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SPECIAL FIRST DIVISION

[G.R. NOS. 165510-33, July 28, 2006]

BENJAMIN ("KOKOY") T.ROMUALDEZ, PETITIONER, VS. HON. SIMEON V. MARCELO, IN HIS OFFICIAL CAPACITY AS THE OMBUDSMAN, AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

For resolution is petitioner's Motion for Reconsideration[1] assailing the Decision dated September 23, 2005, the dispositive portion of which states:

> WHEREFORE, the petition is DISMISSED. The resolutions dated July 12, 2004 and September 6, 2004 of the Office of the Special Prosecutor, are AFFIRMED.
>
> SO ORDERED.[2]

Petitioner claims that the Office of the Ombudsman gravely abused its discretion in recommending the filing of 24 informations against him for violation of Section 7 of Republic Act (RA) No. 3019 or the *Anti-Graft and Corrupt Practices Act;* that the Ombudsman cannot revive the aforementioned cases which were previously dismissed by the Sandiganbayan in its Resolution of February 10, 2004; that the defense of prescription may be raised even for the first time on appeal and thus there is no necessity for the presentation of evidence thereon before the *court a quo*. Thus, this Court may accordingly dismiss Criminal Case Nos. 28031-28049 pending before the Sandiganbayan and Criminal Case Nos. 04-231857-04-231860 pending before the Regional Trial Court of Manila, all on the ground of prescription.

In its Comment,[3] the Ombudsman argues that the dismissal of the informations in Criminal Case Nos. 13406-13429 does not mean that petitioner was thereafter exempt from criminal prosecution; that new informations may be filed by the Ombudsman should it find probable cause in the conduct of its preliminary investigation; that the filing of the complaint with the Presidential Commission on Good Government (PCGG) in 1987 and the filing of the information with the Sandiganbayan in 1989 interrupted the prescriptive period; that the absence of the petitioner from the Philippines from 1986 until 2000 also interrupted the aforesaid period based on Article 91 of the Revised Penal Code.

For its part, the PCGG avers in its Comment[4] that, in accordance with the 1987 Constitution and RA No. 6770 or the *Ombudsman Act of 1989*, the Omdudsman need not wait for a new complaint with a new docket number for it to conduct a preliminary investigation on the alleged offenses of the petitioner; that considering that both RA No. 3019 and Act No. 3326 or the *Act To Establish Periods of*

Prescription For Violations Penalized By Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin To Run, are silent as to whether prescription should begin to run when the offender is absent from the Philippines, the Revised Penal Code, which answers the same in the negative, should be applied.

The issues for resolution are: (1) whether the preliminary investigation conducted by the Ombudsman in Criminal Case Nos. 13406-13429 was a nullity; and (2) whether the offenses for which petitioner are being charged have already prescribed.

Anent the first issue, we reiterate our ruling in the assailed Decision that the preliminary investigation conducted by the Ombudsman in Criminal Case Nos. 13406-13429 is a valid proceeding despite the previous dismissal thereof by the Sandiganbayan in its Minute Resolution[5] dated February 10, 2004 which reads:

> Crim. Cases Nos. 13406-13429-PEO. vs. BENJAMIN T. ROMUALDEZ
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> Considering that the Decision of the Honorable Supreme Court in G.R. Nos. 143618-41, entitled "Benjamin 'Kokoy' Romualdez vs. The Honorable Sandiganbayan (First Division, et al.)" promulgated on July 30, 2002 annulled and set aside the orders issued by this Court on June 8, 2000 which, among others, denied the accused's motion to quash the informations in these cases; that in particular the above-mentioned Decision ruled that the herein informations may be quashed because the officer who filed the same had no authority to do so; and that the said Decision has become final and executory on November 29, 2002, these cases are considered DISMISSED. Let these cases be sent to the archives.

The aforesaid dismissal was effected pursuant to our ruling in *Romualdez v. Sandiganbayan*[6] where petitioner assailed the Sandiganbayan's Order dated June 8, 2000 in Criminal Case Nos. 13406-13429 which denied his Motion to Quash, terminated the preliminary investigation conducted by Prosecutor Evelyn T. Lucero and set his arraignment for violations of Section 7 of RA No. 3019 on June 26, 2000. [7] In annulling and setting aside the aforesaid Order of the Sandiganbayan, we held that:

> In the case at bar, the flaw in the information is not a mere remediable defect of form, as in *Pecho v. Sandiganbayan* where the wording of the certification in the information was found inadequate, or in *People v. Marquez,* where the required certification was absent. Here, the informations were filed by an unauthorized party. The defect cannot be cured even by conducting another preliminary investigation. An invalid information is no information at all and cannot be the basis for criminal proceedings.[8]

In effect, we upheld in *Romualdez v. Sandiganbayan*[9] petitioner's Motion to Quash and directed the dismissal of Criminal Case Nos. 13406-13429 because the informations were filed by an unauthorized party, hence void.

In such a case, Section 6, Rule 117 of the Rules of Court is pertinent and applicable. Thus:

> *SEC. 6. Order sustaining the motion to quash not a bar to another prosecution; exception.* - An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in section 3(g) and (i)[10] of this Rule.

An order sustaining a motion to quash on grounds other than extinction of criminal liability or double jeopardy does not preclude the filing of another information for a crime constituting the same facts. Indeed, we held in *Cudia v. Court of Appeals*[11] that:

> In fine, there must have been a valid and sufficient complaint or information in the former prosecution. If, therefore, the complaint or information was insufficient because it was so defective in form or substance that the conviction upon it could not have been sustained, its dismissal without the consent of the accused cannot be pleaded. As the fiscal had no authority to file the information, the dismissal of the first information would not be a bar in petitioner's subsequent prosecution. x x x.[12]

Be that as it may, the preliminary investigation conducted by the Ombudsman in the instant cases was not a violation of petitioner's right to be informed of the charges against him. It is of no moment that the cases investigated by the Ombudsman bore the same docket numbers as those cases which have already been dismissed by the Sandiganbayan, to wit: Criminal Case Nos. 13406-13429. As we have previously stated:

> The assignment of a docket number is an internal matter designed for efficient record keeping. It is usually written in the Docket Record in sequential order corresponding to the date and time of filing a case.
>
> This Court agrees that the use of the docket numbers of the dismissed cases was merely for reference. In fact, after the new informations were filed, new docket numbers were assigned, i.e., Criminal Cases Nos. 28031-28049 x x x.[13]

Besides, regardless of the docket numbers, the Ombudsman conducted the above-referred preliminary investigation pursuant to our Decision in *Romualdez v. Sandiganbayan*[14] when we categorically declared therein that:

> The Sandiganbayan also committed grave abuse of discretion when it abruptly terminated the reinvestigation being conducted by Prosecutor Lucero. It should be recalled that our directive in G.R. No. 105248 for the holding of a preliminary investigation was based on our ruling that the right to a preliminary investigation is a substantive, rather than a procedural right. Petitioner's right was violated when the preliminary investigation of the charges against him were conducted by an officer without jurisdiction over the said cases. It bears stressing that our directive should be strictly complied with in order to achieve its objective of affording petitioner his right to due process.[15]

Anent the issue on the prescription of the offenses charged, we should first resolve the question of whether this Court may validly take cognizance of and resolve the aforementioned issue considering that as we have said in the assailed Decision, "this

case has never progressed beyond the filing of the informations against the petitioner"[16] and that "it is only prudent that evidence be gathered through trial on the merits to determine whether the offense charged has already prescribed."[17] We reconsider our stance and shall rule in the affirmative.

Rule 117 of the Rules of Court provides that the accused may, at any time before he enters his plea, move to quash the complaint and information[18] on the ground that the criminal action or liability has been extinguished,[19] which ground includes the defense of prescription considering that Article 89 of the Revised Penal Code enumerates prescription as one of those grounds which totally extinguishes criminal liability. Indeed, even if there is yet to be a trial on the merits of a criminal case, the accused can very well invoke the defense of prescription.

Thus, the question is whether or not the offenses charged in the subject criminal cases have prescribed? We held in the case of *Domingo v. Sandiganbayan*[20] that:

> In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[21]

Petitioner is being charged with violations of Section 7 of RA No. 3019 for failure to file his Statements of Assets and Liabilities for the period 1967-1985 during his tenure as Ambassador Extraordinary and Plenipotentiary and for the period 1963-1966 during his tenure as Technical Assistant in the Department of Foreign Affairs.

Section 11 of RA No. 3019 provides that all offenses punishable therein shall prescribe in 15 years. Significantly, this Court already declared in the case of *People v. Pacificador*[22] that:

> It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.[23]

Thus, for offenses allegedly committed by the petitioner from 1962 up to March 15, 1982, the same shall prescribe in 10 years. On the other hand, for offenses allegedly committed by the petitioner during the period from March 16, 1982 until 1985, the same shall prescribe in 15 years.

As to when these two periods begin to run, reference is made to Act No. 3326 which governs the computation of prescription of offenses defined by and penalized under special laws. Section 2 of Act No. 3326 provides:

> SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its

investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

In the case of *People v. Duque,*[24] we construed the aforequoted provision, specifically the rule on the running of the prescriptive period as follows:

> In our view, the phrase "institution of judicial proceedings for its investigation and punishment" may be either disregarded as surplusage or should be deemed preceded by the word "until." Thus, Section 2 may be read as:
>
> > "Prescription shall begin to run from the day of the commission of the violation of the law; and if the same be not known at the time, from the discovery thereof;"
>
> or as:
>
> > "Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and *until* institution of judicial proceedings for its investigation and punishment." (Emphasis supplied)[25]

Thus, this Court rules that the prescriptive period of the offenses herein began to run from the discovery thereof or on May 8, 1987, which is the date of the complaint filed by the former Solicitor General Francisco I. Chavez against the petitioner with the PCGG.

In the case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*[26] this Court already took note that:

> In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.[27]

However, both respondents in the instant case aver that, applying Article 91 of the Revised Penal Code suppletorily, the absence of the petitioner from the Philippines from 1986 until April 27, 2000 prevented the prescriptive period for the alleged offenses from running.

We disagree.

Section 2 of Act. No. 3326 is conspicuously silent as to whether the absence of the offender from the Philippines bars the running of the prescriptive period. The silence