SECOND DIVISION

[G.R. Nos. 236308-09, February 17, 2020]

EFREN M. CANLAS, PETITIONER VS. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN (THIRD DIVISION), RESPONDENTS.

R E S O L U T I O N

INTING, J.:

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the Resolutions dated September 25, 2017[2] and November 20, 2017[3] of the Sandiganbayan Third Division (Sandiganbayan). The Resolutions denied the two Motions to Quash Information,[4] and the Motion for Reconsideration[5] filed by Efren M. Canlas (petitioner), respectively.

The Antecedents

Two Informations were filed against petitioner, along with public officers named therein, before the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0080 and SB-16-CRM-0084.[6] The Informations charged him and his co-accused, former Mayor Jejomar Erwin S. Binay, Jr., among others, with violations of Section 3(e)[7] of Republic Act No. (RA) 3019 in relation to the construction of the Makati City Hall Parking Building.[8]

The Information[9] in Criminal Case No. SB-16-CRM-0080 alleged that the accused former Makati City Mayor Jejomar Erwin S. Binay, Jr. and the other accused public officers of Makati City mentioned therein, in the performance of their official and/or administrative functions, conspired with petitioner, a private individual and the representative of Hilmarc's Construction Corporation (Hilmarc's), in giving unwarranted benefits, advantage, and preference to Hilmarc's, and causing undue injury to the Government by awarding Hilmarc's the contract for the Phase IV construction of the Makati City Hall Parking Building amounting to P649,275,681.73, through simulated public bidding.[10] The relevant portions of the Information as to petitioner's participation in the offense are quoted as follows:

SB-16-CRM-0080

xxxx

c) De Veyra, San Gabriel, Dasal, Amores, and Binay, Jr., collectively making it appear in the BAC Resolution that Hilmarc's, through *Canlas*, became the bidder with the Lowest Calculated and Responsive Bid, which BAC Resolution was

approved by Binay, Jr. despite knowing the absence of public bidding;

  d) Entering, through Binay, Jr., in to a Contract for the Phase IV construction of the Makati City Hall Parking Building with *Canlas*, on behalf of Hilmarc's, and proceeding with the said project despite the absence of the project's accepted and approved plans and specifications, and the failure of Hilmarc's to post its performance security; and

  e) Processing and releasing of the payments to Hilmarc's by De Veyra. Amores, Lim, Barlis, which payments were approved by Binay, Jr. and received by *Canlas* despite the baseless Accomplishment Report prepared by Dela Peña and Consulta, and the deficiencies in the required supporting documents.[11] (Emphasis omitted; italics supplied.)

The Information[12] in Criminal Case No. SB-16-CRM-0084 is similarly worded as to petitioner's participation, except that SB-16-CRM-0084 involved the Phase V construction of the Makati City Hall Parking Building amounting to P141,649,366.00. [13]

Petitioner filed a Motion to Quash Information dated July 13, 2017 in Criminal Case No. SB-16-CRM-0080, and another Motion to Quash Information dated July 19, 2017 in Criminal Case No. SB-16-CRM-0084.[14] He argued that the facts alleged in the Informations which charged him with the offense of violation of Section 3(e) of RA 3019 did not constitute the charged offense for the following reasons: (1) RA 3019 explicitly applies only to public officers; however, the Informations alleged that he is a private individual; and (2) the Informations did not allege that he induced or caused any public officer to commit a violation of Section 3(e) of RA 3019 to render him liable under Section 4[15] thereof.[16]

The prosecution then filed on August 4, 2017 its *Consolidated Opposition to Accused Canlas' Separate Motions to Quash Information*[17] dated August 3, 2017. Thereafter, petitioner filed his Reply to "Consolidated Opposition to Accused Canlas' Separate Motions to Quash Information"[18] dated August 11, 2017.

In its Resolution[19] dated September 25, 2017, the Sandiganbayan denied the two motions to quash information.[20]

Petitioner filed a Motion for Reconsideration of the Resolution dated September 25, 2017, but this was denied by he Sandiganbayan in its Resolution[21] dated November 20, 2017.[22]

Hence, the petition.

Petitioner adopts his arguments in the two motions to quash information and argues that as a private individual, he can only be held liable under Section 4(b) of RA 3019.[23] Moreover, Section 3 of RA 3019 applies only to public officers.[24] Since the Informations did not allege that he committed the acts provided under Section 4, the Informations should be quashed under Section 3(a), Rule 117 of the Rules of

Court.[25]

Petitioner maintains that while the prosecution alleged that the accused public officers acted in conspiracy with him, conspiracy does not make him a public officer. [26]

Petitioner further argues that there is not a single case in which a private person was held liable for violation of Section 3(e) of RA 3019 under Section 4(b) of the law.[27] Thus, he prays for a reversal, or at least a clarification, of the ruling in several cases decided by the Court to the effect that private individuals may be held liable under Section 3 of RA 3019 if they act in conspiracy with public officers. Pursuant to Sections 3(h) and 3(m), Rule 2 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC), the petition falls within the responsibility of the Court *En Banc*.[28]

Lastly, he prays for the issuance of a temporary restraining order (TRO) to restrain the Sandiganbayan from holding further proceedings in the two cases,[29] and the setting aside of the Resolutions dated September 25, 2017 and November 20, 2017 of the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0080 and SB-16-CRM-0084.[30]

On the other hand, in its Comment,[31] the People argues that a private individual, when acting in conspiracy with public officers, may be indicted and held liable for the pertinent offenses under Section 3 of RA 3019.[32] Moreover, by the very nature of the transaction involved in this case, which is a government procurement and by petitioner's indispensable acts towards the consummation of the offense, he should be indicted together with the accused public officials for violation of Section 3(e) of RA 3019.[33] Lastly, the People argues that the issuance of a TRO to hold in abeyance a criminal prosecution is proscribed.[34]

The petition has no merit.

The Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's motions to quash the information. Moreover, the Court does not find the need to revisit the doctrine that private individuals may be held liable under Section 3(e) of RA 3019 if they act in conspiracy with public officers.

The well-settled rule is that "private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses *under Section 3 of RA 3019*, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto."[35]

In *PCGG v. Office of the Ombudsman*,[36] the Court reiterated the well-settled elements of Section 3(e) of RA 3019 as follows: (i) that the accused must be a public officer discharging administrative, judicial, or official functions, *or a private individual acting in conspiracy with such public officers*; (ii) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (iii) that his action caused any undue injury to any patty, including the government, or giving