

## THIRD DIVISION

[ G.R. No. 167304, August 25, 2009 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS.  
SANDIGANBAYAN (THIRD DIVISION) AND VICTORIA AMANTE,  
RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before this Court is a petition<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to reverse and set aside the Resolution<sup>[2]</sup> of the Sandiganbayan (Third Division) dated February 28, 2005 dismissing Criminal Case No. 27991, entitled *People of the Philippines v. Victoria Amante* for lack of jurisdiction.

The facts, as culled from the records, are the following:

Victoria Amante was a member of the *Sangguniang Panlungsod* of Toledo City, Province of Cebu at the time pertinent to this case. On January 14, 1994, she was able to get hold of a cash advance in the amount of P71,095.00 under a disbursement voucher in order to defray seminar expenses of the Committee on Health and Environmental Protection, which she headed. As of December 19, 1995, or after almost two years since she obtained the said cash advance, no liquidation was made. As such, on December 22, 1995, Toledo City Auditor Manolo V. Tulibao issued a demand letter to respondent Amante asking the latter to settle her unliquidated cash advance within seventy-two hours from receipt of the same demand letter. The Commission on Audit, on May 17, 1996, submitted an investigation report to the Office of the Deputy Ombudsman for Visayas (OMB-Visayas), with the recommendation that respondent Amante be further investigated to ascertain whether appropriate charges could be filed against her under Presidential Decree (P.D.) No. 1445, otherwise known as *The Auditing Code of the Philippines*. Thereafter, the OMB-Visayas, on September 30, 1999, issued a Resolution recommending the filing of an Information for Malversation of Public Funds against respondent Amante. The Office of the Special Prosecutor (OSP), upon review of the OMB-Visayas' Resolution, on April 6, 2001, prepared a memorandum finding probable cause to indict respondent Amante.

On May 21, 2004, the OSP filed an Information<sup>[3]</sup> with the Sandiganbayan accusing Victoria Amante of violating Section 89 of P.D. No. 1445, which reads as follows:

That on or about December 19, 1995, and for sometime prior or subsequent thereto at Toledo City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused VICTORIA AMANTE, a high-ranking public officer, being a member of the Sangguniang Panlungsod of Toledo City, and committing the offense in

relation to office, having obtained cash advances from the City Government of Toledo in the total amount of SEVENTY-ONE THOUSAND NINETY-FIVE PESOS (P71,095.00), Philippine Currency, which she received by reason of her office, for which she is duty-bound to liquidate the same within the period required by law, with deliberate intent and intent to gain, did then and there, wilfully, unlawfully and criminally fail to liquidate said cash advances of P71,095.00, Philippine Currency, despite demands to the damage and prejudice of the government in aforesaid amount.

CONTRARY TO LAW.

The case was raffled to the Third Division of the Sandiganbayan. Thereafter, Amante filed with the said court a MOTION TO DEFER ARRAIGNMENT AND MOTION FOR REINVESTIGATION<sup>[4]</sup> dated November 18, 2004 stating that the Decision of the Office of the Ombudsman (Visayas) dated September 14, 1999 at Cebu City from of an incomplete proceeding in so far that respondent Amante had already liquidated and/or refunded the unexpected balance of her cash advance, which at the time of the investigation was not included as the same liquidation papers were still in the process of evaluation by the Accounting Department of Toledo City and that the Sandiganbayan had no jurisdiction over the said criminal case because respondent Amante was then a local official who was occupying a position of salary grade 26, whereas Section 4 of Republic Act (R.A.) No. 8249 provides that the Sandiganbayan shall have original jurisdiction only in cases where the accused holds a position otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989, R.A. No. 6758.

The OSP filed its Opposition<sup>[5]</sup> dated December 8, 2004 arguing that respondent Amante's claim of settlement of the cash advance dwelt on matters of defense and the same should be established during the trial of the case and not in a motion for reinvestigation. As to the assailed jurisdiction of the Sandiganbayan, the OSP contended that the said court has jurisdiction over respondent Amante since at the time relevant to the case, she was a member of the *Sangguniang Panlungsod* of Toledo City, therefore, falling under those enumerated under Section 4 of R.A. No. 8249. According to the OSP, the language of the law is too plain and unambiguous that it did not make any distinction as to the salary grade of city local officials/heads.

The Sandiganbayan, in its Resolution<sup>[6]</sup> dated February 28, 2005, dismissed the case against Amante, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, this case is hereby dismissed for lack of jurisdiction. The dismissal, however, is without prejudice to the filing of this case to the proper court.

The Motion for Reinvestigation filed by the movant is hereby considered moot and academic.

SO ORDERED.

Hence, the present petition.

Petitioner raises this lone issue:

WHETHER OR NOT THE SANDIGANBAYAN HAS JURISDICTION OVER A CASE INVOLVING A SANGGUNIAN PANLUNGSOD MEMBER WHERE THE CRIME CHARGED IS ONE COMMITTED IN RELATION TO OFFICE, BUT NOT FOR VIOLATION OF RA 3019, RA 1379 OR ANY OF THE FELONIES MENTIONED IN CHAPTER II, SECTION 2, TITLE VII OF THE REVISED PENAL CODE.

In claiming that the Sandiganbayan has jurisdiction over the case in question, petitioner disputes the former's appreciation of this Court's decision in *Inding v. Sandiganbayan*.<sup>[7]</sup> According to petitioner, *Inding* did not categorically nor implicitly constrict or confine the application of the enumeration provided for under Section 4(a)(1) of P.D. No. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. No. 3019, R.A. No. 1379, or Chapter II, Section 2, Title VII of the Revised Penal Code. Petitioner adds that the enumeration in Section (a)(1) of P.D. No. 1606, as amended by R.A. No. 7975 and R.A. No. 8249, which was made applicable to cases concerning violations of R.A. No. 3019, R.A. No. 1379 and Chapter II, Section 2, Title VII of the Revised Penal Code, equally applies to offenses committed in relation to public office.

Respondent Amante, in her Comment<sup>[8]</sup> dated January 16, 2006, averred that, with the way the law was phrased in Section 4 of P.D. No. 1606, as amended, it is obvious that the jurisdiction of the Sandiganbayan was defined first, enumerating the several exceptions to the general rule, while the exceptions to the general rule are provided in the rest of the paragraph and sub-paragraphs of Section 4. Therefore, according to respondent Amante, the Sandiganbayan was correct in ruling that the latter has original jurisdiction only over cases where the accused is a public official with salary grade 27 and higher; and in cases where the accused is public official below grade 27 but his position is one of those mentioned in the enumeration in Section 4(a)(1)(a) to (g) of P.D. No. 1606, as amended and his offense involves a violation of R.A. No. 3019, R.A. No. 1379 and Chapter II, Section 2, Title VII of the Revised Penal Code; and if the indictment involves offenses or felonies other than the three aforementioned statutes, the general rule that a public official must occupy a position with salary grade 27 and higher in order that the Sandiganbayan could exercise jurisdiction over him must apply. The same respondent proceeded to cite a decision<sup>[9]</sup> of this Court where it was held that jurisdiction over the subject matter is conferred only by the Constitution or law; it cannot be fixed by the will of the parties; it cannot be acquired through, or waived, enlarged or diminished by, any act or omission of the parties, neither is it conferred by acquiescence of the court.

In its Reply<sup>[10]</sup> dated March 23, 2006, the OSP reiterated that the enumeration of public officials in Section 4(a)(1) to (a) to (g) of P.D. No. 1606 as falling within the original jurisdiction of the Sandiganbayan should include their commission of other offenses in relation to office under Section 4(b) of the same P.D. No. 1606. It cited

the case of *Esteban v. Sandiganbayan, et al.*<sup>[11]</sup> wherein this Court ruled that an offense is said to have been committed in relation to the office if the offense is "intimately connected" with the office of the offender and perpetrated while he was in the performance of his official functions.

The petition is meritorious.

The focal issue raised in the petition is the jurisdiction of the Sandiganbayan. As a background, this Court had thoroughly discussed the history of the conferment of jurisdiction of the Sandiganbayan in *Serana v. Sandiganbayan, et al.*,<sup>[12]</sup> thus:

x x x 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.<sup>[13]</sup>

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.<sup>[14]</sup>

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. x x x

Specifically, the question that needs to be resolved is whether or not a member of the *Sangguniang Panlungsod* under Salary Grade 26 who was charged with violation of The Auditing Code of the Philippines falls within the jurisdiction of the Sandiganbayan.

This Court rules in the affirmative.

The applicable law in this case is Section 4 of P.D. No. 1606, as amended by Section 2 of R.A. No. 7975 which took effect on May 16, 1995, which was again amended on February 5, 1997 by R.A. No. 8249. The alleged commission of the offense, as shown in the Information was on or about December 19, 1995 and the filing of the Information was on May 21, 2004. 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>[15]</sup> The exception contained in R.A. 7975, as well as R.A. 8249, where it expressly provides that to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code is not applicable in the present case as the offense involved herein is a violation of The Auditing Code of the Philippines. The last clause of the opening sentence of paragraph (a) of the

said two provisions states:

Sec. 4. *Jurisdiction*. -- The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, other 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**:

The present case falls under Section 4(b) where other offenses and felonies committed by public officials or employees in relation to their office are involved. Under the said provision, no exception is contained. Thus, the general rule that 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 applies in this present case. Since the present case was instituted on May 21, 2004, the provisions of R.A. No. 8249 shall govern. Verily, the pertinent provisions of P.D. No. 1606 as amended by R.A. No. 8249 are the following:

Sec. 4. *Jurisdiction*. -- The Sandiganbayan shall exercise 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 of the Revised Penal Code, where one or more of the principal 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 city department heads;

(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads.

(c) Officials of the diplomatic service occupying the position of consul and higher;