Republic of the Philippines
Sandiganbayan
Quezon City
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SEVENTH DIVISION

MINUTES of the proceedings held on August 22, 2017.

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ---------- *Chairperson*
ZALDY V. TRESPESES ---------- *Associate Justice*
BAYANI H. JACINTO[*] ---------- *Associate Justice*

The following resolution was adopted:

Criminal Cases No. SB-17-CRM-1480 to 1482 – People v. Carlos Jose V. Lopez

This resolves the following:

1. Accused Carlos Jose V. Lopez's "MOTION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE (WITH PRAYER TO HOLD IN ABEYANCE THE ISSUANCE OF A WARRANT OF ARREST)" dated July 28, 2017; and

2. Prosecution's "COMMENT/OPPOSITION" dated August 7, 2017.

3. Accused Carlos Jose V. Lopez's "REPLY" dated August 11, 2017

Following the issuance of a Hold Departure Order,[1] but before any warrant of arrest could be issued against him, Carlos Jose V. Lopez ["**accused**"] promptly filed a *Motion for Judicial Determination of Probable Cause (With Prayer to Hold in Abeyance the Issuance of a Warrant of Arrest)*[2] dated July 28, 2017 to dispute the present charges. Accused was charged with three (3) counts of usurpation of official functions, which is penalized under Article 177 of the *Revised Penal Code* when he, supposedly, issued three (3) directive letters[3] exempting certain vehicles from the truck ban[4] in Bacolod

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[*] Per Administrative Order No. 284-2017 dated August 18, 2017
[1] Records, p. 225
[2] *Id.* at 140-161
[3] *Id.* at 28-33
[4] Section IV (C), City Ordinance No. 338, Series of 2003 (Records, p. 44) in relation to Section IV (E), City Ordinance No. 542 dated June 22, 2011 (Records, p. 67)

City, in effect usurping a function that is lodged with the chief of the Bacolod Traffic Authority Office/Traffic Management Unit (BTAO/TMU).

Essentially, accused thrusts that there is no probable cause establishing his indictment. In the first place, accused emphasizes that the letters were not issued to grant exemptions from the truck ban, but were merely "requests and/or indorsements" addressed to the chief or officer-in-charge (OIC) of BTAO/MTU to issue exemptions.[5] This theory was allegedly corroborated by Police Senior Inspector Benedictor Villarias, Jr. (P/SInsp. Villarias, Jr.) himself, the OIC of BTAO/MTU to whom accused wrote.[6] Secondly, accused posits that at the time the subject letters were issued, he received several requests for truck ban exemptions as he was the Chairman of the Committee on Transportation and Traffic Management of the Sangguniang Panlungsod. On this premise, he was under obligation to forward such requests to the OIC of BTAO/MTU for further action.[7] Thirdly, accused harbored no malice or ill will in issuing the letters in question. In fact, he was well-aware he had no authority to issue truck ban exemptions, ergo, the letters in question were addressed to P/SInsp. Villarias, Jr. and not addressed to those who requested and/or applied for exemption from the truck ban.[8] Additionally, accused blames the Office of the Ombudsman (Ombudsman) for ignoring or brushing aside certain pieces of "newly documentary evidence" that he attached to his motion for reconsideration of the Ombudsman's Resolution dated September 2, 2016, which found probable cause to charge accused of usurpation of official functions. Accused thus prays that the Court conduct its own *judicial* determination of probable cause, that the issuance of a warrant of arrest be held in abeyance, and that the cases against him be dismissed.

In its *Comment/Opposition*, the Prosecution chiefly argues that accused's contentions are merely evidentiary matters which could be ventilated in trial, and that his indictment is thoroughly supported by the evidence at hand. What is clear is that the accused granted truck ban exemptions by issuing three (3) separate letters to P/SInsp. Villarias, Jr., then head of the BTAO/MTU in whose office is lodged the power to grant exemptions from the truck ban of Bacolod City. There is no vagueness in the letters written by accused, the contents of which could be understood by persons with common intelligence.[9] Moreover, the newly discovered evidence accused had attempted to introduce upon the filing of his motion for reconsideration failed to qualify as "newly discovered" because there was no showing that the same were unavailable before or during the investigation of the case. Neither was it proved that reasonable diligence was exerted by accused in producing the same. Hence, it is prayed that accused's *Motion* be denied.

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[5] Records, p. 148
[6] Affidavit of P/SInsp. Benedicto Villarias, Jr. (Records, pp. 182-183)
[7] Records, p. 148
[8] *Id.* at 148-149
[9] *Id.* at 231-236

By way of *Reply*, accused counters that he had adequately explained why some of his evidence could not have been discovered or produced during the investigation of his case.[10] Further, accused reiterated that he could not have usurped the official functions of the head of BTAO/TMU when the letters he issued were precisely addressed to the same person, P/SInsp. Villarias, Jr. and the latter appreciated the letters as mere requests.[11]

Mendoza v. People[12] holds that *the judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause*; rather, the judge makes a determination of probable cause *independent* of the prosecutor's finding.

This Court's independent assessment on the existence of probable cause is separate and distinct from the executive determination of probable cause made by the Office of the Ombudsman, even if it is the same evidence on record which is scrutinized in detail to make such judicial determination. However, the findings by courts and prosecutors of the existence of probable cause are arrived at independently.[13] The executive determination of probable cause made by prosecutors are controlled by the *Rules of Court*, *Republic Act No. 6770*, and the various issuances by the Department of Justice.[14] On the other hand, courts are guided by the *Constitution* in the judicial determination of probable cause.[15] In *Borlongan, Jr. v. Peña*,[16] the Supreme Court explains:

> Enshrined in our *Constitution* is the rule that "[n]o . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing . . . the persons . . . to be seized." Interpreting the words "personal determination," we said in *Soliven v. Makasiar* that it does not thereby mean that judges are obliged to conduct the personal examination of the complainant and his witnesses themselves. To require thus would be to unduly laden them with preliminary examinations and investigations of criminal complaints instead of concentrating on hearing and deciding cases filed before them. Rather, what is emphasized merely is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. **To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence.** What he is never allowed to do is to follow blindly the prosecutor's bare certification as to the existence of probable cause. Much more is required by the constitutional

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[10] *Id.* at 242
[11] *Id.* at 240
[12] G.R. No. 197293, April 21, 2014
[13] *Reyes v. Ombudsman*, G.R. Nos. 212593-94, 213163-78, 213540-41, 213542-43, 215880-94 & 213475-76, March 15, 2016
[14] Ibid
[15] Ibid
[16] G.R. No. 143591, May 5, 2010

> provision. Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he cannot just rely on the bare certification alone but must go beyond it. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it. He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.

After a careful consideration of the separate positions presented and an independent examination of the records in detail, the *Motion* filed by accused must be denied. Probable cause exists for the issuance of a warrant of arrest against the accused.

While accused may claim that there was no malice or ill will harbored by him in issuing the letters in question, this argument and the other grounds he relied on, however, deal with evidentiary matters which cannot simply be taken at face value. Indeed, the case contains contentious grounds that also need to be proven, including among others: (i) the nature of the letters issued by accused, whether they are content-based or merely requests for exemption from the truck ban; (ii) the good faith, or absence thereof, of accused in issuing the subject letters; and (iii) whether or not the chief of the BTAO/MTU is the sole authority who may issue exemptions from the truck ban of Bacolod City.

A judicial determination of probable cause is not the proper mode for a full and exhaustive display of the parties' evidence.[17] Simply stated, a finding of probable cause does not touch on the issue of guilt or innocence of the accused.[18] As echoed by the Supreme Court in *Co v. People*,[19] accused's arguments are evidentiary in nature and are matters of defense. They are thus best left for now, to be resolved only after a full-blown trial on the merits.

It is thus premature to ask for a dismissal of the charge considering the preliminary evidence set before this Court at this stage of the proceedings.

Moreover, the concomitant prayer of accused to defer the issuance of a warrant of arrest against him encroaches upon the exclusive prerogative of this Court and should be denied outright. The salient portion in the case of *Viudez II v. Court of Appeals*[20] is quoted hereunder:

> The function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive; thus, the consequent implementation of a warrant of arrest cannot be deferred pending the

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[17] *Vide*: *Redulla v. Sandiganbayan,* G.R. No. 167973, February 28, 2007
[18] *Ganaden, et al. v. Honorable Office of the Ombudsman, et al.,* G.R. Nos. 169359-61, June 1, 2011, 665 Phil. 224-233
[19] G.R. No. 168811, November 28, 2007, which cited *Redulla v. Sandiganbayan,* G.R. No. 167973, February 28, 2007
[20] G.R. No. 152889, June 5, 2009

resolution of a petition for review by the Secretary of Justice as to the finding of probable cause, a function that is executive in nature. To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge. xxx

Therefore, the discretion of the court whether or not to suspend the proceedings or the implementation of the warrant of arrest, upon the motion of the appellant or the trial prosecutor, remains unhindered. This is in consonance with the earlier ruling of this Court that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. In the instant case, the judge of the trial court merely exercised his judicial discretion when he denied petitioner's motion to suspend the implementation of the warrant of arrest. Consequently, the CA was correct when it found no whimsicality or oppressiveness in the exercise of the trial judge's discretion in issuing the challenged orders. (Emphasis supplied)

WHEREFORE, the *Motion for Judicial Determination of Probable Cause (With Prayer to Hold in Abeyance the Issuance of a Warrant of Arrest)* filed by accused Carlos Jose V. Lopez is **DENIED**.

Finding the existence of probable cause, let a warrant of arrest **ISSUE** against accused Carlos Jose V. Lopez in these cases.

SO ORDERED.

GOMEZ-ESTOESTA, J., *Chairperson*

TRESPESES, J.

JACINTO, J.