

## EN BANC

[ G.R. Nos. 120681-83, October 01, 1999 ]

**JEJOMAR C. BINAY, PETITIONER, VS. HON. SANDIGANBAYAN  
(THIRD DIVISION) AND THE DEPARTMENT OF INTERIOR AND  
LOCAL GOVERNMENT, RESPONDENTS.**

**[G.R. NO. 128136. OCTOBER 1, 1999]**

**MARIO C. MAGSAYSAY, FRANCISCO B. CASTILLO, CRISTINA D.  
MABIOG, REGINO E. MALAPIT, ERLINDA I. MASANGCAY AND  
VICENTE DE LA ROSA, PETITIONERS, VS. HON.  
SANDIGANBAYAN, HON. OMBUDSMAN AND ITS PROSECUTOR  
WENDELL BARERRAS-SULIT AND STATE PROSECUTORS ERIC  
HENRY JOSEPH F. MALLONGA AND GIDEON C. MENDOZA,  
RESPONDENTS.**

### D E C I S I O N

#### **KAPUNAN, J.:**

Pursuant to Section 4, Article XIII of the 1973 Constitution, Presidential Decree No. 1486 created an Anti-Graft Court known as the Sandiganbayan. Since then the jurisdiction of the Sandiganbayan has undergone various changes,<sup>[1]</sup> the most recent of which were effected through Republic Act Nos. 7975<sup>[2]</sup> and 8249.<sup>[3]</sup> Whether the Sandiganbayan, under these laws, exercises exclusive original jurisdiction over criminal cases involving municipal mayors accused of violations of Republic Act No. 3019<sup>[4]</sup> and Article 220 of the Revised Penal Code<sup>[5]</sup> is the central issue in these consolidated petitions.

In G.R. Nos. 120681-83, petitioner Jejomar Binay seeks to annul, among others, the Resolution of the Sandiganbayan denying his motion to refer Criminal Case Nos. 21001, 21005 and 21007 to the Regional Trial Court (RTC) of Makati and declaring that the Sandiganbayan has jurisdiction over said cases despite the enactment of R.A. No. 7975.

In G.R. No. 128136, petitioner Mario C. Magsaysay, *et al.* assails the October 22, 1996 Resolution of the Sandiganbayan, reversing its Order of June 21, 1996 which suspended the proceedings in Criminal Case No. 23278 in deference to whatever ruling this Court will lay down in the Binay cases.

The facts, as gathered from the records, are as follows:

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On September 7, 1994, the Office of the Ombudsman filed before the Sandiganbayan three separate informations against petitioner Jejomar Binay, one for violation of Article 220 of the Revised Penal Code,<sup>[6]</sup> and two for violation of

Section 3(e) of R.A. No. 3019.<sup>[7]</sup> The informations, which were subsequently amended on September 15, 1994, all alleged that the acts constituting these crimes were committed in 1987 during petitioner's incumbency as Mayor of Makati, then a municipality of Metro Manila.

Thereafter, petitioner moved to quash the informations. He contended that the six-year delay from the time the charges were filed in the Office of the Ombudsman on July 27, 1988 to the time the informations were filed in the Sandiganbayan on September 7, 1994 constituted a violation of his right to due process. Arraignment of the accused was held in abeyance pending the resolution of this motion.

On March 29, 1995, the Sandiganbayan issued a Resolution denying petitioner's motion to quash. Petitioner's motion for reconsideration, which was opposed by the prosecution, was likewise denied by the Sandiganbayan. The resolution denying the motion for reconsideration, however, was issued before the petitioner could file a reply to the prosecution's opposition to the motion for reconsideration.

In the meantime, on March 31, 1995, the prosecution filed a "Motion to Suspend Accused *Pendente Lite*." The Sandiganbayan, in a Resolution dated April 25, 1995, granted the motion and ordered the suspension of petitioner for ninety days from receipt of the resolution. The court ruled that the requisites for suspension *pendente lite* were present as petitioner was charged with one of the offenses under Section 13 of R.A. No. 3019<sup>[8]</sup> and the informations containing these charges had previously been held valid in the resolution denying the motion to quash and the resolution denying the motion for reconsideration.

Petitioner thus filed before this Court a petition for *certiorari*,<sup>[9]</sup> to set aside the resolution denying his motion for reconsideration, claiming that he was denied due process when the Sandiganbayan ordered his suspension *pendente lite* before he could file a reply to the prosecution's opposition to his motion for reconsideration of the resolution denying the motion to quash. In a Resolution dated April 28, 1995, the Court directed the Sandiganbayan to, among other things, permit petitioner to file said reply.

After allowing and considering petitioner's reply, the Sandiganbayan, on June 6, 1995, issued a Resolution reiterating the denial of his motion for reconsideration of the denial of the motion to quash. On the same day, the Sandiganbayan issued another resolution reiterating the order suspending petitioner *pendente lite*.

Meanwhile, R.A. No. 7975, redefining the jurisdiction of the Sandiganbayan, took effect on May 16, 1995.<sup>[10]</sup>

On June 13, 1995, petitioner filed before the Sandiganbayan a motion to refer his cases to the "proper court" for further proceedings, alleging that when the two Resolutions, both dated June 6, 1995, were issued by the Anti-Graft Court, it had already lost jurisdiction over the subject cases. The Sandiganbayan, in a Resolution dated July 4, 1995, denied petitioner's motion, holding thus:

There is no question that Municipal Mayors are classified as Grade "27" under the compensation & Position Classification Act of 1989. Since, at the time of the commission of the offenses charged in the above-entitled cases, the accused Mayor Jejomar C. Binay was a Municipal Mayor, although in an acting or interim capacity, the Sandiganbayan, has, under

Section 4 (e) 5, original jurisdiction over the cases therein filed against him. The allegation that Mayor Binay ought to have been classified with a salary grade lower than Grade "27", because at the time of the commission of the offenses charged he was paid a salary which merits a grade lower than Grade "27" does not hold water. In 1986 when the herein offenses were committed by the accused, the Compensation & Position Classification Act of 1989 was not as yet in existence. From the very definition of the very Act itself, it is evident that the Act was passed and had been effective only in 1989. The Grade classification of a public officer, whether at the time of the commission of the offense or thereafter, is determined by his classification under the Compensation & Position Classification Act of 1989. Thus since the accused Mayor Jejomar C. Binay was a Municipal Mayor at the time of the commission of the offenses and the Compensation & Position Classification Act of 1989 classifies Municipal Mayors as Grade "27", it is a conclusion beyond cavil that the Sandiganbayan has jurisdiction over the accused herein.

As of July 1, 1989, when Republic Act No. 6758 took effect, Municipal Mayor Jejomar C. Binay had begun receiving a monthly salary of P15,180.00 which is equivalent to Grade "28" under the salary scale provided for in Section 27 of the said Act. Under the Index of Occupational Services, the position titles and salary grades of the Compensation & Position classification system prepared by the Department of Budget and Management pursuant to Section 6 of Republic [A]ct No. 6758, the position of Municipal Mayor had been classified as Grade "27."<sup>[11]</sup>

On July 7, 1995, petitioner filed the present petition for *certiorari*, prohibition and mandamus questioning the jurisdiction of the Sandiganbayan over Criminal Case Nos. 21001, 21005 and 21007. He prayed, among others, that the Court annul and set aside: (1) the Resolution of the Sandiganbayan dated June 6, 1995 reiterating the denial of the motion for reconsideration of the motion to quash; (2) the Resolution of the same court also dated June 6, 1995 reiterating the order suspending petitioner *pendente lite*; and (3) the Resolution of the Sandiganbayan dated July 4, 1995 denying the motion to refer case to the RTC. Petitioner also asked that the Court issue a temporary restraining order preventing the suspension and arraignment of petitioner. The Court on July 7, 1995, resolved, among others, to issue the temporary restraining order prayed for.

On July 14, 1995, petitioner filed an "Addendum to Petition (To allow the introduction of alternative reliefs)," praying that, should this Court hold that the Sandiganbayan has jurisdiction over the cases, the criminal cases filed against him be dismissed just the same on the ground that the long delay of the preliminary investigation before the Ombudsman prior to the filing of the informations, deprived him of his right to due process; and that, moreover, there was no probable cause to warrant the filing of the informations.

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Petitioner Mario Magsaysay is the Mayor of the Municipality of San Pascual, Batangas. Save for petitioner Vicente dela Rosa, all of Mayor Magsaysay's co-petitioners are officials of the same municipality.

In a complaint dated April 16, 1994, Victor Cusi, then Vice-Mayor of San Pascual, Batangas, charged petitioners along with Elpidia Amada, Jovey C. Babago, and Brigido H. Buhain, also officials of San Pascual Batangas, with violation of R.A. No. 3019, as amended. The complaint charged the respondent municipal officials of overpaying Vicente de la Rosa of TDR Construction for the landscaping project of the San Pascual Central School. This was docketed in the Office of the Ombudsman as OMB-1-94-1232.

In a Resolution dated June 14, 1995, Graft Investigation Officer Lourdes A. Alarilla recommended the filing of an information for violation of Section 3(e) and (g) of R.A. No. 3019, as amended, against petitioners with the Sandiganbayan. Director Elvis John S. Asuncion concurred in the resolution, and Manuel C. Domingo, Deputy Ombudsman for Luzon, recommended approval of the same. The resolution was approved by then Acting Ombudsman Francisco A. Villa with the following marginal note:

Authority is given to the deputy Ombudsman for Luzon to cause the preparation of the information and to approve the same for filing with the proper court.<sup>[12]</sup>

On August 11, 1995, an Information for violation of Section 3 (e) and (g) was filed against petitioners and Jovey C. Babago, not with the Sandiganbayan per the June 14, 1995 Resolution, but with the RTC of Batangas City. The information was signed by a Lourdes A. Alarilla, the same Graft Investigation Officer who recommended the filing of the information with the Sandiganbayan.

In the meantime, a group denominated as the Concerned Citizens of San Pascual, Batangas filed a complaint before the Ombudsman against petitioners, and Elpidia Amada and Brigido Buhain, with violations of R.A. No. 3019. The complaint also alleged, among others, the overpricing of the landscaping project of San Pascual Central School. The case was docketed as OMB-0-94-0149.

In a Resolution dated July 27, 1995, Graft Investigation Officer Ernesto M. Nocos recommended the filing of an information charging petitioners with violation of Section 3(e) and (g) of R.A. No. 3019, as amended "with proper court." The resolution, which was recommended for approval by Nicanor J. Cruz, OIC-Deputy Ombudsman for Luzon, and approved by Ombudsman Aniano A. Desierto, adopted the findings and conclusions in the resolution in OMB-1-94-1232 that the landscaping project was overpriced.

On February 9, 1996, another Information for violation of Section 3(e) of R.A. No. 3019, as amended, was filed against petitioners for the overpricing of the landscaping project, this time before the Sandiganbayan. The information was subsequently amended on May 17, 1996. Except for the date the alleged crime was committed, the information charged essentially the same inculpatory facts as the information filed in the RTC. The case was docketed in the Sandiganbayan as Crim. Case No. 22378.

On June 1, 1996, the accused filed with the Sandiganbayan a motion to quash the information in Crim. Case No. 22378 on the following grounds: that the Sandiganbayan had no jurisdiction over the case; that the accused were charged with the same offense in two informations; and that the proceedings in the Sandiganbayan would expose petitioners to double jeopardy. The Sandiganbayan denied the accused's motion to quash in a Resolution dated June 21, 1996. The

court, however, suspended proceedings in the case until the Supreme Court resolved the question of the Sandiganbayan's jurisdiction involved in the Binay petition.

Meanwhile, on June 7, 1996, Prosecutor Eric Mallonga filed a motion before the RTC to refer the R.A. No. 3019 case pending therein to the Sandiganbayan, arguing that under R.A. No. 7975 the Sandiganbayan, not the RTC, had jurisdiction over the case. On July 3, 1996, the RTC issued an order holding in abeyance the resolution of the motion to refer the case since the issue of jurisdiction was pending before the Sandiganbayan.

Back at the Sandiganbayan, the prosecution, on July 24, 1996, filed a motion for reconsideration of the Sandiganbayan's Order dated June 21, 1996. On August 2, 1996, filed their own motion for the reconsideration of the same order. On October 22, 1996, the Sandiganbayan granted the motion for reconsideration filed by the prosecution and set the case for arraignment. Petitioners moved for a reconsideration of the October 22, 1996 Resolution ordering their arraignment, which motion was denied on February 17, 1997.

On February 27, 1997, the accused filed the present petition.

On October 1, 1997, the Court resolved to issue a temporary restraining order to prevent respondents from further proceeding with Crim. Case No. 23278 of the Sandiganbayan.

The petition raises the following issues:

## **I**

Had the Sandiganbayan been ousted of its jurisdiction over the case of municipal mayor after the passage of Republic Act No. 7975, coupled with the filing earlier of an information for the same offense before the Regional Trial Court having territorial jurisdiction and venue of the commission of the offense?

## **II**

Are the respondents Ombudsman and the prosecutors estopped by laches or waiver from filing and prosecuting the case before respondent Sandiganbayan after the filing earlier of the information in the proper court, thereafter repudiating it, seeking another court of the same category and finally to respondent court?

## **III**

Whether or not the filing of two (2) informations for the same offense violated the rule on duplicity of information?

## **IV**

Whether or not the trial to be conducted by respondent court, if the case shall not be dismissed, will expose the petitioners who are accused therein to double jeopardy?

## **V**

Under the circumstances, are the respondent Ombudsman and the prosecutors guilty of forum shopping?<sup>[13]</sup>