



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**CRIM. CASE Nos. SB-17-
CRM-0023 to 0029**

-versus-

**For: Malversation of
Public Funds (Article 217 of
the Revised Penal Code)**

**LABUALAS BAGANDAY
MAMANSUAL and
FRANCIS BALANAY NADAR,**
Accused.

Present:

**Lagos, J., Chairperson,
Mendoza-Arcega, J., and
Cruz, J. ***

Promulgated:

May 09, 2017 led

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RESOLUTION

MENDOZA-ARCEGA, J.:

Posed for resolution is the Entry of Appearance and Urgent Omnibus Motion (a) to direct the Office of the Ombudsman to conduct preliminary investigation or, in the alternative, reinvestigation in these cases; (b) to defer issuance of warrant of arrest and to suspend further proceedings pending preliminary investigation/reinvestigation and resolution of motion related to these cases by the Hon. Court First Division; and (c) to transfer the cases to the First Division, if possible.¹

*As per Administrative Order No. 025-2017 dated February 1, 2017.

¹ Records, pp. 91-114.

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In the omnibus motion, Labualas Baganday Mamansual and Francis Balanay Nadar (collectively referred to as the “accused-movants”) recounted that the instant charge of seven (7) counts of malversation of public funds stemmed from the two (2) cases filed before the First Division of Sandiganbayan, namely: SB-16-CRM-0463 (for Malversation of Public Funds under Art. 217 of the Revised Penal Code) and SB-16-CRM-0464 (for Removal, Concealment or Destruction of Documents under Art. 226 of the Revised Penal Code).

The accused-movants averred that the prosecution filed a Motion to Withdraw Informations² in Criminal Case Nos. SB-16-CRM-0463 to 0464 praying that the Informations in the said cases be withdrawn. In support of the said motion, the prosecution attached a Memorandum³ dated September 19, 2016 that was approved by the Hon. Ombudsman. The memorandum made the following recommendations: (a) that the prosecution be allowed to dismiss without prejudice Criminal Case No. SB-16-CRM-0463 against the accused-movants; (b) to dismiss with prejudice Criminal Case No. SB-16-CRM-0464 against Labualas Baganday Mamansual, Francis Balanay Nadar, Zaida Darping Apil and Pukog Plang Makakua; (c) to charge accused Mamansual and Nadar with seven (7) counts of malversation instead of one (1) count; and (d) to withdraw the Informations in Criminal Case Nos. SB-16-CRM-0463 to 0464. Thus, on December 5, 2016, the First Division issued a Resolution⁴ granting the prosecution’s Motion to Withdraw Informations, there being no objection on the part of the accused to the withdrawal.

Consequently, herein accused-movants filed their Manifestation with Prayer for Clarification⁵ and Manifestation and Motion⁶, respectively, assailing the findings of the First Division in the aforementioned resolution. The manifestations are pending resolution of the First Division.

Meanwhile, the instant cases were filed and raffled before this Court. The accused-movants assailed the propriety of the filing of the instant cases as there was no preliminary investigation conducted. It was likewise submitted that the instant cases should have been raffled to the First Division, being the first to acquire jurisdiction over the persons of the accused as well as the subject matter of the cases.

² Ibid., pp. 161-163.

³ Ibid., pp. 164-173.

⁴ Ibid., p. 183.

⁵ Ibid., pp. 186-189.

⁶ Ibid., pp. 190-192.

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On February 3, 2017, the prosecution filed its Opposition⁷ and maintained that the instant cases had already been the subject of a preliminary investigation conducted by the Office of the Ombudsman for Mindanao albeit the first recommendation was to file an Information for malversation and another one for removal, destruction or concealment of documents. After a review of the records by the OSP Prosecutor assigned to the case, the OSP, with the approval of the Ombudsman, sought the withdrawal of the two (2) Informations and recommended instead for the filing of seven (7) Informations for malversation.

Moreover, the prosecution insisted that it is the prerogative of the prosecutor to determine what crime is committed and the person to be charged. The conduct of preliminary investigation will unnecessarily prolong the proceedings in the Office of the Ombudsman. Besides, the First Division already found sufficient grounds for the finding of probable cause for the issuance of warrants of arrest in Criminal Case Nos. SB-16-CRM-0463 to 0464.

Finally, the prosecution posited that there is no compelling reason to transfer the instant cases before the First Division.

THE COURT'S RULING

After weighing the parties' contrasting arguments and after a close scrutiny of the records, the Court partially grants the instant motion.

The prosecution unrelentingly maintained that there is no need to conduct another preliminary investigation for the present charges against the accused-movants since there was already a preliminary investigation made in Criminal Case Nos. SB-16-CRM-0463 to 0464.

The argument cannot pass fair scrutiny.

Preliminary investigation is "an inquiry or proceeding to determine whether sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."⁸ The conduct of preliminary investigation is governed by Section 1, Rule 112 of the Rules of Court, to wit:

⁷ Ibid., pp. 202-206.

⁸ Villaflor v. Vivar, G.R. No. 134744, January 16, 2001 citing Section 1, Rule 112 of the Revised Rules of Criminal Procedure.

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“Section 1. Preliminary investigation defined; when required. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in Section 7 (now Section 6) of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.” (Emphasis supplied.)

The Rules of Court requires such investigation before an information for an offense punishable by at least four years, two months and one day may be filed in court.⁹ As an exception, the conduct of preliminary investigation may be dispensed with when a person was lawfully arrested without a warrant as provided for under Section 6, Rule 112 of the Rules of Court. It states:

“Section 6. When accused lawfully arrested without warrant. — **When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation** provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.” (Emphasis supplied.)

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In this regard, it must be noted that the crime of malversation of public funds under Article 217 of the Revised Penal Code for which the accused-movants is being indicted is punishable by reclusion temporal in its maximum period to reclusion perpetua; hence, a preliminary investigation must be conducted prior to the filing of the seven (7) Informations.¹⁰ There is likewise

⁹ Yusop v. The Honorable Sandiganbayan (First Division), G.R. Nos. 138859-60. February 22, 2001.

¹⁰ Based on the allegations in the Informations, the amount allegedly misappropriated is Five Million Pesos (Php5,000,000.00).

Article 217 of the Revised Penal Code states:

“Article 217. Malversation of public funds or property; Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent,

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no showing that herein accused-movants were lawfully arrested without a warrant since these cases, as earlier mentioned, were filed by the prosecution pursuant to the recommendations made in the Memorandum¹¹ dated September 19, 2016. The Court cannot countenance the theory of the prosecution that there is no need to conduct another preliminary investigation as it would only unnecessarily prolong the proceedings in the Office of the Ombudsman.

The main objective of preliminary investigation is to determine whether there is probable cause to hold a person for trial. The disquisition of the High Court in *Duterte, et al. v. The Honorable Sandiganbayan*¹² is instructive, *viz:*

“A preliminary investigation, on the other hand, takes on an adversarial quality and an entirely different procedures (sic) comes into play. This must be so because the purpose of a preliminary investigation or a previous inquiry of some kind, before an accused person is placed on trial, is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of public trial.¹³ It is also intended to protect the state from having to conduct useless and expensive trials.¹⁴ While the right is statutory rather than constitutional in its fundament, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence, formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. To deny the accused’s claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.¹⁵”

through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

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4. The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. **If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.**”

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¹¹ Supra note 1, pp. 164-173.

¹² G.R. No. 130191, April 27, 1998.

¹³ Ibid., citing *Rodis, Sr. v. Sandiganbayan*, 166 SCRA 618 (1988); *People v. Poculan*, 167 SCRA 155 (1988).

¹⁴ Ibid., citing *Tandoc v. Resultan*, 175 SCRA 37 (1989).

¹⁵ Ibid., citing *Doromal v. Sandiganbayan*, 177 SCRA 354 (1980); *Go v. Court of Appeals*, 206 SCRA 138 (1992).

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Unquestionably, a preliminary investigation must be necessarily conducted prior to the filing of the seven (7) Informations in the present cases. It must be borne in mind that due process cannot be dispensed with at the expense of mere convenience. The life and liberty of the accused-movants are involved and to deprive them of their right to a preliminary investigation amounts to a denial of due process. Albeit the right to a preliminary investigation is a statutory right, the right to due process is a constitutionally mandated right of every person. It is a hornbook doctrine that no person shall be deprived of life, liberty, or property without due process of law.¹⁶ In one case,¹⁷ the Supreme Court had the occasion to discuss the duty of the Office of the Ombudsman to observe due process, to wit:

“A valid and just determination of whether there is a probable cause on the part of the Ombudsman to bring the cases to court against petitioner would ensue only when the petitioner has been fully accorded due process in the conduct of the preliminary investigation.”

At any rate, it is never the duty of the accused-movants to prove that there is probable cause to charge them with seven (7) counts of malversation. To be sure, the instant cases stemmed from the Motion to Withdraw Informations¹⁸ filed by the prosecution in Criminal Case Nos. SB-16-CRM-0463 to 0464. The prosecution should have been more cautious in filing the instant cases against the accused-movants by conducting a new preliminary investigation since there was already a mistake in filing the correct charges in Criminal Case Nos. SB-16-CRM-0463 to 0464. The prosecution even admitted in its Opposition¹⁹ that the first recommendation in Criminal Case Nos. SB-16-CRM-0463 to 0464 was to file an Information for malversation and another one for removal, destruction or concealment of documents. It also bears emphasis that the present charges are based on the findings of the Office of the Ombudsman in its Resolution dated October 12, 2015.²⁰ The dispositive portion of the said resolution states:

“**WHEREFORE**, this Office finds probable cause to indict Labualas B. Mamansual, Al Haj, Francis B. Nadar, Zaida D. Apil and Pukog P. Makakua for violation of Articles 217 and 226 of the Revised Penal Code.

SO ORDERED.”

¹⁶ Section 1, Article III of the 1987 Constitution.

¹⁷ *Estandarte v. People*, G.R. Nos. 156851-55, February 18, 2008.

¹⁸ Record, pp. 161-163.

¹⁹ Record, pp. 202-206.

²⁰ Record, pp. 5-12.

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An examination of the records reveals that the prosecution utilized the same old Resolution dated October 12, 2015 which it filed in Criminal Case Nos. SB-16-CRM-0463 to 0464. The said resolution delves into the merits of the previous indictments against Mamansual and Nadar that were later withdrawn by the prosecution. Without conducting a new preliminary investigation, there could be no certainty whether there is sufficient ground to engender a well-founded belief that the seven (7) counts of malversation have been committed to hold the accused-movants for trial. A component part of due process in criminal justice, preliminary investigation is a statutory and substantive right accorded to the accused before trial.²¹ To deny their claim to a preliminary investigation would be to deprive them of the full measure of their right to due process.²² It is therefore incumbent upon the prosecution to observe the rudiments of justice and fair play. As held in the case of *Torralba v. The Sandiganbayan, et al.*:²³

“It is true that a preliminary investigation is not an occasion for a full and exhaustive display of the parties' evidence, being merely an inquiry to determine whether or not there is sufficient ground to engender a founded belief that a crime has been committed and that the respondent is probably guilty thereof.²⁴ **The right to such preliminary investigation, nevertheless, is still an indispensable element of our criminal justice system that may not be treated lightly, let alone ignored.** In *Go. v. Court of Appeals*,²⁵ the Court, speaking through Mr. Justice *Florentino P. Feliciano*, reiterated:

... While that right is statutory rather than constitutional in its fundament, since it has in fact been established by statute, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is *not* a mere formal or technical right; it is a *substantive* right.” (Emphasis supplied.)

Anent the claim of the accused-movants that the instant cases should have been raffled to the First Division, being the first to acquire jurisdiction over the persons of the accused as well as the subject matter of the cases, the same must be denied for utter lack of merit.

²¹ *Villaflor v. Vivar*, supra note 8.

²² *Ibid.*, citing *Go v. CA*, 206 SCRA 138, February 11, 1992.

²³ G.R. No. 101421, February 10, 1994.

²⁴ *Ibid.*, citing *Paderanga v. Drilon*, 196 SCRA 86.

²⁵ 206 SCRA 138, 153.

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The jurisdiction of the court is referred to as “continuing” in view of the general principle that once a court has acquired jurisdiction, that jurisdiction continues until the court has done all that it can do in the exercise of the jurisdiction.²⁶ The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.²⁷ In the absence of any sufficient and compelling grounds, this Court retains and will retain jurisdiction until the final disposition of the instant cases.²⁸ Perforce, the motion to transfer the present cases to the First Division is denied.

A final note. Agencies tasked with the preliminary investigation and prosecution of crimes should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials.²⁹ It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.³⁰

WHEREFORE, in light of all the foregoing, the Court hereby resolves as follows:

1. The motion to direct the Office of the Ombudsman to conduct preliminary investigation is **GRANTED**. The Office of the Ombudsman is therefore ordered to conduct the necessary preliminary investigation and submit the result thereof to this Court with dispatch;
2. The motion to defer issuance of warrant of arrest and to suspend further proceedings pending preliminary investigation/reinvestigation is **GRANTED**;

²⁶ Willard B. Riano, Criminal Procedure (The Bar Lectures Series), 2011, p. 14, citing 20 Am. Jur. 2d, Courts, § 147, 1965.

²⁷ Crespo v. Mogul, G.R. No. L-53373, June 30, 1987.

²⁸ The records show that the First Division has already issued a Resolution dated February 2, 2017 partially granting the accused-movants' Manifestation and Motion dated January 16, 2017. (Records, Criminal Case Nos. SB-16-CRM-0463 to 0464, pp. 309-312)

²⁹ Collantes v. Hon. Simeon Marcelo, et al., G.R. Nos. 167006-07, August 14, 2007.

³⁰ Ibid., citing Baylon v. Office of the Ombudsman, 423 Phil. 705 (2001); Venus v. 358 Phil. 675, 697 (1998).

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3. The motion to transfer the cases to the First Division is **DENIED**.

The *Entry of Appearance* of Eusebio M. Avila as counsel for accused Labualas Baganday Mamansual and Francis Balanay Nadar is **NOTED**.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice