

## THIRD DIVISION

[ G.R. NO. 156408, January 31, 2005 ]

**ANDRES S. SUERO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF THE OMBUDSMAN-MINDANAO; THE CITY PROSECUTION OFFICE OF DAVAO CITY; AND HON. EMMANUEL C. CARPIO, IN HIS CAPACITY AS JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 16, DAVAO CITY, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

The defense of double jeopardy places upon the accused the burden of proving the following three requisites: (1) the first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first; or the second offense is necessarily included in the first. The same act may give rise to two or more separate and distinct offenses. No double jeopardy attaches as long as there is a variance between the elements of the two offenses charged. What is forbidden is another prosecution for the same offense.

### The Case

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, seeking to reverse the December 14, 2001 Order<sup>[2]</sup> of the Regional Trial Court (RTC) of Davao City (Branch 16) in Criminal Case No. 48167-01, denying the Motion to Quash Information filed by petitioner, as well as the October 3, 2002 Order<sup>[3]</sup> denying his Motion for Reconsideration. The first assailed Order states in full:

"Posed for resolution is the motion to quash information and/or dismiss the case filed by the accused along with the opposition thereto filed by the Office of the Ombudsman.

"Sifting through the arguments and counter-arguments in support of and in opposition to the instant motion, the court rules to deny the motion to quash the information.

"There is no dispute that the present case and Criminal Case No. 23518 before the Sandiganbayan arose out of the same incident or transaction.

Nonetheless, as correctly raised by the Office of the Ombudsman, the present case involves the prosecution for Falsification of Public Documents as defined and penalized under Art. 171 of the Revised Penal Code, while Criminal Case No. 23518 before the Sandiganbayan pertains to the causing of undue injury to the government. The latter case requires the element of damage while in Falsification of Public Document,

damage is of no consequence.

"The dismissal therefore of Criminal Case No. 23518 before the Sandiganbayan has no bearing with the present case since the quantum of evidence required to sustain both cases are not similar. In the same vein, this is a particular case where one incident results to two (2) separate and distinct criminal offenses, such that the dismissal of one case would not constitute double jeopardy against the accused in the other case.

"Accordingly, the motion to quash the information is denied for lack of merit."<sup>[4]</sup>

### **The Facts**

The undisputed facts, as narrated by petitioner, are as follows:

"The herein [p]etitioner was earlier accused, together with another accused [Aquilina B. Granada], of the crime of Falsification of Public Document, defined and penalized under Article 171 of the Revised Penal Code, per Information dated November 7, 1996, signed by Marco Anacleto P. Bueno, Graft Investigation Officer I, Office of the Ombudsman for Mindanao, Davao City, committed as follows, to wit:

'That on or about February 12, 1992 or sometime prior or subsequent thereto, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused-public officers, being then the Administrative Officer and Property Inspector, respectively, of the Department of Education, Culture and Sports (DECS), Region XI, Davao City, with salary grades below grade 27, while in the performance of their official duties, and taking advantage of their official positions, in conspiracy with one another, did then and there, willfully, unlawfully and feloniously falsify or cause to be falsified an undated Inspection Report affixing their signatures thereto, making it appear that various furniture purchase[d] from, and delivered by Business International Wood Products under Delivery Receipt Nos. 9758, 9759, 9760 and 9761, in the total amount of P1,033,450.00, have all been delivered and duly inspected, thereby justifying the release of the payment to Business International Wood Products in the aforesaid amount, when in truth and in [f]act, no such complete delivery was made and inspected, to the damage and prejudice of the government.

'CONTRARY TO LAW.'

which case was docketed as Criminal Case [N]o. 38552-97 before the Regional Trial Court, Branch 16, Davao City x x x.

"Thereafter, herein [p]etitioner was arraigned sometime on June 20, 1997.

"The RESPONDENT CITY PROSECUTOR commenced the trial on the merits in Criminal Case [N]o. 38552-97 against the herein [p]etitioner, but the trial was later suspended when the Court a Quo granted the Joint Motion to Suspend further Proceedings, **filed jointly by the Accused and RESPONDENT OMBUDSMAN through Special Prosecutor Humphrey Monteroso and Special Prosecutor Leonardo P. Tamayo** x x x.

"The basic reason for the joint motion to suspend further proceedings in Criminal Case [N]o. 38552-97 is and we quote the pertinent portion of the Order dated September 1, 1998:

'Asst. City Prosecutor Emilio Dayanghirang III interpose[d] no opposition to the motion of the accused Andres Suero and Special Prosecutor Humphrey Monteroso and Leonardo P. Tamayo, for the prosecution to suspend further proceeding in the instant case on the trial on the merits and to allow the Sandiganbayan to proceed with the hearing of the [sic] **Criminal Case No. 23518** pending trial before it on the ground that the two accused in the instant case charged for falsification of a public document and other accused who are also charged for similar offense arising from the same transaction now pending before Br. 14 of this Court are the same Accused who are likewise charged before the Sandiganbayan for violation of Sec. 3(e) of RA No. 3019; **that the primordial issue under which these cases were filed before different courts of separate jurisdiction are the same – validity (or falsification) of the questioned documents**; that in the appreciation of the issue as to the validity of the questioned documents, it could not be assumed that both courts would rule in the same manner; that considering that all the accused in the questioned transaction are lumped together in one before the Sandiganbayan, which is a collegial court, it is preferred that the Sandiganbayan takes precedence over all other cases including the instant case involving the same accused similarly situated.'

"Subsequently, [upon the motion of the accused] Criminal Case [N]o. 38552-97 was eventually dismissed without prejudice by the RESPONDENT JUDGE in an Order dated November 2, 2000, pursuant to the ruling in the case of George Uy vs. Sandiganbayan, G.R. [N]o. 105965-07.

"Meanwhile, x x x Criminal Case [N]o. 23518 against the herein [p]etitioner for alleged violation of Section 3(e) of Republic Act 3019, as amended, pending before the Sandiganbayan x x x was decided, acquitting the herein Accused x x x.

"Thereafter, on July 31, 2001, the RESPONDENT OMBUDSMAN through Ombudsman Prosecutor I Eusebio M. Avila Sr. wrote a letter to the Clerk of Court of the RESPONDENT JUDGE regarding Criminal Case [N]o. 38552-97, expressing their decision in 'refiling the herein enclosed

information and request that the same be entered in the docket of the criminal case with a new case number assigned to it x x x,' attaching thereto the Criminal Information.

"Consequently, a new information was filed by the RESPONDENT OMBUDSMAN with the RESPONDENT JUDGE and docketed as Criminal [C]ase [N]o. 48167-2001.

x x x

x x x

x x x

"On October 10, 2001, herein [p]etitioner filed in Criminal Case [N]o. 48167-2001 before the RESPONDENT JUDGE, a Motion to Quash Information and/or Dismiss Case.

x x x

x x x

x x x

"On December 14, 2001, the RESPONDENT JUDGE issued the questioned Order denying herein [p]etitioner's Motion to Quash Information x x x.

"Herein [p]etitioner filed a timely Motion for Reconsideration on February 19, 2002.

"On October 3, 2002, the RESPONDENT JUDGE issued the questioned Order denying [p]etitioner's Motion for Reconsideration x x x."<sup>[5]</sup>

### **Ruling of the Trial Court**

Denying the Motion to Quash Information, the RTC held that the Sandiganbayan's dismissal of Criminal Case No. 23518 did not bar the re-filing of the questioned Information for falsification of a public document in Criminal Case 48167-01, now pending before trial court. While there was no dispute that the same incident or transaction gave rise to the two cases, it nonetheless resulted in two separate and distinct criminal offenses, such that the dismissal of one would not constitute double jeopardy in the other case.

Hence, this Petition.<sup>[6]</sup>

### **Issues**

Petitioner submits the following issues for our consideration:

"I. Whether or not it was improper and utterly without legal basis for the respondent ombudsman to refile the same criminal information against the herein accused, after the latter was acquitted by the Sandiganbayan in a criminal case involving the same parties, the same questioned documents, the same questioned transaction and admittedly involving the same fundamental legal issue?

"II. Whether or not the formal admission of [similarity] of primo[r]dial legal issue by the respondent ombudsman, as well as identical parties, public documents involved and questioned transactions, would amount to double jeopardy upon the filing of the instant case after the dismissal of