

EN BANC

[G.R. No. 166510, July 23, 2008]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. BENJAMIN "KOKOY" T. ROMUALDEZ AND THE SANDIGANBAYAN (FIRST DIVISION), RESPONDENTS.

DECISION

BRION, J.:

We resolve the Petition for *Certiorari* filed under Rule 65 of the Revised Rules of Court by the People of the Philippines (*People*), assailing the Resolutions dated 22 June 2004^[1] and 23 November 2004^[2] of the Sandiganbayan in CRIMINAL CASE NO. 26916 entitled *People of the Philippines versus Benjamin "Kokoy" Romualdez*, on the ground of grave abuse of discretion and/or lack or excess of jurisdiction. The first assailed Resolution granted the motion to quash filed by private respondent Benjamin "Kokoy" Romualdez (*Romualdez*); the second assailed Resolution, on the other hand, denied the People's motion for reconsideration of the first assailed Resolution.

ANTECEDENTS

The Office of the Ombudsman (*Ombudsman*) charged Romualdez before the Sandiganbayan with violation of Section 3 (e) of Republic Act No. 3019 (*RA 3019*), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The Information^[3] reads:

That on or about and during the period from 1976 to February 1986 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Benjamin "Kokoy" Romualdez, a public officer being then the Provincial Governor of the Province of Leyte, while in the performance of his official function, committing the offense in relation to his Office, did then and there willfully, unlawfully and criminally with evident bad faith, cause undue injury to the Government in the following manner: accused public officer being then the elected Provincial Governor of Leyte and without abandoning said position, and using his influence with his brother-in-law, then President Ferdinand E. Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment is in violation of the existing laws as the Office of the Ambassador or Chief of Mission is incompatible with his position as Governor of the Province of Leyte, thereby enabling himself to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte in the amount of Two Hundred

Seventy-six Thousand Nine Hundred Eleven Dollars and 56/100 (US \$276,911.56), US Currency or its equivalent amount of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (P5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty-eight Pesos and 86/100 (P293,348.86) both Philippine Currencies, respectively, to the damage and prejudice of the Government in the aforementioned amount of P5,806,709.50.

CONTRARY TO LAW.

Romualdez moved to quash the information^[4] on two grounds, namely: **(1)** *that the facts alleged in the information do not constitute the offense with which the accused was charged*; and **(2)** *that the criminal action or liability has been extinguished by prescription*. He argued that the acts imputed against him do not constitute an offense because: (a) the cited provision of the law applies only to public officers charged with the grant of licenses, permits, or other concessions, and the act charged - receiving dual compensation - is absolutely irrelevant and unrelated to the act of granting licenses, permits, or other concessions; and (b) there can be no damage and prejudice to the Government considering that he **actually** rendered services for the dual positions of Provincial Governor of Leyte and Ambassador to foreign countries.

To support his prescription argument, Romualdez posited that the 15-year prescription under Section 11 of RA 3019 had lapsed since the preliminary investigation of the case for an offense committed *on or about and during the period from 1976 to February 1986* commenced only in May 2001 after a Division of the Sandiganbayan referred the matter to the Office of the Ombudsman. He argued that there was no interruption of the prescriptive period for the offense because the proceedings undertaken under the *1987 complaint* filed with the Presidential Commission on Good Government (PCGG) were null and void pursuant to the Supreme Court's ruling in *Cojuangco Jr. v. PCGG*^[5] and *Cruz Jr* [sic].^[6] He likewise argued that the Revised Penal Code provision^[7] that prescription does not run when the offender is absent from the Philippines should not apply to his case, as he was charged with an offense not covered by the Revised Penal Code; the law on the prescription of offenses punished under special laws (Republic Act No. 3326) does not contain any rule similar to that found in the Revised Penal Code.

The People opposed the motion to quash on the argument that Romualdez is misleading the court in asserting that Section 3 (e) of RA 3019 does not apply to him when Section 2 (b) of the law states that corrupt practices may be committed by public officers who include *"elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government."*^[8] On the issue of prescription, the People argued that Section 15, Article XI of the Constitution provides that *the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel*, and that prescription is a matter of technicality to which no one has a vested right. Romualdez filed a Reply to this Opposition.^[9]

The Sandiganbayan granted Romualdez' motion to quash in the first Resolution

assailed in this petition. The Sandiganbayan stated:

We find that the allegation of damage and prejudice to the Government in the amount of P5,806,709.50 representing the accused's compensation is without basis, absent a showing that the accused did not actually render services for his two concurrent positions as Provincial Governor of the Province of Leyte and as Ambassador to the People's Republic of China, Kingdom of Saudi Arabia, and United States of America. The accused alleges in the subject Motion that he actually rendered services to the government. To receive compensation for actual services rendered would not come within the ambit of improper or illegal use of funds or properties of the government; nor would it constitute unjust enrichment tantamount to the damage and prejudice of the government.

Jurisprudence has established what "evident bad faith" and "gross negligence" entail, thus:

In order to be held guilty of violating Section 3 (e), R. A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. ***But bad faith per se is not enough for one to be held liable under the law, the "bad faith" must be "evident".***

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xxx. **"Gross negligence" is characterized by the want of even slight care, acting or omitting to act in a willful or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected.** (Emphasis supplied)

The accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court quoted above. At most, any liability arising from the holding of both positions by the accused may be administrative in nature.

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However, as discussed above, the Information does not sufficiently aver how the act of receiving dual compensation resulted to undue injury to the government so as to make the accused liable for violation of Section 3 (e) of R.A. No. 3019.^[10]

The Sandiganbayan found no merit in Romualdez' prescription argument.

The People moved to reconsider this Resolution, citing "*reversible errors*" that the Sandiganbayan committed in its ruling.^[11] Romualdez opposed the People's motion,

but also moved for a partial reconsideration of the Resolution's ruling on prescription.^[12] The People opposed Romualdez' motion for partial reconsideration.^[13]

Thereafter, the Sandiganbayan denied *via* the second assailed Resolution^[14] the People's motion for reconsideration under the following terms -

The Court held in its Resolution of June 22, 2004, and so maintains and sustains, that assuming the averments of the foregoing information are hypothetically admitted by the accused, it would not constitute the offense of violation of Section 3 (e) of RA 3019 as the elements of (a) causing undue injury to any party, including the government, by giving unwarranted benefits, advantage or preference to such parties, and (b) that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, are wanting.

As it is, a perusal of the information shows that pertinently, accused is being charged for: (a) having himself appointed as ambassador to various posts while serving as governor of the Province of Leyte and (b) for collecting dual compensation for said positions. As to the first, the Court finds that accused cannot be held criminally liable, whether or not he had himself appointed to the position of the ambassador while concurrently holding the position of provincial governor, because the act of appointment is something that can only be imputed to the appointing authority.

Even assuming that the appointee influenced the appointing authority, the appointee only makes a passive participation by entering into the appointment, unless it is alleged that he acted in conspiracy with his appointing authority, which, however, is not so claimed by the prosecution in the instant case. Thus, even if the accused's appointment was contrary to law or the constitution, it is the appointing authority that should be responsible therefor because it is the latter who is the doer of the alleged wrongful act. In fact, under the rules on payment of compensation, the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the appointment been lawful. As it is, the appointing authority herein, then President Ferdinand E. Marcos has been laid to rest, so it would be incongruous and illogical to hold his appointee, herein accused, liable for the appointment.

Further, the allegation in the information that the accused collected compensation in the amounts of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (P5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty Eight Pesos and 86/100 (P293,348.86) cannot sustain the theory of the prosecution that the accused caused damage and prejudice to the government, in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross inexcusable negligence. Besides receiving compensation is an incident of actual

services rendered, hence it cannot be construed as injury or damage to the government.

It likewise found no merit in Romualdez' motion for partial reconsideration.

THE PETITION AND THE PARTIES' SUBMISSIONS

The People filed the present petition on the argument that the Sandiganbayan committed grave abuse of discretion in quashing the Information based on the reasons it stated in the assailed Resolutions, considering that:

- a. Romualdez cannot be legally appointed as an ambassador of the Republic of the Philippines during his incumbency as Governor of the Province of Leyte; thus, to draw salaries for the two positions is to cause undue injury to the government under Section 3 (e) of RA 3019;
- b. Romualdez cannot receive compensation for his illegal appointment as Ambassador of the Republic of the Philippines and for his services in this capacity; thus, to so pay him is to make illegal payment of public funds and cause undue injury to the government under Section 3 (e) of RA 3019; and
- c. The Sandiganbayan went beyond the ultimate facts required in charging a violation of Section 3 (e) of RA 3019 and delved into matters yet to be proven during trial.

Required to comment on the petition, Romualdez filed a Motion to Dismiss with Comment *Ad Cautelam*.^[15] He argued that the filing of the present Rule 65 petition is improper, as a petition filed under Rule 45, instead of Rule 65, of the Revised Rules of Court is the proper remedy, considering that the assailed Resolutions are appealable. He cited in support of this contention the ruling that *an order granting a motion to quash, unlike one of denial, is a final order; it is not merely interlocutory and is therefore immediately appealable*.^[16] He further argued that the present petition was belatedly filed, as the People filed it beyond the 15-day reglementary filing period for a Rule 45 petition. On the substantive issues raised in the petition, he argued that the factual averments in the Information do not constitute the offense charged and that the criminal action or liability has been extinguished by prescription.

The People, on the other hand, asserted in reply^[17] that while a petition for *certiorari* under Rule 65 may be availed of only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, or that *certiorari* is not a substitute for the lost remedy of an appeal, the rule may be relaxed when the issue raised is purely legal, when public interest is involved, and in case of urgency. It also argued that *certiorari* may also be availed of where an appeal would be slow, inadequate, and insufficient; and that it is within this Court's power to suspend or exempt a particular case from the operation of the rules when its strict application will frustrate rather than promote justice. Thus, the People asked for a review of the case based on substantial justice and the claimed merits of the instant petition.

Romualdez countered in his Rejoinder^[18] that the assailed Resolutions, being final, can no longer be questioned, re-opened, or reviewed; that public policy and sound practice demand that at the risk of occasional errors, judgments of courts become