

**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

- versus -

ENERICO M. SAMPANG,

Accused.

**Criminal Case No. SB-16-
CRM-0057**

*For: Failure to Render Accounts
under Art. 218 of the Revised
Penal Code*

Present:

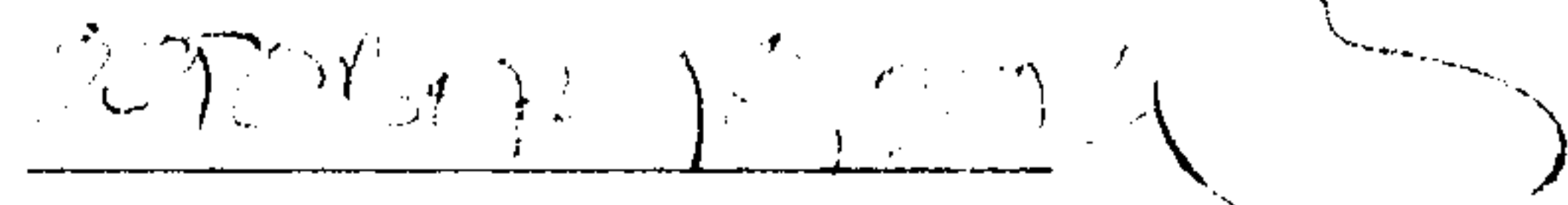
CABOTAJE-TANG, P.J.,

Chairperson,

MARTIRES, J.¹ and

FERNANDEZ, J.

Promulgated:



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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is accused Enerico M. Sampang's *Motion for Judicial Determination of Probable Cause with Formal Entry of Appearance of Counsel* dated June 9, 2016.² This motion is primarily anchored on the assertion that there exists no probable cause to charge the accused with *Failure to Render*

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.

² pp. 168-174, Record



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Accounts as defined and penalized in Article 218 of the Revised Penal Code, in relation to Presidential Decree (P.D.) No. 1445 and Commission on Audit (COA) Circular 97-002. The accused-movant avers that the charge against him is not an offense covered by the penal sanctions under P.D. No. 1445, particularly Section 128 thereof. Accused-movant Sampang cites Section 128 of P.D. No. 1445 in support of his argument, to wit:

Section 128. Penal Provision. Any violation of the provisions of Sections 67, 68, 89, 106, and 108 of this Code or any regulation issued by the Commission implementing these sections, shall be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

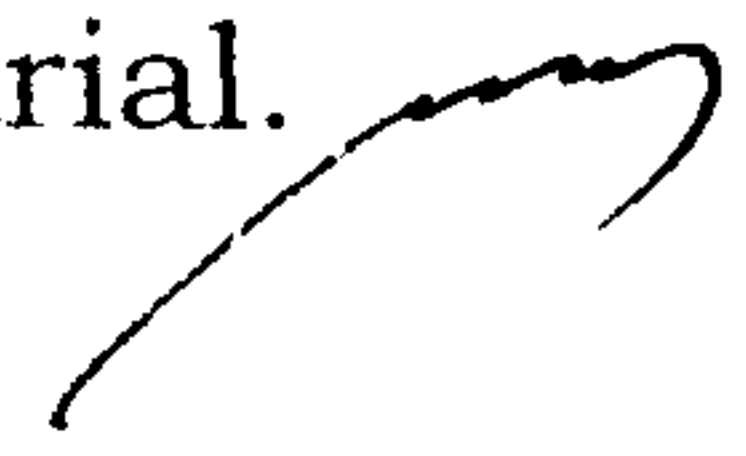
According to the accused-movant, none of the above-mentioned sections in Section 128 of P.D. No. 1445, mandating penal sanctions, covers the act referred to in the Information; hence, there is no basis to criminally charge him with *Failure to Render Accounts*.³ The accused contends that Article 218 of the Revised Penal Code is made dependent on P.D. No. 1445 as stated in the Information regarding what offense is to be charged against him. Therefore, there is no offense which may be charged because P.D. No. 1445 itself defines what is to be the violation.⁴

In its *Opposition to Motion for Judicial Determination of Probable Cause* dated June 17, 2016,⁵ the prosecution prays for the denial of the said motion and submits that the claims and defenses of accused-movant Sampang in his motion are evidentiary in nature and that they are matters of defense which are best passed upon in a full-blown trial.

³ p. 172, Record

⁴ p. 172, Record

⁵ pp. 198-201, Record



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The said opposition merited a *Comment on the Opposition to the Motion for Judicial Determination of Probable Cause*⁶ dated July 3, 2016 from the accused-movant. The accused-movant avers, among other things, that:

1. The opposition failed to overcome the argument that the Information against the accused failed to allege any valid offense committed by him.

2. It will be an exercise in futility if this trial is pursued because the acts stated in the Information, that is one count of Failure of an Accountable Officer to Render Accounts as defined in Article 218 of the Revised Penal Code in relation to P.D. 1445 and COA Circular 97, is not an offense covered by the penal sanctions under P.D. 1445 particularly Section 128 thereof.

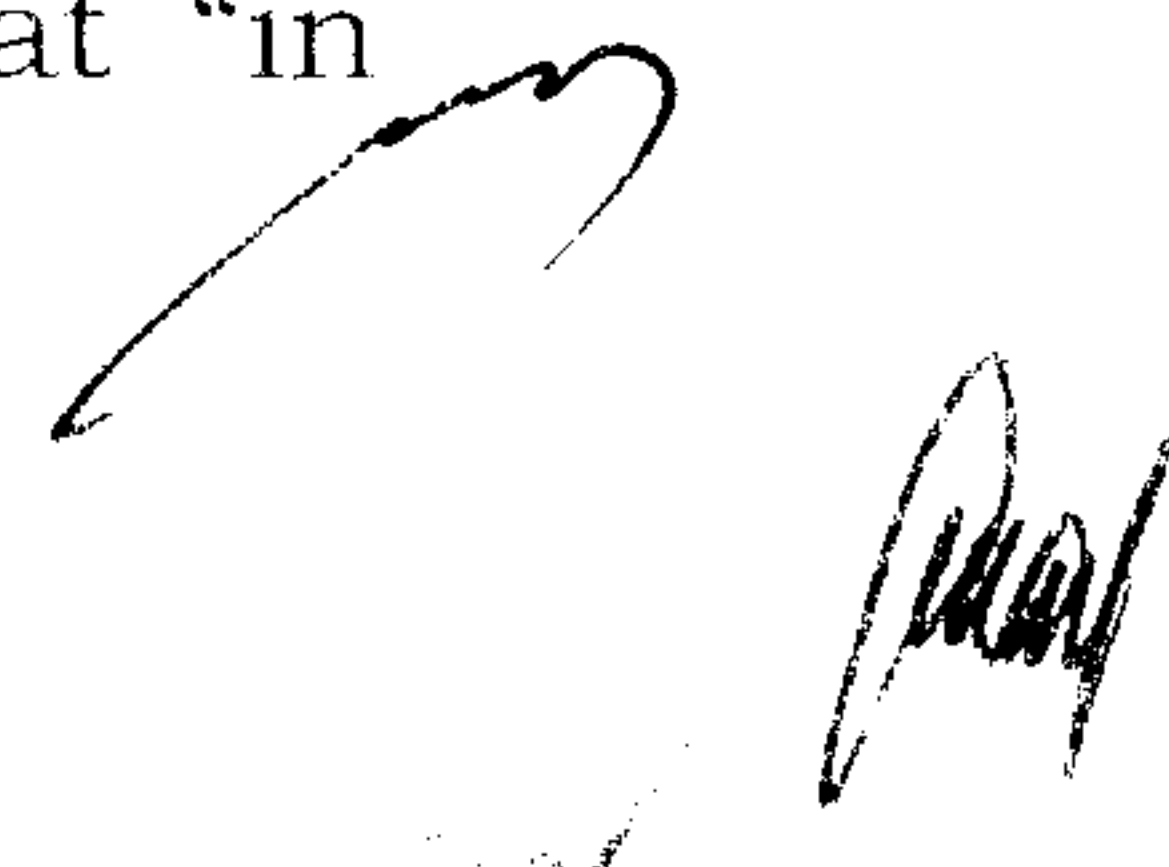
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6. With due respect, the claims of the accused Sampang in his claim for judicial determination of probable cause is already supported by documentary evidence. The Ombudsman has acknowledged the presence of photo copies of a Certificate of Appearance and Certificates of Attendance both certified by the records officer of the Philippine State College of Aeronautics (PhilSCA). These are the requirements for the liquidation of cash advances for Official Travel. These are adequate evidence to show that accused Sampang has gone through the process of liquidating his cash advance.

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10. Be that as it may, there is no further need for the accused to present at this time any evidence to prove that there is no probable case against him because the Ombudsman has also acknowledged the fact that "in

⁶ pp. 207-213, Record



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his recent Counter-Affidavit, Sampang attached photocopies of a Certificate of Appearance and Certificates of Attendance both certified by the Records Officer of the Philippines State College of Aeronautics (PhilSCA). The certificates attested to his presence and participation in the Executive Forum from 27 to 29 March 2007 for which he received the subject cash advance. Thus, the likelihood that he applied the funds corresponding to said cash advance to personal use is diminished. The presumption which arose from this failure to liquidate was sufficiently rebutted and the prima facie case was negated.

11. The presence of documents presented before the Ombudsman, such as photo copies of a certificate of Appearance and Certificates of Attendance both certified by the Records Officer of the Philippine State College of Aeronautics (PhilSCA) are the requirements for the liquidation of cash advances for Official Travel. And the certificates attested to his presence and participation in the Executive Forum from 27 to 29 March 2007 for which he received the subject cash advance.
12. The accused Sampang pleads before the Honorable Court to take Judicial Notice of the finding of the Ombudsman to wit: "thus the likelihood that he applied the funds corresponding to the said cash advance to personal use is diminished." This should attest to the fact that no fraud or intention to commit the same is present, as well as the fact that this supports the premise that he stated to render account of his cash advance. No amount of Prosecution evidence or argument can diminish the foregoing facts.

Accused-movant Enerico M. Sampang insists that there is no probable cause to charge him with Failure to Render Accounts in relation to P.D. No. 1445 and COA Circular 97-002, since there is no such offense covered by the penal sanctions under P.D. No. 1445. The accused-movant likewise

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prays that (1) the Court rule on the non-existence of a probable cause and (2) the Information filed against him be dismissed for want of probable cause or for failing to charge an offense.⁷

THE COURT'S RULING

The Court finds the subject motion unmeritorious.

The Supreme Court has consistently emphasized that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil.⁸ Rather, he relies on the calculus of common sense of which all reasonable men have an abundance.⁹ A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.¹⁰

Moreover, it is a fundamental rule in remedial law that upon receipt of the Information, the primordial task of the presiding judge is to determine the existence or non-existence of probable cause for the purpose of the issuance of a warrant of arrest. This is precisely what the Court did in this case. After it received the *Information*, the Court reviewed the record of the case and found the existence of probable cause. Thus, the Court promulgated its *Resolution*¹¹ on February 22, 2016, directing the issuance of a warrant of arrest¹² and a hold departure order¹³ against the accused. This fact had thereby

⁷ pp. 211-213, Record

⁸ **Webb v. De Leon**, 247 SCRA 652 (1995); **Domolanta v. COMELEC**, 334 SCRA 555 (2000)

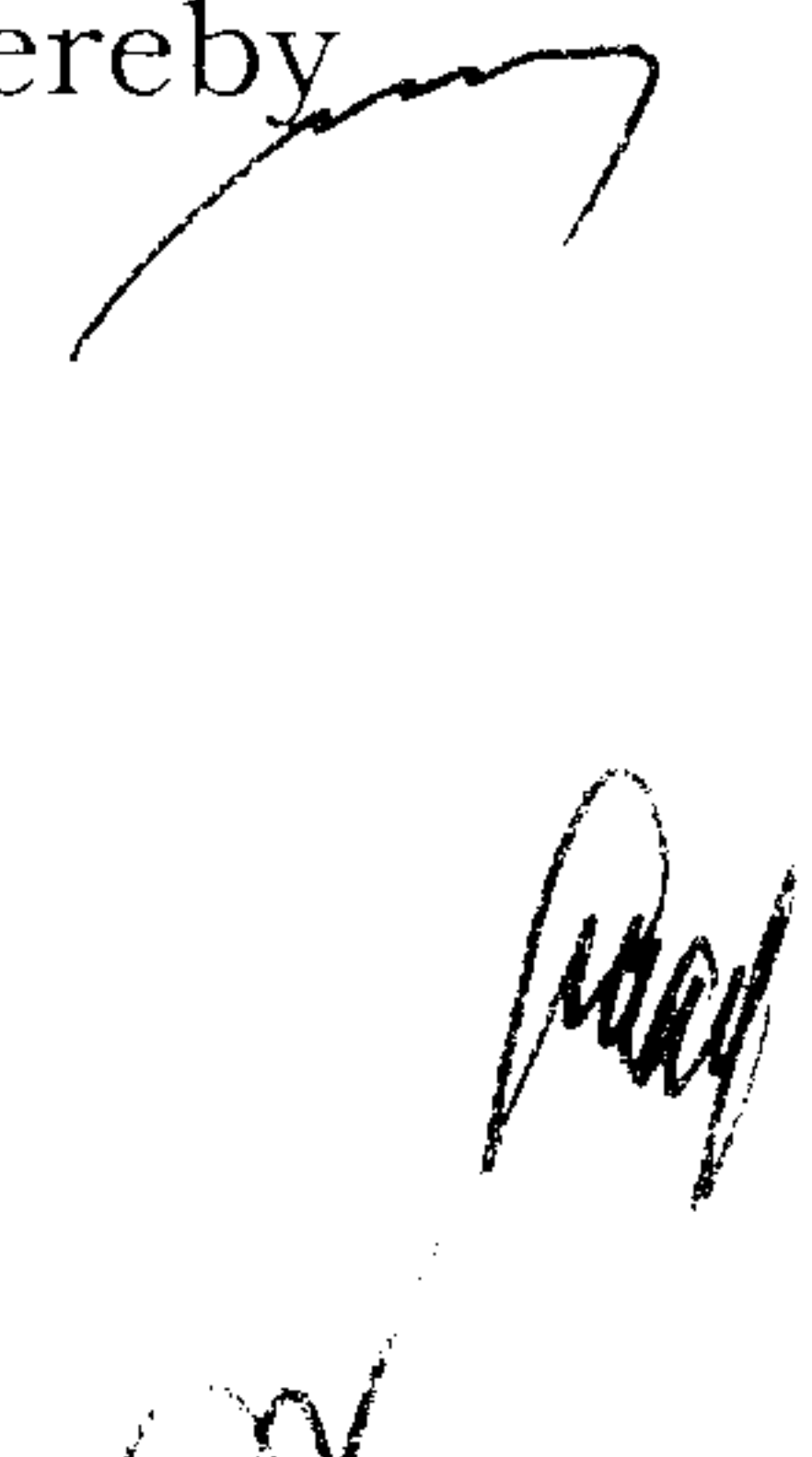
⁹ *id*

¹⁰ **Estrada v. Office of the Ombudsman**, G.R. No. 212140-41, January 21, 2015

¹¹ p. 126, Record

¹² pp. 132-136, Record

¹³ p. 127, Record



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rendered moot and academic the present motion filed by the accused.

Indeed, the filing of the present motion for judicial determination of probable cause is 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.¹⁴

At any rate, the Court does not find any sound reason to depart from its finding of probable cause in this case.

The *Information*¹⁵ alleges that the accused-movant, being then the president of the Philippine State College of Aeronautics (PhilSCA), willfully, unlawfully and feloniously fail to liquidate or render an account of public funds in the total amount of Fourteen Thousand Pesos (Php14,000), received by him as cash advance from PhilSCA under Check No. 336503 for his official travel to Dapitan City from 27 to 29 March 2007. This failure to liquidate, as alleged by the prosecution, violated the required thirty-day period prescribed by Section 5 of Commission on Audit (COA) Circular No. 97-002, in relation to Section 89 of P.D. No. 1445.

The aforesaid *Information* charges the accused-movant with having committed the crime of *failure of an accountable officer to render accounts* punishable under Article 218 of the Revised Penal Code. The elements of this crime are:

1. That the offender is a public officer, whether in the service or separated therefrom;
2. That he must be an accountable officer for public funds or property;
3. That he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and

¹⁴ *Delos Santos-Dio v. Court of Appeals*, 699 SCRA 614, (2013)

¹⁵ pp. 1-3, Record

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4. That he fails to do so for a period of two months after such accounts should be rendered.¹⁶

The evidence presented by the prosecution extant in the record of this case shows that the accused is probably guilty of the crime charged; hence, he must be arrested and brought to trial.

In its *Resolution*¹⁷ dated November 28, 2014, the Office of the Ombudsman-Field Investigation Office I found that accused Sampang was a public officer during the time material to the complaint. A review of the record shows that the accused-movant was appointed president of PhilSCA on February 5, 2004 and his term expired on February 4, 2008.¹⁸ Furthermore, the Office of the Ombudsman, citing Chapter 3, Section 3 of the College Code of PhilSCA, held that as President of PhilSCA, Sampang had general supervision over all business and financial operations of the State College, thereby making him an accountable officer which is an element under Article 218 of the Revised Penal Code.

Moreover, to be held liable under Article 218 of the Revised Penal Code, the accountable officer must have been required by law or regulation to render accounts to the Commission on Audit (COA), or to a provincial Auditor.¹⁹ Section 5.1.3 of COA Circular No. 97-002 requires that in cases of official travel, the accountable officer shall, within sixty (60) days after return to the Philippines in case of foreign travel, or within thirty (30) days after the return to his permanent official station in case of local travel, liquidate the cash advance issued to him.

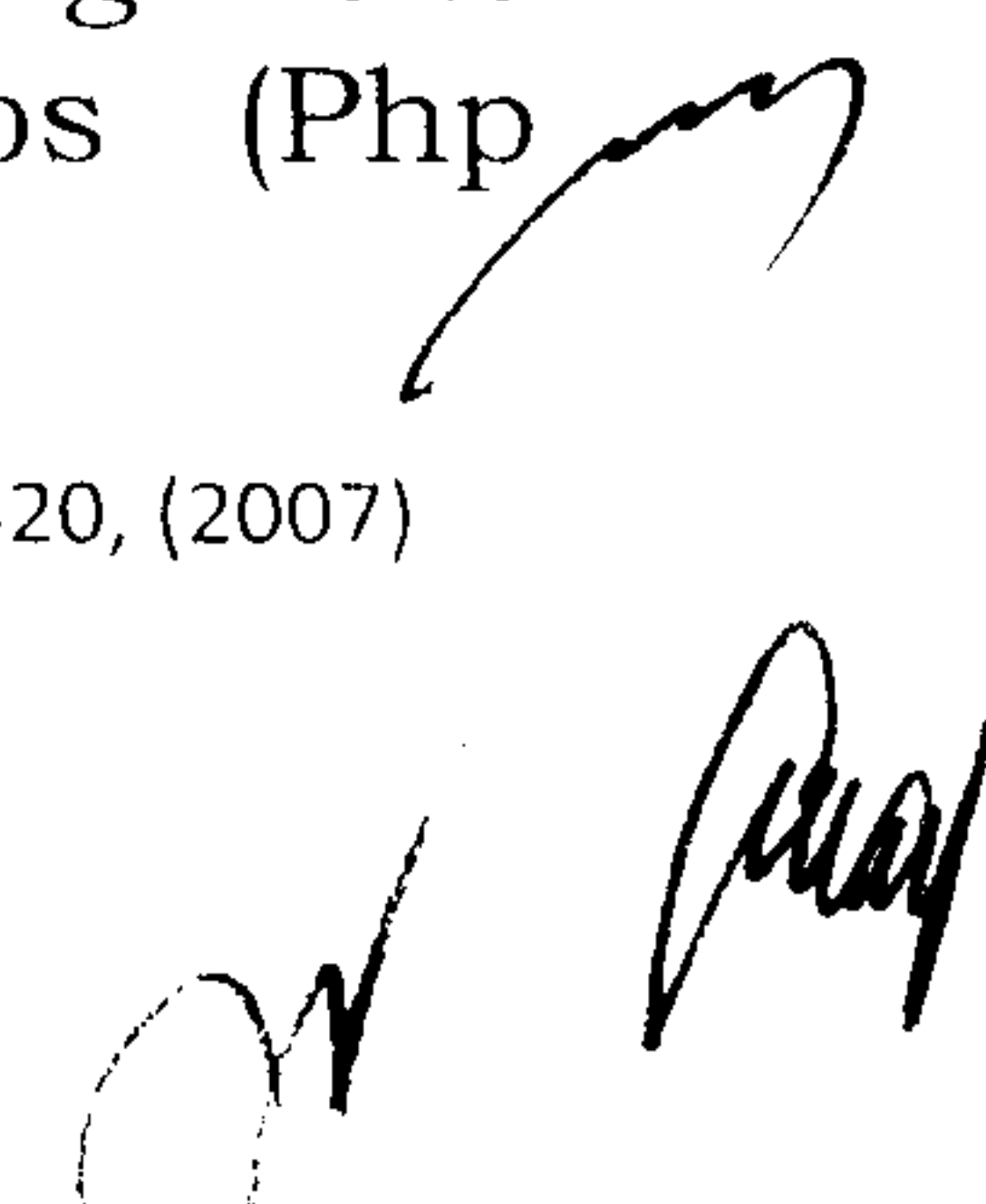
The record of this case reveals that the COA sent several demand letters to accused Sampang regarding the unliquidated amount of Fourteen Thousand Pesos (Php

¹⁶ *Lumauig v. People*, 729 SCRA 191, (2014), citing *Manlangit v. Sandiganbayan*, 531 SCRA 420, (2007)

¹⁷ pp. 5-11, Record

¹⁸ p. 32, Record

¹⁹ Reyes, L.B. (2008), *The Revised Penal Code: Book Two*, p. 441



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14,000) covered by Check No. 336503 dated March 19, 2007 on the following dates, to wit: July 9, 2008,²⁰ December 23, 2011,²¹ and November 20, 2012.²² In a *Liquidation Report*²³ dated June 14, 2012, submitted by the COA to the Field Investigation Office I of the Office of the Ombudsman, Mr. Froilan Sison, State Auditor IV, certified that as of June 14, 2012, the cash advance in issue remained unliquidated as indicated in the PhilSCA *Schedule of Cash Advances to Officers and Employees*. Thereafter, or on January 31, 2013, Mr. Sison issued another *certification*²⁴ to the Office of the Ombudsman wherein he noted that despite the several demand letters sent to the accused-movant, and received by a certain Ms. Charmaine Dayrit, as shown by the copy of the Registry Return Receipt, no written explanation was filed to date by the accused-movant Sampang regarding his unliquidated cash advance of Fourteen Thousand Pesos (Php 14,000) as per Check No. 336503 dated March 19, 2007.

On April 22, 2015, the Office of the Ombudsman promulgated an *Order*²⁵ which resolved the *Motion for Reconsideration* filed by the accused Sampang, of the *Resolution* dated November 28, 2014 of the Office of the Ombudsman. In the said *Order*, the Ombudsman found no probable cause to charge Sampang with the crime of *malversation* but declared that probable cause exists as to the commission of the crime of *failure of accountable officer to render accounts*.²⁶ The Office of the Ombudsman ratiocinated that despite the presentation by the accused of his (1) secretary's affidavit stating the liquidation of the subject amount and (2) a *Summary of Unliquidated Cash Advances of Officers and Employees* as of December 31, 2007 and April 31, 2008, the accused was unable to produce proof of liquidation and the attached summaries were unsigned,

²⁰ p. 114, Record

²¹ p. 122, Record

²² p. 124, Record

²³ p. 120, Record

²⁴ p. 125, Record

²⁵ pp. 13-19, Record

²⁶ p. 18, Record

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unverified and unauthenticated. Furthermore, in its *Order*²⁷ dated April 22, 2015, the Office of the Ombudsman observed that there were two (2) demand letters sent to accused Sampang on July 8, 2008: one pertaining to the amount Fourteen Thousand Pesos (Php14,000), and another for a cash advance of Ten Thousand Pesos (Php10,000). Both were sent and received in the same address. However, only the latter cash advance was liquidated as evidenced by an Official Receipt dated May 21, 2009. The Office of the Ombudsman noted that the cash advance, which is the subject of controversy, remains and is classified as “*past due*” for “*two years and above*” as per the *Schedule of Advances to Officers & Employees* as of May 31, 2009, and was even considered and reported by the COA as unliquidated as of April 30, 2012.²⁸

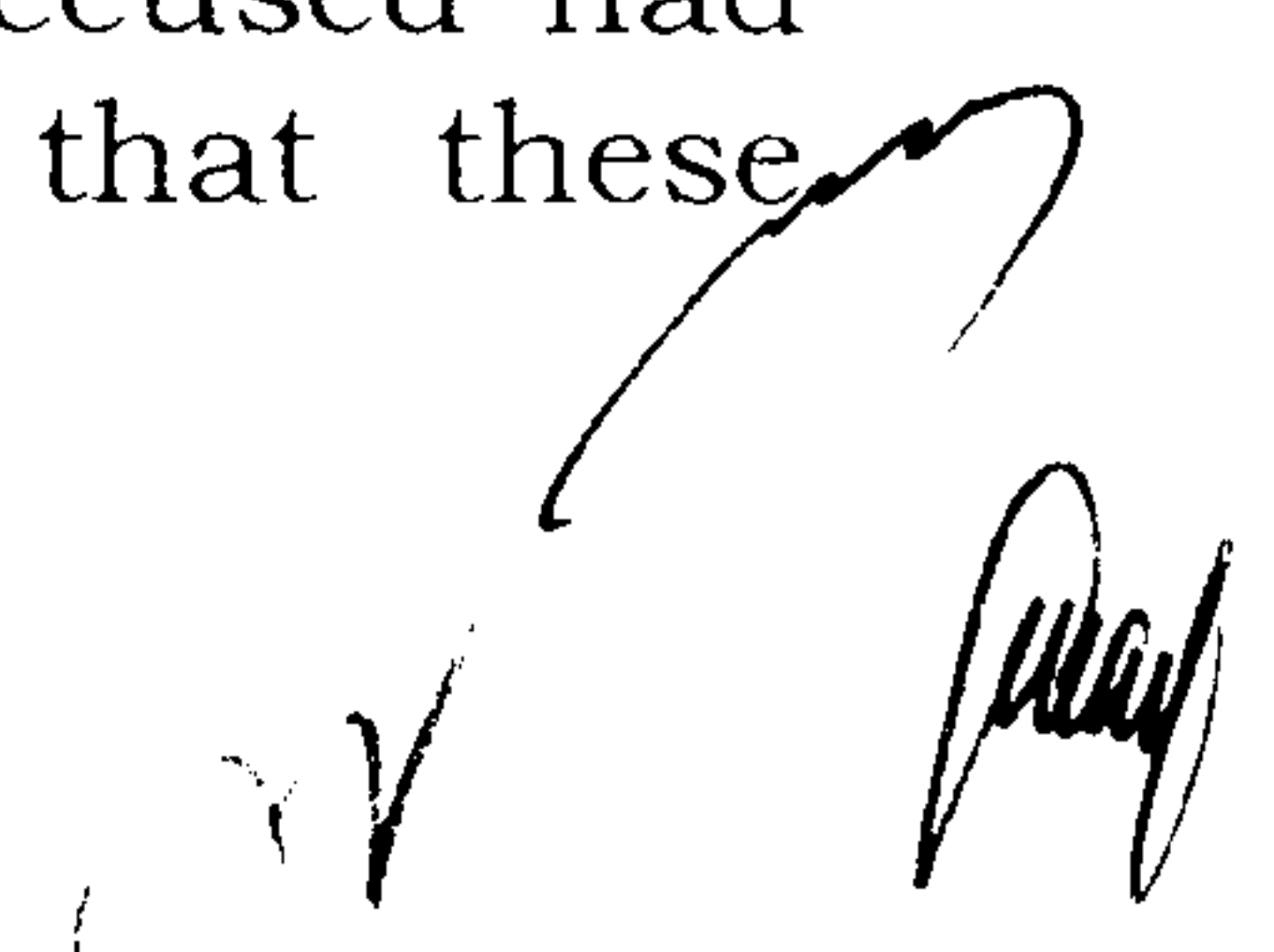
Accused Sampang’s insistence that there is no probable cause to charge him with *failure to render accounts* since there is no such offense covered by the penal sanctions under P.D. No. 1445 is bereft of merit.

To be sure, the accused is charged under Article 218 of the Revised Penal Code and not for a violation of P.D. No. 1445. Thus, the existence of probable cause, or the lack thereof, should be assessed based on the elements of the crime penalized under Article 218 of the Revised Penal Code *vis-à-vis* the evidence on record. As hereinbefore indicated, the established set of facts and circumstances warrants a finding that accused Sampang is probably guilty of the crime charged; hence, the issuance of the warrant of arrest and to hold him for trial is in order.

Finally, accused Sampang adverts to the fact that the Ombudsman has purportedly acknowledged the presence of photocopies of a Certificate of Appearance and Certificate of Attendance, both certified by the records officer of PhilSCA. Allegedly, these are adequate to show that the accused had gone through the process of liquidation, and that these

²⁷ pp. 13-19, Record

²⁸ p.17, Record



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certificates attest to his presence and participation in the Executive Forum for which he received the subject cash advance. Thus, the likelihood of him applying the said cash advance to his personal use has diminished.

Notably, the above assertions are all matters of defense and are evidentiary in nature. They are best left for the Court to resolve after a full-blown trial on the merits. Moreover, a reading of the *Order*²⁹ dated April 22, 2015 of the Office of the Ombudsman shows that the said acknowledgement pertains only to the charge of *malversation* and not to the charge of *failure to render accounts*.

It is important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or on the admissibility or veracity of testimonies presented.³⁰ The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused.³¹

In sum, the Court does not find merit in the accused's arguments that no probable cause exists in this case.

WHEREFORE, the Court maintains its finding of probable cause in this case. Accordingly, set the arraignment of accused Enerico M. Sampang on November 21, 2016 at 1:30 in the afternoon.

Accused Enerico M. Sampang's *Motion for Judicial Determination of Probable Cause* dated June 9, 2016 is **NOTED**.

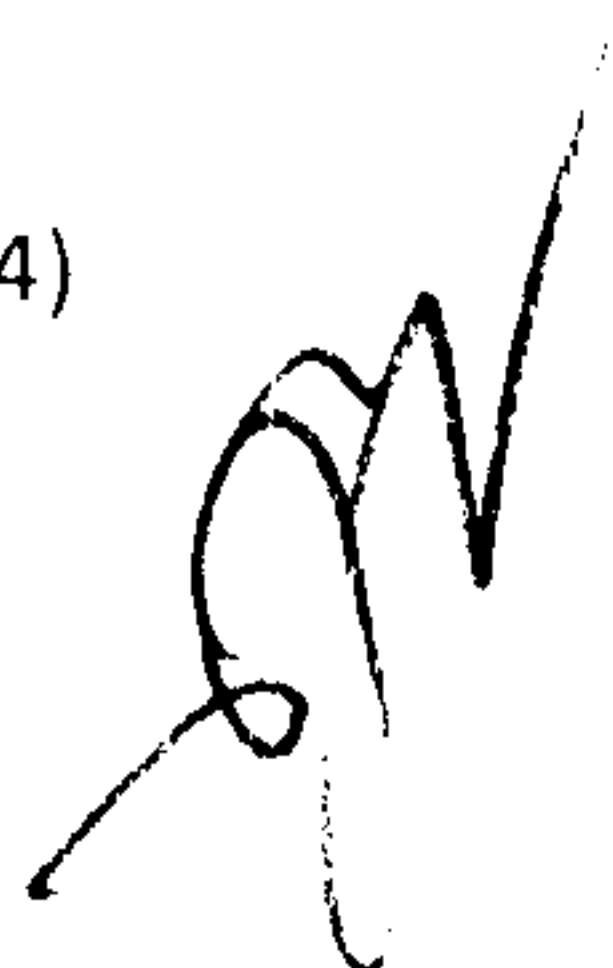
SO ORDERED.



²⁹ pp. 13-19, Record

³⁰ *Unilever Philippines, Inc. v. Tan*, 715 SCRA 36 (2014)

³¹ *id*



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Quezon City, Metro Manila



AMPARO M. CABOTAJE TANG

Presiding Justice
Chairperson

WE CONCUR:



SAMUEL R. MARTIRES
Associate Justice



SARAH JANE T. FERNANDEZ
Associate Justice

