

## FIRST DIVISION

[ G.R. No. 112584, May 23, 1997 ]

**DOMINGO INGCO, ERNESTO MAGBOO AND HERMINIO ALCASID,  
PETITIONERS, VS. SANDIGANBAYAN, RESPONDENT.  
D E C I S I O N**

**VITUG, J.:**

Petitioners Domingo Ingco, Ernesto Magboo and Herminio Alcasid have lodged the instant civil action of *certiorari* and prohibition, with prayer for temporary restraining order, to nullify the resolutions,<sup>[1]</sup> dated 07 October 1993<sup>[2]</sup> and 08 November 1993,<sup>[3]</sup> of the Sandiganbayan which denied petitioners' motion to quash the information and motion for a reconsideration of the denial.

The case began when, on 26 May 1987, Domingo Ingco, a former Vice-President of the Philippine National Bank ("PNB"), was charged, along with top officials of Cresta Monte Shipping Corporation, namely, its Chairman of the Board of Directors Ernesto Magboo and its President Herminio Alcasid, by PNB before the Presidential Blue Ribbon Committee with violation of Republic Act No. 3019 ("Anti-Graft and Corrupt Practices Act"). The matter was at once referred to the Office of the Ombudsman.

In a resolution,<sup>[4]</sup> dated 22 June 1993, the Committee on Behest Loans under the Office of the Special Prosecutor in the Office of the Ombudsman made a narration of its factual findings; viz:

"Cresta Monte Shipping Corporation is a domestic corporation registered with the Securities and Exchange Commission on October 3, 1976 and whose primary purpose is to engage in the domestic and/or overseas cargo and passenger shipping business.

"Its officers and directors included Ernesto S. Magboo as Chairman of the Board of Directors and controlling stockholder; Herminio Alcasid as President and General Manager; Mario Ramos, Nora Roasa and Nelson Magboo as directors.

"The Corporation started operations sometime in July 1977. At the time of the filing of the instant complaint, it maintained and operated nine vessels which carried logs, lumber and wood products, copper, iron ore, heavy machineries and general cargo to Southeastern Asian countries.

"Sometime in 1977 and 1978, it obtained two (2) loan accommodations from the Philippine National Bank, which are now the subject of the instant complaint.

"Through Board Resolution No. 703 dated September 22, 1977, PNB extended a loan accommodation to Cresta Monte in the amount of

US\$5,910,000.00 to be utilized for the purchase of two cargo vessels from Japan. Said loan was secured by 1) a Guaranty Loan of the National Investment and Development Corporation (NIDC) as approved under its Board Resolution No. 223 dated December 22, 1976 amounting to US\$7.8M; and 2) the joint and several signatures of Ernesto Magboo and Herminio Alcasid and their spouses.

"Meanwhile, the aforementioned NIDC loan was secured by 1) a chattel mortgage on the second-hand vessel to be purchased from the proceeds of the said loan, at an acquisition price of US\$1.89 Million (P14,150,430.00); 2) the joint and several signatures of Ernesto Magboo and Herminio Alcasid and their spouses; and 3) a pledge of 100% shares of stocks.

"Subsequently, per Board Resolution No. 642 dated March 27, 1978, PNB again approved Cresta Monte's request for PNB to advance the amount of US\$7.5 Million to be remitted to the Bank of Tokyo, Shimbashi Branch, Tokyo, Japan for the account of Liberation Maritime Carriers Co. Ltd. to cover the purchase price of two brand-new oceangoing vessels with the unit cost of US\$3.75 Million. Said loan was similarly secured by 1) a Guaranty by the NIDC in the amount of US\$7.8 Million approved under its Board Resolution No. 223 dated December 22, 1976; and 2) the joint and several signatures of Ernesto Magboo and Herminio Alcasid and their spouses.

"On the other hand, the NIDC loan was secured by 1) a chattel mortgage on second-hand vessels at an acquisition cost of US\$1.89 Million or P14.175 Million (P7.50 = \$1); 2) a chattel mortgage on two cargo vessels (M/V Amasia and M/V Kusunaki Maru) at an acquisition cost of US\$5.91 Million or P44.325 Million; and 3) the joint and several signatures of Ernesto Magboo and Herminio Alcasid and their spouses. The value of the collateral security totaled P58.500 Million.

"In the instant complaint, PNB charges Domingo Ingco with conspiring with the other respondents in having the loan applications approved even without a project feasibility study and notwithstanding the fact that the credit rating submitted by the Credit Department showed more adverse comments. It further alleged that the collaterals offered by Cresta Monte were deficient. PNB likewise charged the officers and directors of Cresta Monte with persuading and inducing respondent Ingco to recommend the approval of the loans under disadvantageous terms and conditions.

"In his Counter-Affidavit, respondent Domingo Ingco denied the imputation of conspiracy with the other respondents. He further declared that contrary to the allegation in the complaint, the commercial viability of the project was thoroughly evaluated by the Credit Department which thereafter gave the company a rating of 'B-1,' meaning good quality. He likewise stated that he cannot be faulted for the alleged failure to require the Magboo and Alcasid spouses to submit their joint and several signatures since the implementation of approved loans as well as the compliance with the requirements devolved on the operating department, which is the International Department. He also asserted that there was

no collateral deficiency on the part of Cresta Monte at the time when the loans were granted and that the NIDC had the recognized stature and capacity to act as guarantor for the loans. Moreover, the loans were granted with the proper safeguards and conditions to protect PNB's interests and with the approval of the Monetary Board after evaluation by the Central Bank."<sup>[5]</sup>

On the basis of the foregoing, the Committee arrived at its following assessments and inferences, to wit:

"The allegations in the complaint hinge on a single issue, namely, whether the loan accommodations extended by PNB to Cresta Monte were in the nature of behest loans granted by a government financial institution to a select corporation which ultimately caused prejudice to the Government or were manifestly disadvantageous to it.

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"A review of the records of the case reveals that Domingo Ingco, in his capacity as Sr. Vice-President of PNB, recommended to the Board of Directors of the PNB, and the latter approved the release of the loans for \$5.91M in September 1977 and \$7.5M in March 1987 (should be 1978) in favor of Cresta Monte. Said loans were secured only by the Guaranty of NIDC and the Joint and Solidary Signatures of Messrs. Ernesto S. Magboo and Herminio M. Alcasid and their respective spouses. It must be remembered that NIDC is but a wholly-owned subsidiary of the PNB. The President of the PNB and all the members of the PNB Board of directors are also the President and members of the NIDC Board of Directors, respectively. Considering above information, it would appear that the guarantee made by NIDC to PNB with respect to Cresta Monte's loan is but illusory. It is as if one creditor extended a loan in favor of a particular debtor with a guarantee/assurance coming from the same creditor. This is tantamount to having no guaranty being submitted at all. For PNB's sake and interest, PNB's management should have required Cresta Monte a security/guaranty emanating from credible private lending institutions and not from its own subsidiary corporations. Moreover, with respect to the \$7.5M loan, records are clear that said loan was released to Cresta Monte without the requisite Joint and Solidary Signatures of Messrs. Ernesto S. Magboo and Herminio M. Alcasid and their respective spouses, which were submitted only a year after the approval and implementation of said loan. It is basic in banking procedure that upon approval of the loan by the board, the covering Board Resolution is forwarded to the operative department for the proper documentation of the account and the compliance by the borrower with all the terms and conditions imposed on the approved loan, including the submission of the Joint and Solidary Signatures of the borrower.

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"Based on our earlier observation, it is very clear that PNB's loan to Cresta Monte Shipping Corporation amounting to US\$13.4M falls within the category of a behest loan. Evidently, there was pressure and

instructions from high government officials for the release of said loan. This is so because in spite of the many risks and deficiencies attendant to the approval of the loan, as discussed above, the owners of Cresta Monte Shipping Corporation were still able to obtain the loan and at concessionary lending terms at that.

"It is indubitably clear that the strong recommendation and direction made by Senior Vice-President Domingo Ingco, who conspired and confederated with Ernesto Magboo and Herminio Alcasid, were chiefly responsible for the grant of the loans to Cresta Monte under manifestly and grossly disadvantageous terms and conditions which resulted in undue damage and prejudice caused to the PNB. Needless to say, the violation of some of the warranties, pre-requisite terms and conditions of the loans should have merited their disapproval but as previously discussed, all these were overlooked when the loans were granted. In this respect, respondents Ingco, Magboo and Alcasid are indictable for Violation of Sec. 3(e) in relation to Sec. 3(g) of R.A. No. 3019."<sup>[6]</sup>

Accordingly, on 21 July 1993, an information<sup>[7]</sup> was filed with the Sandiganbayan for violation of Section 3(e), in relation to Section 3(g), of R.A. 3019, as amended, against herein petitioners. The inculpatory statements in the information read:

"That on or about September 22, 1977 and March 27, 1978, and for some time prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Domingo Ingco, being then the Senior Vice-President of the Philippine National Bank, a government-owned bank, and hence a public officer, while in the performance of his official functions, taking advantage of his position and conspiring and confederating with Ernesto Magboo and Herminio Alcasid, both private individuals, being then the Chairman of the Board of Directors and the President and General Manager, respectively, of Cresta Monte Shipping Corporation, a private corporation engaged in the maritime industry and duly organized and registered in accordance with Philippine law, did then and there willfully, unlawfully, criminally and with evident bad faith and manifest partiality cause undue injury to the Government in the following manner: accused Domingo Ingco favorably recommended the approval of the applications for loan of Cresta Monte Shipping Corporation in the amount of US\$5.91 Million and US\$7.5 Million and the subsequent release of such loans notwithstanding the fact that Cresta Monte had a capitalization of only P1 Million; that the loans were guaranteed only by the National Investment Development Corporation, a subsidiary of the Philippine National Bank; that the joint and several signatures of accused Ernesto Magboo and Herminio Alcasid and their spouses were not given in violation of the terms and conditions of the guaranty loan by NIDC; that a project feasibility study was not conducted to evaluate the commercial viability of the proposed undertaking covered by the aforesaid loans; that the Credit Rating submitted by the PNB Credit Department contained adverse comments; and that the collaterals offered by Cresta Monte Shipping Corporation were deficient, thereby allowing the Government to enter into a manifestly and grossly disadvantageous contract, and as a result of the grant of said loans and their subsequent release in complete disregard of

the aforementioned factors which should have justified their disapproval, undue injury and damage was consequently caused to the Government by the default of Cresta Monte Shipping Corporation in the payment of its loan obligations, thereby leaving an unpaid balance of P511.437 Million as of March 31, 1986.”<sup>[8]</sup>

Petitioners moved for the quashal<sup>[9]</sup> of the information on the ground, inter alia, that the facts alleged in the information did not constitute an offense under the invoked law, and that the offense charged, in any case, had already prescribed. Expectedly, the motion was opposed by the prosecution.

On 07 October 1993, the Sandiganbayan denied the motion to quash; it likewise turned down the motion for a reconsideration of the denial.

The appeal hinges on the resolution of two main issues, i.e., (1) whether or not the offense has already prescribed, and (2) whether or not the facts charged under the information indeed constitute an offense.

On the issue of prescription, the Court affirms the holding of the Sandiganbayan that the offense has not as yet prescribed.<sup>[10]</sup> Although, it is true that more than ten years have elapsed from the time of the alleged commission of the offense on 22 September 1977 and/or 27 March 1978 to the date of filing of the information on 21 July 1993, the then<sup>[11]</sup> applicable 10-year prescriptive period has, however, been effectively suspended by the filing of the complaint on 26 May 1987 with the Ombudsman. In *Llenes vs. Dicdican*,<sup>[12]</sup> the Court has underscored what should now be the settled rule on this question; viz:

"The matter of interruption of the prescriptive period due to the filing of the complaint or information had been the subject of conflicting decisions of this Court. In *People vs. Tayco* (73 Phil. 509), *People vs. Del Rosario* (110 Phil. 476), and *People vs. Coquia* (8 SCRA 349), this Court held that it is the filing of the complaint or information with the proper court, viz., the court having jurisdiction over the crime, which interrupts the running of the period of prescription. On the other hand, in the first case of *People vs. Olarte* (108 Phil. 756), a case for libel, this Court held that the filing of the complaint with the justice of the peace court even for preliminary investigation purposes only interrupts the running of the statute of limitations.

"However, the decision of 28 February 1967 of this Court in the second case of *People vs. Olarte* (19 SCRA 494) resolved once and for all what should be the doctrine, viz., that the filing of the complaint with the municipal trial court even for purposes of preliminary investigation only suspends the running of the prescriptive period. x x x

"Then, in its decision of 30 May 1983 in *Francisco vs. Court of Appeals* (122 SCRA 538), this Court not only reiterated *Olarte* of 1967 but also broadened its scope by holding that the filing of the complaint in the fiscal's office for preliminary investigation also suspends the running of the prescriptive period. x x x