

SECOND DIVISION

[G.R. No. 172035, July 04, 2012]

**FERNANDO Q. MIGUEL, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN, RESPONDENT.**

DECISION

BRION, J.:

Before the Court is a petition for *certiorari* under Rule 65^[1] filed by Fernando Q. Miguel (*petitioner*), assailing the January 25, 2006 and March 27, 2006 resolutions^[2] of the Sandiganbayan. These resolutions (i) ordered the petitioner's suspension from public office and (ii) denied the petitioner's motion for reconsideration of the suspension order.

THE ANTECEDENT FACTS

On May 29, 1996, then Vice Mayor Mercelita M. Lucido and other local officials^[3] of Koronadal City, South Cotabato filed a letter-complaint with the Office of the Ombudsman-Mindanao (*Ombudsman*)^[4] charging the petitioner, among others,^[5] with violation of Republic Act (R.A.) No. 3019, in connection with the consultancy services for the architectural aspect, the engineering design, and the construction supervision and management of the proposed Koronadal City public market (*project*).^[6]

In a June 27, 1996 order, the Ombudsman directed the petitioner, among others, to submit his counter-affidavit. On October 23, 1996, after moving for an extension, the petitioner filed his counter-affidavit.^[7] In its July 29, 1999 resolution, the Ombudsman found probable cause against the petitioner and some private individuals for violation of R.A. No. 3019 and against the petitioner alone for Falsification of Public Document under Article 171, par. 4 of the Revised Penal Code.^[8]

On March 1, 2000, the Ombudsman filed the corresponding informations with the Sandiganbayan.^[9] The information for violation of Section 3(e) of R.A. No. 3019 reads:

That on 10 January 1995 or sometime prior or subsequent thereto, in the Municipality of Koronadal, South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the [petitioner], a high ranking public officer in his capacity as former Municipal Mayor of Koronadal, South Cotabato, and as such while in the performance of his official functions, **committing** the offense in relation to his office, **taking** advantage of his official position, conspiring and confederating with the private

[individuals] xxx **acting with evident bad faith and manifest partiality**, did then and there willfully, unlawfully and criminally give unwarranted benefits and advantages to said [accused], by inviting them to participate in the prequalification of consultants to provide the Detailed Architectural & Engineering Design and Construction Supervision and Management of the proposed Koronadal Public Market, without causing the publication of said invitation in a newspaper of general circulation, thereby excluding other consultants from participating in said prequalification.^[10] (Emphases and underscoring added)

On motions separately filed by two of the petitioner's co-accused,^[11] the Sandiganbayan ordered the Office of the Special Prosecutor (OSP) to conduct a reinvestigation. On August 21, 2000, the petitioner, through counsel, followed suit and orally moved for a reinvestigation, which the Sandiganbayan likewise granted. The Sandiganbayan gave the petitioner ten (10) days within which to file his counter-affidavit with the OSP.^[12]

Instead of submitting his counter-affidavit, the petitioner asked^[13] the Sandiganbayan for a thirty-day extension to submit his counter-affidavit. Shortly before the expiry of the extension requested, the petitioner asked^[14] the OSP for an additional thirty-day period to file his counter-affidavit. Despite the two extensions asked and granted, the petitioner asked the OSP anew for a twenty-day extension period.^[15]

Despite the extension period asked and given, the petitioner failed to file his counter-affidavit, prompting Prosecutor Norberto B. Ruiz to declare that the petitioner had waived his right to submit countervailing evidence (April 25, 2001 resolution). On July 31, 2001, then Ombudsman Aniano Desierto approved the resolution.^[16]

On August 7, 2001, Prosecutor Ruiz asked the Sandiganbayan for the arraignment and trial of the petitioner and of the other accused private individuals.^[17]

On August 6, 2002, after several extensions sought and granted, the petitioner filed a Motion to Quash and/or Reinvestigation for the criminal cases against him. On February 18, 2003, the Sandiganbayan denied the petitioner's motion because of the pending OSP reinvestigation – this, despite the OSP's earlier termination of the reinvestigation for the petitioner's continuous failure to submit his counter-affidavit.^[18] The petitioner did not question the denial of his motion.

On November 3, 2004, the petitioner was arraigned; he pleaded not guilty in both criminal cases.^[19]

On April 28, 2005, the OSP filed a Motion to Suspend [the petitioner] *Pendente Lite*. On June 27, 2005, the petitioner filed his "Vigorous Opposition" based on the "obvious and fatal defect of the [i]nformation" in failing to allege that the giving of unwarranted benefits and advantages was done through manifest partiality, evident bad faith or gross inexcusable negligence.^[20]

On January 25, 2006, the Sandiganbayan promulgated the assailed resolution^[21] suspending the petitioner *pendente lite* –

WHEREFORE, PREMISES CONSIDERED, the Prosecution's Motion is GRANTED. As prayed for, the Court hereby orders the suspension of [the petitioner] from his position as City Mayor, Koronadal City, South Cotabato, and from any other public position he now holds. His suspension shall be for a period of ninety (90) days only.^[22]

On February 2, 2006, the petitioner moved for reconsideration of his suspension order and demanded for a pre-suspension hearing.^[23] The Sandiganbayan denied his motion,^[24] prompting him to file this *certiorari* petition to challenge the validity of his suspension order.

THE PETITION

The petitioner claims that the Sandiganbayan gravely abused its discretion in ordering his suspension despite the failure of the information to allege that the giving of unwarranted benefits and advantages *by the petitioner* was made through "manifest partiality, evident bad faith or gross inexcusable negligence." He alleges that the phrases "evident bad faith" and "manifest partiality" actually refers not to him, but to his co-accused,^[25] rendering the information fatally defective.

The petitioner bewails the lack of hearing before the issuance of his suspension order. Citing *Luciano, et al. v. Hon. Mariano, etc., et al.*,^[26] he claims that "[n]owhere in the records of the [case] can [one] see any order or resolution requiring the [p]etitioner to show cause at a specific date of hearing why he should not be ordered suspended."^[27] For the petitioner, the requirement of a pre-suspension hearing can only be satisfied if the Sandiganbayan ordered an actual hearing to settle the "defect" in the information.

THE OSP'S COMMENT

The OSP argues for the sufficiency of the information since all the elements of the offense under Section 3(b) of R.A. No. 3019 are specifically pleaded by way of ultimate facts. These elements are:

1. The petitioner was the Municipal Mayor of Koronadal, South Cotabato at the time material to the acts complained of;
2. The petitioner acted with manifest partiality and evident bad faith when he invited only his co-accused private individuals to participate in the prequalification of consultants for the project instead of publishing it in a newspaper of general circulation; and
3. The petitioner's actions, performed in relation to his office, gave unwarranted benefits and advantages to his co-accused.^[28]

The OSP faults the petitioner for his attempt to mislead the Court on the sufficiency of the allegations in the information, by conveniently failing to cite the phrase “acting with evident bad faith and manifest partiality” when the petitioner quoted the “relevant” portions of the information in his petition.

Citing *Juan v. People*,^[29] the OSP argues that while no actual pre-suspension hearing was conducted, the events preceding the issuance of the suspension order already satisfied the purpose of conducting a pre-suspension hearing – i.e., basically, to determine the validity of the information. Here, the petitioner was afforded his right to preliminary investigation both by the Ombudsman and by the OSP (when the petitioner moved for a reinvestigation with the Sandiganbayan); the acts for which the petitioner was charged constitute a violation of R.A. No. 3019 and Title VII, Book II of the Revised Penal Code; and the petitioner already moved to quash the information, although unsuccessfully, after he had been declared to have waived his right to submit countervailing evidence in the reinvestigation by the OSP.^[30]

ISSUES

There are only two issues presented for our resolution:

1. Whether the information, charging the petitioner with violation of Section 3(e) of R.A. No. 3019, is valid; and
2. If it is valid, whether the absence of an actual pre-suspension hearing renders invalid the suspension order against the petitioner.

THE COURT’S RULING

We dismiss the petition for failure to establish any grave abuse of discretion in the issuance of the assailed resolutions.

The information for violation of R.A. No. 3019 is valid

In deference to the constitutional right of an accused to be informed of the nature and the cause of the accusation against him,^[31] Section 6, Rule 110 of the Revised Rules of Criminal Procedure (Rules)^[32] requires, *inter alia*, that the information shall state the designation of the offense given by the statute and the acts or omissions imputed which constitute the offense charged. Additionally, the Rules requires that these acts or omissions and its attendant circumstances “must be stated in ordinary and concise language” and “in terms sufficient to enable a person of common understanding to know what offense is being charged x x x and for the court to pronounce judgment.”^[33]

The test of the information’s sufficiency is whether the crime is described in intelligible terms and with such particularity with reasonable certainty so that the accused is duly informed of the offense charged. In particular, whether an information validly charges an offense depends on whether the material facts alleged in the complaint or information shall establish the essential elements of the

offense charged as defined in the law. The *raison d'être* of the requirement in the Rules is to enable the accused to suitably prepare his defense.^[34]

In arguing against the validity of the information, the petitioner appears to go beyond the standard of a "person of common understanding" in appreciating the import of the phrase "acting with evident bad faith and manifest partiality." A reading of the information clearly reveals that the phrase "*acting* with evident bad faith and manifest partiality" was merely a continuation of the prior allegation of the acts *of the petitioner*, and that he ultimately acted with evident bad faith and manifest partiality in giving unwarranted benefits and advantages to his co-accused private individuals. This is what a plain and non-legalistic reading of the information would yield.

Notably, in his petition, the petitioner would have us believe that this elemental phrase was actually omitted in the information^[35] when, in his reaction to the OSP's comment, what the petitioner actually disputes is simply the *clarity* of the phrase's position, in relation with the other averments in the information. Given the supposed ambiguity of the subject being qualified by the phrase "acting with evident bad faith and manifest partiality," the remedy of the petitioner, if at all, is merely to move for a bill of particulars and not for the quashal of an information which sufficiently alleges the elements of the offense charged.^[36]

The pre-suspension order is valid

Section 13 of R.A. No. 3019 reads:

Section 13. *Suspension and loss of benefits.* Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

While the suspension of a public officer under this provision is mandatory,^[37] the suspension requires a prior hearing to determine "the validity of the information"^[38] filed against him, "taking into account the serious and far reaching consequences of a suspension of an elective public official even before his conviction."^[39] The accused public official's right to challenge the validity of the information before a suspension order may be issued includes the right to challenge the (i) validity of the criminal proceeding leading to the filing of an information against him, and (ii) propriety of his prosecution on the ground that the acts charged do not constitute a violation of R.A. No. 3019 or of the provisions on bribery of the Revised Penal Code.^[40]

In *Luciano v. Mariano*^[41] that the petitioner relied upon, the Court required, "by way of broad guidelines for the lower courts in the exercise of the power of