

THIRD DIVISION

[G.R. Nos. 147026-27, September 11, 2009]

**CAROLINA R. JAVIER, PETITIONER, VS. THE FIRST DIVISION OF
THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for *certiorari*^[1] under Rule 65 of the Rules of Court filed by petitioner Carolina R. Javier in Criminal Case Nos. 25867 and 25898, entitled "*People of the Philippines, Plaintiff versus Carolina R. Javier, Accused,*" seeking to nullify respondent Sandiganbayan's: (1) Order^[2] dated November 14, 2000 in Criminal Case No. 25867, which denied her Motion to Quash Information; (2) Resolution^[3] dated January 17, 2001 in Criminal Case No. 25898, which denied her Motion for Reconsideration and Motion to Quash Information; and (3) Order^[4] dated February 12, 2001, declaring that a motion for reconsideration in Criminal Case No. 25898 would be superfluous as the issues are fairly simple and straightforward.

The factual antecedents follow.

On June 7, 1995, Republic Act (R.A.) No. 8047,^[5] or otherwise known as the "Book Publishing Industry Development Act", was enacted into law. Foremost in its policy is the State's goal in promoting the continuing development of the book publishing industry, through the active participation of the private sector, to ensure an adequate supply of affordable, quality-produced books for the domestic and export market.

To achieve this purpose, the law provided for the creation of the National Book Development Board (NBDB or the Governing Board, for brevity), which shall be under the administration and supervision of the Office of the President. The Governing Board shall be composed of eleven (11) members who shall be appointed by the President of the Philippines, five (5) of whom shall come from the government, while the remaining six (6) shall be chosen from the nominees of organizations of private book publishers, printers, writers, book industry related activities, students and the private education sector.

On February 26, 1996, petitioner was appointed to the Governing Board as a private sector representative for a term of one (1) year.^[6] During that time, she was also the President of the Book Suppliers Association of the Philippines (BSAP). She was on a hold-over capacity in the following year. On September 14, 1998, she was again appointed to the same position and for the same period of one (1) year.^[7] Part of her functions as a member of the Governing Board is to attend book fairs to

establish linkages with international book publishing bodies. On September 29, 1997, she was issued by the Office of the President a travel authority to attend the Madrid International Book Fair in Spain on October 8-12, 1997.^[8] Based on her itinerary of travel,^[9] she was paid P139,199.00^[10] as her travelling expenses.

Unfortunately, petitioner was not able to attend the scheduled international book fair.

On February 16, 1998, Resident Auditor Rosario T. Martin advised petitioner to immediately return/refund her cash advance considering that her trip was canceled.^[11] Petitioner, however, failed to do so. On July 6, 1998, she was issued a Summary of Disallowances^[12] from which the balance for settlement amounted to P220,349.00. Despite said notice, no action was forthcoming from the petitioner.

On September 23, 1999, Dr. Nellie R. Apolonio, then the Executive Director of the NBDB, filed with the Ombudsman a complaint against petitioner for malversation of public funds and properties. She averred that despite the cancellation of the foreign trip, petitioner failed to liquidate or return to the NBDB her cash advance within sixty (60) days from date of arrival, or in this case from the date of cancellation of the trip, in accordance with government accounting and auditing rules and regulations. Dr. Apolonio further charged petitioner with violation of Republic Act (R.A.) No. 6713^[13] for failure to file her Statement of Assets and Liabilities.

The Ombudsman found probable cause to indict petitioner for violation of Section 3(e) of R.A. No. 3019,^[14] as amended, and recommended the filing of the corresponding information.^[15] It, however, dismissed for insufficiency of evidence, the charge for violation of R.A. No. 6713.

In an Information dated February 18, 2000, petitioner was charged with violation of Section 3(e) of R.A. No. 3019 before the Sandiganbayan, to wit:

That on or about October 8, 1997, or for sometime prior or subsequent thereto, in the City of Quezon, Philippines and within the jurisdiction of this Honorable Court, the aforementioned accused, a public officer, being then a member of the governing Board of the National Book Development Board (NBDB), while in the performance of her official and administrative functions, and acting with evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally, without any justifiable cause, and despite due demand by the Resident Auditor and the Executive Director of NBDB, fail and refuse to return and/or liquidate her cash advances intended for official travel abroad which did not materialize, in the total amount of P139,199.00 as of September 23, 1999, as required under EO No. 248 and Sec. 5 of COA Circular No. 97-002 thereby causing damage and undue injury to the Government.

CONTRARY TO LAW.^[16]

The case was docketed as Criminal Case No. 25867 and raffled to the First Division.

Meanwhile, the Commission on Audit charged petitioner with Malversation of Public Funds, as defined and penalized under Article 217 of the Revised Penal Code, for not liquidating the cash advance granted to her in connection with her supposed trip to Spain. During the conduct of the preliminary investigation, petitioner was required to submit her counter-affidavit but she failed to do so. The Ombudsman found probable cause to indict petitioner for the crime charged and recommended the filing of the corresponding information against her. [17]

Thus, an Information dated February 29, 2000 was filed before the Sandiganbayan, which was docketed as Criminal Case No. 25898, and raffled to the Third Division, the accusatory portion of which reads:

That on or about and during the period from October 8, 1997 to February 16, 1999, or for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a high ranking officer, being a member of the Governing Board of the National Book Development Board and as such, is accountable for the public funds she received as cash advance in connection with her trip to Spain from October 8-12, 1997, per LBP Check No. 10188 in the amount of P139,199.00, which trip did not materialize, did then and there willfully, unlawfully and feloniously take, malverse, misappropriate, embezzle and convert to her own personal use and benefit the aforementioned amount of P139,199.00, Philippine currency, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW. [18]

During her arraignment in Criminal Case No. 25867, petitioner pleaded not guilty. Thereafter, petitioner delivered to the First Division the money subject of the criminal cases, which amount was deposited in a special trust account during the pendency of the criminal cases.

Meanwhile, the Third Division set a clarificatory hearing in Criminal Case No. 25898 on May 16, 2000 in order to determine jurisdictional issues. On June 3, 2000, petitioner filed with the same Division a Motion for Consolidation [19] of Criminal Case No. 25898 with Criminal Case No. 25867, pending before the First Division. On July 6, 2000, the People filed an *Urgent Ex-Parte Motion to Admit Amended Information* [20] in Criminal Case No. 25898, which was granted. Accordingly, the Amended Information dated June 28, 2000 reads as follows:

That on or about and during the period from October 8, 1997 to February 16, 1999, or for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a high ranking officer, being a member of the Governing Board of the National Book Development Board equated to Board Member II with a salary grade 28 and as such, is accountable for the public funds she received as case advance in connection with her trip to Spain from October 8-12, 1997, per LBP Check No. 10188 in the

amount of P139,199.00, which trip did not materialize, did then and there willfully, unlawfully and feloniously take, malverse, misappropriate, embezzle and convert to her own personal use and benefit the aforementioned amount of P139,199.00, Philippine currency, to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW.^[21]

In its Resolution dated October 5, 2000, the Third Division ordered the consolidation of Criminal Case No. 25898 with Criminal Case No. 25867. ^[22]

On October 10, 2000, petitioner filed a Motion to Quash Information,^[23] averring that the Sandiganbayan has no jurisdiction to hear Criminal Case No. 25867 as the information did not allege that she is a public official who is classified as Grade "27" or higher. Neither did the information charge her as a co-principal, accomplice or accessory to a public officer committing an offense under the Sandiganbayan's jurisdiction. She also averred that she is not a public officer or employee and that she belongs to the Governing Board only as a private sector representative under R.A. No. 8047, hence, she may not be charged under R.A. No. 3019 before the Sandiganbayan or under any statute which covers public officials. Moreover, she claimed that she does not perform public functions and is without any administrative or political power to speak of - that she is serving the private book publishing industry by advancing their interest as participant in the government's book development policy.

In an Order^[24] dated November 14, 2000, the First Division^[25] denied the motion to quash with the following disquisition:

The fact that the accused does not receive any compensation in terms of salaries and allowances, if that indeed be the case, is not the sole qualification for being in the government service or a public official. The National Book Development Board is a statutory government agency and the persons who participated therein even if they are from the private sector, are public officers to the extent that they are performing their duty therein as such.

Insofar as the accusation is concerned herein, it would appear that monies were advanced to the accused in her capacity as Director of the National Book Development Board for purposes of official travel. While indeed under ordinary circumstances a member of the board remains a private individual, still when that individual is performing her functions as a member of the board or when that person receives benefits or when the person is supposed to travel abroad and is given government money to effect that travel, to that extent the private sector representative is a public official performing public functions; if only for that reason, and not even considering situation of her being in possession of public funds even as a private individual for which she would also covered by provisions of the Revised Penal Code, she is properly charged before this Court.

On November 15, 2000, the First Division accepted the consolidation of the criminal cases against petitioner and scheduled her arraignment on November 17, 2000, for Criminal Case No. 25898. On said date, petitioner manifested that she is not prepared to accept the propriety of the accusation since it refers to the same subject matter as that covered in Criminal Case No. 25867 for which the Sandiganbayan gave her time to file a motion to quash. On November 22, 2000, petitioner filed a Motion to Quash the Information^[26] in Criminal Case No. 25898, by invoking her right against double jeopardy. However, her motion was denied in open court. She then filed a motion for reconsideration.

On January 17, 2001, the Sandiganbayan issued a Resolution^[27] denying petitioner's motion with the following disquisition:

The accused is under the jurisdiction of this Court because Sec. 4 (g) of P.D. 1606 as amended so provides, thus:

Sec. 4. *Jurisdiction.* - The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

x x x x

(g) Presidents, *directors or trustees*, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

x x x x

The offense is office-related because the money for her travel abroad was given to her because of her Directorship in the National Book Development Board.

Furthermore, there are also allegations to hold the accused liable under Article 222 of the Revised Penal Code which reads:

Art. 222. *Officers included in the preceding provisions.* - The provisions of this chapter shall apply to *private individuals* who, in any capacity whatever, have charge of any insular, provincial or municipal funds, revenues, or property and to any administrator or depository of funds or property attached , seized or deposited by public authority, even if such property belongs to a private individual.

Likewise, the Motion to Quash the Information in Criminal Case No. 25898 on the ground of *litis pendencia* is denied since in this instance, these two Informations speak of offenses under different statutes, i.e., R.A. No. 3019 and the Revised Penal Code, neither of which precludes prosecution of the other.