

## FIRST DIVISION

[ G.R. Nos. 169823-24, September 11, 2013 ]

**HERMINIO T. DISINI, PETITIONER, VS. THE HON.  
SANDIGANBAYAN, FIRST DIVISION, AND THE PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

[G.R. Nos. 174764-65]

**HERMINIO T. DISINI, PETITIONER, VS. SANDIGANBAYAN, FIRST  
DIVISION, AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**BERSAMIN, J.:**

The Sandiganbayan has exclusive original jurisdiction over the criminal action involving petitioner notwithstanding that he is a private individual considering that his criminal prosecution is intimately related to the recovery of ill-gotten wealth of the Marcoses, their immediate family, subordinates and close associates.

#### The Case

Petitioner Herminio T. Disini assails *via* petition for *certiorari* the resolutions promulgated by the Sandiganbayan in Criminal Case No. 28001 and Criminal Case No. 28002, both entitled *People v. Herminio T. Disini*, on January 17, 2005 (denying his motion to quash the informations)<sup>[1]</sup> and August 10, 2005 (denying his motion for reconsideration of the denial of his motion to quash),<sup>[2]</sup> alleging that the Sandiganbayan (First Division) thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

#### Antecedents

The Office of the Ombudsman filed two informations dated June 30, 2004 charging Disini in the Sandiganbayan with *corruption of public officials*, penalized under Article 212 in relation to Article 210 of the *Revised Penal Code* (Criminal Case No. 28001), and with a violation of Section 4(a) of Republic Act 3019 (R.A. No. 3019), also known as the *Anti-Graft and Corrupt Practices Act* (Criminal Case No. 28002).

The accusatory portions of the informations read as follows:

#### Criminal Case No. 28001

That during the period from 1974 to February 1986, in Manila, Philippines, and within the jurisdiction of this Honorable Court, accused HERMINIO T. DISINI, conspiring together and confederating with the then

President of the Philippines Ferdinand E. Marcos, did then and there, wilfully, unlawfully and feloniously offer, promise and give gifts and presents to said Ferdinand E. Marcos, consisting of accused DISINI's ownership of two billion and five hundred (2.5 billion) shares of stock in Vulcan Industrial and Mining Corporation and four billion (4 billion) shares of stock in The Energy Corporation, with both shares of stock having then a book value of P100.00 per share of stock, and subcontracts, to Engineering and Construction Company of Asia, owned and controlled by said Ferdinand E. Marcos, on the mechanical and electrical construction work on the Philippine Nuclear Power Plant Project ("Project") of the National Power Corporation at Morong, Bataan, all for and in consideration of accused Disini seeking and obtaining for Burns and Roe and Westinghouse Electrical Corporation (Westinghouse), the contracts to do the engineering and architectural design and to construct, respectively, the Project, as in fact said Ferdinand E. Marcos, taking undue advantage of his position and committing the offense in relation to his office and in consideration of the aforesaid gifts and presents, did award or cause to be awarded to said Burns and Roe and Westinghouse, the contracts to do the engineering and architectural design and to construct the Project, respectively, which acts constitute the crime of *corruption of public officials*.

CONTRARY TO LAW.<sup>[3]</sup>

#### Criminal Case No. 28002

That during the period 1974 to February 1986, in Manila, Philippines, and within the jurisdiction of the Honorable Court, accused HERMINIO T. DISINI, conspiring together and confederating with the then President of the Philippines, Ferdinand E. Marcos, being then the close personal friend and golfing partner of said Ferdinand E. Marcos, and being further the husband of Paciencia Escolin-Disini who was the first cousin of then First Lady Imelda Romualdez-Marcos and family physician of the Marcos family, taking advantage of such close personal relation, intimacy and free access, did then and there, willfully, unlawfully and criminally, in connection with the Philippine Nuclear Power Plant (PNPP) Project ("PROJECT") of the National Power Corporation (NPC) at Morong, Bataan, request and receive from Burns and Roe, a foreign consultant, the total amount of One Million U.S. Dollars (\$1,000,000.00), more or less, and also from Westinghouse Electric Corporation (WESTINGHOUSE), the total amount of Seventeen Million U.S. Dollars (\$17,000,000.00), more or less, both of which entities were then having business, transaction, and application with the Government of the Republic of the Philippines, all for and in consideration of accused DISINI securing and obtaining, as accused Disini did secure and obtain, the contract for the said Burns and Roe and Westinghouse to do the engineering and architectural design, and construct, respectively, the said PROJECT, and subsequently, request and receive subcontracts for Power Contractors, Inc. owned by accused DISINI, and Engineering and Construction Company of Asia (ECCO-Asia), owned and controlled by said Ferdinand E. Marcos, which stated amounts and subcontracts constituted kickbacks, commissions and gifts as material or pecuniary advantages, for securing and obtaining, as accused

DISINI did secure and obtain, through the direct intervention of said Ferdinand E. Marcos, for Burns and Roe the engineering and architectural contract, and for Westinghouse the construction contract, for the PROJECT.

CONTRARY TO LAW.<sup>[4]</sup>

On August 2, 2004, Disini filed a motion to quash,<sup>[5]</sup> alleging that the criminal actions had been extinguished by prescription, and that the informations did not conform to the prescribed form. The Prosecution opposed the motion to quash.<sup>[6]</sup>

On September 16, 2004, Disini voluntarily submitted himself for arraignment to obtain the Sandiganbayan's favorable action on his motion for permission to travel abroad.<sup>[7]</sup> He then entered a plea of *not guilty* to both informations.

As stated, on January 17, 2005, the Sandiganbayan (First Division) promulgated its first assailed resolution denying the motion to quash.<sup>[8]</sup>

Disini moved for the reconsideration of the resolution dated January 17, 2005,<sup>[9]</sup> but the Sandiganbayan (First Division) denied his motion on August 10, 2005 through the second assailed resolution.<sup>[10]</sup>

### **Issues**

Undaunted, Disini commenced this special civil action for *certiorari*, alleging that:

A. THE RESPONDENT COURT HAS NO JURISDICTION OVER THE OFFENSES CHARGED.

1. THE RESPONDENT COURT GRAVELY ERRED WHEN IT RULED THAT SECTION 4, PARAGRAPHS (A) AND (B) OF REPUBLIC ACT NO. 8249 DO NOT APPLY SINCE THE INFORMATIONS WERE "FILED PURSUANT TO E.O. NOS. 1, 2, 14 AND 14-A".

2. THE RESPONDENT COURT GRAVELY ERRED WHEN IT ASSUMED JURISDICTION WITHOUT HAVING MET THE REQUISITE UNDER SECTION 4 OF R.A. 8249 THAT THE ACCUSED MUST BE A PUBLIC OFFICER.

B. THE RESPONDENT COURT ACTED WITH SUCH GRAVE ABUSE OF DISCRETION WHEN IT EFFECTIVELY IGNORED, DISREGARDED, AND DENIED PETITIONER'S CONSTITUTIONAL AND STATUTORY RIGHT TO PRESCRIPTION.

1. THE RESPONDENT COURT GRAVELY ERRED IN DETERMINING THE APPLICABLE PRESCRIPTIVE PERIOD.

2. THE RESPONDENT COURT GRAVELY ERRED IN DETERMINING THE COMMENCEMENT OF THE PRESCRIPTIVE PERIOD.

3. THE RESPONDENT COURT GRAVELY ERRED IN DETERMINING THE POINT OF INTERRUPTION OF THE PRESCRIPTIVE PERIOD.

- C. BY MERELY ASSUMING THE PRESENCE OF GLARINGLY ABSENT ELEMENTS IN THE OFFENSES CHARGED TO UPHOLD THE 'SUFFICIENCY' OF THE INFORMATIONS IN CRIMINAL CASE NOS. 28001 AND 28002, THE RESPONDENT COURT DEMONSTRATED ITS PREJUDGMENT OVER THE SUBJECT CASES AND ACTED WITH GRAVE ABUSE OF ITS DISCRETION.
- D. THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN REFUSING TO QUASH THE INFORMATIONS DESPITE THEIR UTTER FAILURE TO COMPLY WITH THE PRESCRIBED FORM, THUS EFFECTIVELY DENYING THE ACCUSED HIS CONSTITUTIONAL AND STATUTORY RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM.<sup>[11]</sup>

### **Ruling**

The petition for *certiorari* has no merit.

#### **1. Preliminary Considerations**

To properly resolve this case, reference is made to the ruling of the Court in G.R. No. 175730 entitled *Herminio Disini v. Sandiganbayan*,<sup>[12]</sup> which involved the civil action for reconveyance, reversion, accounting, restitution, and damages (Civil Case No. 0013 entitled *Republic v. Herminio T. Disini, et al.*) filed by the Presidential Commission on Good Government (PCGG) against Disini and others.<sup>[13]</sup> The amended complaint in Civil Case No. 0013 alleged that Disini had acted in unlawful concert with his co-defendants in acquiring and accumulating ill-gotten wealth through the misappropriation of public funds, plunder of the nation's wealth, extortion, embezzlement, and other acts of corruption,<sup>[14]</sup> as follows:

4. Defendant HERMINIO T. DISINI is a close associate of defendant Ferdinand E. Marcos and the husband of the first cousin of Defendant Imelda R. Marcos. By reason of this relationship x xx defendant Herminio Disini obtained staggering commissions from the Westinghouse in exchange for securing the nuclear power plant contract from the Philippine government.

x x x x

13. Defendants Herminio T. Disini and Rodolfo Jacob, by themselves and/or in unlawful concert, active collaboration and willing participation of defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their association and influence with the latter defendant spouses in order to prevent disclosure and recovery of ill-gotten assets, engaged in devices, schemes, and stratagems such as:

x x x x

(c) unlawfully utilizing the Herdis Group of Companies and Asia Industries, Inc. as conduits through which defendants received, kept, and/or invested improper payments such as unconscionably large commissions from foreign corporations like the Westinghouse Corporation;

(d) secured special concessions, privileges and/or benefits from defendants Ferdinand E. Marcos and Imelda R. Marcos, such as a contract awarded to Westinghouse Corporation which built an inoperable nuclear facility in the country for a scandalously exorbitant amount that included defendant's staggering commissions – defendant Rodolfo Jacob executed for HGI the contract for the aforesaid nuclear plant;<sup>[15]</sup>

Through its letter dated April 8, 1991,<sup>[16]</sup> the PCGG transmitted the records of Criminal Case No. 28001 and Criminal Case No. 28002 to then Ombudsman Conrado M. Vasquez for appropriate action, to wit:

In line with the decision of the Supreme Court in the case of Eduardo M. Cojuangco, Jr. versus the PCGG (G.R. Nos. 92319–92320) dated October 2, 1990, we are hereby transmitting to your Office for appropriate action the records of the attached criminal case which we believe is similar to the said Cojuangco case in certain aspects, such as: (i) some parts or elements are also parts of the causes of action in the civil complaints[-] filed with the Sandiganbayan; (ii) some properties or assets of the respondents have been sequestered; (iii) some of the respondents are also party defendants in the civil cases.

Although the authority of the PCGG has been upheld by the Supreme Court, we are constrained to refer to you for proper action the herein-attached case in view of the suspicion that the PCGG cannot conduct an impartial investigation in cases similar to that of the Cojuangco case. x x x

Ostensibly, the PCGG's letter of transmittal was adverting to the ruling in *Cojuangco, Jr. v. Presidential Commission on Good Government (Cojuangco, Jr.)*,<sup>[17]</sup> viz:

x x x [T]he PCGG and the Solicitor General finding a *prima facie* basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. x x x.

Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of a *prima facie* finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of coconut levy funds. **Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the "cold neutrality of an impartial judge," as it has prejudged the matter.** x x x<sup>[18]</sup>

x x x x

**The Court finds that under the circumstances of the case, the PCGG cannot inspire belief that it could be impartial in the conduct of the preliminary investigation of the aforesaid complaints against petitioner and intervenors. It cannot possibly preside in the said preliminary investigation with an even hand.**