

## THIRD DIVISION

[ G.R. Nos. 234670-71, August 14, 2019 ]

**OMAR ERASMO GONOWON AMPONGAN, PETITIONER, VS. HON. SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, AND OMBUDSMAN SPECIAL PROSECUTOR, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court, filed by petitioner Omar Erasmo Gonowon Ampongan, seeking to annul and set aside the Order<sup>[1]</sup> dated September 29, 2017 issued by the Sandiganbayan in SB-17-CRM-1429 and SB-17-CRM-1430.

The antecedent facts are as follows:

On July 14, 2017, the Office of the Ombudsman, through the Office of the Special Prosecutor, filed two Informations with the Sandiganbayan charging petitioner with (1) violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act; and (2) violation of Article 171, paragraph 2 of the Revised Penal Code, in connection with the appointment of one Edsel Dimaiwat to the vacant position of Secretary to the *Sangguniang Panlungsod* of Iriga City in 2014. At the time of the commission of the alleged offenses, petitioner was the Vice Mayor of Iriga City, Camarines Sur, with salary grade 26 as classified under R.A. No. 6758.<sup>[2]</sup>

The accusatory portion for the charge of violation of Section 3(e) of R.A. No. 3019 reads:

That on 3 November 2014, or sometime prior or subsequent thereto, in Iriga City, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, accused OMAR ERASMO GONOWON AMPONGAN, a high-ranking public officer, being the City Vice-Mayor of Iriga City, in such capacity, committing the crime in relation to office and while in the performance of his official functions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Edsel S. Dimaiwat by appointing the latter to the vacant position of Secretary to the Sangguniang Panlungsod of Iriga City without the Iriga City Personnel Selection board having conducted a screening or deliberation on the qualifications of the candidates to the said vacant position, to the damage and prejudice of the public interest.

CONTRARY TO LAW.<sup>[3]</sup>

And the charge for Falsification of Public Document, as defined and penalized under Article 171, paragraph 2 of the Revised Penal Code, was committed as follows:

That on 3 November 2014, or sometime prior or subsequent thereto, in Iriga City, Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, accused OMAR ERASMO GONOWON AMPONGAN, a high-ranking public officer, being the City Vice-Mayor of Iriga City, in such capacity, committing the offense in relation to office and while in the performance of his official functions, and taking advantage of his position, did then and there willfully, unlawfully and feloniously make it appear or cause it to appear in the Civil Service Commission (CSC) appointment paper (KSS Porma Blg. 33) of Edsel S. Dimaiwat as Secretary to the Sangguniang Panlungsod of Iriga City, a public document, that "the appointee has been screened and found qualified by the Promotion/Personnel Selection Board", when in truth and in fact, as accused well knew, that the Iriga City Personnel Selection Board did not conduct a screening or deliberation on the qualifications of the candidates to the said position, nor did the selection board convene, participate or deliberate on the qualifications of Dimaiwat for the same position, to the damage and prejudice of public interest.

CONTRARY TO LAW.<sup>[4]</sup>

Petitioner filed a motion<sup>[5]</sup> to quash the Informations for lack of jurisdiction. He claimed that since the Informations did not allege any damage to the government or any bribery, or that granting without admitting that the damage had been suffered by the government, the Informations did not allege that the government suffered any damage in excess of One million pesos, hence, the jurisdiction is vested with the proper Regional Trial Court (RTC) as provided under Section 2 of R.A. No. 10660.<sup>[6]</sup> Assuming that R.A. No. 8249, the law governing the jurisdiction of the Sandiganbayan at the time of the commission of the offense, is applicable, still petitioner, as Vice Mayor with salary grade 26, is not within the jurisdiction of the Sandiganbayan.

On September 29, 2017, the Sandiganbayan, during a scheduled hearing, issued the assailed Order<sup>[7]</sup> as follows:

When these cases were called for arraignment today, accused Omar Erasmo Gonowon Ampongan, through counsel, Atty. Emmanuel Brotardo, moved for the de deferment of the arraignment on the ground that he has filed a Motion to Quash Information on September 25, 2017 based on the following grounds: (1) that the Court has no jurisdiction because there is no allegation of damage to the government in the amount of more than One Million, and (2) that as City Vice-Mayor, he holds a position equivalent to Salary Grade 26. The Court denied the Motion to Quash Informations for the reason that the requirement of allegation of damage to the government is (*sic*) an amount of more than One Million Pesos for the Sandiganbayan to have jurisdiction applies only to cases arising from offenses committed after May 15, 2015, while his, the alleged dated (*sic*) of commission of the offense is 2014. And the second, the position of City Vice-Mayor is among those enumerated in the provisions of R.A. 8249, reiterated in R.A. 1[0]660, over which the Court

has jurisdiction.

The Court proceeded with the arraignment of accused Ampongan. The Informations were read to him in open Court. After the reading of the Informations, the accused, assisted by Atty. Brotardo, informed the Court that he understands the nature and cause of the accusations against him, but refuse (*sic*) to enter a plea. The Court ordered that the plea of not guilty be entered for the accused in the two (2) criminal cases.

The pre-trial of these cases is set on October 27, 2017 at 1:30 o'clock (*sic*) in the afternoon.

SO ORDFRED.<sup>[8]</sup>

Aggrieved, petitioner tiles the instant petition for *certiorari* alleging that:

THE PUBLIC RESPONDENT SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT IT HAS JURISDICTION TO TRY THE SUBJECT CASES.<sup>[9]</sup>

The issue for resolution is whether the Sandiganbayan has jurisdiction over the offenses allegedly committed by petitioner and over his person.

Preliminarily, we note that petitioner failed to file a motion for reconsideration before resorting to the instant petition for *certiorari*. Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.<sup>[10]</sup>

The rule is, however, circumscribed by well-defined exceptions, such as: (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 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.<sup>[11]</sup>

In this petition for *certiorari*, petitioner reiterates the same arguments raised in his Motion to Quash Informations which were passed upon by the Sandiganbayan, and the issues involved are pure questions of law; hence, we find the petition falling under the above-stated exceptions (b) and (i).

We now tackle the substantive issue raised, regarding the jurisdiction of the

Sandiganbayan.

In *Serana v. Sandiganbayan, et al.*,<sup>[12]</sup> we have discussed a brief history of the law creating the Sandiganbayan, to wit:

The Sandiganbayan was created by P.D. No. 1486, promulgated by then President Ferdinand E. Marcos on June 11, 1978. 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 and efficiency and shall remain at all times accountable to the people.

P.D. No. 1486 was, in turn, amended by P.D. No. 1606 which was promulgated on December 10, 1978. P.D. No. 1606 expanded the jurisdiction of the Sandiganbayan.

P.D. No. 1606 was later amended by P.D. No. 1861 on March 23, 1983, further altering the Sandiganbayan jurisdiction. R.A. No. 7975 approved on March 30, 1995 made succeeding amendments to P.D. No. 1606, which was again amended on February 5, 1997 by R.A. No. 8249. Section 4 of R.A. No. 8249 further modified the jurisdiction of the Sandiganbayan.<sup>[13]</sup> (Citations omitted.)

R.A. No. 8249 was later amended by R.A. No. 10660 which took effect on May 5, 2015. Section 2 of R.A. No. 10660 amends the jurisdiction of the Sandiganbayan and which we quote the pertinent portions thereof, to wit:

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;

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.

**"*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 (P1,000,000.00).***

**"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." (Emphasis supplied.)

Petitioner contends that based on Section 2 of R.A. No. 10660, which is the law at the time of the institution of the actions, the Sandiganbayan has no jurisdiction over his cases since the Informations filed against him do not allege any damage to the government or any bribery; or the Informations allege damage to the government in an amount not exceeding One million pesos, hence, the cases fall under the jurisdiction of the RTC.

We are not persuaded.

Generally, the jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense.<sup>[14]</sup> In this case, the Informations were filed on July 14, 2017, for petitioner's violations of Section 3(e) of R.A. No. 3019 and Article 171(2) of the Revised Penal Code, allegedly committed on November 3, 2014 or sometime prior or subsequent thereto. While R.A. No. 10660 which took effect on May 5, 2015 is the law in force at the time of the institution of the action, such law is not applicable to petitioner's cases. R.A. No. 10660 provides that the reckoning period to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019 is the time of the commission of the offense, to wit: