

**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

- versus -

**LEONIDES THERESA BORJA
PLAZA, et. al.**

Accused.

**Criminal Case No. SB-16-
CRM-0264**

**For: Violation of Section
3(e), Republic Act (R. A.) No.
3019**

**Criminal Case No. SB-16-
CRM-0265**

**For: Violation of Section
3(g), R. A. No. 3019**

Present:

CABOTAJE-TANG, P.J.,
Chairperson
MARTIRES,¹ J. and
FERNANDEZ, J.

Promulgated:

SEPTEMBER 21, 2016

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RESOLUTION

CABOTAJE-TANG, PJ:

For resolution is the *Omnibus Motion (1) To Dismiss the Case for Violation of the Right of the Accused to Speedy Disposition of Cases; and (2) For Judicial Redetermination of*

¹ This incident was submitted for resolution when J. Martires, now Chairperson of the Second Division, was still the senior member of the Third Division.

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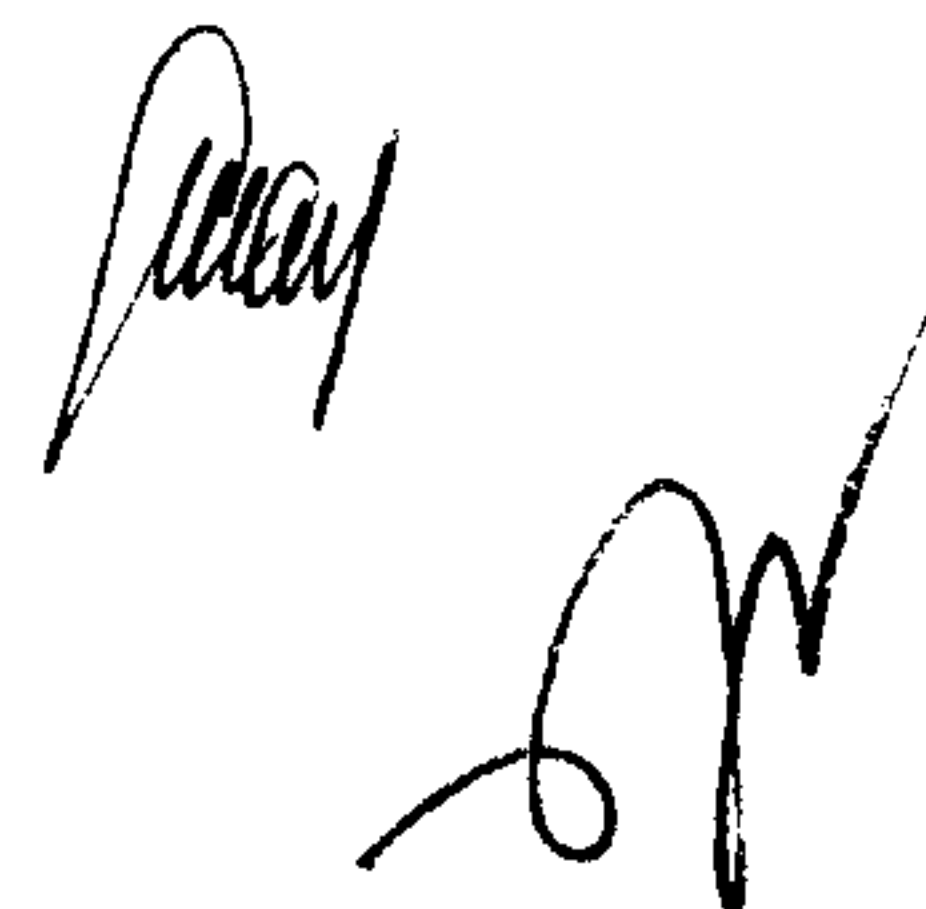
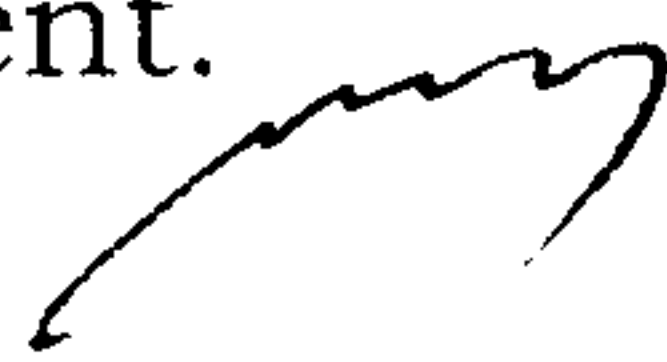
Probable Cause dated May 27, 2016 filed by accused Leonides Theresa Borja Plaza.²

Invoking her right to speedy disposition of cases and relying on **Tatad vs. Sandiganbayan**,³ accused Plaza moves for the dismissal of the cases against her. She argues that the length of time, or the period of almost five (5) years, that it took the Ombudsman to conduct its preliminary investigation violated her right to speedy disposition of cases. She contends that the Ombudsman cannot use the motions for extension of time that she filed as an excuse for the delay allegedly because the said motions “only attributed to the period for arguably less than six (6) months.” She stresses that she raised the issue of violation of her right in her motion for reconsideration when she assailed the Ombudsman’s Resolution dated September 3, 2013 finding probable cause to charge her with these cases. It took the Office of the Ombudsman more than three (3) months to resolve her motion by denying the same on the ground that it was filed beyond the reglementary period. She takes issue with the fact that the Ombudsman approved the Resolution dated September 3, 2013 only on June 26, 2015 and that she received the same Resolution only on September 22, 2015.

In the same motion, accused Plaza implores the Court to “redetermine the existence of probable cause” alleging that there is no evidence that she conspired with the other accused in the commission of the offense of violation of Section 3(e) of R. A. No. 3019. She argues that her act of signing the bidding documents, without participating in the canvass and selection process, does not amount to “manifest partiality, evident bad faith or gross inexcusable negligence.” She also argues that the element of “undue injury” is not present in this case because her acts of requesting the release of funds from the Department of Agriculture (DA) and executing the Memorandum of Agreement (MOA) with the DA are not illegal or irregular; hence, her acts could not have resulted in undue injury to the government.

² pp. 15-26, Record, Vol II

³ 159 SCRA 70 (1988)



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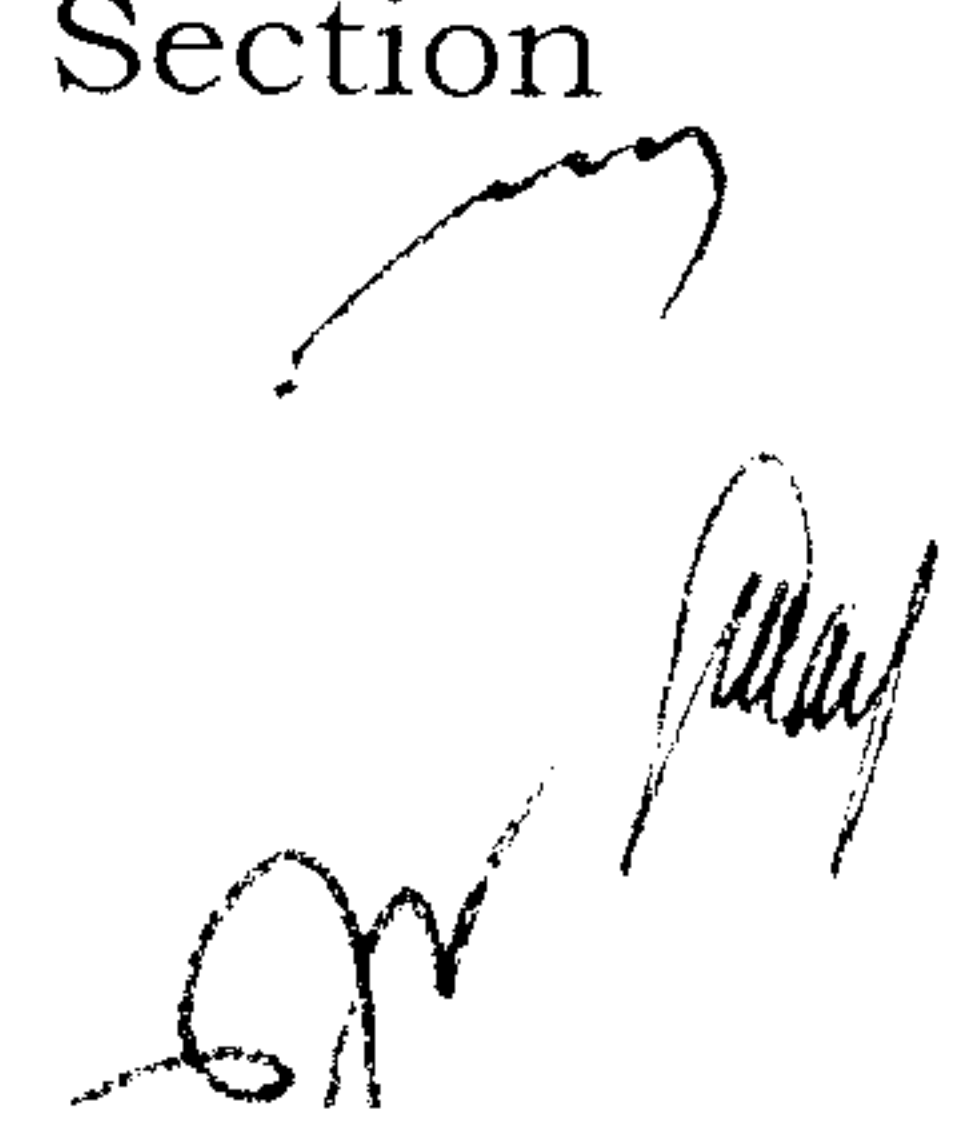
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Insofar as the charge for violation of Section 3(g) of R. A. No. 3019 is concerned, accused Plaza argues that the transaction between the City of Butuan and Feshan Philippines, Inc. cannot be considered illegal under Section 3(g) of R. A. No. 3019 because she was merely exercising her ministerial duty to implement the award of the project to Feshan when she signed the purchase order (PO). Granting *arguendo* that she participated in the approval of the procurement, she contends that she cannot be held criminally liable because she merely relied in good faith on the findings of her subordinates. In support thereof, she invokes **Arias vs. Sandiganbayan**.

In its Comment/Opposition dated June 15, 2016, the prosecution claims that the proceedings before the Office of the Ombudsman was not attended by vexatious, capricious or oppressive delay. Thus, it argues that accused Plaza cannot claim a violation of her right to speedy disposition of cases against her. The prosecution enumerates the chronology of incidents which happened from the time of the filing of the complaint until the Information was filed with the Court which, according to it, were valid, reasonable and necessary processes and procedures in the resolution of her cases. It claims that reasonable time was needed to resolve the case because it had to undergo several levels of review; that the case involved voluminous records and several respondents; and that the case involves fertilizer scam which needed a more thorough evaluation. It contends that accused Plaza's failure to file a motion for early resolution of her case may be interpreted as waiver of her right to speedy disposition of cases. The prosecution also argues that accused Plaza's motion for redetermination of probable cause is already moot considering that the Court had already determined the existence of probable cause against her when it issued warrants of arrest against the accused. At any rate, the prosecution submits that the Ombudsman's Resolution dated September 3, 2013 extensively discussed the existence of probable cause against accused Plaza for violation of Section

⁴ 180 SCRA 309 (1989)



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3(e) and (g) of R. A. No. 3019. It further asserts that the issues raised by accused Plaza are matters of defense which are properly threshed out in a full blown trial.⁵

The Court finds the omnibus motion devoid of merit.

First. The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient.⁶ It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.⁷ Thus, the fact that it took the Office of the Ombudsman almost five (5) years to resolve accused Plaza's case and file the corresponding Information does not, by itself, automatically establish that accused Plaza's right to speedy disposition of cases had been violated.

In the determination of whether or not the right to a "speedy trial" has been violated, certain factors may be considered and balanced against each other. These are length of delay, reason for the delay, assertion of the right or failure to assert it, and prejudice caused by the delay.⁸

These cases are part of the P728 million fertilizer scam where the Task Force Abono, Field Investigation Office (TFA-FIO) initially conducted an investigation of fifteen (15) respondents. As pointed out by the prosecution, the voluminous documents, the number of accused involved and the several levels of review, should be considered in resolving the complaint. The prosecution further enumerates the following chronology of incidents to allegedly "dispel the impression of delay" in the resolution of these cases:

i. On 11 April 2011, the Task Force Abono, Field Investigation Office, Office of the Ombudsman, as the

⁵ pp. 90-104, Record, Vol. II

⁶ *Braza vs. Sandiganabayan*, 691 SCRA 471 (2013)

⁷ *Caballero vs. Alfonso, Jr.*, 153 SCRA 153 (1987)

⁸ *Barcelona vs. Lim*, 724 SCRA 433 (2014), citing *Caballero vs. Alfonso, Jr.*, *supra*

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nominal complainant hereto filed a complaint. It must be noted that said complaint includes several annexes and several respondents, namely:

ii. On 5 August 2011, after evaluation of the complaint and finding enough basis to proceed with the preliminary investigation, the respondents were required to file their respective counter-affidavits.

iii. On 2 and 16 September 2011, accused Plaza filed a Motion for Extension of Time to File Counter-Affidavit. It is worth (sic) to emphasize that the other respondents also filed their respective Motions for Extension of Time to File Counter-Affidavits.

iv. On 10 October 2011, accused Plaza filed her counter-affidavit. The other respondents also filed their respective counter-affidavits sometime in 2011.

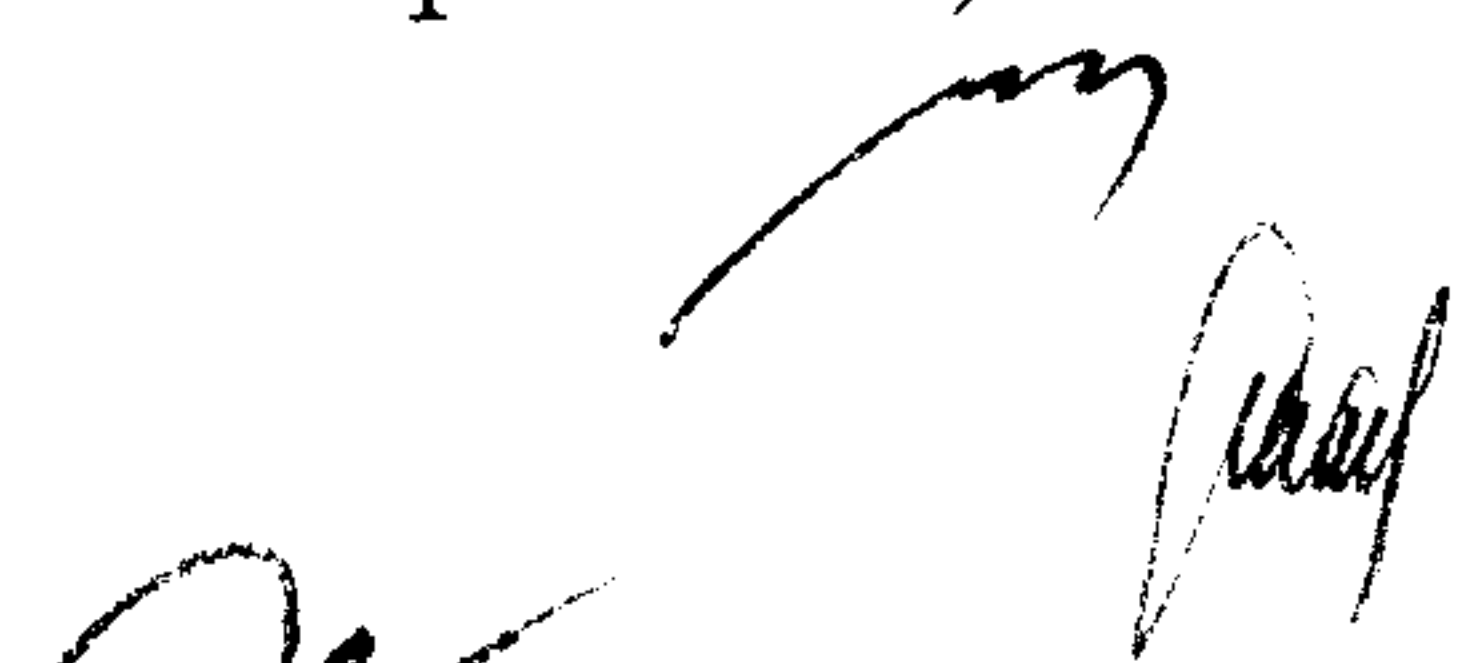
v. On 26 June 2015, the Office of the Ombudsman issued a Resolution dated September 3, 2013, finding probable cause to indict herein accused Plaza together with the other accused for violation of Section 3(e) in relation to Section 3(g) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act.

vi. On 8 October 2015, accused Plaza filed a Motion for Reconsideration of the 3 September 2013 Ombudsman Resolution.

vii. On 11 March 2016, the Ombudsman issued an Order denying accused Plaza's motion for reconsideration. Subsequently, *informations* were filed on 2 May 2016, before the Sandiganbayan.

Considering the above cited reasons and the chronology of incidents, the Court finds that there was no unreasonable or oppressive delay to speak of in the conduct of the preliminary investigation. The delay was reasonable being part of the ordinary process of justice.

Further, in factoring prejudice caused by the delay in the determination of violation of the right to speedy disposition of cases, prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect,



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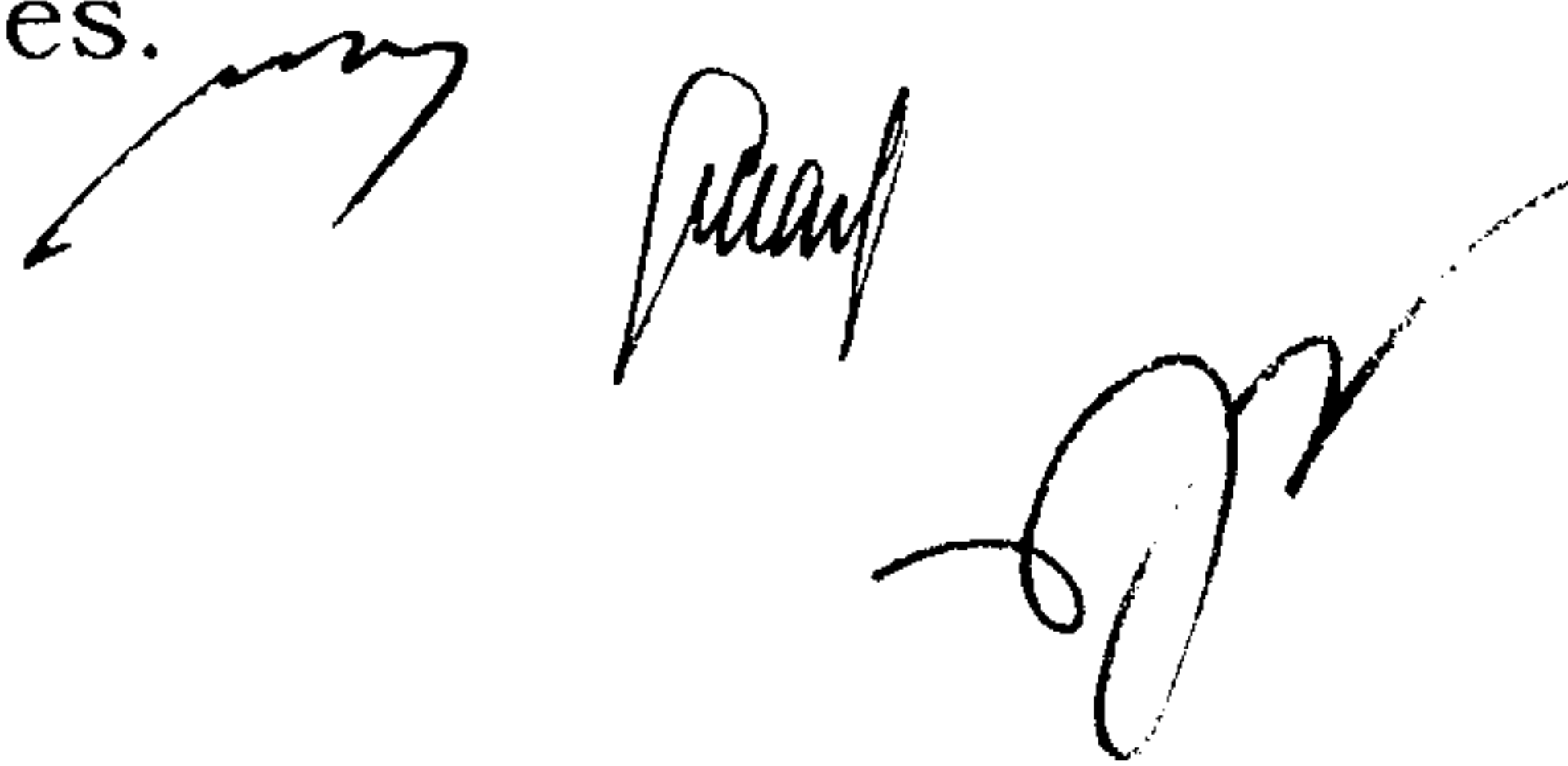
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namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.⁹

Here, accused Plaza failed to establish any serious prejudice which she suffered because of the “delay” in the resolution of her cases.

Finally, accused Plaza’s reliance on the **Tatad case** is misplaced. In **Tatad**, the Supreme Court ruled that the delay of almost three (3) years in the conduct of preliminary investigation was tantamount to a violation of the accused’s rights to due process and to a speedy disposition of his cases. In arriving at said declaration, the Supreme Court considered the following peculiar circumstance: “political motivations played a vital role in activating and propelling the prosecutorial process;” there was a departure from the established procedure in conducting the preliminary investigation and the issues involved were simple.

To be sure, the aforementioned circumstances in **Tatad** justifying the dismissal of the case against Tatad are not attendant to these cases.



⁹ **Caballes vs. Court of Appeals**, 452 SCRA 312 (2005), citing **Corpuz, et.al. vs. Sandiganbayan**, 442 SCRA 294 (2004)

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Second. The task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.¹⁰ Since the judge is already duty-bound to determine the existence or non-existence of probable cause for the arrest of the accused immediately upon the filing of the information, the filing of a motion for judicial determination of probable cause becomes a mere superfluity, if not a deliberate attempt to cut short the process by asking the judge to weigh in on the evidence without a full-blown trial.¹¹

To be sure, in its Resolution dated May 16, 2016, the Court found that probable cause exists in these cases against all the accused; hence, it issued warrants of arrest against them.¹² Thereby, the issue of the existence of probable cause is now academic as correctly pointed out by the prosecution.

At any rate, after a careful re-assessment of the records of these cases, the Court maintains its finding that probable cause exists to justify the issuance of warrant of arrest against accused Plaza, along with the other accused.

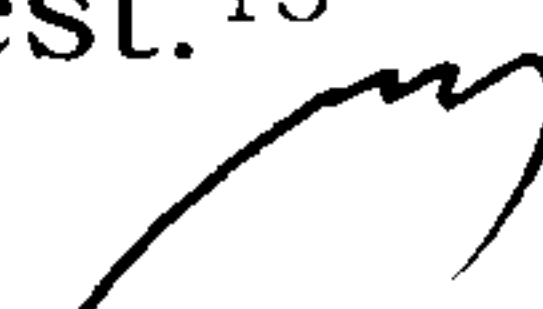
Probable cause in judicial proceedings for the issuance of a warrant of arrest is defined as the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. Hence, before issuing a warrant of arrest, the judge must be satisfied that based on the evidence submitted, there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof. At this stage of the criminal proceeding, the judge is not yet tasked to review in detail the evidence submitted during the preliminary investigation. It is sufficient that he personally evaluates the evidence in determining probable cause to issue a warrant of arrest.¹³

¹⁰ *Leviste vs. Alameda*, 626 SCRA 574 (2010)

¹¹ *De los Santos-Dio vs. Court of Appeals*, 699 SCRA 614 (2013)

¹² p. 441, Record, Vol. 1

¹³ *Pestilos vs. Generoso*, G.R. No. 182601, November 10, 2014



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In this case, the Court finds anew that there is substantial basis to support the finding of probable cause for the purpose of issuing a warrant of arrest against the accused as shown by the following documents/circumstances noted by the Office of the Ombudsman:

1. Feshan President Julie Gregorio's letter containing the quotation for Bio Nature Liquid Organic Fertilizer dated January 6, 2004 was sent to Butuan way ahead of Special Allotment Release Order (SARO) No. E-04-0164 released on February 3, 2004 and the MOA between DA-RFU XIII and Butuan on April 12, 2004;
2. On April 22, 2004, several incidents happened at the same time: (a) The Notices of Canvass were sent to selected suppliers; (b) Suppliers sent back their replies on the Notice of Canvass; (c) PO No. 714 was issued to Feshan; (d) DV No. 253 was released; (e) Check Nos. 0000611781 and 0000611782 were issued to Feshan as partial payment for the fertilizer;
3. On the same day, or on April 22, 2004, Feshan received and replied to the Canvass Proposal sent by BAC. Feshan office is located in Manila, and has no branch in Butuan;
4. Bio Nature Liquid Organic Fertilizer was delivered to Butuan on April 20, 2004, before the purported canvass of prices on April 22, 2004 and before the copy of the canvass of prices was received by the City Mayor on April 26, 2004;
5. Bio Nature Liquid Organic Fertilizer was delivered to Butuan on April 20, 2004 before the issuance of PO No. 714 to Feshan on April 22, 2004;
6. In DV No. 253, the date was changed from 21 April 2004 to 22 April 2004;

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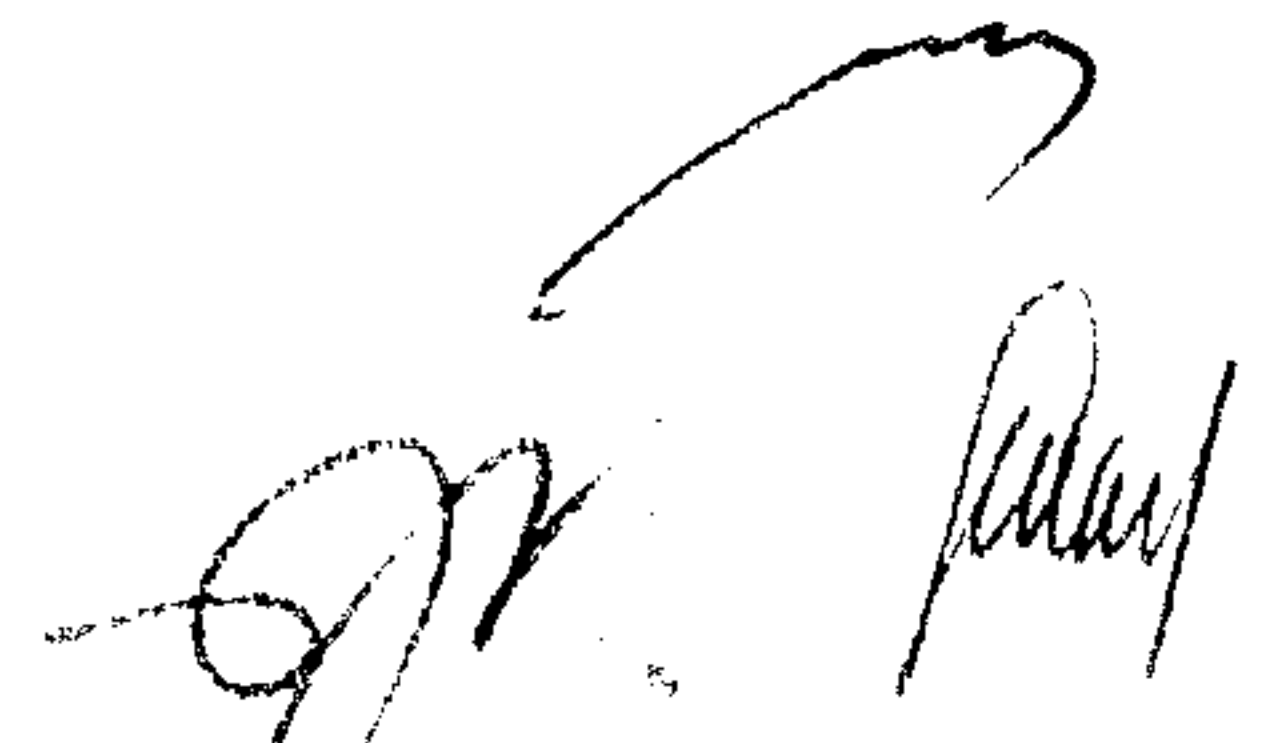
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7. Disbursement Voucher (DV) No. 356 bore two (2) dates, a typewritten "13 May 2004" and a handwritten "31 May 2004;"
8. PR No. 1430 specified the brand name Bio Nature Liquid Organic Fertilizer, a product exclusively distributed by Feshan in violation of Section 18 of R.A. No. 9184 prohibiting reference to brand names;
9. Invitation to Bid Contract was not advertised by Butuan;
10. The very detailed specifications as to the micro-nutrient content of the fertilizer to be procured in PR 1430, is different from those specified in PO No. 714 which states that Bio Nature Liquid Organic Fertilizer contains only three elements; and
11. In the canvas of prices conducted by DA-RFU XIII, it appears that there are two (2) other brands available in the locality; Restorer Liquid Organic and Megayield, the prices of which are cheaper priced at Php120.00 and Php125.00, respectively, and contain higher percentage of nutrients than Feshan's Bio Nature.
An over pricing could thus be estimated at the amount of Php4,582,875.00 computed as follows:
3,333 bottles x Php1,500 (Bio Nature) =Php4,999,500
3,333 bottles x Php125.00 (Megayield) = 416,625
Overpricing =Php4,582,875

The above circumstances show that accused Plaza is probably guilty of (1) causing undue injury to the government and giving unwarranted benefit to Feshan Philippines, Inc. and (2) entering into a contract with Feshan which is manifestly and grossly disadvantageous to the City government of Butuan when she approved the purchase of liquid fertilizer without public bidding which resulted in the



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overprice of more than four million pesos. Accused Plaza's acts indicate probable manifest partiality, evident bad faith and/or gross inexcusable negligence.

Accused Plaza, however, insists that there is no evidence that she conspired with her co-accused; that her act of signing the PR, PO, abstract of canvass and DV does not amount to "manifest partiality, evident bad faith or gross inexcusable negligence" because she did not participate in the canvass and selection process; and that element of "undue injury" is not present in this case because her acts of requesting the release of funds from the DA and executing the MOA are not illegal or irregular. Citing **Arias vs. Sandiganbayan**,¹⁴ she argues that granting that she participated in the approval of the procurement, she acted in good faith when she relied on the findings of her subordinates; hence, she could not be held liable for violation of Section 3(g) of R. A. No. 3019.

Accused Plaza's claims are matters of defense and are evidentiary in nature. It is best left for the court to resolve after a full-blown trial on the merits.

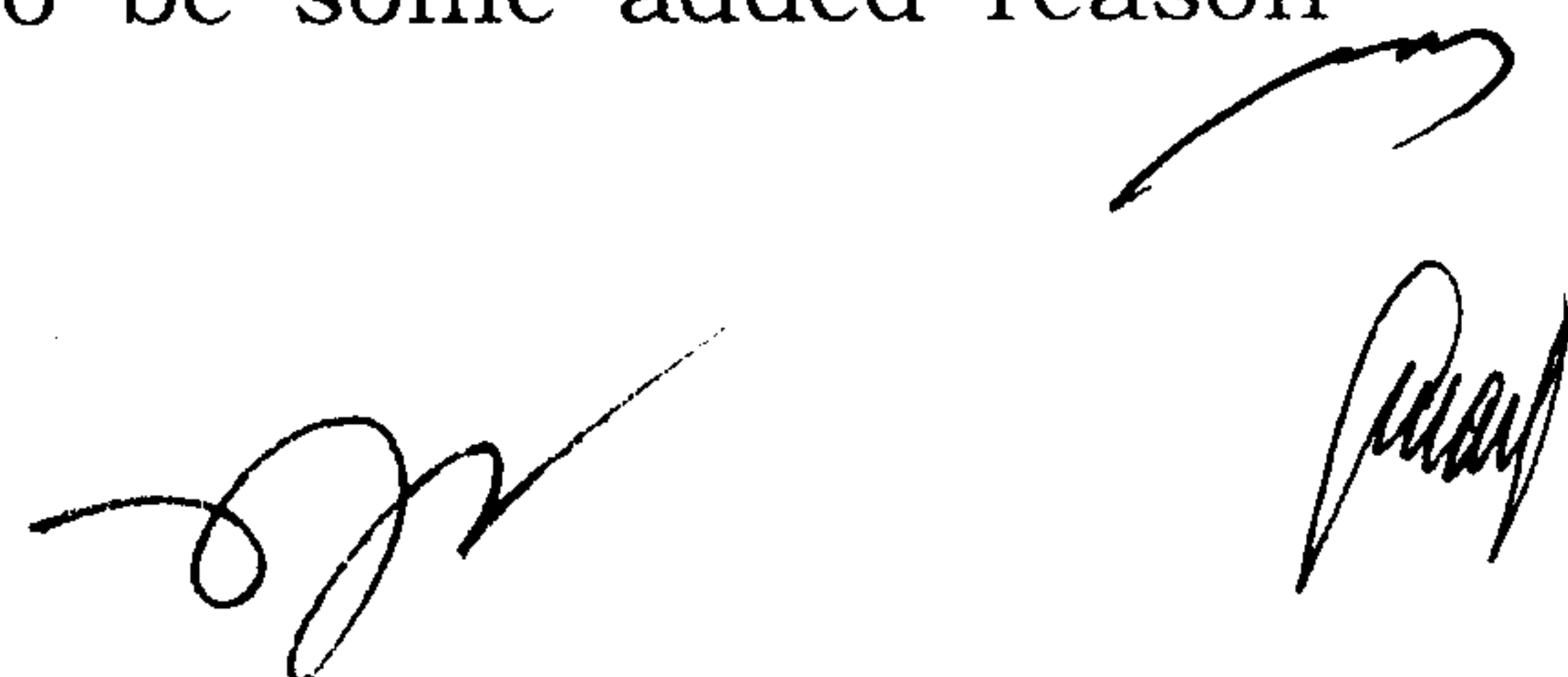
Indeed, the validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level. A finding of probable cause does not ensure a conviction or a conclusive finding of guilt beyond reasonable doubt. The allegations adduced by the prosecution will be put to test in a full-blown trial in which evidence shall be analyzed, weighed, given credence or disproved.¹⁵

Further, accused Plaza's reliance on **Arias case** is misplaced.

The *Arias doctrine* held that all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. There has to be some added reason

¹⁴ *supra* note 3

¹⁵ **Ricaforte vs. Jurado**, 532 SCRA 317 (2007)



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why the head of office should examine each of the documents he is supposed to sign.¹⁶

It must be stressed, however, that the *Arias doctrine* is not an absolute rule. In **Rivera vs. People**,¹⁷ the Supreme Court made the following declaration:

The *Arias doctrine* is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability. Thus, this ruling cannot be applied to exculpate the petitioners in view of the peculiar circumstances in this case which should have prompted them, as heads of offices, to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared.

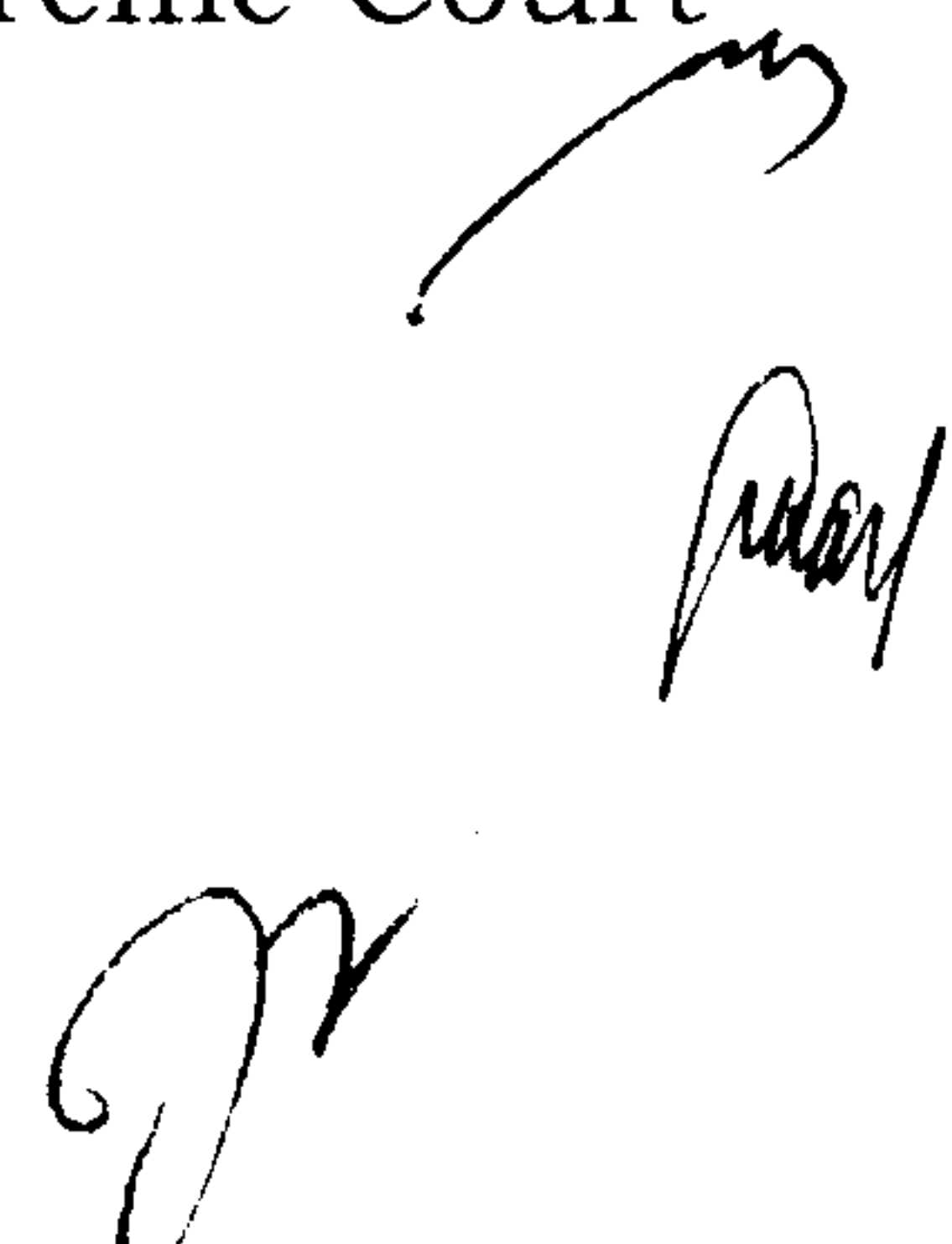
In this case, the Court notes that accused Plaza signed the PR on April 14, 2004 and the PO on April 22, 2004 relative to the procurement of the organic fertilizer. Both documents indicate the brand name: Bio Nature. The PO contains specification of the product different from that in the PR. Further, the alleged copy of the canvass of prices was received by the office of accused Plaza only on April 26, 2004, or after she already signed the PO. These circumstances should have prodded accused Plaza to go beyond what was prepared by her subordinates; hence, she cannot tenably rely on the *Arias doctrine*.

At any rate, accused Plaza's claim that her act of signing the PO and approving the canvass cannot be construed as an act of conspiring with the other accused is a matter of defense. The truth of these can be best passed upon after a full-blown trial. In **Nava vs. Commission on Audit**,¹⁸ the Supreme Court declared:

¹⁶ **People vs. Sandiganbayan**, G.R. No. 197953, August 5, 2015

¹⁷ G.R. Nos. 156577, 156587 and 156749, December 3, 2014

¹⁸ 419 SCRA 544 (2001), cited in **Redulla vs. Sandiganbayan**, 517 SCRA 110 (2007)



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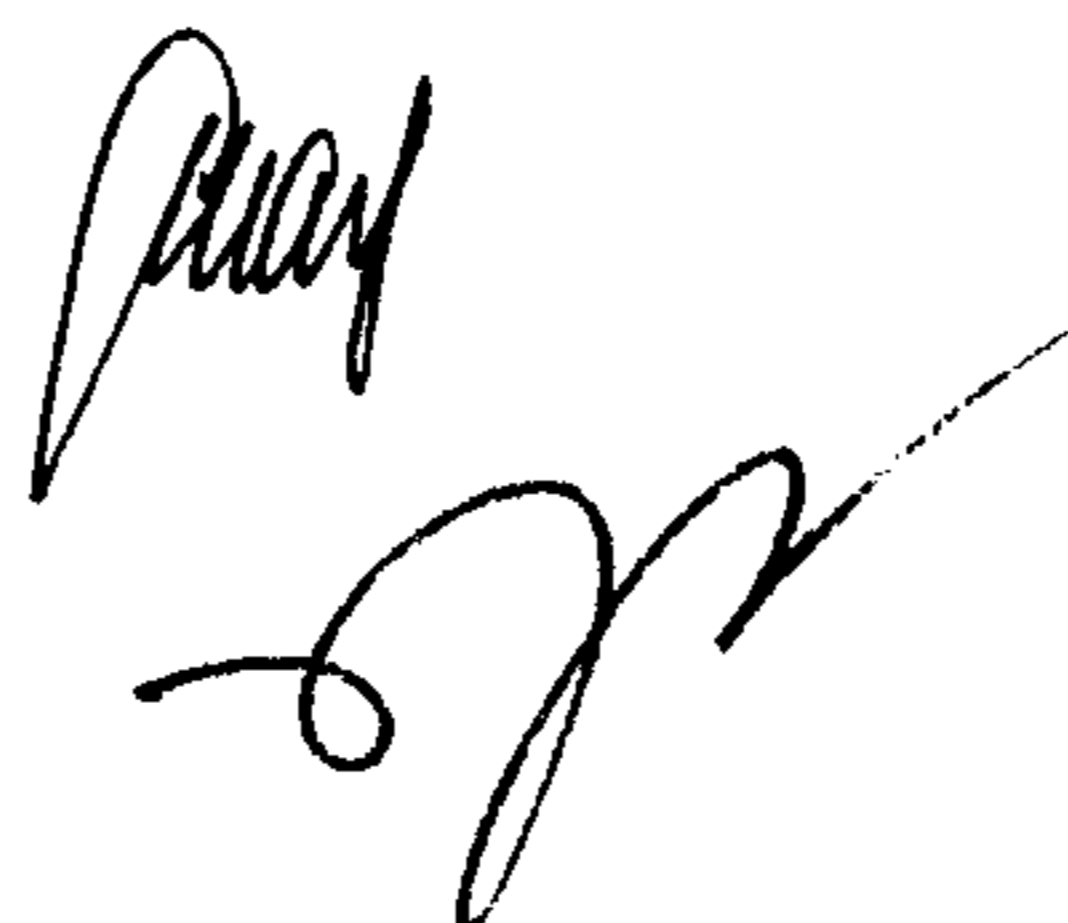

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Petitioner's argument that he could not be indicted for violation of Section 3(g) of RA 3019, because he acted in good faith when he approved the disbursement voucher, purchase order, invitation to bid and signed the checks after the same had been processed by his subordinates, are evidentiary in nature and are matters of defense, the truth of which can be best passed upon after a full-blown trial on the merits. A preliminary investigation is conducted for the purpose of determining whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty thereof and should be held for trial. It is not the occasion for full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

In sum, accused Plaza failed to establish that the alleged "delay" in the conduct of the preliminary investigation was oppressive and unreasonable; hence, her claim of a violation of her right to speedy disposition of cases has no merit. Also, the Court reiterates its earlier finding that probable cause exists for the issuance of a warrant of arrest against accused Plaza, along with the other accused.

WHEREFORE, the Court **DENIES** the *Omnibus Motion (1) To Dismiss the Case for Violation of the Right of the Accused to Speedy Disposition of Cases; and (2) For Judicial Redetermination of Probable Cause* dated May 27, 2016 filed by accused Leonides Theresa Borja Plaza for lack of merit.

SO ORDERED.



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Quezon City, Metro Manila


AMPARO M. GABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


SAMUEL R. MARTIRES
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice