

## FIRST DIVISION

[ G.R. No. 130576, May 18, 1999 ]

**CONRADO G. AVILA, SR., PETITIONER, VS. SANDIGANBAYAN,  
FIRST DIVISION, AND THE HONORABLE OMBUDSMAN,  
RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

The case before the Court is a special civil action for *certiorari* with preliminary injunction or temporary restraining order seeking to set aside the resolution of the Sandiganbayan, First Division,<sup>[1]</sup> which denied petitioner's motion for an order directing reinvestigation of the charge against him.

The motion for reinvestigation was based on the ground that the accusation in the information was for violation of Section 3 (e), R.A. 3019, but the charge in the complaint subject of preliminary investigation in the office of the Ombudsman was for direct assault and that there was no evidence to support the finding of probable cause to hold the accused for trial.

We grant the petition.

The facts may be related as follows:

Petitioner Conrado G. Avila, Sr. was, at the time alleged in the information, the municipal mayor of the municipality of San Isidro, Northern Samar.

On July 23, 1997, Graft Investigation Officer I Raul V. Cristoria filed with the Sandiganbayan, Manila, assigned to the First Division, an Information charging petitioner Conrado G. Avila, Sr. with violation of R.A. 3019, Section 3 (e), as amended, committed as follows:

"That on or about the 15<sup>th</sup> day of February, 1996, at about 12:00 o'clock noon, in Barangay San Juan, Municipality of San Isidro, Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of San Isidro, Northern Samar, in such capacity and committing the offense in relation to Office, with deliberate intent, with manifest partiality and with evident bad faith, with intimidation, did then and there wilfully, unlawfully and feloniously, intervene, prevent, prohibit or stop, the Forest Rangers of the Department of Environment and Natural Resources (DENR) Regional Office No. VIII from confiscating and seizing one hundred sixty (160) pieces of illegally cut lumber thus, accused in the performance or discharge of his official functions had given unwarranted benefits to himself, to the damage and prejudice of the government.

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

On August 15, 1997, petitioner filed with the Sandiganbayan, Manila, a motion for reinvestigation on the ground that (a) the accusation in the information in this case is for violation of Section 3 (e), R. A. 3019, but this is not the nature of the case subject of preliminary investigation since the crime charged in the letter complaint is for direct assault, and (b) lack of evidence to support the finding of probable cause to hold the accused for trial.

On September 8, 1997, respondent Sandiganbayan by minute resolution denied petitioner's motion for lack of merit "it appearing that issues raised . . . are either matters of law already resolved by the Supreme Court (e.g. Enrile vs. Salazar, 186 SCRA 217) or otherwise not a matter of evidence not available to the accused at preliminary investigation."<sup>[3]</sup>

Hence, this petition.

On October 15, 1997, the Court required respondents to comment on the petition (not to file a motion to dismiss) within ten (10) days from notice. On December 1, 1997, respondents filed their comment.

On January 28, 1998, we resolved to (a) give due course to the petition; and (b) require both parties to submit their respective memoranda within thirty (30) days from notice.

In due time, the parties filed their memoranda.

The issues raised are (a) whether the Ombudsman acted with grave abuse of discretion in filing an information against petitioner for violation of Section 3 (e), R. A. 3019, despite the absence of the requisite *prima facie* evidence, and (b) whether the Sandiganbayan acted with grave abuse of discretion in denying his motion for reconsideration.<sup>[4]</sup>

We find no merit in petitioner's contention that he was deprived of due process because the accusation in the information was for violation of Section 3 (e), R. A. 3019, but the crime charged in the letter complaint subject of the preliminary investigation was for direct assault.<sup>[5]</sup>

In Enrile vs. Salazar, we ruled that there is "nothing inherently irregular or contrary to law in filing against a respondent an indictment for an offense different from what was charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation."<sup>[6]</sup>

We are, however, not convinced that there was sufficient reason or that a *prima facie* evidence existed for the prosecution of petitioner for violation of Sec. 3 (e) of R. A. 3019. This Court has held in Pecho vs. Sandiganbayan<sup>[7]</sup> that "Causing undue injury to any party, including the government, could only mean **actual injury or damage** which must be **established by evidence**."

In the case at bar, the confiscated lumber was officially deposited under the care of