



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
\*\*\*

SEVENTH DIVISION

*MINUTES of the proceedings held on May 31, 2017.*

*Present:*

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

The following resolution was adopted:

**Criminal Case No. SB-17-CRM-0160 – People v. EDNA B. BANDA and GEMMA B. BANZUELA**

This resolves the following:

1. Accused Edna B. Banda and Gemma B. Banzuela's "MOTION TO QUASH INFORMATION" dated April 11, 2017; and
2. The Prosecution's "COMMENT/OPPOSITION (TO ACCUSED'S MOTION TO QUASH INFORMATION)" dated May 2, 2017.

---

Accused Edna B. Banda and Gemma B. Banzuela [**"the accused"**] were indicted for the *Violation of Sections 4 (3) and 84 (2) in relation to Sections 106 and 128 of Presidential Decree No. 1445 (P.D. 1445)*, otherwise known as the *Government Auditing Code of the Philippines*, in an Information<sup>1</sup> dated December 2, 2016. Prior to their arraignment, the accused filed their Motion to Quash Information<sup>2</sup> on the main ground that the facts charged do not constitute an offense.

The accused advance that the ultimate facts as alleged in the Information, if hypothetically admitted, do not establish any offense. They cite Section 128 of *P.D. 1445* which provides that any violation of Sections **67, 68, 89, 106, and 108** is punishable by a fine not exceeding one thousand pesos, imprisonment not exceeding six (6) months, or both fine and imprisonment subject to the discretion of the court.<sup>3</sup> The accused emphasize

---

<sup>1</sup> Records, pp. 1-3

<sup>2</sup> *Id.* at 117-124

<sup>3</sup> Ordaining and Instituting a Government Auditing Code of the Philippines [GOVERNMENT AUDITING CODE OF THE PHILIPPINES], Presidential Decree No. 1445, §128 (1978)

1 N 7.

that *P.D. 1445* does not punish a violation of Sections 4 (3)<sup>4</sup> and 84 (2),<sup>5</sup> the violation of which they had been charged, as these provisions were **not** expressly included in Section 128. Furthermore, while Section 128 makes mention of Section 106 (the violation of which the accused had likewise been charged), the accused posit that it is not an offense to violate Section 106 because the said provision is bereft of a mandatory or prohibitory act which is the proper subject of a penal provision. The accused interpret Section 106 to contain a mere declaration of a rule regarding the imposition of an unspecified liability; as stated, the failure to provide a written notice is not a punishable act, but a manner of exempting from liability a subordinate who had acted under the direction of a superior.<sup>6</sup> Additionally, it is contended that the Court has no jurisdiction over the offense charged in relation to Accused Gemma B. Banzuela [**“Accused Banzuela”**] because she had no assigned salary grade, being a mere Job Order employee. Thus, the accused pray for the quashal of the Information.

In its Comment/Opposition,<sup>7</sup> the Prosecution, through the Office of the Special Prosecutor, maintains that the following facts charged in the Information constitute the denominated offense: the accused, by the nature of their duties as Acting Municipal Mayor and Assistant for Accounting Matters, are accountable public officers; the accused caused the disbursement from the trust fund account created for priority development projects the amount of P2,183,300.00; and the expenses paid for by the accused are not priority development projects and are different from the specific purpose for which the trust fund had been created. Finally, citing the case of *People v.*

---

<sup>4</sup> Section 4 (3) of P.D. 1445 provides:

SECTION 4. Fundamental Principles. — Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

xxx

(3) Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received.

<sup>5</sup> Section 84 (2) of P.D. 1445 states:

SECTION 84. Disbursement of Government Funds. — (1) Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.

(2) Trust funds shall not be paid out of any public treasury or depository except in fulfillment of the purpose for which the trust was created or funds received, and upon authorization of the legislative body, or head of any other agency of the government having control thereof, and subject to pertinent budget law, rules and regulations.

xxx

<sup>6</sup> Section 106 of P.D. 1445 reads:

SECTION 106. Liability for Acts Done by Direction of Superior Officer. — No accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

<sup>7</sup> Records, pp. 143-148

1 N  
2.

*Sandiganbayan and Plaza*,<sup>8</sup> the Prosecution counters that the Court has jurisdiction over violations of *P.D. 1445* and, consequently, Accused Banzuela falls under the jurisdiction of the Court.

In the first place, it bears noting that Accused Banzuela's postulations insofar as this Court's jurisdiction over her person is concerned, are erroneous and undeserving of merit. The case of *People v. Sandiganbayan (Third Division) and Amante*<sup>9</sup> is instructive in its discussion on the scope of the jurisdiction of this Court, viz:

Section 4 (b) of P.D. No. 1606, as amended, provides that:

b. Other offenses or felonies committed by public officials and employees mentioned in subsection (a) of this section in relation to their office.

A simple analysis after a plain reading of the above provision shows that those public officials enumerated in Section 4 (a) of P.D. No. 1606, as amended, may not only be charged in the Sandiganbayan with violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code, but also with other offenses or felonies in relation to their office. The said other offenses and felonies are broad in scope but are limited only to those that are committed in relation to the public official or employee's office. This Court had ruled that as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, there being no personal motive to commit the crime and had the accused not have committed it had he not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his office.

xxx

Proceeding from the above rulings of this Court, a close reading of the Information filed against respondent Amante for violation of The Auditing Code of the Philippines reveals that the said offense was committed in relation to her office, making her fall under Section 4 (b) of P.D. No. 1606, as amended.

The mere fact that Accused Banzuela had no salary grade being a Job Order employee is unavailing. Jurisprudence has held that compensation is not an essential element of public office, at most, it is merely incidental to the public office.<sup>10</sup> What is paramount in defining a public officer is that there is an investment in an individual of some portion of the sovereign functions of the government, to be exercised by him or her for the benefit of the public.<sup>11</sup> Indeed, for Accused Banzuela, it is difficult for her to deny being a public officer owing to the nature of the position she held as Assistant to Accounting Matters, Municipality of Sto. Domingo, Albay.

<sup>8</sup> G.R. No. 169004, September 15, 2010

<sup>9</sup> G.R. No. 167304, August 25, 2009; See also *People v. Sandiganbayan (Third Division) and Plaza*, G.R. No. 169004, September 15, 2010

<sup>10</sup> See *Serana v. Sandiganbayan and People*, G.R. No. 162059, January 22, 2008

<sup>11</sup> Ibid

Clearly therefore, the Court has jurisdiction over *P.D. 1445* in relation to Accused Banzuela.

In any event, however, the test to be applied in considering a motion to quash on the ground that the facts charged do not constitute an offense is “whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information.”<sup>12</sup>

The accused were charged with the *Violation of Sections 4 (3) and 84 (2) in relation to Sections 106 and 128 of P.D. 1445*. The Information reads:

That on or about October 2008 to January 2009, or sometime prior or subsequent thereto, in the Municipality of Sto. Domingo, Province of Albay, Philippines, and within the jurisdiction of this Honorable Court, accused EDNA B. BANDA, then Acting Municipal Mayor, and GEMMA B. BANZUELA, Assistant for Accounting Matters, both of the Municipality of Sto. Domingo, Albay, conspiring and confederating with one another, and while in the performance of their official functions, did then and there willfully, unlawfully, and criminally cause the disbursements from the trust fund account of the Municipality created for priority development projects the total amount of Two Million One Hundred Eighty Three Thousand Three Hundred Pesos (Php2,183,300.00), for the payment of the year-end benefits of casual employees, cash prizes for raffle draw, room accommodations and meals for the participants and guests of the Carrera Habagat Race 2008, catering services for executive and legislative meetings, and the purchase of ten thousand (10,000) candles for All Saints/Souls Day, which expenses are not priority development projects and hence different from the specific purpose for which said trust fund had been created.

CONTRARY TO LAW.

A careful perusal of the facts as alleged in the Information, however, shows that the test of sufficiency has not been successfully hurdled.

Section 128 of *P.D. 1445* is the penal clause which punishes the violation of select provisions, as follows:

**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. (Emphasis supplied)**

Of the enumerated prohibited acts in the aforecited penal provision, the Court notes that no mention was made of the violation of Section 4 (3)<sup>13</sup> or Section 84 (2),<sup>14</sup> for which the accused were indicted. As a rule in statutory construction, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others –

<sup>12</sup> *Soriano v. People*, G.R. No. 162336, February 1, 2010

<sup>13</sup> *Supra* note 4

<sup>14</sup> *Supra* note 5

*expresio unius est exclusio alterius*.<sup>15</sup> On this basis, it may be said that the legislative intent in crafting the penal provision of *P.D. 1445* was to exclude or omit the violation of Sections 4 (3) or 84 (2) therefrom. As such, a violation of the said Sections 4 (3) or 84 (2) would not merit the imposition of the penal sanction pursuant to Section 128.

Regarding Section 106 of *P.D. 1445*, the alleged violation of which the accused were likewise charged, states:

SECTION 106. Liability for Acts Done by Direction of Superior Officer. — No accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

As can be gleaned from a judicious reading of the abovementioned provision, the plain and ordinary import of Section 106 essentially pertains to the order of liability, or relief therefrom, of a subordinate officer who had acted under the direction of a superior officer, in case the latter caused and is thereby held responsible for a loss of public funds. Consequently, Section 106 not being a prohibitory provision, the liability, if any, for which the accused may be adjudged will be merely subject to the order outlined by the same provision. On the other hand, for the person acting under the direction of a superior officer, the provision under Section 106 can actually be claimed as an exemption from liability. Thus, a contravention of Section 106, by itself, will likewise not warrant the application of the penal provision as per Section 128. *Nullum crimen, nulla poena sine lege* – there is no crime when there is no law punishing it.<sup>16</sup>

Based on the foregoing, considering that the acts for which the accused were indicted are not expressly punishable under the penal provision, Section 128 of *P.D. 1445*, it cannot be said that the Information passed the test of sufficiency, which requires that the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. Hence, the facts charged in the Information do not constitute an offense.

**WHEREFORE**, the *Motion to Quash Information* filed by the accused Edna B. Banda and Gemma B. Banzuela is **GRANTED**. Accordingly, the Information dated December 2, 2016 filed against said accused is **QUASHED**. Let *Criminal Case No. SB-17-CRM-0160* be **DISMISSED**.

**SO ORDERED.**

<sup>15</sup> Vide *Titong v. Court of Appeals*, G.R. No. 111141, March 6, 1998; *National Food Authority v. Masada Security Agency, Inc.*, G.R. No. 163448, March 8, 2005

<sup>16</sup> *Rimando v. Commission on Elections*, G.R. No. 176364, September 18, 2009

**GESMUNDO, J., Chairperson**

A handwritten signature in cursive script, appearing to read 'Gesmundo', written over a horizontal line.

**GOMEZ-ESTOESTA, J.**

A handwritten signature in cursive script, appearing to read 'J. Gomez-Estoesta', written over a horizontal line.

**TRESPESES, J.**

A handwritten signature in cursive script, appearing to read 'J. Trespeses', written over a horizontal line.