

THIRD DIVISION

[G.R. Nos. 235937-40, July 23, 2018]

**JOHANNE EDWARD B. LABAY, PETITIONER, VS.
SANDIGANBAYAN, THIRD DIVISION, AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

DECISION

VELASCO JR., J.:

The Case

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court from the Resolutions dated July 10, 2017^[1] and October 19, 2017^[2] of the Sandiganbayan, Third Division in Criminal Case Nos. SB-17-CRM-0642 to 0643 and Criminal Case Nos. SB-17-CRM-0644 to 0645. The first assailed resolution denied petitioner's motion for reinvestigation, among others, while the second assailed motion denied petitioner's motion for partial reconsideration of the first assailed resolution.

The Facts

The case arose from the complaint dated May 11, 2015 filed by the Field Investigation Office I (FIO I) of the Office of the Ombudsman against petitioner Johanne Edward B. Labay (Petitioner Labay) for his participation in the alleged anomalous utilization of the Priority Development Assistance Fund (PDAF) of former Representative of the 1st District of Davao del Sur, Marc Douglas C. Cagas IV (Rep. Cagas IV). The complaint was for violation of Article 217 (Malversation of Public Funds or Property), Article 171 (Falsification of Public Documents), paragraphs (1), (2), (4), and (7), Article 217 in relation to Article 171 (Malversation thru Falsification of Public Documents), all of the Revised Penal Code (RPC), as well as Section 3, paragraphs (a) and (e) of Republic Act (R.A.) No. 3019, as amended. The case was docketed as OMB-C-C-15-0152.^[3]

The complaint alleged that Rep. Cagas IV, in conspiracy with other public officials and private individuals such as petitioner Labay, through the Technology Resource Center (TRC), sought the release and transfer of his PDAF in the total amount of Php6,000,000.00 to Farmer-business Development Corporation (FDC), which was led by its then president, herein petitioner Labay. However, upon field verification conducted by the FIO I, it appears that the livelihood projects funded by Rep. Cagas IV's PDAF were never implemented and were considered to be "ghost projects."^[4]

In a Joint Order dated September 1, 2015, the Ombudsman directed respondents to file their respective counter-affidavits.^[5] Several respondents filed their respective counter-affidavits. However, copies of this Order could not be served on petitioner

Labay.^[6]

According to the Ombudsman, it exerted diligent efforts to serve copies of the September 1, 2015 Joint Order on petitioner Labay through his office and at his last known address. However, the copies were returned unserved because he was no longer employed in that office and he was unknown at the given residential address. As such, the Ombudsman proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay.^[7]

In a Resolution dated May 10, 2016,^[8] the Ombudsman found probable cause to indict Rep. Cagas IV and his co-respondents, including petitioner Labay, for conspiracy in the commission of two counts of Violation of Section 3(e) of RA 3019, one count of Malversation of Public Funds, and one count of Malversation thru Falsification.

Petitioner alleges that it was unknown to him that preliminary investigations for the charges against him were being conducted by the Ombudsman. According to him, it was only sometime in October 2016 that he learned of the cases when his daughter, Atty. Jo Blanca P.B. Labay, came across the press releases of the Ombudsman wherein petitioner was mentioned as among those who are facing charges.^[9]

On October 3, 2016, Atty. Labay, on behalf of her father, attempted to secure information on the cases from the Central Records of the Ombudsman, but she was advised to submit a written request. Accordingly, Atty. Labay sent the Ombudsman a letter dated October 4, 2016 in compliance with the said directive.^[10]

In a letter dated October 10, 2016, the Ombudsman replied to Atty. Labay's request and served on her copies of its May 10, 2016 Resolution. At the same time, the Ombudsman directed Atty. Labay to file a motion for reconsideration of the said Resolution within five days from receipt thereof.^[11]

Accordingly, petitioner, through Atty. Labay, filed an *Omnibus Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents* dated November 16, 2016.^[12] In said Omnibus Motion, petitioner prayed that the Ombudsman conduct a reinvestigation on his alleged participation in the crimes charged and take into consideration his answer and counter-evidence which he would present. He pointed out that he had neither been notified that a complaint had been filed against him nor was furnished a copy of the same. Thus, he argued that he was not afforded an opportunity to present his defense and to participate during the preliminary investigation. More importantly, petitioner prayed that he be furnished copies of the complaint-affidavit and other supporting documents and that he be given time to gather his evidence and submit his answer to the complaint. At the same time, he prayed for the deferment of the filing of any charges against him arising out of the May 10, 2016 Resolution pending the reinvestigation of the case.^[13]

In its Order dated November 25, 2016,^[14] the Ombudsman denied petitioner Labay's Omnibus Motion, ruling thus:

This Office had exerted diligent efforts to serve on Labay copies of the 1 September 2015 Order directing him to submit his counter-affidavit and the 10 May 2016 Resolution finding him probably guilty of the charges. The same were sent to his office and at his last known address and were returned unserved because he was no longer employed in that office, or was unknown at the given address. There was sufficient compliance with due process.

The filing by Labay of the *Omnibus Motion for Reinvestigation* on 16 November 2016 cured whatever defect in the observance of due process. *Denial of due process cannot be successful, fully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.*

WHEREFORE, this Office, through the undersigned, **DENIES** respondents Marc Douglas C. Cagas IV's *Motion for Reconsideration* dated 10 August 2016; Maria Rosalinda M. Lacsamana's *Motion for Reconsideration* dated 08 August 2016; Consuela Lilian R. Espiritu's *Motion for Reconsideration* dated 10 August 2016; Marivic V. Jover's *Motion for Reconsideration* dated 13 September 2016; and Johanne Edward B. Labay's *Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavits and Supporting Documents* dated 16 November 2016.

All indictments against them, as originally embodied in the Resolution dated 10 May 2016, **STAND**.

SO ORDERED.^[15] (Emphasis in the original)

Dissatisfied with this ruling, petitioner Labay filed an *Omnibus Motion for Reconsideration (of the Order dated 25 November 2016) and Deferment of Filing of Information with Reiterative Request for Copies of Complaint-Affidavit and Supporting Documents* dated January 30, 2017.^[16] Petitioner essentially reiterated his arguments in his first omnibus motion, but added that the filing of the said omnibus motion did not cure the defects in the Ombudsman's failure to observe due process.^[17]

The Ombudsman treated this second Omnibus Motion as a second motion for reconsideration and denied the same for lack of merit in its Order dated February 1, 2017.^[18]

On March 24, 2017, the Ombudsman filed four (4) Informations before the Sandiganbayan against petitioner Labay and his co-accused.^[19]

It was only on March 28, 2017, four days after the Informations had already been filed with the Sandiganbayan, that petitioner Labay was furnished a copy of the Complaint-Affidavit and its supporting evidence.^[20]

On April 4, 2017, petitioner Labay received copies of the Informations filed by the Ombudsman with the Sandiganbayan. Immediately thereafter, on April 5, 2017, petitioner Labay filed an Extremely Urgent Motion of even date, arguing that he is entitled to a reinvestigation of the case to prevent injustice against him brought

about by the wrongful filing of charges without affording him his right to a complete preliminary investigation.^[21]

Ruling of the Sandiganbayan

In the assailed Resolution dated July 10, 2017, the Sandiganbayan denied petitioner's motion, the dispositive portion of which reads:

WHEREFORE, the Court -

(1) **DECLARES** the existence of probable cause in these cases. Accordingly, let warrants of arrest be issued against all the accused except for accused Marc Douglas Chan Cagas IV who had already posted bail;

(2) **NOTES** the *Urgent Motion for Judicial Determination of Probable Cause With Entry of Appearance* dated April 4, 2017, filed by accused Marc Douglas Chan Cagas IV; and the *Motion To Set Aside No Bail Recommendation in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification and To Fix the Amount of Bail in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification* filed by accused Johanne Edward B. Labay; and

(3) **DENIES** the *Motion For Reinvestigation and To Defer the Issuance of Warrants of Arrest* filed by accused Johanne Edward B. Labay for lack of merit.

SO ORDERED.^[22]

Aggrieved, petitioner filed a Motion for Partial Reconsideration^[23] dated August 3, 2017. However, this was denied for lack of merit and for being *pro forma* in the second assailed Resolution dated October 19, 2017.^[24]

Hence, this Petition for *Certiorari*.

The Petition

In the present petition, petitioner prays for the (1) issuance of a temporary restraining order and/or writ of injunction; (2) nullification and setting aside of the assailed Resolutions; (3) remand of the case to the Office of the Ombudsman for a reinvestigation of petitioner; and (4) suspension of the criminal proceedings with respect to petitioner Labay, pending the resolution of the reinvestigation before the Office of the Ombudsman.

Petitioner argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied him the constitutional right to due process by denying his prayer for a reinvestigation. Essentially, petitioner argues that he was not accorded a reasonable opportunity to be heard since he could not have effectively and intelligently moved for the reconsideration of the Ombudsman's May 10, 2016 Resolution due to the latter's failure to furnish him with a copy of the complaint affidavit and its attachments upon which the resolution

was based.

In a Resolution^[25] dated March 21, 2018, this Court required respondent to file its Comment on the Petition and at the same time issued a temporary restraining order enjoining respondent Sandiganbayan to suspend the criminal proceedings against petitioner Labay.

On April 2, 2018, the People of the Philippines represented by the Office of the Ombudsman, through its counsel, the Office of the Special Prosecutor (OSP), filed an *Entry of Appearance with Comment and Motion to Dissolve the Temporary Restraining Order Issued on 21 March 2018*.^[26] It claimed that the Sandiganbayan did not act with grave abuse of discretion in denying petitioner Labay's Motion for Partial Reconsideration. It argued that there was no violation of his constitutional right to due process

considering that he was given the opportunity to present countervailing evidence through the Ombudsman's effort to issue subpoenas at his last known addresses, especially since the government substantially complied with the requirements of the law in doing so.^[27]

Aside from the effort exerted in issuing subpoenas, the OSP contended that petitioner Labay was eventually informed of the nature of the accusations against him when he was furnished a copy of the Ombudsman's May 10, 2016 Resolution, in response to which he was able to file an omnibus motion. It further maintains that petitioner Labay had the opportunity to refute the charges against him and present any countervailing evidence he may have, but faults him for hiding on technicalities and insisting that he was denied due process without presenting any evidence to support his claim of having a valid and meritorious defense. In other words, the OSP asserted that petitioner Labay was afforded due process when he filed two motions seeking reinvestigation and reconsideration of the Ombudsman's rulings.^[28]

From the arguments presented by the parties, the Court is now faced with the issue of whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner Labay's motion for reinvestigation and ruling that he was not deprived of due process.

The Court's Ruling

The petition is meritorious.

After a judicious review of the records of the case, the Court finds that petitioner's constitutional right to due process was violated when he was not furnished a copy of the complaint affidavit and its attachments during the preliminary investigation.

Section 1, Article III of the 1987 Constitution guarantees the right of every person to due process before they are deprived of their life, liberty, or property. Due process in criminal prosecutions is further emphasized under Section 14, Article III which provides that no person shall be held to answer for a criminal offense without due process of law. The same provision also states that the accused shall be presumed innocent until the contrary is proved and shall enjoy the right to be informed of the nature and cause of the accusation against him.