

EN BANC

[G.R. No. 216914, December 06, 2016]

SUBIDO PAGENTE CERTEZA MENDOZA AND BINAY LAW OFFICES, PETITIONER, V. THE COURT OF APPEALS, HON. ANDRES B. REYES, JR., IN HIS CAPACITY AS PRESIDING JUSTICE OF THE COURT OF APPEALS, AND THE ANTI-MONEY LAUNDERING COUNCIL, REPRESENTED BY ITS MEMBERS, HON. AMANDO M. TETANGCO, JR., GOVERNOR OF THE BANGKO SENTRAL NG PILIPINAS, HON. TERESITA J. HERBOSA, CHAIRPERSON OF THE SECURITIES AND EXCHANGE COMMISSION, AND HON. EMMANUEL F. DOOC, INSURANCE COMMISSIONER OF THE INSURANCE COMMISSION, RESPONDENTS.

DECISION

PEREZ, J.:

Challenged in this petition for *certiorari*^[1] and prohibition under Rule 65 of the Rules of Court is the constitutionality of Section 11 of Republic Act (R.A.) No. 9160, the Anti-Money Laundering Act, as amended, specifically the Anti-Money Laundering Council's authority to file with the Court of Appeals (CA) in this case, an *ex-parte* application for inquiry into certain bank deposits and investments, including related accounts based on probable cause.

In 2015, a year before the 2016 presidential elections, reports abounded on the supposed disproportionate wealth of then Vice President Jejomar Binay and the rest of his family, some of whom were likewise elected public officers. The Office of the Ombudsman and the Senate conducted investigations^[2] and inquiries^[3] thereon ostensibly based on their respective powers delineated in the Constitution.

From various news reports announcing the inquiry into then Vice President Binay's bank accounts, including accounts of members of his family, petitioner Subido Pagente Certeza Mendoza & Binay Law Firm (SPCMB) was most concerned with the article published in the Manila Times on 25 February 2015 entitled "*Inspect Binay Bank Accounts*" which read, in pertinent part:

xxx The Anti-Money Laundering Council (AMLC) asked the Court of Appeals (CA) to allow the [C]ouncil to peek into the bank accounts of the Binays, their corporations, and **a law office where a family member was once a partner.**

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Also the bank accounts of the law office linked to the family, **the Subido Pagente Certeza Mendoza & Binay Law Firm**, where the Vice President's daughter Abigail was a former partner.^[4]

The following day, 26 February 2015, SPCMB wrote public respondent, Presiding Justice of the CA, Andres B. Reyes, Jr.:

The law firm of Subido Pagente Certeza Mendoza and Binay was surprised to receive a call from Manila Times requesting for a comment regarding a [supposed petition] filed by the Republic of the Philippines represented by the Anti-Money Laundering Council before the Court of Appeals seeking to examine the law office's bank accounts.

To verify the said matter, the law office is authorizing its associate Atty. Jose Julius R. Castro to inquire on the veracity of said report with the Court of Appeals. He is likewise authorized to secure copies of the relevant documents of the case, such as the petition and orders issued, if such a case exists.

As this is a matter demanding serious and immediate attention, the Firm respectfully manifests that if no written response is received within 24-hours from receipt of this letter, we shall be at liberty to assume that such a case exists and we shall act accordingly.

Hoping for your immediate action.

Respectfully yours,
For the Firm

CLARO F. CERTEZA^[5]

Within twenty four (24) hours, Presiding Justice Reyes wrote SPCMB denying its request, thus:

Anent your request for a comment on a supposed petition to inquire into your law office's bank accounts, please be informed that a petition of this nature is strictly confidential in that when processing the same, not even the handling staff members of the Office of the Presiding Justice know or have any knowledge who the subject bank account holders are, as well as the bank accounts involved.

Please be informed further that clearly under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of any petition brought before this Court by the Anti-Money Laundering Council, its contents and even its entry in the logbook.

Trusting that you find satisfactory the foregoing explanation.^[6]

By 8 March 2015, the Manila Times published another article entitled, "*CA orders probe of Binay's assets*" reporting that the appellate court had issued a Resolution granting the *ex-parte* application of the AMLC to examine the bank accounts of SPCMB:

The Court of Appeals (CA) has officially issued an order for examination of Vice President Jejomar Binay's bank accounts.

In granting the petition of the Anti-Money Laundering Council (AMLC), the CA also ordered the inspection of the bank deposits of Binay's wife, children, and a law office connected to him.

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The bank accounts of the law office linked to Binay - **the Subido Pagente Certeza Mendoza & Binay** where Binay's daughter, Makati City (Metro Manila) Rep. Mar-len Abigail Binay was a partner, are also included in the probe, the sources said.^[7]

Forestalled in the CA thus alleging that it had no ordinary, plain, speedy, and adequate remedy to protect its rights and interests in the purported ongoing unconstitutional examination of its bank accounts by public respondent Anti-Money Laundering Council (AMLC), SPCMB undertook direct resort to this Court *via* this petition for *certiorari* and prohibition on the following grounds:

A. THE ANTI-MONEY LAUNDERING ACT IS UNCONSTITUTIONAL INsofar AS IT ALLOWS THE EXAMINATION OF A BANK ACCOUNT WITHOUT ANY NOTICE TO THE AFFECTED PARTY:

1. IT VIOLATES THE PERSON'S RIGHT TO DUE PROCESS; AND

2. IT VIOLATES THE PERSON'S RIGHT TO PRIVACY.

B. EVEN ASSUMING *ARGUENDO* THAT THE ANTI-MONEY LAUNDERING ACT IS CONSTITUTIONAL, THE RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION CONSIDERING THAT:

1. THE REFUSAL OF RESPONDENT PRESIDING JUSTICE TO PROVIDE PETITIONER WITH A COPY OF THE *EX-PARTE* APPLICATION FOR BANK EXAMINATION FILED BY RESPONDENT AMLC AND ALL OTHER PLEADINGS, MOTIONS, ORDERS, RESOLUTIONS, AND PROCESSES ISSUED BY THE RESPONDENT COURT OF APPEALS IN RELATION THERETO VIOLATES PETITIONER'S RIGHT TO DUE PROCESS;

2. A *CARTE BLANCHE* AUTHORITY TO EXAMINE ANY AND ALL TRANSACTIONS PERTAINING TO PETITIONER'S BANK ACCOUNTS VIOLATES THE ATTORNEY-CLIENT PRIVILEGE WHICH IS SACROSANCT IN THE LEGAL PROFESSION;

3. A BLANKET AUTHORITY TO EXAMINE PETITIONER'S BANK ACCOUNTS, INCLUDING ANY AND ALL TRANSACTIONS THEREIN FROM ITS OPENING UP TO THE PRESENT, PARTAKES THE NATURE OF A GENERAL WARRANT THAT IS CLEARLY INTENDED TO AID A MERE FISHING EXPEDITION;

4. THERE IS NOTHING IN THE ANTI-MONEY LAUNDERING ACT THAT ALLOWS OR JUSTIFIES THE WITHHOLDING OF INFORMATION AND/OR ANY COURT RECORDS OR PROCEEDINGS PERTAINING TO AN EXAMINATION OF A BANK ACCOUNT, ESPECIALLY IF THE COURT

HAS ALREADY GRANTED THE AUTHORITY TO CONDUCT THE EXAMINATION;

5. THE PETITIONER DID NOT COMMIT, NOR HAS THE PETITIONER BEEN IMPEADED IN ANY COMPLAINT INVOLVING ANY PREDICATE CRIME THAT WOULD JUSTIFY AN INQUIRY INTO ITS BANK ACCOUNTS; AND

7. THE EXAMINATION OF THE PETITIONER'S BANK ACCOUNTS IS A FORM OF POLITICAL PERSECUTION OR HARASSMENT.^[8]

In their Comment, the AMLC, through the Office of the Solicitor General (OSG), points out a supposed jurisdictional defect of the instant petition, *i.e.*, SPCMB failed to implead the House of Representatives which enacted the AMLA and its amendments. In all, the OSG argues for the dismissal of the present petition, highlighting that the AMLC's inquiry into bank deposits does not violate due process nor the right to privacy:

1. Section 11's allowance for AMLC's *ex-parte* application for an inquiry into particular bank deposits and investments is investigative, not adjudicatory;
2. The text of Section 11 itself provides safeguards and limitations on the allowance to the AMLC to inquire into bank deposits: (a) issued by the CA based on probable cause; and (b) specific compliance to the requirements of Sections 2 and 3, Article III of the Constitution;
3. The *ex-parte* procedure for investigating bank accounts is necessary to achieve a legitimate state objective;
4. There is no legitimate expectation of privacy as to the bank records of a depositor;
5. The examination of, and inquiry, into SPCMB's bank accounts does not violate Attorney-Client Privilege; and
6. A criminal complaint is not a pre-requisite to a bank inquiry order.

In their Reply, SPCMB maintains that the *ex-parte* proceedings authorizing inquiry of the AMLC into certain bank deposits and investments is unconstitutional, violating its rights to due process and privacy.

Before anything else, we here have an original action turning on three crucial matters: (1) the petition reaches us from a letter of the Presiding Justice of the CA in response to a letter written by SPCMB; (2) SPCMB's bank account has been reported to be a related account to Vice President Binay's investigated by the AMLC for anti-money laundering activities; and (3) the constitutionality of Section 11 of the AMLA at its recent amendment has not been squarely raised and addressed.

To obviate confusion, we act on this petition given that SPCMB directly assails the constitutionality of Section 11 of the AMLA where it has been widely reported that Vice President Binay's bank accounts and all related accounts therewith are subject of an investigation by the AMLC. In fact, subsequent events from the filing of this petition have shown that these same bank accounts (including related accounts) were investigated by the Ombudsman and both Houses of the Legislature. However,

at the time of the filing of this petition, SPCMB alleged that its accounts have been inquired into but not subjected to a freeze order under Section 10 of the AMLA. Thus, as previously noted, with its preclusion of legal remedies before the CA which under the AMLA issues the *ex-parte* bank inquiry and freeze orders, Sections 10 and 11, respectively, SPCMB establishes that it has no plain, speedy and adequate remedy in the ordinary course of law to protect its rights and interests from the purported unconstitutional intrusion by the AMLC into its bank accounts.

The foregoing shall be addressed specifically and bears directly on the disposition of the decision herein.

Additionally, we note that the OSG did not question how this petition reaches us from a letter of the appellate court's Presiding Justice, only that, procedurally, SPCMB should have impleaded Congress.

On the sole procedural issue of whether SPCMB ought to have impleaded Congress, the contention of the OSG though novel is untenable. All cases questioning the constitutionality of a law does not require that Congress be impleaded for their resolution. The requisites of a judicial inquiry are elementary:

1. There must be an actual case or controversy; party;
2. The question of constitutionality must be raised by the proper party;
3. The constitutional question must be raised at the earliest possible opportunity; and
4. The decision of the constitutional question must be necessary to the determination of the case itself.^[9]

The complexity of the issues involved herein require us to examine the assailed provision *vis-a-vis* the constitutional proscription against violation of due process. The statute reads:

SEC. 11. *Authority to Inquire into Bank Deposits.* - Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791; and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an *ex parte* application in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12) hereof, and felonies or offenses of a nature similar to those mentioned in Section 3(i)(1), (2), and (12), which are punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non-