

EN BANC

[G.R. No. 148965, February 26, 2002]

**JOSE "JINGGOY" E. ESTRADA, PETITIONER, VS.
SANDIGANBAYAN (THIRD DIVISION), PEOPLE OF THE
PHILIPPINES AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

DECISION

PUNO, J.:

A law may not be constitutionally infirm but its application to a particular party may be unconstitutional. This is the submission of the petitioner who invokes the equal protection clause of the Constitution in his bid to be excluded from the charge of plunder filed against him by the respondent Ombudsman.

The antecedent facts are as follows:

In November 2000, as an offshoot of the impeachment proceedings against Joseph Ejercito Estrada, then President of the Republic of the Philippines, five criminal complaints against the former President and members of his family, his associates, friends and conspirators were filed with the respondent Office of the Ombudsman.

On April 4, 2001, the respondent Ombudsman issued a Joint Resolution^[1] finding probable cause warranting the filing with the Sandiganbayan of several criminal Informations against the former President and the other respondents therein. One of the Informations was for the crime of plunder under Republic Act No. 7080 and among the respondents was herein petitioner Jose "Jinggoy" Estrada, then mayor of San Juan, Metro Manila.

The Information was amended and filed on April 18, 2001. Docketed as Criminal Case No. 26558, the case was assigned to respondent Third Division of the Sandiganbayan. The arraignment of the accused was set on July 10, 2001 and no bail for petitioner's provisional liberty was fixed.

On April 24, 2001, petitioner filed a "Motion to Quash or Suspend" the Amended Information on the ground that the Anti-Plunder Law, R.A. No. 7080, is unconstitutional and that it charged more than one offense. Respondent Ombudsman opposed the motion.

On April 25, 2001, the respondent court issued a warrant of arrest for petitioner and his co-accused. On its basis, petitioner and his co-accused were placed in custody of the law.

On April 30, 2001, petitioner filed a "Very Urgent Omnibus Motion"^[2] alleging that: (1) no probable cause exists to put him on trial and hold him liable for plunder, it appearing that he was only allegedly involved in illegal gambling and not in a "series

or combination of overt or criminal acts” as required in R.A. No. 7080; and (2) he is entitled to bail as a matter of right. Petitioner prayed that he be excluded from the Amended Information and be discharged from custody. In the alternative, petitioner also prayed that he be allowed to post bail in an amount to be fixed by respondent court.^[3]

On June 28, 2001, petitioner filed a “Motion to Resolve Mayor Jose ‘Jinggoy’ Estrada’s Motion To Fix Bail On Grounds That An Outgoing Mayor Loses Clout An Incumbent Has And That On Its Face, the Facts Charged In The Information Do Not Make Out A Non-Bailable Offense As To Him.”^[4]

On July 3, 2001, petitioner filed a “Motion to Strike Out So-Called ‘Entry of Appearance,’ To Direct Ombudsman To Explain Why He Attributes Impropriety To The Defense And To Resolve Pending Incidents.”^[5]

On July 9, 2001, respondent Sandiganbayan issued a Resolution denying petitioner’s “Motion to Quash and Suspend” and “Very Urgent Omnibus Motion.”^[6] Petitioner’s alternative prayer to post bail was set for hearing after arraignment of all accused. The court held:

“WHEREFORE, in view of the foregoing, the Court hereby DENIES for lack of merit the following: (1) MOTION TO QUASH AND SUSPEND dated April 24, 2001 filed by accused Jose ‘Jinggoy’ Estrada; (2) MOTION TO QUASH dated June 7, 2001 filed by accused Joseph Ejercito Estrada; and (3) MOTION TO QUASH (Re: Amended Information dated 18 April 2001) dated June 26, 2001 filed by accused Edward S. Serapio.

Considering the denial of the MOTION TO QUASH AND SUSPEND of accused Jose ‘Jinggoy’ Estrada, his VERY URGENT OMNIBUS MOTION, praying that he be: (1) dropped from the information for plunder for want of probable cause and (2) discharged from custody immediately which is based on the same grounds mentioned in this MOTION TO QUASH AND SUSPEND is hereby DENIED. Let his alternative prayer in said OMNIBUS MOTION that he be allowed to post bail be SET for hearing together with the petition for bail of accused Edward S. Serapio scheduled for July 10, 2001, at 2:00 o’clock in the afternoon after the arraignment of all the accused.”^[7]

The following day, July 10, 2001, petitioner moved for reconsideration of the Resolution. Respondent court denied the motion and proceeded to arraign petitioner. Petitioner refused to make his plea prompting respondent court to enter a plea of “not guilty” for him.^[8]

Hence, this petition. Petitioner claims that respondent Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in:

“1) not declaring that R.A. No. 7080 is unconstitutional on its face and, as applied to petitioner, and denying him the equal protection of the laws;

2) not holding that the Plunder Law does not provide complete and sufficient standards;

3) sustaining the charge against petitioner for alleged offenses, and with alleged conspirators, with which and with whom he is not even remotely connected - contrary to the dictum that criminal liability is personal, not vicarious - results in the denial of substantive due process;

4) not fixing bail for petitioner for alleged involvement in jueteng in one count of the information which amounts to cruel and unusual punishment totally in defiance of the principle of proportionality.”^[9]

We shall resolve the arguments of petitioner *in seriatim*.

I.

Petitioner contends that R.A. No. 7080 is unconstitutional on its face and as applied to him and denies him the equal protection of the laws.^[10]

The contention deserves our scant attention. The constitutionality of R.A. No. 7080, the Anti-Plunder Law, has been settled in the case of **Estrada v. Sandiganbayan**.^[11] We take off from the Amended Information which charged petitioner, together with former President Joseph E. Estrada, Atty. Edward Serapio, Charlie “Atong” Ang, Yolanda T. Ricaforte and others, with the crime of plunder as follows:

“AMENDED INFORMATION

The undersigned Ombudsman Prosecutor and OIC-Director, EPIB Office of the Ombudsman, hereby accuses former PRESIDENT OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. “ASIONG SALONGA” AND a.k.a “JOSE VELARDE”, together with Jose ‘Jinggoy’ Estrada, Charlie ‘Atong’ Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there

wilfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P4,097,804,173.17], more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

- (a) by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AN (sic) JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;
- (b) by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS [P130,000,000.00], more or less, representing a portion of the TWO HUNDRED MILLION PESOS [P200,000,000] tobacco excise tax share allocated for the Province of Ilocor Sur under R.A. No. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES AND JANE DOES;
- (c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCK MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO

MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [P1,102,965,607.50] AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [P744,612,450.00], RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [P1,847,578,057.50]; AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [P189,700,000.00], MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME "JOSE VELARDE";

(d) by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P3,233,104,173.17] AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME "JOSE VELARDE" AT THE EQUITABLE-PCI BANK.

CONTRARY TO LAW.

Manila for Quezon City, Philippines, 18 April 2001"^[12]

Petitioner's contention that R.A. No. 7080 is unconstitutional as applied to him is principally perched on the premise that the Amended Information charged him with only one act or one offense which cannot constitute plunder. He then assails the denial of his right to bail.

Petitioner's premise is patently false. A careful examination of the Amended Information will show that it is divided into three (3) parts: (1) the first paragraph charges former President Joseph E. Estrada with the crime of plunder together with petitioner Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda Ricaforte and others; (2) the second paragraph spells out in general terms how the accused conspired in committing the crime of plunder; and (3) the following four