

FIRST DIVISION

[G.R. No. 162206, November 17, 2010]

**MONICO V. JACOB AND CELSO L. LEGARDA, PETITIONERS, VS.
HON. SANDIGANBAYAN FOURTH DIVISION AND THE OFFICE OF
THE OMBUDSMAN, RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court for the nullification of the Resolutions dated February 4, 2002^[1] of the Sandiganbayan Special Fourth Division and December 12, 2003^[2] of the Sandiganbayan Fourth Division. In its Resolution dated February 4, 2002, the Sandiganbayan Special Fourth Division set aside the order to dismiss Criminal Case Nos. 25922-25939, among other cases, verbally issued by Associate Justice Narciso S. Nario (Justice Nario), Chairman of the Sandiganbayan Fourth Division, during the court session held on August 20, 2001;^[3] while in its Resolution dated December 12, 2003, the Sandiganbayan Fourth Division denied the motions for reconsideration of the petitioners and other accused.

The following facts are duly established from the pleadings of the parties:

From 1993 to 1997, Petron Corporation (Petron), a corporation engaged in the business of refining, marketing and distribution of petroleum products, received Tax Credit Certificates (TCCs) by assignment from 18 private firms^[4] registered with the Board of Investments (BOI). The TCCs were issued by the One Stop Shop Inter-Agency Tax Credit & Duty Drawback Center (OSS), an office under the Department of Finance (DOF), created by virtue of Administrative Order No. 266 dated February 7, 1992. Petron used the assigned TCCs to pay its excise tax liabilities.

The practice was for the BOI-registered firms to sign the Deeds of Assignment upon delivery of the TCCs to Petron. Petron then forwarded said documents to the OSS, with a request for authorization to use said TCCs to pay for its excise tax liabilities. DOF Undersecretary Antonio P. Belicena (Belicena) approved the request of Petron through the issuance of Tax Debit Memoranda (TDM) addressed to the Collection Program Division of the Bureau of Internal Revenue (BIR). The BIR Collection Program Division accepted the TCCs as payment for the excise tax liabilities of Petron by issuing its own TDM.^[5] The control numbers of the BIR-TDM were indicated on the back of the TCCs, marking the final utilization of the tax credits.^[6]

However, the Fact Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman eventually found that the aforementioned transactions involving the TCCs were irregular and violative of the Memorandum of Agreement dated August 29, 1989 between the BOI and the DOF, which implemented Article 21 of Executive

Order No. 226, otherwise known as the Omnibus Investments Code of 1987.^[7]

After the termination of the requisite preliminary investigation, the Office of the Ombudsman issued a Resolution dated March 27, 2000 finding probable cause against several public officers and private individuals, including petitioners Monico V. Jacob (Jacob), President, and Celso L. Legarda (Legarda), Vice-President and General Manager for Marketing, both of Petron, for perpetrating the so-called "tax credit scam." On April 10, 2010, the Office of the Ombudsman filed a total of 62 Informations, 18 of which, docketed as Criminal Case Nos. 25922-25939, were against DOF Undersecretary Belicena, OSS Deputy Executive Director Uldarico P. Andutan, Jr., petitioners and other Petron officials, and officers of the BOI-registered firms which assigned the TCCs to Petron, charging them with violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Petitioners provided an undisputed account of the events that subsequently took place before the Sandiganbayan:

On April 14, 2000, petitioners and the four other Petron officers who were similarly charged filed a Motion for Reinvestigation [with the Office of the Ombudsman].

On 17 April 2000, the [Sandiganbayan Fourth Division] issued an Order giving the prosecution a period of sixty (60) days within which -

... to re-assess its evidence in these cases and to take appropriate action on the said motion for reconsideration of accused movants and to inform the Court within the same period as to its findings and recommendations including the action thereon of the Honorable Ombudsman.

Sixty (60) days passed but the Office of the Ombudsman did not even bother to submit a report on the status of the motions for reconsideration. Months passed, and then, AN ENTIRE YEAR PASSED. There was still nothing from the respondent Office of the Ombudsman.

In the meantime, petitioner Jacob was arraigned on 1 June 2000 while petitioner Legarda was arraigned on 18 May 2001.

On March 20, 2001, in view of a significant development in the Shell cases (then pending with the 5th Division of [the Sandiganbayan]), petitioners and other accused Petron officials filed a Motion to Resolve with the Office of the Ombudsman. In the said motion, petitioners cited the Memorandum dated 30 January 2001 issued by Special Prosecutor Leonardo P. Tamayo upholding the dropping of the charges against Shell official Pacifico Cruz on the ground that there was no sufficient evidence to prove that he was part of the conspiracy. Petitioners asserted that since their situation/alleged participation is similar to that of Mr. Pacifico Cruz, they should similarly be dropped from the criminal cases. Despite

this, the respondent Office of the Ombudsman took no action.

Considering the time that had lapsed, the [Sandiganbayan Fourth Division], at the hearing on 1 June 2001, expressly warned the prosecution that should it fail to resolve the reconsideration/investigation, it would order the dismissal of the cases or require the prosecution to show cause why it should not be cited for contempt.

In its Resolution dated 26 June 2001, the [Sandiganbayan Fourth Division] in fact denied the motion of the prosecution for the resetting of the scheduled arraignment and pre-trial on 2 July 2001 "it appearing that the Reinvestigation of these cases has been pending for more than one (1) year now and the court cannot countenance the unreasonable delay attributable to the plaintiff."

In spite of the denial of their motion, the prosecution still failed to submit its report to the [Sandiganbayan Fourth Division] during the 2 July 2001 hearing. Instead they asked for a period of seven (7) more days to resolve the motions for reconsideration. The arraignment (of the other accused) and pre-trial therefore had to be reset again to 17 July 2001.

One day before the schedule hearing, the prosecution filed a Manifestation requesting the cancellation of the arraignment and pre-trial scheduled the next day on the ground that the motions for reconsideration/reinvestigation were still pending resolution.

Once again, [the Sandiganbayan Fourth Division] gave the prosecution another chance. During the hearing on 17 July 2001, the [Sandiganbayan 4th Division] directed the prosecution, through Prosecutor Orlando Ines, to terminate the reinvestigation within a period of one (1) more month. The arraignment and pre-trial were then reset to 20 August 2001.

At the scheduled hearing on August 20, 2001, Prosecutor Orlando Ines, however, again requested for the deferment of the arraignment and pre-trial on the ground that the resolution on the various motions for reconsideration/reinvestigation were still pending approval by the Office of the Ombudsman.

In all the hearings conducted in the cases the defense verbally and consistently invoked their right to speedy trial and moved for the dismissal of the cases. In the course of more than one year, however, the [Sandiganbayan 4th Division] kept affording the prosecution one chance after another. The sixty days granted to the prosecution became more than four hundred days - still, there was no resolution in sight.

Thus on 20 August 2001, compelled by its duty to uphold the fundamental law, the [Sandiganbayan Fourth Division, through its Chairman, Justice Nario] issued a verbal order dismissing the cases. The dismissal was duly recorded in the minutes of the hearing of the said date which was attested to by the Clerk of Court and signed by the

parties.

On 24 August 2001, the prosecution filed a Motion for Reconsideration with the following prayer: "WHEREFORE, the undersigned Ombudsman Prosecutors prayed (sic) that the Order issued by the Honorable Court for the summary dismissal of all the graft and estafa charges aforecited be SET ASIDE."

On August 31, 2001, the [Sandiganbayan Fourth Division] issued an Order taking cognizance of the Motion for Reconsideration filed by the prosecution and requiring the accused to file their respective comments thereon within five (5) days.

On 4 February 2002, OR SIX (6) MONTHS after [Justice Nario] issued the verbal order of dismissal, the [Sandiganbayan Special Fourth Division] issued an Order setting aside said verbal order.

x x x x

In the 4 February 2002 Resolution, this time a Division of five justices (two of whom dissented) rendered a Resolution stating:

WHEREFORE, the dismissal of these cases orally ordered in open court by the Chairman of the Fourth Division during its court session held on August 20, 2001, and reiterated in his subsequent ponencia, is hereby set aside.^[8] (Citations omitted.)

The Sandiganbayan Special Fourth Division gave the following reasons for overruling Justice Nario's verbal order dismissing the criminal cases against the accused in the alleged tax credit scam:

In the present case, (1) there is already a delay of the trial for more than one year now; (2) but it is not shown that the delay is vexatious, capricious and oppressive; (3) it may be that, as stated in the herein dissented Resolution, "at the hearings conducted in these cases, the defense orally, openly and consistently asked for the dismissal of these cases"; however, these oral manifestations were more of "knee-jerk reactions" of the defense counsel in those hearings everytime the prosecution requested for postponement than anything else as said defense counsel did not seriously pursue the dismissal of these cases, such as by reducing their "request" in a formal written motion to dismiss and/or insisting that the court formally rule on their request for dismissal and go on *certiorari* if denied; and (4) considering the nature and importance of the cases, if there is any prejudice that may have resulted as a consequence of the series of postponements, it would be more against the government than against any of the accused; however, be that as it may, none of the herein accused has come out to claim having been thus prejudiced.^[9]

On February 26, 2002, petitioners, together with four other co-accused Petron officials, filed a Motion for Reconsideration^[10] of the February 4, 2002 Resolution of the Sandiganbayan Special Fourth Division. Other accused also filed their motions for reconsideration and motions to quash/dismiss. The prosecution expectedly opposed all such motions of the accused.

In an *Omnibus* Resolution dated December 12, 2003, the Sandiganbayan Fourth Division ruled in the prosecution's favor and denied all the motions filed by the accused, to wit:

Wherefore, premises considered, this court issues an Omnibus Resolution denying all the above-described Motion to Quash for lack of merit.

Hence, petitioners come before us *via* the instant Petition for *Certiorari* averring grave abuse of discretion on the part of the Sandiganbayan Special Fourth Division, specifically:

I

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' RIGHT TO SPEEDY TRIAL.

II

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS HAVE NOT BEEN PUT IN DOUBLE JEOPARDY.

III

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT CONSIDERING THE GLARING LACK OF EVIDENCE AGAINST PETITIONERS.^[11]

To recall, Justice Nario, as the Chairman of the Sandiganbayan Fourth Division, ordered the dismissal of all criminal cases arising from the purported tax credit scam on the ground that the accused, including petitioners, had already been deprived of their right to a speedy trial and disposition of the cases against them. Petitioners assert that the Sandiganbayan gravely abused its discretion in reversing Justice Nario's order of dismissal of Criminal Case Nos. 25922-25939 because such reversal violated petitioners' constitutional right against double jeopardy.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2), Article III^[12] of the Constitution. This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive