

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-17-CRM-0049

For: Violation of Section 1(c)
Presidential Decree No. 1829

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
Pahimna, J.

Baguinda-Ali A. Pacalna,
Accused.

Promulgated:

June 15, 2017

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RESOLUTION

HERRERA, JR., J.:

Submitted for resolution of the Court is a ***Motion For Judicial Re-determination Of Probable Cause***¹ dated April 17, 2017, filed by accused Baguinda-Ali A. Pacalna (Movant for short), through counsel, praying that the case be dismissed for lack of probable cause, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Comment/Opposition Re: Motion For Judicial Re-determination Of Probable Cause***² dated May 12, 2017.

Movant is charged with ***Obstruction of Apprehension and Prosecution of Criminal Offenders under Section 1(c) of Presidential Decree (P.D.) No. 1829***, under an ***Information***³ dated July 15, 2016, the accusatory portion of which reads:

“On 19 September 2007 or sometime prior or subsequent thereto, in Marawi City, Lanao del Sur, and within this Honorable Court’s jurisdiction; **BAGUINDA-ALI AHMAD PACALNA (SG-27)** took advantage of his position as Presiding Judge of the Municipal Trial Court in Cities,

¹ Record, pp. 113-132

² Id, pp. 170-179

³ Id, pp. 1-3

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Marawi City and committed the offense in relation thereto when – aware of the arrest and detention of Menor Saud (Saud) at the Marawi City Jail – Pacalna knowingly, wilfully and criminally obstructed Saud's apprehension, investigation, and prosecution by exerting undue influence over the Jail Warden to turn over custody of Saud's person to him solely on the basis of an acknowledgement receipt that Pacalna prepared and signed as Judge, and allow Saud's removal from the jail premises, which removal facilitated Saud's escape due to the absence of physical restraints and concrete barriers.

CONTRARY TO LAW.”

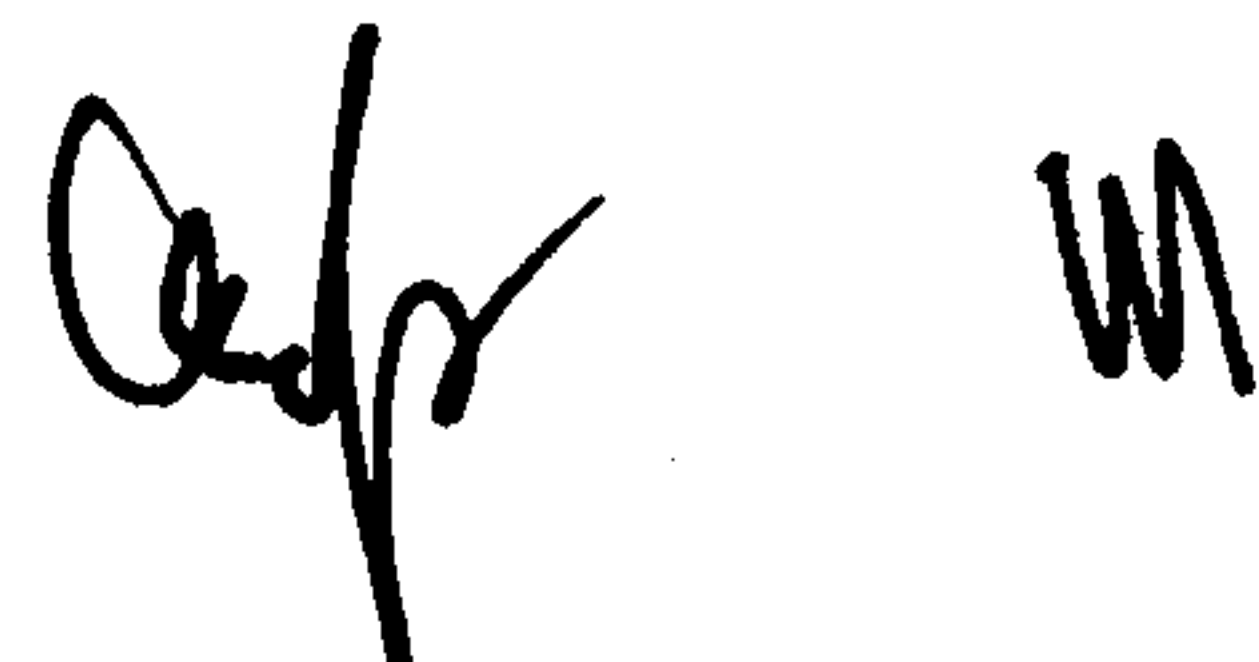
The Court has already determined the existence of probable cause to hold the movant for trial, as shown by the issuance of a **Warrant of Arrest**⁴ dated January 24, 2017 by the Hon. Samuel R. Martires, then Chairperson of the Second Division, following the filing of the **Information** on January 16, 2017.

Section 5(a), Rule 112 of the Rules of Criminal Procedure provides:

“Sec. 5. When warrant of arrest may issue -- (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or Information, the judge shall personally **evaluate the resolution of the prosecutor and its supporting evidence.** He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.”

In **Leviste v. Alameda**,⁵ the Supreme Court held that to move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence.

⁴ Id, p. 73
⁵ 626 SCRA 575, 578

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Here, perusal of the **Information** and a careful evaluation of the **Resolution**⁶ dated January 12, 2015 and **Order**⁷ dated September 3, 2015, both of the Office of the Ombudsman, as well as the supporting evidence, yields that there is sufficient probable cause to hold movant for trial.

In his **Motion For Judicial Re-determination Of Probable Cause**, movant contends that he never took custody of Menor Saud who had to be brought out of jail for medical treatment at a hospital due to severe injury. Saud was all along under the custody of the jail guards who executed affidavits exculpating movant. The Office of the Ombudsman ignored the affidavits of the jail warden and the jail guards.

The Court rules that movant's contention is a matter of defense that should be proved by evidence during the trial of the case.

WHEREFORE, the **Motion For Judicial Re-determination Of Probable Cause** dated April 17, 2017, filed by accused Baguinda-Ali A. Pacalna, through counsel, praying for the dismissal of the instant cases for lack of probable cause, is hereby denied.

The arraignment of accused Pacalna is hereby set on August 3, 2017 at 1:30 in the afternoon.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

⁶ Record, pp. 5-10

⁷ Id, pp. 13-15