

SECOND DIVISION

[G.R. Nos. 234886-911 & 235410, June 17, 2020]

**EDILBERTO M. PANCHO, PETITIONER, VS. SANDIGANBAYAN
(6TH DIVISION) AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

INTING, J.:

This resolves the Petition for *Certiorari*^[1] filed by Edilberto M. Pancho (petitioner) pursuant to Rule 65 of the Rules of Court assailing the Resolutions dated August 4, 2017^[2] and October 4, 2017^[3] of the Sandiganbayan Sixth Division (SB) in SB-17-CRM-0130-142 for violation of Section 3(e) of Republic Act No. (RA) 3019^[4] and SB-17-CRM-0143-0155 for violation of Section 52(g), in relation to Section 6(b), of RA 8291.^[5] The Resolution dated August 4, 2017 denied petitioner's Motion to Quash/Dismiss the Informations^[6] dated May 17, 2017, while the Resolution dated October 4, 2017 denied petitioner's subsequent Motion for Reconsideration.^[7]

The antecedents, as gathered by the SB, are as follows:

On October 21, 2013, the Field Investigation Office (FIO) of the Office of the Ombudsman through Graft Investigation and Prosecution Officer (GIPO) I Marie Beth S. Almero (Almero) filed a Complaint-Affidavit dated January 16, 2013 with the Office of the Ombudsman. Said complaint-affidavit charged former Nueva Ecija Governor Tomas Joson III (Joson) and [petitioner] Edilberto M. Pancho, former Provincial Treasurer, with violations of Section 3 (e) of R.A. No. 3019, Article 220 of the Revised Penal Code (R.P.C.), R.A. No. 8291, R.A. No. 7875, R.A. No. 9679, R.A. No. 8424, and gross neglect of duty for failure to remit the Government Service Insurance System (GSIS) premiums and other trust liabilities of the Provincial Government of Nueva Ecija from 1997 to June 2007.

On October 31, 2013, the complaint-affidavit was referred to the Office of the Deputy Ombudsman for Luzon. The records of the complaint-affidavit were received by the Office of the Deputy Ombudsman for Luzon on November 7, 2013.

On January 7, 2014, the Office of the Deputy Ombudsman for Luzon through GIPO II Paul Elmer M. Clemente (Clemente) directed [petitioner] and Joson to submit their respective counter-affidavits.

On January 28, 2014, [petitioner] submitted his Counter-Affidavit dated January 20, 2014. [Petitioner] subsequently sought the correction of a

clerical error in his counter-affidavit on February 11, 2014.

On February 25, 2014, Joson sought an extension of time to submit his counter-affidavit. Joson submitted his counter-affidavit on March 20, 2014.

On March 18, 2015, the Deputy Ombudsman for Luzon approved the request for an extension of time to resolve the complaint. The records, however, do not show who filed the said request and the reason for such approval.

On July 1, 2015, the Special Panel of Investigators through GIPO I Maxlen C. Balanon (Balanon) and GIPO I Elbert L. Bunagan (Bunagan) submitted their draft resolution finding probable cause against [petitioner] for violation of Section 52 (g), in relation to Section 6 (b), of R.A. No. 8291 and violation of Section 3 (e) of R.A. No. 3019. Said draft resolution, however, dismissed the rest of the charges against [petitioner] and all the charges against Joson. On July 6, 2015, Director Joaquin F. Salazar (Salazar) of Evaluation and Investigation Office-Bureau A reviewed the said draft resolution.

On September 15, 2016,^[8] Ombudsman Conchita Carpio-Morales (Carpio-Morales) approved the Resolution dated July 1, 2015.

[Petitioner] did not seek a reconsideration of the resolution of the Ombudsman. Thus, on January 31, 2017, the [Office of the Special Prosecutor] filed the informations for thirteen (13) counts of Violation of Section 52 (g), in relation to Section 6 (b), of R.A. No. 8291, and another thirteen (13) counts of Violation of Section 3 (e) of R.A. No. 3019 against [petitioner] with [SB].^[9]

On May 17, 2017, petitioner filed with the SB a Motion to Quash/Dismiss Informations^[10] contending that the Office of the Ombudsman (OMB) is without authority or has lost jurisdiction to file the cases due to inordinate delay in the conduct of the preliminary investigation. Petitioner averred that despite the approval by Ombudsman Conchita Carpio-Morales (Ombudsman Carpio-Morales) of the Resolution dated July 1, 2015 on September 15, 2015, it still took *one (1) year and three (3) months* to cause the filing of the informations before the SB. Therefore, the OMB spent three (3) years and two (2) months, more or less, to conduct the preliminary investigation and the filing of the informations before the SB.^[11]

In its Comment/Opposition (In re: [Petitioner's] Motion to Quash/Dismiss Informations dated 17 May 2017),^[12] the People, through the Office of the Special Prosecutor (OSP), argued that there was no inordinate delay in the conduct of the preliminary investigation. It contended that the sheer volume of the documents to be thoroughly reviewed and considered by the OMB as well as the complexity of the nature of the cases filed demanded considerable time in order to resolve all the issues involved therein, including the determination of the respective criminal and/or administrative liabilities of petitioner and former Nueva Ecija Governor Tomas N. Joson III (Joson).^[13] Hence, it maintained that there was no violation of petitioner's right to speedy disposition of the cases filed against him.^[14]

On August 4, 2017, the SB issued the first assailed Resolution^[15] denying petitioner's Motion to Quash/Dismiss the Informations dated May 17, 2017. It ruled that under the circumstances of the case, the total period of *three (3) years and twenty-eight (28) days* devoted to the conduct of the preliminary investigation and the filing of the informations is justified, acceptable, and not capricious, oppressive and vexatious.^[16] Thus, it directed the continuation of petitioner's arraignment as scheduled.^[17]

Petitioner filed a Motion for Reconsideration^[18] of the Resolution dated August 4, 2017, alleging that the date of approval by Ombudsman Carpio-Morales of the draft resolution of the cases was erroneously indicated as "September 15, 2016" instead of "September 15, 2015" in the timeline of events.^[19] Petitioner argued that the period of *one (1) year and three (3) months*, more or less, from the approval of the draft Resolution by Ombudsman Carpio-Morales on September 15, 2015 to the filing of the Informations with the SB on January 31, 2017 constituted inordinate delay that would justify the dismissal of the cases against him.^[20]

In its Comment/Opposition (In re: [Petitioner's] Motion for Reconsideration dated 16 August 2017),^[21] the People, through the OSP, asserted that the assailed Resolution must be appreciated in its entirety and not on a piecemeal basis.^[22] It emphasized that apart from the approval of the draft resolution, the drafting of the informations to be filed before the SB also has to pass the scrutiny of the different offices within the OMB; otherwise, the informations would not be able to stand the rigors of trial or would fail to charge the correct offenses.^[23]

Subsequently, petitioner filed a Supplemental Motion for Reconsideration.^[24] He prayed that the Informations charging him with violation of Section 3(e) of RA 3019 and Section 52(g) of RA 8291 be dismissed on the following grounds: (1) inordinate delay; and (2) the allegations in the Informations do not constitute an offense.^[25]

On October 4, 2017, the SB issued the second assailed Resolution^[26] denying petitioner's Motion for Reconsideration and affirming the first assailed Resolution dated August 4, 2017. It held that its inadvertent mistake of indicating the date of approval by Ombudsman Carpio-Morales of the draft resolution as "September 15, 2016" instead of "September 15, 2015" does not materially affect its discussion in the assailed Resolution; and it does not change the fact that the total period spent by the OMB to finish its preliminary investigation and for the OSP to file the corresponding informations is still *three (3) years and twenty-eight (28) days*. Thus, the SB upheld its previous finding that this period is not unreasonable, arbitrary, and oppressive because of the volume of the records, the nature of the cases, and the peculiar incidents involved.^[27]

As to the contention that the facts alleged in the informations do not constitute the offenses charged against petitioner, the SB ruled that petitioner's belated attempt to insert this ground in his Motion for Reconsideration constitutes a blatant disregard of procedures. It held that petitioner should have raised this ground in his Motion to Quash/Dismiss Informations.^[28]

Hence, this petition relying upon the following grounds:

- A. THE UNJUSTIFIED FAILURE AND REFUSAL OF RESPONDENT [SB] TO CONSIDER THE THREE (3) YEARS AND TWO MONTHS (2) IT TOOK THE [OMB] TO TERMINATE THE PRELIMINARY INVESTIGATION AND FILE THE INFORMATIONS AS CONSTITUTING INORDINATE DELAY THAT IMPELS THE DISMISSAL OF THE INFORMATIONS CONSTITUTE GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR ABSENCE OF JURISDICTION ON THE PART OF THE [SB].
- B. THE FAILURE AND REFUSAL OF THE [SB] TO ACT AND TO DISMISS THE INFORMATIONS FILED BY THE [OMB] FOR THE REASON THAT THE ALLEGATIONS THEREIN DO NOT CONSTITUTE AN OFFENSE AMOUNTS TO GRAVE ABUSE OF DISCRETION EQUIVALENT TO ABSENCE OR WANT OF JURISDICTION.^[29]

The Court's Ruling

The petition lacks merit.

Under Section 16, Article III of the 1987 Philippine Constitution (Constitution), all persons are guaranteed the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.^[30] *Ergo*, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice,^[31] including the Ombudsman.

No less than the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed. Section 12, Article XI of the Constitution commands:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Section 13 of RA 6770, otherwise known as "The Ombudsman Act of 1989," magnifies the above constitutional mandate. It reads:

Section 13. *Mandate.* - The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Both the Constitution and RA 6770, however, are silent with respect to what constitutes a "prompt" action on a complaint. They do not provide for a definite period within which to measure promptness. Neither do they lay out specific criteria or factors in determining the existence of delay in the disposition of complaints.

In *Magante v. Sandiganbayan*^[32] (*Magante*), the Court underscored that the lack of statutory definition on what constitutes a prompt action on a complaint had opened the gates for judicial interpretation, which did not draw definite lines, but merely listed factors to consider in treating petitions invoking the right to speedy disposition of cases.^[33] These factors are: (1) length of the delay, (2) reasons for the delay, (3) assertion of right by the accused, and (4) prejudice to the respondent.^[34]

It was clarified in *Magante* that delay begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations.^[35] Consistent with *Magante*, the subsequent *En Banc* Decision in *Cagang v. Sandiganbayan*^[36] (*Cagang*) declared that the ruling in *People v. Sandiganbayan, et al.*^[37] that fact-finding investigations are included in the period for the determination of inordinate delay is abandoned. The reason for the abandonment is that the proceedings at this stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused.^[38]

In addition, *Cagang* pronounced:

The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.^[39]

Taking into account the foregoing factors, the Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the informations by the OMB. The Court is mindful of the duty of the OMB under the Constitution and RA 6770 to act promptly on complaints brought before it. Such duty, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.^[40] Further, inordinate delay is determined not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.^[41] Further, as enunciated in *Cagang*:

x x x Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons