



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on May 29, 2017.

Present:

ALEXANDER G. GESMUNDO ----- Chairperson
MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Associate Justice
ZALDY V. TRESPESES ----- Associate Justice

The following resolution was adopted:

Crim. Cases No. SB-17-CRM-0001 to 0015 – People vs. JOSEFINA M. DELA CRUZ,
et al.

This resolves the following:

1. Accused Bendanillo's "MOTION TO QUASH" dated April 4, 2016; and
2. The Prosecution's "COMMENT/OPPOSITION (Re: Motion to Quash)" filed by accused Bendanillo" dated April 24, 2017.

Before this Court is accused Arlene O. Bendanillo's *Motion to Quash* the *Informations* on the grounds that the facts charged do not constitute an offense, and that this Court has no jurisdiction over the offense charged.

Accused Bendanillo explains that the *Informations* allege damage and prejudice to the private complainant and public interest, which are not elements of the crime; thus, the facts charged do not constitute an offense. At any rate, there could be no damage to private complainant Santos Jose V. Pamatong, Jr. as his claims have been settled even before the filing of the *Informations*; neither could there be damage to public interest in view of the Memorandum of Agreement signed between PHL-Post Zamboanga City and the GSIS for the restructuring of arrearages. Accused Bendanillo likewise asserts that it is the GSIS and not this Court which has jurisdiction over these cases involving the non-remittance of loan amortizations, as the GSIS has original and exclusive jurisdiction to settle any dispute arising under R.A. 8291. At the very least, administrative remedies have not been exhausted. Finally, she could not be charged with the failure to remit the amortizations as the funds coming from the Philpost Central Office for personal service were already net of deductions. She urges this Court to treat the Ombudsman's

Resolution dismissing the complaint in *Santiago Lim v. Antonio de Guzman, et al.*, OMB-V-C-11-0217-E as jurisprudence in resolving her *Motion*.

In its *Comment/Opposition*, the Prosecution rejoins that the *Informations* pass the test of sufficiency under Section 6, Rule 110 of the Rules on Criminal Procedure. This Court has jurisdiction over offenses committed by presidents, directors or trustees, or managers of government-owned or controlled corporations, or in these cases, accused dela Cruz, being the Postmaster General of Philpost, with whom accused Bendanillo is charged with having conspired.

The *Motion* is bereft of merit.

Accused is charged with having conspired in committing a violation of Sec. 52(g) of R.A. 8291, which punishes:

(g) The heads of the offices of the national government, its political subdivisions, branches, agencies and instrumentalities, including government-owned or controlled corporations and government financial institutions, and the personnel of such offices who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable shall, upon conviction by final judgment, suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Twenty thousand pesos (₱20,000.00), and in addition, shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

On the other hand, the *Informations* charge accused Bendanillo, in conspiracy with her co-accused and in relation to their official functions, with failing to remit to the GSIS the loan amortizations collected from the salary of Santos Jose V. Pamatong, Jr.

It is easy to see that the *Informations* allege the crime punished under Sec. 52(g) of R.A. 8291. Ironically, accused Bendanilla's objection to its sufficiency springs from a perceived surplusage, *i.e.*, damage and prejudice to the private complainant and the public interest, which is indeed not an element of the offense, but which, in the same breath, she alleges does not exist. Be that as it may, neither the allegation nor the existence of damage or prejudice affects the sufficiency of the *Informations*, which duly charged the offense and provided the details on how it was committed.¹

Accused Bendanillo likewise argues that the alleged non-remittance of loan amortizations is a "dispute" over which the GSIS has original and exclusive jurisdiction. It should not be overlooked, however, that she is charged with a criminal offense under Sec. 52(g) of R.A. 8291, in conspiracy with other officials of PPC over which this Court has jurisdiction, as already discussed by this Court in its *Resolution* on accused dela Cruz's *Motion for*

¹ Cf. *Antone v. Beronilla*, G.R. No. 183824, December 8, 2010

Reinvestigation raising the same issue.² Clearly, jurisdiction falls with this Court and not the GSIS, and consequently, there is no violation of the rule on exhaustion of administrative remedies, which requires such prior resort on a **matter that comes within the administrative agency's jurisdiction.**³

Accused Bendanillo's criminal liability or lack thereof is not a matter to be considered or determined by this Court in resolving her motion to quash, but during trial. Thus, whether private complainant's claims have been settled, or whether the funds for personal service coming from the Philpost Central Office are already net of deductions, are matters of defense inappurtenant at this stage of the proceedings. Matters of defense cannot be raised in a motion to quash. It is not proper, therefore, to resolve the charges at the very outset without the benefit of a full blown trial.⁴

Finally, accused Bendanillo is correct in saying that the Ombudsman's Resolutions are not part of jurisprudence and hence, this Court will not base any disposition thereon, as no judicial notice can be taken of the Resolution in OMB-V-C-11-0217-E, which is not even attached to the *Motion*.

WHEREFORE, in view of the foregoing, accused Bendanillo's Motion to Quash *Informations* is DENIED for lack of merit.

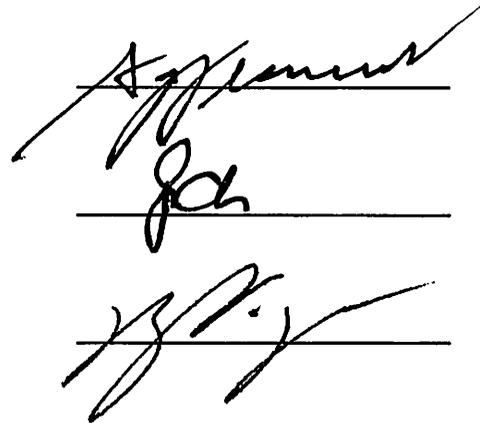
Let the arraignment of accused Bendanillo on May 31, 2017 at 8:30 a.m. proceed, as scheduled.

SO ORDERED.

GESMUNDO, J., *Chairperson*

GOMEZ-ESTOESTA, J.

TRESPESES, J.



The image shows three handwritten signatures, each written over a horizontal line. The first signature is for Gesmundo, J., the second for Gomez-Estoesta, J., and the third for Trespeses, J. The signatures are written in black ink and are somewhat stylized.

² *Records*, Vol. 2, pp. 81-86

³ *UST, et al. v. Sanchez*, G.R. No. 165569, July 29, 2010

⁴ *People v. Odtuhan*, G.R. No. 191566, July 17, 2013