

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Second Division

People of the Philippines,
Plaintiff,

Crim. Case No. SB-17-CRM-0454

For: Violation of Section 3(h)
of R.A. No. 3019

-versus-

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

Joel A. Lomugdang, et al.,
Accused.

Promulgated:

August 22, 2017

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RESOLUTION

HERRERA, JR., J:

For resolution of the Court is a ***Motion To Quash And To Dismiss on Grounds of Inordinate Delay***¹ dated May 16, 2017, filed by accused Joel A. Lomugdang, through counsel, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a ***Comment/Opposition (To accused Joel A. Lomugdang's Motion To Quash dated May 16, 2017)***² dated May 29, 2017. Accused Lomugdang, through counsel, filed a ***Reply To Comment/Opposition***³ dated June 27, 2017.

Accused Lomugdang is charged with ***Violation of Section 3(h) of Republic Act (R.A.) No. 3019***, or the ***Anti-Graft And Corrupt Practices Act***, under an ***Information***⁴ dated November 6, 2015.

In his instant ***Motion, etc.***, accused Lomugdang invokes the following grounds: 1) The facts alleged in the ***Information*** dated November 6, 2015 do not constitute the offense charged; and 2) There was inordinate delay in the preliminary investigation conducted by the

¹ Record, pp. 144-150

² Id, pp. 154-168

³ Id, pp. 177-181

⁴ Id, pp. 1-2



Office of the Ombudsman that violated his right to speedy disposition of cases.

After a careful study, the Court finds that the ***Motion To Quash, etc.*** must be denied.

Anent the first ground invoked by accused Lomugdang, it is settled that a motion to quash on the ground that the facts alleged in the information do not constitute an offense should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted.⁵ The fundamental test is whether or not the facts alleged in the information, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law.⁶ Facts which constitute the defense of the accused against the charge in the information must be proved during the trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information.⁷

In this case, accused Lomugdang is charged with ***Violation of Section 3(h) of R.A. 3019*** which provides:

“Sec. 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx.

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.”

The elements⁸ of ***Section 3(h) of R.A. 3019*** are as follows:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and

⁵ People v. Ferrer, 101 Phil. 234

⁶ Lazarte v. Sandiganbayan, 581 SCRA 432

⁷ Soriano v. People, 591 SCRA 257-258

⁸ Jacinto v. Sandiganbayan, 178 SCRA 254-259



3. He either –

- (a) intervenes or takes part in his official capacity or connection with such interest; or
- (b) is prohibited from having such interest by the Constitution or by law.

The accusatory portion of the **Information** dated November 6, 2015 reads:

“In July to October 2010, or thereabout, in the Municipality of Culasi, Province of Antique, Philippines, and within this Honorable Court’s jurisdiction, above-named accused **JOEL A. LOMUGDANG** (Lomugdang), public officer, being then the Municipal Mayor of Culasi, Antique, while in the performance of his official functions, did then and there willfully, unlawfully, and criminally intervene in his official capacity in the Municipality’s procurement from and payment to NK Enterprise by approving and signing the Purchase Request, Purchase Order and issuing the corresponding check as payment to NK Enterprise; Lomugdang having direct or indirect financial or pecuniary interest in such transaction with NK Enterprise by being the creditor of its owner Nestor M. Kho Yute; the issued check, in fact, being eventually deposited in the account of **ML Trading**, Lomugdang’s private business.

CONTRARY TO LAW.”

The aforequoted **Information** thus alleges that: 1) accused Lomugdang is a public officer, being then the Municipal Mayor of Culasi, Antique; 2) he has a direct or indirect financial or pecuniary interest in the Municipality’s transaction with NK Enterprise being the creditor of its owner; and 3) he intervened in his official capacity in the Municipality’s procurement from and payment to NK Enterprise by approving and signing Purchase Request, Purchase Order and issuing the check as payment to NK Enterprise. Hence, it sufficiently alleges the elements of the crime charged.

With regard to the alleged inordinate delay in the preliminary investigation of the charge, accused Lomugdang asserts that the **Complaint-Affidavit** is dated January 11, 2012, yet it was only on November 6, 2015 that the Office of the Ombudsman issued a **Joint**

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Resolution finding probable cause to indict him for **Violation of Section 3(h) of R.A. 3019**. Hence, there was a violation of his Constitutionally guaranteed right to speedy disposition of cases.⁹

In its **Comment/Opposition, etc.**, the plaintiff claims that there was no inordinate delay. It gave the following timeline¹⁰ of the preliminary investigation.

Date	Incidents/Proceedings
January 11, 2012	Complaint-Affidavit of Hernalie D. Alagos dated January 11, 2012 was filed with the Office of the Ombudsman (Visayas)
April 20, 2012	The Office of the Ombudsman, thru Virginia Palanca-Santiago issued an Order requiring the respondents to file their counter-affidavits within the (10) days from receipt of the Order
June 15, 2012	Accused Joel A. Lomugdang and other respondents filed their Motion for Extension of Time to File and Submit Counter-Affidavit dated May 28, 2012
June 20, 2012	Accused Joel A. Lomugdang filed his Counter-Affidavit dated June 6, 2012
June 20, 2012	Respondents Filma Y. Hilario, Gloria A. Cadio, Ronald Rey R. Guamen, Sylvia O. Malalad and Evangeline A. Salazar filed their joint Counter-Affidavit dated June 6, 2012
June 10, 2012	Respondent Domingo F. Tan filed his Counter-Affidavit dated June 6, 2012
July 12, 2012	Private complainant Hernalie D. Alagos filed her Reply-Affidavit dated June 22, 2012
April 18, 2013	Private complainant Hernalie D. Alagos filed an Ex Parte Manifestation and Motion for Urgent Action/Resolution dated April 3, 2013
June 20, 2013	An order was issued by the Office of the Ombudsman (Visayas) requiring the parties to submit within 10 days from receipt of the Order, a Verified Position Paper
July 26, 2013	Private complainant Hernalie D. Alagos filed her Position Paper dated July 15, 2013
July 26, 2013	Accused Joel A. Lomugdang filed his Position Paper dated July 11, 2013
July 26, 2013	Respondents Filma Y. Hilario, Gloria A. Cadio, Ronald Rey R. Guamen, Sylvia O. Malacac, Evangeline A. Salazar and Domingo F. Tan filed their Joint Manifestation dated July 11, 2013
November 6, 2015	The Office of the Ombudsman issued a Joint Resolution finding probable against accused Joel A. Lomugdang for violation of Sec. 3(h) RA 3019
December 7, 2015	Accused Joel A. Lomugdang filed a Motion for

⁹ Record, pp. 148-149

¹⁰ Id, pp. 158-160

	Partial Reconsideration or Reinvestigation, and to hold in Abeyance Filing of Information dated December 1, 2015
December 11, 2015	Private complainant filed an Opposition to Respondent Mayor Joel A. Lomugdang's "Motion for Partial Reconsideration or Reinvestigation and To Hold in Abeyance Filing of Information" dated December 8, 2015
December 21, 2015	Accused filed a Supplemental Arguments to Motions for Reconsideration or Reinvestigation dated December 16, 2015
December 28, 2015	Accused filed an Addendum to Supplemental Arguments to Motions for Reconsideration dated December 21, 2015
December 9, 2016	The Office of the Ombudsman issued an Order denying the Motion for Reconsideration of accused Joel A. Lomugdang
February 27, 2017	Information for Violation of Sec. 3(h) was filed against accused Joel A. Lomugdang before the Sandiganbayan Second Division

The plaintiff explained that:

"18. In the instant case, there were nine (9) original respondents who were all given the opportunity to file their respective Counter-Affidavit and there were fifteen (15) pleadings submitted by the parties. In truth, it was accused who filed the last pleading on **December 28, 2015** before the case has been decided with finality on **December 9, 2016**. By the sheer volume of each document, the investigating officer had to diligently peruse and thoroughly study all the allegation therein, hence, it would take a considerable time before the matter would be finally resolved."¹¹

The Court finds satisfactory and acceptable the explanation given by the plaintiff regarding the time spent by the Office of the Ombudsman in the investigation of the case. Considering the peculiar circumstances, the time spent cannot be characterized as one attended by inordinate delay, or that which is vexatious, capricious and oppressive.

The Court notes that accused Lomugdang and the other respondents were given time to submit their counter-affidavits against the complaint against them. When a resolution was issued finding probable cause to charge them in court, they filed motions for reconsideration which were eventually denied. These demonstrated that accused Lomugdang

¹¹ Id, p. 160

was accorded due process and given all the opportunity to heard during the investigation.

The Supreme Court has laid down the guiding principles in determining whether the right of an accused to speedy disposition of cases has been violated.

In *Dansal, et. al. v. Fernandez, et. al.*,¹² the Supreme Court explained:

"In the determination of whether or not the constitutional right invoked by petitioners has been violated, the factors to consider and balance are the duration of the delay, reason thereof, assertion of the right or failure to assert it and the prejudice caused by such delay. The desideratum of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present evidence...."

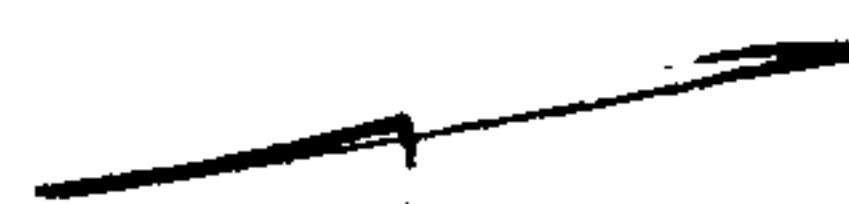
A mere mathematical reckoning of the time involved, therefore would not be sufficient. In the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstances peculiar to each case."

In *Dela Peña, et al. v. Sandiganbayan*,¹³ reiterated in *Coscolluela v. Sandiganbayan*,¹⁴ the High Court declared:

"The right to "a speedy disposition of cases" is guaranteed by the Constitution. Section 16 of Article II thereof provides: All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies. This right, however, like the right to a speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious and oppressive delays."

Here, accused Lomugdang only made a mathematical reckoning of the time involved in the investigation of the case, and then summarily contended that there was a violation of his right to speedy disposition of

¹² 327 SCRA 145
¹³ 360 SCRA 484-485
¹⁴ 701 SCRA188




cases. There is no specific allegation of prejudice caused to him by the alleged delay in the investigation that would warrant a characterization that it was vexatious, capricious and oppressive.

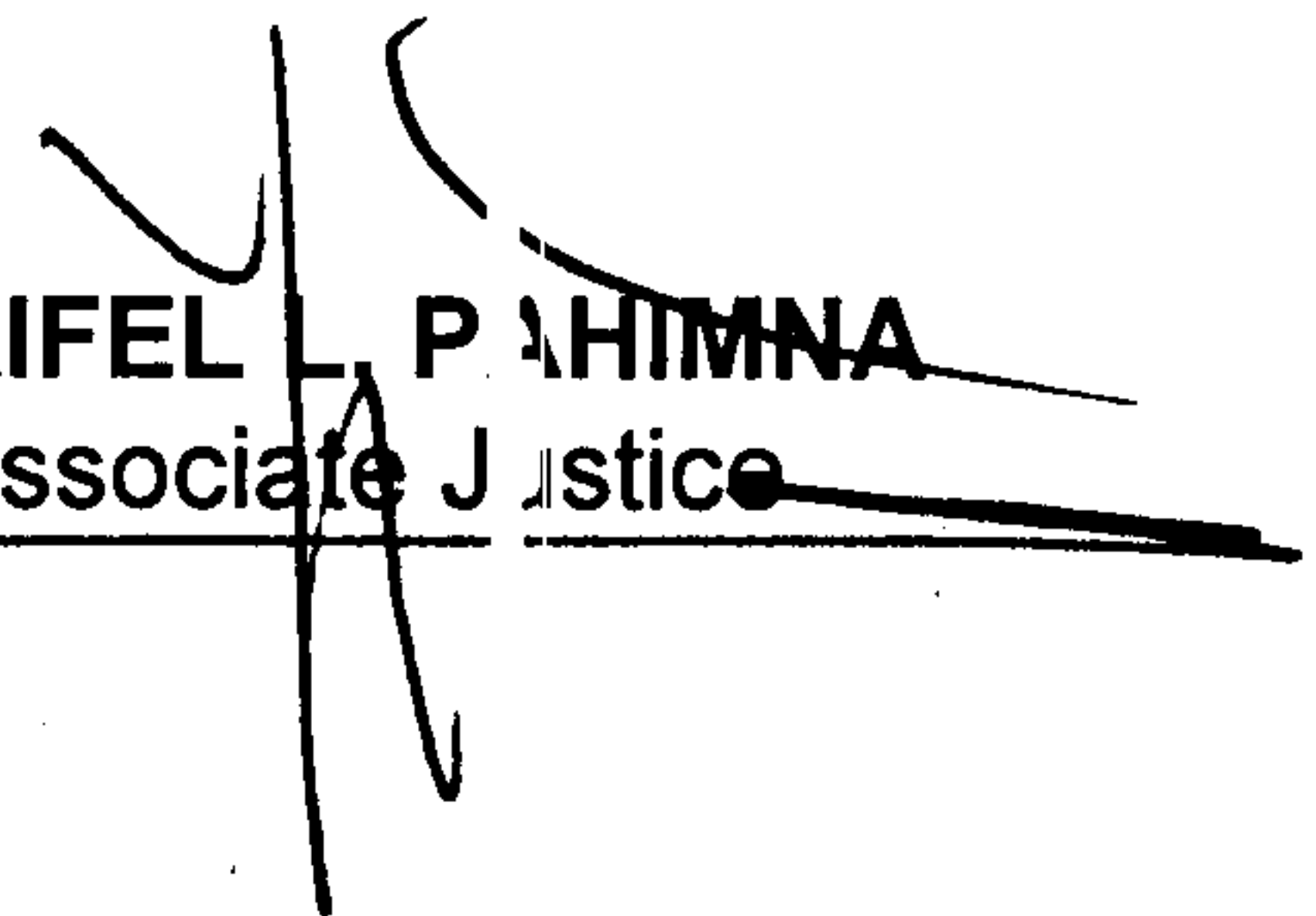
WHEREFORE, the ***Motion To Quash And To Dismiss On Grounds Of Inordinate Delay*** dated May 16, 2017, filed by accused Joel A. Lomugdang, through counsel, is hereby denied.

SO ORDERED.


OSCAR D. HERRERA, JR.
Chairperson

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


LORIFEL P. HIMNA
Associate Justice