

## SECOND DIVISION

[ G.R. No. 240621, July 24, 2019 ]

### PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (SEVENTH DIVISION) AND JAIME KISON RECIO, RESPONDENTS.

#### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for *certiorari*<sup>[1]</sup> are the Resolutions dated April 27, 2018<sup>[2]</sup> and May 22, 2018<sup>[3]</sup> of the Sandiganbayan (SB) in SB-17-CRM-0063 which denied the Motion for Leave of Court to File Amended Information<sup>[4]</sup> and the subsequent Motion for Reconsideration<sup>[5]</sup> filed by petitioner People of the Philippines, through the Office of the Ombudsman (Ombudsman), on the ground that the amendment sought is substantial.

#### The Facts

The instant case stemmed from an Information<sup>[6]</sup> filed before the SB charging respondent Jaime Kison Recio (Recio) with violation of Section 3 (e) of Republic Act No. (RA) 3019,<sup>[7]</sup> entitled the "Anti-Graft and Corrupt Practices Act." Verily, the Information accuses Recio, then Executive Director III of the National Parks and Development Committee (NPDC), of entering into numerous security service contracts with Variance Protective and Security Agency (Variance) from 2002 to 2010 absent the required public bidding, thereby giving the latter unwarranted benefits. The accusatory portion thereof reads:

That on 30 January 2004 to 8 October 2004, or thereabout, in the City of Manila, and within this Honorable Court's jurisdiction, public officer JAIME K. RECIO, Executive Director III, National Parks Development Committee, City of Manila, while in the performance of his official functions, acting with evident bad faith, manifest partiality, or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally give unwarranted benefits, preference, or advantage to Variance Protective and Security Agency (Variance), a private corporation, when he signed Disbursement Vouchers facilitating the release of payment to Variance for security services purportedly rendered from 1 January 2004 to 15 September 2004, amounting to **P7,843,54.33**, knowing fully well that Variance was not legally entitled thereto considering that the public bidding and other procurement activities required under Republic Act No. 9184 and its implementing rules and regulations were not conducted prior to the procurement of Variance's security service for said period, to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>[8]</sup>

During trial and before the prosecution presented its last witness on April 4, 2018, it filed a Motion for Leave of Court to File Amended Information<sup>[9]</sup> dated March 27, 2018 seeking to amend the amount stated in the Information from **P7,843,54.33** to **P7,842,941.60**, which is the amount reflected in the disbursement vouchers.<sup>[10]</sup> In opposition thereto, Recio argued that the amendment is not merely formal but substantial, which would be prejudicial to his right to be informed of the charges against him.<sup>[11]</sup>

### **The SB Ruling**

In a Resolution<sup>[12]</sup> dated April 27, 2018, the SB denied the prosecution's motion for lack of merit.<sup>[13]</sup> It ruled that the mistake in the amount of the *alleged undue injury* stated in the Information is too substantial to have been left uncorrected for more than a year, during which time evidence to prove the allegations in the Information had already been presented. Moreover, it held that the alleged difference could not be ruled out as a mere typographical error, especially considering that the amount involved was only alleged numerically and had not been spelled out in words where the difference would have been readily apparent.<sup>[14]</sup>

Dissatisfied, the Ombudsman moved for reconsideration,<sup>[15]</sup> which the SB denied in a Resolution<sup>[16]</sup> dated May 22, 2018. Hence, this petition.<sup>[17]</sup>

### **The Issue Before the Court**

The essential issue for the Court's resolution is whether or not the SB gravely abused its discretion in denying the Ombudsman's Motion for Leave of Court to File Amended Information.

### **The Court's Ruling**

The petition is meritorious.

At the outset, it must be stressed that to justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>[18]</sup> There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, the law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.<sup>[19]</sup>

Guided by the foregoing considerations and as will be shown below, the SB gravely abused its discretion when it denied the Ombudsman's Motion for Leave of Court to File Amended Information despite the absence of any resulting prejudice to the

rights of the accused.

The proper procedure for the amendment of an Information is governed by Section 14, Rule 110 of the Revised Rules of Criminal Procedure, viz.:

Section 14. *Amendment or Substitution.* - **A complaint or information may be amended**, in form or in substance, without leave of court, at any time before the accused enters his plea. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.**

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (Emphases and underscoring supplied)

Under this provision, the prosecution is given the right to amend the information, regardless of its nature, so long as the amendment is sought before the accused enters his plea, subject to the qualification under the second paragraph thereof. However, once the accused enters his plea during arraignment, the prosecution is already prohibited from seeking a substantial amendment, particularly citing those that may prejudice the rights of the accused. One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then the prosecution must establish its case on the basis of the same information.<sup>[20]</sup>

While there is no precise definition under the Revised Rules on Criminal Procedure of what should be deemed as a substantial amendment, case law instructs that substantial amendments consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court.<sup>[21]</sup> On the other hand, formal amendments which can be made at any time do not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. Verily, they are amendments which merely state with additional precision something which is already contained in the original Information, and which, therefore, adds nothing essential for conviction of the crime charged.<sup>[22]</sup> Hence, the following are considered as mere formal amendments: (a) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (b) an amendment which does not charge another offense different or distinct from that charged in the original one; (c) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (d) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.<sup>[23]</sup>

In this case, the Court finds that the amendment of the Information sought by the