

## EN BANC

[ G.R. No. 128790, November 25, 1998 ]

**EDUARDO P. PILAPIL, PETITIONER, VS. HON. FRANCIS E. GARCHITORENA, AS PRESIDING JUSTICE, SANDIGANBAYAN; HON. JOSE S. BALAJADIA, HON. HARRIET O. DEMETRIOU, AND HON. ROBERTO M. LAGMAN, AS MEMBERS OF THE SANDIGANBAYAN, SECOND DIVISION; AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**DAVIDE, JR., J.:**

This special civil action for *certiorari* and prohibition, with application for a temporary restraining order and preliminary injunction, raises the following issues:

[1] May the Sandiganbayan try and decide Criminal Case No. 16672 where its presiding justice, Hon. Francis E. Garchitorena, is a party thereto without violating the impartiality requirement in the due process clause?

[2] May Presiding Justice Francis E. Garchitorena assign said case to the Second Division of the Sandiganbayan upon voluntary inhibition of Justice Cipriano del Rosario of the Third Division where the case was originally raffled, without violating R.A. [No.] 7975, which provides that when the required quorum for a particular division cannot be had due to legal disqualification of a justice the Presiding Justice may designate an Associate Justice of the Court to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division?

[3] May respondent Second Division deny the motion to withdraw information filed by the Ombudsman who found no *prima facie* case against petitioner without any valid reason?

This case is a sequel to G.R. No. 101978, entitled *Eduardo P. Pilapil v. Sandiganbayan*, which we decided on 7 April 1993.<sup>[1]</sup> We found therein as duly established the following factual antecedents:

On October 16, 1987, the Philippine Charity Sweepstakes Office (PCSO) donated one ambulance (a Mitsubishi L-300) to the Municipality of Tigaon, Camarines Sur. Petitioner, who [was] the Congressman of the 3rd District of Camarines Sur, received the ambulance in behalf of the municipality. However, he did not deliver the ambulance to said municipality.

Unaware of the donation, the Sangguniang Bayan of the municipality

passed a resolution (Resolution No. 16, Series of 1988) requesting PCSO for an ambulance. Said request was reiterated in their Resolution No. 117, Series of 1988. The mayor of the municipality, Eleanor P. Lelis, thereafter sought the intercession of Sandiganbayan Presiding Justice Francis E. Garchitorena, who is from the said municipality, regarding said request. Thereafter, Justice Garchitorena contacted the PCSO and learned about the ambulance previously donated by the latter to Tigaon through petitioner. He accordingly informed Mayor Lelis that the municipality's request [could not] be favorably acted upon in view of the previous donation.

Mayor Lelis reiterated the municipality's request for an ambulance making reference to the certification of the municipal treasurer that no vehicle from the PCSO or from anyone has been received.

Upon verification of the whereabouts of the Mitsubishi L-300 by the PCSO from the petitioner, the latter indicated his willingness to return the ambulance. In a letter dated December 22, 1988, he requested that said vehicle be donated instead to the Municipality of Tinambac, same province. Finally, on December 26, 1988, he personally returned the ambulance, then already painted to cover the logo of the PCSO and the other markings thereon.

With the return of the Mitsubishi L-300 to the PCSO, the Municipality of Tigaon, through Mayor Lelis, finally received a brand new Besta Kia Ambulance unit complete with all accessories.

On January 2, 1989, Justice Garchitorena wrote the then Chief Justice Marcelo B. Fernan relating to him the whole story of the ambulance.

On January 25, 1989, Justice Garchitorena also sent Deputy Ombudsman Jose C. Colayco a letter-complaint against petitioner regarding said ambulance. Said letter-complaint was referred by Ombudsman Conrado M. Vasquez to the Deputy Ombudsman for Luzon, Manuel C. Domingo, for appropriate action. Thereupon, Deputy Ombudsman Domingo required Justice Garchitorena to submit all relevant records and documents, as well as his affidavit and those of his witnesses. Failing in this regard, Justice Garchitorena was requested anew to comply. In his stead, Anthony D. Jamora, the Regional manager of the Special Projects Department of the PCSO, and Mayor Lelis of Tigaon, Camarines Sur, submitted their respective affidavits.

On October 3, 1990, Deputy Ombudsman Domingo issued an order requiring petitioner to submit his counter-affidavit, affidavits of his witnesses and other controverting evidence. This order was captioned as Case No. OMB-1-89-0168 for "Malversation of Public Property under Article 217 of the Revised Penal Code."

On October 22, 1990, petitioner submitted his counter-affidavit denying the imputation of said offense claiming that the vehicle was not equipped with any medical attachments or facilities so he was constrained to request PAGCOR for assistance to finance its conversion into a medical

ambulance which is evidenced by his letter dated November 15, 1987 to Mrs. Alice Reyes. He claimed that it was only on April 28, 1988 that PAGCOR acted on his request, but in lieu of financial assistance, said office donated accessories, which can be installed at an estimated cost of P5,000.00. Thus, he allegedly made personal representations with PAGCOR for the latter to shoulder the expenses of the installation. While awaiting for the financial assistance, petitioner claimed, in explanation why the logo of PCSO and the other markings on the vehicle were removed, that he acceded to the suggestion of his staff to include the name of PAGCOR on the sides of the ambulance in view of the substantial contribution of the latter.

On December 5, 1990, Ombudsman Investigator Isaac D. Tolentino issued a resolution finding no probable cause for malversation and recommended that the case be dismissed, which recommendation was approved by Deputy Ombudsman Domingo.

On January 5, 1991, Assistant Ombudsman Abelardo Aportadera, Jr., recommended the disapproval of the aforesaid resolution and instead, suggested the filing of criminal information for violation of Article 217 of the Revised Penal Code. This was followed by another resolution to the same effect by Special Prosecution Officer Wilfredo Orenchia dated February 14, 1991.

On April 1, 1991, Ombudsman Conrado Vasquez issued a resolution sustaining the finding of Ombudsman Investigator Tolentino that there is no malversation but found in the same resolution, a prima facie case for violation of Section 3(e) of Republic Act No. 3019".

On April 3, 1991, an information for violation of Section 3(e) of Republic Act No. 3019, docketed as Criminal Case No. 16672, against petitioner was filed".

On April 12, 1991, a warrant of arrest was issued against petitioner. On April 18, 1991, he was allowed to deposit the sum of P15,000.00 in court to be considered as bail bond and the warrant of arrest was recalled.

On May 2, 1991, petitioner filed a motion to quash on the ground that respondent Sandiganbayan has no jurisdiction over his person because the information was filed without probable cause since there is absolutely no proof adduced in the preliminary investigation of any of the elements of the crime defined in Section 3(e) of Republic Act No. 3019. On June 27, 1991, respondent court denied the said motion to quash holding that the factual and legal issues and/or questions raised are evidentiary in nature and are matters of defense, the validity of which can be best passed upon after a full-blown trial on the merits. On September 5, 1991, respondent court denied petitioner's motion for reconsideration of the said resolution and set the arraignment of petitioner on October 21, 1991 at 8:30 a.m.

On October 12, 1991, petitioner filed the present petition [G.R. No.

101978] and by reason of such filing, respondent court ordered that the arraignment be held in abeyance.

In our decision in G.R. No. 101978, we found that respondent Sandiganbayan had not acted in excess of jurisdiction or with grave abuse of discretion in finding probable cause against petitioner and, consequently, in denying the motion to quash and motion for reconsideration. We dismissed as clearly unfounded the insinuations of petitioner that Presiding Justice Francis Garchitorena had used the influence of his office in initiating the complaint against petitioner. Likewise, we agreed with the Sandiganbayan that "the act of bringing to the attention of appropriate officials possible transgression of the law is as much an obligation of the highest official of the land as it is the responsibility of any private citizen."

After the finality of the aforementioned decision, petitioner filed a motion for reinvestigation with the Third Division of the Sandiganbayan, to which the case was originally raffled. That division granted the motion.

On 15 February 1995, after a reinvestigation was conducted, then Special Prosecution Officer III Leonardo Tamayo and Special Prosecutor Aniano Desierto recommended the dismissal of the case against petitioner. However, then Ombudsman Conrado M. Vasquez disapproved the recommendation and, in a marginal note, stated: "The allegations of the accused are matters of defense for him to prove in Court."<sup>[2]</sup>

Acting on petitioner's motion for reconsideration, Special Prosecution Officer III Reynaldo L. Mendoza issued a Memorandum<sup>[3]</sup> recommending the dismissal of the case for lack of sufficient evidence to establish a *prima facie* case for violation of Section 3(e) of R.A. No. 3019, as amended. Leonardo P. Tamayo, then Deputy Special Prosecutor and OIC of the Office of the Special Prosecutor, recommended the approval of Mendoza's recommendation.<sup>[4]</sup> On 12 February 1996, Ombudsman Aniano Desierto approved Mendoza's recommendation.

On 26 February 1996, Special Prosecution Officer II Humphrey T. Monteroso, with the approval of Special Prosecutor Leonardo P. Tamayo, filed with the Third Division of the Sandiganbayan a Motion to Withdraw Information.<sup>[5]</sup>

On 5 March 1996, Associate Justice Cipriano A. del Rosario, Chairman of the Third Division, voluntarily inhibited<sup>[6]</sup> himself from resolving the Motion to Withdraw Information and from further sitting in the case. On the same date the Third Division promulgated a resolution<sup>[7]</sup> directing that in view of the inhibition of Justice del Rosario, the case be returned to the Office of the Presiding Justice for re-raffle pursuant to the rules and practice of the Sandiganbayan.

On 6 March 1996, Presiding Justice Francis E. Garchitorena issued Administrative Order No. 79-96<sup>[8]</sup> assigning the case to the Second Division "[i]n view of the inhibition of Hon. Cipriano A. del Rosario, Chairman, Third Division, - and considering that he, [the Presiding Justice and Chairman of the First Division, was] likewise the complainant/relator in the case."

On 15 March 1996, the Second Division of the Sandiganbayan issued an order giving the Presiding Justice ten days within which to comment on the Motion to Withdraw

Information and also giving the prosecution ten days to file a reply.<sup>[9]</sup>

On 18 March 1996, petitioner filed a Motion to Set Aside Administrative Order No. 79-96<sup>[10]</sup> on the ground that it violated Section 1 of R.A. No. 7975, which provides, *inter alia*, that when the required quorum for a division of the Sandiganbayan cannot be had due to the legal disqualification or temporary disability of a Justice or due to a vacancy occurring therein, the Presiding Justice may designate an Associate Justice of the Sandiganbayan, to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division. Petitioner further alleged that since the Presiding Justice was himself the complainant or relator in the case, his administrative order would "not be free from suspicion even if it [was] untainted with unfairness and partiality." Petitioner then prayed that the case be referred to the Presiding Justice for him to act on the motion to set aside the administrative order and thereafter to return the case to the Third Division; and for the most Senior Associate Justice to designate an Associate Justice to sit temporarily in the Third Division pursuant to Section 1 of R.A. No. 7975.

On 11 April 1996, the prosecution, through Special Prosecution Officer II Monteroso, filed an opposition<sup>[11]</sup> to the Motion to Set Aside Administrative Order No. 79-96, alleging that said order was valid and legal, since it involved an administrative matter which was within the prerogative of the Presiding Justice and the Sandiganbayan.

On 16 April 1996, Presiding Justice Garchitorena, as complainant/ relator in the case, filed the required comment<sup>[12]</sup> on the Motion to Withdraw Information.

On 29 May 1996, petitioner filed a Motion for Voluntary Inhibition<sup>[13]</sup> wherein he prayed that the Justices of the Second Division, namely, herein public respondents Balajadia, Demetriou, and Lagman, inhibit themselves from the case and recommend to the President the designation of three Justices of the Court of Appeals to temporarily sit in the case. He alleged that said Justices of the Second Division could not be expected to act with independence or administer justice impartially for or against a brother in the Court who was the complainant/relator in the case.

Petitioner also filed a Motion for Reconsideration of the Resolution of 15 March 1996 and to Strike Out the Comment of the Presiding Justice on the ground that the latter was not the offended party in the case. His personality as complainant/relator in the case ceased when the case was elevated to the court upon the filing of the information where the only parties were the People of the Philippines as plaintiff and the petitioner as accused.

On 28 January 1997, the Second Division of the Sandiganbayan promulgated a resolution<sup>[14]</sup> denying for lack of merit the motions (a) for the nullification of Administrative Order No. 79-96, (b) for voluntary inhibition, (c) for reconsideration of the resolution of 15 March 1996 and for the striking out of the comment of the Presiding Justice, and (d) for the withdrawal of the Information. At the same time, it set the arraignment of petitioner on 29 April 1997.

As to the Motion to Set Aside Administrative Order No. 79-96, the Second Division