

EN BANC

[G.R. NO. 165835, June 22, 2005]

**MAJOR GENERAL CARLOS F. GARCIA, PETITIONER, VS.
SANDIGANBAYAN AND THE OFFICE OF THE OMBUDSMAN,
RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Petitioner Major General Carlos F. Garcia was the Deputy Chief of Staff for Comptrollership, J6, of the Armed Forces of the Philippines. Petitioner filed this Petition for certiorari and prohibition under Rule 65 to annul and set aside public respondent Sandiganbayan's *Resolution*^[1] dated 29 October 2004 and *Writ of Preliminary Attachment*^[2] dated 2 November 2004, and to enjoin public respondents Sandiganbayan and Office of the Ombudsman from further proceeding with any action relating to the enforcement of the assailed issuances.

On 27 September 2004, Atty. Maria Olivia Elena A. Roxas, Graft Investigation and Prosecution Officer II of the Field Investigation Office of the Office of the Ombudsman, after due investigation, filed a complaint against petitioner with public respondent Office of the Ombudsman, for violation of Sec. 8, in relation to Sec. 11 of Republic Act (R.A.) No. 6713,^[3] violation of Art. 183 of the Revised Penal Code, and violation of Section 52 (A)(1), (3) and (20) of the Civil Service Law. Based on this complaint, a case for Violations of R.A. No. 1379,^[4] Art. 183 of the Revised Penal Code, and Sec. 8 in relation to Sec. 11 of R.A. No. 6713, docketed as Case

No. OMB-P-C-04-1132-I, was filed against petitioner.^[5] Petitioner's wife Clarita Depakakibo Garcia, and their three sons, Ian Carl, Juan Paolo and Timothy Mark, all surnamed Garcia, were impleaded in the complaint for violation of R.A. No. 1379 insofar as they acted as conspirators, conduits, dummies and fronts of petitioner in receiving, accumulating, using and disposing of his ill-gotten wealth.

On the same day, 27 October 2004, the Republic of the Philippines, acting through public respondent Office of the Ombudsman, filed before the Sandiganbayan, a *Petition with Verified Urgent Ex Parte Application for the Issuance of a Writ of Preliminary Attachment*^[6] against petitioner, his wife, and three sons, seeking the forfeiture of unlawfully acquired properties under Sec. 2 of R.A. No. 1379, as amended. The petition was docketed as Civil Case No. 0193, entitled "Republic of the Philippines vs. Maj. Gen. Carlos F. Garcia, *et al.*" It was alleged that the Office of the Ombudsman, after conducting an inquiry similar to a preliminary investigation in criminal cases, has determined that a *prima facie* case exists against Maj. Gen. Garcia and the other respondents therein who hold such properties for, with, or on behalf of, Maj. Gen. Garcia, since during his incumbency as a soldier and public officer he acquired huge amounts of money and properties manifestly out of

proportion to his salary as such public officer and his other lawful income, if any.^[7]

Acting on the Republic's prayer for issuance of a writ of preliminary attachment, the Sandiganbayan issued the questioned *Resolution* granting the relief prayed for. The corresponding writ of preliminary attachment was subsequently issued on 2 November 2004 upon the filing of a bond by the Republic. On 17 November 2004, petitioner (as respondent a quo) filed a *Motion to Dismiss*^[8] in Civil Case No. 0193 on the ground of lack of jurisdiction of the Sandiganbayan over forfeiture proceedings under R.A. No. 1379. On even date, petitioner filed the present *Petition*, raising the same issue of lack jurisdiction on the part of the Sandiganbayan.

Petitioner argues in this *Petition* that the Sandiganbayan is without jurisdiction over the "civil action" for forfeiture of unlawfully acquired properties under R.A. No. 1379, maintaining that such jurisdiction actually resides in the Regional Trial Courts as provided under Sec. 2^[9] of the law, and that the jurisdiction of the Sandiganbayan in *civil actions* pertains only to separate actions for recovery of unlawfully acquired property against President Marcos, his family, and cronies as can be gleaned from Sec. 4 of Presidential Decree (P.D.) No. 1606,^[10] as amended, and Executive Orders (E.O.) Nos. 14^[11] and 14-A.^[12]

Theorizing that the Sandiganbayan, under P.D. No. 1606 or the law creating it, was intended principally as a criminal court, with no jurisdiction over separate civil actions, petitioner points to President Corazon C. Aquino's issuances after the EDSA Revolution, namely: (1) E.O. No. 1 creating the Presidential Commission on Good Government (PCGG) for the recovery of ill-gotten wealth amassed by President Ferdinand E. Marcos, his family and cronies, (2) E.O. No. 14 which amended P.D. No. 1606 and R.A. No. 1379 by transferring to the Sandiganbayan jurisdiction over civil actions filed against President Marcos, his family and cronies based on R.A. No. 1379, the Civil Code and other existing laws, and (3) E.O. No. 14-A which further amended E.O. No. 14, P.D. No. 1606 and R.A. No. 1379 by providing that the civil action under R.A. No. 1379 which may be filed against President Marcos, his family and cronies, may proceed independently of the criminal action.

Petitioner gathers from the presidential issuances that the Sandiganbayan has been granted jurisdiction only over the separate civil actions filed against President Marcos, his family and cronies, regardless of whether these civil actions were for recovery of unlawfully acquired property under R.A. No. 1379 or for restitution, reparation of damages or indemnification for consequential damages or other civil actions under the Civil Code or other existing laws. According to petitioner, nowhere in the amendments to P.D. No. 1606 and R.A. No. 1379 does it provide that the Sandiganbayan has been vested jurisdiction over separate civil actions other than those filed against President Marcos, his family and cronies.^[13] Hence, the Sandiganbayan has no jurisdiction over any separate civil action against him, even if such separate civil action is for recovery of unlawfully acquired property under R.A. No. 1379.

Petitioner further contends that in any event, the petition for forfeiture filed against him is fatally defective for failing to comply with the jurisdictional requirements under Sec. 2, R.A. No. 1379, ^[14] namely: (a) an inquiry similar to a preliminary

investigation conducted by the prosecution arm of the government; (b) a certification to the Solicitor General that there is reasonable ground to believe that there has been violation of the said law and that respondent is guilty thereof; and (c) an action filed by the Solicitor General on behalf of the Republic of the Philippines.^[15] He argues that only informations for perjury were filed and there has been no information filed against him for violation of R.A. No. 1379. Consequently, he maintains, it is impossible for the Office of the Ombudsman to certify that there is reasonable ground to believe that a violation of the said law had been committed and that he is guilty thereof. The petition is also supposedly bereft of the required certification which should be made by the investigating City or Provincial Fiscal (now Prosecutor) to the Solicitor General. Furthermore, he opines that it should have been the Office of the Solicitor General which filed the petition and not the Office of the Ombudsman as in this case. The petition being fatally defective, the same should have been dismissed, petitioner concludes.

In their *Comment*,^[16] respondents submit the contrary, noting that the issues raised by petitioner are not novel as these have been settled in *Republic vs. Sandiganbayan*^[17] which categorically ruled that “there is no issue that jurisdiction over violations of [R.A.] Nos. 3019 and 1379 now rests with the Sandiganbayan.”^[18] Respondents argue that under the Constitution^[19] and prevailing statutes, the Sandiganbayan is vested with authority and jurisdiction over the petition for forfeiture under R.A. No. 1379 filed against petitioner. Respondents point to Sec. 4.a (1) (d) of P.D. 1606, as amended, as the prevailing law on the jurisdiction of the *Sandiganbayan*, thus:

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

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade ‘27’ and higher of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

....

(d) Philippine army and air force colonels, naval captains, and all officers of higher ranks;

....

As petitioner falls squarely under the category of public positions covered by the aforesaid law, the petition for forfeiture should be within the jurisdiction of the Sandiganbayan.

Respondents also brush off as inconsequential petitioner’s argument that the

petition for forfeiture is “civil” in nature and the Sandiganbayan, having allegedly no jurisdiction over civil actions, therefore has no jurisdiction over the petition, since the same P.D. No. 1606 encompasses all cases involving violations of R.A. No. 3019, irrespective of whether these cases are civil or criminal in nature. The petition for forfeiture should not be confused with the cases initiated and prosecuted by the PCGG pursuant to E.O. Nos. 14 and 14-A, as these are dealt with under a separate subparagraph of P.D. No. 1606, as amended, in particular Sec. 4.c thereof.^[20] Further, respondents stress that E.O. Nos. 14 and 14-A exclusively apply to actions for recovery of unlawfully acquired property against President Marcos, his family, and cronies. It would also not be accurate to refer to a petition for forfeiture as a “civil case,” since it has been held that petitions for forfeiture are deemed criminal or penal and that it is only the proceeding for its prosecution which is civil in nature.^[21]

The Office of the Ombudsman filed a separate *Comment*,^[22] likewise relying on *Republic v. Sandiganbayan* to argue that the Sandiganbayan has jurisdiction over the petition for forfeiture filed against petitioner. The Ombudsman explains that the grant to the Sandiganbayan of jurisdiction over violations of R.A. No. 1379 did not change even under the amendments of

R.A. No. 7975^[23] and R.A. No. 8294^[24], although it came to be limited to cases involving high-ranking public officials as enumerated therein, including Philippine army and air force colonels, naval captains, and all other officers of higher rank, to which petitioner belongs.^[25]

In arguing that it has authority to investigate and initiate forfeiture proceedings against petitioner, the Office of the Ombudsman refers to both the Constitution^[26] and R.A. No. 6770.^[27] The constitutional power of investigation of the Office of the Ombudsman is plenary and unqualified; its power to investigate any act of a public official or employee which appears to be “illegal, unjust, improper or inefficient” covers the unlawful acquisition of wealth by public officials as defined under R.A. No. 1379. Furthermore, Sec. 15 (11)^[28] of R.A. No. 6770 expressly empowers the Ombudsman to investigate and prosecute such cases of unlawful acquisition of wealth. This authority of the Ombudsman has been affirmed also in *Republic vs. Sandiganbayan*.^[29]

The Office of the Ombudsman then refutes petitioner’s allegation that the petition for forfeiture filed against him failed to comply with the procedural and formal requirements under the law. It asserts that all the requirements of R.A. No. 1379 have been strictly complied with. An inquiry similar to a preliminary investigation was conducted by a Prosecution Officer of the Office of the Ombudsman. The participation of the Office of the Solicitor General, claimed by petitioner to be necessary, is actually no longer required since the Office of the Ombudsman is endowed with the authority to investigate and prosecute the case as discussed above.^[30]

In addition, the Office of the Ombudsman alleges that the present *Petition* should be dismissed for blatant forum-shopping. Even as petitioner had filed a *Motion to Dismiss* as regards the petition for forfeiture (docketed as Civil Case No. 0193) before the Sandiganbayan on the ground of the Sandiganbayan’s alleged lack of

jurisdiction, he filed the instant *Petition* raising exactly the same issue, even though the Motion to Dismiss in Civil Case No. 0193 is still pending resolution. Worse, it appears that the *Motion to Dismiss* and the instant *Petition* were filed on the same day, 17 November 2004.

Petitioner refutes these arguments in his *Reply*^[31] and enunciates that the Sandiganbayan's criminal jurisdiction is separate and distinct from its civil jurisdiction, and that the Sandiganbayan's jurisdiction over forfeiture cases had been removed without subsequent amendments expressly restoring such civil jurisdiction. His thesis is that R.A. No. 1379 is a special law which is primarily civil and remedial in nature, the clear intent of which is to separate the *prima facie* determination in forfeiture proceedings from the litigation of the civil action. This intent is further demonstrated by Sec. 2 of R.A. No. 1379 which grants the authority to make an inquiry similar to a preliminary investigation being done by the City or Provincial Fiscal, and the authority to file a petition for forfeiture to the Solicitor General.

Petitioner also points out in his *Reply*^[32] to the *Comment* of the Office of the Ombudsman, that the use of the phrase "violations of [R.A.] Nos. 3019 and 1379" in P.D. No. 1606, as amended, implies jurisdiction over cases which are principally criminal or penal in nature because the concept of "violation" of certain laws necessarily carries with it the concept of imposition of penalties for such violation. Hence, when reference was made to "violations of [R.A.] Nos. 3019 and 1379," the only jurisdiction that can supposedly be implied is criminal jurisdiction, not civil jurisdiction, thereby highlighting respondent Sandiganbayan's lack of jurisdiction over the "civil case" for forfeiture of ill-gotten wealth. Of course, petitioner does not rule out cases where the crime carries with it the corresponding civil liability such that when the criminal action is instituted, the civil action for enforcement of the civil liability is impliedly instituted with it, and the court having jurisdiction over the criminal action also acquires jurisdiction over the ancillary civil action. However, petitioner argues that the action for forfeiture subject of this case is not the ancillary civil action impliedly instituted with the criminal action. Rather, the petition for forfeiture is an independent civil action over which the Sandiganbayan has no jurisdiction. Petitioner points to P.D. No. 1606, as amended, which treats of independent civil actions only in the last paragraph of Sec. 4 thereof:

Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: *Provided*, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.