of inmates to a penal farm or penal colony morphed from a manner of rewarding good behavior inside the national penitentiary into a way of punishing those who did not contribute to or fund petitioner's candidacy. The imminent threat of transfer, which was then within the exclusive power of petitioner as Secretary of Justice, became a manner of keeping disobedience at bay, disobedience here meaning not engaging in the illegal drug trade. Presumably, without that threat, petitioner would not have been able to exact obedience from the inmates.

Habang ine-escortan ng mga opisyal ng BuCor noong unang lingo ng Nobyembre taong 2012, pinagbantaan ako ni MARTINEZ. Ang sabi niya sa akin, "ANO NA NGAYON, POY, WALA NA ANG DIRECTOR MO PERO AKO CONSULTANT PA RIN Nl SOJ. SAAN MO BA GUSTONG IPATAPON?" x x x Dito niya po aka hiningan ng Sampung Libong Piso (₱10,000.00). Upang hindi naman po ako mapatapon at malayo sa aking pamilya, sinikap ko pong makalikom ng halagang ito at ibinigay kay MARTINEZ.

[51] Testimony of Froilan "Poypoy" Lacson Trestiza before the House of Representatives on 20 September 2016:

Noong ika-tatlong lingo ng Disyembre taong 2012 matapos na mailipat na sa Maximum Security Compound *ang ilan naming kasamahan na nabartolina sa* Medium Security Compound*, aka ay binalitaan ni (John) Herra at nagsabing nakausap daw niya si Jun Ablen. Si Ablen ay malapit kay noo'y OIC BuCor* Director *Rafal Marcos Ragos. Ang sabi ni Ablen sa akin ay pinagbibigay daw ako ni OIC Ragos ng dalawandaang libong piso kung gusto ko no mailipat sa* Maximum Security Compound*. Ayon kay Ablen, sinabi daw ni Ragos na ang magdedesisyon ng aking paglipat ay si De Lima.*

Ako po ay humingi ng tulong sa aking magulang at mga kapatid para maibigay ang hinihinging halaga ni Ragos sa akin. Sa pamamagitan ng aking kapatid at ni Herra, ay naiabot ang nasabing halaga kay Jun Ablen noong Disyembre 19, 2012. Dagdag ni Herra, sabi din daw ni Jun Ablen na ayon kay Ragos, susunduin daw ako mula sa Medium Security Compound *at ihahatid sa* Maximum Security Compound *bilang patunay na natanggap na niya ang pera. Noong Disyembre 22 taong 2012, nangyari nga po ang pangakong pagsundo sa akin ni Ragos at ni Jun Ablen, kung kaya't siguradong natanggap na ni Ragos ang dalawandaang libong piso na hiningi niya.*

Note is also taken of the apparent fact that inmates considered the transfer from the maximum security to the medium security compound as a punishment, again contrary to the regulation that medium security inmates are provided relative freedom and less supervision than those classified as maximum security. According to the inmates, this power to transfer them to other security compounds or detention centers was also lodged in petitioner as a way to keep their behavior in check. Again "keeping their behavior in check" here meant that they should continue to engage in the illegal drug trade inside the NBP. The evolution of the maximum security compound into a "Little Las Vegas" appears to have been an important incentive for inmates to want to stay there.

Rodolfo Magleo narrated that the maximum security compound of the NBP was nicknamed "Little Las Vegas" because it was rife with concerts, gambling and prostitution.[52] This allegation was confirmed by Sebastian.[53] Jojo Baligad disclosed that the weekly *tara* of ₱100,000 that their group paid to Ragos was in exchange for leniency in allowing contraband to be brought inside the prison.[54] Vicente Sy stated that he paid ₱1 million,

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[52] Affidavit of Rodolfo Magleo *y* Tamayo, page 1:

Noong mga kapanahunan ng pangangasiwa ni DOJ Secretary *LEILA DE LIMA, ang* Maximum Security Compound *ng* New Bilibid Prisons *ay kinilala bilang* "LITTLE LAS VEGAS" *dahil sa talamak na paglipana ng droga, sugal,* concert *ng mga kilalang mga* singer *at* celebrities *at prostitusyon. Halos 80% ng mga inmate ay mayroong mga* cellphones *at* gadgets.

[53] Affidavit of Jaybee Nino Manicad Sebastian, page 6:

Gusto ko pong linawin at pasinungalingan ang mga balita o paratang na ako diumano ay untouchable *at malakas kay* Secretary *De Lima. Ang totoo po ay si Colangco ang siyang tunay na malakas sa BUCOR at kay DOJ* Secretary *De Lima. Bilang patotoo nito, nagagawa niyang magpasok ng lahat ng kontrabando, babae, alak, mga matataas na kalibreng baril, mga mamahaling gamit at magpasimuno ng ibat-ibang sugal sa loob ng Bilibid kung saan ang pustahan nila ay milyun-milyong piso halos araw-araw, kasama na dito ang paggawa ng halos linggohang* concert *ni Colangco kung saan nagpapapasok siya ng* truck-truck *na* beer *at mga tao galing sa labas ng Bilibid upang manood ng kanyang* concert.

[54] Affidavit of Jojo Baligad *y* Rondal, page 1:

so that he could bring and use appliances in the prison, and another ₱500,000 when they were actually delivered.[55] Engelberto Acenas Durano stated that Ronnie Dayan approached him and told him that if he needed protection for his business, the former would have to help with petitioner's candidacy.[56] Durano added that one could not refuse to be part of the drug trade inside the prison, because the privileges originally extended could be lost.[57] According to Jaime Patcho, Sebastian assured him that if they contributed to fund the candidacy of petitioner, they would not be harassed or disturbed in the enjoyment of privileges.[58] In fact, after they obeyed the instruction for them

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Noong unang lingo ng Enero 2013 ay pinuntahan ako ni Commander POY sa aking kubol. Sinabi niya sa akin na nagbigay nang "tara" sa pangkat naming si O.I.C. RAFAEL RAGOS na lsandaang Libong Piso (₱100,000.00) kada lingo. Ang halagang ito ay kapalit ng pagluluwag dito sa loob ng NBP. Dahil sa pagluwag na ito, hindi na kinukumpiska ang mga kontrabando katulad ng drogang shabu at marijuana, mga cellphone, laptop computer, tablet, wifi receiver at signal booster. *Dahil din sa pagluwag na ito, hindi na rin sinisita ang mga dapat sana'y mga ipinagbabawal na gawain katulad ng pagbebenta at pag gamit ng droga, pagsusugal, pagiinom ng alak at pag gamit ng babae.*

[55] Affidavit of Vicente M. Sy, page 5:

Humingi sa akin si George ng ONE MILLION PESOS *(₱1,000,000.00). Ang halagang ito ay sinabi ni George na para kay* Justice Secretary *Leila De Lima para papasukin ang mga* appliances *at para payagan ang paggamit ng mga ito sa loob ng Bilibid. Bago magkaroon ng actual delivery, ako ay hiningian pa ulit ng karagdagang FIVE HUNDRED THOUSAND PESOS (₱500,000.00) at ito ay sinabi sa akin na para din kay* Justice Secretary *Leila De Lima.*

[56] Affidavit of Engelberto Acenas Durano, page 2:

Isang beses, tinawagan niya (Ronnie Dayan) ako at sinabi na kung kailangan ko ng "proteksiyon" sa aking "negosyo" ay tulungan namin si Secretary *De Lima sa kanyang pangangampanya bilang senador sa taong 2016.*

[57] *Id.* at 5:

Bilang kalakaran sa loob ng preso, hindi ka maaaring tumanggi na maging bahagi ng pagbebenta ng illegal na droga sa loob ng NBP dahil matatanggalan ka ng mga benepisyo na ibinibigay tulad sa aming mga pinuno ng mga samahan sa loob ng NBP at ang malala ay ang posibilidad na pagbantaaan ang aming buhay kung hindi makikisama at magiging parte ng ganitong sistema.

[58] Affidavit of Jaime Patcho, page 1:

to engage in the drug trade for petitioner's candidacy, Joel Capones observed that new privileges were extended to them almost immediately.[59] German Agojo also disclosed that Sebastian assured the members of his group that they would receive protection and privileges if they would agree to deal drugs to earn money for petitioner's candidacy.[60]

The alleged grant by petitioner of special requests from the inmates was also alleged by Ragos. He stated that when he relayed these special requests to petitioner, she would just respond with a nod.[61] Nevertheless, Reynante Diaz disclosed that the

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Kinausap niya (Jaybee Sebastian) ako at sabi niya tolongan ko siya para hinde na aka mapurhiwesyo at doon derekta niyang sinabi na bigyan siya bilang tolong sa paghahanda sa pagtakbo sa pagka senador sa darating na election *ni DOJ* Secretary *Laila Dilima. At wag ako mangamba kasi sa kanya raw ang administrasyon.*

[59] Affidavit of Joel Capones *y* Duro, page 2:

Halos kasabay nito, kami ay pinayagan na ng mga bagong pribilehiyo sa Maximum Security. *Ako ay nagkaroon ng* aircon *at* refrigerator *sa aking kubol. Pinayagan din ako na gumamit ng motorsiklo sa loob ng* Maximum Security Compound. *Naging mas maluwag din ang pamunuan ng NBP sa kanilang pagpapatupad ng mga patakaran sa amin.*

[60] Affidavit of German Agojo *y* Luna, page 1:

Natatandaan ko na noong Enero 2014 pinulong ni Jaybee ang aking pangkat at kami ay inutusan na magbenta ng droga. Wala raw kaming dapat ikatakot. Kami raw ay malayang makakagalaw at kami ay puproteksyunan at bibigyan ng mga pribilehiyo. Ngunit kailangan naming makalikom ng halagang ₱20,000,000.00 para sa aming pangkat sa loob ng tatlong buwan, para raw sa suporta sa pagtakbo ni Sec. Leila Delima sa 2016 election para sa Senado. Ang hindi pagsang-ayon ay may kaukulang parusa.

[61] Affidavit of Rafael Z. Ragos, page 2:

During my tenure as Officer in Charge of the Bureau of Corrections, I also received several special requests from inmates such as long weekends, that is to allow their visitors to stay with them for a couple days, entry of construction materials, and conduct of celebrations inside the NBP. Inmate Herbert Colanggo made several requests to conduct a celebration inside the NBP. In making some of his requests, he told me that "*Alam na ni* secretary *yan*," referring to Sec. De Lima.

I would casually mention such celebration requests, including the request of inmate Colanggo, to Sec. De Lima whenever I have the opportunity to tell her, to which she would normally respond with a nod.

Office of the Director also received bribe money in exchange for allowing women, liquor and concert equipment to be brought into the prison.[62]

Other allegations relate to the use of disciplinary powers by the petitioner. All of these again yield the same conclusion that she could not have committed them except, self-evidently, by using her power as Secretary of Justice. Under the existing rules, the commission of any prohibited acts[63] will subject the

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[62] Affidavit of Reynante Diaz *y* Delima, page 3:

Pagdating sa pagpasok ng mga banda at performers, *may* request *kaming ginagawa una sa* Commander of the Guards, *tapos sa* Office of the Superintendent, *tapos i*-routing *at maghihintay na lang kami ng tawag ng* Secretary *ng* Office of the Superintendent. *Pero mas mabilis sa amin kasi dumidirekta kami sa* Office of the Superintendent. *May* weekly *kaming binibigay pero ang pinaka-sigurado ay* every month *sa* Office of the Director, Superintendent, *OIC at sa* Commander of the Guards *pati ang mga* Prison Guards *na nakabantay sa bawat* gate. *Pag nagpapasok kami ng babae, sinasabay namin sila sa mga bisita para hindi halata. Para sa mga* gadgets, beer, *alak at iba pa, sinisingit namin ang mga ito sa* truck *ng* sound system. *At kunwari i-checheck ng* guards *para hindi halata pero alam nila yun. Mga 4 to 5* trucks *ang pumapasok kasama ang generator na 350 kaya na kayang pailawin ang buong* maximum.

Page 5:

Kasi pag sobrang maramihan na ang guest, kunwari ine-endorse *kami ng* Office of the Director *sa DOJ, para masabi lang na ginagawa din nila ang trabaho nila*.

[63] Section 4, Chapter 1, Part IV, Book I of the BuCor Operating Manual, prohibits the commission of the following acts inside prisons:

1. Participating in illegal sexual acts or placing oneself in situations or exhibiting behavior in a way that would encourage the commission of illegal sexual acts;
2. Openly or publicly displaying photographs, pictures, drawings, or other pictorial representations of persons engaged in sexual acts (actual or simulated), masturbation, excretory functions or lewd or obscene exhibitions of the genitals;
3. Possessing articles that pose a threat to prison security or to the safety and well-being of the inmates and staff;
4. Giving gifts, selling or engaging in barter with prison personnel;
5. Maligning or insulting any religious belief or group;
6. Rendering personal services to or requiring personal services from a fellow inmate;

erring inmate to disciplinary action by the Board of Discipline established by the BuCor Director. The decision of the board is subject to the approval of the Superintendent of the prison facility.[64] The board can impose sanctions such as caution or reprimand; cancellation of recreation, education, entertainment or visiting privileges; deprivation of GCTA for a specific period; and change of security status to the next higher category, e.g., from medium to maximum.[65]

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7. Gambling;

8. Exchanging uniforms with other inmates or wearing uniforms other than those that were officially issued to the inmate;

9. Using profane, vulgar or obscene language or making loud or unusual noise of any kind;

10. Loitering in the prison compound or reservation;

11. Giving a gift or providing material or other assistance to fellow inmates or to the prison administration in general;

12. Engaging in any private work for the benefit of a prison officer or employee;

13. Controlling the activities of other inmates except in organizations or groups recognized by prison authorities;

14. Tattooing oneself or allowing oneself to be tattooed on any part of the body. The removal or alteration of tattoos may only be performed by a prison medical officer upon prior approval by the Superintendent;

15. Disobeying legal orders of prison authorities promptly and courteously;

16. Threatening, orally or in writing, the life of any employee or prison official;

17. Possessing any communication device like a cellular telephone, pager or radio transceiver;

18. Constructing, renovating or repairing, with personal funds, a prison building or structure;

19. Making frivolous or groundless complaints; and

20. In general, displaying any behavior that might lead to disorder or violence, or such other actions that may endanger the facility, the outside community or others.

Further, inmates are not allowed to engage in any revenue-generating or profit-making endeavor or profession, except when authorized to do so in writing by the Director or the Superintendent. (Section 5)

[64] *Id*. at Chapter 2, Section 1 and Section 2(f).

[65] *Id*. at Section 4.

Considering that the Superintendent is required to strictly enforce all laws and rules and regulations relating to prisons,[66] these prohibited acts could not have been committed inside the prison without those in charge allowing them. Significantly, under Section 8 of R.A. 10575 (The Bureau of Corrections Act of 2013), the Department of Justice (DOJ) exercises administrative supervision over BuCor and retains the authority to review, reverse, revise or modify the latter's decisions in the exercise of the department's regulatory or quasi-judicial functions. Therefore, **the power allegedly exercised by petitioner as narrated by the inmate-witnesses is affirmed by the legal framework instituted between the DOJ and BuCor through applicable laws and regulations**.

Based on the narrations of the inmate-witnesses, leniency and special privileges were accorded in exchange for money. The inmates allegedly would not have forked in the money or engaged in illegal drug trade to be able to give the money, if they knew that their efforts would not matter anyway. Like a transfer, the grant or denial of special privileges was allegedly used as an incentive for obedience or a deterrent for refusal to follow what was required of the inmates by those in power.

Other than the above acts, petitioner is not charged with having committed any other act in a private, non-official capacity to further the trade in drugs. It is therefore indubitable that she is being charged in her former capacity as a public official and for having committed violations of R.A. 9165 by using her office as a means of committing the crime of illegal trading in dangerous drugs under Section 5 in relation to Section 3(jj), Section 26(b), and Section 28.

Sandiganbayan has Exclusive Jurisdiction

Respondents allege that under the Revised Penal Code, R.A. 6425 (The Dangerous Drugs Act of 1972), and R.A. 9165, the regional trial courts are vested by law with jurisdiction over cases involving illegal drugs, originally because of the imposable

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[66] *Id.* at Book II, Part II, Section 2(a)(ii).

penalty and, later on, because of the nature of the offense.[67] They have exclusive and original jurisdiction in all cases punishable under R.A. 6425 and R.A. 9165.

Specifically, Section 90 of R.A. 9165 provides:

> Section 90. *Jurisdiction*. — **The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act.** The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.
>
> The DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act.
>
> The preliminary investigation of cases filed under this Act shall be terminated within a period of thirty (30) days from the date of their filing.
>
> When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the records of the case.
>
> Trial of the case under this Section shall be finished by the court not later than sixty (60) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution. (Emphasis supplied)

Additionally, respondents argue that the exclusive jurisdiction of regional trial courts over violations of R.A. 9165 finds further support in several provisions of R.A. 9165,[68] such as the following:

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[67] Office of the Solicitor General's Memorandum, pp. 32-36.

[68] *Id*. at 39-41.

Section 20. *Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals*. — Every penalty imposed for the unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical, the cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment, shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not liable for the unlawful act, but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act.

After conviction in the Regional Trial Court in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income: *Provided, however*, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.

During the pendency of the case in the Regional Trial Court, no property, or income derived therefrom, which may be confiscated and forfeited, shall be disposed, alienated or transferred and the same shall be in *custodia legis* and no bond shall be admitted for the release of the same.

The proceeds of any sale or disposition of any property confiscated or forfeited under this Section shall be used to pay all proper expenses incurred in the proceedings for the confiscation, forfeiture, custody and maintenance of the property pending disposition, as well as expenses for publication and court costs. The proceeds in excess of the above expenses shall accrue to the Board to be used in its campaign against illegal drugs.

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Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon **any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act**.

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations.

Section 28. *Criminal Liability of Government Officials and Employees*.— **The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.** (Emphases supplied)

The reliance of respondents on Section 90 of R.A. 9165 stems from the phrase "exclusively try and hear cases involving violations of this Act." It is believed that the word "exclusively" denotes that jurisdiction lies with regional trial courts to the exclusion of all other courts.

It bears emphasis that the entire first sentence of Section 90 provides that "[t]he Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial

region to exclusively try and hear cases involving violations of this Act." Thus, in recognition of the constitutional authority of the Supreme Court to supervise the administration of all courts, the legislature mandated it to designate special courts from among the regional trial courts that shall exclusively try and hear cases involving violations of R.A. 9165.

In *Gonzales v. GJH Land, Inc.*,[69] it was ruled that the power of this Court to designate special courts has nothing to do with the statutory conferment of jurisdiction, because, primarily, the Court cannot enlarge, diminish, or dictate when jurisdiction shall be removed.[70] As a general rule, the power to define, prescribe, and apportion jurisdiction is a matter of legislative prerogative.[71]

To emphasize the distinction between the power of the legislature to confer jurisdiction and that of the Supreme Court to supervise the exercise thereof, the Court enunciated:

> As a basic premise, let it be emphasized that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction. Jurisdiction over the subject matter of a case is **conferred by law**, whereas a court's **exercise of jurisdiction**, unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Court. In *Lozada v. Bracewell*, it was recently held that **the matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction**.[72] (Emphases and underscoring in the original)

In the first sentence of Section 90 of R.A. 9165, the legislature called on the Supreme Court to rationalize the exercise of jurisdiction by the courts. This call for rationalization is evident

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[69] G.R. No. 202664, 10 November 2015, 774 SCRA 243.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 257.

from the words "to exclusively try and hear cases involving violations of this Act."

As will be shown below, the word "exclusively" in Section 90 of R.A. 9165 pertains to the courts' exercise of jurisdiction, and not to the legislature's conferment thereof.

In the En Banc Resolution dated 11 October 2005, the Court, answering the question "May special courts for drug cases be included in the raffle of civil and criminal cases other than drug related cases?" stated:

The phrase "to exclusively try and hear cases involving violations of this Act" means that, as a rule, courts designated as special courts for drug cases shall try and hear drug-related cases only, i.e., cases involving violations of R.A. No. 9165, to the exclusion of other courts.

The very title of Article XI of R.A. No. 9165, the article where Section 90 is included, reads: "Jurisdiction Over Drug Cases." **It provides for the forum where drug cases are to be filed, tried and resolved: Regional Trial Courts (RTCs) designated by this Court as special drug courts. The jurisdiction of the designated courts is exclusive of all other courts not so designated.**

In our resolution in A.M. No. 00-8-01-SC on August 1, 2000, certain branches of the RTCs were designated as special courts for drug cases. They were tasked to hear and decide all criminal cases in their respective jurisdictions involving violations of R.A. No. [6425], otherwise known as the "Dangerous Drugs Act of 1972," as amended, regardless of the quantity of drugs involved. Among the guidelines issued to implement such designation was a directive to Executive Judges of the RTCs concerned to exclude the designated courts from the raffle of other cases subsequent to the assignment or transfer of drug cases to them.

Even after the passage of R.A. No. 9165, the designated courts under A.M. No. 00-8-01-SC remained as special courts for drug cases. The resolution is still in effect insofar as it is not inconsistent with the new law. The fact that A.M. No. 00-8-01-SC has not been abandoned is evident in resolutions subsequently issued by the Court adding or replacing drug courts in different jurisdictions. These resolutions expressly state that the guidelines set forth in A.M. No. 00-8-01-SC should be observed, if applicable.

The rationale behind the exclusion of drug courts from the raffle of cases other than drug cases is to expeditiously resolve criminal cases involving violations of R.A. No. 9165 (previously, of R.A. No. [6425]). Otherwise, these courts may be sidelined from hearing drug cases by the assignment of non-drug cases to them and the purpose of their designation as special courts would be negated. The faithful observance of the stringent time frame imposed on drug courts for deciding drug related cases and terminating proceedings calls for the continued implementation of the policy enunciated in A.M. No. 00-8-01-SC.[73] (Emphases supplied)

Clearly, only those designated as special courts for drug cases shall exercise the jurisdiction to try and hear drug-related cases, to the exclusion of all other courts *not so designated*. The rationale for the rule is for these special courts to expeditiously resolve cases within the stringent time frame provided by the law; i.e., the trial of the case shall be finished by the court not later than 60 days from the date of filing of the information, and the decision shall be rendered within a period of 15 days from the date of submission of the case for resolution.

The En Banc Resolution dated 11 October 2005 succinctly echoes the legislative intent of the framers of R.A. 9165 as shown below:

REP. DILANGALEN. Under Section 60, we have here Jurisdiction Over Dangerous Drug Case. Section 60, it states here: "The Supreme Court shall designate Regional Trial Courts to have original jurisdiction over all offenses punishable in this Act."

Mr. Speaker, what I know is, the Regional Trial Courts have original jurisdiction over offenses involving drugs.

REP. CUENCO. Yes.

REP. DILANGALEN. Is it the intention of the Committee that certain salas of the Regional Trial Courts be designated by the Supreme Court to try exclusively drugs related offenses?

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[73] *Re: Request for Clarification on whether Drug Courts should be included In the Regular Raffle*, A.M. No. 05-9-03-SC, 11 October 2005.

REP. CUENCO. That is correct. That is the objective. What is happening right now, Gentleman from Maguindanao, is that although the Supreme Court has issued a directive requiring the creation of — the assignment of drugs cases to certain judges, but the assignment is not exclusive. These judges still handle other cases, aside from the drugs cases. Our intention really is to assign cases to judges which are exclusively drugs cases and they will handle no other cases.

REP. DILANGALEN. If that is the case, Mr. Speaker, at the appropriate time, I would like to propose the following amendment, "that the Supreme Court shall designate specific or salas of Regional Trial Courts to try exclusively offenses related to drugs.

REP. CUENCO. Yes. Simply stated, we are proposing the setting up of exclusive drug courts, just like traffic courts. Because almost all judges now are really besieged with a lot of drug cases. There are thousands upon thousands of drug cases pending for as long as twenty years.

REP. DILANGALEN. Yes, Mr. Speaker. I think we have here a convergence of ideas. We have no dispute here, but I am only more concerned with the phraseology of this particular provision.

REP. CUENCO. Then we will polish it.

REP. DILANGALEN. Thank you very much, Mr. Speaker.

So, at the appropriate time I would like to recommend an amendment that the Supreme Court shall designate particular salas of Regional Trial Courts to try exclusively all offenses punishable under this Act.

REP. CUENCO. Fine.

REP. DILANGALEN. Thank you very much, Mr. Speaker.

Under Article 60 also, we have here a provision, second paragraph on page 46, "Trial of the case under this Section shall be finished by the court not later than ninety (90) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case."

My question is, is it the intention of the Committee to make this particular provision merely directory as in...?

REP. CUENCO. Compulsory.

REP. DILANGALEN. If it is compulsory, what will happen if the case is not finished in ninety days?

REP. CUENCO. Well, administrative sanctions should be imposed on the judge by the Supreme Court.

REP. DILANGALEN. You know, Mr. Speaker, even under the Constitution, we have specific provisions here. The Supreme Court will decide certain cases from the time it is submitted for resolution within a specific period of time. That is true with the Court of Appeals, Regional Trial Courts and Municipal Trial Courts.

REP. CUENCO. Yes. Pero directory lang daw.

REP. DILANGALEN. But this provision of the Constitution is not followed. So, if we are going to make this particular provision not only directory but mandatory, will it be criminal if judges would fail?

REP. CUENCO. I do not know whether we have the power to the Supreme Courts. The power to the Supreme Courts rests with the Supreme Court.

REP. DILANGALEN. So, the intention of the Committee is only to mete administrative sanction.

REP. CUENCO. Yes, that is the only power that the Congress would have against erring judges. You cannot send a judge to jail because he is a slowpoke.

REP. DILANGALEN. Well, if that is the case, Mr. Speaker, then thank you very much for the information. There is no intention of filing criminal case against them but only administrative sanctions.

Thank you very much.

REP. CUENCO. Administrative sanctions should be imposed on him by the Supreme Court.[74] (Emphases supplied)

The intention behind the first sentence of Section 90 of R.A. 9165 was thus made clear: for the Supreme Court to assign regional trial courts that will handle drug cases exclusive of all other cases. Considering the foregoing, the exclusivity referred

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[74] Plenary Deliberations (Period of Sponsorship and Debate) on R.A. 9165 (House Bill No. 4433), 7 March 2002.

to therein pertains to the court's exercise of the jurisdiction conferred upon it by the legislature. There is no cogent reason to conclude that the legislature conferred jurisdiction on these special courts for them to take cognizance of violations of R.A. 9165 to the exclusion of all other courts.

The fact that it was not the intention of the legislature to confer jurisdiction on regional trial courts to the exclusion of all other courts was even highlighted during the bicameral conference committee meeting on the disagreeing provisions of House Bill No. 4433 and Senate Bill No. 1858, to wit:

CHAIRMAN CUENCO. x x x

On other matters we would like to propose the creation of drug courts to handle exclusively drug cases; the imposition of a sixty day deadline on courts within which to decide drug cases; and number three, provide penalties on officers of the law and government prosecutors for mishandling and delaying drug cases. We will address these concerns one by one. Number one, the possible creation of drug courts to handle exclusively drug cases, any comment? Congressman Ablan? First with the Chairman of the Senate Panel would like to say something.

CHAIRMAN BARBERS. We have no objection on this proposal, Mr. Chairman. As a matter of fact, this is one of the areas where we come to an agreement when we were in Japan. However, I would just like to add a paragraph after the word "Act" in Section 86 of the Senate version, Mr. Chairman, and this is in connection with the designation of special courts by the Supreme Court. And the addendum that I'd like to make is this, Mr. Chairman, after the word "Act" — the Supreme Court of the Philippines shall designate special courts from among the existing regional trial courts in its judicial region to exclusively try and hear cases involving violations of this Act. The number of court designated in each division, region shall be based on the population and the number of cases pending in the respective jurisdiction. That is my proposal, Mr. Chairman.

CHAIRMAN CUENCO. We adopt the same proposal.

SEN. CAYETANO. Comment, comment.

CHAIRMAN CUENCO. Pwede ba iyan? O sige Senator Cayetano.

SEN CAYETANO. Mr. Chairman, first of all there is already an administrative order by the Supreme Court, Administrative Order 51 as amended by Administrative Order 104, if I'm not mistaken, in '96 designating special courts all over the country that handles heinous crimes which include, by the way, violation of the present drug act where the penalty is life to death. **Now, when it comes to crimes where the penalty is six years or below this is the exclusive jurisdiction not of the RTC, not of the regional trial court, but of the municipal courts.** So my observation, Mr. Chairman, I think since there are already special courts we need not create that anymore or ask the Supreme Court. **And number two, precisely because there are certain cases where the penalties are only six years and below. These are really handled now by the Municipal Trial Court.** As far as the 60-day period, again in the Fernan Law, if I'm not mistaken, there is also a provision there that all heinous crimes now will have to be decided within 60 days. But if you want to emphasize as far as the speed by which all these crimes should be tried and decided, we can put it there. But as far as designation, I believe this may be academic because there are already special courts. And number 2, we cannot designate special courts as far as the municipal courts are concerned. In fact the moment you do that then you may limit the number of municipal courts all over the country that will only handled that to the prejudice of several other municipal courts that handles many of these cases.

CHAIRMAN CUENCO. Just a brief rejoinder, with the comments made by Senator Cayetano.

It is true that the Supreme Court has designated certain courts to handle exclusively heinous crime. Okay. But our proposal here is confined exclusively to drug cases, not all kinds of heinous crimes. There are so many kinds of heinous crimes, murder, piracy, rape, et cetera. The idea here is to focus the attention of a court, on that court to handle only purely drug cases. **Now, in case the penalty, the penalty provided for by law is below 6 years wherein the regional trial courts will have no jurisdiction, then the municipal courts may likewise be designated as the trial court concerning those cases.** The idea here really is to assign exclusively a sala of a regional trial court to handle nothing else except cases involving drugs, illegal drug trafficking. Right now there are judges who have been so designated by the Supreme Court to handle heinous crimes but they are not exclusive to drugs, eh. Aside from those heinous crimes, they also handle other cases, which are not even heinous.

So the idea here is to create a system similar to the traffic courts, which will try and hear exclusively traffic cases. So, in view of the gravity of the situation and in view of the urgency of the resolution of these drug cases because the research that we have made on the drug cases filed is that the number of decided cases not even 1% of those filed. There have been many apprehensions, thousands upon thousands of apprehensions, thousands upon thousands of cases filed in court but only about 1% have been disposed, The reason is that there is no special attention made or paid on these drug cases by our courts.

So that is my humble observation.

SEN. CAYETANO. No Problem.

CHAIRMAN CUENCO. You have no problem.

CHAIRMAN BARBERS. I have no problem with that, Mr. Chairman. **But I'd like to call your attention to the fact that my proposal is only for a designation because if it is for creation that would entail another budget, Mr. Chairman. And almost always, the Department of Budget will tell us in the budget hearing that we lack funds, we do not have money. So that might delay the very purpose why we want the RTCs or the municipal courts to handle exclusively the drug cases.** That's why my proposal is designation not creation.

CHAIRMAN CUENCO. Areglado. No problem. Designation. Approved.[75] (Emphases supplied)

Clearly, the legislature took into consideration the fact that certain penalties were not within the scope of the jurisdiction of regional trial courts; hence, it contemplated the designation of municipal trial courts to exclusively handle drug cases as well. Notably, under Section 32 of *Batas Pambansa Blg*. (B.P.) 129 (The Judiciary Reorganization Act of 1980), metropolitan trial courts, municipal trial courts and municipal circuit trial courts have exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six years, irrespective of the amount of fine.

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[75] Bicameral Conference Committee Meeting on the Disagreeing Provisions of House Bill No. 4433 and Senate Bill No. 1858, 29 April 2002.

In this regard, Section 20 of B.P. 129 as amended finds relevance:

Section 20. *Jurisdiction in Criminal Cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, **except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter**. (Emphasis supplied)

Section 20 of B.P. 129 is the legislature's conferment of jurisdiction on regional trial courts. However, the legislature explicitly removed from the jurisdiction of regional trial criminal cases falling under the exclusive and concurrent jurisdiction of the Sandiganbayan. Thus, Section 20 of B.P. 129 should be read in conjunction with Section 4[76] of Presidential Decree No. (P.D.) 1606[77] as amended.

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[76] Section 4. *Jurisdiction*. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification. Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

As will be discussed more thoroughly in the following section

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(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including *quo warranto*, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

of this opinion, the Court has ruled in a line of cases[78] that the following requisites must concur for an offense to fall under the exclusive original jurisdiction of the Sandiganbayan:

1. The offense committed is (a) a violation of the Anti-Graft and Corrupt Practices Act as amended; (b) a violation of the law on ill-gotten wealth; (c) a violation of the law on bribery; (d) related to sequestration cases; or (e) all other offenses or felonies, whether simple or complexed with other crimes;

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.

[77] Entitled "Revising Presidential Decree No. 1486 Creating a Special Court to be known as 'Sandiganbayan' and for Other Purposes."

[78] *Adaza v. Sandiganbayan*, 502 Phil. 702 (2005); *Geduspan v. People*, 491 Phil. 375 (2005); *Lacson v. Executive Secretary*, 361 Phil. 251 (1999).

2. The offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph (a) of Section 4; and
3. The offense committed is in relation to office.

In this case, an offense was allegedly committed by petitioner while she was Secretary of Justice, an official of the executive branch, and classified as Grade '27' or higher. Furthermore, as discussed above, the offense was allegedly committed in relation to her office. Thus, the offense charged falls under the exclusive original jurisdiction of the Sandiganbayan.

It follows that the Ombudsman has primary jurisdiction in the conduct of the investigation into the four complaints taken cognizance of by the DOJ panel of investigators[79] (panel) in this case. Section 15(1) of R.A. 6770 (The Ombudsman Act of 1989) as amended provides that the Ombudsman shall have primary jurisdiction over cases cognizable by the Sandiganbayan; and, in the exercise of this primary jurisdiction, the Ombudsman may take over, at any stage and from any investigatory agency of the government, the investigation of these cases.

The primary jurisdiction of the Ombudsman to investigate cases cognizable by the Sandiganbayan was operationalized by the former, together with the DOJ in the Memorandum of Agreement (MOA) executed on 29 March 2012. The pertinent portion of the MOA provides:

I. Agreements

A. Jurisdiction

1. The OMB has primary jurisdiction in the conduct of preliminary investigation and inquest proceedings over complaints for crimes cognizable by the Sandiganbayan.

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[79] Chaired by Senior Asst. State Prosecutor Peter Ong, with members Senior Asst. City Prosecutor Alexander Ramos, Senior Asst. City Prosecutor Leila Llanes, Senior Asst. City Prosecutor Evangeline Viudes-Canobas, and Asst. State Prosecutor Editha Fernandez.

2. If, upon the filing of a complaint, the prosecution office of the DOJ determines that the same is for a crime falling under the exclusive jurisdiction of the Sandiganbayan, it shall advise the complainant to file it directly with the OMB: Provided, That in case a prosecution office of the DOJ receives a complaint that is cognizable by the Sandiganbayan, it shall immediately endorse the same to the OMB. Provided further, That in cases where there are multiple respondents in a single complaint and at least one respondent falls within the jurisdiction of the Sandiganbayan, the entire records of the complaint shall be endorsed to the OMB.

However, the fact that the Ombudsman has primary jurisdiction to conduct an investigation into the four complaints does not preclude the panel from conducting any investigation of cases against public officers involving violations of penal laws. In *Honasan II v. Panel of Investigating Prosecutors of the Department of Justice*,[80] the Court ruled that accords between the Ombudsman and the DOJ, such as the MOA in this case, are mere internal agreements between them. It was emphasized that under Sections 2[81] and 4,[82] Rule 112 of the Rules of Court,

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[80] 470 Phil. 721 (2004).

[81] Section 2. *Officers Authorized to Conduct Preliminary Investigations*.—

The following may conduct preliminary investigations:

(a) Provincial or City Prosecutors and their assistants;

(b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;

(c) National and Regional State Prosecutors; and

(d) Other officers as may be authorized by law.

Their authority to conduct preliminary investigations shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.

[82] Section 4. *Resolution of Investigating Prosecutor and its Review*. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given

DOJ prosecutors have the authority to conduct preliminary investigations of criminal complaints filed with them for offenses cognizable by the proper court within their respective territorial jurisdictions, including those offenses that fall under the original jurisdiction of the Sandiganbayan.[83]

Nevertheless, if the offense falls within the original jurisdiction of the Sandiganbayan, the prosecutor shall, after investigation, transmit the records and their resolutions to the Ombudsman or the latter's deputy for appropriate action.[84] Furthermore, the

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an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphases supplied)

[83] *Honasan II v. Panel of Investigating Prosecutors of the Department of Justice*, *supra*.

[84] *Id*.

prosecutor cannot dismiss the complaint without the prior written authority of the Ombudsman or the latter's deputy; nor can the prosecutor file an Information with the Sandiganbayan without being deputized by, and without receiving prior written authority from the Ombudsman or the latter's deputy.[85]

Thus, after concluding its investigation in this case, the panel should have transmitted the records and their resolution to the Ombudsman for appropriate action.

Considering that an Information has already been filed before the Regional Trial Court of Muntinlupa City, Branch 204, this Court may order the quashal of the Information based on lack of jurisdiction over the offense charged, pursuant to Section 3(b),[86] Rule 117 of the Rules of Court.

Accordingly, Section 5 of Rule 117 shall apply:

> Section 5. *Effect of sustaining the motion to quash.* — **If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in Section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail.** If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (Emphasis supplied)

It would be necessary for the Court to provide the Ombudsman a certain period of time within which to file a new complaint or Information based on the records and resolution transmitted by the panel. Significantly, petitioner will not be discharged from custody. If, however, the Ombudsman finds that there is

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[85] *Id.*

[86] Rules of Court, Rule 117, Section 3(b) provides:

> Section 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:
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> x x x x x x x x x
>
> (b) That the court trying the case has no jurisdiction over the offense charged;

no probable cause to charge her, or if it fails to file an Information before the Sandiganbayan within the period provided by this Court, petitioner should be ordered discharged, without prejudice to another prosecution for the same offense.[87]

Rationale for the Creation of the Sandiganbayan

The Sandiganbayan is a court that exists by constitutional fiat, specifically Section 5, Article XIII of the 1973 Constitution, which provides as follows:

SECTION 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over 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 as may be determined by law.

Pursuant to the Constitution and Proclamation No. 1081,[88] President Ferdinand Marcos issued P.D. No. 1486[89] creating the Sandiganbayan. Its creation was intended to pursue and attain the highest norms of official conduct required of public

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[87] *Id.* at Section 6, which provides:

Section 6. Order sustaining the motion to quash not a bar to another prosecution; exception. — An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 3 (g) and (i) of this Rule.

Section 3(g) and (i) of Rule 117 provides:

Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(g) That the criminal action or liability has been extinguished;

x x x x x x x x x

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[88] Proclaiming a State of Martial Law in the Philippines dated 21 September 1972.

[89] Creation of the Sandiganbayan, Presidential Decree No. 1486 dated 11 June 1978.

officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain at all times accountable to the people.[90] As an anti-graft court, the Sandiganbayan is structured as a collegiate body and is considered a trailblazing institution that arose from our unique experience in public governance.[91]

P.D. 1486 was expressly repealed by P.D. 1606, which elevated the Sandiganbayan to the level of the CA and expanded the former's jurisdiction. B.P. 129, P.D. 1860,[92] and P.D. 1861[93] subsequently amended P.D. 1606, further expanding the jurisdiction of the Sandiganbayan.

The existence and operation of the Sandiganbayan continued under the 1987 Constitution by express mandate, as follows:

> Section 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.[94]

Subsequently, Executive Order Nos. (E.O.) 14[95] and 14-a,[96] as well as R.A. 7080,[97] further expanded the jurisdiction of the Sandiganbayan.

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[90] WHEREAS Clause, Creation of the Sandiganbayan, Presidential Decree No. 1486 dated 11 June 1978.

[91] Co-Sponsorship Speech of Senator Franklin Drilon, S. Journal Sess. No. 75, at 33, 16th Congress, 1st Regular Session (26 February 2014).

[92] Amendments to P.D. No. 1606 and B.P. Blg. 129 Re: Jurisdiction of the Sandiganbayan, Presidential Decree No. 1860, (14 January 1983).

[93] Amending P.D. No. 1606 and B.P. Blg. 129 Re: Jurisdiction of the Sandiganbayan, Presidential Decree No. 1861 (March 23, 1983).

[94] The 1987 CONSTITUTION, Art. XI. Sec. 4.

[95] Jurisdiction Over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Executive Order No. 14 (7 May 1986).

[96] Amending E.O. No. 14 (May 7, 1986) Re: Ill-Gotten Wealth of Former President Ferdinand Marcos, Executive Order No. 14-A (18 August 1986).

[97] Anti-Plunder Act, Republic Act No. 7080 (12 July 1991).

P.D. 1606 was further modified by R.A. 7975,[98] R.A. 8249,[99] and R.A. 10660,[100] which introduced amendments in the Sandiganbayan's composition, jurisdiction, and procedure.

The jurisdiction of the Sandiganbayan has undergone significant modifications through the years in order to keep up with the ever-evolving dynamics of public governance.

Section 4 of P.D. 1486 first defined the cases over which the Sandiganbayan shall have original and exclusive jurisdiction as follows:

(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act and Republic Act No. 1379;
(b) Crimes committed by public officers or employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code;
(c) Other crimes or offenses committed by public officers or employees including those employed in government-owned or controlled corporations in relation to their office; *Provided*, that, in case private individuals are accused as principals, accomplices or accessories in the commission of the crimes hereinabove mentioned, they shall be tried jointly with the public officers or employees concerned.
Where the accused is charged of an offense in relation to his office and the evidence is insufficient to establish the of Tense so charged, he may nevertheless be convicted and sentenced for the offense included in that which is charged.
(d) Civil suits brought in connection with the aforementioned crimes for restitution or reparation of damages, recovery of the instruments and effects of the crimes, or forfeiture proceedings provided for under Republic Act No. 1379;

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[98] Amendments to P.D. No. 1606 Re: Organization of Sandiganbayan, Republic Act No. 7975 (30 March 1995).

[99] Defining the Jurisdiction of the Sandiganbayan, Republic Act No. 8249 (5 February 1997).

[100] Amendment to P.D. No. 1606 (Functional and Structural Organization of the Sandiganbayan), Republic Act No. 10660, 16 April 2015.

(e) Civil actions brought under Articles 32 and 34 of the Civil Code.

Exception from the foregoing provisions during the period of material law are criminal cases against officers and members of the Armed Forces of the Philippines, and all others who fall under the exclusive jurisdiction of the military tribunals.[101]

P.D. 1606 expressly repealed[102] P.D. 1486 and revised the jurisdiction of the Sandiganbayan. It removed therefrom the civil cases stated in Section 4(d) and (e) of P.D. 1486 and specified the penalty of *prision correccional* or its equivalent as the demarcation delineating the anti-graft court's jurisdiction over crimes or offenses committed in relation to public office.

Subsequently, Section 20 of B.P. 129[103] expanded the exclusive original jurisdiction of the Sandiganbayan over the offenses enumerated in Section 4 of P.D. 1606 to embrace all such offenses irrespective of the imposable penalty. This expansion caused a proliferation in the filing of cases before the Sandiganbayan, when the offense charged was punishable by a penalty not higher than *prision correccional* or its equivalent.[104]

P.D. 1606 was subsequently amended, first by P.D. 1860 and eventually by P.D. 1861, which made *prision correccional* or imprisonment for six years, or a fine of ₱6,000 the demarcation line limiting the Sandiganbayan's jurisdiction to offenses or

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[101] P.D. 1486, Section 4.

[102] P.D. 1606, Section 16 provides:

Section 16. *Repealing Clause*. — This Decree hereby repeals Presidential Decree No. 1486 and all other provisions of law, General Orders, Presidential Decrees, Letters of instructions, rules or regulations inconsistent herewith.

[103] B.P. 129, Section 20 provides:

Section 20. *Jurisdiction in Criminal Cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

[104] WHEREAS Clause, P.D. 1860 and 1861.

felonies committed in relation to public office.[105] Appellate jurisdiction was then vested in the Sandiganbayan over the cases triable by the lower courts.[106]

Section 2 of R.A. 7975 subsequently redefined the jurisdiction of the anti-graft court as follows:

> Sec. 4. *Jurisdiction*. — The *Sandiganbayan* shall exercise original jurisdiction on all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code, where one or more of the principal accused are officials occupying the following positions in the government, whether in a permanent, acting or *interim* capacity, at the time of the commission of the offense:
>
> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> (a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads;
>
> (b) City mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers and other city department heads;
>
> (c) Officials of the diplomatic service occupying the position of consul and higher;
>
> (d) Philippine army and air force colonels, naval captains, and all officers of higher ranks;
>
> (e) PNP chief superintendent and PNP officers of higher rank;
>
> (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

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[105] P.D. 1860, Sec. 1.

[106] P.D. 1861, Sec. 1.

(g) Presidents, directors or trustees, or managers of government-owned or-controlled corporations, state universities or educational institutions or foundations;

(2) Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;

(3) Members of the Judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses or felonies committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A

In cases where none of the principal accused are occupying positions corresponding to salary grade "27" or higher, as prescribed in the said Republic Act No. 6758, or PNP officers occupying the rank of superintendent or higher, or their equivalent, exclusive jurisdiction thereof shall be vested in the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129.

The Grade '27' demarcation was first introduced in this amending law. As explained in *People v. Magallanes*,[107] under the amendments, the Sandiganbayan partially lost its exclusive original jurisdiction over cases involving violations of R.A. 3019; R.A. 1379; and Chapter II, Section 2, Title VII of the Revised Penal Code. The anti-graft court retains cases in which the accused are those enumerated in Section 4(a) of R.A. 7975 and, generally, national and local officials classified as Grade '27'

[107] 319 Phil. 319 (1995).

and higher under R.A. 6758 (The Compensation and Position Classification Act of 1989). Moreover, the Sandiganbayan's jurisdiction over other offenses or felonies committed by public officials and employees in relation to their office is no longer determined by the prescribed penalty, as it is enough that they be committed by those public officials and employees enumerated in Section 4(a). However, the exclusive original jurisdiction over civil and criminal cases filed in connection with E.O. 1, 2, 14, and 14-A was retained.[108]

In 1997, R.A. 8249 was passed, further altering the jurisdiction of the anti-graft court as follows:

> Sec. 4. *Jurisdiction*. — The *Sandiganbayan* shall exercise exclusive original jurisdiction in all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, other known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or *interim* capacity, at the time of the commission of the offense:
>
> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> (a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other city department heads;
>
> (b) City mayor, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;
>
> (c) Officials of the diplomatic service occupying the position of consul and higher;
>
> (d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

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[108] *Id.*

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or-controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commission, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. Other offenses of felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in *Batas Pambansa Blg*. 129, as amended.

As can be gleaned from the above-quoted portions, Section 4(a) and (c) of R.A. 8249 deleted the word "principal" before the word "accused" appearing in the Section 2(a) and (c) of R.A. 7975. Further, the phrase "whether simple or complexed

with other crimes" was added in paragraph 4 of Section 4. The jurisdiction over police officials was also extended under paragraph a(1)(e) to include "officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintended or higher."

In *Lacson v. Executive Secretary*,[109] the requisites for a case to fall under the exclusive original jurisdiction of the Sandiganbayan under R.A. 8249 were enumerated as follows:

1. The offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act); (b) R.A. 1379 (the law on ill-gotten wealth); (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery); (d) E.O. 1, 2, 14, and 14-A, issued in 1986; or (e) some other offense or felony whether simple or complexed with other crimes.
2. The offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of Section 4.
3. The offense is committed in relation to office.

In *Adaza v. Sandiganbayan*,[110] this Court clarified the third element — that the offense committed is in relation to office:

R.A. 8249 mandates that for as long as the offender's public office is intimately connected with the offense charged or is used to facilitate the commission of said offense and the same is properly alleged in the information, the Sandiganbayan acquires jurisdiction. Indeed, the law specifically states that the Sandiganbayan has jurisdiction over all "other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of Section 4 in relation to their office." Public office, it bears reiterating, need not be an element of the offense charged.[111] (Emphasis supplied)

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[109] 361 Phil. 251 (1999).

[110] 502 Phil. 702 (2005).

[111] *Id*. at 720-721.

The latest amendment to P.D. 1606 was R.A. 10660 issued on 16 April 2015. While R.A. 10660 retained the list of officials under the Sandiganbayan s jurisdiction, it streamlined the anti-graft court's jurisdiction by adding the following proviso in Section 4 of P.D. 1606:

> *Provided*, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).
>
> Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

In effect, the latest amendment transferred the jurisdiction over cases classified by the amending law's sponsors as *minor*[112] to regional trial courts, which have sufficient capability and competence to handle those cases.

An understanding of the structural framework of the Sandiganbayan would affirm its jurisdiction over the drug case involving petitioner herein. An analysis of the structure of the Sandiganbayan's jurisdiction would reveal the following salient points:

1. There is a marked focus on high-ranking officials.
2. Its jurisdiction covers offenses or felonies involving substantial damage to the government or public service.
3. These offenses or felonies involve those that are committed in relation to public office.

The foregoing points indicate what Justice Mario Victor Marvic F. Leonen terms "expertise-by-constitutional design."[113]

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[112] Co-Sponsorship Speech of Senator Franklin Drilon, S. Journal Sess. No. 75, at 33, 16th Congress, 1st Regular Session (26 February 2014).

[113] *Macapagal-Arroyo v. People*, G.R. Nos. 220598 & 220953, 19 July 2016, Dissenting Opinion of J. Leonen.

The unique competence of the anti-graft court was also observed by Justice Antonio P. Barredo in his concurring opinion in *Nuñez v. Sandiganbayan*:[114]

> Constitutionally speaking, I view the Sandiganbayan as *sui generis* in the judicial structure designed by the makers of the 1971 Constitution. To be particularly noted must be the fact that the mandate of the Constitution that the National Assembly "shall create," it is not under the Article on the Judiciary (Article X) but under the article on Accountability of Public Officers. More, the Constitution ordains it to be "a special court." To my mind, such "special" character endowed to the Sandiganbayan carries with it certain concomitants which compel that it should be treated differently from the ordinary courts.[115]

Indeed, the jurisdiction of the Sandiganbayan contemplates not only an offense against the people, as in an ordinary crime, but an offense against the people committed precisely by their very defenders or representatives. It involves an additional dimension abuse of power — considered over and above all the other elements of the offense or felony committed.

The delineation of public officials who fall within the original and exclusive jurisdiction of the Sandiganbayan indicates the intention to focus on high-ranking officials, particularly including the following:

> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> (a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other city department heads;
>
> (b) City mayor, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;

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[114] *Nuñez v. Sandiganbayan*, 197 Phil. 407 (l982), Concurring Opinion of *J.* Barredo.

[115] *Id.* at 434.

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commission, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

In *Serana v. Sandiganbayan*,[116] this Court clarified that while the first part of Section 4(a) covers only officials classified as Grade '27' and higher, its second part specifically includes other executive officials whose positions may not fall under that classification, but who are by express provision of the law placed under the jurisdiction of the anti-graft court. Therefore, more than the salary level, the focus of the Sandiganbayan's jurisdiction and expertise is on the nature of the position held by the public officer.

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[116] 566 Phil. 224 (2008).

To put it simply, public officials whose ranks place them in a position of marked power, influence, and authority are within the exclusive original jurisdiction of the Sandiganbayan. While all government employees are public officers as defined by law, those with Grade '27' and higher and other officials enumerated are recognized as holding more concentrated amounts of power that enable them to commit crimes in a manner that lower-ranked public officers cannot. As clearly explained by this Court in *Rodrigo v. Sandiganbayan*,[117] the delineation of the jurisdiction of the Sandiganbayan in this manner frees it from the task of trying cases involving lower-ranking government officials and allows it to focus its efforts on the trial of those who occupy higher positions in government.

These high-ranking officials are the so-called "big fish" as o posed to the "small fry." The Explanatory Note of House Bill No. 9825,[118] which eventually became R.A. 7965 and introduced for the first time the delineation of the Sandiganbayan's jurisdiction based on salary grade, provides a very telling insight on the court's intended expertise. The Explanatory Note reads:

> One is given the impression that only lowly government workers or the so-called 'small fry' are expediently tried and convicted by the *Sandiganbayan*. The reason for this is that at present, the *Sandiganbayan* has the exclusive and original jurisdiction over graft cases committed by all officials and employees of the government, irrespective of rank and position, from the lowest-paid janitor to the highly-placed government official. **This jurisdiction of the *Sandiganbayan* must be modified in such a way that only those occupying high positions in the government and the military (the big fishes) may fall under its exclusive and original jurisdiction.** In this way, the *Sandiganbayan* can devote its time to big time cases involving the "big fishes" in the government. The regular courts will be vested with the jurisdiction of cases involving less-ranking officials (those occupying positions corresponding to salary grade twenty-seven (27) and below and PNP members with a rank lower than Senior Superintendent.[119] (Emphasis supplied)

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[117] 362 Phil. 646 (1999).

[118] *Id*.

[119] *Id*. at 664.

In other words, Congress deemed Grade '27' as the proper demarcation distinguishing the "big fish" from the "small fry." In fact, House Bill No. 9825 originally intended only officials of Grade '28' and above as falling within the exclusive and original jurisdiction of the Sandiganbayan, but the resulting law included officials of Grade '27.'[120]

It is the intention of Congress to focus the expertise of the Sandiganbayan not only on high-ranking public officials, but also on high- profile crimes committed in relation to public office. At the outset, the fact that the crime was committed by a high-ranking public official as defined by the Sandiganbayan law makes it a high-profile crime in itself. However, the most succinct display of the legislative intention is the recent passage of R.A. 10660, which transfers so-called minor cases to the regional trial courts. These minor cases refer to those in which the Information does not allege any damage to the government or any bribery, or alleges damage to the government or bribery in an amount not exceeding one million pesos.[121]

Senator Franklin Drilon, in his sponsorship speech before the Senate, expressed this specific intention:[122]

> The second modification under the bill involves the streamlining of the anti-graft court's jurisdiction, which will enable the Sandiganbayan to concentrate its resources in resolving the **most significant cases filed against public officials**. x x x With this amendment, **such court will be empowered to focus on the most notorious cases** and will be able to render judgment in a matter of months. (Emphases supplied)

That the Sandiganbayan's jurisdiction must focus on high-profile cases was also expressed during the committee deliberations on Senate Bill Nos. 470 and 472[123] as follows:

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[120] *Id*.

[121] R.A. 10660, Sec. 4.

[122] Co-Sponsorship Speech of Senator Franklin Drilon, S. Journal Sess. No. 75, at 33, 16th Congress, 1st Regular Session (26 February 2014).

[123] Senate Committee on Justice and Human Rights, Discussion and Deliberation on Senate Bill No. 470 and 472, at 23-24 (13 February 2014).

MR. MARCELO. Sixty percent belong to this category of minor cases. It is my position, Your Honor, **that the Sandigan should be able to focus their attention to major cases not to these minor cases**. I don't know but during my time two-thirds of the justices in the Sandiganbayan are former regional trial court judges and they were handling much more complicated cases involving much higher amounts than this, than one million or less.

x x x x x x x x x

So that's the amendment that I am proposing **so that really the Sandiganbayan can really spend their time in high profile cases**. (Emphases supplied)

From the foregoing, it can be gleaned that the Sandiganbayan's jurisdiction is intended to focus on major cases that involve bribery or damage to the government worth at least one million pesos, or is unquantifiable.

That allegations of unquantifiable bribery or damage remain within the Sandiganbayan's jurisdiction is shown by the legislative history of R.A. 10660. A review would show that in both House Bill No. 5283 and Senate Bill No. 2138, cases in which the Information alleges damage or a bribe that is unquantifiable are included among those to be transferred to the regional trial courts' jurisdiction. Even the sponsorship speech of Senator Drilon,[124] as well as the interpellations[125] before the Senate, notably included unquantifiable bribe or damage among the considerations. However, the Conference Committee Report on the Disagreeing Provisions of Senate Bill No. 2138 and House Bill No. 5283 adopted the House version as the working draft and deleted the phrase "(b) alleges damage or bribe that are unquantifiable."[126] While there was no reason available in the records explaining the deletion of this phrase, the law retains,

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[124] Co-Sponsorship Speech of Senator Franklin Drilon, S. Journal Sess. No. 75, at 32-33, 16th Congress, 1st Regular Session (26 February 2014).

[125] Senate Committee on Justice and Human Rights, Discussion and Deliberation on Senate Bill No. 470 and 472 (13 February 2014).

[126] S. Journal Sess. No. 69, at 196, 16th Congress, 1st Regular Session (12 May 2014).

in effect, the Sandiganbayan's jurisdiction over cases involving allegations of an unquantifiable bribe or damage.

The latest amendment reflects the consistent legislative intent to streamline the jurisdiction of the Sandiganbayan by focusing it on high- ranking officials involved in high-profile or notorious cases involving public office.

In consideration of the caliber of the parties and cases falling within the ambit of the exclusive and original jurisdiction of the Sandiganbayan, the law has carefully crafted a judicial structure that especially addresses the intricacies of the issues that may arise before that court.

The Sandiganbayan is a collegial court presently composed of seven divisions of three members each.[127] The term "collegial" relates to a group of colleagues or a "collegium," which is "an executive body with each member having approximately equal power and authority."[128] As such, the members of the anti-graft court act on the basis of consensus or majority rule.[129]

This collegiate structure of the Sandiganbayan was acknowledged to be necessary in order to competently try the public officials and cases before it. As discussed by this Court in *Jamsani-Rodriguez v. Ong*:[130]

> Moreover, the respondents' non-observance of collegiality contravened the **very purpose of trying criminal cases cognizable by Sandiganbayan before a Division of *all* three Justices**. Although there are criminal cases involving public officials and employees triable before single-judge courts, PD 1606, as amended, has *always* required a Division of three Justices (not one or two) to try the criminal cases cognizable by the Sandiganbayan, **in view of the accused in such cases holding higher rank or office than those charged in the former cases**.[131] (Emphases supplied)

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[127] R.A. 10660, Section 1.

[128] *Payumo v. Sandiganbayan*, 669 Phil. 545 (2011), citing Webster's Third New World International Dictionary, 445 (1993).

[129] *Id.*

[130] 643 Phil. 14 (2010).

[131] *Id.* at 36.

Aware of the political clout that high-ranking public officials may have, and how they could easily exert influence over single-judge courts, a division composed of three Justices was recognized to be less susceptible to the political reach of the public officers involved.

The foregoing intention is reflected in the latest amendment to R.A. 10660 which provides that the trial of cases transferred to regional trial courts shall be conducted in a judicial region other than where the official holds office.[132]

As discussed by the resource person during the committee deliberations on Senate Bill No. 2138:[133]

Mr. Marcelo: x x x The only limitation that I suggest is that the Supreme Court should assign these cases to a region different from where any of the accused or the accused reside or have their place of office. That is the reason why these cases, most of them, involve officials who have salary grade 27 like mayors, most of these cases, these minor cases. And because of their political clout, you know, they can have connections, they may be partymates of the governor who may —

Unfortunately in our judicial system right now, there are instances where maybe he can exert influence on the judges so the jurisdiction now—they made it that the jurisdiction belong to the Sandiganbayan. That is why we also propose an amendment that the Supreme Court in assigning these cases, what we call minor cases, to the RTCs will only assign it to a regional trial court in a different region so that there will be no possibility of political influence, Your Honors. (Emphases supplied)

This was noted again during the interpellation by Senator Angara:[134]

Senator Angara. I see. In the proposed amendment that we are referring to, the second paragraph mentions that, "subject to the rules

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[132] R.A. 10660, Section 2.

[133] Senate Committee on Justice and Human Rights, *Discussion and Deliberation on Senate Bills No. 470 and 472*, at 24-25 (13 February 2014).

[134] S. Journal Sess. No. 62, at 72, 16th Congress, 1st Regular Session (5 March 2014).

promulgated by the Supreme Court, the cases falling under the jurisdiction of the RTC shall be tried in a judicial region other than that where the official holds office".

Mr. President, I understand **the basic reasoning behind this provision, and this is probably to prevent that official from exerting influence over the RTC judge who is to try the case**. Is this correct, Mr. President?

Senator Pimentel. Yes, specifically, the concept of the other judicial region. Yes, that is the purpose, Mr. President. So, **there is a presumption, in effect, that the public official of this rank has influence or wields influence in the judicial region where he holds office. That is the assumption in the amendment.** (Emphases supplied)

The structural framework of the Sandiganbayan as discussed above is unique. There is no other court vested with this kind of jurisdiction and structured in this manner. The structure vests the anti-graft court with the competence to try and resolve high-profile crimes committed in relation to the office of a high-ranking public official — as in the case at bar.

Here, we have a senator whose salary is above Grade '27.' She is being charged in the Information with a drug offense that was clearly described as committed in relation to her office as Secretary of Justice. There is an alleged bribe or damage to the government that is above the amount of one million pesos. Clearly, the case falls within the Sandiganbayan's jurisdiction. The drug courts specified in R.A. 9165 do not have the necessary machinery, expertise, or competence that the Sandiganbayan has to resolve the accusations against petitioner. Therefore, its structural framework further affirms the conclusion that as between a single-judge trial court and a collegiate Sandiganbayan, the latter retains original and exclusive jurisdiction over high-ranking officials accused of committing drug offenses in relation to their office.

A conclusion placing within the jurisdiction of the Sandiganbayan those drug offenses committed by public officers falling under Grade '27' and above is in consonance with a fundamental principle: the Court must construe criminal rules in favor of the accused. In fact, even the slightest doubt must

be resolved in favor of the accused.[135] In my dissenting opinion in *Corpuz v. People*,[136] I extensively explained this principle in the following manner:

> This directive is moored on the equally vital doctrine of presumption of innocence. These principles call for the adoption of an interpretation which is more lenient. Time and again, courts harken back to the *pro reo* rule when observing leniency, explaining: "The scales of justice must hang equal and, in fact should be tipped in favor of the accused because of the constitutional presumption of innocence."
>
> This rule underpins the prospectivity of our penal laws (laws shall have no retroactive application, unless the contrary is provided) and its exception (laws have prospective application, unless they are favorable to the accused). The *pro reo* rule has been applied in the imposition of penalties, specifically the death penalty and more recently, the proper construction and application of the Indeterminate Sentence Law.
>
> The rationale behind the *pro reo* rule and other rules that favor the accused is anchored on the rehabilitative philosophy of our penal system. In *People v. Ducosin*, the Court explained that it is "necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order."[137]

Here, it is more favorable to petitioner and all other similar public officials accused of drug offenses committed in relation to their office to be placed within the Sandiganbayan's jurisdiction, as shown in the following two ways.

First, the appeal route is shorter, by virtue of the fact that the review of convictions is generally elevated to this Court via the discretionary mode of petition for review on certiorari

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[135] *People v. Milan*, 370 Phil. 493 (1999).

[136] *Corpuz v. People*, 734 Phil. 353 (2014).

[137] *Id.* at 454-455.

under Rule 45.[138] On the other hand, convictions by the trial courts still undergo intermediate review before ultimately reaching this Court, if at all. If measured against the Speedy Trial Act[139] standards, a review of convictions by this Court will show a higher speed of disposition.

Second, the direct elevation of a petition to the Supreme Court translates to the application of a tighter standard in the trial of the case. The three Justices of a Division, rather than a single judge, will naturally be expected to exert keener judiciousness and to apply broader circumspection in trying and deciding such cases.[140] As again observed by Justice Barredo in his concurring opinion in *Nuñez v. Sandiganbayan*:[141]

> I believe that **the accused has a better guarantee of a real and full consideration of the evidence and the determination of the facts where there arc three judges actually seeing and observing the demeanor and conduct of the witnesses**. It is Our constant jurisprudence that the appellate courts should rely on the evaluation of the evidence by the trial judges, except in cases where pivotal points are shown to have been overlooked by them. With more reason should this rule apply to the review of the decision of a collegiate trial court. Moreover, when the Court of Appeals passes on an appeal in a criminal case, it has only the records to rely on, and yet the Supreme Court has no power to reverse its findings of fact, with only the usual exceptions already known to all lawyers and judges. **I strongly believe that the review of the decisions of the Sandiganbayan, whose three justices have actually seen and observed the witnesses as provided for in P.D. 1606 is a more iron-clad guarantee that no person accused before such special court will ever be finally convict without his guilt appearing beyond reasonable doubt as mandated by the Constitution.**[142] (Emphases supplied)

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[138] P.D. 1606, Section 7.

[139] R.A. 8493, 12 February 1998.

[140] *Payumo v. Sandiganbayan*, 669 Phil. 545 (2011).

[141] *Nuñez v. Sandiganbayan*, 197 Phil. 407 (1982). Concurring Opinion of *J*. Barredo.

[142] *Id*. at 436.

In *Cesar v. Sandiganbayan*,[143] this Court discussed how, ultimately, the tighter standards in the Sandiganbayan translates into the application of the same standards before this Court:

> Considering further that no less than three senior members of this Court, Justices Teehankee, Makasiar, and Fernandez dissented from the Court's opinion in *Nuñez* partly because of the absence of an intermediate appeal from Sandiganbayan decisions, where questions of fact could be fully threshed out, this Court has been most consistent in carefully examining all petitions seeking the review of the special court's decisions to ascertain that the fundamental right to be presumed innocent is not disregarded. This task has added a heavy burden to the workload of this Court but it is a task we steadfastly discharge.[144]

Procedural Issues

The procedural issues identified all boil down to the propriety of filing the instant petition despite there being remedies available, and in fact availed of, before the Regional Trial Court of Muntinlupa City, Branch 204 (RTC) and the Court of Appeals (CA).

Notwithstanding the fact that petitioner failed to observe the hierarchy of courts, and opted not to wait for the resolution of her motion to quash the Information — which was a plain, speedy and adequate remedy under the premises — her petition has clearly established enough basis to grant relief.

There is substantial compliance with respect to the rule on the verification and certification against forum shopping.

It is conceded that there was failure on the part of petitioner to sign the Verification and Certification Against Forum Shopping in the presence of the notary public, Atty. Maria Cecile C. Tresvalles-Cabalo. Nevertheless, this defect is not fatal and does not warrant an automatic and outright dismissal of the present petition.

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[143] G.R. Nos. 54719-50, 17 January 1985, 134 SCRA 105.

[144] *Id*. at 121.

The purpose of requiring a verification is to secure an assurance that the allegations of the petition have been made in good faith or are true and correct, and not merely speculative.[145] This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render them fatally defective. Indeed, verification is only a formal, not a jurisdictional, requirement.[146]

On the other hand, the required certification against forum shopping is considered by this Court to be rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different *fora*, as this practice is detrimental to an orderly judicial procedure.[147] Like the requirement of verification, the rule requiring the submission of certification, although obligatory, is not jurisdictional.[148]

Since the requirement of verification and certification against forum shopping is not jurisdictional, this Court has relaxed compliance therewith under justifiable circumstances, specifically (1) under the rule of substantial compliance,[149] and (2) in the presence of special circumstances or compelling reasons.[150]

In the present case, there is substantial compliance with the above rule. It is undisputed that petitioner herself personally signed the Verification and Certification Against Forum Shopping of the petition before this Court. She was qualified to sign the foregoing document, as she had sufficient knowledge to swear to the truth of the allegations therein. This principle is in accordance with this Court's ruling in *Fernandez v. Villegas* on substantial compliance as follows:

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[145] *Torres v. Specialized Packaging Development Corp.*, 447 Phil. 540 (2004).

[146] *In-N-Out Burger, Inc. v. Sehwani, Inc.*, 595 Phil. 1119 (2008).

[147] *People v. De Grano*, 606 Phil. 547 (2009).

[148] *Id.*

[149] *Fernandez v. Villegas*, 741 Phil. 689 (2014).

[150] *Id.*

3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and involve a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.[151]

The Decision cites *William Go Que Construction v. Court of Appeals*[152] as basis for the dismissal of the petition on the ground of a defective verification and certification against forum shopping. In that case, this Court ordered the dismissal of the petition for certiorari before the Court of Appeals for the failure of private respondents therein to substantially comply with the rule on verification and certification against forum shopping. The ruling hinged on the finding that the jurat therein was defective for its failure to indicate the pertinent details regarding the private respondent's competent evidence of identities. Because of the lack of evidence of identities, it could not be ascertained whether any of the private respondents actually swore to the truth of the allegations in the petition.

However, the above-cited jurisprudence is not apropos, as it does not consider substantial compliance, as in this case, by the present petitioner with the rule on verification and certification against forum shopping. While petitioner admittedly failed to

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[151] *Id*. at 698.

[152] G.R. No. 191699, 19 April 2016.

sign the verification and certification against forum shopping in the presence of the notary public, the latter was able to sufficiently confirm the former's identity as the signatory thereof.

As explained in her affidavit, Atty. Tresvalles-Cabalo examined the signature of petitioner. The notary was then able to confirm that it was genuine on account of her personal relationship with petitioner and after comparing the signatures in the petition and in the latter's valid passport. The passport is competent evidence of identification duly indicated in the *jurat*. Likewise notable is the fact that when the two of them met at the Criminal Investigation and Detection Group (CIDG) in Camp Crame, petitioner personally informed the notary public that she had already affixed her signature on the verification and certification against forum shopping. Under the foregoing circumstances, the identity of petitioner as the person who subscribed and swore to the truth of the allegations in her petition can no longer be put into question.

More importantly, the vital issue presented by the present petition is whether it is the DOJ or Ombudsman that has jurisdiction. It is this issue that serves as the "special circumstance" or "compelling reason" for the Court to justify a liberal application of the rule on verification and certification against forum shopping.

As will be further expounded below, the threshold issue raised is novel, of transcendental importance, and its resolution is demanded by the broader interest of justice. Therefore, it behooves this Court to give the petition due course and resolve it on the merits.

The petition presents exceptions to the doctrine of hierarchy of courts.

While it is conceded that the Court must enjoin the observance of the hierarchy of courts, it is likewise acknowledged that this policy is not inflexible in light of several well-established exceptions. *The Diocese of Bacolod v. Commission on*

Elections[153] enumerates and explains the different exceptions that justify a direct resort to this Court as follows:

> *First*, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of *certiorari*and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.
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> x x x x x x x x x
>
> **A *second* exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.**
>
> x x x x x x x x x
>
> ***Third*, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan*, this court took cognizance of the case as a matter of first impression that may guide the lower courts:**
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> **In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.**
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> x x x x x x x x x
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> ***Eighth*, the petition includes questions that are** "**dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice**, or the *orders complained of were found to be patent nullities*, **or the appeal was considered as clearly an inappropriate remedy**." In the past, questions similar to these which this court ruled on immediately despite the doctrine of hierarchy of courts included citizens' right to bear arms, government contracts

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[153] G.R. No. 205728, 21 January 2015, 747 SCRA 1, 45-50.

involving modernization of voters' registration lists, and the status and existence of a public office.

The instant petition presents several exceptions to the doctrine of hierarchy of courts, which justifies the direct resort to this Court.

The issue involved is one of transcendental importance. There is an urgent necessity to resolve the question of whether it is the DOJ or the Ombudsman that should investigate offenses defined and penalized under R.A. 9165 in view of the government's declared platform to fight illegal drugs. This avowed fight has predictably led to a spike in drug-related cases brought before the courts involving public officers. The President has already identified a large number of public officers allegedly involved in the drug trade. Our investigating and prosecutorial bodies must not be left to guess at the extent of their mandate.

As shown above, the offense charged falls under the jurisdiction of the Sandiganbayan, because it was allegedly committed by petitioner in relation to her public office as Secretary of Justice, which is classified as Grade '27' or higher.

Lastly, as the issue raised affects public welfare and policy, its resolution is ultimately demanded by the broader interest of justice. The difficulties in reading the various statutes in light of the 84,908 pending drug-related cases that are foreseen to sharply increase even more in the near future demands a clarification of the parameters; of jurisdiction that will guide the DOJ, the Ombudsman, the Sandiganbayan, and the lower courts in addressing these cases. This clarification will lead to a speedy and proper administration of justice.

The petition is not entirely premature.

In *Arula v. Espino*,[154] the Court explained the legal tenet that a court acquires jurisdiction to try a criminal case only when the following requisites concur: (a) the offense must be one that the court is by law authorized to take cognizance of; (b) the offense must have been committed within its territorial

[154] 138 Phil. 570 (1969)

jurisdiction; and (c) the person charged with the offense must have been brought to its forum for trial, involuntarily by a warrant of arrest or upon the person's voluntary submission to the court.

In the instant petition, petitioner ascribes grave abuse of discretion of the part of respondent judge for the following alleged acts and omissions:

1. Issuance of the Order dated 23 February 2017 finding probable cause for the issuance of a warrant of arrest against all the accused, including petitioner;
2. Issuance of a Warrant of Arrest dated 23 February 2017 against petitioner;
3. Issuance of the Order dated 24 February 2017 committing petitioner to the Philippine National Police Custodial Center; and
4. Failure or refusal to resolve the Motion to Quash through which petitioner seriously questions the jurisdiction of the RTC.

In the petition before us, petitioner is assailing the RTC's acquisition of jurisdiction to try the charge against her on two fronts. In assailing the trial court's finding of probable cause for the issuance of a warrant of arrest and the resulting issuance thereof, she is questioning the validity of the grounds on which she was brought before the RTC for trial. In insisting that the trial court resolve her motion to quash, she is saying that its resolution thereof will lead it to the conclusion that the offense with which she is charged is not one that it is authorized by law to take cognizance of.

Considering that the warrant of arrest has already been implemented and that she has already been brought into custody, it cannot be said that the instant petition is entirely premature. Her alleged "**unmistakable admission that the RTC has yet to rule on her Motion to Quash and the existence of the RTC's authority to rule on the said motion**"[155] relates to only one of the aspects of the trial court's assailed jurisdiction.

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[155] Draft Decision, p. 15.

As regards the alleged failure of petitioner to move for reconsideration of the Orders dated 23 February 2017 and 24 February 2017 before filing the instant petition for certiorari, it is my opinion that her situation falls under the recognized exceptions.

In *People v. Valdez*,[156] we said:

> The general rule is that a motion for reconsideration is a condition sine qua non before a petition for certiorari may lie, its purpose being to grant an opportunity for the court a quo to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.
>
> However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for certiorari is proper notwithstanding the failure to file a motion for reconsideration:
>
> a) **where the order is a patent nullity, as where the court a quo has no jurisdiction;**
> b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
> c) **where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner** or the subject matter of the petition is perishable;
> d) where, under the circumstances, a motion for reconsideration would be useless;
> e) where petitioner was deprived of due process and there is extreme urgency for relief;
> f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
> g) where the proceedings in the lower court are a nullity for lack of due process;
> h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,
> i) **where the issue raised is one purely of law or public interest is involved.**[157] (Emphasis supplied)

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[156] G.R. Nos. 216007-09, 8 December 2015, 776 SCRA 672.

[157] *Id*. at 683-684.

In that case, we recognized that the resolution of the question raised was of urgent necessity, considering its implications on similar cases filed and pending before the Sandiganbayan. In this case, the primordial interest, which is the observance of the rule of law and the proper administration of justice, requires this Court to settle once and for all the question of jurisdiction over public officers accused of violations of R.A. 9165.

Forum shopping was not willful and deliberate.

While petitioner may have indeed committed forum shopping when she filed the instant petition before this Court raising essentially the same arguments that she raised in her pending motion to quash before the RTC. However, I am of the view that her act of forum shopping was not willful and deliberate for the following reasons.

First, she clearly stated in the verification and certification against forum shopping attached to the instant Petition for Certiorari and Prohibition that she had a pending motion to quash filed before the RTC on 20 February 2017. She also reported therein the pendency of the Petition for Certiorari and Prohibition, which she had filed before the CA on 13 January 2017.

Second, the amount of publicity and media coverage received by petitioner in relation to the charge against her renders it practically impossible for her to hide the fact of the pendency of the other cases she has filed in pursuance of her defenses and arguments. It must be borne in mind that what is critical in determining the existence of forum shopping is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs. It is this vexation that creates the possibility of conflicting decisions being rendered by different fora upon the same issues.[158] Such eventuality will not come to pass in this case.

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[158] *Grace Park International Corp. v. Eastwest Banking Corp.*, G.R. No. 210606, 27 July 2016.

We have occasions[159] to rule that when forum shopping is not willful and deliberate, the subsequent case shall be dismissed without prejudice on the ground of either *litis pendentia* or *res judicata*. However, we have also ruled in certain cases that the newer action is not necessarily the one that should be dismissed.[160]

In *Medado v. Heirs of Consing*,[161] we reiterated the relevant factors that courts must consider when they have to determine which case should be dismissed, given the pendency of two actions. These factors are (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the latter action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.

In this case, in determining the action or the relief that should be dismissed, I believe that the motion to quash filed by petitioner before the RTC should be the one disregarded by this Court. The instant petition for certiorari is the appropriate vehicle to settle the issue of whether it is the RTC or the Sandiganbayan that should try and hear the charge against petitioner.

Accordingly, I vote that the Court **GRANT** the petition. The Order dated 23 February 2017 and the Warrant of Arrest issued against petitioner should be annulled and set aside. Nevertheless, the Department of Justice panel of investigators should be directed to transmit the records and the resolution of the case to the Office of the Ombudsman for appropriate action.

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[159] *Phil. Pharmawealth, Inc. v. Pfizer, Inc.*, 649 Phil. 423 (2010); *Chua v. Metropolitan Bank and Trust Co.*, 613 Phil. 143 (2009).

[160] *Bandillion v. La Filipina Uygongco Corp.*, G.R. No. 202446, 16 September 2015, 770 SCRA 624; *Espiritu v. Tankiansee*, 667 Phil. 9 (2011).

[161] 681 Phil. 536 (2012).

DISSENTING OPINION

CARPIO, *J.*:

The petition primarily seeks to: (a) annul the Order[1] dated 23 February 2017 and the issuance of Warrants of Arrest against petitioner Senator Leila M. De Lima and the others accused in Criminal Case No. 17-165,[2] and (b) enjoin respondent Judge Juanita Guerrero from conducting further proceedings in Criminal Case No. 17-165 until the Motion To Quash is resolved with finality.

Petitioner's Motion To Quash raised the following issues: (1) the Regional Trial Court (RTC) has no jurisdiction over the offense charged against petitioner; (2) the Department of Justice (DOJ) Panel has no authority to file the Information; (3) the Information charges more than one offense, and (4) the allegations and recital of facts, both in the Information and in the resolution of the DOJ Panel, do not allege the *corpus delicti* of the charge of violation of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act.

The petition should be **GRANTED** for the following substantive reasons:

(1) The Information does not allege any of the essential elements of the crime of illegal sale or illegal trade of drugs under Section 5 of R.A. No. 9165, hence the charge of illegal trade of drugs is void *ab initio*;

(2) The exclusive original jurisdiction over bribery, the offense actually alleged in the Information, lies with the Sandiganbayan; hence, the RTC has no jurisdiction over Criminal Case No. 17-165; and

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[1] Finding sufficient probable cause for the issuance of Warrants of Arrest against all the accused in Criminal Case No. 17-165, namely, Leila M. De Lima, Rafael Marcos Z. Ragos, and Ronnie Palisoc Dayan.

[2] Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5, in relation to Sections 3(jj), 26(b), and 28, Republic Act No. 9165 (Illegal Drug Trading).

(3) In the Memorandum of Agreement dated 29 March 2012 between the DOJ and the Ombudsman, the DOJ expressly recognizes the Ombudsman's primary jurisdiction to conduct preliminary investigations in complaints for crimes cognizable by the Sandiganbayan; hence, the DOJ Panel had no authority to file the Information.

Substantive Matters

The Information does not allege any of the essential elements of the crime of illegal sale or illegal trade of drugs.

The Information in Criminal Case No. 17-165 filed by the DOJ Panel before the RTC of Muntinlupa City on 17 February 2017 states:

> The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5 of R.A. No. 9165, in relation to Section 3(jj), Section 26(b), and Section 28, Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:
>
> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: **De Lima** and Ragos, **with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates** in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; **by reason of which, the inmates**, not being lawfully authorized by law and through the use of mobile phones and electronic devices, did then and

there willfully and **unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.

CONTRARY TO LAW.[3] (Emphasis supplied)

The allegations in the Information against petitioner do not constitute an offense under any provision of R.A. No. 9165. The investigation and eventual prosecution of her case fall under Section 4(b) of Presidential Decree (P.D.) No. 1606, **specifically as amended by R.A. No. 10660, bringing her case within the exclusive original jurisdiction of the Sandiganbayan**.

For immediate reference, Section 5, as well as Sections 3(jj), 26(b), and 28 of R.A. No. 9165, is reproduced below:

Section 5. **Sale, Trading,** Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

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[3] Annex F of the Petition.

If the **sale, trading,** administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

Section 3. **Definitions**. As used in this Act, the following terms shall mean:

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(jj) **Trading.** – Transactions involving the **illegal trafficking** of dangerous drugs and/or controlled precursors and essential chemicals **using electronic devices** such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

Section 26. Attempt or Conspiracy. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) **Sale, trading,** administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

x x x x x x x x x

Section 28. Criminal Liability of Government Officials and Employees. – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and **employees**. (Emphasis supplied)

R.A. No. 9165 took effect on 7 June 2002. Our jurisprudence is replete with the enumeration of the **essential elements of the crime of illegal sale of drugs under Section 5 of R.A. No. 9165.** For the present case, I refer to the enumeration of these essential elements in a non-exhaustive recitation of cases prepared by the *ponente* and some incumbent Members of the Court.

In September 2009, the *ponente* affirmed the conviction of Hasanaddin Guiara.[4]

In the prosecution of illegal sale of shabu, the **essential elements** have to be established, to wit: **(1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor**. (Emphasis supplied)

In December 2009, the *ponente* denied the parole of SPO3 Sangki Ara.[5]

For the successful prosecution of the illegal sale of shabu, the following **elements** must be established: (**1) the identity of the buyer**

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[4] *People v. Guiara*, 616 Phil. 290, 302 (2009), citing *People v. Gonzales*, 430 Phil. 504 (2002); *People v. Bongalon*, 425 Phil. 96 (2002); *People v. Lacap*, 420 Phil. 153 (2001); *People v. Tan*, 401 Phil. 259 (2000); *People v. Zheng Bai Hui*, 393 Phil. 68 (2000).

[5] *People v. Ara,* 623 Phil. 939, 955 (2009), citing *Cruz v. People*, 597 Phil. 722 (2009).

and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. ***What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.***(Emphasis supplied)

A few weeks later, the *ponente* enumerated the same elements in another case and affirmed the guilt of Victorio Pagkalinawan.[6]

It bears stressing that what is material to the prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti. In other words, the **essential elements** of the crime of illegal sale of prohibited drugs are: **(1) the accused sold and delivered a prohibited drug to another; and (2) he knew that what he had sold and delivered was a prohibited drug.** (Emphasis supplied)

The *ponente* affirmed the conviction of spouses Ewinie and Maria Politico in October 2010,[7] thus:

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.** Such elements are present in this case. ***What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug or the corpus delicti as evidence.*** (Emphasis supplied)

In a January 2011 case,[8] the *ponente* affirmed the conviction of Francisco Manlangit as a seller of shabu and cited the elements as written in *People v. Macatingag*.[9]

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[6] *People v. Pagkalinawan*, 628 Phil. 101, 114 (2010), citing *People v. Pendatun*, 478 Phil. 201 (2004), further citing *People v. Cercado*, 434 Phil. 492 (2002); *People v. Pacis*, 434 Phil. 148 (2002).

[7] *People v. Politico,* 647 Phil. 728, 738 (2010), citing *People v. Alberto*, 625 Phil. 545, 554 (2010) and *People v. Rivera*, 590 Phil. 894 (2008).

[8] *People v. Manlangit,* 654 Phil. 427, 436 (2011).

[9] 596 Phil. 376, 383-384 (2009).

People v. Macatingag prescribed the requirements for the successful prosecution of the crime of illegal sale of dangerous drugs, as follows:

> The **elements** necessary for the prosecution of illegal sale of drugs are (**1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor**. ***What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti***. (Emphasis supplied)

In January 2011, the *ponente* affirmed the conviction of Carlo Magno Aure and Melchor Austriaco using the same enumeration of elements.[10]

> In the prosecution for the crime of illegal sale of prohibited drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it**. (Emphasis supplied)

In the same month, the *ponente* affirmed the conviction of Nene Quiamanlon,[11] thus:

> Significantly, in the prosecution for the crime of illegal sale of prohibited drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.** It is worth noting that ***what is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.*** (Emphasis supplied)

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[10] *People v. Aure,* 654 Phil. 541, 553 (2011), citing *People v. Alberto*, 625 Phil. 545, 554 (2010), further citing *People v. Dumlao*, 584 Phil. 732, 739 (2008).

[11] *People v. Quiamanlon*, 655 Phil. 695, 705 (2011), citing *People v. Alberto*, 625 Phil. 545, 554 (2010); citing *People v. Dumlao*, 584 Phil. 732, 739 (2008).

Jacquiline Pambid's conviction[12] was affirmed under the same enumeration of elements:

> Essentially, all the **elements** of the crime of illegal sale of drugs have been sufficiently established, i.e., **(1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for it.** (Emphasis supplied)

The *ponente* used the enumeration of elements in the acquittal of Andrew Roble in April 2011.[13]

> In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following **elements**: **"(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."** Similarly, ***it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of corpus delicti.*** *Corpus delicti* means the "actual commission by someone of the particular crime charged." (Emphasis supplied)

In June 2011, the *ponente* acquitted Garry dela Cruz.[14]

> For the prosecution of illegal sale of drugs to prosper, the following **elements** must be proved: **(1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment**. ***What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the corpus delicti.*** (Emphasis supplied)

In August 2011, the *ponente* affirmed the conviction of Adriano Pascua.[15]

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[12] *People v. Pambid*, 655 Phil. 719, 732 (2011), citing *People v. Gonzales*, 430 Phil. 504, 513 (2002); *People v. Bongalon*, 425 Phil. 96, 117 (2002); *People v. Lacap*, 420 Phil. 153, 175 (2001); *People v. Tan*, 401 Phil. 259, 269 (2000); *People v. Zheng Bai Hui*, 393 Phil. 68, 131 (2000).

[13] *People v. Roble*, 663 Phil. 147, 157 (2011), citing *People v. Lorenzo*, 633 Phil. 393, 402-403 (2010); *People v. Ong*, 568 Phil. 114, 121-122 (2008); with remaining citations omitted.

[14] *People v. De la Cruz*, 666 Phil. 593, 605-606 (2011).

[15] *People v. Pascua*, 672 Phil. 276, 283-284 (2011), citing *People v. Midenilla*, 645 Phil. 587, 601 (2010), citing *People v. Guiara*, 616 Phil. 290, 302 (2009).

In every case of illegal sale of dangerous drugs, the prosecution is obliged to establish the following **essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment**. ***What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence***. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. (Emphasis supplied)

In October 2012, the *ponente* affirmed with modification the convictions of Asia Musa, Ara Monongan, Faisah Abas, and Mike Solalo,[16] thus:

In determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following **essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. *There must be proof that the transaction or sale actually took place and that the corpus delicti be presented in court as evidence***. (Emphasis supplied)

The *ponente* repeated these essential elements in his decision in *People v. Adrid*,[17] a March 2013 case. This time, the *ponente* acquitted Edgardo Adrid and cited the elements as written in his previous *ponencia* in *People v. Politico*.[18]

In every prosecution for illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it**. As it were, the dangerous drug itself forms an integral and key part of the *corpus delicti* of the offense of possession or sale of prohibited

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[16] *People v. Musa,* 698 Phil. 204, 215 (2012), citing *People v. Pascua*, 672 Phil. 276 (2011).

[17] 705 Phil. 654, 670 (2013).

[18] *Supra* note 7.

drugs. Withal, it is essential in the prosecution of drug cases that the identity of the prohibited drug be established beyond reasonable doubt. This means that on top of the elements of possession or illegal sale, the fact that the substance illegally sold or possessed is, in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. (Emphasis supplied)

In similar manner, I also quote from the *ponencias* of other members of this Court to illustrate that any conviction or acquittal under Section 5 of R.A. No. 9165 goes through the test of proving the same essential elements. I limited my examples to the Justices' latest promulgated *ponencias* on the subject.

In *People v. Arce*,[19] penned by Chief Justice Sereno, the Court sustained the conviction of accused-appellant Adalton Arce. The Joint Judgment of the Court of Appeals convicted Arce of violating Sections 5 and 11, Article II of R.A. No. 9165.

> In every prosecution for the illegal sale of marijuana, the following **elements** must be proved: **(1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor**.
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> On the other hand, in a prosecution for the illegal possession of marijuana, the following elements must be proved: (1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that the drug possession was not authorized by law; and (3) that the accused freely and consciously possessed the drug.
>
> For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their integrity is well preserved – from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. The fact that the substance said to have been illegally sold or possessed was the very same substance offered in court as exhibit must be established. (Emphasis supplied)

[19] G.R. No. 217979, 22 February 2017. Citations omitted.

In *People v. Cloma*,[20] my *ponencia* found accused-appellant Randy Cloma guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

For the successful prosecution of the offense of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following **elements** must be proven: **(1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it**. ***The prosecution must establish proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti***.

All the required elements are present in this case. SPO1 Ellevera testified that he was the poseur-buyer in the buy-bust operation. He identified Cloma as the seller of the shabu. SPO1 Ellevera confirmed the exchange of the five hundred peso (₱500) marked money and shabu. Hence, the illegal sale of drugs was consummated. In *People v. Gaspar*, we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated. (Emphasis supplied)

In *People v. Ocfemia*,[21] penned by Justice Leonardo-De Castro, the Court found accused-appellant Giovanni Ocfemia guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

In the prosecution for the crime of illegal sale of prohibited drugs, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof**. ***What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence***.[22] (Emphasis supplied)

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[20] G.R. No. 215943, 16 November 2016. Citations omitted.

[21] 718 Phil. 330 (2013).

[22] *Id*. at 345.

In *People v. Barte*,[23] penned by Justice Peralta, the Court found accused-appellant Mercelita Arenas guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. No. 9165.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (**1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing**. ***What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence***. We find all the elements necessary for appellant's conviction for illegal sale of shabu clearly established in this case.

PO3 Rimando, the poseur-buyer, positively identified appellant as the person whom he caught *in flagrante delicto* selling white crystalline substance presumed to be shabu in the buy-bust operation conducted by their police team; that upon appellant's receipt of the ₱2,000.00 buy-bust money from PO3 Rimando, she handed to him the two sachets of white crystalline substance which when tested yielded positive results for shabu. Appellant's delivery of the shabu to PO3 Rimando and her receipt of the marked money successfully consummated the buy-bust transaction. The seized shabu and the marked money were presented as evidence before the trial court. (Emphasis supplied)

Justice Peralta also added, for good measure, that: "Public prosecutors are reminded to carefully prepare the criminal complaint and Information in accordance with the law so as not to adversely affect the dispensation of justice."

In *People v. Barte*,[24] penned by Justice Bersamin, the Court acquitted accused-appellant Eddie Barte of violation of Section 5, Article II of R.A. No. 9165.

After thorough review, we consider the appeal to be impressed with merit. Thus, we acquit the accused-appellant.

In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard,

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[23] G.R. No. 213598, 27 July 2016, 798 SCRA 680, 689. Citations omitted.

[24] G.R. No. 179749, 1 March 2017. Citations omitted.

we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. In this instance, therefore, the Court is not limited to the assigned errors, but can consider and correct errors though unassigned and even reverse the decision on grounds other than those the parties raised as errors.

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In the prosecution of the crime of selling a dangerous drug, the following **elements** must be proven, to wit: **(1) the identities of the buyer, seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor**. On the other hand, the essential requisites of illegal possession of dangerous drugs that must be established are the following, namely: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug. (Emphasis supplied)

In *People v. Ismael*,[25] penned by Justice Del Castillo, the Court acquitted accused-appellant Salim Ismael of violation of Sections 5 and 11, Article II of R.A. No. 9165.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following **elements**: **(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor**. ***What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused***.

On the other hand, for illegal possession of dangerous drugs, the following elements must be established: "[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs."

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity

[25] G.R. No. 208093, 20 February 2017. Citations omitted.

and identity of the seized drugs must be shown to have been duly preserved. "The chain of custody rule performs this function as it ensures that necessary doubts concerning the identity of the evidence are removed."

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In sum, we find that the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. This Court is thus constrained to acquit the appellant based on reasonable doubt. (Emphasis supplied)

In *Belmonte v. People*,[26] penned by Justice Perlas-Bernabe, the Court found accused-appellant Kevin Belmonte guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: **(a) identity of the buyer and the seller, the object, and the consideration; and (b) delivery of the thing sold and the payment**.

In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. (Emphasis supplied)

In *Lescano v. People*,[27] penned by Justice Leonen, the Court acquitted accused-appellant Howard Lescano of violation of Sections 5 and 11, Article II of R.A. No. 9165.

The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled:

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[26] G.R. No. 224143, 28 June 2017. Citations omitted.

[27] G.R. No. 214490, 13 January 2016, 781 SCRA 73.

> In actions involving the illegal sale of dangerous drugs, the following **elements** must first be established: **(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence**.[28] (Emphasis supplied)

Justice Leonen ended his *ponencia* in Lescano with a quote from *People v. Holgado*,[29] which he also wrote:

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for minuscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[30]

Finally, in *People v. Cutura*,[31] penned by Justice Tijam, the Court found accused-appellant Jose Cutura guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

> To secure a conviction for illegal sale of dangerous drugs, like shabu, the following **elements** must be established: **(1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its**

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[28] *Id*. at 82-83.

[29] 741 Phil. 78 (2014).

[30] *Id*. at 100.

[31] G.R. No. 224300, 7 June 2017. Citations omitted.

payment. ***The prosecution must also prove the illegal sale of the dangerous drugs and present the corpus delicti in court as evidence.***

In this case, the prosecution duly established the following: (1) the identity of the buyer — PO3 Marcial, the seller — accused-appellant, the object of the sale one sachet of shabu which is an illegal drug, and the consideration — the two pieces of marked two hundred peso bills; and (2) PO3 Marcial positively identified accused-appellant as the one who transacted and sold the shabu to him in exchange for the marked money. He caught accused-appellant *in flagrante delicto* selling the shabu during a buy-bust operation. The seized item was sent to the crime laboratory and yielded positive results for presence of a dangerous drug. The seized sachet of shabu was likewise presented in court with the proper identification by PO3 Marcial. Evidently, what determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. (Emphasis supplied)

To be sure, the stage in the prosecution of petitioner is different from those in the cases cited as examples above. Petitioner has yet to go into trial, while the accused-appellants in the above-mentioned cases have already been through this Court's review.

However, the Information in Criminal Case No. 17-165, as filed against petitioner, clearly and egregiously does not specify any of the essential elements necessary to prosecute the crime of illegal sale of drugs under Section 5, or of illegal trade of drugs under Section 5 in relation to Section 3(jj). **Indisputably, the Information does not identify the buyer, the seller, the object, or the consideration of the illegal sale or trade. The Information also does not make any allegation of delivery of the drugs illegally sold or traded nor of their payment. The Information does not state the kind and quantity of the drugs subject of the illegal sale or trade.**

Without these essential elements alleged in the Information, the actual sale or trade of dangerous drugs can never be established. For without the identities of the seller and buyer, and without an allegation on the kind and quantity of the drugs and the consideration of the sale, as well as the delivery of the object of the sale and the payment, there is no sale or trade of

dangerous drugs that can be established during the trial. As this Court has repeatedly held:

> x x x. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.**[32] (Emphasis supplied)

In illegal sale of drugs, the *corpus delicti* is "**the actual sale**"[33] of the dangerous drugs, which must be alleged in the Information. This can be done only if the Information alleges the identities of the seller and buyer, the kind and quantity of the drugs which constitute the object of the sale, the consideration, the delivery of the dangerous drugs and the payment.

In short, it is simply impossible for the Information, as presently worded, to make out a case of illegal sale or illegal trade of dangerous drugs under Section 5 of R.A. No. 9165, which is the governing provision of R.A. No. 9165 prescribing the essential elements and penalties of the illegal sale or illegal trade of drugs.

The present Information against petitioner alleges only the "use of electronic devices" but does not allege any of the essential elements of "illegal sale" under Section 5. This Court cannot allow a prosecution for "illegal trade" of drugs where none, **repeat absolutely none**, of the essential elements of "illegal sale" of drugs is present. **In short, in the present Information for the offense of "illegal trade" of drugs, only the circumstance of "use of electronic devices" is alleged, with no allegation on the identity of the seller, identity of the buyer, the kind and quantity of the illegal drugs sold or traded, the consideration and the delivery of the illegal drugs, and the actual payment**. To allow such prosecution is obviously contrary to the constitutional due process requirement that

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[32] *People v. De Jesus,* 695 Phil. 114, 124 (2012), citing *People v. Opiana,* 750 Phil. 140, 147 (2015); *People v. Salonga*, 717 Phil. 117, 125 (2013); *People v. Unisa*, 674 Phil. 89, 108 (2011); *People v. Gaspar*, 669 Phil. 122, 135 (2011); *People v. Berdadero*, 636 Phil. 199, 206-207 (2010); *People v. Dilao*, 555 Phil. 394, 409 (2007).

[33] *People v. Uy*, 392 Phil. 773 (2000).

the accused shall "**be informed of the nature and cause of the accusation against him**," as expressly mandated in Section 14(2), Article III in the Bill of Rights of the Constitution.

In *People v. Caoile*,[34] penned by Justice Leonardo-De Castro, and *People v. PO2 Valdez*,[35] penned by Justice Bersamin, the Court emphasized that "**every element of the offense must be stated in the information**." Both cases cited the case of *People v. Dimaano*,[36] in which the Court elaborated:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.**[37] (Emphasis supplied)

In the present petition, the *ponente* himself believes in the importance of the accused's constitutional right to "be informed

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[34] 710 Phil. 564 (2013).

[35] 703 Phil. 519 (2013).

[36] 506 Phil. 630 (2005).

[37] *Id*. at 649-650.

of the nature and cause of the accusation" against him. In his *ponencia* in *Lim v. People*,[38] the *ponente* acquitted petitioner in that case. The Information there alleged that petitioner knew of the alleged theft of the thing sold, which is the first part of the third element of the crime of fencing. However, the trial court convicted petitioner on the ground that he should have known that the thing sold was derived from the proceeds of theft, which pertains to the second part of the third element of the crime of fencing. To support his decision to reverse the trial court and acquit petitioner, the *ponente* wrote:

We find that the conviction of petitioner violated his constitutional right to be informed of the nature and cause of the accusation against him.

In *Andaya v. People of the Philippines*, we ruled that:

> **It is fundamental that every element constituting the offense must be alleged in the information**. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.
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From the foregoing, we find that the CA erred in affirming the trial court's findings and in convicting herein petitioner. It is necessary

[38] G.R. No. 211977, 12 October 2016.

to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove **each and every element of the crime charged in the information** to warrant a finding of guilt for the said crime. Furthermore, the information must correctly reflect the charges against the accused before any conviction may be made.

In the case at bar, the prosecution failed to prove the first and third essential elements of the crime charged in the information. Thus, petitioner should be acquitted due to insufficiency of evidence and reasonable doubt.[39] (Emphasis in the original)

Thus, as the *ponente* himself correctly stated in *Lim v. People*, the accused has the "**constitutional right to be informed of the nature and cause of the accusation against him."** In the same case, the *ponente* reiterated and affirmed the hornbook doctrine, by quoting *Andaya v. People*, that it is **"fundamental that every element constituting the offense must be alleged in the information." The purpose of requiring the allegation in the Information of all the essential elements of the offense is to comply with the constitutional requirement that the accused must be "informed of the nature and cause of the accusation" against him.**

In *Dela Chica v. Sandiganbayan*,[40] the Court held that an Information is not sufficient unless it accurately and clearly alleges all the elements of the crime charged. The Court explained:

The issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency has long been settled. **It is fundamental that every element of which the offense is composed must be alleged in the information. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged**. Section 6, Rule 110 of the Revised Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense. Recently, this Court emphasized that the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information

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[39] *Id*. Citations omitted.

[40] 462 Phil. 712 (2003).

will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.

What facts and circumstances are necessary to be stated in the information must be determined by reference to the definitions and the essentials of the specific crime.[41] (Emphasis supplied)

Indeed, there can be no dispute whatsoever that each and every essential element of the offense charged must be alleged in the Information. This, in fact and in law, is axiomatic. Nothing can be more fundamental than this in initiating any criminal prosecution, as the right to be informed of the "**nature and cause of the accusation**" is a fundamental right of an accused enshrined in the Bill of Rights of the Constitution.

Failure to allege any of the essential elements of the offense invariably means that probable cause cannot be determined on the basis of the Information, both as to the commission of the offense and as to the issuance of the warrant of arrest. In *Baltazar v. People*,[42] probable cause is defined as:

Probable cause is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.[43]

Clearly, it is impossible for the presiding judge to determine the existence of probable cause for the issuance of a warrant of arrest where the Information does not allege any of the essential elements of the offense. Under Section 5[44] of Rule 112 of the

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[41] *Id*. at 719-720.

[42] 582 Phil. 275 (2008).

[43] *Id*. at 290.

[44] Sec. 5. *When warrant of arrest may issue*. – (a) *By the Regional Trial Court*. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence

Revised Rules of Criminal Procedure, the Regional Trial Court judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. As held in *People v. Sandiganbayan,*[45] "[t]he absence of probable cause for the issuance of a warrant of arrest is not a ground for the quashal of the Information but is a ground for the dismissal of the case."

Here, the present Information against petitioner does **not** allege any of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs. In short, the Information does not charge the offense of illegal sale or illegal trade of drugs. Ineluctably, the present Information against petitioner is patently **void** to charge petitioner of illegal sale or illegal trade of dangerous drugs. The trial court's only recourse is to dismiss the Information with respect to the charge of trade of dangerous drugs.

In *People v. Pangilinan*,[46] **Justice Peralta recognized that an information that fails to allege the essential elements of the offense is void**. In *People v. Pangilinan,* Justice Peralta quoted from this Court's ruling in *People v. Dela Cruz:*[47]

> The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter [Jeannie Ann] either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are conclusions of law, not facts. **The information in Criminal Case No. 15368-R is therefore**

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on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

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[45] 482 Phil. 613, 630 (2004).

[46] 676 Phil. 16 (2011).

[47] 432 Phil. 988 (2002).

void for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.[48] (Emphasis supplied)

Thus, Justice Peralta unequivocally acknowledges that the failure to allege in the Information the essential elements of the offense, a failure that violates the constitutional right of the accused to be informed of the nature and cause of the accusation against him, renders the Information **void**. After quoting from *People v. Dela Cruz*, Justice Peralta stated further in *People v. Pangilinan*:

> The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.[49]

The *ponencia* insists that the crime of **illegal sale** of drugs under Section 5 of R.A. No. 9165 is **separate and distinct** from the crime of **illegal trade** of drugs in Section 3(jj) of R.A. No. 9165.[50] The *ponencia* asserts that the Information charges petitioner for illegal trade of drugs under Section 3(jj), not under Section 5. This is gross error.

The title of Section 5 expressly states "**Sale, Trading x x x of Dangerous Drugs**." The text itself of Section 5 penalizes the unauthorized "**sale, trade**" of drugs. **Indeed, the sale of drugs means the trade of drugs**. Section 3(jj) defines "**[t]rading**" of drugs to refer to "[t]ransactions involving the illegal trafficking of dangerous drugs x x x **using electronic devices."** Thus, Section 3(jj) describes illegal "trading" of drugs as the illegal sale, illegal trade or illegal trafficking of drugs "**using electronic devices**." In illegal trade of drugs, there is an illegal sale of drugs but this illegal act is committed "**using electronic devices**."

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[48] *Id*. at 28. Citations omitted.

[49] *Supra* note 46 at 28. Citations omitted.

[50] *Ponencia*, pp. 27-30.

Significantly, Section 3(r) defines "**Illegal Trafficking**" as "[t]he illegal cultivation, culture, delivery, administration, dispensation, manufacture, **sale, trading,** transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical." **Thus, illegal trafficking of dangerous drugs means the illegal sale or illegal trading of dangerous drugs**. Section 3(jj) defines "**trading**" of dangerous drugs as the "**illegal trafficking**" of dangerous drugs. Thus, the "**trading**" of dangerous drugs means "illegal trafficking," which under Section 3(r) means the "**sale, trading**" of dangerous drugs. **Section 5 punishes the illegal sale or illegal trade of dangerous drugs. In short, the illegal sale, illegal trade, and illegal trafficking of dangerous drugs refer to the same crime that is punished under Section 5 of R.A. No. 9165.**

R.A. No. 9165 does not provide a separate or higher penalty when the illegal sale or illegal trade of drugs is committed with the use of electronic devices. With or without the use of electronic devices, the crime committed is illegal sale or illegal trade of drugs **if all the essential elements of illegal sale or illegal trade of drugs in Section 5 are present**. The circumstance of 'use of electronic devices' is not an essential element of illegal sale or illegal trade of drugs in Section 5. Certainly, the crime of illegal trade of drugs can be committed even without the use of electronic devices. **To trade in illegal drugs is to sell or to traffic in illegal drugs**. The use of electronic devices does not create a separate crime or even qualify the crime of illegal sale of drugs. The penalty for illegal sale or illegal trade of drugs is the same. The circumstance of "use of electronic device" does not increase the penalty or create a separate penalty.

The Information in Criminal Case No. 17-165 accused petitioner, together with Rafael Marcos Z. Ragos and Ronnie Palisoc Dayan, "for violation of Section 5, in relation to Sections 3(jj), 26(b), and 28 of R.A. No. 9165." The crime of illegal sale or illegal trade of dangerous drugs is governed by Section 5, and not Section 3(jj) which merely defines the term "trading" to

include the illegal sale of drugs with the use of electronic devices. Section 5 reads:

Section 5. **Sale, Trading,** Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the **sale, trading**, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section. (Emphasis supplied)

Contrary to the position of the *ponencia*, the crimes of "illegal sale" and "illegal trade" of drugs are both violations of Section 5, except that "illegal trade" involves the use of electronic devices in the sale of drugs. Thus, "trading" is defined in Section 3(jj) as "[t]ransactions involving the illegal trafficking of dangerous drugs x x x **using electronic devices** such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act."

Section 3(jj) falls under Section 3 on "Definitions." Section 3 is not the operative provision that prescribes the essential elements of the crime and its penalty. Section 3(jj) does not penalize "illegal trade" of drugs; it is Section 5 that penalizes "illegal trade" of drugs. Section 3(jj) has the same status as the other terms defined in Section 3 — they are mere definitions and do not prescribe the essential elements of an act that constitutes a crime to which a penalty is attached by law for the commission of such act. No person can be charged and convicted for violating a term defined in Section 3 separate and distinct from the provision of law prescribing the essential elements of the offense and penalizing such offense.

Clearly, the essential elements of "illegal sale" of drugs are the same as the essential elements of "illegal trade" and "illegal trafficking" of drugs, with the additional circumstance of use of electronic devices to facilitate the sale of drugs in case of "illegal trade" or "illegal trafficking." However, this additional circumstance of "use of electronic devices" is not an essential element of the crime that is punished under Section 5. After all, "to trade" or "to traffic" in drugs means to sell drugs. **Thus, the Information charging the accused of "illegal trade" must**

allege all the essential elements of the offense of "illegal sale," and if the prosecution wants to be more specific, the Information can also allege the circumstance that there was "use of electronic devices" to facilitate the illegal sale. The absence of an allegation of "use of electronic devices" will not take the offense out of Section 5.

The circumstance of "use of electronic devices" is not an essential element of the crime under Section 5. **There is also no provision whatsoever in R.A. No. 9165 that makes this circumstance a separate crime or qualifies the crime of illegal sale under Section 5**. *Nullum crimen sine lege*. No crime without a law.[51] To repeat, there is no provision in R.A. No. 9165 defining and penalizing the circumstance of "use of electronic devices" in the sale or trade of dangerous drugs as a separate and distinct offense from Section 5. **To charge petitioner, as the *ponencia* does, under Section 3(jj) for "illegal trade," *separate and distinct from the offense under Section 5*, is to charge petitioner with a non-existent crime**. Section 3(jj) merely defines the "trading" of dangerous drugs. To repeat, no person can be charged and convicted for violating a definition in the law separate and distinct from the provision of law prescribing the essential elements of the crime and its penalty.

The *ponencia* mistakenly invokes *People v. Benipayo*.[52] In the 2009 *People v. Benipayo* case, this Court concluded that the RTC had exclusive original jurisdiction to try a written defamation complaint against an impeachable officer to the exclusion of the Ombudsman and the Sandiganbayan. At that time, R.A. No. 8249 was then the most recent law that amended Presidential Decree (P.D.) No. 1606. On 16 April 2015, P.D. No. 1606 was further amended by R.A. No. 10660, which is now the latest amendment to P.D. No. 1606. R.A. No. 10660 has the same enumeration of public officers as R.A. No. 8249.

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[51] *Causing v. COMELEC*, 742 Phil. 539 (2014); *Rimando v. Commission on Elections*, 616 Phil. 562 (2009); *Evangelista v. People*, 392 Phil. 449 (2000).

[52] 604 Phil. 317 (2009).

R.A. No. 10660 took out of the jurisdiction of the RTC cases involving public officials with salary grade 27 or higher where there is allegation of damage to the government or bribery in an amount exceeding ₱1,000,000, and these cases now fall under the exclusive original jurisdiction of the Sandiganbayan. This amendment in R.A. No. 10660 now applies to the case of petitioner, taking her case out of the jurisdiction of the RTC since in the present Information there is an allegation of bribery exceeding ₱1,000,000 and petitioner had salary grade 31 as then Secretary of Justice.

In the present case, the *ponencia* attempts to replicate the logic of *People v. Benipayo* to conform with its strained conclusion that the RTC has exclusive original jurisdiction to try Senator De Lima. However, it is clear as day that *People v. Benipayo* does not apply to the present case because R.A. No. 10660, enacted **after** *People v. Benipayo* was decided, has already taken the present case out of the jurisdiction of the RTC.

In *People v. Benipayo,* this Court declared that it is "unnecessary and futile" to determine whether a crime is committed in relation to office when —

> x x x. The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to (public) office, similar to the expansion of the jurisdiction of the MTCs, did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.[53]

However, *People v. Benipayo* has clearly been superseded by R.A. No. 10660 which takes out of the exclusive original jurisdiction of the RTC cases involving public officials with Salary Grade 27 or higher where there is an allegation of damage to the government or bribery in an amount exceeding

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[53] *Id*. at 331-332.

₱1,000,000. In the present Information against petitioner, there is an allegation of bribery exceeding ₱1,000,000 and petitioner then had Salary Grade 31. This clearly takes the case out of the exclusive original jurisdiction of the RTC.

The Sandiganbayan has jurisdiction over bribery, the crime actually alleged in the Information.

In insisting on the jurisdiction of the RTC, the *ponencia* sets aside R.A. No. 10660 **as if this law does not exist at all**. R.A. No. 10660 was approved on 16 April 2015, a date later than the approval of R.A. No. 9165. Section 2 of R.A. No. 10660 further amended Section 4 of P.D. No. 1606 to read as follows:

SEC. 4. Jurisdiction. – **The Sandiganbayan shall exercise exclusive original jurisdiction in *all cases* involving**:

"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

"(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads:

"(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

"(c) Officials of the diplomatic service occupying the position of consul and higher;

"(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

"(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

"(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

"(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

"(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

"(3) Members of the judiciary without prejudice to the provisions of the Constitution;

"(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

"(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

"b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

"c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

"Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

"In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Sampan Lg. 129, as amended.

"The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

"The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

"The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

"Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal

action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned." (Emphasis supplied)

Section 4 of P.D. No. 1606, as amended by R.A. No. 10660, explicitly states that the **Sandiganbayan** "**shall exercise exclusive original jurisdiction in *all cases***" involving:

(1) Violations of R.A. No. 3019,[54] as amended, R.A. No. 1379,[55] and Chapter II, Section 2 (Bribery), Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials of the executive branch with **Salary Grade 27 or higher**, and other officials specifically enumerated under Section 4a(1)(a) to (g) and (2) to (5);

(2) Other offenses or felonies, whether simple or complexed with other crimes, **committed in relation to their office** by the public officials and employees mentioned in subsection "a"; and

(3) Civil and criminal offenses filed pursuant to and in connection with Executive Order Nos. 1,[56] 2,[57] 14[58] and 14-A,[59] issued in 1986.

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[54] Anti-Graft and Corrupt Practices Act.

[55] An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

[56] Creating the Presidential Commission on Good Government.

[57] Regarding the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees.

When R.A. No. 10660, the latest amendment to Section 4 of P.D. No. 1606, mandated that the Sandiganbayan "**shall exercise exclusive original jurisdiction in *all cases***" involving the offenses specified in the amended Section 4, it meant **all cases without exception unless specifically excepted in the same or subsequent law. When the law says "all cases," it means there is no exception. R.A. No. 10660 wiped out all previous exceptions in all laws prior to R.A. No. 10660, and the only exceptions now are those found in Section 4 as amended by R.A. No. 10660.**

Black's Law Dictionary[60] defines "all" in this manner:

> All. Means **the whole of** – used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. **The whole number or sum of** – used collectively, with a plural noun or pronoun expressing an aggregate. **Every member of individual component of**; **each one of** – used with a plural noun. In this sense, all is used generically and distributively. "All" refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves.

Clearly, when the law says "all cases," the law means the whole number of cases, every one and each one of the cases. There is no exception, unless the same or subsequent law expressly grants an exception.

In the same Section 4 of P.D. No. 1606, as amended by R.A. No. 10660, the law states the exceptions granting the **Regional Trial Court exclusive original jurisdiction** where the information:

> (1) does not allege any damage to the government or any bribery; or

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[58] Vesting in the Sandiganbayan original and exclusive jurisdiction over all criminal and civil suits filed by the Presidential Commission on Good Government.

[59] Amending Executive Order No. 14.

[60] Fifth edition, 1979, page 68.

(2) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding ₱1,000,000.

In cases where none of the accused is occupying positions with Salary Grade 27 or higher, or military or PNP officers mentioned in Section 4a(1)(d) and (e), the **exclusive original jurisdiction is vested in the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, as the case may be**.

Thus, the Sandiganbayan has **exclusive original jurisdiction** in "**all cases**" **of bribery where the accused is a public official with a Salary Grade 27 or higher and the amount involved exceeds ₱1,000,000**. Furthermore, the Sandiganbayan also exercises **exclusive original jurisdiction** in "**all cases**" involving **other offenses or felonies committed in relation to their office** by the officials and employees enumerated under Section 4a, a situation applicable to petitioner Senator De Lima.

At the time that the alleged crime was committed, Senator De Lima was Secretary of Justice with Salary Grade 31.[61] Her alleged acts of demanding, soliciting, and extorting money from high profile inmates in the New Bilibid Prison were committed in relation to her office, as the Information expressly alleges that she used her "**power, position and authority**" in committing the offense. The unnamed high profile inmates are detained in the New Bilibid Prison. The New Bilibid Prison is a facility under the administration of the Bureau of Corrections.[62] The Bureau of Corrections, in turn, is a line bureau and a constituent unit of the Department of Justice.[63] The amounts in the

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[61] http://www.dbm.gov.ph/wp-content/uploads/2012/03/Manual-on-PCC-Chapter-5.pdf (accessed 10 July 2017).

[62] http://www.bucor.gov.ph/facilities/nbp.html (accessed 10 July 2017).

[63] See also Section 4, Chapter 1, Title III, Book IV of Executive Order No. 292.

Section 8, Republic Act No. 10575, The Bureau of Corrections Act of 2013 reads:

Information exceed ₱10,000,000 (ten million pesos), because aside from the ₱5,000,000 given twice, Senator De Lima also allegedly received ₱100,000 (one hundred thousand pesos) weekly from the unnamed inmates.

As previously discussed, the Information does not allege any of the essential elements of the crime of illegal sale or illegal trade of drugs. Instead, what is apparent is that the crime alleged in the Information is **direct bribery**. Article 210 of the Revised Penal Code defines direct bribery as:

> Art. 210. *Direct Bribery*. – Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of [not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.
>
> If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of not less than twice the value of such gift.
>
> If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.

Supervision of the Bureau of Corrections. – The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38(2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

The elements of direct bribery are:

1. The offender is a public officer;
2. The offender accepts an offer or a promise or receives a gift or present by himself or through another;
3. Such offer or promise is accepted, or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an unjust act which does not constitute a crime, or to refrain from doing something which is his official duty to do; and
4. The act which the offender agrees to perform or which he executes is connected to the performance of his official duties.[64]

The Information stated that: (1) The accused petitioner was the DOJ Secretary and the Officer-in-Charge of the Bureau of Corrections at the time of the alleged crime; (2) Petitioner demanded, solicited and extorted money from the high profile inmates; (3) Petitioner took advantage of her public office and used her power, position and authority to solicit money from the high profile inmates; (4) Petitioner received more than ₱10,000,000 (ten million pesos) from the high profile inmates; (5) "By reason of which" – referring to the payment of extortion money, the unnamed inmates were able to unlawfully trade in drugs. Thus, based on the allegations in the Information, the crime allegedly committed is direct bribery and not illegal sale or illegal trade of drugs.

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[64] *Tad-y v. People*, 504 Phil. 51 (2005); *Magno v. COMELEC*, 439 Phil. 339 (2002).

Clearly, based on the allegations in the Information, jurisdiction lies with the Sandiganbayan and not with the RTC since petitioner allegedly used the "power, position and authority" of her office as then Secretary of Justice. Even if the Information designated the offense charged against petitioner as "*Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165 (Illegal Drug Trading)*," such caption in the Information is not controlling since it is the description of the crime charged and the particular facts alleged in the body of the Information that determine the character of the crime.[65] As explained by this Court in *People v. Dimaano*:[66]

> x x x. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the [offense] charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.[67]

The *ponencia* further insists that as a **co-principal and co-conspirator**, petitioner is liable for the acts of her co-principals and co-conspirators even if the Information does not allege that petitioner actually participated in the illegal trafficking of dangerous drugs but simply alleges that petitioner allowed the NBP inmates to do so.[68] The Information does not identify the actual "illegal traffickers" of drugs who are supposedly unnamed high profile inmates in the New Bilibid Prison. The Information does not also identify the buyers of the dangerous drugs, or the kind and quantity of the dangerous drugs illegally sold or traded. There is further no allegation on the delivery of the

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[65] *People v. Amistoso*, 701 Phil. 345 (2013).

[66] 506 Phil. 630 (2005).

[67] *Id*. at 649.

[68] *Ponencia*, pp. 26-27.

illegal drugs or payment for the illegal sale or trade of the drugs. How can petitioner be made liable as co-principal and co-conspirator when there is no allegation whatsoever that she committed an act constituting part of the illegal sale or trade of drugs and not one of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs is alleged in the Information for "violation of Section 5, in relation to Sections 3(jj), 26(b), and 28 of R.A. No. 9165?"

Certainly, an allegation of conspiracy in the Information does not do away with the constitutional requirement that the accused must be "informed of the nature and cause of the accusation" against her. The fundamental requirement that the Information must allege each and every essential element of the offense charged applies whether or not there is a charge of conspiracy. *National Housing Corporation v. Juco*[69] defined "every" as follows:

> "Every" means each one of a group, *without exception.* It means all possible and all, taken one by one. (Italicization in the original.

In the present case, petitioner cannot be held liable for conspiracy in the illegal sale or illegal trade of dangerous drugs where none of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs is alleged in the Information. Besides, the Information does not even allege that petitioner **actually participated in the commission of acts constituting illegal sale or illegal trade of dangerous drugs** to make her liable as a co-principal and co-conspirator.

Petitioner's alleged co-conspirators and co-principals who actually conducted and performed the illegal sale or illegal trade of dangerous drugs are not even charged as John Does or Jane Does in the Information. Without the inclusion in the Information of the co-principals and co-conspirators who allegedly actually conducted and performed the illegal sale or illegal trade of dangerous drugs, petitioner cannot be charged with conspiracy.

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[69] No. 64313, 17 January 1985, 134 SCRA 172, 182.

In conspiracy to illegally sell or illegally trade dangerous drugs, the identity of the actual sellers or traders must not only be alleged in the Information, but such actual sellers or traders must also be charged in the Information, either by name or as John Does or Jane Does. Without an actual seller or trader of the dangerous drugs identified in the Information, the petitioner cannot properly prepare for her defense. Without an actual seller or trader of the dangerous drugs charged in the Information, the illegal sale or illegal trade of dangerous drugs cannot be proven. **It is self-evident that in any sale or trade of goods or services, there must be an actual seller and actual buyer**. There is no illegal sale or illegal trade of dangerous drugs if there is no actual seller and actual buyer of the dangerous drugs.

The Ombudsman has primary jurisdiction over complaints for crimes cognizable by the Sandiganbayan.

Finally, the acts of the DOJ Panel violated the Memorandum of Agreement between the Department of Justice and the Office of the Ombudsman.

On 29 March 2012, the Office of the Ombudsman and the Department of Justice signed a Memorandum of Agreement[70] (MOA) which stated that t**he Ombudsman has "primary jurisdiction in the conduct of preliminary investigation and inquest proceedings over complaints for crimes cognizable by the Sandiganbayan**." The MOA also provided a list of cases which fall under the exclusive original jurisdiction of the Sandiganbayan.[71] If a complaint involving one of the enumerated cases is filed before the DOJ, the DOJ shall advise the complainant to file it directly with the Ombudsman.

Based on the MOA, the DOJ should have turned over to the Ombudsman the preliminary investigation of petitioner on four grounds. *First*, there is an allegation of bribery against the public

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[70] http://www.ombudsman.gov.ph/docs/references/OMB-DOJ_MOA.pdf (accessed 10 July 2017).

[71] Annex A of the MOA provides as follows:

officer, which is alleged in the Information against petitioner. *Second*, the offense charged was allegedly committed in relation

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"**Sec. 4 of RA 8249 provides that the Sandiganbayan shall have original exclusive jurisdiction over**:

I.) **Violations of RA 3019** (Anti-graft and Corrupt Practices Law);

II.) RA 1379 (Forfeiture of Illegally Acquired Wealth);

III.) Crimes by public officers or employees embraced in Ch. II, Sec. 2, Title VII, Bk. II of the RPC (Crimes committed by Public Officers) namely:

a) **Direct Bribery** under Art. 210 as amended by BP 871, May 29, 1985;

b) Indirect Bribery under Art. 211 as amended by BP 871, May 29, 1985;

c) Qualified Bribery under Art. 211-A as amended by RA 7659, December 13, 1993;

d) **Corruption of public officials** under Art. 212 where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758) specifically including:

i. Provincial governors, vice-governors, members of the sangguniang panlalawigan, provincial treasurers, assessors, engineers and other provincial department heads;

ii. City mayors, vice-mayors, members of the sangguniang panglungsod, city treasurers, assessors, engineers and other department heads;

iii. Officials of the diplomatic service occupying the position of consul and higher;

iv. Philippine Army and Air force colonels, naval captains and all officers of higher rank;

v. Officers of the PNP while occupying the position of Provincial Director and those holding the rank of Senior Superintendent or higher;

vi. City and provincial prosecutors and their assistants, officials and the prosecutors in the Office of the Ombudsman and special prosecutor;

vii. President, directors or trustees or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

to the public officer's public office, which is alleged in the Information against petitioner. *Third,* the public officer has Salary Grade 27 or higher, which is the situation of petitioner. *Fourth*,

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2) Members of Congress and Officials thereof classified as Grade 27 and up under Compensation and Classification Act of 1989;
3) Members of the Judiciary without prejudice to the provisions of the Constitution;
4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution;
5) **All other national and local officials classified as Grade 27 and higher under the Compensation and Position Classification Act of 1989**.

IV.) **Other offenses or felonies whether simple or complexed with other crimes committed in relation to their office by the public officials and employees mentioned above**;

V.) Civil and Criminal Cases filed pursuant to and in connection with EO 1, 2, 14 & 14-A issued in 1986;

VI.) Petitions for issuance of Writ of *mandamus*, prohibition, *certiorari*, *habeas corpus*, injunction and other ancillary writs and processes in aid of its appellate jurisdiction; Provided, jurisdiction is not exclusive of the Supreme Court;

VII.) Petitions for *Quo Warranto* arising or that may arise in cases filed or that may be filed under EO 1, 2, 14 & 14-A;

VIII.) OTHERS provided the accused belongs to SG 27 or higher:
a) Violation of RA 6713 – Code of Conduct and Ethical Standards
b) Violation of RA 7080 – THE PLUNDER LAW
c) Violation of RA 7659 – The Heinous Crime Law
d) RA 9160 – Violation of The Anti-Money Laundering Law when committed by a public officer.
e) PD 46 referred to as the gift-giving decree which makes it punishable for any official or employee to receive directly or indirectly and for the private person to give or offer to give any gift, present or other valuable thing on any occasion including Christmas, when such gift, present or valuable thing is given by reason of his official position, regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition is the throwing of parties or entertainment in honor of the official or employee or his immediate relatives.

there is an allegation of corruption by a public officer, which is alleged in the Information as committed by unnamed high profile inmates.

In any of the first three circumstances, the MOA expressly states that exclusive original jurisdiction belongs to the Sandiganbayan. In the fourth circumstance, exclusive original jurisdiction belongs to the Sandiganbayan if the public officer has Salary Grade 27 or higher, which is the situation of petitioner. Thus, any one of these four circumstances is a ground for the turn over of petitioner's preliminary investigation to the Ombudsman. The DOJ obviously failed to comply with its obligation under the MOA. In short, the DOJ under the terms of the MOA had no authority to conduct the preliminary investigation in Criminal Case No. 17-165 against petitioner.

Procedural Matters

The prosecution's dilemmas:
incurable defects in the Information,
effective denial of the Motion To Quash,
duplicity of offenses in the Information.

Pages 41 to 44 of the *ponencia* instruct the DOJ prosecutors how to correct the patent defects in the Information filed against petitioner should this Court order its quashal. The *ponencia* cites Rule 117, Sections 4 and 5 of the Revised Rules of Criminal Procedure to justify petitioner's continued detention.

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f) PD 749 which grants immunity from prosecution to any person who voluntarily gives information about any violation of Art. 210, 211 or 212 of the RPC, RA 3019, Sec. 345 of the NIRC, Sec. 3604 of the Customs and Tariff Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned and other laws, rules and regulations penalizing graft, corruption and other forms of official abuse and who willingly testifies against the public official or employee subject to certain conditions." (Emphasis supplied)

Section 4. *Amendment of complaint or information.* – If the motion to quash is based on an alleged defect of the complaint or information which **can be cured by amendment**, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Section 5. *Effect of sustaining the motion to quash*. – If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (Emphasis supplied)

The *ponencia* also cites *Dio v. People*[72] and emphasizes its statement that "failure to provide the prosecution with the opportunity to amend is an arbitrary exercise of power." The *ponencia* further states that "in the case at bar where petitioner has not yet been arraigned, the court a quo has the power to order the amendment of the February 17, 2017 Information filed against petitioner."

The *ponencia's* statements tend to mislead. The *ponencia* overlooked procedural errors in its suggestions. The defects in the Information cannot be cured by mere amendment.

An Information cannot be amended to vest jurisdiction upon a court.

The trial court can only order the prosecution to amend the Information as provided under Section 4 of Rule 117 if the trial court finds that there is a defect in the Information which **"can be cured by amendment**."[73] An amendment of the

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[72] G.R. No. 208146, 8 June 2016, 792 SCRA 646.

[73] Section 4, Rule 117; *Gonzales v. Judge Salvador*, 539 Phil. 25 (2006).

Information to vest jurisdiction upon a court is not allowed.[74] As held in *Gonzales v. Judge Salvador*:[75]

> Not all defects in an information can be cured by amendment, however. In *Agustin v. Pamintuan*, this Court held that the absence of any allegation in the information that the therein offended party was actually residing in Baguio City at the time of the commission of the alleged offense or that the alleged libelous articles were printed and first published in Baguio City is a substantial defect, which cannot be amended after the accused enters his plea. **Amendment of the information to vest jurisdiction upon a court is not permissible**.[76] (Emphasis supplied)

Thus, assuming that the RTC has exclusive original jurisdiction over all cases involving violations of R.A. No. 9165, the trial court cannot order the prosecution to amend the Information from one which charges direct bribery in an amount exceeding ₱1,000,000 and is cognizable by the Sandiganbayan to one which charges illegal trade of dangerous drugs in order to vest jurisdiction in the RTC, even assuming that the RTC has such jurisdiction which it does not have over petitioner, considering her salary grade and the allegation that she used her public office.

The Information as regards the charge of illegal trade of dangerous drugs is void ab initio.

Dio v. People allowed the correction of the defect in the Information of failure to allege venue. In the present case, however, the defect lies in the failure to allege even at least one of the elements of the crime. There was no allegation of any element of the crime of illegal trade of dangerous drugs. There was no specified seller, no specified buyer, no specified kind of dangerous drug, no specified quantity of dangerous drugs, no specified consideration, no specified delivery, and

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[74] *Agustin v. Hon. Pamintuan*, 505 Phil. 103 (2005).

[75] 539 Phil. 25 (2006).

[76] *Id.* at 36.

no specified payment. All that the Information alleged was the use of cellular phones, which is not even an essential element of the crime of illegal trade of dangerous drugs. If, as in the present case, the Information failed to mention even one element of the alleged crime, then the defect is so patent that it cannot ever be cured. There is complete and utter absence of the essential elements of the crime. Section 4 of Rule 117 allows an amendment of the Information if the defect "**can be cured by amendment**." A defective Information can be cured if it alleges some, but not all, of the essential elements of the offense. However, if the Information does not allege any of the essential elements at all, the Information is void *ab initio* and is not merely defective. As held in *Leviste v. Hon. Alameda*:[77]

> It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. **An information which is void *ab initio* cannot be amended to obviate a ground for quashal.** An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[78] (Emphasis supplied)

An amendment that cures a defective Information is one that supplies a missing element to complete the other essential elements already alleged in the Information. But when none of the other elements is alleged in the Information, there is nothing to complete because not a single essential element is alleged in the Information.

The Information already charges direct bribery.

The Court is also precluded from ordering an amendment of the present Information under Section 4 of Rule 117. The amendment under this section applies only when the defect in the Information can be cured by amendment, such as when the facts charged do not constitute any offense at all. **In the present case, the Information already charges an offense, which is direct bribery**. Thus, even if the prosecution specifies the seller,

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[77] 640 Phil. 620 (2010).

[78] *Id*. at 640.

the buyer, the kind of dangerous drugs, the quantity of dangerous drugs, the consideration, the delivery, and the payment, the Information charging illegal trade of drugs would still be void. The Information would be void for **duplicity of offense**, because it would then charge petitioner with two crimes: direct bribery and illegal trade of drugs. Duplicity of offense is prohibited under Rule 110, Section 13 of the Revised Rules of Criminal Procedure, which states that "[a] **complaint or information must charge only one offense**, except when the law prescribes a single punishment for various offenses." There is nothing in our laws which states that there should be a single punishment for the two offenses of direct bribery and illegal trade of drugs.

No prematurity since this petition is for certiorari under Rule 65

The *ponencia* claims that the present petition is **premature** under under Section 5(2), Article VIII of the Constitution which empowers this Court to "review x x x on appeal or certiorari x x x final judgments or orders of lower courts x x x in [a]ll cases in which the jurisdiction of any lower court is in issue." The *ponencia* has fallen into grievous error.

Section 5(2), Article VIII of the Constitution refers to ordinary appeals, or to petitions for review under Rule 45 of the Rules of Court. The present petition for certiorari is an **original action under Rule 65**, and is expressly allowed under Section (1), Article VII of the Constitution, which provides:

> Sec. 5. The Supreme Court shall have the following powers:
>
> (1) **Exercise original jurisdiction x x x over petitions for certiorari x x x**. (Emphasis supplied)

A petition for certiorari under this Section as provided in Rule 65 is an **original action** that waits for no final judgment or order of a lower court because what is assailed is the lower court's absence of jurisdiction over the subject matter or its grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner is assailing an error of jurisdiction, not an error of judgment or order. Absence, lack or excess of

jurisdiction is the very basis for a petition for certiorari under Rule 65.

What the *ponencia* wants is for petitioner, who is being held for a non-bailable offense, to wait for the final judgment or order of the trial court on the merits of the case before resorting to this Court on the fundamental and purely legal issue of jurisdiction. That obviously would not be a plain, speedy and adequate remedy as petitioner would be detained during the entire duration of the trial of the case. *Certiorari* under Rule 65 is properly available when "there is no appeal, nor plain, speedy and adequate remedy in the ordinary course of law."[79] There can be no appeal because there is still no final judgment or order of the RTC. Unless there is resort to certiorari under Rule 65, petitioner will continue to be deprived of her liberty for the duration of the trial. The situation of petitioner in this case is precisely why the certiorari under Rule 65 was created.

In fact, Section 1 of Rule 41 expressly provides that the "aggrieved party may file an appropriate special civil action as provided in Rule 65" to assail "[a]n interlocutory order"[80] of a regional trial court. The Warrant of Arrest issued by respondent Judge Guerrero, like a search warrant, is an interlocutory order since it does not dispose of a case completely but leaves something more to be done in the criminal case, that is, the determination of the guilt or innocence of the accused.[81] There can be no prematurity when petitioner assails in the present petition for certiorari under Rule 65 that the Warrant of Arrest issued against her was a grave abuse of discretion on the part of Judge Guerrero.

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[79] Section 1, Rule 65, Rules of Court.

[80] Rule 41, Section 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. **No appeal may be taken from**: (a) x x x; (b) **An interlocutory order**; x x x. **In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65**. (Emphasis supplied)

[81] *Marcelo v. De Guzman*, 200 Phil. 137 (1982). *See* also *People v. Tan*, 623 Phil. 1 (2009).

Issuance of Warrant of Arrest effectively denied the Motion To Quash

The *ponencia* also insists that petitioner should have waited for Judge Guerrero's resolution on her Motion To Quash before proceeding to this Court. This is error. There is no longer any need to wait for the trial court's resolution on the Motion To Quash because the trial court had issued a Warrant of Arrest against petitioner **after** petitioner filed her Motion To Quash. We stated in *Mead v. Argel*:[82]

> x x x. In *Pineda vs. Bartolome*, the ground invoked was duplicity of offenses charged in the information. In the case at bar, the petitioner assails the very jurisdiction of the court wherein the criminal case was filed. Certainly, there is a more compelling reason that such issue be resolved soonest, in order to avoid the court's spending precious time and energy unnecessarily in trying and deciding the case, and to spare the accused from the inconvenience, anxiety and embarrassment, let alone the expenditure of effort and money, in undergoing trial for a case the proceedings in which could possibly be annulled for want of jurisdiction. Even in civil actions, We have counseled that when the court's jurisdiction is attacked in a motion to dismiss, it is the duty of the court to resolve the same as soon as possible in order to avoid the unwholesome consequences mentioned above.

The Information against petitioner was filed before the RTC of Muntinlupa City on 17 February 2017. Petitioner filed a Motion To Quash on 20 February 2017. Judge Guerrero found probable cause and issued Warrants of Arrest against petitioner and her co-accused on 23 February 2017.

Section 5(a) of Rule 112 of The Revised Rules of Criminal Procedure reads:

> Sec. 5. *When warrant of arrest may issue*. – (a) *By the Regional Trial Court*. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant

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[82] 200 Phil. 650, 658 (1982).

of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

x x x x x x x x x

Maza v. Turla[83] emphasized these options when it said:

A plain reading of the provision shows that upon filing of the information, the trial court judge has the following options: (1) dismiss the case if the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.

By issuing the Warrant of Arrest, Judge Guerrero found probable cause that petitioner most likely committed the offense of illegal trade of dangerous drugs. This means that Judge Guerrero believed that the Information alleged all the essential elements of the offense charged, her court had jurisdiction over the offense charged, the DOJ Panel had authority to file the Information, and the Information does not charge more than one offense. **In effect, Judge Guerrero already ruled on the merits of petitioner's Motion To Quash**.

Thus, Judge Guerrero's issuance of the Warrant of Arrest is an effective denial of petitioner's Motion To Quash. Issuance of the Warrant of Arrest means that the trial court judge accepted the contents of the Information as well as the evidence supporting it, and found probable cause. However, it is a legal impossibility for the judge to find probable cause when the Information does not allege any of the essential elements of the offense charged. It is an oxymoron to say that the Information does not allege any of the essential elements of the offense charged and yet there is probable cause that the accused committed the offense charged, justifying the issuance of the Warrant of Arrest.

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[83] G.R. No. 187094, 15 February 2017, citing *Ong v. Genio*, 623 Phil. 835, 843 (2009).

Clearly, there was an effective denial of petitioner's Motion To Quash when Judge Guerrero issued the Warrant of Arrest. The rule is that any order of an amendment of a defective Information must be contained in the same order as the denial of the Motion To Quash.[84] Thus, there is no longer any room for the amendment of the Information at Judge Guerrero's level since she already effectively denied the Motion To Quash.

Moreover, the effective denial of petitioner's Motion To Quash through the issuance of the Warrant of Arrest is a proper subject matter of a petition for certiorari under Rule 65 in relation to Rule 41. A denial of a Motion To Quash is an interlocutory order.[85] To repeat, **Section 1 of Rule 41 provides that the "aggrieved party may file an appropriate special civil action as provided in Rule 65" to assail "[a]n interlocutory order**"[86] where the judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction. This is exactly what petitioner has done in the present petition.

As Justice Peralta held in *People v. Pangilinan*, an Information that fails to allege the essential elements of the offense is **void**. A judge who finds probable cause, and issues a warrant of arrest, based on such void Information certainly commits grave abuse of discretion amounting to lack or excess of jurisdiction. **For Judge Guerrero to issue the Warrant of Arrest despite the failure of the Information to allege *any of the essential elements of the offense* is an *extreme case* of grave abuse of discretion that must be struck down by this Court in the appropriate case, and that appropriate case is the present petition for certiorari under Rule 65**.

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[84] *Gonzales v. Judge Salvador*, 539 Phil. 25 (2006).

[85] *People v. Macandog*, 117 Phil. 216 (1963); *Perez v. Court of Appeals*, 250 Phil. 244 (1988).

[86] Rule 41, Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. **No appeal may be taken from**: (a) x x x; (b) **An interlocutory order**; x x x**. In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65**. (Emphasis supplied)

No Forum-Shopping

The *ponencia* insists that petitioner violated the rule against forum-shopping when she filed the present case against Judge Guerrero before this Court while her Motion To Quash was still pending before Judge Guerrero. However, as we have previously shown, Judge Guerrero's issuance of a Warrant of Arrest **after** petitioner filed her Motion To Quash is a denial of petitioner's Motion To Quash. **Contrary to the *ponencia's* assertion, there is no longer any Motion To Quash pending before the trial court.**

Moreover, the *ponencia* still cannot declare that the petition filed before the Court of Appeals also violates the rule against forum-shopping. Page 3 of the *ponencia* states that —

> On January 13, 2017, petitioner filed before the Court of Appeals a *Petition for Prohibition and Certiorari* **assailing the jurisdiction of the DOJ Panel** over the complaints against her. The petitions, docketed as CA-G.R. No. 149097 and CA-G.R. No. 149385, are currently pending with the Special 6th Division of the appellate court. (Emphasis supplied)

There is a clear recognition that petitioner filed the case in the Court of Appeals to question the jurisdiction of the DOJ Panel, and not the jurisdiction of Judge Guerrero. There is no identity of parties, neither is there an identity of reliefs. Thus, there is obviously no forum-shopping.

A Final Word

The Information glaringly does not charge the non-bailable offense of illegal trade of drugs since not a single essential element of this particular offense is alleged in the Information. What the Information actually charges is the bailable offense of direct bribery. Yet petitioner is held without bail. Worse, direct bribery falls under the exclusive original jurisdiction of the Sandiganbayan, not the RTC that issued the Warrant of Arrest that keeps petitioner under detention for the non-existent, non-bailable offense of illegal trade of drugs as charged in the present Information.

Based on the Information itself, the accusation of illegal trade of drugs against petitioner is blatantly a **pure invention**. This Court, the last bulwark of democracy and liberty in the land, should never countenance such a **fake charge**. To allow the continued detention of petitioner under this Information is one of the grossest injustices ever perpetrated in recent memory in full view of the Filipino nation and the entire world.

The charge against petitioner under the present Information is like charging petitioner as a co-principal and co-conspirator in the crime of kidnapping for ransom with murder, where the Information alleges that petitioner received part of the ransom money from the perpetrators of the crime who are high profile inmates in the New Bilibid Prison, but the Information does ***not*** allege the identity of the actual kidnappers and killers, the identity of the victim, the fact of death of the victim or the *corpus delicti*, how the victim was killed, and the amount of the ransom money. Obviously, such an Information is void *ab initio* to charge anyone for the offense of kidnapping for ransom with murder. Such an Information, like the present Information under consideration, would be **laughable** if not for the non-bailable detention of the accused.

ACCORDINGLY, I vote to **GRANT** the petition for prohibition and certiorari. The Order dated 23 February 2017, and the Warrants of Arrest against petitioner Senator Leila M. De Lima and the other accused in Criminal Case No. 17-165, issued by respondent Judge Juanita Guerrero of the Regional Trial Court of Muntinlupa City, Branch 204, should be annulled and respondent judge should be enjoined from conducting further proceedings in Criminal Case No. 17-165. The Department of Justice should be directed to refer the direct bribery charge against petitioner Senator Leila M. De Lima and her co-accused to the Ombudsman for appropriate action. The Director-General of the Philippine National Police should be directed to immediately release from detention petitioner Senator Leila M. De Lima and all other accused in Criminal Case No. 17-165.

DISSENTING OPINION

LEONEN, *J.*:

"For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others."[1]

Nelson Mandela
Prisoner of Conscience for 27 years
Long Walk to Freedom

I dissent.

The majority's position may not have been surprising. Yet, it is deeply disturbing. With due respect, it unsettles established doctrine, misapplies unrelated canons, and most importantly, fails to render a good judgment: law deployed with sound reasons taking the full context of the case as presented.

Reading the law and the jurisprudence with care, it is the Sandiganbayan, not the respondent Regional Trial Court, that has jurisdiction over the offense as charged in the Information. The Information alleged acts of petitioner when she was Secretary of the Department of Justice. That the alleged acts were done during her tenure, facilitated by her office, and would not have been possible had it not been for her rank, is also clear in the information. The alleged crime she had committed was in relation to her office.

The legislative grant of jurisdiction to the Sandiganbayan can be no clearer than how it is phrased in Section 4 of Presidential Decree 1606 as amended by Republic Act No. 8249:[2]

Section 4. Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

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[1] NELSON MANDELA, LONG WALK TO FREEDOM 385 (1994).

[2] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes (1997).

. . . . . .

b. Other offenses of felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.[3]

Jurisdiction over crimes committed by a Secretary of Justice in relation to his or her office is explicit, unambiguous and specifically granted to the Sandiganbayan by law.

On the other hand, the majority relies upon ambiguous inferences from provisions which do not categorically grant jurisdiction over crimes committed by public officers in relation to their office. They rely on Section 90 of Republic Act No. 9165,[4] which states:

Section 90. Jurisdiction. – The Supreme Court ***shall designate special courts from among the existing Regional Trial Courts in each judicial region*** to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.[5] (Emphasis supplied)

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[3] Subsection (A) in Section 4 includes "[o]fficials of the executive branch occupying the positions of regional director and higher". This includes the Secretary of Justice. Republic Act No. 8249 by qualifying certain crimes to be referred to the Regional Trial Court also supports the interpretation that Section 4 [B] includes all crimes committed in relation to their office.

[4] Comprehensive Dangerous Drugs Act (2002).

[5] Similarly, Sections 20, 61 and 62 also refers to the Regional Trial Court but are not exclusive grants of jurisdiction only to the Regional Trial Court.

Rep. Act No. 9165, Secs. 20, 61 and 62 provides:

Section 20. Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals. —

. . . . . .

After conviction in the *Regional Trial Court* in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other

There is no express grant of jurisdiction over any case in Republic Act No. 9165. Section 90 only authorizes the Supreme Court to designate among Regional Trial Courts special courts for drug offenses. Section 90 has not authorized the Supreme Court to determine which Regional Trial Court will have jurisdiction because Article VIII, Section 2 of the Constitution assigns that power only to Congress.[6]

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persons if the same shall be found to be manifestly out of proportion to his/her lawful income: Provided, however, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.

SECTION 61. Compulsory Confinement of a Drug Dependent Who Refuses to Apply Under the Voluntary Submission Program. —

. . . . . .

A petition for the confinement of a person alleged to be dependent on dangerous drugs to a Center may be filed by any person authorized by the Board with the *Regional Trial Court* of the province or city where such person is found.

Section 62. Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation. — If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.

In the event the Board determines, after medical examination, that public interest requires that such drug dependent be committed to a center for treatment and rehabilitation, it shall file a petition for his/her commitment with the *regional trial court* of the province or city where he/she is being investigated or tried: Provided, That where a criminal case is pending in court, such petition shall be filed in the said court. The court shall take judicial notice of the prior proceedings in the case and shall proceed to hear the petition. If the court finds him to be a drug dependent, it shall order his/her commitment to a Center for treatment and rehabilitation. The head of said Center shall submit to the court every four (4) months, or as often as the court may require, a written report on the progress of the treatment. If the dependent is rehabilitated, as certified by the Center and the Board, he/she shall be returned to the court, which committed him, for his/her discharge therefrom.

[6] CONST., Art. VIII, Sec. 2 provides:

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

The general grant of jurisdiction for all crimes for Regional Trial Courts is in Batas Pambansa Blg. 129, Section 20, which provides:

> Section 20. Jurisdiction in criminal cases. – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, ***except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter***. (Emphasis supplied)

A responsible reading of this general grant of criminal jurisdiction will readily reveal that the law qualifies and defers to the specific jurisdiction of the Sandiganbayan. Clearly, Regional Trial Courts have jurisdiction over drug-related offenses while the Sandiganbayan shall have jurisdiction over crimes committed by public officers in relation to their office even if these happen to be drug-related offenses.

Respondent Regional Trial Court could not have cured its lack of jurisdiction over the offense by issuing a warrant of arrest. Nor could it also not have been cured by an amendment of the Information. The Regional Trial Court could only have acted on the Motion to Quash and granted it. To cause the issuance of a warrant of arrest was unnecessary and clearly useless. Being unreasonable, it was arbitrary. Such arbitrariness can be addressed by this original Petition for Certiorari and Prohibition.

Even the issuance of the Warrant of Arrest was unconstitutional. Respondent Regional Trial Court Judge Juanita Guerrero did not conduct the required personal examination of the witnesses and other pieces of evidence against the accused to determine probable cause. She only examined the documents presented by the prosecution. Under the current state of our jurisprudence, this is not enough considering the following: (a) the crime charged was not clear, (b) the prosecution relied on convicted prisoners; and (c) the sworn statements of the convicted prisoners did not appear to harmonize with each other.

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

In the context of the facts of this case, the reliance of the respondent judge only on the documents presented by the prosecution falls short of the requirements of Article III, Section 1 of the Constitution,[7] *Soliven v. Makasiar*,[8] *Lim v. Felix,*[9] and *People v. Ho*[10] among others. Having failed to determine probable cause as required by the Constitution, her issuance of the warrant of arrest was likewise arbitrary.

Therefore, the Petition should be granted.

I

The Regional Trial Court does not have jurisdiction over the offense charged.

Jurisdiction in a criminal case is acquired over the subject matter of the offense, which should be committed within the assigned territorial competence of the trial court.[11] Jurisdiction over the person of the accused, on the other hand, is acquired upon the accused's arrest, apprehension, or voluntary submission to the jurisdiction of the court.[12]

Jurisdiction over the offense charged "is and may be conferred *only by law*."[13] It requires an inquiry into the provisions of law under which the offense was committed and an examination

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[7] CONST., Art. III, Sec. 1 provides:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[8] 249 Phil. 394 (1988) [*Per Curiam, En Banc*].

[9] 272 Phil. 122 (1992) [Per *J.* Gutierrez, Jr., *En Banc*].

[10] 345 Phil. 597 (1997) [Per *J.* Panganiban, *En Banc*].

[11] See *Cruz v. Court of Appeals*, 436 Phil. 641, 654 (2002) [Per *J.* Carpio, Third Division] *citing* 4 OSCAR M. HERRERA, *REMEDIAL LAW 3* (1992).

[12] See *Valdepeñas v. People*, 123 Phil. 734 (1966) [Per *J.* Concepcion, *En Banc*].

[13] See *Cruz v. Court of Appeals*, 436 Phil. 641, 654 (2002) [Per *J.* Carpio, Third Division].

of the facts as alleged in the information.[14] An allegation of lack of jurisdiction over the subject matter is primarily a question of law.[15] Lack of jurisdiction may be raised at any stage of the proceedings, even on appeal.[16]

Jurisdiction over a criminal case "is determined by the allegations of the complaint or information,"[17] and not necessarily by the designation of the offense in the information.[18] This Court explained in *United States v. Lim San*:[19]

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the information and proved in the trial is not the crime characterized by the fiscal in the caption of the information. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a

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[14] *Soller v. Sandiganbayan*, 409 Phil. 780, 789 (2001) [Per J. Gonzaga-Reyes, Third Division] *citing* CAMILO QUIAZON, *PHILIPPINE COURTS AND THEIR JURISDICTIONS* 36 (1993).

[15] See *Gala v. Cui*, 25 Phil. 522 (1913) [Per J. Moreland, First Division].

[16] See *United States v. Castañares*, 18 Phil. 210 (1911) [Per J. Carson, *En Banc*].

[17] *Colmenares v. Hon. Villar*, 144 Phil. 139, 142 (1970) [Per J. Reyes, J.B.L., *En Banc*].

[18] See *Santos v. People*, 260 Phil. 519 (1990) [Per J. Cruz, First Division].

[19] 17 Phil. 273 (1910) [Per J. Moreland, First Division].

real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not, "Did you commit a crime named murder?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. If the accused performed the acts alleged in the manner alleged, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.[20]

Petitioner stands charged for violation of Republic Act No. 9165, Article II, Section 5[21] in relation to Article I, Section 3(jj),[22]

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[20] *Id*. at 278-279.

[21] Rep. Act No. 9165, Art. II, Sec. 5 provides:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

[22] Rep. Act No. 9165, Art. I, Sec. 3(jj) provides:

Section 3. Definitions. – As used in this Act, the following terms shall mean:

. . . . . .

jj) Trading. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a

Article II, Section 26 (b),[23] and Article II, Section 28.[24] The Information filed against her read:

INFORMATION

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, [accused] LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

> That within the period of November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority,

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broker in any of such transactions whether for money or any other consideration in violation of this Act.

[23] Rep. Act No. 9165, Art. II, Sec. 26(b) provides:

Section 26. Attempt or Conspiracy. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

. . . . . .

b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

[24] Rep. Act No. 9165, Art. II, Sec. 28 provides:

Section 28. Criminal Liability of Government Officials and Employees. – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

> demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000.000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "tara" each from the high profile inmates in the New Bilibid Prison.
>
> CONTRARY TO LAW.[25]

According to the ponencia and the Office of the Solicitor General, petitioner is charged with the crime of "Conspiracy to Commit Illegal Drug Trading."[26] There is yet no jurisprudence on this crime or a definitive statement of its elements. The ponencia insists that while illegal sale of dangerous drugs defined under Section 3(ii) is a different crime from illegal trading of dangerous drugs defined under Section 3(jj), illegal trading is essentially the same as the crime defined under Section 3(r).[27] For reference, Sections 3(ii), (jj), and (r) read:

> (ii) Sell. – Any act of giving away any **dangerous drug and/or controlled precursor and essential chemical** whether for money or any other consideration.
>
> (jj) Trading. – Transactions involving the illegal trafficking of **dangerous drugs and/or controlled precursors and essential chemicals** using electronic devices such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

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[25] Annex F of the Petition, pp. 1-2.

[26] *Ponencia,* p. 24.

[27] *Id*. at 27-28.

(r) Illegal Trafficking. – The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of **any dangerous drug and/or controlled precursor and essential chemical**. (Emphasis supplied)

A plain reading of the three provisions, however, shows that all three (3) crimes necessarily involve (1) dangerous drugs, (2) controlled precursors, or (3) essential chemicals. These are the *corpus delicti* of the crime. Without the dangerous drug, controlled precursor, or essential crimes, none of the acts stated would be illegal. Thus, in *People v. Viterbo*:[28]

As the dangerous drug itself forms an integral and key part of the corpus delicti of the crime, **it is therefore essential that the identity of the prohibited drug be established beyond reasonable doubt.**[29] (Emphasis in the original)

Similarly, in *People v. Dimaano*:[30]

In cases involving violations of the Comprehensive Dangerous Drugs Act of 2002, the prosecution must prove "the existence of the prohibited drug[.]" "[T]he prosecution must show that the integrity of the corpus delicti has been preserved," because "the evidence involved — the seized chemical — is not readily identifiable by sight or touch and can easily be tampered with or substituted."[31] (Emphasis supplied)

In illegal sale of drugs, it is necessary to identify the buyer and the seller, *as well as the dangerous drug involved*. Illegal

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[28] 739 Phil. 593 (2014) [Per J. Perlas-Bernabe, Second Division].

[29] *Id*. at 601 citing *People v. Adrid*, 705 Phil. 654 (2013) [Per J. Velasco, Jr., Third Division].

[30] G.R. No. 174481, February 10, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/174481.pdf> [Per J. Leonen, Second Division].

[31] *Id*. at 10 citing *People v. Laba*, 702 Phil. 301 (2013) [Per J. Perlas-Bernabe, Second Division]; *People v. Watamama*, 692 Phil. 102, 106 (2012) [Per J. Villarama, Jr., First Division]; and *People v. Guzon*, 719 Phil. 441 (2013) [Per J. Reyes, First Division].

trading, being a different crime, does not only require the identities of the buyer and seller but also requires the identity of the broker: Regardless of the additional element, the fact remains that the essential element in all violations of Republic Act No. 9165 is the dangerous drug itself. The failure to identify the *corpus delicti* in the Information would render it defective.

The ponencia, however, insists that the offense designated in the Information and the facts alleged are that of illegal drug trading and not any other offense, stating:

> Read, as a whole, and not picked apart with each word or phrase construed separately, the Information against De Lima go beyond an indictment for Direct Bribery under Article 210 of the [Revised Penal Code]. As Justice Martires articulately explained, the averments on solicitation of money in the Information, which may be taken as constitutive of bribery, form "part of the description on how illegal drug trading took place in the [National Bilibid Prisons]." The averments on how petitioner asked for and received money from the [Bilibid] inmates simply complete the links of conspiracy between her, Ragos, Dayan, and the [Bilibid] inmates in willfully and unlawfully trading dangerous drugs through the use of mobile phones and other electronic devices under Section 5, in relation to Section 3 (jj), Section 26 (b), and Section 28 of [Republic Act No.] 9165.[32]

The Information alleges crucial facts that do not merely "complete the links of conspiracy." It alleges that petitioner "being then the Secretary of the Department of Justice . . . by taking advantage of [her] public office, conspiring and confederating with accused Ronnie P. Dayan," "all of them having moral ascendancy or influence over inmates in the New Bilibid Prison," "did then and there commit illegal drug trading" "with the use of their power, position and authority," "demand[ed], solicit[ed] and extort[ed] money from the high profile inmates in the New Bilibid Prison Prison to support the Senatorial bid in the May 2016 election."[33] The Information further provides that "proceeds of illegal drug trading amounting

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[32] *Ponencia*, p. 26.

[33] Annex F of the Petition, pp. 1-2.

to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly '*tara*' each from the high profile inmates in the New Bilibid Prison" were given and delivered to petitioner.

Petitioner was the Secretary of Justice where she exercised supervision over the Bureau of Corrections,[34] the institution in charge of New Bilibid Prison. Petitioner is alleged to have raised money for her senatorial bid by ordering the inmates to engage in an illicit drug trade where "those who cooperate will be given protection, but those who refuse will meet an [sic] unwelcome consequences."[35] The relationship between the public office and the probability of the commission of the offense, thus, becomes a critical element in the determination of jurisdiction. The public office held by petitioner at the time of the alleged commission of the offense cannot be overlooked since it is what determines which tribunal should have jurisdiction over the offense, as will be discussed later.

II

Jurisdiction is conferred by law. Article VIII, Section 2, first paragraph of the Constitution reads:

ARTICLE VIII
Judicial Department

. . . . . .

SECTION 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not

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[34] Rep. Act No. 10575, Sec. 8. Supervision of the Bureau of Corrections. – The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38(2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

[35] Annex G of the Petition, p. 40, DOJ Resolution.

deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

Under Batas Pambansa Blg. 129,[36] Regional Trial Courts have exclusive original jurisdiction over all criminal cases, except those under the exclusive concurrent jurisdiction of the Sandiganbayan:

> Sec. 20. Jurisdiction in criminal cases. Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, ***except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter***. (Emphasis supplied)

The Sandiganbayan was created under Presidential Decree No. 1486[37] as a special court with the original and exclusive jurisdiction to hear and decide crimes and offenses committed by public officers. Its creation was intrinsically linked to the principle of public accountability in the 1973 Constitution.[38]

Under its current structure, it is composed of seven (7) divisions, with three (3) justices per division.[39] This composition was designed precisely to hear and decide the cases of public officers, considering that the accused may have immense political clout. Instead of the case being heard by only one (1) magistrate who might succumb to political power, the case is heard in a division of three (3) magistrates acting as a collegial body. In an ideal setting, the Sandiganbayan's structure makes it more difficult for a powerful politician to exert his or her influence over the entire court.

Thus, in order to determine which tribunal must try the criminal offense committed by a public officer, it must first be determined

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[36] The Judicial Reorganization Act of 1980.

[37] Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes (1978).

[38] *See* Pres. Decree No. 1486 (1978), Whereas Clauses.

[39] *See* Rep. Act No. 10660 (2015), Sec. 1.

whether the Sandiganbayan exercises exclusive and concurrent jurisdiction over the offense.

Under the 1973 Constitution, the Sandiganbayan had jurisdiction over cases involving graft and corruption as may be determined by law:

> ARTICLE XIII
> ACCOUNTABILITY OF PUBLIC OFFICERS
>
> . . . . . .
>
> SEC. 5. The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over 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 as may be determined by law.[40]

Originally, its jurisdiction was stated in Presidential Decree No. 1486. Section 4 provided:

> SECTION 4. Jurisdiction. — Except as herein provided, the Sandiganbayan shall have original and exclusive jurisdiction to try and decide:
>
> (a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act and Republic Act No. 1379;
>
> (b) Crimes committed by public officers or employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code;
>
> (c) ***Other crimes or offenses committed by public officers or employees including those employed in government-owned or controlled corporations in relation to their office; Provided, that, in case private individuals are accused as principals, accomplices or accessories in the commission of the crimes hereinabove mentioned, they shall be tried jointly with the public officers or employees concerned***.

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[40] CONST. (1973), Art. XIII, Sec. 5.

Where the accused is charged of an offense in relation to his office and the evidence is insufficient to establish the offense so charged, he may nevertheless be convicted and sentenced for the offense included in that which is charged.

(d) Civil suits brought in connection with the aforementioned crimes for restitution or reparation of damages, recovery of the instruments and effects of the crimes, or forfeiture proceedings provided for under Republic Act No. 1379;

(e) Civil actions brought under Articles 32 and 34 of the Civil Code.

Exception from the foregoing provisions during the period of martial law are criminal cases against officers and members of the Armed Forces of the Philippines, and all others who fall under the exclusive jurisdiction of the military tribunals. (Emphasis supplied)

This provision was subsequently amended in Presidential Decree No. 1606[41] to read:

SECTION 4. Jurisdiction. — The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

(b) Crimes committed by public officers and employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c) ***Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office.***

The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than prision correccional, or its equivalent, except as herein provided; in other offenses, it shall be concurrent with the regular courts.

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[41] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes (1978).

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees.

Where an accused is tried for any of the above offenses and the evidence is insufficient to establish the offense charged, he may nevertheless be convicted and sentenced for the offense proved, included in that which is charged.

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized; Provided, however, that, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had theretofore been filed separately with a regular court but judgment therein has not yet been rendered and the criminal case is hereafter filed with the Sandiganbayan, said civil action shall be transferred to the Sandiganbayan for consolidation and joint determination with the criminal action, otherwise, the criminal action may no longer be filed with the Sandiganbayan, its exclusive jurisdiction over the same notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction; Provided, further, that, in cases within the concurrent jurisdiction of the Sandiganbayan and the regular courts, where either the criminal or civil action is first filed with the regular courts, the corresponding civil or criminal action, as the case may be, shall only be filed with the regular courts of competent jurisdiction.

Excepted from the foregoing provisions, during martial law, are criminal cases against officers and members of the armed forces in the active service. (Emphasis supplied)

Republic Act No. 8249[42] further amended Presidential Decree No. 1486 to grant the Sandiganbayan exclusive original

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[42] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purposes Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes (1997).

jurisdiction over violations of Republic Act No. 3019 (graft and corruption), Republic Act No. 1379 (ill-gotten wealth), bribery under the Revised Penal Code, and the Executive Orders on sequestration:

SECTION 4. Section 4 of the same decree is hereby further amended to read as follows:

Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, other known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other city department heads;

(b) City mayor, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintended or higher;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or -controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commission, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. ***Other offenses of felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office***.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or order of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2,

14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may thereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or -controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned. (Emphasis supplied)

The question of whether the amended jurisdiction of the Sandiganbayan included all other offenses was settled in *Lacson v. Executive Secretary,*[43] where this Court stated that **the Sandiganbayan would have jurisdiction over all other penal**

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[43] 361 Phil. 251 (1999) [Per *J.* Martinez, *En Banc*].

offenses, "provided it was committed in relation to the accused's official functions,"[44] thus:

A perusal of the aforequoted Section 4 of R.A. 8249 reveals that to fall under the exclusive original jurisdiction of the Sandiganbayan, the following requisites must concur: (1) the offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act), (b) R.A. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery), (d) Executive Order Nos. 1, 2, 14, and 14-A, issued in 1986 (sequestration cases), or (e) other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of Section 4; and (3) the offense committed is in relation to the office.

Considering that herein petitioner and intervenors are being charged with murder which is a felony punishable under Title VIII of the Revised Penal Code, the governing provision on the jurisdictional offense is not paragraph a but paragraph b, Section 4 of R.A. 8249. This paragraph b pertains to "other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of [Section 4, R.A. 8249] in relation to their office." *The phrase "other offenses or felonies" is too broad as to include the crime of murder, provided it was committed in relation to the accused's official functions. Thus, under said paragraph b, what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender that is, whether he is one of those public officers or employees enumerated in paragraph a of Section 4.* The offenses mentioned in paragraphs a, b and c of the same Section 4 do not make any reference to the criminal participation of the accused public officer as to whether he is charged as a principal, accomplice or accessory. In enacting R.A. 8249, the Congress simply restored the original provisions of P.D. 1606 which does not mention the criminal participation of the public officer as a requisite to determine the jurisdiction of the Sandiganbayan.[45] (Emphasis supplied)

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[44] *Id*. at 270.

[45] *Id*. at 270-271.

The Sandiganbayan's jurisdiction, however, was recently amended in Republic Act No. 10660.[46] Section 2 of this law states:

SECTION 2. Section 4 of the same decree, as amended, is hereby further amended to read as follows:

SEC. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

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[46] An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor (2015).

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

(2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.

b. ***Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office***.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2,14 and 14-A, issued in 1986.

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant

to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2,14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2,14 and 14-A, issued in 1986.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the

appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned. (Emphasis supplied)

Republic Act No. 10660 retained the Sandiganbayan's exclusive original jurisdiction over offenses and felonies committed by public officers in relation to their office. It contained, however, a new proviso:

Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

Inversely stated, *Regional Trial Courts do not have exclusive original jurisdiction over offenses where the information alleges damage to the government or bribery, or where the damage to the government or bribery exceeds ₱1,000,000.00.*

The Office of the Solicitor General proceeds under the presumption that offenses under Republic Act No. 9165 were under the exclusive original jurisdiction of the regional trial courts, citing Article XI, Section 90, first paragraph of the law:[47]

ARTICLE XI
JURISDICTION OVER
DANGEROUS DRUGS CASES

SEC. 90. Jurisdiction. –The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

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[47] *Comment*, p. 30.

The phrase "exclusive original jurisdiction" does not appear anywhere in the cited provision. The Office of the Solicitor General attributes this to the previous drug law, Republic Act No. 6425,[48] which stated:

> ARTICLE X
> Jurisdiction Over Dangerous Drug Cases
>
> Section 39. Jurisdiction of the Circuit Criminal Court. The Circuit Criminal Court shall have exclusive original jurisdiction over all cases involving offenses punishable under this Act.
>
> . . . . . .

Republic Act No. 6425, however, has been explicitly repealed in the repealing clause of Republic Act No. 9165.[49] The current drug law does not provide exclusive original jurisdiction to the Regional Trial Courts.

The ponencia, however, attempts to rule otherwise ***without citing any legal basis*** for the conclusion. It states in no uncertain terms:

> In this case, RA 9165 specifies the RTC as the court with the jurisdiction to "exclusively try and hear cases involving violations of (RA 9165)."[50]

This citation in the ponencia has no footnote. Further examination shows that this was not quoted from any existing law or jurisprudence but from the Concurring Opinion of Justice Peralta[51] in this case. What the ponencia cites instead are the following provisions of Republic Act No. 9165:

> Section 20. Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors

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[48] The Dangerous Drugs Act (1972).

[49] Rep. Act No. 9165, Sec. 100.

[50] *Ponencia*, p. 39.

[51] *Id*. at 34, citing the Concurring Opinion of *J*. Peralta, p.12.

and Essential Chemicals. – Every penalty imposed for the unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical, the cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment, shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not liable for the unlawful act, but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act.

After conviction in the Regional Trial Court in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income: Provided, however, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.

During the pendency of the case in the Regional Trial Court, no property, or income derived therefrom, which may be confiscated and forfeited, shall be disposed, alienated or transferred and the same shall be in custodia legis and no bond shall be admitted for the release of the same.

. . . . . .

Section 62. Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation. – If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.

In the event he Board determines, after medical examination, that public interest requires that such drug dependent be committed to a center for treatment and rehabilitation, it shall file a petition for his/her commitment with the regional trial court of the province or city where he/she is being investigated or tried[.]

None of these provisions explicitly states that only the Regional Trial Court has exclusive and original jurisdiction over drug offenses. It merely ***implies*** that the Regional Trial Court has jurisdiction over the drug offenses.

It was likewise inaccurate to cite *Morales v. Court of Appeals*[52] as basis considering that it involved Republic Act No. 6425, not Republic Act No. 9165. This Court in that case stated the change of status from "Court of First Instance" to "Regional Trial Court" did not abolish its exclusive original jurisdiction over drug offenses *under Republic Act No. 6425*. This Court did not explicitly state that this provision in Republic Act No. 6425 was carried over in Republic Act No. 9165.

The ponencia likewise anchors its "legal basis" for the Regional Trial Court's exclusive and original jurisdiction on Section 90 of Republic Act No. 9165:

SEC. 90. Jurisdiction. –The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The phrase "exclusively" in Section 90 of Republic Act No. 9165 only pertains to the limited operational functions of the specially designated courts. Thus, in the Concurring Opinion in *Gonzales v. GJH Land*:[53]

In this court's August 1, 2000 Resolution in A.M. No. 00-8-01-SC, this court designated certain Regional Trial Court branches as

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[52] 347 Phil. 493 (1997) [Per *J.* Davide, Jr. *En Banc*].

[53] 772 Phil. 483 (2015) [Per *J.* Perlas-Bernabe, *En Banc*].

"Special Courts for drugs cases, which shall hear and decide all criminal cases in their respective jurisdictions involving violations of the Dangerous Drugs Act [of] 1972 (R.A. No. 6425) as amended, regardless of the quantity of the drugs involved."

This court's Resolution in A.M. No. 00-8-01-SC made no pretenses that it was creating new courts of limited jurisdiction or transforming Regional Trial Courts into courts of limited jurisdiction. Instead, it repeatedly referred to its operational and administrative purpose: efficiency. Its preambular clauses emphasized that the designation of Special Courts was being made because "public policy and public interest demand that [drug] cases ... be expeditiously resolved[,]" and in view of "the consensus of many that the designation of certain branches of the Regional Trial Courts as Special Courts to try and decide drug cases . . . may immediately address the problem of delay in the resolution of drugs cases." Moreover, its dispositive portion provides that it was being adopted "pursuant to Section 23 of [the Judiciary Reorganization Act of 1980], [and] in the interest of speedy and efficient administration of justice[.]"

Consistent with these operational and administrative aims, this court's October 11, 2005 Resolution in A.M. No. 05-9-03-SC, which addressed the question of whether "special courts for dr[u]g cases [may] be included in the raffle of civil and criminal cases other than drug related cases[,]" stated:

> The rationale behind the exclusion of dr[u]g courts from the raffle of cases other than drug cases is to expeditiously resolve criminal cases involving violations of [R.A. No.] 9165 (previously, of [R.A. No.] 6435). Otherwise, these courts may be sidelined from hearing drug cases by the assignment of non-drug cases to them and the purpose of their designation as special courts would be negated. The faithful observance of the stringent time frame imposed on drug courts for deciding dr[u]g related cases and terminating proceedings calls for the continued implementation of the policy enunciated in A.M. No. 00-8-01-SC.

To reiterate, at no point did this court declare the Regional Trial Court branches identified in these administrative issuances as being transformed or converted into something other than Regional Trial Courts. They retain their status as such and, along with it, the Judiciary Reorganization Act of 1980's characterization of them as courts of general jurisdiction. However, this court, in the interest of facilitating

operational efficiency and promoting the timely dispensation of justice, has opted to make these Regional Trial Court branches focus on a certain class of the many types of cases falling under their jurisdiction.[54] (Citations omitted)

Designation of special courts does not vest exclusive original jurisdiction over a particular subject matter to the exclusion of any other court. It is Congress that has the power to define and prescribe jurisdiction of courts. This power cannot be delegated even to the Supreme Court. Thus, in Article VIII, Section 2 of the Constitution:

> Section 2. ***The Congress*** shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof. (Emphasis supplied)

Thus, the Congress passed Batas Pambansa Blg. 129, which grants the Regional Trial Courts exclusive original jurisdiction over criminal cases that do not fall under the exclusive concurrent jurisdiction of the Sandiganbayan. The Sandiganbayan has exclusive original jurisdiction over all other offenses committed by public officers in relation to their office. Moreover, Regional Trial Courts may have exclusive original jurisdiction where the Information does not allege damage to the government or bribery, or where damage to the government or bribery does not exceed ₱1,000,000.00.

The ponencia's invocation of Section 27 of Republic Act No. 9165 is *non sequitur*. The mention of the phrase "public officer or employee" does not automatically vest exclusive jurisdiction over drugs cases to the Regional Trial Courts. Section 27 reads:

> Section 27. Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment

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[54] Concurring Opinion of *J.* Leonen in *Gonzales v. GJH Land*, 772 Phil. 483, 534-535 (2015) [Per *J.* Perlas-Bernabe, *En Banc*].

Including the Proceeds or Properties Obtained from the Unlawful Act Committed. – . . . .

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or –controlled corporations.

Petitioner was not an elective local or national official at the time of the alleged commission of the crime. She was an appointive official. This section would not have applied to her.

Simply put, ***there is no law which gives the Regional Trial Court exclusive and original jurisdiction over violations of Republic Act No. 9165***. The Sandiganbayan, therefore, is not prohibited from assuming jurisdiction over drug offenses under Republic Act No. 9165.

The determination of whether the Sandiganbayan has jurisdiction depends on whether the offense committed is intimately connected to the offender's public office. In *Lacson*, this Court stated that it is the specific factual allegation in the Information that should be controlling in order to determine whether the offense is intimately connected to the discharge of the offender's functions:

The remaining question to be resolved then is whether the offense of multiple murder was committed **in relation to the office** of the accused PNP officers.

In ***People vs. Montejo***, we held that an offense is said to have been committed **in relation to the office** if it (the offense) is intimately connected with the office of the offender and perpetrated while he was in the performance of his official functions. This intimate relation between the offense charged and the discharge of official duties **must be alleged in the Information.**

As to how the offense charged be stated in the information, Section 9, Rule 110 of the Revised Rules of Court mandates:

> SEC. 9. *Cause of Accusation*. The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.

As early as 1954, we pronounced that the factor that characterizes the charge is the **actual recital of the facts**. The real nature of the criminal charges is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, **they being conclusions of law**, but by the **actual recital of facts** in the complaint or information.

The noble object of written accusations cannot be overemphasized. This was explained in ***U.S. v. Karelsen***:

> The object of this written accusations was First, To furnish the accused with such a description of the charge against him as will enable him to make his defense, and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause, and third, to inform the court of the **facts alleged** so that it may decide whether they are sufficient in law to support a conviction if one should be had. **In order that this requirement may be satisfied, facts must be stated, not conclusions of law** Every crime is made up of **certain acts** and **intent these must be set forth in the complaint with reasonable particularity of time, place, names** (plaintiff and defendant) **and circumstances.** In short, **the complaint must contain a specific allegation** of **every fact** and **circumstance necessary to constitute the crime charged.**
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> It is essential, therefore, that the accused be informed of the facts that are imputed to him as **he is presumed to have no independent knowledge of the facts that constitute the offense.**
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> . . . . . .
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> . . . **For the purpose of determining jurisdiction, it is these allegations that shall control**, and not the evidence presented by the prosecution at the trial.

> In the aforecited case of ***People vs. Montejo***, it is noteworthy that the phrase committed in relation to public office does not appear in the information, which only signifies that the said phrase is not what determines the jurisdiction of the *Sandiganbayan*. What is **controlling** is the **specific factual allegations** in the information that would indicate the close intimacy between the discharge of the accused's official duties and the commission of the offense charged, in order to qualify the crime as having been committed in relation to public office.
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> Consequently, for failure to show in the amended informations that the charge of murder was intimately connected with the discharge of official functions of the accused PNP officers, the offense charged in the subject criminal cases is plain murder and, therefore, within the exclusive original jurisdiction of the Regional Trial Court, not the *Sandiganbayan.*[55] (Emphasis in the original)

Even when holding public office is not an essential element of the offense, the offense would still be considered intimately connected to the public officer's functions if it "was perpetrated while they were in the performance, though improper or irregular, of their official functions:"[56]

In *Sanchez v. Demetriou*, the Court elaborated on the scope and reach of the term "offense committed in relation to [an accused's] office" by referring to the principle laid down in *Montilla v. Hilario*, and to an exception to that principle which was recognized in *People v. Montejo*. The principle set out in *Montilla v. Hilario*, is that an offense may be considered as committed in relation to the accused's office if "the offense cannot exist without the office" such that "the

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[55] *Lacson v. Executive Secretary*, 361 Phil. 251, 278-284 (1999) [Per *J.* Martinez, *En Banc*] citing *People v. Montejo*, 108 Phil. 613 (1960) [Per *J.* Concepcion, *En Banc*]; *Republic vs. Asuncion*, 301 Phil. 216 (1994) [Per *J.* Davide, Jr., *En Banc*]; *People vs. Magallanes*, 319 Phil. 319 (1995) [Per *J.* Davide, Jr., First Division]; *People vs. Cosare,* 95 Phil. 657, 660 (1954)[Per *J.* Bautista Angelo, *En Banc*]; *People vs. Mendoza*, 256 Phil. 1136 (1989) [Per *J.* Fernan, Third Division]; *US v. Karelman*, 3 Phil. 223, 226 (1904) [Per *J.* Johnson, *En Banc*].

[56] *Cunanan v. Arceo*, 312 Phil. 111, 118 (1995) [Per *J.* Feliciano, Third Division].

office [is] a constituent element of the crime as . . . defined and punished in Chapter Two to Six, Title Seven of the Revised Penal Code." In *People v. Montejo*, the Court, through Chief Justice Concepcion, said that "although public office is not an element of the crime of murder in [the] abstract," the facts in a particular case may show that

> ". . . the offense therein charged is intimately connected with [the accuseds'] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, [the accused] had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. The co-defendants or respondent Leroy S. Brown obeyed his instructions because he was their superior officer, as Mayor of Basilan City."

In the instant case, public office is not, of course, an element of the crime of murder, since murder may be committed by any person whether a public officer or a private citizen. In the present case, however, the circumstances quoted above found by the RTC bring petitioner Cunanan's case squarely within the meaning of an "offense committed in relation to the [accused's] public office" as elaborated in the Montejo case. It follows that the offense with which petitioner Cunanan is charged falls within the exclusive and original jurisdiction of the Sandiganbayan, and that the RTC of San Fernando, Pampanga had no jurisdiction over that offense.[57] (Citations omitted)

The Information clearly acknowledges that petitioner was the Secretary of Justice when the offense was allegedly committed. As Secretary of Justice, she exercised administrative supervision over the Bureau of Corrections,[58] the institution in charge of the New Bilibid Prison. The preliminary investigation concluded that the inmates participated in the alleged drug trade inside the New Bilibid Prison based on privileges granted or punishments meted out by petitioner.[59] This, in turn, leads to the conclusion that the offense was committed due to the improper or irregular exercise of petitioner's functions as Secretary of

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[57] *Id*. at 118-119.

[58] Rep. Act No. 10575, Sec. 8.

[59] Annex G of the Petition, p. 40, DOJ Resolution.

Justice. If she were not the Secretary of Justice at the time of the commission of the offense, she would not have been able to threaten or reward the inmates to do her bidding.

The Information alleges that petitioner received ₱5,000,000.00 on November 24, 2012, another ₱5,000,000.00 on December 15, 2012, and ₱100,000.00 weekly from the high profile inmates of the New Bilibid Prison "by taking advantage of [her] public office" "with the use of [her] power, position and authority," to "demand, solicit and extort money from the high profile inmates in the New Bilibid Prison Prison to support the Senatorial bid in the May 2016 election." None of these allegations actually corresponds to the crime of conspiracy to commit drug trading. It corresponds instead to **direct bribery** under Article 210 of the Revised Penal Code:

> Art. 210. Direct Bribery. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prision mayor in its minimum and medium periods and a fine of not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.
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> . . . . . .

The elements of direct bribery are:

> [1] That the accused is a public officer; [2] that he received directly or through another some gift or present, offer or promise; [3] that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his official duty to do, and [4] that the crime or act relates to the exercise of his functions as a public officer.[5] The promise of a public officer to perform an act or to refrain from doing it may be express or implied.[60]

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[60] *Manipon v. Sandiganbayan*, 227 Phil. 253 (1986) [Per *J*. Fernan, *En Banc*] citing *Maniego vs. People*, 88 Phil. 494 (1951) [Per *J*. Bengzon, *En Banc*] and *US vs. Richards*, 6 Phil. 545 (1906) [Per *J*. Willard, First Division].

I agree with Justice Perlas-Bernabe that Republic Act No. 10660 only refers to "any bribery" without specific mention of Direct Bribery under Article 210 of the Revised Penal Code. However, pending a conclusive definition of the term, resort must be made to existing penal statutes. The elements of Article 210 sufficiently correspond to the allegations in the Information. What is essential in bribery is that a "gift, present or promise has been given in consideration of his or her commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his or her official duty to do."

The allegations in the Information, thus, place the jurisdiction of the offense squarely on the Sandiganbayan. To reiterate, the Regional Trial Court may exercise exclusive original jurisdiction only in cases where the Information does not allege damage to the government or any bribery. If the Information alleges damage to the government or bribery, the Regional Trial Court may only exercise jurisdiction if the amounts alleged do not exceed ₱1,000,000.00.

III

Not having jurisdiction over the offense charged, the Regional Trial Court committed grave abuse of discretion in determining probable cause and in issuing the warrant of arrest.

There are two (2) types of determination of probable cause: (i) executive; and (ii) judicial.[61]

Executive determination of probable cause answers the question of whether there is "sufficient ground to engender a well-founded belief that a crime has been committed, and the respondent is probably guilty, and should be held for trial."[62] It is determined by the public prosecutor after preliminary investigation when the parties have submitted their affidavits and supporting evidence. If the public prosecutor determines

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[61] *People v. Castillo,* 607 Phil. 754, 764 (2009) [Per *J.* Quisumbing, Second Division].

[62] RULES OF COURT, Rule 112, Sec. 1.

that there is probable cause to believe that a crime was committed, and that it was committed by the respondent, it has the quasi-judicial authority to file a criminal case in court.[63]

On the other hand, judicial determination of probable cause pertains to the issue of whether there is probable cause to believe that a warrant must be issued for the arrest of the accused, so as not to frustrate the ends of justice. It is determined by a judge after the filing of the complaint in court.[64] In this instance, the judge must evaluate the evidence showing the facts and circumstances of the case, and place himself or herself in the position of a "reasonably discreet and prudent man [or woman]" to assess whether there is a lawful ground to arrest the accused.[65] There need not be specific facts present in each particular case.[66] But there must be sufficient facts to convince the judge that the person to be arrested is the person who committed the crime.[67]

This case involves the exercise of judicial determination of probable cause.

IV

Arrest is the act of taking custody over a person for the purpose of making him or her answer for an offense.[68]

Except in specific instances allowed under the law, a judge must first issue a warrant before an arrest can be made. In turn, before a warrant can be issued, the judge must first determine if there is probable cause for its issuance.

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[63] *People v. Castillo,* G.R. No. 171188, June 19, 2009, 607 Phil. 754, 764 (2009) [Per *J.* Quisumbing, Second Division].

[64] *Id.* at 765.

[65] *Allado v. Diokno*, 302 Phil. 213, 235 (1994) [Per *J.* Bellosillo, First Division].

[66] *U.S. v. Ocampo*, 18 Phil. 1, 42 (1910) [Per *J.* Johnson, *En Banc*]; Act of Congress of July 1, 1902, otherwise known as The Philippine Bill, §5.

[67] *Id.*

[68] RULES OF COURT, Rule 113, Sec. 1.

"No warrant of arrest shall issue except upon probable cause, supported by oath or affirmation."[69]

This rule has been recognized as early as the 1900s[70] and has been enshrined in the Bill of Rights of the 1935, the 1973, and the present 1987 Constitution of the Philippines.[71]

Under the 1935 Constitution, the issuance of a warrant was allowed only upon the judge's determination of probable cause after examining the complainant and his witnesses under oath or affirmation. Thus:

ARTICLE III
Bill of Rights

SECTION 1. (3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and *no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.*

The 1973 Constitution, on the other hand, specified the types of warrants that may be issued. Likewise, it allowed other responsible officers authorized by law to determine the existence of probable cause:

ARTICLE IV
Bill of Rights

SECTION 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or*

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[69] *U.S. v. Ocampo*, 18 Phil. 1, 37 (1910) [Per *J.* Johnson]; Act of Congress of July 1, 1902, otherwise known as The Philippine Bill, §5.

[70] *Id*.

[71] CONST. (1935), Art. III, Sec. 1(3); CONST. (1972), Art. IV, Sec. 3; CONST., Art. III, Sec. 2.

affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

When the present 1987 Constitution was enacted, the authority to issue warrants of arrest again became exclusively the function of a judge. Moreover, it specified that the judge must do the determination of probable cause *personally*:

ARTICLE III
Bill of Rights

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be* ***determined personally*** *by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.*

V

Thus, in determining probable cause for the issuance of a warrant of arrest, there are two (2) Constitutional requirements: (i) the judge must make the determination, and (ii) the determination must be personal, after examining under oath or affirmation the complainant and his witnesses.[72]

Jurisprudence affirms that the judge alone determines the existence of probable cause for the issuance of a warrant of arrest.[73]

Confusion arises on the interpretation of the personal determination by the judge of probable cause.

The word "personally" is new in the 1987 Constitution. In the deliberations of the Constitutional Commission: [74]

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[72] 1987 Constitution, Article III, Section 2.

[73] *People v. Honorable Enrique B. Inting, et al.,* 265 Phil. 817, 821 (1990) [Per J. Gutierrez, Jr., *En Banc*].

[74] Record of the 1986 Constitutional Commission No. 032 (1986).

FR. BERNAS: Thank you, Madam President.

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Section 2 is the same as the old Constitution.

The provision on Section 3 reverts to the 1935 formula by eliminating the 1973 phrase "or such other responsible officer as may be authorized by law," and also adds the word PERSONALLY on line 18. In other words, warrants under this proposal can be issued only by judges. I think one effect of this would be that, as soon as the Constitution is approved, the PCGG will have no authority to issue warrants, search and seizure orders, because it is not a judicial body. So, proposals with respect to clipping the powers of the PCGG will be almost unnecessary if we approve this. We will need explicit provisions extending the power of the PCGG if it wants to survive.

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MR. SUAREZ: Mr. Presiding Officer, I think the Acting Floor Leader is already exhausted. So I will get through with my questions very quickly. May I call the *sponsor's attention to Section 3, particularly on the use of the word "personally." This, I assume, is on the assumption that the judge conducting the examination must do it in person and not through a commissioner or a deputy clerk of court.*

FR. BERNAS: *Yes, Mr. Presiding Officer.*

MR. SUAREZ: The other point is that the Committee deleted the phrase "through searching questions" which was originally proposed after the word "affirmation." May we know the reason for this, Mr. Presiding Officer.

FR. BERNAS: The sentiment of most of the members of the Committee was that it would still be understood even without that phrase.

MR. SUAREZ: For purposes of record, does this envision a situation where the judge can conduct the examination personally even in his own residence or in a place outside of the court premises, say, in a restaurant, bar or cocktail lounge? I ask this because I handled a case involving Judge Pio Marcos in connection with the Golden Buddha case, and I remember the search warrant was issued at 2:00 a.m. in his residence.

FR. BERNAS: May I ask Commissioner Colayco to answer that question from his vast experience as judge?

MR. COLAYCO: We have never come across an incident like that. But we always make sure that the application is filed in our court. It has to be done there because the application has to be registered, duly stamped and recorded in the book.

MR. SUAREZ: *So it is clear to everybody that when we said "it shall be determined personally by the judge after examination under oath or affirmation" that process must have to be conducted in the court premises.*

MR. COLAYCO: *Not only in the court premises but also in the courtroom itself. We do that at least in Manila.*

MR. SUAREZ: Thank you, Mr. Presiding Officer.

MR. COLAYCO: For the information of the body, the words "searching questions," if I am not mistaken, are used in the Rules of Court.

FR. BERNAS: The phrase is not yet used in the Rules of Court.[75]

In adding the word "personally" to the provision, the Constitutional Commission deliberations envisioned a judge personally conducting the examination in the courtroom, and not through any other officer or entity.

In the 1988 case of *Soliven v. Makasiar*,[76] this Court clarified the operation of this requirement given that documents and evidence are available also after the prosecutor's preliminary investigation:

> The second issue, raised by petitioner Beltran, calls for an interpretation of the constitutional provision on the issuance of warrants of arrest. …
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> . . . . . .
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> The addition of the word "personally" after the word "determined" and the deletion of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law", has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the

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[75] Record of the 1986 Constitutional Commission No. 032 (1986).

[76] 249 Phil. 394 (1988) [*Per Curiam* Resolution].

complainant and his witnesses determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

What the Constitution underscores is the *exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause.* In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.[77]

Thus, in this earlier case, this Court implied that the actual personal examination of the complainant and his witnesses is not necessary if the judge has the opportunity to personally evaluate the report and the supporting documents submitted by the fiscal, or require the submission of supporting affidavits of witnesses if the former is not sufficient.[78]

This standard for determining probable cause was further explained in *Lim, Sr. v. Felix*,[79] where this Court ruled that a judge may not issue an arrest warrant solely on the basis of the prosecutor's certification that probable cause exists.[80] The evidence must be available to the judge for perusal and examination.

In *Lim, Sr. v. Felix*, a complaint was filed in the Municipal Trial Court of Masbate against several accused for the murder

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[77] *Id*. at 399-400.

[78] *Id*. at 399.

[79] 272 Phil.122 (1991) [Per *J*. Gutierrez, Jr., *En Banc*].

[80] *Id*. at 138.

of Congressman Moises Espinosa and his security escorts.[81] The Municipal Trial Court of Masbate issued an arrest warrant after evaluating the affidavits and answers of the prosecution's witnesses during the preliminary investigation.[82] The Provincial Prosecutor of Masbate affirmed this finding, and thus filed separate Informations for murder with the Regional Trial Court of Masbate.[83]

Later, the case was transferred to the Regional Trial Court of Makati.[84]

In the Regional Trial Court of Makati, several of the accused manifested that some of the witnesses in the preliminary investigations recanted their testimonies.[85] Thus, they prayed that the records from the preliminary investigation in Masbate be transmitted to the court, and moved for the court to determine the existence of probable cause.[86]

Despite the motions and manifestations of the accused, the Regional Trial Court of Makati issued arrest warrants.[87] It found that since two (2) authorized and competent officers had determined that there was probable cause and there was no defect on the face of the Informations filed, it may rely on the prosecutor's certifications.[88]

This Court reversed the trial court's ruling and held that the prosecutor's certification was not enough basis for the issuance of the warrant of arrest.[89] While the judge may consider the

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[81] *Id*. at 126.

[82] *Id*. at 127.

[83] *Id*. at 128.

[84] *Id*.

[85] *Id*. at 129.

[86] *Id*. at 128.

[87] *Id*. at 129.

[88] *Id*.

[89] *Id*. at 130.

prosecutor's certification, he or she must make his or her own personal determination of probable cause.[90] There is grave abuse of discretion if the judge did not consider any evidence before issuing an arrest warrant.[91] In such a case, there is no compliance with the Constitutional requirement of personal determination because the only person who made the determination of probable cause is the prosecutor.[92]

In ruling as such, *Lim, Sr. v. Felix*, discussed that the extent of the judge's personal determination depends on what is required under the circumstances: [93]

> The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. *The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require*. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. *He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.*
>
> It is worthy to note that petitioners Vicente Lim, Sr. and Susana Lim presented to the respondent Judge documents of recantation of witnesses whose testimonies were used to establish a *prima facie* case against them. Although, the general rule is that recantations are not given much weight in the determination of a case and in the granting of a new trial, the respondent Judge before issuing his own warrants of arrest should, at the very least, have gone over the records of the preliminary examination conducted earlier in the light of the evidence now presented by the concerned witnesses in view of the "political undertones" prevailing in the cases. …
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> We reiterate that in making the required personal determination, a Judge is not precluded from relying on the evidence earlier gathered

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[90] *Id*. at 130.

[91] *Id*. at 137.

[92] *Id*. at 136.

[93] *Id*.

by responsible officers. *The extent of the reliance depends on the circumstances of each case and is subject to the Judge's sound discretion.* However, the Judge abuses that discretion when having no evidence before him, he issues a warrant of arrest.[94] (Emphasis supplied)

The extent of the judge's examination for the determination of probable cause, thus, depends on the circumstances of each case.[95] It may be extensive or not extensive, but there must always be a personal determination.[96]

The consideration of the prosecutor's certification is also discretionary.[97] While any preliminary finding of the prosecutor may aid the judge in personally determining probable cause, the judge is not bound to follow it.[98] The judge may disregard it and if he or she is not satisfied with the evidence presented, he may require the submission of additional affidavits to help him determine the existence of probable cause.[99]

In *People v. Honorable Enrique B. Inting, et al.*, this Court even went as far as to say:

> By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination. [100]

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[94] *Id*. at 136-137.

[95] *Id*. at 136.

[96] *Id*.

[97] *Id*. at 130.

[98] *Id*.

[99] *Id*. at 131. citing *Placer v. Villanueva*, 211 Phil. 615 (1983)[Per *J*. Escolin, Second Division].

[100] *People v. Honorable Enrique B. Inting, et al*., 265 Phil. 817, (1990) [Per *J*. Gutierrez, Jr., *En Banc*].

Thus, this Court ruled that "[t]he warrant issues not on the strength of the certification standing alone but because of the records which sustain it.[101]

It, thus, follows that the judicial determination of probable cause must be supported by the records of the case.

In *Allado v. Diokno*,[102] this Court invalidated an arrest warrant after it found that the issuing judge's determination was not supported by the records presented.

In that case, two (2) lawyers were implicated in the kidnapping and murder of German national Eugene Alexander Van Twest (Van Twest) on the basis of a sworn confession of one Escolastico Umbal (Umbal). Umbal claimed that the two (2) lawyers were the masterminds of the crime, while he and several others executed the crime in exchange for ₱2,500,000.00.[103]

The Presidential Anti-Crime Commission conducted an investigation. After evaluating the evidence gathered, the Chief of the Presidential Anti-Crime Commission referred the case to the Department of Justice for the institution of criminal proceedings.[104]

The matter was referred to a panel of prosecutors who eventually issued a resolution recommending the filing of informations against the accused.[105]

The case was filed in the Regional Trial Court of Makati and raffled to Branch 62 presided by Judge Roberto C. Diokno (Judge Diokno).[106]

Judge Diokno issued a warrant of arrest against the two (2) lawyers.[107]

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[101] *Lim, Sr. v. Felix*, 272 Phil.122, 135 (1991) [Per *J*. Gutierrez, Jr., *En Banc*].

[102] 301 Phil. 213 (1994) [Per *J*. Bellosillo, First Division].

[103] *Id*. at 222.

[104] *Id*. at 222-223.

[105] *Id*. at 225.

[106] *Id*.

[107] *Id*. at 226.

However, this Court found that there was not enough basis for the issuance of the warrant of arrest.[108] It ruled that the evidence was insufficient to sustain the finding of probable cause.[109] It noted that several inconsistencies were blatantly apparent, which should have led to the non-issuance of the arrest warrant.[110]

This Court found that the corpus delicti was not established. Van Twest's remains had not been recovered and the testimony of Umbal as to how they burned his body was "highly improbable, if not ridiculous." [111] It noted that the investigators did not even allege that they went to the place of the burning to check if the remains were there. [112]

It observed that Van Twest's own counsel doubted the latter's death, such that even after Van Twest's alleged abduction, his counsel still represented him in judicial and quasi-judicial proceedings, and manifested that he would continue to do so until Van Twest's death had been established. [113]

It also noted that Van Twest was reportedly an "international fugitive from justice" and, thus, there was a possibility that his "death" may have been staged to stop the international manhunt against him. [114]

This Court also considered the revoked admission of one (1) of the accused, the Presidential Anti-Crime Commission's finding on the crime's mastermind, the manner by which the accused obtained a copy of the resolution of the panel of prosecutors, the timing of Umbal's confession, and its numerous

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[108] *Id*. at 224.

[109] *Id*. at 229.

[110] *Id*. at 231.

[111] *Id*. at 229.

[112] *Id*. at 230.

[113] *Id*.

[114] *Id*. at 231.

inconsistencies and contradictions.[115] This Court observed "the undue haste in the filing of the information and the inordinate interest of the government" and found that "[f]rom the gathering of evidence until the termination of the preliminary investigation, it appears that the state prosecutors were overly eager to file the case and secure a warrant for the arrest of the accused without bail and their consequent detention. [116]

This Court then elucidated that good faith determination and mere belief were insufficient and could not be invoked as defense by the judge.[117] There must be sufficient and credible evidence.[118] Thus:

> Clearly, probable cause may not be established simply by showing that a trial judge subjectively believes that he has good grounds for *his action. Good faith is not enough. If subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be "secure in their persons, houses, papers and effects" only in the fallible discretion of the judge.* On the contrary, *the probable cause test is an objective one,* for in order that there be probable cause the facts and circumstances must be such as would warrant a belief by a reasonably discreet and prudent man that the accused is guilty of the crime which has just been committed. This, as we said, is the standard. Hence, if upon the filing of the information in court the trial judge, after reviewing the information and the documents attached thereto, finds that no probable cause exists must either call for the complainant and the witnesses themselves or simply dismiss the case. There is no reason to hold the accused for trial and further expose him to an open and public accusation of the crime when no probable cause exists.
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> But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion. If they really believed that petitioners were probably guilty, they should have armed themselves with facts and circumstances in support of

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[115] *Id*.

[116] *Id*. at 236.

[117] *Id*. at 235 citing *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed. 2d. 142 (1964).

[118] *Id*.

that belief; for *mere belief is not enough.* They should have presented *sufficient and credible evidence* to demonstrate the existence of probable cause. For *the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.* As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. *It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.*"

. . . . . .

Indeed, the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of prosecutors. And, whether it is preliminary investigation by the prosecutor, which ascertains if the respondent should be held for trial, or a preliminary inquiry by the trial judge which determines if an arrest warrant should issue, the bottomline is that there is a *standard in the determination of the existence of probable cause, i.e., there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged.* Judges and prosecutors are not off on a frolic of their own, but rather engaged in a delicate legal duty defined by law and jurisprudence.[119] (Emphasis supplied, citations omitted)

It further emphasized the need for the government to be responsible with the exercise of its power so as to avoid unnecessary injury and disregard of rights: [120]

The facts of this case are fatefully distressing as they showcase the seeming immensity of government power which when unchecked becomes tyrannical and oppressive. Hence the Constitution, particularly

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[119] *Id.* at 235-237.

[120] *Id.* at 238.

the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend. Needless injury of the sort inflicted by government agents is not reflective of responsible government. Judges and law enforcers are not, by reason of their high and prestigious office, relieved of the common obligation to avoid deliberately inflicting unnecessary injury.

The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law. This is essential for its self-preservation, nay, its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution. *Confinement, regardless of duration, is too high a price to pay for reckless and impulsive prosecution.* Hence, even if we apply in this case the "multifactor balancing test" which requires the officer to weigh the manner and intensity of the interference on the right of the people, the gravity of the crime committed and the circumstances attending the incident, still we cannot see probable cause to order the detention of petitioners.

The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political power. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities. Certainly, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former. Thus, relief may be availed of to stop the purported enforcement of criminal law where it is necessary to provide for an orderly administration of justice, to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights.

. . . . . .

Let this then be a constant reminder to judges, prosecutors and other government agents tasked with the enforcement of the law that in the performance of their duties they must act with circumspection, lest their thoughtless ways, methods and practices cause a disservice

to their office and aim their countrymen they are sworn to serve and protest. We thus caution government agents, particularly the law enforcers, to be more prudent in the prosecution of cases and not to be oblivious of human rights protected by the fundamental law. While we greatly applaud their determined efforts to weed society of felons, let not their impetuous eagerness violate constitutional precepts which circumscribe the structure of a civilized community. (Citations omitted, emphasis supplied)[121]

The powers granted to the judge are discretionary, but not arbitrary.[122] Verily, there is grave abuse of discretion when the judge fails to personally examine the evidence, refuses to further investigate despite "incredible accounts" of the complainant and the witnesses, and merely relies on the prosecutor's certification that there is probable cause.[123]

Thus, it found that given the circumstances and the insufficient evidence found against the two (2) lawyers, there is no sufficient basis for issuing the warrant of arrest.[124]

The later case of *Ho v. People*[125] illustrates the necessity of the judge's independent evaluation of the evidence in determining the existence of probable cause.

In *Ho v. People*,[126] this Court ruled that a judge cannot solely rely on the report and recommendation of the investigating prosecutor in issuing a warrant of arrest. The judge must make an independent, personal determination of probable cause through the examination of sufficient evidence submitted by the parties during the preliminary investigation. [127]

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[121] *Id*. at 237-239.

[122] *Id*. at 228.

[123] *Id*. at 233.

[124] *Id*. at 229.

[125] 345 Phil. 597 (1997) [Per *J*. Panganiban, *En Banc*].

[126] 345 Phil. 597 (1997) [Per *J*. Panganiban, *En Banc*].

[127] *Id*. at 611.

In this case, the Sandiganbayan relied on the "facts and evidence appearing in the resolution/memorandum of responsible investigators/ prosecutors."[128] It issued the warrant of arrest after reviewing: (i) the information filed by the Office of the Ombudsman; (ii) the investigating officer's resolution, and (iii) the prosecution officer's memorandum.[129]

The Sandiganbayan noted that the memorandum and the resolution showed the proper holding of a preliminary investigation and the finding of probable cause by the authorized officials. It found that the resolution outlined and evaluated the facts, law, and submitted evidence before it recommended the filing of the Information. It likewise stated that "the Ombudsman will not approve a resolution just like that, without evidence to back it up." [130]

This Court found that this is not sufficient to be considered an independent and personal examination required under the Constitution and jurisprudence. [131]

This Court noted that the Sandiganbayan's examination did not include a review of the supporting evidence submitted at the preliminary investigation. This Court also observed that the memorandum and the resolution did not have the same recommendations as to who was to be indicted.[132] This Court found that the Sandiganbayan checked no documents from either of the parties, not even the documents which was the basis of the Ombudsman in determining the existence of probable cause.[133]

This Court, thus, ruled that the Sandiganbayan committed grave abuse of discretion in issuing the arrest warrant. The Ombudsman's findings and recommendation could not be the

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[128] *Id*. at 610.

[129] *Id*. at 609.

[130] *Id*. at 609.

[131] *Id*. at 613.

[132] *Id*. at 609.

[133] *Id*. at 613.

only basis of the Sandiganbayan.[134] The latter was obliged to verify the sufficiency of the evidence.[135] It must determine the issue of probable cause on its own and base it on evidence other than the findings and recommendation of the Ombudsman.[136]

This Court explained:

> In light of the aforecited decisions of this Court, such justification cannot be upheld. Lest we be too repetitive, we only wish to emphasize three vital matters once more: *First*, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, *i.e*. whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.
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> *Second*, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide *independently*. Hence, he must have supporting evidence, *other than* the prosecutor's *bare* report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable

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[134] *Id*.

[135] *Id*. at 604.

[136] *Id*. at 613.

His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

Lastly, it is not required that the *complete* or *entire* records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have *sufficient* supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to *personally* determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[137] (Emphasis in the original, citations omitted)

Ho v. People[138] reiterated the rule that the objective of the prosecutor in determining probable cause is different from the objective of the judge. The prosecutor determines whether there is cause to file an Information against the accused. The judge determines whether there is cause to issue a warrant for his arrest. Considering this difference in the objectives, the judge cannot rely on the findings of the prosecutor, and instead must make his own conclusion. Moreover, while the judge need not conduct a new hearing and look at the entire record of every case all the time, his issuance of the warrant of arrest must be based on his independent judgment of sufficient, supporting documents and evidence. [139]

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[137] *Id.* at 611-612.

[138] 345 Phil. 597 (1997) [Per *J.* Panganiban, *En Banc*].

[139] *Id.* at 611.

VI

The determination of the existence of probable cause for the issuance of a warrant of arrest is different from the determination of the existence of probable cause for the filing of a criminal complaint or information. The first is a function of the judge and the latter is a function of the prosecutor.

The delineation of these functions was discussed in *Castillo v. Villaluz*:[140]

> Judges of Regional Trial Courts (formerly Courts of First Instance) no longer have authority to conduct preliminary investigations. That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964, was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985, which deleted all provisions granting that power to said Judges. We had occasion to point this out in *Salta v. Court of Appeals*, 143 SCRA 228, and to stress as well certain other basic propositions, namely: (1) that the conduct of a preliminary investigation is "not a judicial function . . . (but) part of the prosecution's job, a function of the executive," (2) that wherever "there are enough fiscals or prosecutors to conduct preliminary investigations, courts are counseled to leave this job which is essentially executive to them," and the fact "that a certain power is granted does not necessarily mean that it should be indiscriminately exercised."
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> The *1988 Amendments* to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988, did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.
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> This is not to say, however, that somewhere along the line RTC Judges also lost the power to make a *preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest* (or search warrant). Such a power —indeed, it is as much a duty as it is a power — has been and remains vested in every judge by the provision in the Bill of Rights in the 1935, the 1973 and the present (1987) Constitutions securing the people against unreasonable searches and seizures, thereby placing

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[140] 253 Phil. 30 (1989) [Per *J.* Narvasa, First Division].

it beyond the competence of mere Court rule or statute to revoke. The distinction must, therefore, be made clear while an RTC Judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for the filing of a criminal complaint or information, he retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest. It might be added that this distinction accords, rather than conflicts, with the *rationale* of *Salta* because both law and rule, in restricting to judges the authority to order arrest, recognize that function to be judicial in nature.[141] (Citations omitted)

Given this difference, this Court has explicitly ruled that the findings of the prosecutor do not bind the judge. In *People v. Honorable Enrique B. Inting, et al.*:[142]

First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor for the Election Supervisor to ascertain. *Only the Judge and the Judge alone makes this determination.*

Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. *By itself the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stereographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.*

And third, Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be

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[141] *Id.* at 31-33.

[142] 265 Phil. 817 (1990) [Per *J.* Gutierrez, Jr., *En Banc*].

subjected to the expense, rigors and embarrassment of trial — is the function of the Prosecutor.[143] (Emphasis supplied)

Thus, the determination of probable cause by the judge is not inferior to the public prosecutor. In fact, this power of the judge is constitutionally guaranteed.

The Constitution clearly mandates that the judge must make a personal determination of probable cause, and jurisprudence has expounded that it must be made independently from the conclusion of the prosecutor. While the basis of their findings may be the same in that they can consider the same evidences and documents in coming to their conclusions, their conclusions must be separate and independently made.[144]

The finding of the public prosecutor may only aid the judge in the latter's personal determination, but it cannot be the basis, let alone be the limitation, of the judge in his finding of the existence or absence of probable cause. [145]

Thus, the judge does not need a clear-cut case before he or she can deny the issuance of a warrant of arrest. There is no rule that a warrant of arrest must be issued automatically if the prosecutor's findings of fact and evaluation of evidence show that there is probable cause to indict the accused. There is no presumption that the Information filed by the prosecutor is sufficient for the issuance of the arrest warrant. The judge does not need to consider or be limited by the authority of the public prosecutor before it can decide to deny or grant the issuance of the warrant of arrest.

The Constitution requires the judge's personal determination. This means that he must make his own factual findings and come up with his own conclusions, based on the evidence on record, or the examination of the complainant and the witnesses.

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[143] *Id.* at 821-822.

[144] *Lim, Sr. v. Felix,* 272 Phil. 122, 135 (1991) [Per *J.* Gutierrez, Jr., *En Banc*].

[145] *Id.* at 136.

The judge's basis for the grant of the arrest warrant depends on whatever is necessary to satisfy him on the existence of probable cause.

Thus, what will satisfy the judge on the existence of probable cause will differ per case. The circumstances of the case, the nature of the proceedings, and the weight and sufficiency of the evidence presented, may affect the judge's conclusion.

The judge is given a wide latitude of discretion. Necessarily, the procedure by which the judge determines probable cause is not automatic, cursory, or ministerial.[146] In some cases, he or she may find it sufficient to review the documents presented during the preliminary investigation. In others, it may be necessary to call a hearing to examine the complainant and the witnesses personally. A judge may not just conduct the examination on each case in the same manner. The standard is his or her own satisfaction of the existence of probable cause.

The doubt in the nature of the offense charged in the Information and the nature and the content of the testimonies presented would have put a reasonable judge on notice that it was not sufficient to depend on the documents available to her. The complexity of this case should have led her to actually conduct a physical hearing, call the witnesses, and ask probing questions.

After all, even Justices of this Court were left bewildered by what was charged, leaving this Court divided between Direct Bribery, Illegal Trading, or even Illegal Trafficking. The Solicitor General himself proposed that it was Conspiracy to Commit Illegal Trading which was being charged.

Furthermore, a substantial majority of the witnesses are convicts under the charge of the Bureau of Prisons and subject to the procedures of the Board of Pardons and Parole. All these agencies are under the Secretary of Justice who recused because he already took a public stance on the guilt of the accused. It

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[146] *Placer v. Villanueva*, 211 Phil. 615, 621 (1983) [Per *J.* Escolin, Second Division].

would have been reasonable for a competent and independent judge to call the witnesses to test their credibility. Clearly the life of convicts can be made difficult or comfortable by any present administration.

Thus, it was grave abuse of discretion for respondent judge not to personally examine the witnesses in the context of the facts of this case. The issuance of the Warrant of Arrest was, therefore, invalid. The Warrant is void ab initio for being unconstitutional.

VII

Assuming that the trial court had jurisdiction over the offense charged in the Information and that the judge properly went through the preliminary investigation, still, the evidence presented by the prosecution and re-stated in the ponencia does not actually prove that there was probable cause to charge petitioner with conspiracy to commit illegal drug trading or illegal drug trading:

> The foregoing findings of the DOJ find support in the affidavits and testimonies of several persons. For instance, in his Affidavit dated September 3, 2016, NBI agent Jovencio P. Ablen, Jr. narrated, viz:
>
> > 21. On the morning of 24 November 2012, I received a call from Dep. Dir. Ragos asking where I was. I told him I was at home. He replied that he will fetch me to accompany him on a very important task.
> >
> > 22. Approximately an hour later, he arrived at my house. I boarded his vehicle, a Hyundai Tucson, with plate no. RGU910. He then told me that he will deliver something to the then Secretary of Justice, Sen. Leila de Lima. He continued and said "Nior confidential 'to. Tayong dalawa Zang ang nakakaalam nito. Dadalhin natin yung quota kay lola. 5M 'yang nasa bag. Tingnan mo."
> >
> > 23. The black bag he was referring to was in front of my feet. It [was a] black handbag. When I opened the bag, I saw bundles of One Thousand Peso bills. ·
> >
> > 24. At about 10 o'clock in the morning, we arrived at the house located at Laguna Bay comer Subic Bay Drive, South Bay Village, Paranaque City.

25. Dep. Dir. parked his vehicle in front of the house. We both alighted the vehicle but he told me to stay. He then proceeded to the house.

26. From our parked vehicle, I saw Mr. Ronnie Dayan open the gate. Dep. Dir. Ragos then handed the black handbag containing bundles of one thousand peso bills to Mr. Dayan.

27. At that time, I also saw the then DOJ Sec. De Lima at the main door of the house. She was wearing plain clothes which is commonly known referred to as "duster."

28. The house was elevated from the road and the fence was not high that is why I was able to clearly see the person at the main door, that is, Sen. De Lima.

29. When Dep. Dir. Ragos and Mr. Dayan reached the main door, I saw Mr. Dayan hand the black handbag to Sen. De Lima, which she received. The three of them then entered the house.

30. After about thirty (30) minutes, Dep. Dir. Ragos went out of the house. He no longer has the black handbag with him.

31. We then drove to the BuCor Director's Quarters in Muntinlupa City. While cruising, Dep. Dir. Ragos told me "Nior 'wag kang maingay kahit kanino at wala kang Nakita ha" to which I replied "Sabi mo e. e di wala akong Nakita."

32. On the morning of 15 December 2012, Dep. Dir. Ragos again fetched me from my house and we proceeded to the same house located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City.

33. That time, I saw a plastic bag in front of my feet. I asked Dep. Dir. Ragos "Quota na naman Sir?" Dep. Dir. Ragos replied "Ano pang ba, 'tang ina sila lang meron."

. . . . . .

Petitioner's co-accused, Rafael Ragos, recounted on his own Affidavit dated September 26, 2016 a similar scenario:

8. One morning on the latter part of November 2012, I saw a black handbag containing a huge sum of money on my bed inside the Director's Quarters of the BuCor. I looked inside

the black handbag and saw that it contains bundles of one thousand peso bills.

9. I then received a call asking me to deliver the black handbag to Mr. Ronnie Dayan. The caller said the black handbag came from Peter Co and it contains "Limang Manok" which means Five Million Pesos (Php5,000,000.00) as a "manok" refers to One Million Pesos (Phpl ,000,000.00) in the vernacular inside the New Bilibid Prison.

10. As I personally know Mr. Dayan and knows that he stays in the house of the then DOJ Sec. Leila M. De Lima located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City, I kn[e]w I had to deliver the black handbag to Sen. De Lima at the said address.

11. Before proceeding to the house of Sen. De Lima at the above-mentioned address, I called Mr. Ablen to accompany me in delivering the money. I told him we were going to do an important task.

12. Mr. Ablen agreed to accompany me so I fetch[ed] him from his house and we proceeded to the house of Sen. De Lima at the above mentioned address.

13. While we were in the car, I told Mr. Ablen that the important task we will do is deliver Five Million Pesos (Php5,000,000.00) "Quota" to Sen. De Lima. I also told him that the money was in the black handbag that was on the floor of the passenger seat (in front of him) and he could check it, to which Mr. Ablen complied.

14. Before noon, we arrived at the house of Sen. De Lima located at Laguna bay corner Subic Bay Drive, South Bay Village, Paranaque City.

15. I parked my vehicle in front of the house. Both Mr. Ablen and I alighted from the vehicle but I went to the gate alone carrying the black handbag containing the Five Million Pesos (Php5,000,0000.00).

16. At the gate, Mr. Ronnie Dayan greeted me and opened the gate for me. I then handed the handbag containing the money to Mr. Dayan.

17. We then proceeded to the main door of the house where Sen. De Lima was waiting for us. At the main door, Mr. Dayan handed the black handbag to Sen. De Lima, who received the same. We then entered the house.

18. About thirty minutes after, I went out of the house and proceeded to my quarters at the BuCor, Muntinlupa City.

19. One morning in the middle part of December 2012, I received a call to again deliver the plastic bag containing money from Peter Co to Mr. Ronie Dayan. This time the money was packed in a plastic bag left on my bed inside my quarters at the BuCor, Muntinlupa City. From the outside of the bag, I could easily perceive that it contains money because the bag is translucent.

20. Just like before, I fetched Mr. Ablen from his house before proceeding to the house of Sen. De Lima located at Laguna Bay corner Subic bay Drive, South Bay Village, Paranaque City, where I know I could find Mr. Dayan.

21. In the car, Mr. Ablen asked me if we are going to deliver "quota." I answered yes.

22. We arrived at the house of Sen. De Lima at the above mentioned address at noontime. I again parked in front of the house.

23. I carried the plastic bag containing money to the house. At the gate, I was greeted by Mr. Ronnie Dayan. At that point, I handed the bag to Mr. Dayan. He received the bag and we proceeded inside the house.

. . . . . .

The source of the monies delivered to petitioner de Lima was expressly bared by several felons incarcerated inside the NBP. Among them is Peter Co, who testified in the following manner:

6. Noong huling bahagi ng 2012, sinabi sa akin ni Hans Tan na nanghihingi ng kontribusyon sa mga Chinese sa Maximum Security Compound ng NBP si dating DOJ Sec. De Lima para sa kanyang planong pagtakbo sa senado sa 2013 Elections. Dalawang beses akong nagbigay ng tig-P5 Million para tugunan ang hiling ni Sen. De Lima, na dating DOJ Secretary;

> 7. Binigay ko ang mga halagang ito kay Hans Tan para maibigay kay Sen. Leila De Lima na dating DOJ Secretary. Sa parehong pagkakataon, sinabihan na lang ako ni Hans Tan na naibigay na ang pera kay Ronnie Dayan na siyang tumatanggap ng pera para kay dating DOJ Sec. De Lima. Sinabi rin ni Hans Tan na ang nagdeliver ng pera ay si dating OIC ng BuCor na si Rafael Ragos.
>
> 8. Sa kabuuan, nakapagbigay ang mga Chinese sa loob ng Maximum ng ₱10 Million sa mga huling bahagi ng taong 2012 kay dating DOJ Sec. De Lima para sa kanyang planong pagtakbo sa senado sa 2013 Elections. Ang mga perang it ay mula sa pinagbentahan ng illegal na droga.[147]

The evidence presented to the trial court does not show that petitioner conspired to trade illegal drugs in the New Bilibid Prison. On the contrary, it alleges that petitioner received certain amounts of money from Jovencio P. Ablen, Jr., co-accused Rafael Ragos, and inmate Wu Tian Yuan/Peter Co. The allegation that the money came from the sale of illegal drugs was mentioned in passing by an inmate of the New Bilibid Prison, presently incarcerated for violation of Republic Act No. 6425 or the Dangerous Drugs Act of 1972.

Most of the evidence gathered by the Department of Justice came from convicts of the New Bilibid Prison, who have not personally appeared before the Department of Justice but were merely presented to the House of Representatives during a hearing in aid of legislation. Their testimonies were likewise inconsistent:

JUSTICE LEONEN:

All the facts in the Affidavits are actually corroborated by each other, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

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[147] *Ponencia*, pp. 48-51 *citing* the affidavits of Jovencio P. Ablen, Jr., Rafael Ragos, and Wu Tian Yuan/Peter Co.

JUSTICE LEONEN:

Because I read every Affidavit that is contained there, and it was difficult for me and my staff to actually create a timeline, or there was a corroboration of substantial points. For example, do you have the Affidavit of Diaz with you?

SOLICITOR GENERAL CALIDA:

Right now, Your Honor?

JUSTICE LEONEN:

Right now.

SOLICITOR GENERAL CALIDA:

I don't have it, Your Honor.

. . . . . .

JUSTICE LEONEN:

In any case, Counsel, paragraph 28 of the Affidavit of Diaz, states the source of the money that he has supposed to have given through intermediaries to De Lima. And it is very clear there that he says, it did not come from drugs. Except that there is a subsequent question, paragraph 29, which actually shows that it was the investigator that suggested by a leading question that drugs were involved. In any case, I'm just saying that there is such an affidavit which actually says that. And based on the Affidavit itself, would you say that any judge really wanting to be impartial, should have called that witness in order to ask more searching questions of that witness?

SOLICITOR GENERAL CALIDA:

Pardon me and forgive me for asking this, Your Honor, but are we now assessing the . . . . .

JUSTICE LEONEN:

We are not assessing . . . . .

SOLICITOR GENERAL CALIDA:

. . . . . substantive evidence, Your Honor?

JUSTICE LEONEN:

We are not assessing the substance of the evidence, unless you are not familiar with it. We are not assessing it, we are just looking at the exceptions for the doctrine that the judge only relies on the document, and that the judge, in many cases of certiorari, have been told by this Court, that he or she should have called the witnesses when there were indicators that relying on the documents were not sufficient. That's a doctrine, that is *Lim v. Felix*, that is *Haw v. People*, that is *People v. Ho*. I am just asking you whether it is your opinion, right for Guerrero, or whether there was grave abuse of discretion in the determination of probable cause, that she did not call the witnesses. Considering that it was not clear where the sources of funds were coming from, case in point, the Affidavit of Diaz. In other words, I'm not saying that Diaz was telling the truth. I'm just saying that based on the Affidavit, there is doubt.[148]

There is nothing on record to support the finding of probable cause. Instead, the trial court issued a one (1)-page Order, which reads:

After a careful evaluation of the herein Information and all the evidence presented during the preliminary investigation conducted in this case by the Department of Justice, Manila, the Court finds sufficient probable cause for the issuance of Warrants of Arrest against all the accused LEILA M. DE LIMA . . .[149]

These evidence sufficiently engender enough doubt that there is probable cause to support illegal trading, illegal trafficking, or even conspiracy to commit illegal trading. It was, therefore, error and grave abuse of discretion for respondent judge to have issued the Warrant of Arrest.

VIII

A writ of prohibition may issue to enjoin criminal prosecutions to prevent the use of the strong arm of the law.

In *Dimayuga v. Fernandez*:[150]

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[148] TSN Oral Arguments, March 28, 2017, pp. 58-59.

[149] "Annex ___."

[150] 43 Phil. 304 (1922) [Per *J.* Johns, First Division].

It is true, as respondents contend, that, as a general rule, a court of equity will not restrain the authorities of either a state or municipality from the enforcement of a criminal law, and among the earlier decisions, there was no exception to that rule. By the modern authorities, an exception is sometimes made, and the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.

. . . . . .

The writ of prohibition is somewhat sui generis, and is more or less in the sound legal discretion of the court and is intended to prevent the unlawful and oppressive exercise of legal authority, and to bring about the orderly administration of justice.[151]

Again, in *Aglipay v. Ruiz*:[152]

The statutory rule, therefore, in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals but will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, "the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions."[153]

Ramos v. Hon. Torres[154] explained further:

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[151] *Id*. at 306-307.

[152] 64 Phil. 201 (1937) [Per *J*. Laurel, First Division].

[153] *Id*. citing *Dimayuga v. Fernandez*, 43 Phil. 304 (1922) [Per *J*. Johns, First Division]. See also *Planas v. Gil,* 67 Phil. 62 (1939) [Per *J*. Laurel, *En Banc*]; *University of the Philippines v. City Fiscal of Quezon City*, 112 Phil. 880 (1961) [Per *J*. Dizon, *En Banc*]; *Lopez v. The City Judge*, 124 Phil. 1211 (1966) [Per *J*. Dizon, *En Banc*]; *Ramos v. Central Bank*, 222 Phil. 473 (1971) [Per Reyes, J.B.L., *En Banc*]; *Fortun v. Labang*, 192 Phil. 125 (1981) [Per *J*. Fernando, Second Division]; and *Santiago v. Vasquez*, 282 Phil. 171 (1992) [Per *J*. Regalado, *En Banc*].

[154] 134 Phil. 544 (1968) [Per *J*. Concepcion, *En Banc*].

[I]t is well-settled that, as a matter of general rule, the writ of prohibition will not issue to restrain criminal prosecution. Hence, in *Hernandez v. Albano*, we called attention to the fact that:

> ". . . a Rule — now of long standing and frequent application — was formulated that ordinarily criminal prosecution may not be blocked by court prohibition or injunction. Really, if at every turn investigation of a crime will be halted by a court order, the administration of criminal justice will meet with an undue setback. Indeed, the investigative power of the Fiscal may suffer such a tremendous shrinkage that it may end up in hollow sound rather than as a part and parcel of the machinery of criminal justice."

This general rule is based, inter alia:

> ". . . on the fact that the party has an adequate remedy at law by establishing as a defense to the prosecution that he did not commit the act charged, or that the statute or ordinance on which the prosecution is based is invalid, and, in case of conviction, by taking an appeal."

It is true that the rule is subject to exceptions. As pointed out in the *Hernandez* case:

> "We are not to be understood, however, as saying that the heavy hand of a prosecutor may not be shackled — under all circumstances. The rule is not an invariable one. Extreme cases may, and actually do, exist where relief in equity may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional, or was 'held invalid.'"[155]

The vindictive and oppressive manner of petitioner's prosecution is well documented. Petitioner submitted to this

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[155] *Id*. at 550-551 citing *Hernandez v. Albano*, 125 Phil. 513 (1967) [Per *J*. Sanchez, *En Banc*] and *Gorospe v. Penaflorida*, 101 Phil. 892 (1957) [Per *J*. Bautista Angelo, *En Banc*].

Court a listing of attacks made against her by President Rodrigo R. Duterte. President Duterte made 37 statements about petitioner on 24 different occasions from August 11, 2016 to November 28, 2016, accusing her of being involved in the drug trade and repeatedly threatening to jail her. Excerpts of those statements included:

"You elected a senator, kayong mga Pilipino na . . . [w]ho was into narco-politics, who was being financed from the inside." – Speech during the oathtaking of MPC, MCA, and PPA, September 26, 2016[156]

"the portals of the national government has been opened by her election as senator because of the drug money. We are now a narco-politics." – Media Interview before his departure for Vietnam, September 28, 2016[157]

"The portals of the invasion of drugs into the national government started with De Lima." – Speech at the Oathtaking of Newly-appointed Officials and LMP, October 11, 2016[158]

"the portals of the national government have been opened to drug influence. . . Look at De Lima. Do you think those officials who testified against her are lying?" – Press Conference with the Malacañang Press Corps, Beijing, October 19, 2016[159]

"with the election of De Lima . . . the national portals of narcopolitics has entered into the political life of our country." – Meeting with the Filipino Community in Tokyo, Japan, October 25, 2016[160]

"De Lima opened the portals of narcopolitics that started in the National penitentiary." Launching of the Pilipinong may Puso Foundation, Waterfront Hotel, Davao City, November 11, 2016[161]

"Now the portals of the national government has been opened to the creeping influence of drug[s]. You must remember that Leila, si

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[156] Annex A of the Compliance, pp. 5-6.

[157] *Id*. at 4-5.

[158] *Id*. at 4.

[159] *Id*. at 3.

[160] *Id*. at 2.

[161] *Id*. at 1.

Lilia or whatever the name is, was the Secretary of Justice herself and she allowed the drug industry to take place." — Speech at the 80th Founding Anniversary of the NBI, Ermita, Manila, November 14, 2016[162]

"sadly, it was Sen. Leila De Lima who opened the 'portals of the national government to the contamination of narco politics.'" – During his meeting with Rep. Gloria Arroyo in Malacañang, November 28, 2016[163]

"I will destroy her in public" — Media interview, Davao City, August 11, 2016[164]

"I will tell the public the truth of you" — Press Conference, August 17, 2016[165]

"De Lima, you are finished." – Media Interview, Ahfat Seafood Plaza 1, Bajada, Davao City, August 24, 2016[166]

"She will be jailed." — Speech during the oathtaking of MPC, MCA, and PPA, September 26, 2016[167]

"De Lima, do not delude yourself about her kneeling down. I warned her 8 months ago, before the election." –Speech during the 115th Anniversary of the PCG, Port Area, Manila, October 12, 2016[168]

"She will rot in jail." — Meeting with the Filipino Community in Tokyo, Japan, October 25, 2016[169]

"[My sins] was just to make public what was or is the corruption of the day and how drugs prorate [sic] inside our penal institutions, not

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[162] *Id*. at 1.

[163] *Id*.

[164] *Id*. at 19.

[165] *Id*. at 18.

[166] *Id*. at 14.

[167] *Id*. at 5.

[168] *Id*. at 3.

[169] *Id*.

only in Muntinlupa but sa mga kolonya." Media Briefing before his departure for Malaysia, NAIA Terminal 2, November 9, 2016[170]

"her driver herself, who was her lover, was the one also collecting money for her during the campaign." – Speech during the 115th Police Service Anniversary, August 17, 2016[171]

"But in fairness, I would never state here that the driver gave the money to her. But by the looks of it, she has it." – Speech during the 115th Police Service Anniversary, August 17, 2016[172]

"The crux of the matter is, if I do not talk about that relationship with De Lima to her driver, then there is no topic to talk about. Because what is really very crucial is the fact of that relationship with her driver, which I termed 'immoral' because the driver has a family and a wife, gave rise—that connection gave rise to the corruption of what was happening inside the national penitentiary." – Media Interview, Davao City, August 21, 2016[173]

"These illegal things which you saw on TV almost everyday for about a month, do you think that without De Lima giving [her driver] the authority to allow the inmates to do that?" – Media Interview, Davao City, August 21, 2016[174]

"She is lying through her teeth because now that she is . . . You know in all her answers, she was only telling about drugs, now she denied there are leads about drugs, but she never said true or false about the driver. And the driver is the connect—lahat naman sa loob sinasabi . . . ang driver." – Media Interview, Davao City, August 21, 2016[175]

"From the looks of it, it would be unfair to say that si De Lima was into drug trafficking but by implication kasi she allowed them through her driver, pati sila Baraan, I was correct all along because I was

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[170] *Id*. at 2.

[171] *Id*. at 17.

[172] *Id*.

[173] *Id*. at 14-15.

[174] *Id*. at 15.

[175] *Id*. at 16.

supplied with a matrix." – Speech during his visit to the 10th ID, Philippine Army, Compostela Valley, September 20, 2016[176]

"Ang tao, hindi talaga makapigil eh. Magregalo ng bahay, see. It has never been answered kung kaninong bahay, sinong gumastos. Obviously, alam natin lahat. But that is how narco-politics has set in." Speech at the Oathtaking of Newly-appointed Officials and LMP, October 11, 2016[177]

The current Secretary of Justice, Vitaliano Aguirre, actively participated in the Senate and House of Representatives inquiry on the alleged proliferation of the drug trade in the New Bilibid Prison, repeatedly signing off on grants of immunity to the inmates who testified.[178]

Even the Solicitor General, Jose Calida, was alleged to have visited one (1) of the New Bilibid Prison inmates, Jaybee Sebastian, to seek information on petitioner:

May mga bumisita sa akin at tinatanong ang mga inpormasyon na ito at isa dito ay si Solicitor General Calida. Kami ay nagkaharap kasama ang kanyang grupo at nagbigay ako ng mga importanteng inpormasyon. Upang lubos ko silang matulungan ako ay humiling na malipat muli sa maximum kasama si Hanz Tan. Kinausap ni SOLGEN Calida sa telepono si OIC Ascuncion at pinakausap nya kami ni Hanz Tan ay dadalhin sa maximum sa lalong madaling panahon o ASAP ngunit hindi ito nangyari.[179]

Minsan kong kinausap ang mga kapwa ko bilanggo sa Bldg. 14 at kinumbinsi ko sila na samahan akong magbigay linaw sa ginagawang imbestigasyon hingil sa paglaganap ng droga sa bilibid bunsod ito ng pakikipag-usap sa akin ni Sol Gen. Calida at Miss Sandra Cam.[180]

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[176] *Id.* at 9.

[177] *Id.* at 4.

[178] *See* Annex 6 of the Compliance of the Office of the Solicitor General.

[179] Compliance of the Office of the Solicitor General, Sinumpaang Salaysay by Sebastian, p. 15.

[180] Compliance of the Office of the Solicitor General, Pinag-isang Sinumpaang Kontra Salaysay by Sebastian, p. 12.

It is clear that the President, the Secretary of Justice, and the Solicitor General were already convinced that petitioner should be prosecuted even before a preliminary investigation could be conducted. The vindictive and oppressive manner by which petitioner was singled out and swiftly taken into custody is an exceptional circumstance that should have placed the courts on guard that a possible miscarriage of justice may occur.

IX

Under Rule 117 of the Rules of Court, an accused may file a motion to quash an Information on the basis that the trial court had no jurisdiction over the offense charged. Section 3 provides:

Section 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

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

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

On February 20, 2017, petitioner filed a Motion to Quash before the Regional Trial Court of Muntinlupa, alleging that the trial court had no jurisdiction over the offense charged in the Information filed against her. While the Motion was pending,

the trial court issued an Order dated February 23, 2017 finding probable cause against petitioner. Warrants of arrest were issued for her and her co-accused.[181]

The ponencia submits that the filing of a Petition for Certiorari and Prohibition before this Court questioning the trial court's jurisdiction to issue the warrants of arrest was premature, considering that the trial court had yet to act on petitioner's Motion to Quash.[182] This Court cited as basis *Solid Builders v. China Bank*,[183] *State Investment House v. Court of Appeals*,[184] *Diaz v. Nora*,[185] *Republic v. Court of Appeals*,[186] *Allied Broadcasting Center v. Republic*,[187] and *De Vera v. Pineda*.[188] None of these cases, however, actually involved a pending motion to quash in a criminal prosecution.

In *Solid Builders*, a civil case, Solid Bank appealed the Court of Appeals decision on the ground that it effectively enabled China Bank to foreclose on its mortgages despite the allegedly unconscionable interest rates. This Court held that their appeal was premature since the trial court had yet to make a determination of whether the stipulated penalty between the parties was unconscionable.[189]

In *State Investment House*, a civil case, the assailed rulings by the Court of Appeals did not actually make a determination on the issue of prescription. Thus, this Court found premature

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[181] *Ponencia,* p. 4.

[182] *Id*. at 15.

[183] 708 Phil. 96 (2013) [Per *J*. Leonardo-De Castro, First Division].

[184] 527 Phil. 443 (2006) [Per *J*. Corona, Second Division].

[185] 268 Phil. 433 (1990) [Per *J*. Gancayco, First Division].

[186] 383 Phil. 398 (2000) [Per *J*. Mendoza, Second Division].

[187] 268 Phil. 852 (1990) [Per *J*. Gancayco, *En Banc*].

[188] 288 Phil. 318 (1992) [Per *J*. Padilla, *En Banc*].

[189] *Solid Builders v. China Bank,* 709 Phil. 96, 117 (2013) [Per *J*. Leonardo-De Castro, First Division].

a petition for certiorari alleging that the Court of Appeals should not have ruled on the issue of prescription.[190]

In *Diaz*, a labor case, a petition for mandamus was filed to compel the Labor Arbiter to issue a writ of execution of his or her decision. The Labor Arbiter did not act on the motion for the issuance of a writ of execution since an appeal of the decision was filed before the National Labor Relations Commission. Diaz, however, contended that the appeal was not perfected. This Court found the petition for mandamus premature since the proper remedy should have been the filing of a motion to dismiss appeal before the National Labor Relations Commission and a motion to remand the records to the Labor Arbiter.[191]

In *Republic*, a civil case, this Court held that a writ of injunction cannot issue when there is no right yet to be violated.[192] In *Allied Broadcasting*, a special civil action, this Court held that the constitutionality of a law cannot be subject to judicial review if there is no case or controversy.[193] In *De Vera*, a special civil action, this Court held that a petition for certiorari questioning the conduct of investigation of the Integrated Bar of the Philippines is premature when the Investigating Commissioner has not yet submitted a report of the findings to the Board of Governors.[194]

Here, the Motion to Quash filed by petitioner before the trial court specifically assails the trial court's lack of jurisdiction over subject matter. Regardless of whether the Motion is denied or granted, it would not preclude this Court from entertaining

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[190] *State Investment House v. Court of Appeals*, 527 Phil. 443, 451 (2006) [Per *J*. Corona, Second Division].

[191] *Diaz v. Nora,* 268 Phil. 433, 437-438 (1990) [Per *J*. Gancayco, First Division].

[192] *Republic v. Court of Appeals,* 383 Phil. 398, 410-412 (2000) [Per *J*. Mendoza, Second Division].

[193] *Allied Broadcasting Center v. Republic,* 268 Phil. 852, 858 (1990) [Per *J*. Gancayco, *En Banc*].

[194] *De Vera v. Pineda,* 288 Phil. 318, 328 (1992) [Per *J*. Padilla, *En Banc*].

a special civil action assailing the trial court's lack of jurisdiction over the offense charged.

If the Motion to Quash is denied, the remedy of certiorari and prohibition may still be available. As a general rule, the denial of a motion to quash is not appealable and the case proceeds to trial. This rule, however, admits of exceptions. In *Lopez v. The City Judge*,[195] this Court granted a petition for prohibition of a denial of a motion to quash on the basis of lack of jurisdiction, stating:

> On the propriety of the writs prayed for, it may be said that, as a general rule, a court of equity will not issue a writ of certiorari to annul an order of a lower court denying a motion to quash, nor issue a writ of prohibition to prevent said court from proceeding with the case after such denial, it being the rule that upon such denial the defendant should enter his plea of not guilty and go to trial and, if convicted, raise on appeal the same legal questions covered by his motion to quash. In this as well as in other jurisdictions, however, this is no longer the hard and fast rule.
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> The writs of certiorari and prohibition, as extraordinary legal remedies, are, in the ultimate analysis, intended to annul void proceedings; to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. Thus, in *Yu Kong Eng vs. Trinidad* . . . We took cognizance of a petition for certiorari and prohibition although the accused in the case could have appealed in due time from the order complained of, our action in the premises being based on the public welfare and the advancement of public policy. In *Dimayuga vs. Fajardo* . . . We also admitted a petition to restrain the prosecution of certain chiropractors although, if convicted, they could have appealed. We gave due course to their petition for the orderly administration of justice and to avoid possible oppression by the strong arm of the law. And in *Arevalo vs. Nepomuceno* . . . the petition for certiorari challenging the trial court's action admitting an amended information was sustained despite the availability of appeal at the proper time.
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> More recently, We said the following in *Yap vs. the Hon. D. Lutero etc.* :

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[195] 124 Phil. 1211 (1966) [Per *J.* Dizon, *En Banc*].

. . . . . .

"Manifestly, the denial, by respondent herein, of the motion to quash the information in case No. 16443, may not be characterized as 'arbitrary' or 'despotic', or to be regarded as amounting to 'lack of jurisdiction'. The proper procedure, in the event of denial of a motion to quash, is for the accused, upon arraignment, to plead not guilty and reiterate his defense of former jeopardy, and, in case of conviction, to appeal therefrom, upon the ground that he had been twice put in jeopardy of punishment, either for the same offense, or for the same act, as the case may be. However, were we to require adherence to this pretense, the case at bar would have to be dismissed and petitioner required to go through the inconvenience, not to say the mental agony and torture, of submitting himself to trial on the merits in case No. 16443, apart from the expenses incidental thereto, despite the fact that his trial and conviction therein would violate one of his constitutional rights, and that, on appeal to this Court, we would, therefore, have to set aside the judgment of conviction of the lower court. This would, obviously, be most unfair and unjust. Under the circumstances obtaining in the present case, the flaw in the procedure followed by petitioner herein may be overlooked, in the interest of a more enlightened and substantial justice."

Indeed, the lack of jurisdiction of the City Court of Angeles over the criminal offense charged being patent, it would be highly unfair to compel the parties charged to undergo trial in said court and suffer all the embarrassment and mental anguish that go with it.[196]

If the trial court grants the Motion to Quash and finds that it had no jurisdiction over the offense charged, the court cannot, as the ponencia states, "simply order that another complaint or information be filed without discharging the accused from custody"[197] under Rule 117, Section 5, unless the order is contained in the same order granting the motion. Rule 117, Section 5 reads:

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[196] *Id*. at 1217-1219.

[197] *Ponencia*, p. 18.

Section 5. Effect of sustaining the motion to quash. — If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in Section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.

In *Gonzales v. Hon. Salvador*:[198]

The order to file another information, if determined to be warranted by the circumstances of the case, must be contained in the same order granting the motion to quash. If the order sustaining the motion to quash does not order the filing of another information, and said order becomes final and executory, then the court may no longer direct the filing of another information.[199]

Thus, if the trial court has no jurisdiction, any subsequent order it issues would be void. It is for this reason that lack of jurisdiction can be raised at any stage of the proceedings, even on appeal.[200] In a criminal case, any subsequent order issued by a court not having jurisdiction over the offense would amount to a harassment suit and would undoubtedly violate the constitutional rights of the accused.

The ponencia also failed to take note that petitioner amended her prayer in her Memorandum. The Petition states:

WHEREFORE, premises considered, and in the interest of substantial justice and fair play, Petitioner respectfully prays the Honorable Court that judgment be rendered:

a. Granting a writ of certiorari annulling and setting aside the Order dated 23 February 2017, the Warrant of Arrest dated the same date, and the Order dated 24 February 2017 of the

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[198] 539 Phil. 25 (2006) [Per *J*. Carpio Morales, Third Division].

[199] *Id*. at 34-35.

[200] See *United States v. Castañares*, 18 Phil. 210 (1911) [Per *J*. Carson, *En Banc*].

Regional Trial Court-Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled People of the Philippines versus Leila M. De Lima et al;

b. Granting a writ of prohibition enjoining and prohibiting respondent judge from conducting further proceedings until and unless the Motion to Quash is resolved with finality;

c. Issuing an order granting the application for the issuance of temporary restraining order (TRO) and a writ of preliminary injunction to the proceedings; and

d. Issuing a Status Quo Ante Order restoring the parties to the status prior to the issuance of the Order and Warrant of Arrest, both dated February 23, 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.[201]

Petitioner's Memorandum, however, states:

WHEREFORE, premises considered, and in the interest of substantial justice and fair play, Petitioner respectfully prays the Honorable Court that judgment be rendered:

a. Granting a writ of certiorari annulling and setting aside the Order dated 23 February 2017, the Warrant of Arrest dated the same date, and the Order dated 24 February 2017 of the Regional Trial Court-Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled People of the Philippines versus Leila M. De Lima et al; and

b. Ordering the immediate release of Petitioner from detention.

Petitioner likewise prays for other just and equitable reliefs.[202]

Issues raised in previous pleadings but not raised in the memorandum are deemed abandoned.[203] The memorandum, "[b]eing a summation of the parties' previous pleadings . . . alone may be considered by the Court in deciding or resolving the petition."[204]

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[201] Petition, p. 64.

[202] Memorandum for Petitioner, p. 61.

[203] *See* A.M. No. 99-2-04-SC (2000).

[204] A.M. No. 99-2-04-SC (2000).

Thus, it is inaccurate for the ponencia to insist that petitioner's prayer in the Petition was "an unmistakable admission that the RTC has yet to rule on her Motion to Quash."[205] Petitioner's Memorandum does not mention the relief cited by the ponencia in her Petition, and thus, should be considered abandoned. Petitioner, therefore, does not admit that the Regional Trial Court must first rule on her Motion to Quash before seeking relief with this Court.

In any case, by issuing the Warrant of Arrest, the trial court already acted on the Motion to Quash by assuming jurisdiction over the offense charged. It would have been baffling for the trial court to find probable cause, issue the warrant of arrest, and then subsequently find the Information defective and grant the Motion to Quash. The relief sought by petitioner in the quashal of the Information would have been rendered moot once the trial court determined that it had the competence to issue the Warrant of Arrest.

X

Petitioner did not violate the rule on forum shopping since a question of lack of jurisdiction may be raised at any stage of the proceeding. The purpose of the rule on forum shopping is to prevent conflicting decisions by different courts on the same issue. Considering the novelty of the issue presented, a direct recourse to this Court despite the pendency of the same action in the trial court should be allowed.

In *City of Makati v. City of Taguig*,[206] this Court previously discussed the origins and purpose of the rule on forum shopping:

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation explained that:

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[205] *Ponencia*, p. 15.

[206] G.R. No. 208393, June 15, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208393.pdf> [Per *J.* Leonen, Second Division].

> Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

First Philippine International Bank v. Court of Appeals recounted that forum shopping originated as a concept in private international law:

> To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of forum non conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
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> In this light, Black's Law Dictionary says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to Words and Phrases, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co.* recounted that:

> The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in

Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[207]

There is forum shopping when "there is identity of parties, rights or causes of action, and reliefs sought."[208] This Court, as discussed, is not precluded from entertaining a pure question of law, especially in this instance where the issue is a novel one. The rationale for the rule on forum shopping is to prevent conflicting decisions by different tribunals. There would be no conflicting decisions if this Court decides with finality that the trial court had no jurisdiction over the offense charged in the Information. It would be unjust to allow the trial court to proceed with the hearing of this case if, at some point, this Court finds that it did not have jurisdiction to try it in the first place.

XI

Petitioner substantially complied with the requirements of the verification in her Petition.

Rule 7, Section 4 of the Rules of Court requires all pleadings to be verified.[209] A pleading which lacks proper verification is treated as an unsigned pleading and shall, thus, be the cause for the dismissal of the case.[210] The requirement of verification

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[207] *Id*. citing *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* , 457 Phil. 740 (2003) [Per *J*. Bellosillo, Second Division]; *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280 (1996) [Per *J*. Panganiban, Third Division]; and *Prubankers Association v. Prudential Bank and Trust Co*., 361 Phil. 744 (1999) [Per *J*. Panganiban, Third Division].

[208] *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per *J*. Reyes, Second Division] citing *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per *J*. Panganiban, Third Division].

[209] RULES OF COURT, Rule 7, Sec. 4 provides:

Section 4. Verification. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit .

[210] See RULES OF COURT, Rule 7, Sec. 4 and Sec. 5.

is merely formal, not jurisdictional, and in proper cases, this Court may simply order the correction of a defective verification.[211] "Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith."[212]

The ponencia insists on an unreasonable reading of the Rules, stating that petitioner's failure to sign the Verification in the presence of the notary invalidated her Verification.[213] It cites *William Go Que Construction v. Court of Appeals*[214] and states that "[w]ithout the presence of the notary upon the signing of the Verification and Certification against Forum Shopping, there is no assurance that the petitioner swore under oath that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative."[215]

The events which transpired in this case, however, are different than that of *William Go Que Construction*. Here, the petitioner and the notary public knew each other. There was no question as to their identities. The notary public's affidavit likewise states that she met with petitioner on the day of the notarization. Even with the difficulties presented by petitioner's detention, the notary public still required petitioner's staff to provide proof of identification.[216]

No one is questioning petitioner's identification or signature in the Petition. No one alleges that she falsified her signature

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[211] See *Jimenez vda. de Gabriel v. Court of Appeals*, 332 Phil. 157, 165 (1996) [Per *J*. Vitug, First Division].

[212] *Shipside v. Court of Appeals*, 404 Phil. 981, 994-995 (2001) [Per *J*. Melo, Third Division].

[213] *Ponencia*, pp. 9-10.

[214] G.R. No. 191699, April 19, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/191699.pdf> [Per *J*. Perlas-Bernabe, First Division].

[215] *Ponencia*, p. 11.

[216] *See* Memorandum for Petitioner, pp. 59-60.

in the Petition or that the notary public was unauthorized to notarize the Petition. The evil sought to be prevented by the defective verification, therefore, is not present in this case.

The ponencia's insistence on its view of strict compliance with the requirements of the *jurat* in the verification is a hollow invocation of an ambiguous procedural ritual bordering on the contrived. Substantial justice should always prevail over procedural niceties without any clear rationale.

XII

A direct resort to this Court will not be entertained if relief can be obtained in a lower court, owing to the doctrine of the hierarchy of courts. As aptly discussed in *Diocese of Bacolod v. Commission on Elections*:[217]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike

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[217] 751 Phil. 301 (2015) [Per. *J.* Leonen, *En Banc*].

the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.

In other words, the Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent should not be emasculated by the doctrine in respect of the hierarchy of courts. That has never been the purpose of such doctrine.[218]

Diocese of Bacolod, however, clarified that the doctrine of hierarchy of courts is not iron-clad. There are recognized exceptions to its application. Thus, in *Aala v. Uy*:[219]

Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[220]

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[218] *Id*. at 329 citing *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987) [Per *J*. Cruz, *En Banc*]. *J.M. Tuason & Co., Inc., et al. v. Court of Appeals, et al*.,113 Phil. 673, 681 (1961) [Per *J*. J.B.L. Reyes, *En Banc*]; and *Espiritu v. Fugoso*, 81 Phil. 637, 639 (1948) [Per *J*. Perfecto, *En Banc*].

[219] G.R. No. 202781, January 10, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/202781.pdf> [Per *J*. Leonen, *En Banc*].

[220] *Id*. at 15 citing *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 331-335 (2015) [Per *J*. Leonen, *En Banc*].

The doctrine of hierarchy of courts does not apply in this case. The issue before this Court is certainly a novel one. This Court has yet to determine with finality whether the regional trial court exercises exclusive jurisdiction over drug offenses by public officers, to the exclusion of the Sandiganbayan. Likewise, the question of jurisdiction pertains to a pure question of law; thus, allowing a direct resort to this Court.

Also, a direct resort to this Court is also allowed to "prevent the use of the strong arm of the law in an oppressive and vindictive manner."[221] This Court would be in the best position to resolve the case as it presents exceptional circumstances indicating that it may be "a case of persecution rather than prosecution."[222]

XIII

This would have been a simple and ordinary case had the petitioner's reaction been different.

The Petitioner here is known to be a vocal critic of this administration. She drew attention to many things she found wrong. She had been the subject of the colorful ire of the President of the Republic of the Philippines and his allies.

Publicly, through media and even before his Department could conduct the usual preliminary investigation, the Secretary of Justice himself already took a position and presented his case against the accused before a committee of the House of Representatives by personally conducting the examination of currently incarcerated individuals and serving sentence. This Court takes judicial notice that the Department of Justice has supervision and control over the Board of Pardons and Parole, the Bureau of Prisons, and the Witness Protection Program.

The public was treated to the witnesses of government as well as other salacious details of the life of the accused even

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[221] *Dimayuga v. Fernandez*, 43 Phil. 304, 306-307 (1922) [Per *J.* Johns, First Division].

[222] *Brocka v. Enrile*, 270 Phil. 271, 277-279 (1990) [Per *J.* Medialdea, *En Banc*].

before any formal investigation related to this case happened. It is true that the Secretary of Justice recused but the preference of the leadership of the Executive Branch was already made known so clearly, so colorfully, and so forcefully. It is reasonable to suspect that her case is quintessentially the use of the strong arm of the law to silence dissent.

Even in strong democracies, dissenting voices naturally find themselves in the minority. Going against the tide of majority opinion, they often have to face threats that may be deployed to silence them. It is then that they will repair to this Court for succor. After all, sacred among this Court's duties is the protection of everyone's fundamental rights enshrined in every corner of our Constitution.

It should not be this institution that wavers when this Court finds rights clearly violated. It is from the courage of our position and the clarity in our words that empowers our people to find their voice even in the most hostile of environments. To me, what happened in this case is clear enough. The motives are not disguised.

It is this that makes this case special: if we fail to call this case what it truly is, then it will not only be the petitioner who will be in chains.

None of us will be able to claim to be genuinely free.

ACCORDINGLY, I vote to **GRANT** the Petition.

DISSENTING OPINION

JARDELEZA, *J.*:

The case presents a conflict between a person's right to liberty and the State's right to prosecute persons who appear to violate penal laws. On the one hand, the petitioner argues that a presiding judge's first duty in a criminal case is to determine the trial court's own competence or jurisdiction. When a judge is put on alert, through a motion to quash filed by the accused challenging her jurisdiction over the offense charged, she must first resolve the issue of jurisdiction before issuing a warrant

of arrest. On the other hand, respondents maintain that the first and foremost task of the judge is to determine the existence or non-existence of probable cause for the arrest of the accused. The Revised Rules of Criminal Procedure do not require a judge to resolve a pending motion to quash prior to the issuance of a warrant of arrest.

The *ponencia* accepts the respondents' position and concludes that the respondent judge had no positive duty to first resolve petitioner De Lima's *motion to quash* before issuing a warrant of arrest. I respectfully dissent. While I do not fully subscribe to petitioner's analysis, I find that, under the present Rules, the demands of due process require the judge to resolve the issue of jurisdiction simultaneous with, if not prior to, the issuance of the warrant of arrest.

I

One of the fundamental guarantees of the Constitution is that no person shall be deprived of life, liberty, or property without due process of law.[1] With particular reference to an accused in a criminal prosecution, Section 14(1) of Article III provides:

> Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

As applied to criminal proceedings, due process is satisfied if the accused is informed as to why he is proceeded against and what charge he has to meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being imposed in accordance with a valid law.[2] This formulation of due process in criminal procedure traces its roots from a US Supreme Court decision of Philippine origin, *Ong Chang Wing v. United States*,[3] where the federal court held:

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[1] CONSTITUTION, Art. III, Sec. 1.

[2] *Vera v. People*, G.R. No. L-31218, February 18, 1970, 31 SCRA 711, 717.

[3] 218 U.S. 272 (1910).

This court has had frequent occasion to consider the requirements of due process of law as applied to criminal procedure, and, generally speaking, it may be said that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded within the authority of a constitutional law, then he has had due process of law.[4] (Citation omitted.)

For clarity, the criminal due process clause of the Bill of Rights refers to procedural due process. It simply requires that the procedure established by law or the rules[5] be followed.[6] "Criminal due process requires that the accused must be proceeded against under the orderly processes of law. In all criminal cases, the judge should follow the step-by-step procedure required by the Rules. The reason for this is to assure that the State makes no mistake in taking the life or liberty except that of the guilty."[7] It applies from the inception of custodial investigation up to rendition of judgment.[8] The clause presupposes that the penal law being applied satisfies the substantive requirements of due process.[9] In this regard, the procedure for one of the early stages of criminal prosecution, *i.e.*, arrests, searches and seizure, is laid down by the Constitution itself. Article III, Section 2 provides that a search warrant or warrant of arrest shall only be issued upon a judge's personal determination of probable cause after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

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[4] *Id.* at 279-280.

[5] CONSTITUTION, Art. VIII, Sec. 5(5).

[6] *United States v. Ocampo*, 18 Phil. 1, 41 (1910).

[7] *Romualdez v. Sandiganbayan*, G.R. Nos. 143618-41, July 30, 2002, 385 SCRA 436, 446. Citations omitted.

[8] *Id.* at 445.

[9] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2009 Ed., p. 498.

Also part of an accused's right to due process is the right to a speedy trial[10] and to a speedy disposition of a case,[11] which have both been expressed as a right against "vexatious, capricious, and oppressive delays."[12] The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. The inquiry as to whether or not an accused has been denied such right is not susceptible to precise qualification; mere mathematical reckoning of the time involved is insufficient. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept. In determining whether the right has been violated, courts must balance various factors such as the duration of the delay, the reason therefor, the assertion of the right, and prejudice to the defendant.[13]

Parallel to the rights of the accused is the State's "inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice."[14] The State has

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[10] CONSTITUTION, Art. III, Sec. 14(2).

[11] CONSTITUTION, Art. III, Sec. 16. In *Dansal v. Fernandez* (G.R. No. 126814, March 2, 2000, 327 SCRA 145, 152-153), the Court succinctly explained the distinction between Section 14(2) and Section 16: "[Section 16] guarantees the right of all persons to 'a speedy disposition of their case'; includes within its contemplation the periods before, during and after trial, and affords broader protection than Section 14(2), which guarantees just the right to a speedy trial. It is more embracing than the protection under Article VII, Section 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases." (Citations omitted.)

[12] *Gonzales v. Sandiganbayan*, G.R. No. 94750, July 16, 1991, 199 SCRA 298, 307. Citation omitted.

[13] *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 313.

[14] *Allado v. Diokno*, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 209.

every right to prosecute and punish violators of the law because it is essential for the sovereign's self-preservation and its very existence.[15] In our democratic system, society has a particular interest in bringing swift prosecutions and the government, as representatives of the people, is the one who should protect that interest.[16]

In resolving conflicts between the State's right to prosecute and the rights of the accused, the Court has applied the balancing test.[17] "[C]ourts must strive to maintain a delicate balance between the demands of due process and the strictures of speedy trial, on the one hand; and, on the other, the right of the State to prosecute crimes and rid society of criminals."[18] While the State, through its executive and judicial departments, has the "natural and illimitable"[19] right to prosecute and punish violators of the law, it has the concomitant duty of insuring that the criminal justice system is consistent with due process and the constitutional rights of the accused.[20]

II

Before proceeding with the analysis of the case, it is important to clarify at the outset the limits of the accused's rights. First, the Constitution does not require judicial oversight of the executive department's decision to prosecute.[21] Second, there

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[15] *Id.*

[16] *Corpuz v. Sandiganbayan, supra* at 321.

[17] *Id.* at 313. See also *Coscolluela v. Sandiganbayan (First Division)*, G.R. No. 191411, July 15, 2013, 710 SCRA 188; *Olbes v. Buemio*, G.R. No. 173319, December 4, 2009, 607 SCRA 336; and *People v. Tampal*, G.R. No. 102485, May 22, 1995, 244 SCRA 202.

[18] *Lumanlaw v. Peralta, Jr.*, G.R. No. 164953, February 13, 2006, 482 SCRA 396, 409.

[19] *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 427.

[20] *Corpuz v. Sandiganbayan*, *supra* note 13 at 321.

[21] We only review, in an appropriate case, whether the prosecutorial arm gravely abused its discretion. (*Information Technology v. Comelec*,

is no absolute constitutional right to have the issue of jurisdiction—understood as the authority to hear and try a particular offense and impose punishment[22]—determined prior to the issuance of a warrant of arrest. This is because the issuance of a warrant of arrest is not dependent upon the court's jurisdiction over the offense charge. Petitioner's formulation—that a court without jurisdiction over the offense charged has no power to issue a warrant of arrest and, consequently, that a warrant so issued is void—fails to capture this nuance.

At first glance, it appears that there is merit to petitioner's argument because under the current Rules of Criminal Procedure, the court that issues the warrant is the same court that hears and decides the criminal case. However, the two are tied only by a mere procedural rule rather than a substantive law on jurisdiction. The history of the warrant procedure in the Philippines and the practice in the US reveal that the two powers, *i.e.*, the power to issue warrants and the power to hear and decide cases, are **separate and distinct**. This is not quite the same as the power to issue a temporary restraining order, for instance, which is plainly incidental to the main action and can have no independent existence apart from a suit on a claim of the plaintiff against the defendant.

Under the Judiciary Act of 1948,[23] the Courts of First Instance (CFI) were granted original jurisdiction over "all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos."[24] However, Section 87 of the same law vests upon lower level courts, the justices of the peace, the authority to "conduct

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G.R. Nos. 159139 & 174777, June 6, 2017.) This is not at issue here because it is the subject of the consolidated cases filed by petitioner which are presently pending before the Court of Appeals, docketed as CA-G.R. SP Nos. 149097 and 149358.

[22] *People v. Mariano*, G.R. No. L-40527, June 30, 1976, 71 SCRA 600, 605.

[23] Republic Act No. 296.

[24] Republic Act No. 296, Sec. 44(f).

preliminary investigations for any offense alleged to have been committed within their respective municipalities and cities, **without regard to the limits of punishment**, and may release, or **commit and bind** over any person charged with such offense to secure his appearance before the proper court."

Thus, under the 1964 Rules of Court, the standard procedure was for the justice of the peace to conduct a preliminary examination upon the filing of a complaint or information imputing the commission of an offense cognizable by the CFI, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.[25] CFI judges had a similar authority to conduct preliminary examination and investigation upon a complaint directly filed with it.[26]

The Judiciary Reorganization Act of 1980[27] is clearer. It provides that "[j]udges of Metropolitan Trial Courts, except those in the National Capital Region, of Municipal Trial Courts, and Municipal Circuit Trial Courts shall have authority to conduct preliminary investigation of crimes alleged to have been committed within their respective territorial jurisdictions which **are cognizable by the Regional Trial Courts**."[28] Thus, municipal/metropolitan trial court (MTC) judges have the power to issue a warrant of arrest in relation to the preliminary investigation pending before them, with the only restriction being that embodied in the Bill of Rights, *i.e.*, finding of probable cause after an examination in writing and under oath or affirmation of the complainant and his witnesses.

This substantive law found implementation in the 1985 Rules of Criminal Procedure, which provided that when the municipal trial judge conducting the preliminary investigation is satisfied

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[25] 1964 RULES OF COURT, Rule 112, Secs. 1 & 2.

[26] 1964 RULES OF COURT, Rule 112, Sec. 13.

[27] *Batas Pambansa Blg.* 129.

[28] *Batas Pambansa Blg.* 129, Sec. 37.

after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest.[29] The 1985 Rules removed the conduct of preliminary investigation by regional trial court (RTC) judges and introduced a substantial change with respect to the RTC's exercise of its power to issue an arrest warrant—the RTC could only do so after an information had been filed.[30]

In the US, from which we patterned our general concept of criminal due process, the magistrate judge who issues the arrest warrant is different from the judge who conducts the preliminary hearing (post-arrest) and the one who actually tries the case.[31] The probable cause determination for the issuance of an arrest warrant is a preliminary step in the Federal Criminal Procedure, done *ex parte* without bearing any direct relation to the jurisdiction to hear the criminal case after indictment. Notably, our old rules hewed closely to the American procedure where the determination of probable cause and issuance of arrest warrants were performed by lower level courts.

The foregoing confirms that the power to issue an arrest warrant may exist independently of the power to hear and decide a case and that the judge issuing the warrant need not be the same judge who will hear and decide the case. The Constitution only requires that the person who issues the warrant should be a judge and there is no requirement that this judge should sit on a court that has jurisdiction to try the case. It is therefore inaccurate to characterize the power to issue a warrant of arrest as being subsumed by the court's jurisdiction over the offense charged. Again, it only seems that way because of the revisions introduced by the 2000 Rules of Criminal Procedure. The 2000 Rules tied the issuance of the warrant of arrest with the court

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[29] 1985 RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 6(b).

[30] 1985 RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 6(a).

[31] FEDERAL RULES OF CRIMINAL PROCEDURE, Rules 4, 5.1 and 18.

having jurisdiction over the offense charged. Thus, unlike the previous iteration of the Rules, the court that will hear and decide the criminal case became the same and exclusive court that determines probable cause for the issuance of the warrant of arrest.[32] The 2005 amendments to Rule 112[33] later removed the function of conducting preliminary investigation from MTC judges, which means that arrest warrants may now only issue after the filing of information. This is significant because the filing of an information is the operative act that vests the court jurisdiction over a particular criminal case.[34] Notwithstanding the present formulation of our criminal procedure, the provision in the Judiciary Reorganization Act authorizing MTC judges to conduct preliminary investigation and issue arrest warrants remain to be good law. Such powers are conferred by substantive law and, strictly speaking, cannot be "repealed" by procedural rules.

The issuance of a warrant of arrest is, at its core, a special criminal process, similar to its companion in the Bill of Rights, that is, the issuance of a search warrant. As the Court explained in *Malaloan v. Court of Appeals*,[35] penned by Justice Regalado:

> Petitioners invoke the jurisdictional rules in the institution of criminal actions to invalidate the search warrant issued by the Regional Trial Court of Kalookan City because it is directed toward the seizure of firearms and ammunition allegedly cached illegally in Quezon City. This theory is sought to be buttressed by the fact that the criminal case against petitioners for violation of Presidential Decree No. 1866 was subsequently filed in the latter court. The application for the search warrant, it is claimed, was accordingly filed in a court of

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[32] 2000 REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 6.

[33] A.M. No. 05-8-26-SC, Amendment of Rules 112 and 114 of the Revised Rules on Criminal Procedure by Removing the Conduct of Preliminary Investigation from Judges of the First Level Courts, August 30, 2005.

[34] The 2000 Rules did not have any explanatory note, though it may be gleaned that the reason is to streamline the criminal procedure and to ease the burden on MTCs or, more generally, to ensure the speedy and efficient administration of justice.

[35] G.R. No. 104879, May 6, 1994, 232 SCRA 249.

improper venue and since venue in criminal actions involves the territorial jurisdiction of the court, such warrant is void for having been issued by a court without jurisdiction to do so.

The basic flaw in this reasoning is in erroneously equating the application for and the obtention of a search warrant with the institution and prosecution of a criminal action in a trial court. ***It would thus categorize what is only a special criminal process, the power to issue which is inherent in all courts, as equivalent to a criminal action, jurisdiction over which is reposed in specific courts of indicated competence.*** **It ignores the fact that the requisites, procedure and purpose for the issuance of a search warrant are completely different from those for the institution of a criminal action.**

For, indeed, **a warrant, such as a warrant of arrest** or a search warrant, merely **constitutes process**. A search warrant is defined in our jurisdiction as an order in writing issued in the name of the People of the Philippines signed by a judge and directed to a peace officer, commanding him to search for personal property and bring it before the court. A search warrant is in the nature of a criminal process akin to a writ of discovery. It is a special and peculiar remedy, drastic in its nature, and made necessary because of a public necessity.

In American jurisdictions, from which we have taken our jural concept and provisions on search warrants, such warrant is definitively considered merely as a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. We emphasize this fact for purposes of both issues as formulated in this opinion, with the catalogue of authorities herein.[36] (Emphasis supplied, citations omitted.)

Malaloan's reasoning is equally applicable to arrest warrants, particularly when historical, functional, and structural considerations of our criminal procedure are taken into account. An arrest warrant is a preliminary legal process, issued at an initial stage of the criminal procedure, in which a judge finds probable cause that a person committed a crime and should be bound over for trial. The principal purpose of the warrant

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[36] *Id*. at 255-257. See also *Worldwide Web Corporation v. People*, G.R. No. 161106, January 13, 2014, 713 SCRA 18.

procedure laid down by the rules is to satisfy the requirements of Article III, Section 2. Its placement in Rule 112 (preliminary investigation) reflects an assumption that the probable cause determination/issuance of arrest warrant precedes the criminal action proper which begins with arraignment. Prior to arraignment, we have held that the specific rights of the accused enumerated under Article III, Section 14(2), as reiterated in Rule 115, do not attach yet because the phrase "criminal prosecutions" in the Bill of Rights refers to proceedings before the trial court from arraignment (Rule 116) to rendition of the judgment (Rule 120).[37] Following Justice Regalado's analysis in *Malaloan*, it may be concluded that the criminal action proper formally begins with arraignment.[38]

The distinction between the warrant process and the criminal action leads me to conclude that there is no stand-alone right that criminal jurisdiction be determined prior to the issuance of a warrant of arrest. For one, the Constitution does not textually prescribe such procedure; for another, such statement would not have been universally true, dependent as it is upon prevailing procedural rules. Moreover, since the power to issue a warrant of arrest is conferred by substantive law, such as the Constitution[39]

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[37] *People v. Jose*, G.R. No. L-28232, February 6, 1971, 37 SCRA 450, 472-473, citing *U.S. v. Beecham*, 23 Phil. 258 (1912).

[38] An arraignment is that stage where, in the mode and manner required by the rules, an accused, *for the first time*, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty (*Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 287. Italics supplied, citation omitted.). See also the rule in double jeopardy, which requires arraignment and plea for jeopardy to attach (*People v. Ylagan*, 58 Phil. 851 [1933]). Jeopardy does not attach in the preliminary investigation stage because it "has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof" (*Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90).

[39] "The power of the judge to determine probable cause for the issuance of a warrant of arrest is enshrined in Section 2, Article III of the Constitution." (*Fenix v. Court of Appeals*, G.R. No. 189878, July 11, 2016, 796 SCRA 117, 131.)

and the Judiciary Reorganization Act, its issuance by a court upon which such authority is vested but having no jurisdiction over offense charged cannot be peremptorily be declared as void for being *ultra vires*. However, the issuance of the warrant may be annulled if it contravenes the Rules because that would result in a violation of the accused's due process rights.

III

In my view, any due process claim by the accused must be evaluated on the basis of the applicable rules of procedure. This is consistent with the traditional touchstone for criminal due process that the accused must be proceeded against according to the procedure prescribed by remedial law.[40]

Under Rule 112 of the 2000 Rules, the judge is required to "personally evaluate the resolution of the prosecutor and its supporting evidence" within 10 days from the filing of the information.[41] After his personal determination of probable cause, the judge has three options: (a) to immediately dismiss the case for lack of probable cause; (b) if he finds probable cause, issue a warrant of arrest or commitment order; or (c) in case of doubt on the existence of probable cause, he may order the prosecution to present additional evidence.[42] While the Rules do not mention dismissal for lack of jurisdiction in Rule 112, it may be raised as a ground for the quashal of the information under Rule 117.[43]

A motion to quash may be filed any time before the accused enter his plea,[44] which means at any point between the filing of the information and arraignment. Thus, there is a 10-day window within which both the determination of probable cause and the motion to quash may be simultaneously pending before

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[40] See *Taglay v. Daray*, G.R. No. 164258, August 22, 2012, 678 SCRA 640; *Romualdez v. Sandiganbayan*, *supra* note 7; and *United States v. Ocampo*, *supra* note 6.

[41] RULES OF COURT, Rule 112, Sec. 5(a).

[42] RULES OF COURT, Rule 112, Sec. 5(a).

[43] RULES OF COURT, Rule 117, Sec. 3(b).

[44] RULES OF COURT, Rule 117, Sec. 1.

the trial court. In this regard, the Solicitor General is correct that the Rules are silent as to which matter the court should resolve first. But the silence is ambiguous; in analyzing the process due the accused in these instances, it becomes necessary to balance the societal interests and the rights of the accused.

A sweeping rule that a motion to quash must be resolved prior to the determination of probable cause would unduly impair society's interest in having the accused answer to a criminal prosecution because it is susceptible to being used as a dilatory tool to evade arrest. Neither would a rule that the motion be resolved simultaneously with probable cause be workable because the judge only has 10 days within which to personally determine probable cause. A motion to quash is a litigious motion that requires notice and hearing,[45] and it may well be unreasonable to impose upon judges such additional burden within a tight timeframe. The accused's right to a speedy disposition of his case does not mean that speed is the chief objective of the criminal process; careful and deliberate consideration for the administration of justice remains more important than a race to end the litigation.[46]

On the narrow ground of lack of jurisdiction over the offense charged, however, the balance tilts in favor of the accused. As I have previously emphasized, the 2000 Rules is structured in such a way that the court that issues the arrest warrant is the same court that hears the case. Upon filing of the information, the court is authorized by the Rules to exercise all powers relevant to the criminal case which include the issuance of arrest warrants, bail applications,[47] quashal of search warrants,[48] and, of course, the criminal action proper, from arraignment to judgment.[49]

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[45] *People v. Court of Appeals*, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 492-493.

[46] *State Prosecutors v. Muro*, A.M. No. RTJ-92-876, December 11, 1995, 251 SCRA 111, 117-118.

[47] RULES OF COURT, Rule 114, Sec. 17.

[48] RULES OF COURT, Rule 126, Sec. 14.

[49] RULES OF COURT, Rules 116-120.

Because the existing procedure has consolidated the various facets of criminal procedure in a single court, the exercise of these powers have become procedurally tied to jurisdiction over the offense charged. Hence, while I have pointed out that the power to issue arrest warrants is separate and distinct from the power to hear and decide a case, the Rules make it impossible for the court to proceed to arraignment and trial if it has no jurisdiction over the offense charged.

When a court without jurisdiction over the offense orders the arrest of the accused prior to resolving the issue of jurisdiction, it necessarily prolongs the disposition of the case. I view this delay as incompatible with due process and the right to speedy disposition of cases. First, the reason for the delay is directly attributable to the prosecution, which has the primary duty of determining where the information should be filed.[50] The accused plays no part in such determination and it is not her duty to bring herself to trial. The State has that duty as well as the duty of ensuring that the conduct of the prosecution, including the pretrial stages, is consistent with due process.[51] Second, when the prosecution is amiss in its duty, it unavoidably prejudices the accused. Prejudice is assessed in view of the interests sought to be protected by the constitutional criminal due process guarantees, namely: to prevent oppressive pretrial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired.[52] When an accused is forced to contend with pretrial restraint while awaiting for the court's dismissal of the case on jurisdictional grounds, these interests are ultimately defeated.

Considering that, under the present Rules, the court where the information is filed cannot proceed to trial if it has no jurisdiction over the offense charged, any delay between the issuance of the warrant of arrest and the resolution of the issue

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[50] RULES OF COURT, Rule 110, Secs. 4, 5 & 15.

[51] *Coscolluela v. Sandiganbayan (First Division)*, *supra* note 17 at 199, citing *Barker v. Wingo*, 407 U.S. 514 (1972).

[52] *Id.* at 200-201.

of jurisdiction, regardless of the length of time involved, is *per se* unreasonable. The delay and concomitant prejudice to the accused is avoidable and would serve no other purpose than to restrain the liberty of the accused for a period longer than necessary. Liberty is "too basic, too transcendental and vital in a republican state, like ours"[53] to be prejudiced by blunders of prosecutors. Society has no interest in the temporary incarceration of an accused if the prosecution's ability proceed with the case in accordance with the processes laid down by the Rules is in serious doubt. The generalized notion of the sovereign power's inherent right to self-preservation must yield to the paramount objective of safeguarding the rights of an accused at all stages of criminal proceedings, and to the interest of orderly procedure adopted for the public good.[54] Indeed, societal interests are better served if the information is filed with the proper court at the first instance.

In practical terms, I submit that the determination of probable cause and resolution of the motion to quash on the ground of lack of jurisdiction over the offense charged should be made by the judge simultaneously within the 10-day period prescribed by Rule 112, Section 5(a). In resolving the question of jurisdiction, the judge only needs to consider the allegations on the face of the information and may proceed *ex parte*. As opposed to other grounds for quashal of the information, jurisdiction may easily be verified by looking at the imposable penalty for the offense charged, the place where the offense was committed, and, if the offender is a public officer, his salary grade and whether the crime was alleged to have been committed in relation to his office. If the motion to quash filed by the accused raises grounds other than lack of jurisdiction over the offense charged, then the court may defer resolution of these other grounds at any time before arraignment. This procedure in no way impinges the right of the State to prosecute because

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[53] *People v. Hernandez, et al.*, 99 Phil. 515, 551 (1956).

[54] *Alejandro v. Pepito*, G.R. No. 52090, February 21, 1980, 96 SCRA 322, 327.

the quashal of the information is not a bar to another prosecution for the same offense.[55]

In sum, the Rules on Criminal Procedure play a crucial role in implementing the criminal due process guarantees of the Constitution. Contravention of the Rules is tantamount to a violation of the accused's due process rights. The structure of the Rules binds the issuance of a warrant of arrest to jurisdiction over the main criminal action; hence, the judicious procedure is for the judge to determine jurisdiction no later than the issuance of the warrant of arrest in order to mitigate prejudice to the accused. Applying the foregoing principles, the respondent judge violated petitioner's constitutional right to due process and to speedy disposition of cases when she issued a warrant of arrest without resolving the issue of jurisdiction over the offense charged. She ought to have known that, under the Rules, she could not have proceeded with petitioner's arraignment if she did not have jurisdiction over the offense charged. Respondent judge's error is aggravated by the fact that the lack of jurisdiction is patent on the face of the information. On this point, I join the opinion of Justice Caguioa that it is the Sandiganbayan which has jurisdiction over the offense. At the time of the alleged commission of the offense, petitioner was the incumbent Secretary of the Department of Justice, a position classified as Salary Grade 31 and squarely falls within the jurisdiction of the Sandiganbayan.[56] It is likewise clear from the allegations in the information that the crime was committed in relation to her capacity as then Secretary of Justice.[57]

I vote to grant the petition.

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[55] RULES OF COURT, Rule 117, Sec. 6.

[56] Presidential Decree No. 1606, as amended. Sec. 4(b) in relation to 4(a)(1).

[57] Relevant portions of the information reads that "accused Leila M. De Lima, being then the Secretary of the Department of Justice x x x having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading x x x De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates x x x."

DISSENTING OPINION

CAGUIOA, *J.*:

Again, I dissent.

First and foremost is the Constitution. And the Court is its most valiant guardian with the sacred duty to nip in the bud any erosion, derogation or diminution of its primacy.

This case, in almost every aspect, involves a constitutional issue — and presents itself as a moment in the country's history where the Court could, as indeed it was called upon, to lay down clear and unambiguous positions on the primacy of the Constitution. Instead of seizing this golden opportunity, and bravely asserting its role as guardian, the Court, speaking through the majority, has chosen to, once again, retreat and find refuge in technical and procedural niceties, totally brushing aside the paramount constitutional significance of this case.

The constitutional questions raised in this case are crystal clear:

Can an Information — void on its face — warrant a determination of probable cause against petitioner and justify the issuance of an arrest warrant against her and cause her arrest and detention without violating her constitutional right to be informed of the nature and cause of the accusation against her — when this very same Court *en banc* has previously ruled[1] that such an Information is violative of the right of the accused to be informed of the nature and cause of the accusation against him and should be acquitted?

Can a trial judge, when called upon to determine probable cause to issue a warrant of arrest, simply ignore the accused's motion to quash the Information raising lack of jurisdiction —

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[1] *People v. Pangilinan*, 676 Phil. 16 (2011) [Per *J.* Peralta, with *JJ.* Velasco, Jr., Abad, Perez and Mendoza concurring, Third Division] and *People v. Dela Cruz*, 432 Phil. 988 (2002) [Per *J.* Kapunan, with *JJ.* Bellosillo, Vitug, Mendoza, Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez and Corona concurring, *En Banc*].

on the expedient pretext that the rules of procedure are silent in this respect, without violating these constitutional rights of the accused?

Is it constitutional to first incarcerate an indicted person charged by a void Information, and then afterwards order its amendment because that is what the rules of procedure insinuate, without violating the accused's constitutional rights?

Can a trial judge postpone the resolution of a motion to quash the Information — based on the ground of lack of jurisdiction where the accused is charged with a violation of the Dangerous Drugs Act of 1972 (Republic Act No. 9165) without any reference to a specific dangerous drug (the *corpus delicti*), and the specific acts constituting the offense and all the elements of the offense averred in statements of fact (and not conclusions of law) — until after the determination of probable cause to issue a warrant of arrest, without violating his constitutional rights?

Are the above constitutional issues not sufficient to warrant the relaxation of the rigid application of the rules of procedure in this case —when, in innumerable other occasions,[2] this very same Court had given due course to a *certiorari* petition despite its procedural defects?

In his Dissenting Opinion in *Cambe v. Office of the Ombudsman*,[3] where former Senator Ramon "Bong" Revilla, Jr. is one of the accused, the *ponente* invoked, as an argument to free the accused, the balancing rule (ensuring that, on one hand, probable criminals are prosecuted, and, on the other, the innocent are spared from baseless prosecution). This balancing rule, according to the *ponente*, is intended to guarantee the right of every person from the inconvenience, expense, ignominy

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[2] See *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*, 568 Phil. 810 (2008) [Per *J.* Velasco, Jr., with *JJ.* Quisumbing, Carpio, Carpio Morales and Tinga concurring, Second Division] and *Marcos-Araneta v. Court of Appeals*, 585 Phil. 38 (2008) [Per *J.* Velasco, Jr., with *JJ.* Quisumbing, Carpio Morales, Tinga and Brion concurring, Second Division].

[3] G.R. Nos. 212014-15, 212427-28, 212694-95, 212794-95, 213477-78, 213532-33, 213536-37 & 218744-59, December 6, 2016.

and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed and to guard the State against the burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges, so that the Court's duty is to temper the prosecuting authority when it is used for persecution.[4] Why is the *ponente* not according petitioner here the same treatment?

In *Macapagal-Arroyo v. People*,[5] the majority of the Court decreed that the situations in which the writ of *certiorari* may issue should not be limited because to do so would destroy its comprehensiveness and usefulness. This was the reasoning of the majority to justify the Court's cognizance of a special civil action for *certiorari* assailing the denial of former President Gloria Macapagal-Arroyo's demurrer to evidence before the lower court notwithstanding the express procedural rule[6] that an order denying a demurrer shall not be reviewable by appeal or *certiorari* before judgment. Why could not petitioner, in this case, be allowed to avail of the comprehensive and useful *certiorari* action even if she did not comply strictly with the procedural rules? Why is she being treated differently?

Unfortunately, these questions have become rhetorical in light of the Decision of the majority. Nevertheless, I find that there is an imperative need to discuss and answer these issues, which I do so through this dissent.

Indeed, while the confluence of stunning revelations and circumstances attendant in this case makes this case unique, its legal ramifications make it unparalleled and one of first impression. The right to liberty and the concomitant rights to due process, to be presumed innocent, to be informed of the nature and cause of the accusation against the accused; the crimes

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[4] *Id*. at 16-17.

[5] G.R. Nos. 220598 & 220953, July 19, 2016, 797 SCRA 241 [Per *J*. Bersamin, with *JJ*. Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Del Castillo, Perez, Mendoza. Reyes and Jardeleza concurring. *En Banc*.]

[6] RULES OF COURT, Rule 119, Sec. 23.

of conspiracy to trade and trading of illegal drugs; the elements of illegal drug trading; the determination of probable cause by a trial judge who is confronted with an Information with unquestionable insufficiency and a pending motion to quash the Information; and the jurisdiction over a public official who is allegedly involved in illegal trading of drugs and a recipient of its proceeds — these are the key legal concepts that define and circumscribe the unprecedented importance of this case.

The Constitution affords the individual basic universal rights that must be safeguarded, protected and upheld before he is detained to face trial for a crime or offense leveled against him in an Information or complaint.

The Constitution guarantees under the first section of the Bill of Rights that no person shall be deprived of **liberty** without due process of law. In the words of Justice Malcolm:

> Civil liberty may be said to mean that measure of freedom which may be enjoyed *in a civilized community*, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. x x x [L]iberty includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. x x x[7]

Section 2 of the Article on Bill of Rights is indispensably linked with Section 1. It provides:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of

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[7] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 705 (1919) [Per *J.* Malcolm, *En Banc*].

whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Without cavil, before a person is deprived of his liberty, he must be accorded due process, and a determination of probable cause by the judge is mandatory before a warrant for his arrest may issue. Truly, the proper determination of probable cause is the cornerstone of the right to liberty.

The Constitution further provides under Section 14, Article III that "(1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right x x x to be informed of the nature and cause of the accusation against him x x x."

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee these basic rights, *viz.*:

Under the Declaration:

Article 3: Right to life

Everyone has the right to life, liberty and security of person.

x x x x x x x x x

Article 9: Ban on arbitrary detention

No one shall be subjected to arbitrary arrest, detention or exile.

And, under the Covenant:

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The Rules of Court echo the right "[t]o be presumed innocent until the contrary is proved beyond reasonable doubt,"[8] and re-affirm the right of the accused in all criminal proceedings "[t]o be informed of the nature and cause of the accusation against him."[9] These rights reinforce the accused's right to due process before his liberty may be curtailed.

The Rules of Court has a counterpart provision on determination of probable cause for the issuance of a warrant of arrest, *viz.*:

SEC. 5. *When warrant of arrest may issue*. – (a) *By the Regional Trial Court*. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record fails to clearly establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted

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[8] RULES OF COURT, Rule 115, Sec. 1(a).

[9] *Id.*, Sec. 1(b).

the preliminary investigation or when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Still another mechanism in the Rules to safeguard the accused's right to liberty is the motion to quash under Rule 117 of the Rules of Court. Section 1 of Rule 117 allows the accused to file a motion to quash the Information or complaint at any time before entering his plea. Under Section 3 of Rule 117, the accused may move to quash the complaint or Information on the grounds, among others, that (a) the facts charged do not constitute an offense, and (b) the court trying the case has no jurisdiction over the offense charged.

Even before an Information is filed before the court, the preliminary investigation stage — which is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial — is part and parcel of the accused's right to due process before he can be deprived of his right to liberty.

These basic, fundamental universal rights, enshrined and cast in stone in our Constitution, are ***guaranteed***. Thus, the pivotal issue in this case is this: Were Petitioner Leila M. De Lima's (Petitioner) constitutional rights violated in the proceedings below?

Given the constitutional ramifications and novel questions of law involved in this case, it is *apropos* to discuss the substantive issues ahead of the procedural ones.

The Substantive Issues

The Information leveled against Petitioner under the caption "For: *Violation of the Comprehensive Dangerous Drugs Act of 2002*, Section 5, in relation to Section 3(jj), Section 26(b), and

Section 28, Republic Act No. 9165[10] ***(Illegal Drug Trading***[11]***)***," states:

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for **violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165**, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, **conspiring and confederating with** accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, **did then and there commit illegal drug trading, in the following manner**: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, **did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.
>
> **CONTRARY TO LAW.** (Emphasis and underscoring supplied)

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[10] Hereinafter referred to as RA 9165.

[11] Emphasis supplied.

The plain language of the Information reveals that it: (1) does ***not*** charge Petitioner with "attempt or conspiracy to commit illegal trading of dangerous drugs" under Section 26(b) of RA 9165; (2) does ***not*** charge Petitioner with illegal "Trading" of dangerous drugs as defined under the Act; (3) is ***fatally defective*** as an indictment of illegal drug "trading" as the term is ordinarily understood; (4) does ***not*** charge Petitioner with violation of Sections 27 and 28 of the Act; and (5) does ***not*** validly charge Petitioner with any unlawful act under the Act.

The Information does NOT charge "attempt or conspiracy to commit illegal trading of dangerous drugs" under Section 26(b) of RA 9165.

The caption and the prefatory clause or preamble of the Information unequivocally states that Petitioner is being charged with "violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28," of RA 9165.

Notably, Section 3(jj) is not a separate offense because it merely defines the term "trading," while Section 28, in turn, relates only to the imposable penalties on government officials and employees, to wit: "The maximum penalties of the unlawful acts provided in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees." In simple terms, therefore, the lynchpin to the charge of the Information is the violation of Section 5 of RA 9165.

It is thus immediately evident that "Section 5 in relation to x x x Section 26(b)" is a misnomer, if not totally nonsensical because Section 5 and Section 26(b) are two separate unlawful acts or offenses penalized under RA 9165.

Section 26(b) of RA 9165 in part states:

SEC. 26. *Attempt or Conspiracy*. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

Clearly, the foregoing provision punishes the mere agreement or conspiracy to commit illegal trading. This is one of those situations where the law itself makes the mere agreement punishable. That said, it is likewise ineluctably clear that what Section 26(b) means is that the illegal trading has ***not been committed*** — which is completely opposite to the situation of Section 5 which requires that the trading has already been committed. In other words, the moment the illegal trading has been committed, then it is Section 5 that is the applicable provision of RA 9165 and no longer Section 26(b) — which is the commonsensical conclusion to make especially since the penalty in the latter is provided to be the same penalty provided for Section 5, or the consummated act.

A fair reading of the body or factual recitals of the Information is that Petitioner is being charged with violation of Section 5 and not violation of Section 26(b). Again, the nomenclature "violation of Section 5, in relation to Section 26(b)" is simply nonsensical.

What exactly was Petitioner charged with by the Information? Once more, the body of the Information reads:

That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, **conspiring and confederating with** accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, **did then and there commit illegal drug trading, in the following manner**: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of

De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, **did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison. (Emphasis and underscoring supplied)

On its face, the Information unmistakably describes ***past or consummated acts*** – "all of them [including Petitioner] **DID** x x x commit illegal drug trading," "the inmates x x x **DID** x x x trade and traffic dangerous drugs," and "[the inmates] **DID** give and deliver to De Lima (Petitioner) x x x the proceeds of illegal drug trading."[12]

Nothing could be clearer: the purported offense described in the Information is illegal drug trading ***as a consummated crime***, and ***not*** as a conspiracy to commit the same. Thus, the claim that Petitioner was charged for conspiracy to commit illegal drug trading under Section 26(b) of RA 9165[13] is egregious error, if not a clear afterthought on the part of the Office of the Solicitor General (OSG) after it had itself realized that, for the reasons to be stated later, the Information filed by the Department of Justice (DOJ) which charges a violation of Section 5, RA 9165, is wholly insufficient and void.

To be sure, nowhere in the language and wording of the Information can a conspiracy or attempt to commit trading of dangerous drugs be even inferred. To read the above-quoted acts in the Information to only be at the preparatory stage, or just about to be committed, is an unforgivable perversion of the English language and an insult to the intelligence of the Court.

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[12] Emphasis, capitalization and underscoring supplied.

[13] Memorandum for Respondents, p. 58.

Again, the gravamen of conspiracy as a distinct crime is the agreement itself. In this jurisdiction, conspiracy embraces either one of two forms – as a crime by itself or as a means to commit a crime. In the first instance, the mere act of agreeing to commit a crime and deciding to commit it is already punishable, but only in cases where the law specifically penalizes such act and provides a penalty therefor. In the latter instance, conspiracy assumes importance only with respect to determining the liability of the perpetrators charged with the crime.[14] Under this mode, once conspiracy is proved, then all the conspirators will be made liable as co-principals regardless of the extent and character of their participation in the commission of the crime: "the act of one is the act of all."[15]

Here, the Information clearly charges Petitioner with illegal drug "trading" *per se* under Section 5 of RA 9165, and **not** for conspiracy to commit the same under Section 26(b). While the phrase "conspiring and confederating" appears in the Information, such phrase is, as explained above, used merely to describe the means or the mode of committing the consummated offense so as to ascribe liability to all the accused as co-principals.

The Court's ruling in *Macapagal-Arroyo v. People*[16] lends guidance. Petitioner therein was charged under an Information for Plunder, which bears a resemblance to the Information in the case at hand. Therein, the phrase "conniving, conspiring and confederating with one another" similarly preceded the narration of the overt acts of "amass[ing], accumulat[ing], and/or acquir[ing] x x x ill-gotten wealth," which demonstrates the intention of the prosecution to use conspiracy **merely to impute liability on the petitioner therein for the collective acts of her co-accused**, *viz.*:

The information reads:

x x x x x x x x x

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[14] See *Macapagal-Arroyo v. People*, *supra* note 5, at 311.

[15] *People v. Peralta*, 134 Phil. 703, 718 (1968) [*Per Curiam*, *En Banc*].

[16] *Macapagal-Arroyo v. People*, *supra* note 5.

> That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, x x x, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, **conniving, conspiring and confederating with one another**, **did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire**[, d]irectly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY-FIVE MILLION NINE HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:
>
> x x x x x x x x x

A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.

x x x x x x x x x

Nevertheless, **the Prosecution insists that GMA, Uriarte and Aguas committed acts showing the existence of an implied conspiracy among themselves, thereby making all of them the main plunderers**. On this score, the Prosecution points out that the sole overt act of GMA to become a part of the conspiracy was her approval *via* the marginal note of "OK" of all the requests made by Uriarte for the use of additional intelligence fund. x x x[17] (Emphasis supplied)

Similar to *Macapagal-Arroyo*, the phrase "conspiring and confederating" in the Information against Petitioner precedes the overt acts of "trad[ing] and traffic[king]" and "giv[ing] and

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[17] *Id*. at 270-271, 317 and 322.

deliver[ing]" — which means that "conspiring and confederating" was alleged to be the means by which the crime of trading was committed. As well, the phrase "did then and there commit" confirms the *consummation* of a prior alleged agreement. In fact, to dispel all doubt, the narration of the alleged delivery of the proceeds of illegal trading to Petitioner unmistakably shows that the alleged conspiracy of illegal drug trading had already been carried out and that Petitioner was to be prosecuted for such — and *not* for her act of allegedly agreeing to commit the same. Indeed, even as to the allegations of giving and delivering of the so-called "*tara*" by the unidentified high-profile inmates in the New Bilibid Prison (NBP), this is clearly phrased as being the result of consummated acts of illegal trading.

Most importantly, the DOJ Resolution[18] itself, upon which the Information is based, confirms that the sense in which conspiracy was used was merely as the manner or mode of imputing liability, and not as a crime in itself:

> From the foregoing, it is clear that there was conspiracy among De Lima, Bucayu, Elli, Sebastian, Dayan, Sanchez and JAD to commit illegal drug trading, hence, **the guilt of one of them is the guilt of all** x x x.
>
> It is a time-honored principle in law that direct proof is not essential to prove conspiracy. x x x In other words, conspiracy may be inferred from the collective acts of respondents before, during and after the commission of the crime **which point to a joint purpose, design, concerted action, and community of interests**.[19] (Emphasis supplied)

On this score, in *People v. Fabro*,[20] the very case cited by the OSG,[21] the Court appreciated the language of the Information there — ***which is almost identical to the Information against***

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[18] DOJ Joint Resolution dated February 14, 2017 in NPS No. XVI-INV-16J-00313, NPS No. XVI-INV-16J-00315, NPS No. XVI-INV-16K-00331, NPS No. XVI-INV-16K-00336 and NPS No. XVI-INV-16L-00384.

[19] *Id.* at 44.

[20] 382 Phil. 166 (2000) [Per *J.* Kapunan, First Division].

[21] Memorandum for Respondents, par. 129, pp. 55-56.

Petitioner here — as charging the crime of consummated drug sale and not a conspiracy to commit.

In that case, the respondent was charged under an Information designated as a "violation of Section 21 (b) Art. IV, in relation to Section 4, Art. II of Republic Act No. 6425, as amended."[22] Section 21(b) is the counterpart provision of Section 26(b) of RA 9165 whereas Section 4 is the counterpart provision of Section 5 of RA 9165. Notably, the Court therein disregarded the charge for conspiracy to sell, administer, or deliver illegal drugs and instead convicted the respondent for violation of Section 4, Article II of RA 6425 (which, again, is now Section 5 of RA 9165), which punishes the sale and/or delivery of illegal drugs as a consummated crime. In affirming the lower court's conviction *in toto*, **the Court interpreted the recital of facts in the Information to be one for *consummated* sale, and not for conspiracy to sell, based on the language used:**

> Appellant Berly Fabro y Azucena, together with her common-law husband Donald Pilay y Calag and Irene Martin, was charged with the crime of "violation of Section 21 (b) Art. IV, in relation to Section 4, Art. II of Republic Act No. 6425, as amended," under Criminal Case No. 11231-R of the Regional Trial Court of Baguio City, in an information that reads:
>
> > That on or about the 7th day of April 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously sell and/or deliver** to PO2 ELLONITO APDUHAN, who acted as poseur-buyer, one (1) kilo of dried marijuana leaves, a prohibited drug without any authority of law, in violation of the aforementioned provision of law.
> >
> > CONTRARY TO LAW.
>
> x x x x x x x x x
>
> On January 4, 1994, the trial court rendered the Decision disposing of Criminal Case No. 11231-R as follows:

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[22] Otherwise known as the "The Dangerous Drugs Act of 1972."

> WHEREFORE, **the Court Finds the accused Berly Fabro guilty beyond reasonable doubt of the offense of Violation of Section 4 Article II of Republic Act No. 6425 as amended (Sale and/or Delivery of Marijuana) as charged in the body of the Information, not its caption**, and hereby sentences her to Life Imprisonment and to pay a Fine of Twenty Thousand Pesos (₱20,000.00) without subsidiary imprisonment in case of Insolvency and to pay the costs.
>
> x x x x x x x x x

A final note. **The information denotes the crime as a "VIOLATION OF SECTION 21 (b) ART. IV IN RELATION TO SECTION 4/ARTICLE II OF REPUBLIC ACT 6425 AS AMENDED." This is an erroneous designation of the crime committed.** Section 21 of R.A. 6425 reads:

> SEC. 21. Attempt and Conspiracy. — The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any x x x conspiracy to commit the same in the following cases:
>
> x x x x x x x x x
>
> b) Sale, administration, delivery, distribution and transportation of dangerous drugs.

It is clear that Section 21 (b) of R.A. 6425 punishes the mere conspiracy to commit the offense of selling, delivering, distributing and transporting of dangerous drugs. Conspiracy herein refers to the mere agreement to commit the said acts and not the actual execution thereof. While the rule is that a mere conspiracy to commit a crime without doing any overt act is not punishable, the exception is when such is specifically penalized by law, as in the case of Section 21 of Republic Act 6425. **Conspiracy as crime should be distinguished from conspiracy as a manner of incurring criminal liability the latter being applicable to the case at bar.**

In any event, such error in the information is not fatal. **The body of the information states that the crime for which the petitioner is charged is as follows:**

> "the above-named accused, **conspiring, confederating and mutually aiding one another, did there willfully, unlawfully and feloniously sell and/or deliver** to PO2 Elonito Apduhan,

who acted as poseur buyer, one (1) kilo of dried marijuana leaves . . ."

It has been our consistent ruling that what is controlling [is] the actual recital of facts in the body of the information and not the caption or preamble of the crime.

Having considered the assignments of error and finding no basis which, from any aspect of the case, would justify us in interfering with the findings of the trial court, it results that the appealed decision must be *AFFIRMED in toto.*[23] (Emphasis and underscoring supplied)

Following *Fabro*, which is on all fours with the situation of Petitioner, there is therefore no other acceptable reading of the Information than that it actually charges Petitioner with illegal drug trading under Section 5 ***and not a conspiracy to commit under Section 26(b)***.

It is noted that Respondents correctly stressed that the unlawful act of "trading" is a separate and distinct offense from conspiracy to commit the same, which are respectively punished under separate provisions of RA 9165.[24] Unfortunately, by the same claim, Respondents fall on their own sword. Given that the two offenses are different from each other, Petitioner cannot now be charged with one crime and yet be convicted of the other. The Court cannot allow the Prosecution's strategy to flourish without infringing on the fundamental right of Petitioner to due process.

By constitutional mandate, a person who stands charged with a criminal offense has the right to be informed of the nature and cause of the accusation against him. As a necessary adjunct of the right to be presumed innocent and to due process, the right to be informed was enshrined to aid the accused in the intelligent and effective preparation of his defense. In the implementation of such right, trial courts are authorized under the Rules of Court to dismiss an Information upon motion of the accused, should it be determined that, *inter alia*, such

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[23] *People v. Fabro*, *supra* note 20, at 170, 175 and 178-179.

[24] Memorandum for Respondents, p. 56.

Information is defective for being in contravention of the said right.

Therefore, Petitioner is correct when she argues in her Memorandum that her right to be informed of the nature and cause of the accusation against her was violated when she was charged, arrested, and detained for consummated illegal drug trading despite Respondents' claim, now, that she was really charged for conspiracy to commit illegal drug trading. Indeed, Respondents' sudden change in stance, through the OSG, along with the subsequent concurrence of the DOJ, violated Petitioner's right to be informed of the nature and cause of the accusation against her.

Given the foregoing, the insistence of some members of the Court that the Information, as worded, validly indicts Petitioner with conspiracy to engage in illegal drug trading, referring to an unconsummated act, is beyond comprehension.

The Information does NOT charge Petitioner with illegal "Trading" of dangerous drugs as defined under RA 9165.

Section 5, which penalizes illegal trading of dangerous drugs, states:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
>
> The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver,

give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions. (Underscoring supplied)

Section 3(jj) in turn defines "Trading" in the following manner:

(jj) *Trading*. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act. (Underscoring supplied)

To be sure, the definition of "[t]rading" above does not identify the act or acts that the offender must commit to make him liable for illegal drug trading. It merely refers to "[t]ransactions involving the illegal trafficking of dangerous drugs."

"Illegal Trafficking," on the other hand, is defined in Section 3(r):

SEC. 3. *Definitions.* – As used in this Act, the following terms shall mean:

x x x x x x x x x

(r) *Illegal Trafficking*. – The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.

x x x x x x x x x

Based on the foregoing definitions, the term "illegal trading" is nothing more than "illegal trafficking" "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions." Or stated differently, illegal trading is "[t]he illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor

and essential chemical" "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions."

Thus, while "trading" does not articulate the underlying specific unlawful acts penalized under RA 9165, its use of the term "illegal trafficking" constitutes a specific reference to the unlawful acts enumerated under illegal trafficking, *i.e.*, cultivation or culture (Section 16), delivery, administration, dispensation, sale, trading, transportation or distribution (Section 5), importation (Section 4), exportation, manufacture (Section 8), and possession (Section 11) of dangerous drugs. The terms "Administer," "Cultivate or Culture," "Deliver," "Dispense," "Manufacture," "Sell," and "Use" are in turn defined under Section 3, subsections (a), (i), (k), (m), (u), (ii), and (kk).

In this regard, the term "trading" in the definition of "illegal trafficking" should now be understood in its ordinary acceptation – the "buy[ing] and sell[ing] of goods, exchang[ing] (something) for something else, typically as a commercial transaction.[25]

While the Information employs the terms "drug trading" and "trade and traffic dangerous drugs," **it does not, however, contain a recital of the facts constituting the illegal "trade" or "traffic" of dangerous drugs**. Since "trading" and "illegal trafficking" are defined terms under RA 9165, their use in the Information will carry with them their respective definitions. Viewed in the foregoing light, the Information is ***fatally defective*** because it does not allege the specific acts committed by Petitioner that constitute illegal "trading" or "illegal trafficking" of dangerous drugs as defined in Section 3(jj) and Section 3(r) of the Act. Rather, it relies only on conclusionary phrases of "drug trading" and "trade and traffic of dangerous drugs."

To restate: the Information did not mention any of the following transactions involving dangerous drugs:

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[25] Available online at: https://en.oxforddictionaries.com/definition/trade. Last accessed: July 23, 2017.

(a) cultivation or culture – planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug;[26]

(b) delivery – passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration;[27]

(c) administration – introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself;[28]

(d) dispensation – giving away, selling or distributing medicines or any dangerous drugs with or without the use of prescription;[29]

(e) manufacture – production, preparation, compounding or processing of any dangerous drug and/or controlled precursor and essential chemical, either directly or indirectly, or by extraction from substance of natural origin, or independently by chemical synthesis or by a combination of extraction and chemical synthesis, including packaging or re-packaging of such substances, design or configuration of its form, labeling or relabeling of its container;[30]

(f) sale – giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration;[31]

(g) transportation; distribution;

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[26] RA 9165, Sec. 3(i).

[27] *Id.*, Sec. 3(k).

[28] *Id.*, Sec. 3(a).

[29] *Id.*, Sec. 3(m).

[30] *Id.*, Sec. 3(u).

[31] *Id.*, Sec. 3(ii).

(h) importation – bring into the Philippines any dangerous drug, regardless of the quantity and purity involved;[32]

(i) exportation;

(j) possession; and

(k) acting as broker in any other preceding transactions.

Without doubt, the Information did not mention if Petitioner cultivated, cultured, delivered, administered, dispensed, manufactured, sold, transported, distributed, imported, exported, possessed or brokered in any transaction involving the illegal trafficking of any dangerous drug.

Accordingly, while the word "trading" is attributed to Petitioner in the Information, ***the essential acts committed by Petitioner from which it can be discerned that she did in fact commit illegal "trading" of dangerous drugs as defined in RA 9165 are not alleged therein***.

Since the Information does not mention the constitutive acts of Petitioner which would translate to a specific drug trafficking transaction or unlawful act pursuant to Section 3(r), then it is fatally defective on its face. Thus, it was improvident for the respondent Judge to issue a warrant of arrest against Petitioner.

Additionally, on the matter of illegal "trading" of dangerous drugs, the *ponencia* quotes with approval Justice Martires' explanation that the averments on solicitation of money in the Information form "part of the description on how illegal drug trading took place at the NBP." However, the Information's averments on solicitation of money, including those on the use of mobile phones and other electronic devices, **without the factual allegations of the specific transaction involving the illegal trafficking of dangerous drugs as defined in Section 3(r)**, are still insufficient to validly indict Petitioner with illegal drug "trading" under Section 5 in relation to Sections 3(jj) of RA 9165. The "solicitation of money" would only indicate

[32] *Id.*, Sec. 4.

that the "transaction involving the illegal trafficking of dangerous drugs" was "for money." That is all.

It bears repeating that the Information sorely lacks specific factual allegations of the illegal trafficking transaction which Petitioner purportedly got involved with in conspiracy with her co-accused. The Information does NOT contain factual allegations of illegal cultivation, culture, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of specific and identified dangerous drugs. Again, the Information simply states: "accused x x x De Lima x x x and accused x x x Ragos x x x, conspiring and confederating with accused x x x Dayan x x x did then and there commit illegal drug trading, in the following manner: De Lima and Ragos x x x demand, solicit and extort money from the high profile inmates in the [NBP] x x x; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs x x x."

The averments of "illegal trading," "unlawfully trade and traffic," and "dangerous drugs" are **conclusions of law and *not* factual allegations**. Such allegations do not sufficiently inform Petitioner of the specific accusation that is leveled against her.

The *ponencia*, while it enumerates the purported two modes of committing illegal trading: (1) illegal trafficking using electronic devices; and (2) acting as a broker in any transaction involved in the illegal trafficking of dangerous drugs, and as it correctly points out that the crime of illegal trading has been written in strokes much broader than that for illegal sale of dangerous drugs, **still conveniently avoids specifying and enumerating the elements of illegal trading**. How can the sufficiency of the Information be determined if not even the elements of the crime it is supposedly charging are known?

Illegal sale of dangerous drugs has defined and recognized elements. Surely, illegal trading of dangerous drugs, like every crime and offense, must have defined and recognized elements.

Without defining and identifying the elements of illegal trading of dangerous drugs, the *ponencia's* reasoning is not only incomplete and insufficient, worse, it tends to validate the dangerous and anomalous situation where an ordinary citizen can be arrested **by mere allegation in an Information** that he committed "illegal trading of dangerous drugs using mobile phones and other electronic devices." It is highly lamentable that the majority of the members of the Court have put their imprimatur to this insidious manner of phrasing an Information concerning illegal drugs offenses to detain an unsuspecting individual. The real concern is this: if this can be done to a sitting Senator of the Republic of the Philippines, then this can be done to any citizen.

As to the purported first mode of committing illegal trading, the Information is thus void as it fails to identify the illegal trafficking transaction involved in this case, and fails to sufficiently allege the factual elements thereof.

As to the purported second mode — acting as a broker in any transactions involved in the illegal trafficking of dangerous drugs — this requires the **existence** of an illegal trafficking transaction. Without a **predicate transaction**, an individual cannot be accused of acting as its broker.

While it may be true that a person accused of illegal "trading" by acting as a broker need not get his hands on the substance or know the meeting of the seller and the buyer, **still, the transaction that he purportedly brokered should be alleged in the Information for the latter to be valid, and thereafter proved beyond reasonable doubt, for the accused to be convicted**. **The seller and the buyer or the persons the broker put together must be identified. If he brokered an illegal sale of dangerous drugs, then the identities of the buyer, seller, the object and consideration are essential**.

Thus, I take exception to the wholesale importation of the concept of "brokering" in the offense of illegal "trading" of dangerous drugs without specifying the predicate illegal trafficking transaction which the accused "brokered." To repeat, this transaction must be sufficiently alleged in charges against

an accused indicted for having acted as a broker **because that is the requirement of the law** — "acting as a broker in any of such **transactions** [involving the illegal trafficking of dangerous drugs]."

As well, and as will be explained further, the specific "dangerous drugs" that are the object of the transaction must likewise be alleged and identified in the Information.

In fine, while the *ponencia* indulges in hypotheticals as to what transactions can or cannot be covered by "illegal trading" by "brokering," it fails miserably to identify the elements of "illegal trading" committed by acting as a broker. There is nothing in the Information against Petitioner from which it can reasonably be inferred that she acted as a broker in an illegal trafficking of dangerous drugs transaction — the Information does not even identify the seller/s and buyer/s of dangerous drugs that Petitioner supposedly brought together through her efforts. If Petitioner was supposedly the broker, then who were the NBP high-profile inmates supposed to be? Sellers? Buyers? Likewise, the Information is dead silent on the specific dangerous drugs consisting of the object of the transaction.

The Information does NOT charge Petitioner with illegal drug "trading" as the term is ordinarily understood.

In *People v. Valdez,*[33] the Court described a sufficient Information, thus:

> It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of facts in the complaint or information. In *People v. Dimaano*, the Court elaborated:
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> > For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting

[33] 679 Phil. 279 (2012) [Per *J.* Bersamin, First Division].

> the offense; the name of the offended party; the approximate time of the commission of the offense[;] and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.** [emphasis supplied]
>
> x x x x x x x x x

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a

> defense on the merits. xxx. **That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. *For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder.*" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court to say what the crime is or what it is named.** xxx. (emphasis supplied)[34] (Italics supplied)

Does the Information under scrutiny comply with the requirement of sufficiency as explained above? ***It clearly does not***. The elements of the offense or unlawful act charged are not contained in the Information.

To reiterate, the unlawful act of "trading" of dangerous drugs is penalized under Section 5 of RA 9165, to wit:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including

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[34] *Id*. at 293-295.

any and species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transaction. The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions. (Underscoring supplied)

While "sell" is defined under Section 3(ii), "trade" is not defined in the same fashion. It is "trading" that is defined under Section 3(jj) and, as explained above, the defined term "illegal trafficking" is imbedded therein. Since "trade" in Section 5, for purposes of this discussion, is to be understood in its ordinary meaning, and "sell" and "trade" involve analogous or similar acts, then logic dictates that the elements of illegal trade of dangerous drugs or "illegal drug trading" should have the same jurisprudentially sanctioned elements of illegal sale of dangerous drugs.

Well-entrenched is the rule that for the prosecution of illegal sale of drugs, the following elements must be proved: (1) the identity of the buyer and seller, the object and the consideration; and (2) the delivery of the thing sold and its payment.[35]

Bearing in mind these elements, the elements of illegal trade or trading of dangerous drugs are thus: (1) the identity of the trader or merchant and purchaser or customer, the object and the consideration (money or other consideration per Section 3[jj]); (2) delivery of the thing traded and its consideration; and (3) the use of electronic devices such as text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms to facilitate the transaction. If the accused acted as a broker, then such fact must be alleged as an additional element.

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[35] *People v. Blanco*, 716 Phil. 408, 414 (2013); cases cited omitted [Per *J.* Perez, Second Division].

The object of the trade or trading is a specific dangerous drug that is included in the definition under Section 3(j) of RA 9165 and described with specificity in the Information. In cases involving dangerous drugs, the *corpus delicti* is the presentation of the dangerous drug itself.[36] **Without the averment of the *corpus delicti*, the Information is deficient because an element of the offense is missing**.

Are all the elements of illegal trade or trading of dangerous drugs by Petitioner alleged in the Information? Again, ***they are not***.

To recall, the Information pertinently states:

> That x x x **accused Leila M. De Lima** x x x and accused Rafael Marcos Z. Ragos, x x x conspiring and confederating with accused Ronnie P. Dayan x x x **did then and there commit illegal drug trading, in the following manner**: **De Lima** and Ragos x x x **demand, solicit and extort money from the high profile inmates** in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, **the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima,** through Ragos and Dayan, **the proceeds of illegal drug trading** amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison. (Emphasis and underscoring supplied)

As to the averments of the Information regarding Petitioner's acts, it only states that Petitioner "commit(ted) illegal drug trading in the following manner: [Petitioner] x x x demand[ed], solicit[ed] and extort[ed] money from the high profile inmates in the New Bilibid Prison" and Petitioner received from the inmates proceeds of illegal drug trading.

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[36] *People v. Climaco*, 687 Phil. 593, 603 (2012) [Per *J.* Carpio, Second Division].

None of the elements of illegal drug trade or trading is present in the Information insofar as Petitioner is concerned. The Information does not identify Petitioner as the trader, or merchant, or broker. There is no indication in the Information that she ever possessed any dangerous drug prior to the purported trading. The Information does not identify any purchaser or customer. It does not state the consideration. It does not identify the specific dangerous drug that she traded or brokered. If Petitioner acted as the broker, who were the seller/s and the buyer/s? The Information is once more silent on these crucial facts. There is even no mention in the Information that Petitioner used any electronic device in her participation, if any, in the purported illegal activity. Given these glaring infirmities that can be easily seen from a plain, unbiased reading of the Information, there is no conclusion other than it is fatally defective.

Even with respect to the acts attributed to the unnamed NBP high-profile inmates, the Information fails to also allege the elements of illegal drug trade or trading that they committed. The Information merely states that "the inmates x x x through the use of mobile phones and other electronic devices x x x trade[d] and traffic[ked] dangerous drugs, and thereafter [gave] and deliver[ed] to [Petitioner] x x x the proceeds of illegal drug trading." Again, the Information does not mention the purchaser or customer, the specific dangerous drug traded, the consideration and the identity of the inmates. While Petitioner and her co-accused, Rafael Marcos Z. Ragos and Ronnie P. Dayan, are identified in the Information, the identities of the NBP inmates have been intentionally omitted.

The employment of the term "dangerous drugs" in the Information does not satisfy the requirement of specificity of the *corpus delicti*. "Dangerous Drugs" is a catch-all term — to "[i]nclude those listed in the Schedule annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotrophic Substances as enumerated in the

attached annex which is an integral part of this Act."[37] The Information does not state the specific dangerous drugs traded by the so-called high-profile NBP inmates.

In *People v. Posada*,[38] an Information where the objects of illegal sale and illegal possession of dangerous drugs were lumped together and commingled, the Court found such as defective and ambiguous, *viz.*:

> The unfortunate fact of this case is that rather than separately charging Emily for the sale of the one sachet of *shabu* and charging both Emily and Roger for possession of the 12 sachets of *shabu*, the public prosecutor lumped the charges together to sale of 12 sachets of *shabu*. This is wrong. The Information is defective for charging the accused-appellants of selling 12 sachets of *shabu* when, in fact, they should have been charged of selling one sachet of *shabu* and possessing 12 sachets of *shabu*. From the evidence adduced, Emily and Roger never sold the 12 sachets of *shabu*. They possessed them. Thus, they should have not been convicted for selling the 12 sachets of *shabu*. However, this was exactly what was done both by the trial court and the CA. Without basis in fact, they convicted the couple for selling the 12 sachets of *shabu.*
>
> Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does not charge an offense[39] or when an essential element of the crime has not been sufficiently alleged.[40] In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify in the Information the subject matter of the sale or the *corpus delicti*. We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with certainty the *corpus delicti*. Here, the prosecution took the liberty to lump together two sets of *corpora delicti* when it should have separated the two in two different

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[37] RA 9165, Sec. 3(j).

[38] 684 Phil. 20 (2012) [Per *J*. Reyes, Second Division].

[39] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 723 (2003) [Per *J*. Azcuna, First Division].

[40] *People v. Galido*, 470 Phil. 348 (2004) [Per *J*. Panganiban, First Division].

informations. To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very *corpus delicti* of the crime.

Furthermore, when ambiguity exists in the complaint or information, the court has no other recourse but to resolve the ambiguity in favor of the accused.[41] Here, since there exists ambiguity as to the identity of *corpus delicti*, an essential element of the offense charged, it follows that such ambiguity must be resolved in favor of the accused-appellants. Thus, from the foregoing discussion, we have no other choice but to acquit the accused-appellants of sale of 12 sachets of *shabu*.

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> Possession is a necessary element in a prosecution for illegal sale of prohibited drugs. It is indispensable that the prohibited drug subject of the sale be identified and presented in court. That the *corpus delicti* of illegal sale could not be established without a showing that the accused possessed, sold and delivered a prohibited drug clearly indicates that possession is an element of the former. The same rule is applicable in cases of delivery of prohibited drugs and giving them away to another.[42] x x x

x x x x x x x x x

Finally, we cannot let this case pass us by without emphasizing the need for the public prosecutor to properly evaluate all the pieces of evidence and file the proper information to serve the ends of justice. The public prosecutor must exert all efforts so as not to deny the People a remedy against those who sell prohibited drugs to the detriment of the community and its children. Many drug cases are dismissed because of the prosecutor's sloppy work and failure to file airtight cases. If only the prosecution properly files the Information and prosecutes the same with precision, guilty drug pushers would be punished to the extent allowed under the law, as in this case.[43]

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[41] *People v. Ng Pek*, 81 Phil. 562, 565 (1948) [Per *J*. Ozaeta, *En Banc*].

[42] *People v. Lacerna*, 344 Phil. 100, 120 (1997) [Per *J*. Panganiban, Third Division].

[43] *Supra* note 38, at 40-47.

If an averment of commingled sachets of *shabu* in an Information is not sufficient, then, **with greater reason**, the mere invocation of the term "dangerous drugs," — a defined term in RA 9165, and thus a conclusion of law, without identifying the specific drug — renders the Information fatally defective.

A charge under Section 5 of RA 9165 requires allegation of corpus delicti.

As a rule, an Information need only state the ultimate facts constituting the offense, as evidentiary details are more appropriately threshed out during trial. However, as a consequence of the accused's right to be informed of the nature and cause of the accusation against him, the Information must allege clearly and accurately the elements of the crime charged.[44] In *People v. Posada*,[45] the Court stressed the importance of alleging and identifying in the Information the *corpus delicti* and explained that ***the failure of the prosecution to particularly identify the dangerous drug in the Information was tantamount to a deprivation of the accused's right to be informed of the nature of the offense being charged***.

It must also be stressed that in prosecutions involving narcotics and other illegal substances, the substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[46]

The crime of "trading" dangerous drugs is punished alongside "selling" under Section 5 of RA 9165. However, the offenses

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[44] *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 316-317 (2009) [Per *J*. Brion, Second Division].

[45] *Supra* note 38, at 46.

[46] *People v. Suan*, 627 Phil. 174, 179 (2010) [Per *J*. Del Castillo, Second Division], citing *Carino v. People*, 600 Phil. 433, 444 (2009) [Per *J*. Tinga, Second Division]; *People v. Simbahon*, 449 Phil. 74, 81 and 83 (2003) [Per *J*. Ynares-Santiago, First Division].

differ only as to the overt acts involved, where "[a]ny act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration" constitutes "selling" while "[t]ransactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals x x x using electronic devices x x x whether for money or any other consideration" amounts to "trading."[47]

There is no difference, however, with respect to the subject matter of both transactions: *they remain to be dangerous drugs and/or controlled precursors and essential chemicals*. There is thus no significant reason to treat prosecutions involving the unlawful act of selling differently from illegal trading, insofar as they require the allegation and identification of the *corpus delicti* in the Information is concerned.

The Court in *People v. Enumerable*,[48] citing *People v. Watamama*,[49] held that the existence of the dangerous drug ***and the chain of its custody*** have to be proven **in *all* prosecutions** for violations of RA 9165:

> It is settled that in prosecutions for illegal sale of dangerous drug, not only must the essential elements of the offense be proved beyond reasonable doubt, but likewise the identity of the prohibited drug. **The dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.**
>
> Necessarily, the prosecution must establish that the substance seized from the accused is the same substance offered in court as exhibit. **In this regard, the prosecution must sufficiently prove the unbroken chain of custody of the confiscated illegal drug**. In *People v. Watamama*, the Court held:
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> **In all prosecutions for the violation of the Comprehensive Dangerous Drugs Act of 2002, the existence of the prohibited**

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[47] RA 9165, Sec. 3(ii) and (jj).

[48] 751 Phil. 751 (2015) [Per *J.* Carpio, Second Division].

[49] 692 Phil. 102, 106-107 (2012) [Per *J.* Villarama, Jr., First Division].

> **drug has to be proved.** The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused.
>
> While this Court recognizes substantial adherence to the requirements of R.A. No. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases, still, such officers must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved x x x

In *People v. Climaco*, citing *Malillin v. People*, the Court held:

> x x x **[T]o establish guilt of the accused beyond reasonable doubt in cases involving dangerous drugs, it is important that the substance illegally possessed in the first place be the same substance offered in court as exhibit.** This chain of custody requirement ensures that unnecessary doubts are removed concerning the identity of the evidence. When the identity of the dangerous drug recovered from the accused is not the same dangerous drug presented to the forensic chemist for review and examination, nor the same dangerous drug presented to the court, the identity of the dangerous drug is not preserved due to the broken chain of custody. With this, an element in the criminal cases for illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, is not proven, and the accused must then be acquitted based on reasonable doubt. For this reason, [the accused] must be acquitted on the ground of reasonable doubt due to the broken chain of custody over the dangerous drug allegedly recovered from him.[50]

Indeed, the State can never fulfill its burden to establish the chain of custody of the concerned dangerous drug, as required under Section 21 of RA 9165, without the dangerous drug being identified with specificity in the Information. Absent such allegation in the Information, it is impossible to validate that

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[50] *People v. Enumerable*, *supra* note 48, at 755-757.

the dangerous drug presented in court is the very same one that the Information speaks of and for which the accused stands indicted.

Thus, when the majority finds, as it has so found, that the Information against Petitioner is sufficient for illegal "trading" of dangerous drugs, **then this case goes down in history as the ONLY criminal case involving dangerous drugs where the Information is totally silent on the *corpus delicti* of the illegal trading and yet is still held sufficient by its mere averment of the phrase "dangerous drugs"**. This farce now opens the floodgates to the unparalleled filing of criminal cases on the mere allegation in the Information that the accused had sold or traded "dangerous drugs", and will indubitably lead to an endless string of prosecutions — **in blatant violation of an accused's constitutionally guaranteed rights to not be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against him**, the strict requirements of Section 21 of RA 9165 having been effectively repealed.

The Information does NOT validly charge Petitioner with violation of Sections 27 and 28 of the Act.

Section 27 of RA 9165 provides:

SEC. 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment

including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations.

The Information partly states that:

x x x De Lima and Ragos, with the use of their power, position and authority [as then Secretary of the Department of Justice and Officer-in-Charge of the Bureau of Corrections, respectively], demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, x x x through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading, amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison. (Underscoring provided)

The quoted portion of the Information is not sufficient to charge Petitioner with the unlawful act of misappropriation, misapplication and failure to account for the proceeds obtained from illegal drug trading allegedly committed by high-profile NBP inmates. Petitioner, as then DOJ Secretary, did not have any legal duty or obligation to take custody of or account for proceeds obtained from unlawful acts committed under RA 9165. Without the allegation in the Information that, as DOJ Secretary, Petitioner had such duty or obligation, she could not have committed misappropriation, misapplication and failure to account for the so-called "proceeds of illegal drug trading." Besides, as explained above, "illegal drug trading" is a conclusion

of law and not an averment of specific facts. At the very least, the specific acts of Petitioner constituting illegal "trading" of dangerous drugs should be alleged in the Information. Again, there is even no mention in the Information that Petitioner transacted dangerous drugs "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, [etc.]."

Also, Petitioner cannot be held liable under the second paragraph of Section 27. She was ***not*** an "**elective local or national official**" when "proceeds of illegal drug trading" were purportedly delivered to her. The Information does not even allege the specifics of the trading and trafficking of dangerous drugs which the high-profile inmates purportedly committed. Nor does the Information allege that the said inmates had been "found guilty of trafficking dangerous drugs" and such proceeds were derived from the illegal trafficking committed by them and for which they had been convicted.

Section 28 of RA 9165 cannot as well be invoked as a possible source of Petitioner's indictment because it does not provide an additional unlawful act for which a penalty is provided. Rather, it only provides the appropriate penalty to be imposed if a government official or employee is found guilty of any unlawful act under RA 9165.

The Information does NOT validly charge Petitioner with any unlawful act under the Act.

Guided by the foregoing, the **patent glaring defects on the face**[51] **of the Information** in the present case present themselves – the *corpus delicti* or the "dangerous drugs" subject of the case is not particularly alleged or identified; the use of the term "trading" is without the specific acts committed by Petitioner as there is no averment of any or all the elements of said unlawful acts, including her use of identified electronic device/s; the names of the so-called "high profile inmates in the New Bilibid

[51] Double redundancy intended for emphasis.

Prison" are not provided; and the purported acts of the said inmates constituting illegal "trade and traffic [of] dangerous drugs" (from which the "proceeds" were derived) are not alleged.

Following the previous discussion, the sweeping use of the terms "dangerous drugs," "illegal drug trading," "trade and traffic dangerous drugs," and "proceeds of illegal drug trading" hardly suffice — and cannot and should not be held by the Court to suffice — for the required particularity of an Information involving violations of RA 9165. By omitting to mention the specific type and amount of the alleged drugs involved, the specific acts constitutive of trading and trafficking by both Petitioner and the so-called high-profile inmates where all the elements of those unlawful acts are described, the Information against Petitioner for illegal trading of drugs under Section 5 in relation to Section 3(r) is perforce ***fatally defective***. Accordingly, Petitioner is effectively deprived of the fair opportunity to prepare her defense against the charges mounted by the Government as she is left to rely on guesswork and hypotheticals as to the subject matter of the offense. Under these circumstances, by no means is Petitioner properly equipped to face the awesome power and resources of the State, there being no sufficient factual allegations of the specific, actual offense that she is charged with and its *corpus delicti*.

Petitioner was no doubt deprived of her right to be informed of the nature and cause of the accusation against her. She has been deprived her liberty without due process and to be presumed innocent.

In *People v. Pangilinan*,[52] the Court, through Justice Diosdado M. Peralta, held, citing the *en banc* case of *People v. Dela Cruz*,[53] that a **defective or deficient information is void**, *viz*:

x x x We again quote the charging part of the Information for easy reference, thus:

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[52] *Supra* note 1.

[53] *Supra* note 1, at 992 and 1014-1016.

> That on or about 1995 up to about June 2001 at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.
>
> That accused is the stepfather of AAA who was born on January 29, 1988.
>
> Contrary to law.

Under Section 8, Rule 110 of the Rules of Criminal Procedure, it provides:

> Sec. 8. *Designation of the offense*. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

A reading of the allegations in the above-quoted Information would show the insufficiency of the averments of the acts alleged to have been committed by appellant. It does not contain the essential facts constituting the offense, but a statement of a **conclusion of law**. Thus, appellant cannot be convicted of sexual abuse under such Information.

In *People v. Dela Cruz*, wherein the Information in Criminal Case No. 15368-R read:

> That on or about the 2nd day of August, 1997, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, x x x as a human being.
>
> CONTRARY TO LAW.

We dismissed the case after finding the Information to be **void** and made the following ratiocinations:

> The Court also finds that accused-appellant cannot be convicted of rape or acts of lasciviousness under the information

in Criminal Case No. 15368-R, which charges accused-appellant of a violation of R.A. No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), "either by raping her or committing acts of lasciviousness."

It is readily apparent that the facts charged in said information do not constitute an offense. The information does not cite which among the numerous sections or subsections of R.A. No. 7610 has been violated by accused-appellant. Moreover, it does not state the acts and omissions constituting the offense, or any special or aggravating circumstances attending the same, as required under the rules of criminal procedure. Section 8, Rule 110 thereof provides:

x x x x x x x x x

The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter x x x either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are **conclusions of law, not facts**. The information in Criminal Case No. 15368-R is therefore **void** for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.

The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.[54] (Emphasis and underscoring supplied)

The dispositive portion of *People v. Pangilinan* is noteworthy, thus:

WHEREFORE, x x x

The Information in Criminal Case No. 11769 is declared null and void for being violative of the appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against

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[54] *People v. Pangilinan*, *supra* note 1 at 26-28.

him. The case for Child Sexual Abuse under Section 5 (b) of RA No. 7160 against appellant is therefore *DISMISSED*.[55]

Thus, an Information which fails the sufficiency requirement of Section 8, Rule 110 of the Rules of Court is ***null and void*** for being violative of the accused's right to be informed of the nature and cause of the accusation against him.

The constitutionally-guaranteed right of the accused to be informed of the nature and cause of the accusation against him is assured and safeguarded under Sections 6, 8 and 9 of Rule 110 of the Rules of Court. Under Section 6, on the sufficiency of information, "[a] complaint or information is sufficient if it states[, among others,] x x x the designation of the offense given by the statute[, and] the acts or omissions complained of as constituting the offense. Section 8, on the designation of the offense, mandates that "[t]he complaint or information shall state the designation of the offense given by the statute[; and] aver the acts or omissions constituting the offense x x x." As to the cause of accusation, Section 9 provides:

> SEC. 9. The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The Information in this case, following *People v. Pangilinan* and *People v. Dela Cruz*, is, without doubt, ***fatally defective*** as an indictment against Petitioner for an unlawful act under RA 9165. The allegation in the Information that Petitioner "did then and there commit illegal drug trading" is not a sufficient averment of the essential facts constituting the offense or unlawful act as required under Section 8, Rule 110 of the Rules of Court for this is a **conclusion of law, and not an averment of facts**. The same holds true with respect to the allegation in the

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[55] *Id*. at 38.

Information that "the inmates x x x through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs" because this too is a conclusion of law.

If a criminal case merits dismissal when the Information from which it arose is void for being insufficient pursuant to *People v. Pangilinan* and *People v. Dela Cruz*, then, ***and with more reason***, should the Information be quashed and the criminal case dismissed at the very outset.

To let the accused suffer the travails of a protracted criminal trial only to be acquitted in the end on the ground that the Information from which the case originated was null and void is totally unjust and inhuman, and should not be countenanced by the Court.

It is true that under Section 3(a), Rule 117, the accused may move to quash the complaint or Information on the ground that "the facts charged do not constitute an offense." It is likewise true that amendment of the Information is possible under Section 4 thereof, to wit:

> SEC. 4. *Amendment of complaint or information*. – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

However, these provisions simply do not, as they cannot, apply to a situation where, as here, there are no factual allegations in the Information constituting an offense or unlawful act that Petitioner purportedly committed under RA 9165, which accordingly renders the Information null and void. In plain terms, the foregoing remedies need not be availed of by the accused — they do not apply when the defect of the Information

cannot be cured by an amendment because a null and void Information ***cannot*** be cured by an amendment.

Given the nullity of the Information, the respondent Judge had no legal basis to issue the warrant of arrest against Petitioner and the Information should have been quashed or nullified by the respondent Judge at the very outset.

Indeed, even if it could be assumed for the sake of argument that the Information may be cured by an amendment, still, **the respondent Judge should have awaited the amendment to be properly made before she issued the warrant of arrest against Petitioner**. To detain or restrain the liberty of Petitioner on the strength of a fatally defective Information, or pending the amendment thereof to conform to the requirements of the Rules of Court, was to consciously and maliciously curtail Petitioner's constitutionally-guaranteed rights to be presumed innocent, to be informed of the nature and cause of the accusation against her, and not to be deprived of her liberty without due process. ***These rights stand supreme in the absence of a showing of any countervailing, convincing and compelling ground to detain Petitioner in the meantime***. Without question, respondent Judge acted whimsically, capriciously and despotically.

The acts alleged in the Information constitute, at most, a charge for indirect bribery.

Petitioner asserts that the offense charged by the Information is neither illegal sale of dangerous drugs, nor conspiracy to commit the same — positing instead that the acts alleged in the Information constitute direct bribery penalized under Article 210[56] of the Revised Penal Code (RPC).

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[56] Article 210 of the Revised Penal Code provides:

ART. 210. *Direct bribery.*— Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of not less than three times the value of the gift, in

Direct bribery has the following elements:

x x x (1) that the accused is a public officer; (2) that he received directly or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer.

Accordingly, Petitioner's Memorandum asserts:

72. The allegations in the Information and the import of the plain terms used therein refer to the crime of bribery.

73. First, [Petitioner] is a public officer as defined in Article 203 x x x

74. Second, the Information alleges that [Petitioner] demanded, solicited and/or extorted and eventually received through intermediaries, money from the NBP Inmates x x x

75. **Third, it is also alleged that the money is given in exchange for special consideration, such as convenient and comfortable**

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addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

spaces in the NBP or just not being transferred to a less hospitable detention area.

76. Lastly, the Information also alleged facts that relate the special consideration/protection to be a function of the accused as Secretary of Justice. x x x[57] (Emphasis supplied)

However, while the first, second, and fourth elements of direct bribery are indeed alleged in the Information, the third is not. **Nowhere within the four corners of the Information is it alleged that the money or "proceeds" purportedly delivered to Petitioner by the NBP high-profile inmates was premised upon any agreement to afford special consideration and/or treatment in their favor**.

It is a fundamental assumption in criminal actions that the accused has no independent knowledge of the facts constituting the crime charged. As a necessary complement of the accused's constitutional right to be informed of the nature and cause of the accusation against him, the Information must therefore contain a complete narration of the essential elements of the offense. In this regard, the accused must strictly rely on the allegations in the Information and no conviction can result for a crime that has not been sufficiently detailed in the same. Thus, applied to this case, contrary to the claim of Petitioner, no direct bribery is discernible from the Information.

Instead, based on the ultimate facts alleged, the Information supplies a basis for a charge of indirect bribery.[58] The essential element of indirect bribery, as defined in Article 211 of the RPC, is the acceptance by a public officer of a gift or material

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[57] Petitioner's Memorandum, pp. 29-30.

[58] Article 211 of the Revised Penal Code provides:

ART. 211. *Indirect bribery.* — The penalties of *prision correccional* in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

consideration.[59] In this respect, the Court held in *Pozar v. Court of Appeals:*[60]

> It is well to note and distinguish direct bribery from indirect bribery. In both crimes, the public officer receives gift. **While in direct bribery, there is an agreement between the public officer and the giver of the gift or present, in indirect bribery, usually no such agreement exists**. In direct bribery, the offender agrees to perform or performs an act or refrains from doing something, because of the gift or promise; in indirect bribery, it is not necessary that the officer should do any particular act or even promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office.[61] (Emphasis and underscoring supplied)

Indirect bribery is an offense cognizable by the Sandiganbayan and not the Regional Trial Court.

As fully explained above, the Information cannot validly indict Petitioner with any unlawful act penalized under RA 9165. Under its Section 90, "the existing Regional Trial Courts in each judicial region [designated by the Court] to exclusively try and hear cases involving violations of this Act" have jurisdiction over such violations. Since this case, however, does not involve any violation of RA 9165, and the only possible felony that the Information may charge Petitioner with is indirect bribery, then the Regional Trial Court is completely bereft of jurisdiction to take cognizance of the case.

Pursuant to Section 4 of Presidential Decree No. (PD) 1606,[62] indirect bribery falls within the exclusive original jurisdiction of the Sandiganbayan when committed by officials of the executive branch occupying positions classified as Salary

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[59] *Garcia v. Sandiganbayan,* 537 Phil. 419, 441-442 (2006). [Per *J.* Chico-Nazario, First Division]

[60] 217 Phil. 698 (1984) [Per *J.* Guerrero, Second Division].

[61] *Id.* at 708.

[62] As amended by RA 10660.

Grade 27 or higher, it being among the offenses treated in Chapter II, Section 2, Title VII, Book II of the RPC, *viz.*:

> SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and **Chapter II, Section 2, Title VII, Book II of the Revised Penal Code**, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as **Grade "27" and higher**, of the Compensation and Position Classification Act of 1989 x x x[.] (Emphasis supplied)

Under the Compensation and Position Classification Act,[63] the position of department secretary is classified as Salary Grade 31. Hence, the offense – indirect bribery – that Petitioner may be charged with in the Information, having been allegedly committed at the time when Petitioner occupied the office of DOJ Secretary, undoubtedly falls within the exclusive original jurisdiction of the Sandiganbayan. Thus, the respondent Judge had no jurisdiction to take cognizance of the case and issue the warrant of arrest against Petitioner.

In this regard, I adopt the further disquisition of Associate Justice Perlas-Bernabe supporting the conclusion that it is the Sandiganbayan that has jurisdiction over the offense charged against Petitioner.

Since the only possible offense that may be leveled against Petitioner, based on the acts alleged in the Information, is indirect bribery, which is exclusively cognizable by the Sandiganbayan, then the DOJ Panel of Prosecutors violated the Memorandum of Agreement between the DOJ and the Office of the Ombudsman dated March 29, 2012 (MOA) which recognizes the primary

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[63] RA 6758 (1989), Sec. 8.

jurisdiction of the Ombudsman in the conduct of preliminary investigation and inquest proceedings for crimes and offenses over which the Sandiganbayan has exclusive jurisdiction.

Thus, when it became apparent that the case involved any of the crimes and offenses specified in Annex A of the MOA, which includes indirect bribery, it behooved the DOJ to already inform the complainant to file the complaint directly with the Ombudsman.

By this statement, no determination is being made that an indictment of indirect bribery should already be filed against Petitioner. The Court cannot second guess what the decision of the Ombudsman would be after the appropriate proceedings concerning a complaint for indirect bribery against Petitioner have been conducted by her Office.

The respondent Judge effectively denied Petitioner's Motion to Quash when she took cognizance of the case and found probable cause to issue a warrant of arrest against Petitioner.

Petitioner's Motion to Quash raised, among others, the lack of jurisdiction of the Regional Trial Court (RTC) over the offense charged against Petitioner, the lack of authority of the DOJ Panel to file the Information, and the defects in the Information.

As stated earlier, the availment by an accused of a motion to quash the information is in furtherance of his constitutional rights not to be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against him. These same rights are safeguarded by the provision requiring the determination of probable cause before the issuance of a warrant of arrest. Thus, both should be decided prior to or simultaneous with the issuance of a warrant of arrest.

While the Rules do not expressly require such simultaneous resolution, there is also nothing in the Rules that bars the judge from doing so. In fact, the preferred sequence should be that the trial court should first rule on the motion to quash before

it can even determine probable cause. Certainly, however, it behooves the trial court to at least rule on the motion to quash ***simultaneously with the determination of probable cause*** before it issues the warrant of arrest against the accused. Postponing the resolution of the motion to quash to after the issuance of the arrest warrant is certainly inconsistent with the accused's constitutional rights. Such a stance is constitutionally unsound. Between the lack of an express provision in the Rules and the constitutional guarantee that the said rights be respected, the express provisions of the Constitution must prevail.

And, if there is a doubt on that matter, the doubt should be resolved in favor of the accused. It is indeed more favorable to the accused and in keeping with his rights that his motion to quash be first resolved — at the earliest opportunity and before the arrest warrant is issued against him. ***The essence of due process is after all the right to be heard before one is deprived of his right to liberty.*** And Petitioner, being an accused, is no exception even if she is an avowed critic of the incumbent President.

Justice Peralta's Concurring Opinion points out that under the 1940 and 1964 Rules of Court, it was provided that the motion to quash shall be heard immediately on its being made unless, for good cause, the court postpone the hearing; and all issues whether of fact or law, which arise on a motion to quash shall be tried by the court. It also points out that the period to file the motion to quash is before the accused enters his plea. On the premise that this no longer appears in the current Rules of Court, a conclusion is reached that the motion to quash should, at the least, be resolved before arraignment — thus implying that the respondent Judge did not commit grave abuse of discretion by not immediately ruling on the motion to quash because she had, after all, the period to do so prior to the entry of plea. The Concurring Opinion implies as well that there was no error on the part of the respondent Judge in issuing a warrant of arrest prior to resolving the motion to quash.

I do not agree. The absence of such provision in the present Rules does not mean that the judge should not rule on the motion

to quash immediately, especially bearing in mind the constitutional rights of the accused. As already explained, to belatedly rule on the motion directly runs counter to these rights.

In plain language, the provision, in providing a period within which to file the motion to quash, intends to put a time limit on when the motion can be entertained by the trial court. **It does *not* provide that the resolution of the motion cannot be made during the determination of probable cause to issue the warrant of arrest**.

As already explained, the respondent Court's jurisdiction over the case is, given the language of the Information, tenuous at best. Thus, when the respondent Judge took cognizance of the case despite the clearly insufficient manner in which the Information charges Petitioner with a violation of RA 9165, she effectively denied the ground in Petitioner's Motion to Quash that the RTC does not have jurisdiction over the case. By the same token, she also denied the ground that the allegations and recital of facts in the Information do not allege the *corpus delicti* of the unlawful act penalized under RA 9165 which the Information is supposed to charge.

As well, inasmuch as the Ombudsman is the proper official who has jurisdiction to conduct preliminary investigation in complaints for possible indirect bribery, the respondent Judge, in asserting jurisdiction, likewise effectively denied the Motion to Quash's ground that the DOJ had no authority to file the Information.

To recall, the Motion to Quash was filed by Petitioner during the probable cause determination stage — *i.e.*, at that time when the respondent Judge was confronted with the question of whether or not a warrant for the arrest of Petitioner should be issued, and where the very jurisdiction of the RTC and sufficiency of the Information had been put in issue. Petitioner even invoked her constitutional right to be informed of the nature and cause of the accusation against her.

Under Section 5, Rule 112, the judge has 10 days from the filing of the Information to determine probable cause for the

issuance of an arrest warrant. ***These same 10 days were more than ample time for respondent Judge to concurrently rule on the Motion to Quash***. It is thus ludicrous to assert that respondent Judge can still rule on the Motion to Quash even after she had already ordered Petitioner's arrest — as this cannot now undo the prior curtailment of Petitioner's rights to liberty, to due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her.

Justice Peralta's Concurring Opinion also observes that sustaining the contention that a judge must first act on a pending motion to quash the information before she could issue a warrant of arrest would render nugatory the 10-day period to determine probable cause to issue a warrant of arrest under Section 5, Rule 112. Again, this is incorrect. As stated, in the face of the constitutional rights of an accused, that same 10-day period was ample time for respondent Judge to simultaneously rule on the motion to quash and determine probable cause — especially where, as in this case, the Information is patently defective.

The respondent Judge thus acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

The Court in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*[64] stated:

> Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the **petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction**. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. In this connection, *Yu v. Judge Reyes-Carpio*, is instructive:

[64] 713 Phil. 500 (2013) [Per *J.* Leonardo-De Castro, First Division].

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the **petitioner could manifestly show that such act was patent and gross**. x x x.[65] (Emphasis supplied; citations omitted)

The respondent Judge's grave abuse of discretion is evident from the following:

(1) She issued the warrant of arrest against Petitioner despite the patent defects evident on the face of the Information;

(2) She made a determination of probable cause for violation of RA 9165 against Petitioner despite the absence of sufficient factual averments in the Information of the specific acts constituting such violation;

(3) She disregarded established and hornbook jurisprudence requiring the presence of *corpus delicti* in dangerous drugs cases, thus characterizing her act of issuing a warrant of arrest as gross ignorance of the law;

(4) She totally ignored or purposely closed her eyes to a plethora of cases which held that Informations that aver conclusions of law, and not specific facts, as to the offense allegedly committed, are null and void for being violative of the accused's right to be informed of the nature and cause of the accusation against him;

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[65] *Id*. at 515-516.

(5) She assumed jurisdiction over the case despite the fact that the Information had not validly charged Petitioner with any offense under RA 9165, it being patent that the only crime the Information could sustain is one exclusively cognizable by the Sandiganbayan;

(6) She disregarded and violated Petitioner's rights not to be deprived of liberty without due process of law and to be presumed innocent when she purposely did not rule on Petitioner's Motion to Quash before she issued a warrant for her arrest, showing extreme and utter malice and bias against Petitioner;

(7) If there was a doubt as to whether the Motion to Quash was to be resolved simultaneously with the determination of probable cause, she should have resolved the doubt in Petitioner's favor which is the general and accepted rule; and since she did not do so, this again showed her bias against Petitioner;

(8) She acted without jurisdiction when she took cognizance of the case despite the fatal defect on the face of the Information that it could not have validly charged any violation of RA 9165 against Petitioner and that what is apparent therein is only a possible charge of indirect bribery, which is exclusively cognizable by the Sandiganbayan; and

(9) In finding probable cause against Petitioner for violation of RA 9165 and issuing the warrant of arrest against her despite the nullity of the Information, she disregarded and curtailed Petitioner's right to be informed of the nature and cause of the accusation against her and to be presumed innocent, again showing bias against Petitioner.

Clearly, there is no conclusion that can be derived from the foregoing other than a finding of grave abuse of discretion on the part of the respondent Judge. The respondent Judge acted **in a capricious, whimsical, arbitrary or despotic manner in the exercise of her jurisdiction as to be equivalent to lack**

of jurisdiction. Thus, Petitioner has availed of the proper remedy – a petition for *certiorari* under Rule 65 of the Rules.

The Procedural Issues

Proceeding now to the procedural issues, the *ponencia* asserts that the Petition is plagued with procedural defects that warrant its outright dismissal.

This is error.

The Court in numerous cases has set aside procedural issues to give due course to *certiorari* petitions. Surely, each member of the Court has invoked, and will so continue to invoke, the Constitution to justify the relaxation of the application of procedural rules. However, the majority finds that Petitioner here has not made out a case falling under any of the recognized exceptions to procedural rules applicable to the Petition.

If the Constitution is the fundamental and highest law of the land, why should its invocation to clothe the Court with jurisdiction be an exception to procedural rules? Should not the invocation of the Constitution be the general rule?

The verification and certification requirements under Rule 65 were substantially complied with.

The *ponencia* takes note of the statements in the Affidavit executed by Atty. Maria Cecile C. Tresvalles-Cabalo (Atty. Tresvalles-Cabalo) confirming that Petitioner affixed her signature on the Petition's Verification and Certification Against Forum Shopping before the same was transmitted to the former for notarization. The *ponencia* submits, on the basis of *William Go Que Construction v. Court of Appeals*[66] and *Salumbides, Jr. v. Office of the Ombudsman*[67] that such fact renders the Petition fatally defective, due to non-compliance with the mandatory verification and certification requirements under Rule 65 of the Rules.

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[66] G.R. No. 191699, April 19, 2016, 790 SCRA 309 [Per *J.* Perlas-Bernabe, First Division].

[67] 633 Phil. 325 (2010) [Per *J.* Carpio Morales, *En Banc*].

That the petitioners in *William Go Que Construction* and *Salumbides, Jr.* failed to strictly comply with the verification and certification requirements under the Rules is undisputed. However, the circumstances in these cases significantly differ from those obtaining in this case, and preclude the adoption of the Court's rulings therein in the present Petition.

In *William Go Que Construction,* respondents therein failed to comply with the verification and certification requirements since the corresponding *jurat* did not indicate the pertinent details regarding their respective identities. For this reason, the Court was left with no means to ascertain whether *any* of said respondents had, in fact, signed the verification and certification in question. In *Salumbides, Jr.*, the verification portion of the petition therein did not carry a certification at all. Accordingly, the Court held that non-compliance with the certification requirement, as distinguished from *defective* compliance, served as sufficient cause for dismissal without prejudice.

The foregoing circumstances do not obtain in this case. As stated in Atty. Tresvalles-Cabalo's Affidavit,[68] Petitioner's staff informed her in advance that the Petition had already been signed by Petitioner, and that the same was ready for notarization. Thereafter, the signed Petition was handed to her by a staff member. Because of her familiarity with Petitioner's signature, Atty. Tresvalles-Cabalo was able to ascertain that the signature appearing on the Verification and Certification Against Forum Shopping appended to the Petition was Petitioner's.[69] Nonetheless, Atty. Tresvalles-Cabalo still requested, and was thereafter provided a photocopy of Petitioner's passport.[70]

Based on the foregoing narrative, Atty. Tresvalles-Cabalo was able to sufficiently ascertain that the person who had signed the Petition and the Verification and Certification Against Forum Shopping appended thereto was, in fact, Petitioner herself.[71]

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[68] Affidavit dated March 20, 2017.

[69] *Id.*

[70] *Id.*

[71] *Id.*

No doubt exists as to the identity of Petitioner as the affiant, and the authenticity of the signature appearing on the document in question. **Petitioner herself does not question the authenticity of her signature.** Hence, it is crystal clear that the reasons which impelled the Court to rule as it did in *William Go Que Construction* and *Salumbides, Jr.* do not exist in the present case.

Verily, the Court, in *William Go Que Construction,* acknowledged that failure to strictly comply with the verification and/or certification requirements shall not constitute a fatal defect, *provided* there is substantial compliance therewith:

> In this case, it is undisputed that the Verification/Certification against Forum Shopping attached to the petition for *certiorari* in C.A.-G.R. S.P. No. 109427 was not accompanied with a valid affidavit/ properly certified under oath. This was because the *jurat* thereof was defective in that it did not indicate the pertinent details regarding the affiants' (*i.e.*, private respondents) competent evidence of identities.
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> x x x x x x x x x
>
> x x x To note, it cannot be presumed that an affiant is personally known to the notary public; the *jurat* must contain a statement to that effect. Tellingly, the notarial certificate of the Verification/ Certification of Non-Forum Shopping attached to private respondents' petition before the CA did not state whether they presented competent evidence of their identities, or that they were personally known to the notary public, and, thus, runs afoul of the requirements of verification and certification against forum shopping under Section 1, Rule 65, in relation to Section 3, Rule 46, of the Rules of Court.

In *Fernandez v. Villegas (Fernandez)*, the Court pronounced that noncompliance with the verification requirement or a defect therein "does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby." "Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition

have been made in good faith or are true and correct." Here, there was no substantial compliance with the verification requirement as it cannot be ascertained that any of the private respondents actually swore to the truth of the allegations in the petition for *certiorari* in C.A.-G.R. S.P. No. 109427 given the lack of competent evidence of any of their identities. Because of this, the fact that even one of the private respondents swore that the allegations in the pleading are true and correct of his knowledge and belief is shrouded in doubt.

For the same reason, neither was there substantial compliance with the certification against forum shopping requirement. **In *Fernandez*, the Court explained that "non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'"** Here, the CA did not mention — nor does there exist — any perceivable special circumstance or compelling reason which justifies the rules' relaxation. At all events, it is uncertain if any of the private respondents certified under oath that no similar action has been filed or is pending in another forum. x x x[72] (Emphasis and underscoring supplied)

Petitioner, being the sole party in interest in the present case, undoubtedly qualifies as one with ample knowledge to affirm the veracity of the allegations in the Petition, and with sufficient capacity to certify that its filing does not constitute forum shopping. This serves, as it should, as sufficient basis to hold that the verification and certification requirements have been substantially complied with.

The principle of substantial compliance remains controlling with respect to the verification and certification requirements under Rule 65.

It has been argued that while there is jurisprudence to the effect that an irregular notarization does not necessarily affect the validity of a document, but merely reduces its evidentiary value to that of a private one, such principle should not be deemed

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[72] *Supra* note 66, at 321-325.

controlling with respect to petitions filed under Rule 65, since the Rule specifically mandates that petitions for *certiorari* be verified and accompanied by a sworn certificate against forum shopping. This position proffers the view that strict compliance with the verification and certification requirements shall, at all times, be necessary. Again, this is wrong.

In *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*,[73] the Court held that the Court of Appeals (CA) correctly resolved the petition for *certiorari* filed by respondent bank notwithstanding allegations that the party who signed the verification and certification thereof was not duly authorized to do so. In so ruling, the Court applied the principle of substantial compliance with respect to a petition for *certiorari* filed under Rule 65:

> On the matter of verification, the purpose of the verification requirement is to assure that the allegations in a petition were made in good faith or are true and correct, not merely speculative. **The verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the petition signed the verification attached to it, and when matters alleged in the petition have been made in good faith or are true and correct**. **In this case, we find that the position, knowledge, and experience of Ferrer as Manager and Head of the Acquired Assets Unit of Asiatrust, and his good faith, are sufficient compliance with the verification and certification requirements**. This is in line with our ruling in *Iglesia ni Cristo v. Ponferrada*, where we said that it is deemed substantial compliance when one with sufficient knowledge swears to the truth of the allegations in the complaint x x x[74] (Emphasis and underscoring supplied)

Further, in *Marcos-Araneta v. Court of Appeals,*[75] the Court held that verification is not a jurisdictional requirement but a formal one which may be subsequently corrected or cured upon

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[73] *Supra* note 2.

[74] *Id*. at 816-817.

[75] *Supra* note 2, at 52.

order of the courts. The Court further held that contrary to the actuations of petitioners therein, the CA did not err when it permitted respondent's counsel to cure the defects in the verification and certification appended to the joint petition for *certiorari* which respondent filed before the CA *via* Rule 65.

Still, in the more recent case of *Ingles v. Estrada*,[76] the Court held that the CA erred when it dismissed the *certiorari* petition filed by petitioners therein on the ground of non-compliance with Section 1 of Rule 65, because its verification and certification lacked the signatures of 3 out of the 5 named petitioners. In so ruling, the Court found that the verification and certification requirements should be deemed to have been substantially complied with.

The foregoing cases, among others,[77] illustrate that while the verification and certification requirements are explicit under Rule 65, they remain within the ambit of the principle of substantial compliance.

The Petition constitutes an exception to the principle of hierarchy of courts, as it presents novel questions of law and raises genuine constitutional issues.

The *ponencia* holds that Petitioner violated the rule on hierarchy of courts and failed to sufficiently establish the existence of reasons that warrant the application of its recognized exceptions. As discussed in the first portion of this Dissenting Opinion, the Petition involves novel questions of law and genuine constitutional issues that justify a direct resort to this Court.

Foremost is the recognition and application of the constitutionally-guaranteed rights of Petitioner, as an accused, to be informed of the nature and cause of the accusation against

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[76] 708 Phil. 271, 303-306 (2013) [Per *J*. Perez, Second Division].

[77] See *Bacolor v. VL Makabali Memorial Hospital, Inc.,* G.R. No. 204325, April 18, 2016, 790 SCRA 20 [Per *J*. Del Castillo, Second Division].

her and to be presumed innocent given the nullity of the Information because it does not contain the essential facts constituting the unlawful act of illegal trading of dangerous drugs. Whether the Motion to Quash should be resolved simultaneously with the determination of probable cause for the issuance of the warrant of arrest against Petitioner, so that her right not to be deprived of liberty without due process would not be curtailed, is a novel question of law.

The nature of the charge involved in the present Petition and the apparent conflict between RA 9165 and RA 10660[78] in respect of jurisdiction over offenses committed by public officials in relation to their office, presents another novel issue based on the observations of some members of the Court. In fact, the specific circumstances which set this case apart from previously decided cases were expounded upon during Justice Carpio's interpellation:

JUSTICE CARPIO:

Counsel, what is the latest law on the charter of the Sandiganbayan?

ATTY. HILBAY:

The latest law, Your Honor, is [RA] 10-6-60 (sic) which was passed in, I think, June or July of 2014.

x x x x x x x x x

JUSTICE CARPIO:

Okay. What does it say on *jurisdiction?*

ATTY. HILBAY:

Okay. If I may read, Your Honor, Section 2 (sic), Section 4 of the same decree: *As amended is hereby further amended to read as follows:*

Section 4. Jurisdiction. The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving (a)...

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[78] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

JUSTICE CARPIO:

x x x x x x x x x

When it says "exclusive" that means no other court can acquire?

ATTY. HILBAY:

You are correct, Your Honor.

JUSTICE CARPIO:

When it says "in all cases", it means there is no exception?

ATTY. HILBAY:

Correct, Your Honor.

JUSTICE CARPIO:

So, it reiterates the word, the meaning of "exclusive" with the phrase "in all cases". So, "in all cases" means no exception at all?

ATTY. HILBAY:

It exhausts all possibilities, Your Honor.

x x x x x x x x x

JUSTICE CARPIO:

Okay, and one case is if the respondent, public respondent has a salary grade of 27 or higher?

ATTY. HILBAY:

Yes.

x x x x x x x x x

JUSTICE CARPIO:

So, if one of the respondents is a public official with salary grade of 27...

x x x x x x x x x

JUSTICE CARPIO:

And above, then the case falls under the Sandiganbayan if there is a violation of laws, correct?

x x x x x x x x x

JUSTICE CARPIO:

Yes. Any criminal law, any crime?

x x x x x x x x x

ATTY. HILBAY:

In letter B, Your Honor, which is the catch all provision: "Other offenses and felonies whether simple or complex with other crimes committed by public officials and employees mentioned in sub-section A those with salary grade 27 and above, in general, of this section in relation to their office."

x x x x x x x x x

JUSTICE CARPIO:

If he commits a crime not falling under those crimes mentioned expressly but he commits it in relation to his office and he is salary grade 27 or above...

x x x x x x x x x

JUSTICE CARPIO:

...it will fall under the Sandiganbayan?

ATTY. HILBAY:

Exclusive original jurisdiction.

JUSTICE CARPIO:

And that is your claim now, that the petitioner here has a salary grade of 27...

x x x x x x x x x

JUSTICE CARPIO:

...at the time of the commission her salary grade was 27 and above?

ATTY. HILBAY:

31.

JUSTICE CARPIO:

31. And the Information charges her with the crime in relation to her office that she took advantage of her position or authority?

ATTY. HILBAY:

That's very clear in the Information, Your Honor.

JUSTICE CARPIO:

Yes, okay. So that's your basis for filing this petition basically on that jurisdictional ground?

ATTY. HILBAY:

Yes, Your Honor.

JUSTICE CARPIO:

Okay. So, that's the latest expression of the law. But there are two previous cases, *People [v.] Benipayo,* where this Court said that despite the charter of the Sandiganbayan even if the respondent is a public official with the salary grade above 27, still it will fall under RTC because the crime is libel?

ATTY. HILBAY:

Yes, Your Honor.

JUSTICE CARPIO:

How do you answer that?

ATTY. HILBAY:

No. 1, Your Honor, in the Benipayo case, the statute clearly says it is the RTC that has exclusive jurisdiction over all libel cases. No. 2, also, Your Honor, you don't have to be a (sic) COMELEC Chair Benipayo to commit libel, he could be Professor Benipayo or any other, you know, he could have done that, committed libel in any other capacity. In this case, Your Honor, it's very different. There is no other law that provides exclusive jurisdiction to the RTC. And in fact, in this case the case of petitioner (sic) falls squarely within Section 4 of P.D. 1606 whether it is, in fact, Direct Bribery under Section A or Drug Trading which would fall under Section B because both of them were done in relation to her public office.

x x x x x x x x x

JUSTICE CARPIO:

In Benipayo, did the prosecution allege that Benipayo committed libel in relation to his office?

ATTY. HILBAY:

No, Your Honor, I don't think so.

JUSTICE CARPIO:

Here, the prosecution alleged that. So it's the prosecution who's claiming that the offense committed by the petitioner is in relation to her office?

ATTY. HILBAY:

Your Honor, as I stated in my opening statement, the prosecution itself has clearly embedded those cooperative phrases.[79] (Emphasis supplied)

The novelty of the issues raised in the Petition was further emphasized during the interpellation of Justice Leonen:

JUSTICE LEONEN:

In the structure of the Sandiganbayan, there are three justices that hear the case and for a Regional Trial Court, there is one judge. And many of you have practiced, I have practiced in our trial courts, *mas madaling kausapin ang isa kaysa tatlo,* correct?

ATTY. HILBAY:

I would suppose, Your Honor.

x x x x x x x x x

JUSTICE LEONEN:

x x x But the point there is, there is a certain reason why the Sandiganbayan is composed of three justices at the level of the Court of Appeals, at the appellate level and they all hear one case. This is a case involving whatever the Sandiganbayan law says. Why? Why is the structure of the Sandiganbayan different?

x x x x x x x x x

JUSTICE LEONEN:

Is it possible, in order that high public officials especially the very high public officials cannot avail of the mechanisms of government or the network that they left behind in government in order to be able to influence a case... (interrupted)

x x x x x x x x x

JUSTICE LEONEN:

...because three justices at the appellate level, very close to being promoted to the Supreme Court, will be, I think, a better buffer than simply one lonely in (sic), let us say, in Muntinlupa whose promotion and whose future may be affected by cases that she or he decides by himself or herself, correct?

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[79] TSN, March 14, 2017, pp. 51-57.

ATTY. HILBAY:
Correct, Your Honor.

x x x x x x x x x

JUSTICE LEONEN:

Yes. Now here we have this particular case so I will not go into the text, I will just go into the purpose; and I will not even go to the general or specific rule because that has already been covered. Here we have a case and De Lima, Leila De Lima was what?

ATTY. HILBAY:
Secretary of Justice...

JUSTICE LEONEN:
And Secretary of Justice means a cabinet official and cabinet official that may have had hand in appointments in many of the judicial offices, right?

ATTY. HILBAY:
Possibly...

JUSTICE LEONEN:
Or for that matter, may have left a network in the Department of Justice, I do not know, or may have a hand in the legal sector of the...our economy and, therefore, there is need that certain kinds of cases of this nature, not because she is Leila De Lima but because she was a Cabinet Secretary. Even [if] it was an offense punishable by the Revised Penal Code, there is reason that it be given to the Sandiganbayan, correct?

ATTY. HILBAY:
Correct, Your Honor.

x x x x x x x x x

JUSTICE LEONEN:
Okay, would you tell us if there is any precedent on Trading, not Illegal Sale, on Trading?

ATTY. HILBAY:

We're not aware, Your Honor, but we'll do the research.

JUSTICE LEONEN:
None, okay. There is no case. This is the first case, if ever there is such an offense, correct?

ATTY. HILBAY:

Correct, Your Honor.[80] (Emphasis supplied)

In addition, it should not be overlooked that the Petition averred that undue haste attended the issuance of the warrant of arrest against Petitioner.[81] Moreover, it bears emphasizing that the Petitioner asserted that the Information against her failed to inform her of the specific nature and cause of the accusation against her, for while she was charged with consummated drug trading under Section 5 of RA 9165, the Information is bereft of any allegation as to the sale and delivery of any specific drug, or the character and quantity thereof.[82]

These issues strike at the very heart of the constitutional right to criminal due process, the importance of which had been painstakingly stressed by the Court in *Enrile v. People,*[83] thus:

> Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him. This right has long been established in English law, and is the same right expressly guaranteed in our 1987 Constitution. This right requires that the offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense.
>
> In the 1904 case of *United States v. Karelsen*, the Court explained the purpose of informing an accused in writing of the charges against him from the perspective of his right to be informed of the nature and cause of the accusation against him:
>
> The object of this written accusation was — First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support

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[80] *Id.* at 131-134.

[81] Petition, p. 22.

[82] *Id.* at 42.

[83] 766 Phil. 75 (2015) [Per J. Brion, *En Banc*].

a conviction, if one should be had. x x x In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged. x x x

The objective, in short, is to describe the act with sufficient certainty to fully appraise the accused of the nature of the charge against him and to avoid possible surprises that may lead to injustice. Otherwise, the accused would be left speculating on why he has been charged at all.

In *People v. Hon. Mencias, et al.*, the Court further explained that a person's constitutional right to be informed of the nature and cause of the accusation against him signifies that an accused should be given the necessary data on why he is the subject of a criminal proceeding. The Court added that the act or conduct imputed to a person must be described with sufficient particularity to enable the accused to defend himself properly.

The general grant and recognition of a protected right emanates from Section 1, Article III of the 1987 Constitution which states that no person shall be deprived of life, liberty, or property without due process of law. The purpose of the guaranty is to prevent governmental encroachment against the life, liberty, and property of individuals; to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice x x x; and to secure to all persons equal and impartial justice and the benefit of the general law.

Separately from Section 1, Article III is the specific and direct underlying root of the right to information in criminal proceedings — Section 14(1), Article III — which provides that *"No person shall be held to answer for a criminal offense without due process of law*." Thus, no doubt exists that the right to be informed of the cause of the accusation in a criminal case has deep constitutional roots that, rather than being cavalierly disregarded, should be carefully protected.[84] (Emphasis and underscoring supplied; citations omitted)

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[84] *Id*. at 98-100.

As tersely observed in *Arroyo v. Department of Justice*,[85] direct relief has been granted by the Court to rectify a manifest injustice suffered by parties whose right to criminal due process had been violated:

> This is not the first time that the Court is confronted with the issue of jurisdiction to conduct preliminary investigation and at the same time with the propriety of the conduct of preliminary investigation. In *Cojuangco, Jr. v. Presidential Commission on Good Government [PCGG]*, the Court resolved two issues, namely: (1) whether or not the PCGG has the power to conduct a preliminary investigation of the anti-graft and corruption cases filed by the Solicitor General against Eduardo Cojuangco, Jr. and other respondents for the alleged misuse of coconut levy funds; and (2) on the assumption that it has jurisdiction to conduct such a preliminary investigation, whether or not its conduct constitutes a violation of petitioner's right to due process and equal protection of the law. The Court decided these issues notwithstanding the fact that Informations had already been filed with the trial court.
>
> In *Allado v. Diokno,* in a petition for *certiorari* assailing the propriety of the issuance of a warrant of arrest, **the Court could not ignore the undue haste in the filing of the information and the inordinate interest of the government in filing the same. Thus, this Court took time to determine whether or not there was, indeed, probable cause to warrant the filing of information**. **This, notwithstanding the fact that information had been filed and a warrant of arrest had been issued. Petitioners therein came directly to this Court and sought relief to rectify the injustice that they suffered**.[86] (Emphasis supplied)

The need for the Court's direct action is made more manifest by the fact that while Petitioner had been charged, arrested, and detained for consummated drug trading under Section 5, of RA 9165,[87] the OSG now claims that the offense she had allegedly committed was conspiracy to commit drug trading

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[85] 695 Phil. 302 (2012) [Per J. Peralta, *En Banc*].

[86] *Id*. at 333-334.

[87] Petition, pp. 18-19.

— an entirely different offense punishable under Section 26 (b) of the same statute.[88]

The principle of hierarchy of courts is not an iron-clad rule.[89] Accordingly, the Court has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it if warranted by the nature of the issues raised in therein.[90] In this connection, the Court ruled in *The Diocese of Bacolod v. Commission on Elections*[91]:

> x x x [T]he Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent should not be emasculated by the doctrine in respect of the hierarchy of courts. That has never been the purpose of such doctrine.
>
> Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine:
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> x x x x x x x x x
>
> ***Third*, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter** x x x[92] (Emphasis supplied)

The Petition, having presented, at the very least, a question of first impression and a genuine constitutional issue, is exempted from the rule on hierarchy of courts. Hence, it is indeed

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[88] TSN, March 28, 2017, p. 16.

[89] *Maza v. Turla,* G.R. No. 187094, February 15, 2017, p. 11 [Per *J.* Leonen, Second Division] citing *The Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301, 330 (2015) [Per *J.* Leonen, *En Banc*].

[90] *Id*. at 330-331.

[91] *Supra* note 89.

[92] *Id*. at 330-333.

lamentable that the majority of the Court has shirked its duty to resolve the Petition to determine whether Petitioner's rights to due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her had in fact been violated in the face of apparent defects plaguing the Information. ***To uphold the technical rules of procedure without due deference to these fundamental constitutional rights would be to defeat the very purpose for which such rules, including the hierarchy of courts, were crafted***.

The factual precedents that gave rise to this Petition have left Petitioner with no other plain, speedy, and adequate remedy in the ordinary course of law.

The *ponencia* finds that the Petition is premature, as there is still something left for the trial court to do — that is, resolve petitioner's Motion to Quash. Such position is anchored on the cases of *Solid Builders Inc. v. China Banking Corporation*[93] (*Solid Builder's*), *State Investment House, Inc. v. Court of Appeals*[94] (*State Investment House*) and *Diaz v. Nora*[95] (*Diaz*), which uphold the dismissal of the petitions therein on the ground of prematurity.

However, as previously narrated, considering that the Petition had been prompted precisely by the RTC's inaction on Petitioner's Motion to Quash, then the cases relied upon to support the contrary view are inapplicable.

It bears noting that subject matter jurisdiction was not an issue in *Solid Builder's* and *State Investment House*. Moreover, while subject matter jurisdiction was raised as an issue in *Diaz*, the antecedents which prompted the Court to dismiss the petition for *mandamus* filed by petitioner therein on the ground of prematurity substantially differ from those in the present case.

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[93] 707 Phil. 96 (2013) [Per *J*. Leonardo-De Castro, First Division].

[94] 527 Phil. 443 (2006) [Per *J*. Corona, Second Division].

[95] 268 Phil. 433 (1990) [Per *J*. Gancayco, First Division].

In *Diaz,* petitioner filed a complaint for illegal suspension and damages before the National Labor Relations Commission (NLRC), and subsequently secured a favorable decision from the Labor Arbiter (LA). Respondent therein appealed said decision to the NLRC. Immediately thereafter, petitioner filed a motion for execution before the LA, alleging that respondent failed to file the necessary bond which precluded the perfection of the appeal, thereby rendering the LA's decision final and executory. Instead of acting on petitioner's motion, the LA forwarded the records of the case to the NLRC. Aggrieved, petitioner filed a petition for *mandamus* before the Court to compel the remand of the records of the case to the LA to facilitate the issuance of a writ of execution. The Court dismissed the petition for being premature because **petitioner failed to give the NLRC the opportunity to determine whether or not it has jurisdiction over respondent's appeal,** thus:

> Petitioner argues that a motion for reconsideration cannot be filed with the respondent labor arbiter as the latter merely failed to resolve the motion for execution and sent the records of the case to respondent NLRC. Petitioner further contends that he cannot seek a reconsideration from respondent NLRC as it has no jurisdiction over the appeal private respondent having failed to perfect its appeal. Petitioner asserts that it is the ministerial duty of the respondent NLRC to remand the records and for the respondent labor arbiter to execute his decision.
>
> **The proper step that the petitioner should have taken was to file a motion to dismiss appeal and to remand the records with the respondent NLRC alleging therein that the decision had become final and executory.** It is not true that respondent NLRC has no jurisdiction to act on this case at all. It has the authority to dismiss the appeal if it is shown that the appeal has not been duly perfected. It is only when the respondent NLRC denies such motion and the denial appears to be unlawful that this petition for *mandamus* should be filed in this Court.
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> x x x x x x x x x
>
> In this case it has not been shown that either the respondent labor arbiter or respondent NLRC has unlawfully neglected the performance of an act which the law specifically enjoins them as a duty to perform or has otherwise unlawfully excluded petitioner from a right he is

entitled to. In the case of the respondent labor arbiter, he has not denied the motion for execution filed by the petitioner. He merely did not act on the same. Neither had petitioner urged the immediate resolution of his motion for execution by said arbiter. **In the case of the respondent NLRC, it was not even given the opportunity to pass upon the question raised by petitioner as to whether or not it has jurisdiction over the appeal, so the records of the case can be remanded to the respondent labor arbiter for execution of the decision**.

Obviously, petitioner had a plain, speedy and adequate remedy to seek relief from public respondents but he failed to avail himself of the same before coming to this Court. To say the least, the petition is premature and must be struck down.[96] (Emphasis and underscoring supplied)

To be sure, what impelled the Court to rule as it did in *Diaz* was the failure of petitioner therein to give the NLRC the opportunity to determine the jurisdictional issue subject of the *mandamus* petition. *Diaz* thus instructs that in assailing matters of jurisdiction, the speedy, adequate, and appropriate remedy lies, in the first instance, with the court or body whose jurisdiction is being assailed. Consequently, should this remedy fail, resort to the next available remedy provided under the Rules should be permitted.

Proceeding therefrom, it bears stressing that Petitioner filed her Motion to Quash before the RTC precisely for the purpose of assailing the latter's jurisdiction. Through the filing of the Motion to Quash, the RTC was afforded the opportunity to address the issue head on. By failing to seasonably rule on the same — and instead, immediately ordering Petitioner's incarceration with the issuance of a warrant of arrest — the respondent Judge left Petitioner with no other recourse but to elevate the matter to this Court *via* Rule 65, in view of the nature of the issues herein. Thus, to dismiss the Petition on the ground of prematurity would be to punish Petitioner for the respondent Judge's inaction, over which she has no control.

Not only was there inaction on the part of the respondent Judge, her Order for the issuance of the warrant of arrest against Petitioner

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[96] *Id*. at 436-438.

without resolving the Motion to Quash (which put in question the court's very jurisdiction and the sufficiency of the Information) **effectively denied the Motion to Quash**. The respondent Judge had in effect found that the Information was sufficient pursuant to the Rules of Court and the trial court had jurisdiction over the case. For her to subsequently "rule" on the Motion to Quash would be illusory — because by refusing to rule on the Motion to Quash simultaneously with the determination of probable cause, the respondent Judge had already disregarded and trampled upon Petitioner's rights not to be held to answer for a criminal offense without due process, not to be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her.

With the glaring defects in the Information and the patent violation of Petitioner's constitutional rights smacking of grave abuse of discretion on the part of respondent Judge, it will be the height of unfairness to insist that the speedy, adequate, and appropriate remedy is to proceed to trial.

The rule against forum shopping was not violated.

In the recent case of *Ient v. Tullett Prebon (Philippines), Inc.*,[97] the Court had the occasion to determine whether petitioners therein committed forum shopping, as they resolved to file a petition for *certiorari* before this Court during the pendency of their motion to quash with the RTC. Ruling in the negative, the Court held:

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. **There is no forum shopping**

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[97] G.R. Nos. 189158 and 189530, January 11, 2017 [Per *J*. Leonardo-De Castro, First Division].

where the suits involve different causes of action or different reliefs.[98] (Emphasis and underscoring supplied)

On such basis, no forum shopping was committed in this case for two primary reasons.

First, the criminal case pending with the RTC, on the one hand, and the Petition on the other, involve different causes of action. The former is a criminal action which seeks to establish criminal liability, while the latter is a special civil action that seeks to correct errors of jurisdiction. *Second,* the two cases seek different reliefs. The RTC case seeks to establish Petitioner's culpability for the purported acts outlined in the Information, while the Petition seeks to correct the grave abuse of discretion allegedly committed by the respondent Judge when she proceeded to issue a warrant of arrest against Petitioner despite the pendency of the latter's Motion to Quash, which, in turn, assailed the respondent Judge's very jurisdiction to take cognizance of the case.[99]

The rules of procedure are intended to facilitate rather than frustrate the ends of justice.

Notwithstanding the foregoing disquisition, it is necessary to stress that the Rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts are promulgated by the Court under Section 5(5) of Article VIII of the Constitution. It cannot diminish or modify substantive rights,[100] much less be used to derogate against constitutional rights. The Rules itself provides it must be construed liberally to promote the just, speedy and inexpensive disposition of every action and proceeding[101] and thus must always yield to the primary objective of the Rules, that is, to enhance fair trials and expedite justice.

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[98] *Id*. at13-14.

[99] Petition, p. 20.

[100] CONSTITUTION, Art. VIII, Sec. 5(5).

[101] RULES OF COURT, Rule 1, Sec. 6.

Time and again, this Court has decreed that rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration.[102] This principle finds emphatic application in this case.

Closing

When the very rights guaranteed to an accused by our Constitution are disregarded and the rules of procedure are accorded precedence — that is abhorrent and preposterous. That is plain and simple injustice.

The separate and discordant voices of the members of the Court have been heard. Yet, there is no direct pronouncement that the Information against Petitioner and her co-accused is valid. The impression that can be gathered is that if it is defective, then it can anyway be subsequently amended. In the meantime, Petitioner must continue to languish in jail — even if the Information cannot possibly be amended because it is fatally defective. This case thus highlights the need for the immediate resolution of a motion to quash that is filed during the determination of probable cause stage if only to avoid the curtailment of an accused's constitutional rights, especially his right to be presumed innocent and to not be deprived of his liberty without due process of law. Where, as here, the Information only contains defined legal terms and conclusions of law, without specific factual allegations of the elements of the offense charged — thus, a sham, and showcasing the lack of jurisdiction of the trial court, then there is a clear need that the motion to quash raising these grounds, when filed during the determination of probable cause stage, should be resolved and cannot be postponed to a time after the arrest of the accused.

In this case, unfortunately, the Constitution is deemed no match to the absence of a specific procedural rule that a motion to quash should be ruled upon simultaneously with the determination of probable cause — even if the Information indicting the accused is void on its face and the very jurisdiction of the criminal court

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[102] *Alcantara v. Philippine Commercial and International Bank*, 648 Phil. 267, 279 (2010) [Per *J.* Leonardo-De Castro, First Division].

is being questioned. The majority of the Court has succeeded, by its Decision, to make the Constitution subservient to the rules of procedure. They now allow for the deprivation of an individual's liberty while waiting for the correct and legally sufficient Information to be filed and approved by the criminal court.

The message is clear and unmistakable: Arrest first; resolve the motion to quash and amend the Information later; then proceed to trial; finally, acquit after ten years or so. It does not matter if the accused is to languish in detention. Never mind the accused's constitutional right to be presumed innocent, to be informed of the nature and cause of the accusation against him and not to be held to answer for a criminal offense without due process of law. Never mind if the Information is void for containing mere conclusions of law, for failing to identify and quantify the specific dangerous drug which is the object or *corpus delicti* of the alleged RA 9165 violation, and for not alleging all the facts needed to establish the elements of the offense charged. Never mind if previously this same Court has ruled that such a void Information warrants the acquittal of the accused.

And when the accused is finally acquitted, then the Constitution can finally be invoked to justify the acquittal — his constitutional rights can then belatedly be declared to have been violated. In the end, ***years down the road,*** the Constitution would then be given its due importance. But TODAY, to the majority, the Constitution can wait.

When I took my oath of office, I swore to uphold and defend the Constitution. This dissent is in keeping with that oath. I submit that the Constitution must reign supreme NOW and ALWAYS.

> ***We've unmasked madmen, Watson, wielding scepters. Reason run riot. Justice howling at the moon.***
>
> - Sherlock Holmes[103]

WHEREFORE, I vote to **GRANT** the Petition.

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[103] *Murder by Decree* – The Movie (1979), http://www.quotes.net/movies/7825, last accessed October 11, 2017.

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— The Court's power to review decisions of the COMELEC stems from the Constitution itself under Sec. 7, Art. IX-A; the Court has interpreted this constitutional provision to mean final orders, rulings and decisions of the COMELEC *en banc* rendered in the exercise of its adjudicatory or quasi-judicial powers; herein petition assails the validity of a COMELEC Resolution which was issued under its rule-making power, to implement the provisions of B.P. Blg. 881 and R.A. No. 7166; thus, the period under Rule 64 does not apply. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — It is essential that the identity of the seized drug/paraphernalia be established with moral certainty; in order to obviate any unnecessary doubts on such identity, the prosecution must be able to account for each link in the chain of custody over the dangerous drug/paraphernalia from the moment of seizure up to its presentation in court as evidence of the *corpus delicti;* Sec. 21, Art. II of R.A. No. 9165 provides the chain of custody rule. (People *vs*. Lim Ching, G.R. No. 223556, Oct. 9, 2017) p. 565

— The Court finds substantial gaps in the chain of custody of the seized dangerous drugs/paraphernalia which were left unjustified, thereby casting reasonable doubt on their integrity; the breaches of the procedure contained in Sec. 21, Art. II of R.A. No. 9165 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused. (*Id.*)

— The failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. (*Id.*)

LAND REGISTRATION

MIGRANT WORKERS OVERSEAS FILIPINO ACT OF 1995 (R.A. NO. 8042)

MOTION FOR RECONSIDERATION

for Injury or Illness x x x If a doctor appointed by the seafarer disagrees with the assessment (of the company-designated physician), a third doctor may be agreed jointly between the Employer and the seafarer; the third doctor's decision shall be final and binding on both parties. (*Id.*)

POSTAL SERVICE ACT OF 1992 (R.A. NO. 7354)

Postmaster General of the Philippine Postal Corporation — Respondent, as designated Officer-in-Charge because the Postmaster General had taken a leave of absence, is considered to have been exercising the functions of the latter during this period; the Postmaster General manages the Philippine Postal Corporation and has the power to sign contracts on behalf of the corporation as "authorized and approved by the Board of Directors." (Office of the Ombudsman *vs*. De Guzman, G.R. No. 197886, Oct. 4, 2017) p. 282

PRELIMINARY INJUNCTION

Writ of — A clear legal right which would entitle the applicant to an injunctive writ; it contemplates a right 'clearly founded in or granted by law'; absent a particular law or statute establishing Naga City's ownership or control over the road lot, the Department of Health's title over the compound must prevail over the unsubstantiated claims of Naga City and respondents. (Bicol Medical Center *vs*. Botor, G.R. No. 214073, Oct. 4, 2017) p. 447

— The following requisites must be proven first before a writ of preliminary injunction, whether mandatory or prohibitory, may be issued: (1) The applicant must have a clear and unmistakable right to be protected, that is a right *in esse*; (2) There is a material and substantial invasion of such right; (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury; only *prima facie* evidence or a sampling is required; rationale. (*Id.*)

— The applicant for land registration must prove that the Department of Environment and Natural Resources Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the Provincial Environment and Natural Resources Office or CENRO. (*Id*.)

— Under Sec. 14(1) of P.D. No. 1529, it is imperative for an applicant for registration of title over a parcel of land to establish the following: (1) possession of the parcel of land under a *bona fide* claim of ownership, by himself and/or through his predecessors-in-interest since June 12, 1945, or earlier; and (2) that the property sought to be registered is already declared alienable and disposable at the time of the application; the applicant must present proof of specific acts of ownership to substantiate the claim and cannot just offer general statements. (*Id*.)

Registration of alienable and disposable lands of public domain — By express provision of the law, only private lands that have been acquired by prescription under existing laws may be the subject of applications for registration under Sec. 14(2); properties of the public dominion, or those owned by the State, are expressly excluded by law from this general rule, unless they are proven to be patrimonial in character; to establish that the land subject of the application has been converted into patrimonial property of the State, an applicant must prove the following: 1. The subject property has been classified as agricultural land; 2. The property has been declared alienable and disposable; and 3. There is an express government manifestation that the property is already patrimonial, or is no longer retained for public service or the development of national wealth; respondent has failed to allege or prove that the subject land belongs to the patrimonial property of the State. (Rep. of the Phils. *vs*. Nicolas, G.R. No. 181435, Oct. 2, 2017) p. 395

REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS)

RULES OF PROCEDURE

Application — Rule 40, Sec. 7 of the Rules of Court states the procedure of appeal before the Regional Trial Court; the rule requiring the filing of the memorandum within the period provided is mandatory; may be suspended where "matters of life, liberty, honor or property" warrant its liberal application; warranted in this case. (Cruz *vs.* Sps. Christensen, G.R. No. 205539, Oct. 4, 2017) p. 379

Construction — It is well settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. (Uy Reyes *vs.* Global Beer Below Zero, Inc., G.R. No. 222816, Oct. 4, 2017) p.

SALES

Implied warranty against eviction — In order for the implied warranty against eviction to be enforceable, the following requisites must concur: (a) there must be a final judgment; (b) the purchaser has been deprived of the whole or part of the thing sold; (c) said deprivation was by virtue of a prior right to the sale made by the vendor; and (d) the vendor has been summoned and made co-defendant in the suit for eviction at the instance of the vendee. (Pilipinas Makro, Inc. *vs.* Coco Charcoal Phils., Inc., G.R. No. 196419, Oct. 4, 2017) p. 267

Warranty — A warranty is a collateral undertaking in a sale of either real or personal property, express or implied; that if the property sold does not possess certain incidents or qualities, the purchaser may either consider the sale void or claim damages for breach of warranty. (Pilipinas Makro, Inc. *vs.* Coco Charcoal Phils., Inc., G.R. No. 196419, Oct. 4, 2017) p. 267

— An express warranty pertains to any affirmation of fact or any promise by the seller relating to the thing, the natural tendency of which is to induce the buyer to purchase the same; on the other hand, an implied warranty is one which the law derives by application or inference from the nature of transaction or the relative situation or

the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure. (People *vs*. Pepaño Nuñez, G.R. No. 209342, Oct. 4, 2017) p. 406

— The totality of circumstances test requires a consideration of the degree of certainty demonstrated by the witness at the moment of identification; a prosecution witness must identify the suspect immediately after the incident; identification made two (2) days after the commission of a crime, considered acceptable. (*Id*.)

WRIT O*F AMPARO*

Issuance of — A writ of *amparo* is an independent and summary remedy to provide immediate judicial relief for the protection of a person's constitutional right to life and liberty; when a person is consumed by fear for her life and liberty that it completely limits her movement, the writ may be issued to secure her; thus, in resolving the necessity of issuing a writ of *amparo* and the corresponding protection order, the courts must look at the overall circumstances surrounding the applicant and respondents. (Lt. Sg. Gadian *vs*. Armed Forces of the Phils. Chief of Staff Lt. Gen. Victor Ibrado, G.R. No. 188163, Oct. 3, 2017) p. 186

— Under the *Rule on the Writ of Amparo*, the persons or agencies who may provide protection to the aggrieved parties and any member of the immediate family are limited to government agencies, and accredited persons or private institutions capable of keeping and securing their safety, but in respect of the latter, they should be accredited in accordance with guidelines still to be issued; the lack of accreditation should not have hindered but instead invited the holding of the hearing. (*Id*.)

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