

FIRST DIVISION

[G.R. Nos. 233061-62, July 28, 2020]

**THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE FOURTH DIVISION, SANDIGANBAYAN AND RAUL Y.
DESEMBRANA, RESPONDENT.**

DECISION

LAZARO-JAVIER, J.:

The Case

This special civil action for *certiorari* assails the following issuances of the Sandiganbayan – Fourth Division in Criminal Cases Nos. SB-14-CRM-0427 and SB-14-CRM-0428 both entitled "*People of the Philippines v. Raul Y. Desembrana, Assistant City Prosecutor, Department of Justice, Quezon City*:"

- 1) Resolution^[1] dated April 12, 2017, granting private respondent Raul Y. Desembrana's motion to dismiss the charges against him for violation of his right to speedy disposition of cases, releasing his cash bond, and lifting the hold departure order against him; and
- 2) Resolution^[2] dated May 22, 2017, denying petitioner's motion for reconsideration.

The Facts

In two Informations dated November 15, 2014, private respondent Raul Desembrana was charged with two (2) counts of violation of Section 7(d) in relation to Section 11 of Republic Act No. 6713^[3] (RA 6713), docketed Criminal Cases Nos. SB-14-CRM-0427 and SB-14-CRM-0428:

Criminal Case No. SB-14-CRM-0427:

That on November 14, 2014, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused RAUL DESEMBRANA y YAZON, a high ranking public officer, being an Assistant City Prosecutor of the Department of Justice (DOJ) and as such is tasked to resolve and recommend action to be taken on, among others, preliminary investigation for unjust vexation, grave coercion and threat filed before the Quezon City Prosecutor's Office, committing the crime in relation to his office and taking advantage of his position, did then and there willfully, unlawfully, and criminally solicit from Dr. Alexis Montes Eighty Thousand Pesos (Php80,000.00), and actually accept Four Thousand Pesos (Php4,000.00) which were placed on top of the "boodle money" from Atty. Ephraim B. Cortez, counsel of Dr. Alexis Montes in consideration for the dismissal of the case

entitled "Rev. Col. (Ret) Reuben Espartinez vs. Dr. Alexis Montes and Dr. Connor Montes" docketed at the Quezon City Prosecutor's Office as NPS Docket No. XV03INV14F-05695, which was pending before him to the damage and prejudice of the public interest and the complainants herein.

Contrary to law.^[4]

Criminal Case No. SB-14-CRM-0428:

That on November 14, 2014, or sometime prior or subsequent thereto in Quezon City, Philippines and within the jurisdiction of this Honorable Court, accused RAUL DESEMBRANO y YAZON, a high ranking public officer, being an Assistant City Prosecutor of the Department of Justice (DOJ) and as such is tasked to resolve and recommend action to be taken on, among others, a preliminary investigation for unjust vexation, grave coercion and threat filed before the Quezon City Prosecutor's Office, DOJ, committing the crime in relation to his office and taking advantage of his position, did then and there willfully, unlawfully, and criminally demand from Dr. Alexis S. Montes, Eighty Thousand Pesos (Php80,000.00) and actually receive Four Thousand Pesos (Php4,000.00) which were placed on top of the "boodle money" from Atty. Ephraim B. Cortez, counsel of Dr. Alexis Montes, in consideration for the dismissal of the case entitled "Rev. Col. (Ret) Reuben Espartinez vs. Dr. Alexis Montes and Dr. Connor Montes" docketed at the Quezon City Prosecutor's Office as NPSW Docket No. XV03INV14F-05695, which was assigned to him for preliminary investigation, an action he was not inclined to do without the amount demanded and delivered to him, which action is unjust as it is contrary to his mandated duty to resolve the case based on the evidence on record and applicable law, to the damage and prejudice of the public interest and complainants herein.

Contrary to law.^[5]

On November 21, 2014, after posting bail, private respondent filed a Motion to Suspend Arraignment (Motion) with the Sandiganbayan to accommodate the Motion to Conduct Preliminary Investigation he had filed with the Office of the Special Prosecutor (OSP) on November 20, 2014.

The Sandiganbayan heard private respondent's Motion on November 28, 2014 and directed the OSP to file its Comment/Opposition to accused's Motion. The OSP filed its Comment/Opposition on December 4, 2014. Thereafter, on January 12, 2015, private respondent filed his Motion to Admit Reply (to Prosecution's Comment/Opposition dated December 4, 2014)."^[6]

After hearing private respondent's Motion to Admit Reply on January 23, 2015, the Sandiganbayan granted the Motion and noted the OSP's Manifestation that it would no longer file any rejoinder.

In its Resolution^[7] dated July 8, 2015, the Sandiganbayan granted private respondent's Motion and directed the OSP to conduct a "full and complete preliminary investigation" within sixty (60) days from notice or until September 11, 2015.

According to the Sandiganbayan, "[a] full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office of the Ombudsman finding probable cause to charge him before the Sandiganbayan."

In compliance therewith, the OSP directed private respondent to submit his counter-affidavit and other countervailing evidence. On September 3, 2015, private respondent submitted his Rejoinder-Affidavit, the last pleading received by the OSP. [8]

On two separate (2) occasions, on September 9, 2015 and October 12, 2015, the OSP filed a Motion for Extension of Time to Terminate a Complete and Full Preliminary Investigation of these Cases.

On October 19, 2015, private respondent manifested that on September 3, 2015, he filed a Rejoinder-Affidavit with the OSP.

On September 29, 2015, the OSP issued a recommendation finding probable cause against private respondent for violation of Article 210^[9] of *The Revised Penal Code* and requesting for the withdrawal of the information in Criminal Case No. SB-14-CRM-0427 and the substitution of the relevant Information in place thereof. The Ombudsman approved the recommendation in its Resolution dated October 21, 2015:

WHEREFORE, premises considered, the undersigned maintain that respondent Raul Desembrano y Yazon be held liable for the crime of Direct Bribery defined and penalized under Article 210 of the Revised Penal Code.

Further, it is hereby recommended that an information for violation of Section 3(e) of Republic Act No. 3019 is hereto attached be filed in lieu of the Information docketed as SB-14-CRM-0427, for violation of Section 7 (d) in relation to Section 11 of Republic Act No. 6713. Consequently, the Information docketed as SB-14-CRM-0427 is hereby recommended withdrawn.^[10]

Private respondent filed his Motion for Reconsideration dated November 9, 2015 with the OSP.^[11]

On November 10, 2015, the OSP submitted the foregoing Resolution with the Sandiganbayan.

As narrated by the Sandiganbayan, the following series of events transpired:

On **November 10, 2015**, in compliance with the July 8, 2015 Resolution of the Court, the prosecution filed its a "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427) and for the Lifting of the Resolution, dated July 8, 2015," appending thereto the Resolution of the Office of the Ombudsman dated September 29, 2015 as approved by the Honorable Ombudsman on October 21, 2015.

On **November 24, 2015**, the Court directed accused Desembrana to file his comment on the prosecution's motion. Accordingly, on December 3,

2015, the accused filed a "Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)," praying for the Court to hold in abeyance any action on the prosecution's motion pending final resolution of the motion for reconsideration he filed on November 9, 2015 with respect to the September 29, 2015 Resolution of the [Office of the Special Prosecutor]. Subsequent to this, the prosecution filed its "Reply (to Comment, dated December 2, 2015)" on **January 12, 2016**, while the accused filed a "Rejoinder (To Reply, dated January 8, 2016 filed by the Office of the Special Prosecutor)" on **January 27, 2016**.

On **December 5, 2016**, in the interest of justice, the Court resolved to admit the prosecution's Reply as well as the accused's Rejoinder and submitted the prosecution's Compliance with Omnibus Motion for resolution.

On **January 20, 2017**, the Court issued a Resolution sustaining the position taken by the accused and holding in abeyance the resolution of the prosecution's "Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM-0427 and for the Lifting of the Resolution, dated July 8, 2015)" until after the final resolution of accused Desembrana's motion for reconsideration before the Office of the Ombudsman. It then directed the prosecution to inform the Court once the reconsideration sought by the accused has been resolved.^[12]

In its Resolution dated January 20, 2017, the Sandiganbayan also directed the OSP to give an update on any incident pending with the Office of the Ombudsman relevant to the case.^[13]

Consequently, the OSP issued a Resolution dated January 27, 2017 denying private respondent's motion for reconsideration, which the Office of the Ombudsman approved in its Resolution dated February 8, 2017.^[14]

Meantime, private respondent filed his Motion to Dismiss dated February 6, 2017. He pointed out that one (1) year and two (2) months had lapsed from the time of the filing of his motion for reconsideration before the Office of the Ombudsman. Further, two (2) years and two (2) months had lapsed from the Sandiganbayan's directive on November 20, 2014 for the OSP to terminate the preliminary investigation within sixty (60) days from notice. By reason of these twin delays, his right to speedy disposition of cases was allegedly violated.^[15]

The OSP, through a Comment and/or Opposition (Motion to Dismiss dated February 6, 2017) filed on March 1, 2017 and a Reply (to Comment/Manifestation dated February 27, 2017) filed on March 7, 2017, countered that the constitutional violation asserted by private respondent was another dilatory tactic. Private respondent contributed to the delay in the termination of the preliminary investigation. Equally important, Section 7(a), Rule II of the Rules of Procedure of the Office of the Ombudsman requires leave of court before a motion for reconsideration may be allowed in cases where the criminal information has already been filed in court. Thus, there was no delay attributable to the OSP since it was only on January 20, 2017 when the Sandiganbayan directed it to give an update on

what action had been taken by the Office of the Ombudsman on private respondent's motion for reconsideration.^[16]

Previously, the OSP once again sought to have its Omnibus Motion dated November 10, 2015 resolved by the Sandiganbayan through another Omnibus Motion dated February 15, 2017. The Sandiganbayan treated this rather simple Omnibus Motion with another set of lengthy hearings from February 15, 2017 to March 7, 2017:

On **February 15, 2017**, the prosecution filed its "Compliance with Omnibus Motion (for Resolution of the Omnibus Motion, dated November 10, 2015 and for the Arraignment of the Accused)." The Court heard the Omnibus Motion on February 23, 2017 and gave the accused until March 2, 2017 to file its comment/opposition thereto. The Court likewise directed the prosecution to file its Reply within five (5) days from receipt of the accused's comment/opposition. Accordingly, on **March 2, 2017**, the accused filed his "Comment/Manifestation" to the prosecution's Compliance with Omnibus Motion. The prosecution filed its "Reply (on Comment/Manifestation, dated February 27, 2017)," on March 7, 2017.^[17]

Ruling of the Sandiganbayan

In its first assailed Resolution^[18] dated April 12, 2017, the Sandiganbayan granted private respondent's motion to dismiss by reason of the unreasonable length of time in the conduct of preliminary investigation by the OSP. It held:

The attendant circumstances herein show that the Court directed the Office of the Ombudsman on July 8, 2015 to conduct a full and complete preliminary investigation. The Court, in its Resolution, clarified that a **"full and complete preliminary investigation"** includes the opportunity for the respondent to file a motion for reconsideration, to wit:

A full and complete preliminary investigation includes proceedings which allow the respondent the opportunity to file, within the period prescribed by the rules, a motion for reconsideration against an adverse resolution issued by the Office of the Ombudsman finding probable cause to charge him before the Sandiganbayan.

The preliminary investigation in this case was deemed terminated on October 21, 2015 when the Honorable Ombudsman approved the Resolution dated September 29, 2015. Contrary to the directive of this Court, however, accused Desembrana has not yet been afforded the opportunity to file a motion for reconsideration when the prosecution filed its *"Compliance with Omnibus Motion (for Withdrawal of Information docketed as SB-14-CRM0427 and for the Lifting of the Resolution, dated July 8, 2015)"* on November 10, 2015 before this Court. Thus, in his "Comment (On the Compliance with Omnibus Motion filed by the Office of the Special Prosecutor dated November 10, 2015)" filed on December 3, 2015, the accused prayed for this Court to hold in abeyance any action on the prosecution's Compliance with Omnibus Motion in view of the motion for reconsideration he filed on November 9, 2015 before the