

## EN BANC

[ G.R. NO. 169509, June 16, 2006 ]

**JOCELYN E. CABO, PETITIONER, VS. THE SANDIGANBAYAN,  
FOURTH DIVISION, THE SPECIAL PROSECUTOR OF THE  
OMBUDSMAN AND THE COMMISSION ON AUDIT, REGION XIII,  
RESPONDENTS.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is a special civil action for certiorari filed by petitioner Jocelyn E. Cabo seeking to nullify the resolutions of the Sandiganbayan, Fourth Division, dated May 4 and July 20, 2005 in Criminal Case No. 27959.

The following are the antecedent facts:

On June 26, 2004, an information for violation of Section 3(b) of R.A. 3019 or the Anti-Graft and Corrupt Practices Act was filed against petitioner and her co-accused Bonifacio C. Balahay. The information alleged:

That on or about 08 August 2000 in the Municipality of Barobo, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, BONIFACIO C. BALAHAY, then Mayor of the Municipality of Barobo, Surigao del Sur, a high ranking public official, with the use of his influence as such public official, committing the offense in relation to his office, together with JOCELYN CABO, did then and there, willfully, unlawfully and feloniously receive and accept the amount of ONE HUNDRED FOUR THOUSAND ONE HUNDRED SIXTY TWO PESOS AND 31/100 (P104,162.31) from said JOCELYN CABO, Business Manager of Orient Integrated Development Consultancy, Inc. (OIDCI), a consultancy group charged with conducting a feasibility study for the Community-Based Resource Management Project of the Municipality of Barobo, with accused Cabo giving and granting the said amount to accused Balahay in consideration of the said accused having officially intervened in the undertaking by the OIDCI of such contract for consultancy services with the Municipality of Barobo.

CONTRARY TO LAW.<sup>[1]</sup>

Claiming that she was deprived of her right to a preliminary investigation as she never received any notice to submit a counter-affidavit or countervailing evidence to prove her innocence, petitioner filed a motion for reinvestigation<sup>[2]</sup> before the Fourth Division of the Sandiganbayan, where the case was raffled and docketed as Criminal Case No. 27959. The Sandiganbayan subsequently granted petitioner's motion on March 29, 2004 and directed the Office of the Special Prosecutor to

conduct a reinvestigation insofar as petitioner is concerned.<sup>[3]</sup>

Meanwhile, petitioner filed a motion seeking the court's permission to travel abroad for a family vacation.<sup>[4]</sup> The Sandiganbayan granted the same in an order dated May 14, 2004 that reads:

Acting on the *Motion With Leave Of Court To Travel Abroad* dated May 11, 2004 filed by accused Jocelyn E. Cabo through counsel, Atty. Tomas N. Prado, and considering the well-taken reason therein stated, the same is hereby GRANTED.

However, considering that this case is still pending reinvestigation/review before the Office of the Special Prosecutor; considering further that the accused has not yet been arraigned by reason thereof; and considering finally that there is a need for the Court to preserve its authority to conduct trial *in absentia* should the accused fail to return to the Philippines, accused Jocelyn E. Cabo, with her express conformity, is hereby ordered arraigned conditionally. If upon such reinvestigation/review, it shall be found that there is no probable cause to proceed against said accused, the conditional arraignment this morning shall be with no force and effect. However, if it should be found that there is a need to amend the present indictment or to pave the way for the filing of some other indictment/s, then the accused shall waive her right to object under Section 14, Rule 110 of the 2000 Rules of Criminal Procedure and her constitutional right to be protected against double jeopardy.

When arraigned, the Information having been read in a language known and familiar to her, accused Jocelyn E. Cabo, duly assisted by her counsel, Atty. Tomas N. Prado, pleaded **not guilty** to the offense charged in the Information.

Accused Jocelyn E. Cabo, duly assisted by her counsel, shall affix her signature in the minutes of the proceedings to signify her conformity to her acceptance of the conditional arraignment and the legal consequences thereof as herein explained.

SO ORDERED.<sup>[5]</sup>

Petitioner returned from abroad on May 24, 2004. Thereafter, the Special Prosecutor concluded its reinvestigation and found probable cause to charge her with violation of Section 3(b) of R.A. No. 3019.<sup>[6]</sup> Petitioner filed a motion for reconsideration but the same was denied.<sup>[7]</sup> Thus, the Sandiganbayan set anew the arraignment of petitioner and her co-accused on October 12, 2004.<sup>[8]</sup>

On the day before the scheduled arraignment, petitioner filed an Urgent Manifestation With Motion<sup>[9]</sup> praying that "she be allowed to [re]iterate on her previous plea of 'not guilty' x x x entered during her conditional arraignment held last May 14, 2004, so that she may be excused from attending the scheduled arraignment for October 12, 2004." It does not appear, however, that the Sandiganbayan acted upon the said motion.

The following day, petitioner's co-accused Balahay failed to appear for arraignment. This prompted the Sandiganbayan to order the arrest of Balahay as well the confiscation of his bail bond.<sup>[10]</sup> Upon motion for reconsideration of Balahay, however, the Sandiganbayan recalled the warrant for his arrest and reinstated the bail bond.<sup>[11]</sup> His arraignment was subsequently reset for November 30, 2004.<sup>[12]</sup>

On November 24, 2004, Balahay, through counsel, filed a motion to quash the information on the ground that the same does not charge any offense.<sup>[13]</sup> While Section 3(b) of R.A. No. 3019 penalizes the act of "(d)irectly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for another, from any person, in connection with any transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law," the information alleged only in general terms that Balahay "intervened in the undertaking by the OIDCI of such contract for consultancy services with the Municipality of Barobo." In other words, the information failed to allege that Balahay had to intervene in the said contract **under the law**, in his official capacity as municipal mayor.

On January 18, 2005, the Sandiganbayan issued a resolution<sup>[14]</sup> sustaining Balahay's contention that the facts charged in the information do not constitute the offense of violation of Section 3(b) of R.A. No. 3019. Apart from the failure to allege that Balahay had to officially intervene in the transaction pursuant to law, it also failed to allege that Balahay accepted and received the money "for himself or for another." The information was thus defective in that it failed to allege every single fact necessary to constitute all the elements of the offense charged.

The Sandiganbayan, however, did not order the immediate quashal of the information. It held that under Section 4, Rule 117 of the Rules of Court, "if the motion to quash is based on the ground that the facts charged in the information do not constitute an offense x x x the (c)ourt should not quash the information outright, but should instead direct the prosecution to correct the defect therein by proper amendment. It is only when the prosecution fails or refuses to undertake such amendment, or when despite such amendment the information still suffers from the same vice or defect,"<sup>[15]</sup> that the court would be finally justified in granting the motion to quash. The Sandiganbayan thus gave the prosecution a period of 15 days from notice within which to file an amended information that is sufficient as to both form and substance.

On February 7, 2005, the prosecution filed an amended information which incorporated all the essential elements of the crime charged, to wit:

That on or about 08 August 2000, in the Municipality of Barobo, Surigao Del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused BONIFACIO C. BALAHAY, then Mayor of the Municipality of Barobo, Surigao Del Sur, a high ranking public official, in the performance of his official functions, taking advantage of his official position, with grave abuse of authority, and committing the offense in relation to his office, conspiring and confederating with JOCELYN CABO, did then and there, willfully, unlawfully and feloniously receive and accept the amount of ONE HUNDRED FOUR THOUSAND ONE HUNDRED SIXTY

TWO PESOS AND 31/100 (P104,162.31) for his own benefit or use from said JOCELYN CABO, Business Manager of Orient Integrated Development Consultancy, Inc. (OIDC), a consultancy group charged with conducting a feasibility study for the Community-Based Resource Management Project of the Municipality of Barobo, with accused Cabo giving and granting said amount to accused Balahay in consideration of the contract for said feasibility study, which contract accused Balahay in his official capacity has to intervene under the law.

CONTRARY TO LAW.<sup>[16]</sup>

Consequently, Balahay was sent a notice for his arraignment on the amended information. Petitioner was likewise notified of her re-arraignment which was set on April 14, 2005.<sup>[17]</sup> However, on April 11, 2005, petitioner filed a Motion to Cancel Second Arraignment<sup>[18]</sup> on the ground that the amended information pertained to Balahay alone. Petitioner claimed that she could no longer be re-arraigned on the amended information since substantial amendment of an information is not allowed after a plea had already been made thereon.

On May 4, 2005, the Sandiganbayan issued the first assailed resolution denying petitioner's motion for lack of merit, to wit:

[T]he arraignment of accused Cabo on the original information was only *conditional in nature* and that the same was resorted to as a mere *accommodation in her favor* to enable her to travel abroad without this Court losing its ability to conduct trial *in absentia* in the event she decides to abscond. However, as clearly stated in the Court's Order of May 14, 2004, accused Cabo agreed with the condition that should there be a need to amend the information, she would thereby *waive*, not only her right to object to the amended information, but also her constitutional protection against double jeopardy. Now that the original information has been superseded by an amended information, which was specifically filed by the prosecution, and thereafter admitted by this Court, on the basis of Section 4, Rule 117 of the *2000 Rules of Criminal Procedure*, accused Cabo is already estopped from raising any objection thereto.<sup>[19]</sup>

Petitioner filed a motion for reconsideration<sup>[20]</sup> from the foregoing resolution on the additional ground that double jeopardy had already set in. She asserted that her conditional arraignment under the original information had been validated or confirmed by her formal manifestation dated October 7, 2004, wherein she reiterated her plea of "not guilty." Thus, her arraignment on the original information was no longer conditional in nature such that double jeopardy would attach.

The Sandiganbayan denied petitioner's motion for reconsideration in the second assailed resolution dated July 20, 2005.<sup>[21]</sup> Consequently, petitioner filed the instant special civil action for certiorari under Rule 65 of the Rules of Court alleging that the Sandiganbayan gravely abused its discretion in holding that her arraignment on the original information was conditional in nature and that a re-arraignment on the amended information would not put her in double jeopardy.

The issue here boils down to whether double jeopardy would attach on the basis of the "not guilty" plea entered by petitioner on the original information. She argues that it would, considering that her arraignment, which was initially conditional in nature, was ratified when she confirmed her "not guilty" plea by means of a written manifestation. In other words, the trial court could no longer assert that she waived her right to the filing of an amended information under the terms of her conditional arraignment because she has, in effect, unconditionally affirmed the same.

Petitioner's assertions must fail. Initially, it must be pointed out that the Sandiganbayan's practice of "conditionally" arraigning the accused pending reinvestigation of the case by the Ombudsman is not specifically provided in the regular rules of procedure.<sup>[22]</sup> In *People v. Espinosa*,<sup>[23]</sup> however, the Court tangentially recognized the practice of "conditionally" arraigning the accused, provided that the alleged conditions attached thereto should be "unmistakable, express, informed and enlightened." The Court ventured further by requiring that said conditions be expressly stated in the order disposing of the arraignment. Otherwise, it was held that the arraignment should be deemed simple and unconditional.<sup>[24]</sup>

In the case at bar, the Sandiganbayan Order dated May 14, 2004 unequivocally set forth the conditions for petitioner's arraignment pending reinvestigation of the case as well as her travel abroad. Among the conditions specified in said order is "if it should be found that there is a need to amend the present indictment x x x, then the accused shall waive her right to object under Section 14, Rule 110 of the 2000 Rules of Criminal Procedure and her constitutional right to be protected against double jeopardy." Petitioner was duly assisted by counsel during the conditional arraignment and was presumably apprised of the legal consequences of such conditions. In fact, she signed the minutes of the proceedings which could only signify her informed acceptance of and conformity with the terms of the conditional arraignment.

Thus, petitioner cannot now be allowed to turn her back on such conditions on the pretext that she affirmed her conditional arraignment by means of a written manifestation. To begin with, there is no showing that the Sandiganbayan ruled on her written manifestation and motion that she be allowed to merely confirm her previous plea on the original information. It is likewise doubtful that petitioner may legally confirm her conditional arraignment by means of a mere written motion or manifestation. Section 1(b), Rule 116 of the Rules of Court explicitly requires that "(t)he accused must be **present** at the arraignment and must **personally** enter his plea."

At any rate, with or without a valid plea, still petitioner cannot rely upon the principle of double jeopardy to avoid arraignment on the amended information. It is elementary that for double jeopardy to attach, the case against the accused must have been dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid information sufficient in form and substance and the accused pleaded to the charge.<sup>[25]</sup> In the instant case, the original information to which petitioner entered a plea of "not guilty" was neither valid nor sufficient to sustain a conviction, and the criminal case was also neither dismissed nor terminated. Double jeopardy could not, therefore, attach even if petitioner is assumed to have been unconditionally arraigned on the original charge.