

SECOND DIVISION

[G.R. Nos. 187912-14, January 31, 2011]

**JOEY P. MARQUEZ, PETITIONER, VS. THE SANDIGANBAYAN 5TH
DIVISION AND THE OFFICE OF THE SPECIAL PROSECUTOR,
RESPONDENTS.**

DECISION

MENDOZA, J.:

Through this petition for certiorari, prohibition and mandamus with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction,^[1] petitioner Joey P. Marquez (*Marquez*) assails the ^{1]} February 11, 2009 Resolution^[2] of the 5th Division of the Sandiganbayan (*SB-5th Division*) in Criminal Case Nos. 27903, 27904 and 27905; and its ^{2]} May 20, 2009 Resolution^[3] denying his motion for reconsideration.

In the assailed issuances, the SB-5th Division denied Marquez's Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation (*NBI*).

From the records, it appears that as a result of the Report on the Audit of Selected Transactions and *Walis Ting-ting* for the City of Parañaque for the years 1996 to 1998, conducted by the Special Audit Team of the Commission on Audit (*COA*), several anomalies were discovered involving Marquez, then City Mayor and Chairman of the Bids and Awards committee of Parañaque City; and Ofelia C. Caunan (*Caunan*), Head of the General Services Office of said city.

It was found that, through personal canvass and without public bidding, Marquez and Caunan secured the procurement of several thousand rounds of bullets of different calibers that were grossly overpriced from VMY Trading, a company not registered as an arms and ammunitions dealer with either the Firearms and Explosives Division of the Philippine National Police (*PNP*) or the Department of Trade and Industry (*DTI*).

Finding the transactions anomalous, the COA Special Audit Team issued Notices of Disallowances for the overpriced ammunitions. Marquez and Caunan sought reconsideration of the findings of the team, but their plea was denied. Aggrieved, they elevated the matter to the COA but their appeal was denied.

At the Office of the Ombudsman (*OMB*), in answer to the charges filed against them, Marquez and Caunan filed their Joint Counter Affidavit^[4] with the Evaluation and Preliminary Investigation Bureau of said office. In the said affidavit, the two insisted on the propriety of the transactions and raised the pendency of their appeal with the COA.

Having found probable cause to indict them for violation of Section 3 (e) of Republic Act (R.A.) No. 3019, the OMB, through the Office of the Special Prosecutor (OSP), filed three (3) informations^[5] against Marquez and Caunan. The cases were raffled to the Fourth Division of the Sandiganbayan (*SB-4th Division*).

Before arraignment, on November 24, 2003, alleging discovery of the forged signatures, Marquez sought *referral of the disbursement vouchers, purchase requests and authorization requests to the NBI* and the reinvestigation of the cases against him.^[6] These were denied by the OSP.

Before the SB-4th Division, to prove its case, the prosecution presented five (5) witnesses, namely: ^{1]} COA State Auditor IV Fatima Valera Bermudez; ^{2]} Elenita Pracale, Chief, Business Permit and Licensing Office, Parañaque City; ^{3]} Benjamin Cruz; ^{4]} P/Insp. Rolando C. Columna, Legal Officer, PNP Firearms and Explosive Division; and ^{5]} Emerito L. Lejano, President, Guns Empire. Documentary evidence consisting of disbursement vouchers, purchase requests and authorization requests were also adduced.

On January 13, 2006, the prosecution filed its Formal Offer of Evidence consisting of Exhibits "A" to "FFFF," and their sub-markings. All of the evidence offered were admitted by the anti-graft court on March 22, 2006.

After the prosecution rested, Caunan testified and partly presented evidence for her defense.

Marquez, on the other hand, in his Omnibus Motion dated April 1, 2008, moved, among others, for the inhibition of Associate Justice Gregory Ong (*Justice Ong*) and Associate Justice Jose Hernandez (*Justice Hernandez*) and *for the referral of the disbursement vouchers, purchase requests and authorization to the NBI*. Associate Justice Hernandez and Associate Justice Ong inhibited themselves but the request of Marquez that the questioned documents be referred to the NBI was not acted upon.

On May 20, 2008, Justice Ong and Justice Hernandez recused themselves from further participating in the cases. The cases were then raffled to the SB-5th Division.

Thereafter, on July 4, 2008, Marquez filed the subject *Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation*. In his motion, he again insisted that his purported signatures on the vouchers were forged.

By way of Comment/Opposition to the motion, the prosecution argued that its documentary exhibits had already been formally offered in January 2006 and had been duly admitted by the anti-graft court. The prosecution added that, when confronted with the questioned transactions during the COA audit investigation, Marquez never raised the defense of forgery. Instead, he insisted on the propriety of the transactions. He did not claim forgery either when he filed his Joint Counter-Affidavit with the OMB. Also, in his verified Motion for Reconsideration dated May 29, 2003 and Supplemental Motion dated July 1, 2003 filed with the COA, no allegation of forgery was made.

The prosecution pointed to Section 4, Rule 129 of the Revised Rules of Court^[7] and posited that since Marquez alleged in his pleadings that he had relied on the competence of his subordinates, there could be no "palpable mistake," thus, he was estopped from alleging that his signatures on the subject documents were forged. The prosecution accused Marquez of filing the motion merely to delay the proceedings.^[8]

In his Reply, Marquez insisted that he never admitted that his signatures on the disbursement vouchers, purchase requests and authorization requests were his and that his motion was not intended to delay the proceedings.

In its Rejoinder, the prosecution reiterated its earlier arguments and added that Caunan testified and identified the signatures of Marquez in the subject vouchers. It further noted that Marquez moved to refer the documents to the NBI only two and a half (2 ½) years after the formal offer of said documents.

In the subject February 11, 2009 Resolution, the anti-graft court denied the motion of Marquez. Citing Section 22 of Rule 132 of the Rules of Court,^[9] it was of the view that while resort to the expert opinion of handwriting experts would be helpful in the examination of alleged forged documents, the same was neither mandatory nor indispensable, since the court can determine forgery from its own independent examination.

The motion for reconsideration of Marquez was likewise denied.

Aggrieved, Marquez interposed this petition for certiorari raising this lone

ISSUE

THAT THE PUBLIC RESPONDENT SANDIGANBAYAN - 5TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTIONS RESPECTIVELY DATED FEBRUARY 11, 2009 AND MAY 20, 2009 DENYING THE PETITIONER'S MOTION TO REFER PROSECUTION'S EVIDENCE FOR EXAMINATION BY THE QUESTIONED DOCUMENTS SECTION OF THE NATIONAL BUREAU OF INVESTIGATION WHICH DENIAL IS IN VIOLATION OF HIS RIGHT TO PRESENT EVIDENCE AND HIS TWIN CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW.

Those availing of the remedy of *certiorari* must clearly show that the trial court acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion, it means such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie,