



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

FIFTH DIVISION

EDDIE C. RODRIGUEZ,
Petitioner,

SB-18-SCA-0022

– versus –

HON. ULYSSES D. DELGADO,
in his capacity as Presiding
Judge of the Regional Trial
Court, Branch 44, Mamburao,
Occidental Mindoro, and the
PEOPLE OF THE PHILIPPINES,
Respondent.

Present:
LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

October 03, 2018 *Jan*

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DECISION

LAGOS, J.:

Before this Court is a Petition for *Certiorari*¹ with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65 of the Rules of Court, which seeks to annul and set aside the two (2) Orders of public respondent dated December 22, 2017 and April 23, 2018 for allegedly having been issued with grave abuse of discretion tantamount to a lack or excess of jurisdiction.

The two (2) assailed Orders were issued in Criminal Case No. Z-2067, entitled "People of the Philippines vs. Eddie Catibog Rodriguez", to wit: (1) the Order dated December 22, 2017 which denied the *Motion to Quash* filed by the accused Eddie C. Rodriguez, now the herein

¹ Records, pp. 1-201.

petitioner, and; (2) the Order dated April 23, 2018 which denied his motion for reconsideration.

The *Motion to Quash* filed by petitioner was premised on the ground that the facts charged in the *Information* do not constitute an offense under Section 3, Rule 117 of the Revised Rules of Criminal Procedure.

The prosecution, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor, in compliance with the *Resolution*² of this Court dated July 2, 2018, filed on July 19, 2018, its Comment³ on the petition with its explanation why the proceedings before the Regional Trial Court (RTC) should not be held in abeyance on account of the pendency of this incident before this Court, pursuant to Section 7 of Rule 65 of the Rules of Court.

The private complainant, through the private prosecutor, in compliance with the *Resolution* dated July 2, 2018, filed his Comment⁴ on the petition with his explanation as ordered by this Court.

FACTUAL AND PROCEDURAL ANTECEDENTS

The antecedents of the instant case, as culled from the records, stemmed from a complaint filed by a certain Ricardo V. Castro, Sr. on June 2, 2015 before the Office of the Ombudsman against Eddie Catibog Rodriguez, in his capacity as Assistant Treasurer, and Filemon M. Galsim, in his capacity as the Municipal Mayor, both of Sta. Cruz, Occidental Mindoro for violation of Section 3(e) and (h) of R.A. 3019, for its criminal aspect, and violation of Section 7(a) of R.A. 6713 and Section 89(a)(1) of R.A. 7160, for its administrative aspect.

It was alleged in the complaint, as amended⁵, that from the period July 2013 up to the time of filing of the complaint and even prior to July 2013, Filemon M. Galsim, in his capacity as Mayor of Sta. Cruz, Occidental Mindoro, had been procuring fuel, oil and other lubricants ("POL" for short) exclusively from R4 Fuel Refilling Station ("R4 Fuel" for short) owned and operated by Lydia C. Rodriguez, the mother of Eddie C. Rodriguez. It was further alleged that Eddie C. Rodriguez, the Assistant Municipal Treasurer, happens to be the son-in-law of Mayor Galsim because he is married to Mayor Galsim's daughter, Florence Galsim.

² Records, p. 203.

³ Records, pp. 206-221.

⁴ Records, pp.227-237.

⁵ The complaint was later amended to correct the name of Eddie C. Rodriguez.

Allegedly, Mayor Galsim, as head of the procuring entity, is the approving authority of the municipality for the purchase orders and disbursement vouchers for the procurement of POL, while Assistant Treasurer Eddie Rodriguez and his wife, Florence Galsim, are the ones who prepare the sales invoice and official receipts acknowledging payments from the municipality of procurement of POL from R4 Fuel, and even sign the disbursement vouchers on behalf of R4 Fuel.

Given the relationships of the parties, by consanguinity (blood) between Lydia C. Rodriguez, owner of the R4 Fuel, and her son, Eddie C. Rodriguez, the Assistant Treasurer of the Municipality of Sta. Cruz, Occidental Mindoro, on one hand, and by affinity between Sta. Cruz Mayor Filemon M. Galsim and Assistant Treasurer Eddie C. Rodriguez, on the other hand, the latter being the husband of Mayor Galsim's daughter, Florence Galsim, complainant Castro claims that both the Mayor and the Assistant Treasurer have direct or indirect financial or pecuniary interest in the procurement by the Municipality of Sta. Cruz of POL in violation of Section 3 (e) and (h) of R.A. 3019, Section 7(a) of R.A. No. 6713 and Section 89(a) (1) of R.A. 7160.

Both Mayor Galsim and Assistant Treasurer Rodriguez specifically deny criminal and administrative liability, explaining in their Joint Counter-Affidavit, that the municipality does not procure POL in bulk but in small quantities or few liters from a retailer at pump prices which does not require public bidding or canvass since it is not covered by the rules on purchases of bulk POL under Appendix 16 of the IRR of R.A. 9184 (Government Procurement Reform Act); that there is only one POL retailer, R4 Fuel, in the municipality that is willing to extend credit to the municipality at pump prices and to be paid after completion of procurement process, without surcharges and price fluctuation adjustments; that the other POL retailers are located 10 kilometers away in the towns of Mamburao and Sablayan.

Eddie C. Rodriguez, for his part, claims that he cannot be made liable under either Section 3(e) or Section 3(h) of R.A. 3019 because, as Assistant Treasurer, he does not have authority to approve or intervene in the preparation of purchase requests, purchase orders and disbursement vouchers. Mayor Galsim, on the other hand, denies liability claiming he cannot be said to have any prohibited material or financial interest in the business of Lydia Rodriguez, for, he is not related, either by consanguinity or affinity, to Lydia Rodriguez. Neither is he liable under Section 3(e) of R.A. 3019 because R4 Fuel is the only POL retailer in the municipality that is willing to extend credit to the municipality at pump prices and to be paid after completion of procurement process, without surcharges and price fluctuation adjustments.

The Office of the Ombudsman, upon a finding of probable cause, recommended in its *Resolution*,⁶ dated October 16, 2015, that an *Information* for violation of Section 3(e) of R.A. 3019 be filed against respondent Filemon M. Galsim⁷ while an *Information* for violation of Section 3(h) of R.A. 3019 be filed against respondent Eddie C. Rodriguez in the proper court. The charge of violation of Section 7(a) of R.A. No. 6713 against both respondent was dismissed for lack of merit.

In the said *Resolution*, the Office of the Ombudsman concluded that the charge of violation of Section 3(e) of R.A. 3019 against respondent Eddie C. Rodriguez should be dismissed because the discharge of his official functions as Assistant Treasurer does not involve procurement of goods and supplies for the local government and it was not established that his office requires him to intervene or take part in the approval of the questioned transactions. The charge of violation of Section 3(h) of R.A. 3019 against respondent Filemon M. Galsim, on the other hand, was dismissed because it was not established that he obtains any financial or pecuniary interest from the procurement of POL from R4 Fuel, the fuel refilling station owned and registered in the name of his "bala", Lydia Rodriguez.

In the case of Eddie C. Rodriguez, in particular, the Office of the Ombudsman recommended the filing of an *Information* against him for violation of Section 3 (h) of R.A. No. 3019 on the following findings:

"Respondent Eddie, being the son and heir of Lydia, has an indirect financial or pecuniary interest in the questioned procurement made by the Municipality. Such interest is prohibited under Section 89 (a) paragraph (1) of R.A. 7160 which makes it unlawful for any local government official or employee, directly or indirectly, to engage in any business transactions with the local government unit in which he is an official or employee. That said, the elements of violation of Section 3(h) of R.A. 3019 are present. However, the charge of violation of Section 7(a) of R.A. 6713 is dismissible since the subject procurement does not require the approval of respondent Eddie as Assistant Treasurer."

⁶ Records, pp. 70-77.

⁷ Filemon M. Galsim, who holds an elective position of Municipal Mayor of Santa Cruz, Occidental Mindoro with a Salary Grade 27, was charged before the Sandiganbayan by the Office of the Ombudsman in an *Information* filed on July 14, 2017 with violation of Section 3(e) of R.A. 3019, docketed as SB-17-CRM-1423. On August 17, 2017, the Sandiganbayan (Fifth Division) promulgated a Resolution dismissing the charge of violation of Section 3(e) of R.A. 3019 against the accused for lack of probable cause. The prosecution's motion for reconsideration was denied in the Resolution dated November 2, 2017.

The partial motion for reconsideration filed by both respondents was denied by the Office of the Ombudsman in an Order dated December 15, 2016.

Consequently, on September 5, 2017, Eddie C. Rodriguez, whose appointment as Assistant Treasurer is classified under Salary Grade 22, was charged before the Regional Trial Court Branch 44, Mamburao, Occidental Mindoro with violation of Section 3(h) of Republic Act No. 3019 in an *Information*, the accusatory allegations of which read, as follows:

“That in July 2013 or sometime prior or subsequent thereto, in the Municipality of Sta. Cruz, Mindoro Occidental, accused EDDIE CATIBOG RODRIGUEZ, a public officer, being the Assistant Municipal Treasurer of Sta. Cruz, Occidental Mindoro, taking advantage of his official position and in relation thereto, did then and there willfully, unlawfully, and criminally have direct or indirect financial or pecuniary interest in the procurement of petroleum, oil and lubricant by the Municipality of Santa Cruz, Occidental Mindoro, he being the son of LYDIA RODRIGUEZ, the registered owner of R4 Fuel Refilling Station from which the Municipality of Santa Cruz procures petroleum, oil and lubricant for all its vehicles and heavy equipment, such interest being prohibited by Section 89 paragraph (a) (1) of Republic Act No. 7160 of the Local Government Code of the Philippines.”

“CONTRARY TO LAW.”

On September 7, 2017, Eddie C. Rodriguez filed a *Motion to Quash*⁸ contending that the facts alleged in the *Information* do not constitute an offense considering that not all the elements constitutive of violation of Section 3(h) of R.A. 3019 are present. Specifically, he argued that as the son of Lydia Rodriguez, the owner of R4 Fuel, he does not have any interest in R4 Fuel business of his mother. He added that since his mother is still very much alive, no successional rights have been transmitted to him pursuant to Article 777 of the Civil Code for him to have any interest over her properties.

On September 25, 2017, the prosecution filed its *Comment/Opposition*⁹ to the *Motion to Quash*.

⁸ Records, pp.108-121.

⁹ Records, pp. 128-139

In an Order dated December 22, 2017, public respondent denied the *Motion to Quash*. A *Motion for Reconsideration*¹⁰ was thereafter filed on January 15, 2018 by Eddie Rodriguez.

Public respondent, acting on the *Motion for Reconsideration* and the prosecution's *Comment and/or Opposition* thereon, as well as the Reply of accused Rodriguez, denied the *Motion for Reconsideration*.

Hence, accused Eddie Rodriguez, now petitioner, elevated the denial of his *Motion to Quash* to this Court by way of the special civil action of *certiorari* under Rule 65 of the Rules of Court imputing grave abuse of discretion tantamount to a lack or excess of jurisdiction on the part of public respondent in denying his motion to quash on the following grounds:

- A. Public respondent gravely abused its discretion in ruling that the facts alleged in the Information constitute an offense for violation of Section 3(h) of R.A. 3019 when the imputed "prohibited interest" against the petitioner to the R4 fuel business of his mother is non-existent since his right is merely inchoate given that no successional rights have been transmitted to him.
- B. Public respondent gravely abused his discretion tantamount to a lack or excess of jurisdiction when it ruled that all the elements constitutive of Section 3(h) of R.A. 3019 are present.

In justifying the propriety of his petition for *certiorari* under Rule 65 of the Revised Rules of Court, petitioner explains that while the rule is that the remedy of a party whose motion to quash is denied is to proceed to trial, this petition presents an exception given the very nature of the *Information* filed against him which patently does not constitute an offense. The higher interest of justice to protect his fundamental right not to be subjected to the anxiety and inconvenience of a trial for an *Information* that obviously does not charge an offense becomes of paramount consideration.

On the supposition that petitioner, as an accused, has the basic right to be shielded from the ordeal of facing a criminal charge based on an *Information* that does not charge an offense, he also seeks the issuance of a temporary restraining order and/or writ of preliminary injunction to restrain public respondent from further proceeding in the trial of the case. He pleads that he is constrained to invoke the wisdom and appellate jurisdiction of this Court as he is left with no appeal nor

¹⁰ Records, pp. 140-153.

any other plain, speedy and adequate remedy in the ordinary course of law other than this petition to protect his right from being unduly dragged into a trial of a case based on an *Information* which patently does not constitute an offense and upon his so-called prohibited interest in a business that is non-existent under the law.

Basically, the two (2) interrelated grounds raised by petitioner, quoted above, in attributing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent when his *Motion to Quash* was denied revolves on the issue of sufficiency of the allegations in the *Information* in that the same do not constitute an offense because two (2) of the essential elements of the violation of Section 3(h) of R.A. 3019 charged against him are allegedly lacking, more particularly, the second and third elements:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by law.

Petitioner contends that in his *Motion to Quash* filed before public respondent, he assailed the sufficiency of the allegations of the *Information* because he has no direct or indirect financial or pecuniary interest in the procurement of POL from the gasoline station of his mother because he is not the owner thereof since no "successional rights" have been transmitted yet to him which, under Article 777 of the Civil Code of the Philippines, are transmitted only "from the moment of death of the decedent." Since his mother is still very much alive, petitioner asserts that there was yet no successional right or legal interest that could have been vested or transmitted to him in relation to his mother's R4 Fuel business, hence, the imputed prohibited interest against him does not exist under the law. With the express statement in the *Information* that Lydia C. Rodriguez is the registered owner of R4 Fuel Refilling Station, petitioner can hardly be considered to have any direct or indirect pecuniary or financial interest in the business transactions of R4 Fuel and his mother with Municipality of Sta. Cruz, Occidental Mindoro.

Petitioner cites the Supreme Court's unequivocal ruling in *Spouses Buenaventura vs. Court of Appeals*¹¹ that "children do not have any legal interest over the property of their living parents" to emphasize his argument that his right to his mother's properties is merely inchoate and vests only upon her death. The fact that the *Information* referred to the petitioner as the son of Lydia Rodriguez and

¹¹ G.R. No. 126376, November 20, 2003.

not as an heir seriously impinges on the validity of the *Information* to constitute an offense premised on the so-called prohibited interest he has in the R4 Fuel business of his mother which, by law, is inchoate, speculative or something that hinges or is contingent to the happening of an event in the future.

In this petition, petitioner explains that as the Municipal Assistant Treasurer of Sta. Cruz, Occidental Mindoro, he was charged under Section 3(h) of R.A. 3019 of having a "prohibited interest" as a government employee in the gasoline business (R4 Fuel) owned and registered in the name of his mother, Lydia C. Rodriguez, from which the municipality of Sta. Cruz purchased its POL products for all its vehicles and heavy equipment. Petitioner refers to the allegations in the *Information* which cited Section 89(a) paragraph (1) of R.A. 7160 as the law governing the prohibition against petitioner from having such interest to the alleged POL transactions with the municipality.

Petitioner further explains that the offense he was charged of in the *Information* requires, as third element thereof, that the public officer, either: (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law, meaning, that there are two modes in which a public officer can be held liable: the *first mode*, by intervening or taking part in his official capacity with such interest, and; *second mode*, by having an interest which is prohibited by law or by the Constitution.

Petitioner points out that the provision on "prohibited business and pecuniary interest" referred to under Section 89(a) paragraph (1) of R.A. 7160 which was cited as basis of the charge and imputed against him in the *Information* that he has, directly or indirectly, in the R4 Fuel business of his mother, is qualified by the phrase "[E]ngaged in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision x x x". Petitioner claims, however, that the *Information* was bereft of any allegation that petitioner engaged in any business transaction with the local government of Sta. Cruz; that in the absence of such allegation in the *Information* which is a qualifying requirement of the said law, the *Information* lacks the requisite element to actually constitute an offense premised on Section 89(a), paragraph (1) of R.A. 7160.

Petitioner argues further that, not being the owner of R4 Fuel which, as stated in the *Information*, is owned by his mother, Lydia C. Rodriguez, he cannot be deemed to have engaged in business transaction with the local government unit of Sta. Cruz in the purchase of POL through a business entity in which he is not even the owner nor



even a shareholder; that as an Assistant Treasurer, he does not obviously have any power of supervision over the local government of Sta. Cruz; that as found by the Ombudsman in its Resolution¹² dated 16 October 2015, “[I]t was not established that his office requires him to intervene or take part in the approval of the questioned transactions” and the position of petitioner as assistant treasurer “ x x x does not involve matters of procurement of goods and supplies for the local government .” In ruling that the third element of the Section 3(h) of R.A. 3019 offense is present or sufficiently allege in the *Information* despite the obvious absence of such important qualifying element of Section 89(a) paragraph (1) of R.A. 7160, petitioner claims that public respondent court gravely abused its discretion amounting to lack or excess of jurisdiction.

In their respective *Comment* with explanation in compliance with the *Resolution* of this Court dated July 2, 2018, both the prosecution and private complainant, citing *Enrile vs. Hon. Manalastas*,¹³ question, at the outset, the remedy availed of by petitioner before this Court under Rule 65 of the Rules of Court, pointing out that the remedy against the denial of a motion to quash is for the movant to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign as error the denial of the motion to quash; that the denial, being an interlocutory order, is not appealable, and may not be the subject of a petition for certiorari because of the availability of other remedies in the ordinary course of law.

In explaining why the proceedings in the RTC, Branch 44 of Mamburao, Occidental Mindoro should not be held in abeyance on account of the pendency of this incident before this Court, the prosecution, citing *People vs. Grey*¹⁴, explains that injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society. The prosecution further contends that, assuming for the sake of argument that it can be done, petitioner failed to establish a right *in esse* or an irreparable injury, hence, his prayer for temporary restraining order has no legal or factual basis. Invoking the same principle of law, private complainant avers that a temporary restraining order to hold criminal procedure in abeyance is not allowed by the Rules and existing jurisprudence.

On the issue of sufficiency of the allegations in the *Information*, the prosecution maintains that the assailed orders are proper because all the essential elements of the offense of violation of Section 3(h) of

¹² Annex "F", Petition, Records, p. 70-77.

¹³ G.R. No. 166414, October 22, 2014.

¹⁴ G.R. No. 180109, July 26, 2010.

R.A. 3019 have been sufficiently alleged in the Information; that petitioner, being the son and heir of Lydia C. Rodriguez, has an indirect financial or pecuniary interest in the questioned procurement of POL Fuel made by the Municipality of Sta. Cruz from R4 Fuel owned by his mother; that petitioner indirectly, through his mother, engaged in a business transaction with the Municipality of Sta. Cruz in which he is an official; that such business or pecuniary interest is prohibited under Section 8(a) paragraph (1) of R.A. 7160.

Private complainant, on the other hand, contends that to test the sufficiency of the complaint, it is necessary to refer to the law defining the offense charged, i.e., Section 89(a)(1) of R.A. 7160; that assuming, without conceding, that a discussion as to the culpability of the petitioner is required in the determination of this petition, it is necessary to point out that petitioner is guilty of violation of Section 89(a)(1) of R.A. 7160 because all the elements of the offense are present in this case; that the complaint only needed to aver the ultimate facts constituting the offense, not the details of why and how the illegal acts allegedly amounted to prohibited business or pecuniary interest, for such matters, being evidentiary, were appropriate for trial.

Private complainant adds that the reliance of petitioner in his defense that his interest in the business of Lydia C. Rodriguez is only inchoate and presumptive proves that he has indirect pecuniary interest for being the son of Lydia C. Rodriguez, and their close relationship gives him access to the financial gains of the business; that registration of business in the name of his mother raises a presumption of ownership that can be rebutted by contrary evidence; that actual ownership of petitioner of R4 Refilling Station is bolstered by the fact that he lives very near the refilling station, while his mother resides abroad.

DISCUSSION AND RULING

We find the petition impressed with merit.

We shall first address the propriety of the legal remedy of *certiorari* availed of by petitioner under Rule 65 of the Rules of Court.

The pronouncements of the Supreme Court in *Galzote vs. Briones and People*¹⁵ preliminarily guides us that in the usual course of procedure, a denial of a motion to quash filed by the accused results in the continuation of the trial and the determination of the guilt or innocence of the accused. If a judgment of conviction is rendered and the lower court's decision of conviction is appealed, the accused can then raise the denial of his motion to quash not only as an error

¹⁵ G.R. No. 164682, September 14, 2011.

committed by the trial court but as an added ground to overturn the latter's ruling.

The procedural narrative of the case, as stated earlier, shows that petitioner did not proceed to trial but opted instead to immediately question the denial of his *Motion to Quash* after a reconsideration thereof was also denied by filing the instant special civil action of *certiorari* under Rule 65 of the Rules of Court.

It is well-settled that, as a rule, the denial of a motion to quash is an interlocutory order and is not appealable; an appeal from an interlocutory order is not allowed under Section 1(c), Rule 41 of the Rules of Court.¹⁶ Neither can it be a proper subject of a petition for *certiorari* which can be used only in the absence of an appeal or any other adequate, plain and speedy remedy.¹⁷ The plain and speedy remedy upon denial of an interlocutory order is to proceed to trial.

Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons.¹⁸ Jurisprudence in this regard, however, tells us that a number of exceptional situations have been recognized by the Supreme Court in the past where *certiorari* is considered an appropriate remedy to assail an interlocutory order, more particularly the denial of a motion to quash, as in the following situations: (a) when the court issued the order without or in excess of jurisdiction or with grave abuse of discretion; (b) when the interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief; (c) in the interest of a more enlightened and substantial justice; (d) to promote public welfare and public policy; and (e) when the cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.

As emphatically stated by the Supreme Court in *Galzote vs. Briones*¹⁹, thus: "In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave

¹⁶ Section 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

xxx xxx xxx

(c) An interlocutory order;

xxx xxx xxx

¹⁷ *Santos vs. People*, G.R. No.173176, August 26, 2008, 563 SCRA 341.

¹⁸ *Galzote vs. Briones*, supra note 15.

¹⁹ *Id.*

abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.”

We find in the instant case that there was a compelling reason to justify a resort to a petition for *certiorari* against the Order of public respondent as will be discussed below.

In the instant case, the issue raised by petitioner in attributing grave abuse of discretion amounting to lack or excess of jurisdiction revolves on the sufficiency of the allegations in the *Information*, more specifically, anchored on Section 3(a), Rule 117 of the Rules of Court, “that the facts charged do not constitute an offense”. By alleging in his *Motion to Quash* that the *Information* should be quashed for lack of two (2) of the essential elements of the violation of Section 3(h) of R.A. 3019 charged against him, the petitioner was contending that the facts charged did not constitute the offense.

The fundamental test in considering a motion to quash anchored on Section 3(a) of Rule 117 of the Rules of Court, is the sufficiency of the averments in the *Information*, that is, whether the facts alleged, if hypothetically admitted, would established the essential elements of the offense charged as defined by law. It is axiomatic that the *Information* must state every single fact necessary to constitute the offense charged, otherwise, a motion to quash on the ground that the *Information* charges no offense may be properly sustained.²⁰

Notably, a motion to quash is the mode by which an accused, before entering his plea, challenges the complaint or *Information* for insufficiency *on its face* in point of law, or the defects apparent *on its face*.²¹

The *Information* sought to be quashed charged petitioner with violation of Section 3, paragraph (h) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act which provides:

“Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X

X X X

X X X

“(h) Directly or indirectly having financial or pecuniary interest in ay business, contract or transaction in connection with which he

²⁰ Cruz, Jr. vs. Court of Appeals, G.R. No 83754, February 18, 1991, 194 SCRA 145.

²¹ Serapio vs. Sandiganbayan, G.R. No. 148469, January 28, 2003, 396 SCRA 443, 474, citing Smith vs. State, 78 S 530.

intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The following elements need to be proven in order to constitute a violation of Section 3(h) of R.A. 3019:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by law.

On the first element of the offense charged

At the time the alleged offense was committed, petitioner is admittedly a public officer, he being the Assistant Treasurer of the Municipality of Sta. Cruz, Occidental Mindoro, a local government unit.

On the second element of the offense charged

The second element requires the public officer to have a direct or indirect financial or pecuniary interest in any business, contract or transaction. It may either be direct or indirect financial or pecuniary interest. A direct financial or pecuniary interest in any business contract or transaction contemplates a situation where the public officer is himself directly engaged or must have engaged, as an owner on record, in a business, a contract or transaction with an agency or instrumentality of the government where he is an employee or officer. On the other hand, an indirect financial or pecuniary interest in any business, contract or transaction means that the public officer may not be necessarily the owner on record of the business establishment but he derives monetary benefits, pecuniary gains or profits thereon through covert, hidden or other related means, e.g. investments in the said business as a shareholder or partner, or intervention or taking part in his official capacity in connection with such interest in connection with a business, contract or transaction with the agency or instrumentality of the government where he is an employee or officer.

The *Information* in the instant case, on its face, is bereft of allegations that petitioner is the owner of the business establishment, R4 Refilling Station, from which the Municipality of Sta. Cruz procures POL for all its vehicles and heavy equipment, or that he has financial investments in said business as a shareholder or partner or actually intervenes or takes part in his official capacity in such business, contract or transaction with the Municipality of Sta. Cruz. Instead, the

Information merely alleged that petitioner is the son of Lydia C. Rodriguez who is the registered owner of R4 Refilling Station, thus:

“ x x x accused EDDIE CATIBOG RODRIGUEZ, a public officer, being the Assistant Municipal Treasurer of Sta. Cruz, Occidental Mindoro, taking advantage of his official position and in relation thereto, did then and there willfully, unlawfully, and criminally have direct or indirect financial or pecuniary interest in the procurement of petroleum, oil and lubricant by the Municipality of Santa Cruz, Occidental Mindoro, **he being the son of LYDIA RODRIGUEZ, the registered owner of R4 Fuel Refilling Station** from which the Municipality of Santa Cruz procures petroleum, oil and lubricant for all its vehicles and heavy equipment x x x ”[Emphasis supplied]

A careful reading of the *Information* would disclose that, on point of law, the second element of the offense charged was not sufficiently alleged. The *Information*, as worded, is insufficient on its face, on point of law, as it failed to state the direct or indirect interest petitioner has in R4 Refilling Station - the business establishment that has a business transaction with the Municipality of Sta. Cruz. The allegations merely refer to petitioner as **the son of the registered owner of R4 Refilling Station**. The said allegations emanate from the theory of the prosecution that as the son of Lydia C. Rodriguez, someday or in the future, he would inherit from his mother. In short, it is the prosecution's theory that petitioner's financial or pecuniary interest in the R4 Refilling station business of his mother originates or emanates from his successional rights or legal interest on the inheritance from her estate.

On this point, we find the reliance of petitioner on the laws of succession meritorious. The statement in the *Information* that petitioner, being the son of the owner of R4 Refilling Station, is not on its face sufficient allegation, on point of law, that the second element of the offense is present in the instant case. The fact that the Municipality of Sta. Cruz was transacting business with petitioner's mother, who is still alive, means that no "successional rights" have been transmitted yet to him. Obviously, while his mother is still alive, there are no successional rights or legal interests to speak of under the laws on succession that could have been vested or transmitted to him in relation to his mother's R4 Fuel business, hence, the imputed financial or pecuniary interest on a "business, contract or transaction" against petitioner does not exist under the law. Unmistakably, Article 777 of the Civil Code is clear that "*the rights to the succession are transmitted from the moment of the death of the decedent.*" Here, while Lydia C. Rodriguez is very much alive during the time material in this

case, there was no estate to speak of, and no estate for petitioner to be interested in, even as compulsory heir.

Even if this Court move forward to the time beyond the period of the questioned transactions with the Municipality of Sta. Cruz, it would be sheer speculation to conclude that in the unfortunate event of the death of petitioner's mother, these business transactions would be of benefit to him. We would have to speculate that petitioner's mother would predecease him, and in such event, we would have to speculate that he is her sole heir, and in the alternative, we would have to speculate that upon partition, the fruits of the subject transactions would certainly be adjudicated to him, as his right is merely inchoate, since he may not lay claim on a particular property of his mother's estate.²²

In the absence of other ultimate facts to constitute the second element of the offense charged, the mere allegation or statement alone that petitioner, being the son of Lydia C. Rodriguez, the registered owner of R4 Refilling Station, has direct or indirect interest in the business, contract or transaction in the *Information* is not sufficient to inform an accused of the nature of the accusation against him so as to enable him to suitably prepare for his defense.

On the third element of the offense charged

The third element of the offense enumerates the two (2) modes by which a public officer may violate Section 3(h) of R.A. 3019, namely: (a) when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction; and (b) when he is prohibited from having such an interest by the Constitution or by law.

Considering the findings of the Office of the Ombudsman in its Resolution, dated October 16, 2015, that it was not established that the Office of the Assistant Treasurer requires petitioner to intervene or take part in the approval of the questioned transaction, and that the discharge of his official functions as Assistant Treasurer does not involve matters of procurement of goods and supplies for local government²³, petitioner was indicted under the *second mode*, that is, having a prohibited interest, citing Section 89(a) paragraph (1) of R.A. 7160, otherwise known as the "Local Government Code of 1991" which provides, thus:

"Section 89. *Prohibited Business and Pecuniary Interest.* - (a)
It shall be unlawful for any local government official or employee, directly or indirectly, to:

²² Silverio vs. Court of Appeals, G.R. No. 178933, September 16, 2009.

²³ Records, Annex F, Petition, pp. 70-77.

