

## SECOND DIVISION

[ G.R. No. 148602, August 12, 2004 ]

**FEDERICO B. DIAMANTE III, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, & THE HON. SANDIGANBAYAN (SECOND DIVISION), RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Federico B. Diamante III, of the Order of the Sandiganbayan<sup>[1]</sup> (Second Division) in Criminal Case No. 25980 denying his motion for a reinvestigation of the case, and the Resolution denying his motion for reconsideration of said order and the revival of his motion for reinvestigation.

### The Antecedents

On April 25, 2000, the petitioner was charged with violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in the Information filed with the Sandiganbayan, the accusatory portion thereof reads:

That on or about the 1<sup>st</sup> day of July, 1998, and for sometime subsequent thereto, at the Municipality of Palo, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being the Municipal Mayor of Palo, Leyte, in such capacity and committing the offense in relation to office, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously terminate from public service Ma. Corina Antonnette M. Ilagan, Budgeting Aide of the Municipal Budget Office, Palo, Leyte, without legal basis, and continually refuses to reinstate said Ms. Ilagan to her former position despite the decisions of the Civil Service Commission dated October 8, 1998 and April 14, 1999 contained under Resolution No. 982681 and 990811, thus accused, in the performance of his official functions had caused damage and injury to Ma. Corina Antonnette M. Ilagan and detriment to public service.

CONTRARY TO LAW.<sup>[2]</sup>

The petitioner posted a surety bond for his provisional liberty in the Regional Trial Court of Tacloban City, Branch 7, on May 2, 2000. He also issued Memorandum No. 0038 reinstating the private complainant, Ma. Corina Antonnette M. Ilagan, to her former position, thus:

You are hereby Ordered for Reinstatement to your former position in this Municipality with all your backwages from date of termination to date of

assumption including all benefits therein and privileges due to all employees, this Municipality as per Resolution No. 000443 of the Civil Service Commission dated February 14, 2000.<sup>[3]</sup>

On May 22, 2000, the petitioner filed with the Sandiganbayan a Motion for Reinvestigation, on the ground that since the private complainant was reinstated and all her monetary claims were paid, it could no longer be alleged that she suffered undue injury. Hence, undue injury being absent, and considered one of the essential elements of the crime, he can no longer be charged, prosecuted and convicted of violating Section 3(e) of Republic Act No. 3019. Besides, the petitioner asserts that he acted in good faith when he terminated the employment of the private complainant.

The petitioner set his motion for hearing ten days after the filing thereof on June 2, 2000 at 8:30 a.m. When the case was called for hearing, neither the petitioner nor his counsel appeared. The court denied the motion on the ground that it had not yet acquired jurisdiction over the person of the petitioner, as the surety bond he posted had not yet been transmitted to the court. The petitioner filed, on August 8, 2000, a "Motion to Revive Motion for Reinvestigation" which was set for hearing on August 11, 2000. The petitioner and his counsel again failed to appear when the case was called for hearing.

On November 14, 2000, the Sandiganbayan issued a Resolution stating that it considered the motion for reinvestigation meritorious, but nevertheless denied the same on the ground that the motion sought to be revived was filed out of time and was set for hearing beyond the ten-day period therefor. The petitioner filed a motion for a reconsideration thereon, which was denied by the Sandiganbayan in a Resolution dated June 26, 2001, on the ground that the allegations contained in the motion for reinvestigation are matters of defense which must be properly ventilated in a full-blown trial.

In the petition at bar, the petitioner avers that the Sandiganbayan acted on his motion in a manner not in accord with the law, because despite its declaration that such motion was meritorious, the court, nevertheless, denied the same. Moreover, he acted in good faith and caused no undue injury to the private complainant, considering that he had already reinstated her to her former position, without loss of seniority rights and with full backwages. Hence, there was no longer a need for a full-blown trial.

In its comment on the petition, the Office of the Special Prosecutor (OSP) concedes that the bare fact that the petitioner set his motion for reinvestigation one day beyond the period as provided for in Section 5, Rule 15 of the Rules of Court, did not affect the substantive rights of the People. It asserts, however, that a reinvestigation is inappropriate, considering that the issues alleged by the petitioner in his motion for reinvestigation and the evidence to be presented should be laid before the court and resolved after trial. It posits that "undue injury" under Section 3(e) of Rep. Act No. 3019 should be construed to be any wrongful act committed by the public officer, and not actual damage within the context and as defined under the New Civil Code. The concept of "injury" as enunciated by this Court in its ruling in *Pecho vs. Sandiganbayan*,<sup>[4]</sup> is applicable, and not the ruling of this Court in *Llorente vs. Sandiganbayan*.<sup>[5]</sup> It avers that the act of reinstating the private