

# FIRST DIVISION

[ G.R. Nos. 240378-84, November 03, 2020 ]

**LABUALAS B. MAMANSUAL AND FRANCIS B. NADAR,  
PETITIONERS, VS. HON. SANDIGANBAYAN (5<sup>TH</sup> DIVISION) AND  
PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF  
THE SPECIAL PROSECUTOR OF THE OFFICE OF THE  
OMBUDSMAN, RESPONDENTS.**

## DECISION

**CAGUIOA, J:**

This is a Petition for *Certiorari* and Prohibition<sup>[1]</sup> (Petition) filed under Rule 65 of the Rules of Court (Rules), assailing the Resolutions dated May 21, 2018<sup>[2]</sup> and June 7, 2018<sup>[3]</sup> of the Sandiganbayan, Fifth Division, in Cases Nos. SB-17-CRM-0023 to 0029 denying petitioners' motion to quash Informations and to dismiss the above-entitled cases with prayer to cancel the April 28, 2018 scheduled arraignment and pre-trial and suspension of further proceedings and seeking the extraordinary remedy of Prohibition against the setting of their arraignment on July 28, 2018 and the conduct of further proceedings by the respondent Court.

## Facts

On December 9, 2011, a Complaint-Affidavit was filed by Abubakar P. Maulana (Maulana), who was then the incumbent Mayor of the Municipality of Palimbang, Province of Sultan Kudarat, with the National Office of the Office of the Ombudsman (OMB).<sup>[4]</sup> The Complaint-Affidavit charged petitioners Labualas B. Mamansual (Mamansual) and Francis B. Kadar (Nadar), as well as Zaida D. Apil (Apil) and Pukog P. Makakua (Makakua), who were the former Mayor, Treasurer, Budget Officer, and Accountant, respectively, of Palimbang, with Malversation of Public Funds under Article 217 and Removal, Concealment, or Destruction of Documents under Article 226 of the Revised Penal Code (RPC).<sup>[5]</sup>

On the basis of the said Complaint-Affidavit, the OMB's Field Investigation Office (FIO) conducted a fact-finding investigation, which resulted in the filing of a Complaint on May 14, 2012, against Mamansual, Nadar, Apil and Makakua - respondents before the OMB - for violation of Articles 217 and 226 of the RPC.<sup>[6]</sup> The Complaint alleged that the Municipal Government of Palimbang maintains a Current Account with the Land Bank of the Philippines (LBP) with Deposit No. 2802-1045-30.<sup>[7]</sup> From April 27, 2010 to June 29, 2010, before the term of office of Mamansual expired on June 30, 2010, seven LBP checks naming Nadar as payee were signed and drawn by Mamansual against the said account, amounting to a total of P13,003,776.71.<sup>[8]</sup> It was further alleged that the encashment of checks through the signatures of Mamansual and Nadar did not represent any project or

appropriation; nor were there any liquidations made by them relative to the encashment of the checks.<sup>[9]</sup>

On November 8, 2013, the OMB issued a Joint Order directing Mamansual, Nadar, Apil, and Makakua to file their Counter-Affidavits.<sup>[10]</sup> Mamansual and Nadar filed their Counter-Affidavits with the OMB on December 5, 2013 and January 9, 2014, respectively.<sup>[11]</sup> Apil and Makakua filed their Counter-Affidavits on December 11, 2013.<sup>[12]</sup>

On October 12, 2015, the OMB prepared a Resolution finding probable cause to file Informations against the four respondents for violations of Articles 217 and 226 of the RPC.<sup>[13]</sup> This Resolution was approved by former Ombudsman Conchita Carpio Morales (Ombudsman Morales) on November 23, 2015.<sup>[14]</sup> Therein respondents filed Motions for Reconsideration of the OMB Resolution on December 15 and 21, 2015.<sup>[15]</sup> These Motions were denied by Resolution dated January 15, 2016 and was approved by Ombudsman Morales on March 30, 2016.<sup>[16]</sup>

On August 3, 2016, two Informations were filed with the Sandiganbayan against Mamansual, Nadar, Apil, and Makakua for violations of Articles 217 and 226 of the RPC.<sup>[17]</sup> These were raffled to the Sandiganbayan, First Division, which issued a Resolution on August 5, 2016, ordering the issuance of warrants of arrest against the four accused.<sup>[18]</sup>

On October 6, 2016, Mamansual, Nadar, and Makakua filed an Omnibus Motion,<sup>[19]</sup> praying for (a) reinvestigation of the cases and referral to the Commission on Audit (COA) for the conduct of a special audit; (b) dismissal of the cases; (c) deferment of arraignment/cancellation of hearings; and (d) suspension of further proceedings. During the hearing for this Omnibus Motion on October 13, 2016, Mamansual and Nadar moved to withdraw the same and instead requested arraignment.<sup>[20]</sup> The Office of the Special Prosecutor (OSP) of the OMB opposed, saying that it had filed on October 12, 2016, a Motion to Withdraw Informations.<sup>[21]</sup>

The OSP's Motion to Withdraw Informations stated that, after a thorough review of the records of the case, the handling prosecutor prepared a Memorandum recommending that the two Informations for violation of Articles 217 and 226 of the RPC filed before the Sandiganbayan be withdrawn, and instead, seven Informations be filed against Mamansual and Nadar for seven counts of violation of Article 217 only.<sup>[22]</sup> The prosecutor's Memorandum explained that there was nothing in the records which would support the existence of the documents subject of the charge for violation of Article 226 - *i.e.*, vouchers, certifications, documents, or papers in connection with the issuance of the subject seven checks; hence, it was proper that these charges be dropped.<sup>[23]</sup> By Resolution dated December 5, 2016, the Sandiganbayan, First Division granted the OSP's Motion.<sup>[24]</sup>

On January 13, 2017, seven new Informations against Mamansual and Nadar for seven counts of violation of Article 217 of the RPC were filed by the OSP before the Sandiganbayan, which were raffled to the latter Court's Fifth Division.<sup>[25]</sup> On January 23, 2017, Mamansual and Nadar filed an Urgent Omnibus Motion, praying

that (a) the OMB be directed to conduct preliminary investigation, or, in the alternative, reinvestigation of these cases;<sup>[26]</sup> (b) the issuance of warrants of arrest be deferred and any further proceedings be suspended; and (c) that the cases be transferred to the Sandiganbayan, First Division.<sup>[27]</sup>

On May 9, 2017, the Sandiganbayan, Fifth Division<sup>[28]</sup> granted petitioners' Motions and directed the OSP to conduct preliminary investigation as regards the seven new Informations.<sup>[29]</sup> Pursuant thereto, the OSP directed petitioners to file their respective counter-affidavits.<sup>[30]</sup> Petitioners refused and instead filed a Manifestation with Motion for Inhibition,<sup>[31]</sup> claiming that the OSP is not the proper body to conduct the preliminary investigation because it cannot be objective and impartial.<sup>[32]</sup>

On December 1, 2017, the OSP denied petitioners' Motion for Inhibition and issued a Resolution finding probable cause for the filing of the seven Informations.<sup>[33]</sup> This Resolution was submitted to the Sandiganbayan, Fifth Division on December 18, 2017.<sup>[34]</sup> By Resolution dated December 19, 2017, the Sandiganbayan, Fifth Division found probable cause for issuance of warrants of arrest against petitioners.<sup>[35]</sup> Petitioners moved for reconsideration,<sup>[36]</sup> but the same was denied.<sup>[37]</sup>

On April 16, 2018, petitioners filed a Motion to Quash Informations and to Dismiss the Above-Entitled Cases with Prayer to Cancel the April 28, 2018 Schedule Arraignment and Pre-Trial and Suspension of Further Proceedings<sup>[38]</sup> (Motion). Petitioners claimed therein that there was inordinate delay in the conduct by the OMB of preliminary investigation and that the total delay is at six years and one month (five years and eight months, if excluding the fact-finding investigation).<sup>[39]</sup>

### **RULING OF THE SANDIGANBAYAN**

In its assailed Resolutions, the Sandiganbayan, Fifth Division denied petitioners' Motion finding that petitioners merely enumerated material dates and were not able to establish the delay by the OMB. It also applied the balancing test in *Barker v. Wingo*,<sup>[40]</sup> and found that (a) petitioners failed to point out where in the timeline the delay occurred; (b) petitioners could have raised the matter of delay when the earlier two Informations were filed, but they failed to do so; (c) petitioners could have raised the matter of delay when the new set of seven Informations were filed; instead, they requested that a new preliminary investigation be conducted and that proceedings before the Sandiganbayan, Fifth Division be suspended; and (d) petitioners failed to identify the prejudice caused to them by the supposed delay.

Hence, this Petition.

### **ISSUES**

For resolution by this Court is the procedural issue of whether the Petition has become moot after the Sandiganbayan, Fifth Division found probable cause and issued warrants of arrest against petitioners, and the substantive issue of whether the Sandiganbayan, Fifth Division acted with grave abuse of discretion in finding that there was no inordinate delay in the conduct of the preliminary investigation by

the OMB.

## I

In its Comment, the OMB cited the case of *De Lima v. Reyes*<sup>[41]</sup> (*De Lima*) in arguing that, since the Sandiganbayan, Fifth Division already found probable cause for the purpose of issuing warrants of arrest against petitioners, the petition for *certiorari* assailing the regularity of preliminary investigation becomes moot and ceases to be the "plain, speedy, and adequate remedy" under the law.<sup>[42]</sup> The Court disagrees.

*De Lima* is not on all fours with this case. In *De Lima*, the violation of the right of the accused therein to speedy disposition of cases was not in issue, and the preliminary investigation therein was assailed on an entirely different and unrelated matter. A finding of probable cause for issuing warrants of arrest against petitioners will not resolve the primary issue raised by petitioners in this case - that of violation of their right to speedy disposition of cases. If indeed there has been inordinate delay and their right has been violated, proceeding to trial before the Sandiganbayan, Fifth Division is decidedly not a plain, speedy, and adequate remedy; on the contrary, it would further put petitioners' rights in jeopardy.

Where there is no other plain, speedy, and adequate remedy, and where allegations of grave abuse of discretion are made in the petition, the remedy of *certiorari* may lie. Thus, in *Galzote v. Briones*,<sup>[43]</sup> the Court said:

Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. In past cases, we have cited the interest of a "more enlightened and substantial justice"; the promotion of public welfare and public policy; cases that "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof"; **or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for certiorari.**

In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.<sup>[44]</sup>

## II

Petitioners assert that the OMB grossly delayed in the conduct of the first preliminary investigation. In the Petition, they claim:

x x x x

39. On January 13, 2017, the Office of the Ombudsman, through its Office of the Special Prosecutor, implementing the afore-mentioned recommendation contained in the Memorandum attached to the MOTION

TO WITHDRAW INFORMATION, filed against the accused-movants, the attached **SEVEN (7) INFORMATIONS** for Malversation.

40. Reckoned from December 9, 2011 to January 13, 2017, there was already a TOTAL DELAY OF SIX (6) YEARS AND ONE MONTH. Clearly, there is here an INORDINATE DELAY in the investigation of the complaint against the Petitioners. And if the date to be reckoned is from May 14, 2012 to January 13, 2017, there was a DELAY OF FIVE (5) YEARS AND EIGHT MONTHS.<sup>[45]</sup>

In *Cagang v. Sandiganbayan*<sup>[46]</sup> (*Cagang*), the Court laid down the following guidelines in resolving issues concerning the right to speedy disposition of cases:

*First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

*Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

*Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove, *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

*Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of