

## THIRD DIVISION

[ G.R. Nos. 221562-69, October 05, 2016 ]

**COMMO. LAMBERTO R. TORRES (RET.), PETITIONER, VS.  
SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### The Case

Before the Court is a Petition for Certiorari filed under Rule 65 of the Rules of Court for the annulment of Sandiganbayan Resolutions dated August 27, 2015<sup>[1]</sup> and October 28, 2015,<sup>[2]</sup> with prayer for the issuance of a status quo order or a temporary restraining order against the Sandiganbayan.

#### The Facts

From 1991 to 1993, petitioner Commo. Lamberto R. Torres was the Assistant Chief of the Naval Staff for Logistics under the Flag Officer In Command of the Philippine Navy. Sometime in July 1991 until June 1992, the Commission on Audit (COA) conducted a special audit at the Headquarters of the Philippine Navy (HPN) pertaining to the procurement of drugs and medicine by emergency mode purchase, among others. On June 18, 1993, the COA issued Special Audit Report No. 92-128, uncovering an alleged overpricing of medicines at the HPN or its units, and triggering a *Fact-Finding Investigation* by the Office of the Ombudsman.

On December 11, 1996, the Office of the Ombudsman commenced a preliminary investigation against petitioner and several others or Illegal Use of Public Funds and Violation of Sec. 3 (e) of Republic Act No. (RA) 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*, docketed as case number OMB-4-97-0789; and for Violation of Sec. 3 (e) of RA 3019, docketed as case number OMB-4-97-0790, based on an Affidavit by COA auditors.

In **OMB-4-97-0789**, it was alleged that the purchase of additional drugs and medicines worth P5.56 million was not properly supported and accounted for, and that additional drugs and medicines purchased were supposedly not included in the list of drugs and medicines received by the Supply Accountable Officer of the Hospital for that period. Petitioner was included as a respondent for being a signatory of the checks involved.

In **OMB-4-97-0790**, it was alleged that supplies and materials amounting to P6,663,440.70 were purchased but equipment were delivered, instead of the items indicated in the purchase orders. Petitioner was included as a respondent in the OMB-4-97-0790 because he allegedly recommended the approval of the purchase

orders and signed the certificates of emergency purchases.

These cases, however, were dismissed against petitioner for lack of probable cause in a Joint Resolution dated March 8, 1999.

A few years after petitioner's retirement from the service in 2001, Tanodbayan Simeon V. Marcelo issued an Internal Memorandum dated October 11, 2004, recommending a new fact-finding investigation and preliminary investigation relative to other transactions in other units and offices of the Philippine Navy. Pursuant to this Internal Memorandum, a new Affidavit Complaint dated **February 22, 2006** was filed by the Ombudsman against petitioner and several others, this time, for violation of Sections 3 (e) and (g) of RA 3019, docketed as case number **OMB-P-C-06-0129-A**.

Notices of the new preliminary investigation were, however, sent to petitioner's old address in Kawit, Cavite, which he had already vacated in 1980. Thus, petitioner was not informed of the proceedings in the new preliminary investigation. Unknown to petitioner, eight (8) Informations were filed by the Ombudsman against him and the other accused before the Sandiganbayan on **August 5, 2011**. The first set of Informations, consisting of four (4) Informations docketed as Crim. Case Nos. SB-11-CRM-0423, SB-11-CRM-0424, SB-11-CRM-0426 & SB-11-CRM-0427, charged petitioner and others with violation of Sec. 3 (e) of RA 3019, while the remaining four (4) Informations, docketed as Crim. Case Nos. SB-11-CRM-0429, SB-11-CRM-0430, SB-11-CRM-0432 & SB-11-CRM-0433, charged petitioner and others with violation of Sec. 3 (g) of RA 3019.

Petitioner and his co-accused were charged for allegedly giving unwarranted benefit to several pharmaceutical companies, certifying the existence of an emergency, and approving the emergency purchase of overpriced medicines without the proper bidding. It was determined that no emergency existed and the overpriced items bought were only kept in stock and were, essentially, over-the-counter drugs.

More particularly, petitioner's participation is limited to his issuance of the Certificates of Emergency Purchase<sup>[3]</sup> that do not indicate the actual condition obtaining at the time of the purchase to justify the emergency purchase.

It was only sometime in July 2014, when petitioner was about to travel to the United States, that he learned of the pending cases before the Sandiganbayan by virtue of a hold departure order issued against him. Thus, petitioner filed a *Motion for Reduction of Bail with Appearance of Counsel and Motion for Preliminary Investigation* before the Sandiganbayan. With his motion granted, the proceedings before the Sandiganbayan were deferred with respect to petitioner and a new preliminary investigation for petitioner was conducted.

Petitioner was thereafter allowed to file a Counter-Affidavit before the Office of the Ombudsman, where he prayed for the dismissal of the case on the ground that his constitutional rights to due process and speedy trial were violated by the inordinate delay of the case.

In its May 7, 2015 Resolution, the Ombudsman nonetheless resolved to maintain the Informations filed against petitioner. According to the Ombudsman, the Affidavit Complaint filed on February 22, 2006, which resulted in the filing of the August 5,

2011 Informations, was based on a new investigation. Thus, petitioner's "inordinate delay" argument does not apply.

Aggrieved, petitioner filed a Motion to Quash the Informations before the Sandiganbayan, claiming that the Ombudsman had no authority to file the Informations having conducted the fact-finding investigation and preliminary investigation for too long, in violation of his rights to a speedy trial and to due process. According to petitioner, the protracted conduct of the fact-finding and preliminary investigations lasted for eighteen (18) years.

Hence, it was inordinate and oppressive. Petitioner argued that "there was already this case to speak of pending against" him since both sets of factfinding and preliminary investigations conducted by the Ombudsman were triggered by the same COA report.

The Ombudsman filed its Comment and/or Opposition, arguing that the preliminary investigations conducted against petitioner in the different periods (from 1996 to 1999 and from 2006 to 2011) involved different transactions pursuant to the various findings embodied in the COA Special Audit Report of 1993. In fact, so the Ombudsman argued, the COA Audit Report is not a prerequisite to any of its investigation and it may conduct fact-finding and/or preliminary investigation with or without said repmi.

In his Reply to the Ombudsman's Comment and/or Opposition, petitioner insisted, among others, that it still took the Ombudsman another six (6) years to file the Informations against him.

### **Ruling of the Sandiganbayan**

In a Resolution dated August 27, 2015, the Sandiganbayan denied petitioner's Motion to Quash and sustained the prosecution's position. The dispositive portion of the Resolution reads:

WHEREFORE, in light of all the foregoing, the Motion to Quash is hereby  
**DENIED.**

SO ORDERED.

Petitioner filed a Motion for Reconsideration, but the same was denied in the Sandiganbayan Resolution dated October 28, 2015.

Hence, this petition.

Petitioner asserts that the Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction when it denied his Motion to Quash. He argues that the eight (8) Informations should have been quashed by the Sandiganbayan considering that the Ombudsman had lost its authority to file them since petitioner's constitutional rights to both the speedy disposition of cases and to due process were grossly violated by the inordinate delay of almost 18 years in conducting the fact-finding and preliminary investigations. Petitioner further argues that, with the Ombudsman losing its authority to file the Information, the Sandiganbayan also lost its jurisdiction over the crimes charged in consequence.

In its Comment,<sup>[4]</sup> respondent People of the Philippines prays for the dismissal of the petition, arguing that petitioner's constitutional rights to speedy disposition of cases and to due process were not violated. Respondent stresses that, prior to 2006, petitioner had no case to speak of since it was only in 2007 when the Ombudsman recommended his indictment. It differentiated COA's audit investigation from 1993 to 1996 as administrative in nature, from the preliminary investigation from 1996 to 2006 for the cases which were dismissed in favor of petitioner, and from the preliminary investigation conducted from 2006 to 2011 where petitioner's involvement was established.

Respondent further asserts that the Sandiganbayan did not abuse its discretion in issuing the assailed Resolution since it was "firmly anchored on a judicious appreciation of the facts and relevant case law."

Thereafter, petitioner filed a *Reply to Comment (On Petition for Certiorari With Application for Status Quo Order and/or Temporary Restraining Order)* asserting that respondent is guilty of "hair-splitting" by distinguishing between the fact-finding investigations and preliminary investigations conducted in 1999 and in 2006 since they both originated from the June 18, 1993 COA Special Audit Report No. 92-128.

### **The Issue**

Essentially, the principal issue is whether the Sandiganbayan committed grave abuse of discretion in denying petitioner's Motion to Quash, anchored on the alleged violation of petitioner's right to speedy disposition of cases.

### **The Court's Ruling**

The petition is meritorious.

There is grave abuse of discretion when an act of a court or tribunal is whimsical, arbitrary, or capricious as to amount to an "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."<sup>[5]</sup> Grave abuse of discretion was found in cases where a lower court or tribunal violates or contravenes the Constitution, the law, or existing jurisprudence.<sup>[6]</sup>

In his Motion to Quash, petitioner invoked Section 3, paragraph (d) of Rule 117, asserting that the Ombudsman had lost its authority to file the Informations against him for having conducted the fact-finding and preliminary investigations too long. He raised a similar argument in the present petition—that the Ombudsman had no more authority to file the Informations since petitioner's rights to speedy disposition of cases and to due process were violated.

In denying the Motion to Quash, the Sandiganbayan ruled:

Ultimately, the results of the 2006 preliminary investigation itself may not be impugned due to inordinate delay that would rise to the level of being violative of herein accused's right to speedy disposition of cases

protected under the Constitution. If ignorance is bliss, the accused had been spared from the travails of the preliminary investigation which started in 2006, not like the other respondents who showed up or were involved therein. By this Court's reckoning it took the OMB-MOLEO only two (2) years, six (6) months and nineteen (days) [sic] from August 7, 2007 after the issues were joined with the filing of the last counter-affidavit therein and the issuance of the Resolution by Graft Investigator & Prosecution Officer Marissa S. Bernal on February 25, 2010, which terminated the preliminary investigation process, finding probable cause. Furthermore, as requested by the accused, the OMB-Office of the Special Prosecutor again conducted a new or another preliminary investigation upon order of this Court, resulting in a new resolution, dated May 7, 2015, which maintained the informations herein. This was approved by Ombudsman Conchita Carpio Morales on May 15, 2015. This investigation only took a little over than six (6) months and, therefore, could not be said to be violative of movant's right to a speedy disposition of his case. There is no showing that movant was made to endure any vexatious process during the said periods of investigation.

We disagree.

In *Isabelo A. Braza v. The Honorable Sandiganbayan (First Division)*,<sup>[7]</sup> this Court has laid down the guiding principle in determining whether the right of an accused to the speedy disposition of cases had been violated:

Section 16, Article III of the Constitution declares in no uncertain terms that "[A]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The right to a speedy disposition of a case is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. The constitutional guarantee to a speedy disposition of cases is a relative or flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

In *Dela Peña v. Sandiganbayan*, the Court laid down certain guidelines to determine whether the right to a speedy disposition has been violated, as follows:

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: **(1) the length of the delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.** (emphasis supplied)