

THIRD DIVISION

[G.R. Nos. 138859-60, February 22, 2001]

**ALVAREZ ARO YUSOP, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN (FIRST DIVISION), RESPONDENT.**

DECISION

PANGANIBAN, J.:

The right of a person to preliminary investigation is recognized by the law and is governed by the Rules of Court. However, the failure to accord this right does not *ipso facto* result in the dismissal of the information; the case is merely suspended, and the prosecutor directed to conduct the proper investigation.

The Case

Before us is a Petition for Certiorari under Rule 65 of the Rules of Court, assailing two Orders^[1] of the Sandiganbayan,^[2] both dated February 15, 1999. The first Order rejected the attempt of petitioner to stop his arraignment in Criminal Case Nos. 24524-25, on the ground that he had been denied the right to a preliminary investigation. In the assailed second Order, the Sandiganbayan directed that a plea of not guilty be entered for all the accused, including herein petitioner.

The Facts

Acting on an Affidavit-Complaint^[3] filed by a certain Erlinda Fadri, the Office of the Ombudsman-Mindanao issued an Order^[4] dated September 19, 1995, naming the following as respondents: Benjamin Arao, Frederick Winters, Pelaez Pantaran, Eduardo Dablo, Efren Sissay and the city jail warden of Pagadian City. The Order also required respondents, within ten days from receipt thereof to submit their counter-affidavits and other pieces of controverting evidence.

The Office of the Ombudsman for Mindanao issued a Resolution dated January 15, 1998,^[5] recommending the prosecution of "the aforementioned respondents" for violation of Article 269 of the Revised Penal Code and Section 3-a in relation to Section 3-e of Republic Act No. 3019 as amended. Significantly, the name of Petitioner Alvarez A. Yusop was included as one of the persons to be prosecuted, although he was not one of the original respondents mentioned in the Order of September 19, 1995. Ombudsman Aniano A. Desierto approved the recommendation.

Accordingly, two Informations were filed with the Sandiganbayan. They were docketed as Criminal Case Nos. 24524 (violation of Section 3-a of RA 3019) and 24525 (unlawful arrest under Article 269 of the Revised Penal Code).

On April 16, 1998, an Order of Arrest was issued by the Sandiganbayan in Criminal

Case No. 24524. Petitioner, however, posted a bail bond before the Regional Trial Court of Dipolog City on May 20 of the same year. On the same day, he filed a "Motion To Remand Case To The Ombudsman - Mindanao For Preliminary Investigation."

In a Resolution dated June 8, 1998, the Sandiganbayan denied the Motion of petitioner for his alleged failure to submit himself to the jurisdiction of the anti-graft court.

On August 8, 1998, petitioner filed a Motion to Dismiss, grounded again on the lack of preliminary investigation. In an Order dated September 22, 1998, the Sandiganbayan resolved not to take action on the Motion, because petitioner had not yet submitted himself to its jurisdiction insofar as Criminal Case No. 24525 was concerned.

On the scheduled arraignment on February 15, 1999, petitioner reiterated his claim that he had not been accorded preliminary investigation. In its two assailed Orders, the Sandiganbayan rejected his claim and proceeded with the arraignment.

Hence, this recourse.^[6]

Ruling of the Sandiganbayan

The Sandiganbayan rejected petitioner's plea for preliminary investigation in this wise:

"This morning, the accused herein appeared for arraignment duly represented by their counsel. Before proceeding, Atty. Omar A. Rivera appearing in behalf of accused Yusop informed this court of his reservations about proceeding with the arraignment this morning, primarily on the ground that accused Yusop did not undergo preliminary investigation, with the additional claim that he had not been furnished any notice nor was he informed of the proceedings before the Ombudsman with respect to these cases. It would appear that one of the reasons [therefor] is that the accused despite notice of the existence of the accusation against him in Criminal Case No. 24525, had not given any timely notice nor any statement of any alleged inadequacy of the proceeding regarding the filing of the Information herein; thus, the Court is not persuaded that the claim of the accused Yusop with regard to the inadequacy of the proceedings as against him could still be validly entertained at this time. This is more particularly significant under Section 27 of Republic Act 6770 and x x x Criminal Cases 24524 and 24525 refer to the same incident although the prosecution, for its part, has filed Informations under different statutes covering the same incident. Thus, the claim of accused Yusop that he was not notified with respect to one of the cases on an identical set of facts herein is not [of] particular significance since this would be indulging in a superfluity.

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"Thus, in view of all the following, the Court will now proceed to the arraignment of the accused herein."

The Issue

Although the parties did not specify the issue in this case, it is clear from their submissions that they are asking this Court to resolve this question: Whether the Sandiganbayan, despite being informed of the lack of preliminary investigation with respect to petitioner, in Criminal Case No. 24524, committed grave abuse of discretion in proceeding with his arraignment.

The Court's Ruling

The Petition is meritorious in part. While petitioner is entitled to preliminary investigation, the case against him should not be dismissed.

Main Issue: **Preliminary Investigation**

Preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."^[7] The Court explained that the rationale of a preliminary investigation is to "protect the accused from the inconvenience, expense and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer."^[8]

The Rules of Court requires such investigation before an information for an offense punishable by at least four years, two months and one day may be filed in court.^[9] The old Rules, on the other hand, mandates preliminary investigation of an offense cognizable by the regional trial court.^[10]

Petitioner is charged in Criminal Case No. 24524 with violation of Section 3-a of RA 3019. Such offense is punishable with, among other penalties, imprisonment of six years and one month to fifteen years.^[11] Under the aforesaid Rules, whether in the old or the revised version, he is entitled to a preliminary investigation.

It is undisputed, however, that before the Information against petitioner was filed, no preliminary investigation had been conducted. In fact, the Office of the Ombudsman admitted that "petitioner was denied of his right to preliminary investigation."^[12]

We find no basis for the Sandiganbayan's ruling that petitioner "had not given timely notice nor any statement of the alleged inadequacy of the proceeding regarding the filing of the Information."

First, there was no showing that petitioner was notified of the charges filed by Erlinda Fadri. As earlier noted, he had not been named as a respondent in the September 19, 1995 Order of the Office of the Ombudsman in Mindanao. His name did not even appear in the caption of its January 15, 1998 Resolution,^[13] which recommended the filing of charges against the accused. Indeed, in his Compliance with the August 26, 1998 Sandiganbayan Resolution,^[14] Special Prosecution Officer Diosdado V. Calonge manifested that petitioner "was not notified of the proceedings