

## FIRST DIVISION

[ G.R. Nos. 140199-200, February 06, 2002 ]

**FELICITO S. MACALINO, PETITIONER, VS. SANDIGANBAYAN AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

The case is a petition for certiorari<sup>[1]</sup> assailing the jurisdiction of the Ombudsman and the Sandiganbayan to take cognizance of two criminal cases<sup>[2]</sup> against petitioner and his wife Liwayway S. Tan, contending that he is not a public officer within the jurisdiction of the Sandiganbayan.<sup>[3]</sup>

On September 16, 1992, the Special Prosecutor, Office of the Ombudsman, with the approval of the Ombudsman, filed with the Sandiganbayan two informations against petitioner and Liwayway S. Tan charging them with estafa through falsification of official documents (Criminal Case No. 18022) and frustrated estafa through falsification of mercantile documents (Criminal Case No. 19268), as follows:

#### “CRIMINAL CASE NO. 18022

“That on or about the 15<sup>th</sup> day of March, 1989 and for sometime prior or subsequent thereto, in the Municipality of Mandaluyong, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, FELICITO S. MACALINO, being then the Assistant Manager of the Treasury Division and the Head of the Loans Administration & Insurance Section of the Philippine National Construction Corporation (PNCC), a government-controlled corporation with offices at EDSA corner Reliance St., Mandaluyong, and hence, a public officer, while in the performance of his official functions, taking advantage of his position, committing the offense in relation to his office and conspiring and confederating with his spouse LIWAYWAY S. TAN, being then the owner of Wacker Marketing, did then and there willfully, unlawfully, feloniously and by means of deceit defraud the Philippine National Construction Corporation in the following manner: in preparing the application with the Philippine National Bank, Buendia Branch for the issuance of a demand draft in the amount of NINE HUNDRED EIGHTY THREE THOUSAND SIX HUNDRED EIGHTY-TWO & 11/100 PESOS (P983,682.11), Philippine Currency, in favor of Bankers Trust Company, accused FELICITO S. MACALINO superimposed the name “Wacker Marketing” as payee to make it appear that the demand draft was payable to it, when in truth and in fact and as the accused very well knew, it was the Bankers Trust Company which was the real payee as indicated in Check Voucher No. 3-800-89 and PNB Check No. B236746 supporting said application for demand draft; subsequently accused FELICITO S. MACALINO likewise

inserted into the letter of PNCC to PNB Buendia Branch the words "payable to Wacker Marketing" to make it appear that the demand drafts to be picked up by the designated messenger were payable to Wacker Marketing when in truth and in fact the real payee was Bankers Trust Company; and as a result of such acts of falsification, PNB Buendia issued 19 demand drafts for P50,000.00 each and another demand draft for P33,682.11, all, payable to Wacker Marketing, which were subsequently delivered to accused Felicitor S. Macalino and which accused LIWAYWAY S. TAN thereafter exchanged with PNB Balanga Branch for 19 checks at P50,000.00 each and another for P33,682.11 and all of which she later deposited into Account No. 0042-0282-6 of Wacker Marketing at Philtrust Cubao, thereby causing pecuniary damage and prejudice to Philippine National Construction Corporation in the amount of P983,682.11.

"CONTRARY TO LAW.

"Manila, Philippines, August 24, 1992."<sup>[4]</sup>

#### "CRIMINAL CASE NO. 19268

"That on or about the 4th day of April, 1990, and subsequently thereafter, in the Municipality of Mandaluyong, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, FELICITO S. MACALINO, being then the Assistant Manager of the Treasury Division and the Head of the Loans Administration and Insurance Section of the Philippine National Construction Corporation, a government-controlled corporation with offices at EDSA corner Reliance St., Mandaluyong, Metro Manila, and hence, a public officer, while in the performance of his official functions, taking advantage of his position, committing the offense in relation to his office, and conspiring and confederating with his spouse LIWAYWAY S. TAN, being then the owner of Wacker Marketing, did then and there willfully, unlawfully, feloniously and by means of deceit defraud the Philippine National Construction Corporation in the following manner: after receiving Check Voucher No. 04-422-90 covering the partial payment by PNCC of the sinking fund to International Corporate Bank (Interbank) as well as Check No. 552312 for TWO MILLION TWO HUNDRED FIFTY THOUSAND PESOS (P2,250,000.00), Philippine Currency, payable to Interbank for the purpose, accused FELICITO S. MACALINO falsified PNB Check No. 552312 by altering the payee indicated therein to make it appear that the aforesaid check was payable to Wacker Marketing instead of Interbank and further falsified the schedule of check disbursements sent to PNB Buendia by making it appear therein that the payee of Check No. 552312 was Wacker Marketing when in truth and in fact and as the accused very well knew, it was Interbank which was the real payee; accused LIWAYWAY S. TAN thereafter deposited Check No. 552312 into Account No. 0042-0282-6 of Wacker Marketing at Philtrust Cubao and Wacker Marketing subsequently issued Philtrust Check No. 148039 for P100,000.00 in favor of accused FELICITO S. MACALINO; which acts of falsification performed by the accused would have defrauded the Philippine National Construction Corporation of P2,250,000.00 had not

PNB Buendia ordered the dishonor of Check No. 552312 after noting the alteration/erasures thereon, thereby failing to produce the felony by reason of causes independent of the will of the accused.

“CONTRARY TO LAW.

“Manila, Philippines, May 28, 1993.”<sup>[5]</sup>

Upon arraignment on November 9, 1992, petitioner pleaded not guilty to the charges. Hence, trial proceeded.<sup>[6]</sup>

However, during the initial presentation of evidence for the defense, petitioner moved for leave to file a motion to dismiss on the ground that the Sandiganbayan has no jurisdiction over him since he is not a public officer because the Philippine National Construction Corporation (PNCC), formerly the Construction and Development Corporation of the Philippines (CDCP), is not a government-owned or controlled corporation with original charter.<sup>[7]</sup> The People of the Philippines opposed the motion.<sup>[8]</sup>

On August 5, 1999, the Sandiganbayan promulgated a resolution denying petitioner’s motion to dismiss for lack of merit.<sup>[9]</sup>

Hence, this petition.<sup>[10]</sup>

#### The Issue

The sole issue raised is whether petitioner, an employee of the PNCC, is a public officer within the coverage of R. A. No. 3019, as amended.

#### The Court’s Ruling

Petitioner contends that an employee of the PNCC is not a public officer as defined under Republic Act No. 3019, as follows:

“Sec. 2. (a) xxx xxx xxx.

“(b) Public officer includes elective and appointive officials and employees, permanent or temporary, whether in the unclassified or classified or exempted service receiving compensation, even nominal, from the government as defined in the preceding paragraph.”

We agree.

To resolve the issue, we resort to the 1987 Constitution. Article XI, on the Accountability of Public Officers, provides:

“Section 12. The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations x x x.”