

SECOND DIVISION

[G.R. NO. 143419, June 22, 2006]

**JOSE B. DEL ROSARIO, JR., PETITIONER, VS. THE PEOPLE OF
THE PHILIPPINES AND THE OFFICE OF THE SPECIAL
PROSECUTOR, [*] RESPONDENTS.**

DECISION

CORONA, J.:

In this petition for review on certiorari,^[1] petitioner Jose B. del Rosario, Jr. assails the pre-trial order^[2] dated May 2, 2000 of the Sandiganbayan in Criminal Case No. 22715.

The facts are undisputed.

On July 19, 1991, five employees of the National Irrigation Administration (NIA), headed by Atty. Musa I. Malayang, filed a letter-complaint dated July 12, 1991 with the Office of the Ombudsman charging petitioner (who was then the Administrator of NIA), among others, of violating Republic Act No. (RA) 6713 or the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other laws, rules and regulations of the Commission on Audit and Civil Service Commission.^[3] The administrative aspect of the case against petitioner was docketed as OMB-ADM-0-91-0341 while the criminal aspect was docketed as OMB-0-91-1540.^[4]

After investigation, the Office of the Ombudsman, in a resolution dated June 15, 1992, dismissed OMB-0-91-1540.^[5] On review, it was again dismissed in a resolution dated September 30, 1992.^[6] Complainants' motions for reconsideration were denied in an order dated December 10, 1993.^[7] The complainants, however, filed a supplemental motion for reconsideration dated August 2, 1994 which was granted in a resolution dated March 7, 1995.^[8] Thus, two informations were filed against petitioner: Criminal Case No. 22715 for estafa through falsification of public document and Criminal Case No. 22716 for violation of RA 3019, Section 3 (e).^[9]

On May 23, 1995, petitioner filed a motion with the Ombudsman praying that the two informations be formally withdrawn since the issuance of the March 7, 1995 resolution was null and void.^[10] He argued that these informations were filed in violation of Section 27 of RA 6770 or the Ombudsman Act of 1989,^[11] as well as Rule II, Section 7 of the Ombudsman's Administrative Order No. 07^[12] and settled jurisprudence. This motion was denied on September 12, 1995.^[13] The information for Criminal Case No. 22716 was subsequently withdrawn on the motion of the prosecution which cited insufficiency of evidence.^[14] Meanwhile, petitioner filed a motion to quash^[15] the information in Criminal Case No. 22715 which the

Sandiganbayan denied.^[16]

Hence, petitioner filed with this Court a petition for certiorari under Rule 65, docketed as G.R. No. 131746, seeking to annul the resolutions of the Sandiganbayan dated June 6, 1997 and December 13, 1997^[17] which denied petitioner's motion to quash the information in Criminal Case No. 22715. However, because of petitioner's non-compliance with the Court's resolution^[18] requiring him to file a reply to the comment of respondents therein, his petition was dismissed in a resolution dated April 12, 1999.^[19] On July 14, 1999, petitioner's motion for reconsideration was denied with finality by this Court.^[20]

Consequently, the Sandiganbayan (Fifth Division)^[21] proceeded to set the pre-trial conference in Criminal Case No. 22715.^[22] Respondents People of the Philippines and Office of the Special Prosecutor filed their request for admission on January 26, 2000 while petitioner filed his reply to the request for admission on March 6, 2000.^[23] Petitioner also filed his own request for admission on March 2, 2000 but the respondents filed their objection to petitioner's request for admission on March 10, 2000.^[24] Thereafter, the pre-trial was conducted and a pre-trial order issued on May 2, 2000. During the pre-trial, respondent Office of the Special Prosecutor objected to the marking of the documents used by petitioner in G.R. No. 131746, citing lack of relevance.^[25]

Petitioner now assails this pre-trial order on the ground that the Sandiganbayan refused to allow him to mark certain documents for his defense and to raise the fundamental issue of whether the information in Criminal Case No. 22715 was null and void.

Thus, petitioner raises this lone issue: did the resolution of this Court dated April 12, 1999 in G.R. No. 131746 dismissing his petition constitute *res judicata* as to the issue raised in that petition, thereby effectively barring him from marking the documents mentioned in and attached to said petition as his exhibits in Criminal Case No. 22715 and also from raising the issue of the nullity and invalidity of the information in said criminal case?^[26]

The petition is bereft of merit.

First of all, this petition should be dismissed outright for adopting the wrong mode of appeal. Petitioner is assailing the pre-trial order of the Sandiganbayan. A petition for review on certiorari under Rule 45 is inappropriate to assail an interlocutory order. A pre-trial order is an interlocutory order since it is one "which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits."^[27] The proper subject of a petition for review on certiorari under Rule 45 is a final judgment or order which finally disposes of a case, leaving nothing more to be done by the Court in respect thereto.^[28]

Assuming, however, that petitioner were allowed to take an appeal under Rule 45 from said order, still the petition would fail. Petitioner cannot be allowed to litigate

anew the issues he raised in G.R. No. 131746 which we already denied with finality for his failure to file a reply to respondents' comment despite ample notice.

Petitioner insists that G.R. No. 131746 was dismissed only for his failure to file a reply to comment, hence, there was no judgment on the merits which was an essential requisite for the applicability of *res judicata*.^[29]

We disagree.

Although contained in a minute resolution, our dismissal of the petition in G.R. No. 131746 was definitely a disposition of the merits of the case and constituted a bar to a relitigation of the issues raised there under the doctrine of *res judicata*. When we dismissed the petition, we effectively affirmed the ruling being questioned. Thus, our ruling has already become final. In *Bernarte v. Court of Appeals*,^[30] we declared:

The petition in *G.R. No. 100663* was dismissed for noncompliance with Circular No. 1-88. Contrary to petitioners' contention, however, such a dismissal through a minute resolution was one on the merits of the petition. Thus, where a first petition for certiorari was dismissed for noncompliance with paragraph 4 of Circular No. 1-88 and another petition, complying with said circular and basically reiterating the same issues raised in the first petition was filed a year later, the Court dismissed the second petition and severely censured counsel for petitioner for refileing the same petition. In a Resolution, the Court stated as follows:

"...(I)t is equally axiomatic that minute resolutions of this Court, denying due course to petitions, or dismissing cases summarily - for failure to comply with the formal or substantial requirements laid down therefor by the law - *are actually dispositions on the merits*, constituting *res judicata*."

Hence, even though the Court did not explicitly resolve *G.R. No. 100663* on the merits, its dismissal on the ground of noncompliance with Circular No. I-88 had the effect of resolving the issues raised therein. While it may be argued that said circular is merely a remedial measure which should not unduly affect the substantive aspects of a case, its force and effect must be at all times be upheld for, after all, it was designed for the orderly administration of justice.^[31]

It is also important to note that in our rules for filing of petitions under Rule 45, "review is not a matter of right but of sound judicial discretion, and will be granted only when there are special and important reasons therefor."^[32]

Petitioner has only himself to blame for not being zealous in advancing his cause in G.R. No. 131746. He had a chance to present such issues before us but because of his negligence, he is now precluded from doing so in this present petition and in the proceedings in Criminal Case No. 22715. Petitioner is now bound by the adverse judgment that has already attained finality.