



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

**CRIM. CASE Nos. SB-11-
CRM-0121 to 0124**

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

-versus-

**AGNES VST DEVANADERA
and ROLANDO B. FALLER,**
Accused.

**CRIM. CASE Nos. SB-11-
CRM-0125 to 0128**

For: Violation of Sec. 3(e),
R.A. No. 3019, as amended

Present:

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

Promulgated:

August 17, 2017 *lal*

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RESOLUTION

MENDOZA-ARCEGA, J.:

For resolution of this Court are the Motions to Lift Hold Departure Order¹ separately filed by accused Agnes VST Devanadera and Rolando B. Faller (collectively referred to as the “accused-movants”) dated May 25, 2017 and June 14, 2017, respectively.

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

¹ Records, Volume (Vol.) 6.

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In their corresponding motions,² herein accused-movants stated that Hold Departure Orders (“HDO”) were issued against them. The said HDOs barred them from leaving the country without prior approval from this Court during the pendency of the instant cases. Then, on May 7, 2013, the present cases against the accused-movants were ordered dismissed by this Court. Hence, the HDOs should be lifted pursuant to Supreme Court Circular No. 39-97 dated June 19, 1997 stating that whenever the accused has been acquitted or the case has been dismissed, the judgment of acquittal or the order of dismissal shall include therein the cancellation of the HDO issued.

On June 8, 2017, the prosecution filed its Comment.³ It argued that the instant cases are now the subject of a Petition for Review on Certiorari under Rule 45 of the Rules of Court and these are still pending with the Supreme Court. There is no justification for the lifting of the HDOs issued by the Sandiganbayan against the accused-movants as the Supreme Court already acquired jurisdiction over the cases. Furthermore, accused Devanadera previously asked the permission of the Supreme Court to allow her to travel outside the country; thus, this is a clear affirmation by the accused herself that this Court has lost its authority to act on any matter or incident pertaining to these cases while the appeal is pending with the former.

Herein accused-movants countered in their respective Replies⁴ that in spite of the pendency of the instant cases before the Supreme Court, the Sandiganbayan can still exercise its residual jurisdiction to lift the subject HDOs since the records of these cases are still with the latter. In addition, this Court has the inherent power to amend and control its process and orders so as to make them conformable with law and justice.

Then on June 29, 2017, a Rejoinder⁵ was filed by the prosecution and it was postulated that the concept of “residual jurisdiction” is not applicable in these cases since the Supreme Court already acquired jurisdiction. Lastly, the prosecution averred that jurisdiction is conferred by law and that when a party-litigant submits to the jurisdiction of the court, jurisdiction over him/her is acquired.

THE COURT’S RULING

² Ibid., pp. 102-106.

³ Ibid., pp. 125-128.

⁴ Supra note 1.

⁵ Ibid.

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After a conscientious perusal of the records, and based on the applicable laws and jurisprudence, the Court finds the instant motions impressed with merit.

The prosecution insists that this Court already lost its jurisdiction to grant the motions to lift the HDOs in question after the instant cases were elevated to the Supreme Court via Petition for Review on Certiorari. To buttress its claim, the prosecution pointed out that since these criminal cases are not yet dismissed with finality, the HDO issued by this Court serves as a continuing restraint on the accused's right to travel.

The arguments of the prosecution deserve scant consideration.

Foremost, the concept of "residual jurisdiction" is governed by Section 9, Rule 41 of the Rules of Court, to wit:

"Section 9. Perfection of appeal; effect thereof. — A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the appeal of the other parties.

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with 2 of Rule 39, and allow withdrawal of the appeal."

The "residual jurisdiction" of trial courts is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal.⁶ This stage is reached upon the

⁶ Katon v. Palanca, Jr., et al. G.R. No. 151149, September 7, 2004.

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perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal.⁷ In either instance, the trial court still retains its so-called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal.⁸

Jurisprudence⁹ made clear the three (3) instances when the trial court may exercise its “residual jurisdiction”, thus:

“Section 9, Rule 41 of the Rules of Court mentions three (3) instances when the trial court is allowed to exercise “residual” jurisdiction after the perfection of the appeal, namely: (1) **to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal**; (2) to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court; and (3) to permit the prosecution of pauper's appeals.”

Measured against these legal standards, the Court retains its “residual jurisdiction” albeit the cases were already elevated to the Supreme Court via a Petition for Review on Certiorari. It bears stressing that the original records of the instant cases are not yet transmitted to the Supreme Court. As correctly observed by the defense, the records are still with this Court and are not yet elevated in accordance with Section 8, Rule 45¹⁰ of the Rules of Court. To be sure, the crux of controversy in the instant cases is the lifting of the HDOs issued against herein accused-movants. The matter before Us do not involve any matter litigated by the appeal since the issue raised before the Supreme Court is the propriety of the dismissal of the instant cases.

Besides, in the Resolution¹¹ dated May 7, 2013, We already ordered the dismissal of the Amended Informations without lifting the subject HDOs. But Section 5, Rule 135 of the Rules of Court gives the trial court ample inherent and administrative powers to effectively control the conduct of its

⁷ Ibid., citing *Zacate v. Commission on Elections*, 353 SCRA 441, 448, March 1, 2001.

⁸ Ibid.

⁹ *Fortune Life and General Insurance Co, Inc. v. The Court of Appeals, et al.*, G.R. No. 101374 July 30, 1993.

¹⁰ Section 8, Rule 45 of the Rules of Court states:

“Section 8. *Due course; elevation of records.* — If the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.”

¹¹ Records, Vol. 4, pp. 83-111.

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proceedings.¹² Section 5(g), Rule 135 of the Rules of Court explicitly states that every court shall have the power to amend and control its process and orders so as to make them conformable to law and justice. Every court has the inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.¹³ Irrefutably, this Court can validly exercise its “residual jurisdiction” based on the foregoing circumstances.

To recapitulate, the Sandiganbayan retains its “residual jurisdiction” based on the following: (a) an appeal was perfected by the prosecution but the original records of these cases are not yet transmitted to the Supreme Court; (b) the issue involved here does not involve any matter litigated by the appeal; and (c) the Court has the inherent power to issue an order to make its Resolution¹⁴ dated May 7, 2013 conformable to Supreme Court Circular No. 39-97¹⁵ dated June 19, 1997.

IN VIEW WHEREOF, the *Motions to Lift Hold Departure Order* filed by accused Agnes VST Devanadera and Rolando B. Faller dated May 25, 2017 and June 14, 2017, respectively, are hereby **GRANTED**.

Accordingly, the hold-departure orders issued by the Court against accused Agnes VST Devanadera and Rolando B. Faller are hereby **LIFTED** and **SET ASIDE**.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹² People v. Hon. Ma. Theresa L. Dela Torre-Yadao, et al., G.R. Nos. 162144-54, November 13, 2012.

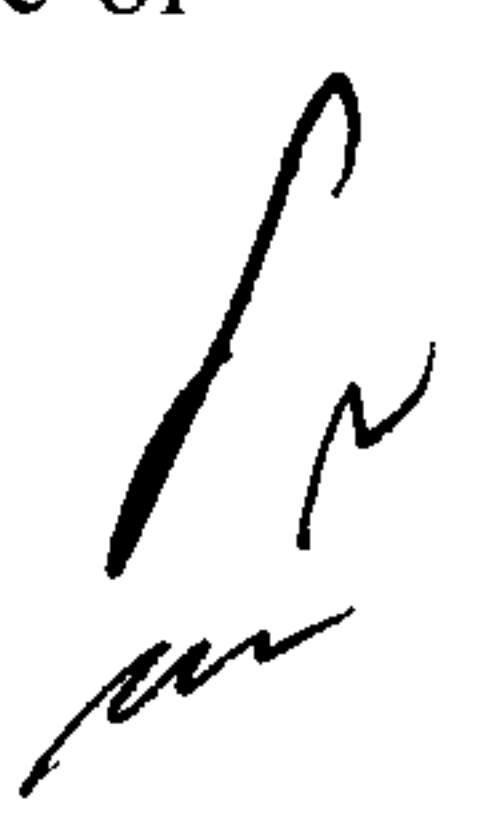
¹³ Espinosa v. Court of Appeals, et al., G.R. No. 128686, May 28, 2004 citing Shioji v. Harvey, 43 Phil. 333, 344 (1922).

¹⁴ Supra note 11.

¹⁵ Supreme Court Circular No. 39-97 dated June 19, 1997 provides:

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“4. Whenever (a) the accused has been acquitted; (b) the case has been dismissed, the judgment of acquittal or the order of dismissal shall include therein the cancellation of the Hold-Departure Order issued. The courts concerned shall furnish the Department of Foreign Affairs and the Bureau of Immigration with a copy each of the judgment of acquittal promulgated or the order of dismissal twenty-four (24) hours from the time of promulgation/issuance and through the fastest available means of transmittal.”



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WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


REYNALDO P. CRUZ
Associate Justice

FN