



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

**FIRST DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

-versus-

**CRIM. CASE NO. SB-12-CRM-0222**

*For: Violation of Section 37, in relation to  
Section 48 (9) of R.A. 9003*

**JULIUS CESAR V. VERGARA,**  
*Accused.*

Present:

DE LA CRUZ, J., Chairperson  
PONFERRADA, J.  
LAGOS, JJ.

Promulgated on:

April 26, 2013

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**RESOLUTION**

**DE LA CRUZ, J.**

This resolves the prosecution's *Motion for Reconsideration*, dated January 9, 2013, and the accused's *Opposition*, dated March 5, 2013, to the said motion.

In its motion, the prosecution seeks to reconsider the Court's Resolution, dated December 18, 2012, which granted the accused's motion to quash on the ground of prescription. The prosecution points out that paragraph (a) of Act No. 3326 providing that offenses punished under special laws by a fine only or by imprisonment for not more than one month, or both, prescribes after one (1) year, does not apply in the case at bar, because even if admittedly the first violation of paragraphs (8), (9), (10) and (11) of Section 48 of RA 9003 is punishable by fine of ₱500,000.00 only, second and subsequent violations thereof, in

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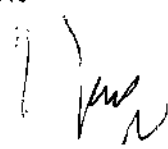
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addition to fine, carries the penalty of imprisonment of a minimum period of one (1) year but not exceeding three (3) years, at the discretion of the court. Instead, the prosecution posits, the Revised Penal Code should be applied in the case in a suppletory character, pursuant to the provision of Article 10 of the said Code. Under Section 26 of the Revised Penal Code, a fine of ₱500,000.00 is considered afflictive and, therefore, prescribes in fifteen (15) years from the discovery of the crime.

The prosecution also asserts that the acts complained of are deemed continuing acts which, as alleged in the Information, were committed by the accused from the period February 15, 2004 to April 2005. The prosecution submits that even assuming that the one (1) year prescriptive period provided under Act 3326 is applicable, the prescriptive period should be computed from April 2005 to the filing of the complaint with the Office of the Ombudsman, and not on the date the Information was filed in court on September 24, 2012. Thus, considering that the sworn complaint was filed with the Office of the Ombudsman on June 21, 2005, the one-year prescriptive period has not elapsed yet.

In his opposition, the accused alleges that the accused's motion for reconsideration showed no newly discovered evidence and raised no additional issue which would warrant reconsideration by the Court of its resolution. The arguments in the said motion are a mere rehash of the arguments stated in its previous comment/opposition. Besides, the only issue raised is prescription which was invoked by the accused in his motion to quash and already ruled upon by the Court. The accused adopts the arguments, laws and jurisprudence discussed in his motion to quash as his objection to the present motion. The accused also calls for the interpretation of the law in such a way that penal legislation should be adopted as would favor the accused.

After a careful evaluation of the arguments raised by the prosecution in its motion for reconsideration and a re-assessment of the records of the case, the Court is swayed to reconsider. However, it should be stressed that the Court does not fully agree with the submission of the prosecution that the subject offense under RA 9003 does not fall within the ambit of Act. No. 3326 since the imposable penalty as a whole contemplates an additional penalty of imprisonment and therefore, the pertinent



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provisions of the Revised Penal Code, in its suppletory manner, shall apply. While RA 9003 provides a fine of Five Hundred Thousand Pesos (P500,000.00) for first time offenders in case of conviction for violation of Section 48, paragraphs (8), (9), (10) and (11) thereof, the Court maintains that said fine is independent of the consequent penalty of imprisonment and cannot be used as a basis in considering that it is already an afflictive penalty as defined in the Revised Penal Code. Hence, the subject violation and its attached penalty are governed by Act No. 3326 for purposes of ascertaining the period of prescription and RA 9003, being a special penal law, mandates the application of the provisions of Act No. 3326 in so far as computation of the prescriptive period is concerned. It has been settled that Section 2 of Act No. 3326 governs the computation of prescription of offenses defined and penalized by special laws.<sup>1</sup>

For clarity, the pertinent provisions of Act. No. 3326 (An Act To Establish Periods Of Prescription For Violations Penalized By Special Acts And Municipal Ordinances And To Provide When Prescription Shall Begin To Run ) are quoted below. Thus:

SECTION 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: **(a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both;** (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

SECTION 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same not be known at the time, from the

<sup>1</sup> People vs. Pacificador, 354 SCRA 310, p. 317

*[Handwritten signature]*

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discovery thereof and the institution of judicial proceedings for its investigation and punishment.

**The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)**

On the other hand, the provisions of RA 9003 (Ecological Solid Waste Management Act of 2000) which prescribe penalties for its violation read:

### *Section 49. Fines and Penalties -*

(a) Any person who violates Sec. 48 paragraph (1) shall, upon conviction, be punished with a fine of not less than Three hundred pesos (P300.00) but not more than One thousand pesos (P1,000.00) or render community service for not less than one (1) day to not more than fifteen (15) days to an LGU where such prohibited acts are committed, or both;

(b) Any person who violates Sec. 48, pars. (2) and (3), shall, upon conviction be punished with a fine of not less than Three hundred pesos (P300.00) but not more than One thousand pesos (P1,000.00) or imprisonment of not less than one (1) day but to not more than fifteen (15) days, or both;

(c) Any person who violates Sec. 48, pars. (4), (5), (6) and (7) shall, upon conviction, be punished with a fine of not less than One thousand pesos (P1,000.00) but not more than Three thousand pesos (P3,000.00) or imprisonment of not less than fifteen (15) day but to not more than six (6) months, or both;

(d) Any person who violates Sec. 48, pars (8), (9), (10) and (11) for the first time shall, upon conviction, pay a fine of Five hundred thousand pesos (P500,000.00) plus and amount not less than five percent (5%) but not more than ten percent



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**(10%) of his net annual income during the previous year.**

The additional penalty of imprisonment of a minimum period of one (1) year but not to exceed three (3) years at the discretion of the court, shall be imposed for second or subsequent violations of Sec. 48, pars. (9) and (10).

(e) Any person who violates Sec. 48, pars. (12) and (13) shall, upon conviction, be punished with a fine not less than Ten thousand pesos (P10,000.00) but not more than Two hundred thousand pesos (P200,000.00) or imprisonment of not less than thirty (30) days but not more than three (3) years, or both;

(f) Any person who violates Sec. 48, pars. (14), (15) and (16) shall, upon conviction, be punished with a fine not less than One hundred thousand pesos (P100,000.00) but not more than One million pesos (P1,000,000.00), or imprisonment not less than one (1) year but not more than six (6) years, or both.

If the offense is committed by a corporation, partnership, or other juridical identity duly recognized in accordance with the law, the chief executive officer, president, general manager, managing partner or such other officer-in-charge shall be liable for the commission of the offense penalized under this Act.

If the offender is an alien, he shall, after service of the sentence prescribed above, be deported without further administrative proceedings.

The fines herein prescribed shall be increased by at least ten (10%) percent every three (3) years to compensate for inflation and to maintain the deterrent functions of such fines.

It is a matter of record that the Sworn Complaint<sup>2</sup> against accused Vergara was filed by private complainant Bonifacio G. Garcia on June 21, 2005 at the Office of the Ombudsman while

<sup>2</sup> Records, pp. 30-34

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the Information was filed with the Sandiganbayan on September 24, 2012. As can be gleaned from the recital of facts, the acts complained of took place "*on or about the period from February 15, 2004 to April 2005*", a crucial fact which compelled the Court to re-examine the assailed Resolution and rectify its reversible error. Reckoned from the above cited period when the alleged violation was committed up to the time the complaint was filed with the Office of the Ombudsman, it cannot be denied that indeed the action has not yet lapsed and is still within the one year prescriptive period based on Section 1 of Act No. 3326 in relation to the prescribed penalty for the offense of the accused which is only a fine. As it appears that barely two (2) months had passed when the present case was instituted against accused Vergara, and applying Section 2 of Act No. 3326 and recent jurisprudence that cites a slew of cases as to when prescription of an action is deemed to have been interrupted, the Court hereby recalls its previous pronouncement and so holds that the action against the accused Vergara is not yet time-barred. In the case of *People vs. Ma. Theresa Pangilinan*,<sup>3</sup> the Honorable Supreme Court has settled the matter of interruption of prescriptive period. Thus:

In the old but oft-cited case of *People v. Olarte*, this Court ruled that the filing of the complaint in the Municipal Court even if it be merely for purposes of preliminary examination or investigation, should, and thus, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. This ruling was broadened by the Court in the case of *Francisco, et al. v. Court of Appeals, et al.* when it held that the filing of the complaint with the Fiscal's Office also suspends the running of the prescriptive period of a criminal offense.

Respondent's contention that a different rule should be applied to cases involving special laws is bereft of merit. There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription. The ruling in *Zaldivia v. Reyes, Jr.* is not controlling in special laws. In *Llenes v. Dicdican, Ingco*,

<sup>3</sup> GR No. 152662 June 13, 2012

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*et al. v. Sandiganbayan, Brillante v. CA, 21 and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held **that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription.** In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulations Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases. **(Citations omitted, emphasis supplied)**

**WHEREFORE**, in light of all the foregoing, the prosecution's Motion for Reconsideration, dated January 9, 2013, is hereby **GRANTED** and the Court's Resolution, dated December 18, 2012, is hereby **RECONSIDERED** and **SET ASIDE** and a new one entered finding that the action against the accused has not yet prescribed.

The Division Clerk of Court is ordered to set this case for arraignment.

**SO ORDERED.**

**EFREN N. DE LA CRUZ**  
Chairperson/Associate Justice

**We Concur:**

  
**RODOLFO A. PONFERRADA**  
Associate Justice

  
**RAFAEL R. LAGOS**  
Associate Justice