

## SECOND DIVISION

[ G.R. Nos. 141675-96, November 25, 2005 ]

**JESUS T. TANCHANCO AND ROMEO R. LACSON, PETITIONERS,  
VS. THE HONORABLE SANDIGANBAYAN (SECOND DIVISION),  
RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

The Court's duty to enforce the law takes on greater imperative when in so doing, it compels the execution of commitments made by the State to its citizens. However the modality a right or privilege is granted by the State to a person—whether under the Constitution, a statute or a mere contract—recognition thereof is required by the government and, if need be, mandated by this Court.

Presently for consideration is what appears to be a broken covenant by the State, made particularly by the Presidential Commission on Good Government (PCGG) to former National Food Authority (NFA) Administrator Jesus Tanchanco (Tanchanco), one of the petitioners at bar. Granted, it is a covenant that should not be lightly undertaken, involving as it does the grant of criminal immunity. Notwithstanding, the legal order has never subscribed to the notion that promises are meant to be broken.

We begin with the facts.

Tanchanco served as NFA Administrator from 1972 to 1986, during the presidency of Ferdinand Marcos. His co-petitioner Romeo Lacson (Lacson) was the Deputy Administrator of the NFA when he was the Administrator.

On 6 May 1988, Tanchanco and the PCGG entered into a *Cooperation Agreement*,<sup>[1]</sup> occasioned by the desire of Tanchanco to cooperate with the Philippine government in connection with the latter's efforts in the location and pursuit of government properties "purloined" by Ferdinand and Imelda Marcos, their agents and others who hold property on their behalf. In the *Cooperation Agreement*, the parties stipulated as follows:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

1. Tanchanco shall cooperate with any and all Philippine Government investigations or prosecutions pursuant to Executive Order No. 1.
2. "Cooperation" means that Tanchanco shall provide complete, candid and absolutely truthful disclosures, in response to any and all questions and inquiries that may be put to him/her in connection

with the Philippines' investigations, civil actions, criminal prosecutions, or any other proceedings whether in the Philippines, the United States or elsewhere. Further, upon the request of the Philippines, Tanchanco will offer such cooperation in investigations and proceedings brought by other governments, including but not limited to the United States and Switzerland.

Cooperation also means a disgorgement of assets, if any, acquired in violation of Philippine laws, rules and regulations. Cooperation further means a full disclosure of assets and liabilities, beneficially owned by Tanchanco. Any assets not therein listed as Tanchanco's personal property, and thereafter discovered to be in Tanchanco's name or under his/her legal or beneficial control, directly or indirectly, as of the date of this Agreement, shall become the property of the PCGG.

3. Should any of Tanchanco's statements or testimonies be false, misleading or materially incomplete, or should Tanchanco knowingly fail to act with total honesty and candor in any such matters, the Philippines shall no longer be bound by any of its representations contained herein. Immunities and other considerations granted in reliance thereof, shall be null and void.

In return for the above, the Philippines hereby represents and agrees as follows:

**(1) At a time to be mutually agreed upon between Tanchanco and the Philippines, the Philippines shall move to dismiss all actions that are presently pending against Tanchanco before the Sandiganbayan and any such other courts;**

**(2) The Philippines shall lift any sequestration orders against Tanchanco's properties, if any, and rescind hold orders it may have issued against his/her actions;**

**(3) The Philippines shall not bring any additional civil or criminal charges against Tanchanco, arising from:**

**(A) Service in or for the Marcos government;**

**(B) Any other actions revealed by Tanchanco pursuant to his/her cooperation as defined in this Agreement.**

Except as expressly set forth herein, there is no understanding or agreement of any kind between the Philippines or its counsel, and Tanchanco, concerning the possible use(s) of his/her liability for criminal or civil prosecution by the Philippines, or any other jurisdiction.

Nothing in this Agreement between the Philippines and Tanchanco is conditioned on the result of any proceedings that might be brought or have been brought against Ferdinand or Imelda Marcos or others in

connection with the information provided or to be provided. Thus none of the obligations or undertakings described above are in any way dependent upon a jury's or court's verdict at any trial, or the success of any criminal or civil prosecution.<sup>[2]</sup>

Significantly, Tanchanco was called upon as one of the witnesses for the prosecution in the case filed against Imelda Marcos in New York for violation of the so-called RICO Act. It appears that his testimony was elicited concerning the transfer of P10,000,000.00 rebate obtained by the NFA from the Philippine National Lines to the Security Bank, as well as the matter of the use of discretionary and/or intelligence funds by the Marcos administration involving the funds of the NFA during Tanchanco's administration.<sup>[3]</sup>

Nonetheless, a criminal case, docketed as Criminal Case No. 16950, was filed in 1991 against Tanchanco with the Sandiganbayan for malversation of public funds in the amount of P10,000,000.00 from the Philippine National Bank. Tanchanco filed a Motion for Reinvestigation, wherein he argued that the case should be dismissed as he had been granted immunity from the said suit by the PCGG. Eventually, the Sandiganbayan First Division agreed with Tanchanco and in a Resolution dated 27 October 2000, the case was ordered dismissed.<sup>[4]</sup>

However, Criminal Case No. 16950 proved to be only just one of several attempts of the government to prosecute Tanchanco. In 1997, a total of 22 Informations were filed with the Sandiganbayan against Tanchanco. He was charged with 21 counts of Malversation of Public Funds under Article 217 of the Revised Penal Code, and one count of Failure of Accountable Officer to Render Accounts under Article 218 of the same Code.<sup>[5]</sup> Lacson was charged as a co-defendant in four of the informations for Malversation of Public Funds.<sup>[6]</sup> These cases were consolidated and raffled to the Sandiganbayan Second Division. On 2 September 1997, Tanchanco and Lacson pleaded not guilty to all of the charges.<sup>[7]</sup>

On 26 November 1997, Tanchanco and Lacson filed a *Motion to Quash and/or Dismiss* all 22 cases, citing as basis the *Cooperation Agreement* which was said to have granted immunity to Tanchanco from criminal prosecution. They likewise presented an affidavit executed by former Vice-President Emmanuel Pelaez, who was serving as Philippine Ambassador to the United States at the time of the New York trial of Imelda Marcos. In his affidavit, Ambassador Pelaez relevantly stated:

2. During my incumbency as Ambassador, I had the privilege to assist the Philippine Government thru the Presidential Commission on Good Government (PCGG) in obtaining the full cooperation of Mr. Jesus Tanchanco relative to its investigation on the transfer of TEN MILLION PESOS (P10,000,000.00) rebate obtained by the National Food Authority (NFA) from the Philippine National Lines (PNL) to the Security Bank. The scope of investigation also encompassed the controversial use of discretionary and/or intelligence funds by the Marcos Administration particularly involving the funds of NFA during the administratorship of Mr. Tanchanco.
3. In this regard, sometime May 1990, I invited Mr. Jesus Tanchanco, on behalf of PCGG, to my office in Washington, D.C. to have an

investigative meeting with Atty. Severina Rivera and Atty. Labella, both of whom presented PCGG in cases against the Marcoses in the U.S. On this occasion, it was explained to Mr. Tanchanco that his disclosure/testimony on the adverted P10M fund transfer and the matter of discretionary and intelligence funds of the NFA were indispensable to the Philippine Government's case against the Marcoses. I urged him to cooperate with the Government and he signified his willingness to do so.

4. After a time of reflection, Mr. Tanchanco obliged, and he thereafter had lengthy question and answer sessions with Attys. Rivera and Labella on the aforesaid major and other collateral issues.<sup>[8]</sup>

Still, the motion was denied by the Sandiganbayan Second Division in a *Resolution* dated 5 March 1999.<sup>[9]</sup> The Sandiganbayan examined Section 5 of Executive Order (E.O.) No. 14, which empowered the PCGG to grant immunity from criminal prosecution, and ruled that the grant of immunity by the PCGG pertained only to offenses which may arise from the act of a person testifying or giving information in connection with the recovery of supposed ill-gotten wealth.

Respondent court declared that the charges of malversation and failure to render an accounting could not be considered as falling within the immunity granted to Tanchanco as the offenses were not related or connected to the testimony or information furnished by Tanchanco in a proceeding concerning the recovery of the purported ill-gotten wealth of the Marcoses. The Sandiganbayan opined that the PCGG could not have intended the grant of immunity to extend to any other crime which Tanchanco may have committed while serving the Marcos Administration, "such as bribery and rape," since such was beyond the scope of the PCGG to bestow. To construe the grant of immunity so broadly, held the Sandiganbayan, would violate the equal protection clause of the Constitution, as well as the due process clause.<sup>[10]</sup>

The Sandiganbayan likewise concluded that even assuming the immunity granted by the *Cooperation Agreement* covered the offenses charged against Tanchanco, the same could not benefit Lacson, as he was not a party to the immunity agreement.<sup>[11]</sup>

A *Motion for Reconsideration* filed by Tanchanco and Lacson was denied in a *Resolution* dated 28 December 1998, the Sandiganbayan declaring therein that the crimes to which petitioners were charged "are beyond the authority and mandate of the PCGG."<sup>[12]</sup>

Petitioners now argue before this Court that the grant of immunity under the *Cooperation Agreement* encompassed the subject charges. They note that Tanchanco had given testimony in the United States regarding the intelligence fund of the NFA, which was used by President Marcos for his own personal benefit. Petitioners advert to the affidavit attesting to such testimony by Ambassador Pelaez. It is argued that Tanchanco had complied with all his commitments made in the *Cooperation Agreement*, and it would be the height of "gross distortion of justice and both moral and legal outrage for the government now to welch on the said Agreement" after Tanchanco had already testified against the Marcoses. Petitioners

likewise cite the relevant jurisprudence concerning the grant of immunity from criminal prosecution by the PCGG.

The Office of the Special Prosecutor, on behalf of the People of the Philippines, cites the comment filed by the PCGG to the *Motion to Quash and/or Dismiss* before the Sandiganbayan, wherein it alleged that contrary to the terms of the *Cooperation Agreement*, Tanchanco had not yet provided the PCGG "a full disclosure of assets and liabilities beneficially owned by Tanchanco."<sup>[13]</sup> This claim is countered by petitioners, who assert before this Court that he had already submitted such disclosure to the PCGG even prior to the execution and signing of the *Cooperation Agreement*.<sup>[14]</sup>

The Office of the Solicitor General (OSG), representing respondent Sandiganbayan, provides a different argument against petitioners. The OSG reiterates the position of the Sandiganbayan that the 22 charges against Tanchanco were not covered by the immunity granted by the PCGG, which pertained only to offenses which may arise from his act in testifying or giving information in connection with the recovery of ill-gotten wealth.<sup>[15]</sup>

Before delving into the merits, we make two preliminary qualifications. First, the general rule under Rule 117 of the Rules of Criminal Procedure is that the accused may move to quash the complaint or information at any time before entering his plea and the failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information shall be deemed a waiver of any objection.<sup>[16]</sup> In this case, Tanchanco and Lacson had pleaded not guilty in all the subject cases on 2 September 1997, two months before they filed the instant *Motion to Quash and/or Dismiss* in November of 1997. Nonetheless, Section 9 of Rule 117 expressly qualifies that the failure to timely raise the objection of lack of jurisdiction over the offense charged cannot be waived,<sup>[17]</sup> and may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal.<sup>[18]</sup> Such objection could be raised through a motion to dismiss when it is no longer timely to file a motion to quash.<sup>[19]</sup> We have no doubt that a claim of immunity from prosecution arising from an immunity statute or agreement is a jurisdictional question. A statutory grant of immunity enjoins the prosecution of a criminal action and thus deprives the court of jurisdiction to proceed.<sup>[20]</sup>

Accordingly, the invocation of immunity may have been the proper subject of petitioners' instant motion, and properly cognizable by the Sandiganbayan even after the plea had been entered. We need not belabor this point further, especially since none of the parties, and certainly not the Sandiganbayan, have either raised or considered this aspect of the case.

Second, we note that different circumstances obtain between Tanchanco and Lacson, the latter being evidently not a party to any immunity agreement with the Philippine government. Thus, it is proper to treat their cases separately. We first rule on Tanchanco's claim of immunity.

*The Plain Meaning of the  
Cooperation Agreement*