

SECOND DIVISION

[G.R. NOS. 161784-86, April 26, 2005]

**DINAH C. BARRIGA, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN (4TH DIVISION) AND THE PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court for the nullification of the Resolution^[1] of the Sandiganbayan in Criminal Case Nos. 27435 to 27437 denying the motion to quash the Informations filed by one of the accused, Dinah C. Barriga, and the Resolution denying her motion for reconsideration thereof.

The Antecedents

On April 3, 2003, the Office of the Ombudsman filed a motion with the Sandiganbayan for the admission of the three Amended Informations appended thereto. The first Amended Information docketed as Criminal Case No. 27435, charged petitioner Dinah C. Barriga and Virginio E. Villamor, the Municipal Accountant and the Municipal Mayor, respectively, of Carmen, Cebu, with malversation of funds. The accusatory portion reads:

That in or about January 1996 or sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, above-named accused VIRGINIO E. VILLAMOR and DINAH C. BARRIGA, both public officers, being then the Municipal Mayor and Municipal Accountant, respectively, of the Municipality of Carmen, Cebu, and as such, had in their possession and custody public funds amounting to TWENTY- THREE THOUSAND FORTY-SEVEN AND 20/100 PESOS (P23,047.20), Philippine Currency, intended for the payment of Five (5) rolls of Polyethylene pipes to be used in the Corte-Cantumog Water System Project of the Municipality of Carmen, Cebu, for which they are accountable by reason of the duties of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously misappropriate, take, embezzle and convert into their own personal use and benefit said amount of P23,047.20, and despite demands made upon them to account for said amount, they have failed to do so, to the damage and prejudice of the government.

CONTRARY TO LAW.^[2]

The inculpatory portion of the second Amended Information, docketed as Criminal Case No. 27436, charging the said accused with illegal use of public funds, reads:

That in or about the month of November 1995, or sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Cebu, Philippines, and within the jurisdiction of the Honorable Court, above-named accused VIRGINIO E. VILLAMOR and DINAH C. BARRIGA, both public officers, being then the Municipal Mayor and Municipal Accountant, respectively, of the Municipality of Carmen, Cebu, and as such, had in their possession and control public funds in the amount of ONE THOUSAND THREE HUNDRED FIVE PESOS (P1,305.00) Philippine Currency, representing a portion of the Central Visayas Water and Sanitation Project Trust Fund (CVWSP Fund) intended and appropriated for the projects classified under Level I and III particularly the construction of Deep Well and Spring Box for Level I projects and construction of water works system for Level III projects of specified barangay beneficiaries/recipients, and for which fund accused are accountable by reason of the duties of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other, did then and there, willfully unlawfully and feloniously disburse and use said amount of P1,305.00 for the Spring Box of Barangay Natimao-an, Carmen, Cebu, a barangay which was not included as a recipient of CVWSP Trust Fund, thus, accused used said public fund to a public purpose different from which it was intended or appropriated, to the damage and prejudice of the government, particularly the barangays which were CVWSP Trust Fund beneficiaries.

CONTRARY TO LAW.^[3]

The accusatory portion of the third Amended Information, docketed as Criminal Case No. 27437, charged the same accused with illegal use of public funds, as follows:

That in or about the month of January 1997, or sometime prior or subsequent thereto, in the Municipality of Carmen, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **Virgilio E. Villamor** and **Dinah C. Barriga**, both public officers, being then the Municipal Mayor and Municipal Accountant, respectively, of the Municipality of Carmen, Cebu, and as such, had in their possession and control public funds in the amount of **TWO HUNDRED SIXTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-SEVEN and 96/100 (P267,537.96) PESOS**, representing a portion of the Central Visayas Water and Sanitation Project Trust Fund (CVWSP Fund), intended and appropriated for the projects classified under Level I and Level III, particularly the construction of Spring Box and Deep Well for Level I projects and construction of water works system for Level III projects of specified barangay beneficiaries/ recipients, and for which fund accused are accountable by reason for the duties of their office, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously disburse and use said amount of

P267,537.96 for the construction and expansion of Barangay Cantucong Water System, a project falling under Level II of CVWSP, thus, accused used said public funds to a public purpose different from which it was intended and appropriated, to the damage and prejudice of the government, particularly the barangay beneficiaries of Levels I and III of CVWSP.

CONTRARY TO LAW.^[4]

The Sandiganbayan granted the motion and admitted the Amended Informations. The petitioner filed a Motion to Quash the said Amended Informations on the ground that under Section 4 of Republic Act No. 8294, the Sandiganbayan has no jurisdiction over the crimes charged. She averred that the Amended Informations failed to allege and show the intimate relation between the crimes charged and her official duties as municipal accountant, which are conditions *sine qua non* for the graft court to acquire jurisdiction over the said offense. She averred that the prosecution and the Commission on Audit admitted, and no less than this Court held in *Tan v. Sandiganbayan*,^[5] that a municipal accountant is not an accountable officer. She alleged that the felonies of malversation and illegal use of public funds, for which she is charged, are not included in Chapter 11, Section 2, Title VII, Book II, of the Revised Penal Code; hence, the Sandiganbayan has no jurisdiction over the said crimes. Moreover, her position as municipal accountant is classified as Salary Grade (SG) 24.

The petitioner also posited that although the Sandiganbayan has jurisdiction over offenses committed by public officials and employees in relation to their office, the mere allegation in the Amended Informations that she committed the offenses charged in relation to her office is not sufficient as the phrase is merely a conclusion of law; controlling are the specific factual allegations in the Informations that would indicate the close intimacy between the discharge of her official duties and the commission of the offenses charged. To bolster her stance, she cited the rulings of this Court in *People v. Montejo*,^[6] *Soller v. Sandiganbayan*,^[7] and *Lacson v. Executive Secretary*.^[8] She further contended that although the Amended Informations alleged that she conspired with her co-accused to commit the crimes charged, they failed to allege and show her exact participation in the conspiracy and how she committed the crimes charged. She also pointed out that the funds subject of the said Amended Informations were not under her control or administration.

On October 9, 2003, the Sandiganbayan issued a Resolution^[9] denying the motion of the petitioner. The motion for reconsideration thereof was, likewise, denied, with the graft court holding that the applicable ruling of this Court was *Montilla v. Hilario*,^[10] i.e., that an offense is committed in relation to public office when there is a direct, not merely accidental, relation between the crime charged and the office of the accused such that, in a legal sense, the offense would not exist without the office; in other words, the office must be a constituent element of the crime as defined in the statute. The graft court further held that the offices of the municipal mayor and the municipal accountant were constituent elements of the felonies of malversation and illegal use of public funds. The graft court emphasized that the rulings of this Court in *People v. Montejo*^[11] and *Lacson v. Executive Secretary*^[12] apply only where the office held by the accused is not a constituent element of the crimes charged. In such cases, the Information must contain specific factual

allegations showing that the commission of the crimes charged is intimately connected with or related to the performance of the accused public officer's public functions. In fine, the graft court opined, the basic rule is that enunciated by this Court in *Montilla v. Hilario*, and the ruling of this Court in *People v. Montejo* is the exception.

The petitioner thus filed the instant petition for *certiorari* under Rule 65 of the Rules of Court, seeking to nullify the aforementioned Resolutions of the Sandiganbayan. The petitioner claims that the graft court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the same.

In its comment on the petition, the Office of the Special Prosecutor averred that the remedy of filing a petition for *certiorari*, from a denial of a motion to quash amended information, is improper. It posits that any error committed by the Sandiganbayan in denying the petitioner's motion to quash is merely an error of judgment and not of jurisdiction. It asserts that as ruled by the Sandiganbayan, what applies is the ruling of this Court in *Montilla v. Hilario* and not *People v. Montejo*. Furthermore, the crimes of malversation and illegal use of public funds are classified as crimes committed by public officers in relation to their office, which by their nature fall within the jurisdiction of the Sandiganbayan. It insists that there is no more need for the Amended Informations to specifically allege intimacy between the crimes charged and the office of the accused since the said crimes can only be committed by public officers. It further claims that the petitioner has been charged of malversation and illegal use of public funds in conspiracy with Municipal Mayor Virginio E. Villamor, who occupies a position classified as SG 27; and even if the petitioner's position as municipal accountant is only classified as SG 24, under Section 4 of Rep. Act No. 8249, the Sandiganbayan still has jurisdiction over the said crimes. The Office of the Special Prosecutor further avers that the petitioner's claim, that she is not an accountable officer, is a matter of defense.

The Ruling of the Court

The petition has no merit.

We agree with the ruling of the Sandiganbayan that based on the allegations of the Amended Informations and Rep. Act No. 8249, it has original jurisdiction over the crimes of malversation and illegal use of public funds charged in the Amended Informations subject of this petition.

Rep. Act No. 8249,^[13] which amended Section 4 of Presidential Decree No. 1606, provides, *inter alia*, that the Sandiganbayan has original jurisdiction over crimes and felonies committed by public officers and employees, at least one of whom belongs to any of the five categories thereunder enumerated at the time of the commission of such crimes.^[14] There are two classes of public office-related crimes under subparagraph (b) of Section 4 of Rep. Act No. 8249: first, those crimes or felonies in which the public office is a constituent element as defined by statute and the relation between the crime and the offense is such that, in a legal sense, the offense committed cannot exist without the office;^[15] second, such offenses or felonies which are intimately connected with the public office and are perpetrated by the public officer or employee while in the performance of his official functions, through improper or irregular conduct.^[16]