

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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Second Division

Republic of the Philippines,  
*Petitioner,*

Civil Case No. SB-14-CVL-0001

*For: Forfeiture of Unlawfully Acquired  
Properties under Republic Act No. 1379*

Present:

-versus-

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

Renato C. Corona, et al.,  
*Respondents.*

Promulgated:

October 23, 2017  
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**RESOLUTION**

**HERRERA, JR., J:**

Before the Court is a ***Motion For Clarification And/Or Reconsideration (Re: Resolution dated 28 April 2016)***<sup>1</sup> dated May 16, 2016, filed by petitioner, through the Office of the Special Prosecutor, Office of the Ombudsman, praying the Court to clarify and/or reconsider the ***Resolution***<sup>2</sup> dated April 28, 2016, to which respondents Renato C. Corona and Cristina R. Corona, through counsel, filed an ***Opposition (To Petitioner's "Motion for Clarification and/or Reconsideration [Re: Resolution dated 28 April 2016]" dated 16 May 2016)***<sup>3</sup> dated June 3, 2016.

It appears that on January 18, 2016, the Court issued *subpoenas duces tecum* and *ad testificandum* to the following: 1) Mr. Anthony Q. Chua of Allied Banking Corporation;<sup>4</sup> 2) Maybelen H. Villareal of the Land Bank of the Philippines;<sup>5</sup> 3) Pascual M. Garcia III of PS Bank Center;<sup>6</sup> and

<sup>1</sup> Record, Vol. 5, pp. 2341-2349




<sup>2</sup> Id, pp. 2330-2337

<sup>3</sup> Id, pp. 2364-2372

<sup>4</sup> Id, p. 2152

<sup>5</sup> Id, p. 2177

<sup>6</sup> Id, p. 2183

Francisco E. Burgos, Jr. of the Land Bank of the Philippines.<sup>7</sup> The subpoenas directed them to appear for a conference at the Office of the Special Prosecutor, Office of the Ombudsman and to testify pursuant to the **Judicial Affidavit Rule** under A.M. No. 12-18-8-SC.

*Subpoena duces tecum and ad testificandum* dated January 28, 2016<sup>8</sup> were also issued by the Court to Enrico S. Cruz and Celia D. Orbeta, both of Deutsche Bank AG Manila directing them to appear for a conference at the Office of the Special Prosecutor, Office of the Ombudsman on February 11, 2016.

The aforementioned subpoenas were issued upon request of the Office of the Special Prosecutor in connection with the instant case.

The **Resolution** of April 28, 2016 granted the **Omnibus Motion**<sup>9</sup> dated February 9, 2016 where respondents Renato C. Corona and Cristina R. Corona prayed, as follows:

“WHEREFORE, respondents RENATO C. CORONA and CRISTINA R. CORONA respectfully pray that this Honorable Court:

1. Quash the Subpoena *Duces Tecum Ad Testificandum* dated 28 January 2016 addressed to Enrico S. Cruz and Celia D. Orbeta, and/or their duly authorized representatives, and the Subpoenae *Duces Tecum et Ad Testificandum* dated 18 January 2016; and
2. Suppress, exclude and expunge from the records of this case all documentary evidence produced pursuant to the above Subpoenae *Duces Tecum et Ad Testificandum* dated 18 and 28 January 2016, respectively, and addressed to Anthony Q. Chua, Enrico S. Cruz, Celia D. Orbeta, Francisco E. Burgos, Jr., Maybelen H. Villareal, and Pascual M. Garcia II, and/or their duly authorized representatives.

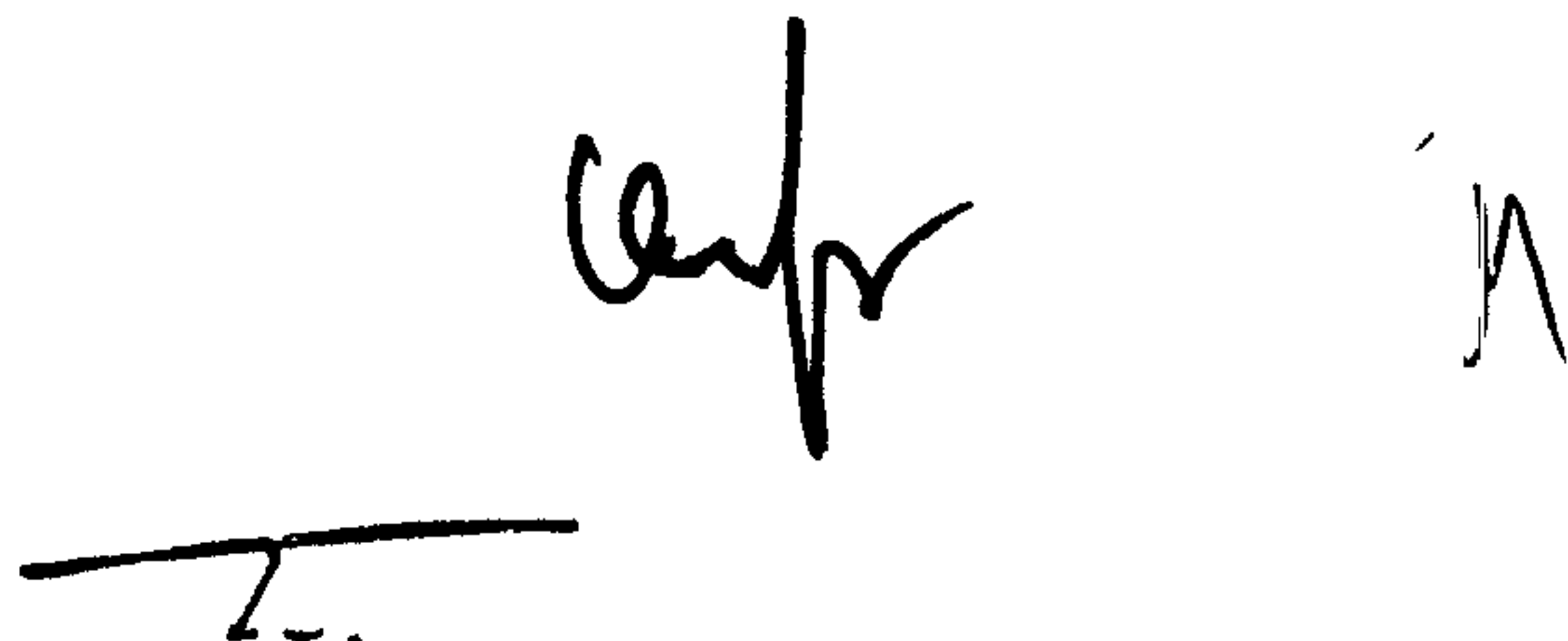
Other reliefs, just or equitable under the circumstances, are likewise prayed for.”<sup>10</sup>

<sup>7</sup> Id, p. 271

<sup>8</sup> Id, p. 2163

<sup>9</sup> Id, pp. 2213-2231

<sup>10</sup> Id, pp. 2228-2229



In the aforesaid *Resolution* of April 28, 2016, the Court ruled, insofar as pertinent:

“**WHEREFORE**, in the light of all the foregoing, the Court hereby **GRANTS** the Omnibus Motion.

Accordingly, let the a) ***Subpoena Duces Tecum et Ad Testificandum*** dated **January 28, 2016** addressed to Enrico S. Cruz and Celia D. Orbeta of Deutsche Bank AG Manila and/or their duly authorized representatives directing them to appear at the petitioner’s office on February 11, 2016 for a conference and to testify on bank statements pertaining to the respondents’ U.S. dollar deposits and to bring certified true copies thereof; and the b) ***Subpoena Duces Tecum et Ad Testificandum*** dated **January 11, 2016** directing Anthony Q. Chua of Allied Banking Corporation, Francisco E. Burgos, Jr. and Maybelen H. Villareal of Land Bank of the Philippines, and Pascual M. Garcia III of PS Bank Center, directing them to appear for conference at the petitioner’s office on January 28, 2016 and to testify pursuant to the Judicial Affidavit Rule, be quashed, as they are hereby quashed.

Considering that the instant Omnibus Motion was filed only on February 10, 2016, or after the conduct of the conference scheduled on January 28, 2016 by virtue of the Subpoena Duces Tecum et Ad Testificandum dated January 18, 2016, let the documentary evidence produced, as well as the Judicial Affidavits executed, by virtue of the said Subpoena Duces Tecum et Ad Testificandum that was ordered quashed, be considered withdrawn and of no legal force and effect.”<sup>11</sup>

The Court essentially gave the following explanation for its ruling above, to wit:

“Under the circumstances, therefore, there can be no doubt that the assistance of this Court is being solicited at the stage where the petitioner is still building or beefing up its case. Understandably, but without pre-empting any contrary action which the subpoenaed bank officials may take, it is being made to appear to them that it is the Court that needs their presence at a conference, when in fact the Court has no participation at all in that conference to be conducted at the Office of the Ombudsman.

The Court does not discount the danger that the subpoenaed bank officials may be misled, not to say deluded, into believing that the Court has countenanced or

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<sup>11</sup> Id, pp. 2335-2336

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tolerated any possible infraction of the policy on secrecy of bank deposits. Evidently, the imprimatur of this Court is being made to bear on these bank officials to comply with the subpoenae, and in all probability validate whatever documents the petitioner has in its possession. This is the significant import of the subpoenae, as substantiated by the fact that the prosecution did not secure subpoenae from the Court in the case of its other witnesses who are not bank officials.

It is thus inarguable that the intervention of this Court which is being harnessed by the petitioner at the present stage cannot be allowed, if it is to maintain an attitude of impartiality of the highest level. It cannot assist either party in building up a case or putting up a defense. The petitioner should instead rely on its own resources to summon its potential witnesses and to secure through lawful means the documents that it will present in court, and not use court processes to facilitate its task. After all, the Office of the Ombudsman has vast powers endowed both by the Constitution and amplified by R.A. No. 6770. As expressed in *Gonzales III vs. Office of the President*, "Given the scope of its disciplinary authority, the Office of the Ombudsman is a very powerful government constitutional agency that is considered 'a notch above other grievance handling investigative bodies.' It has powers, both constitutional and statutory, that are commensurate with its daunting task of enforcing accountability of public officers."

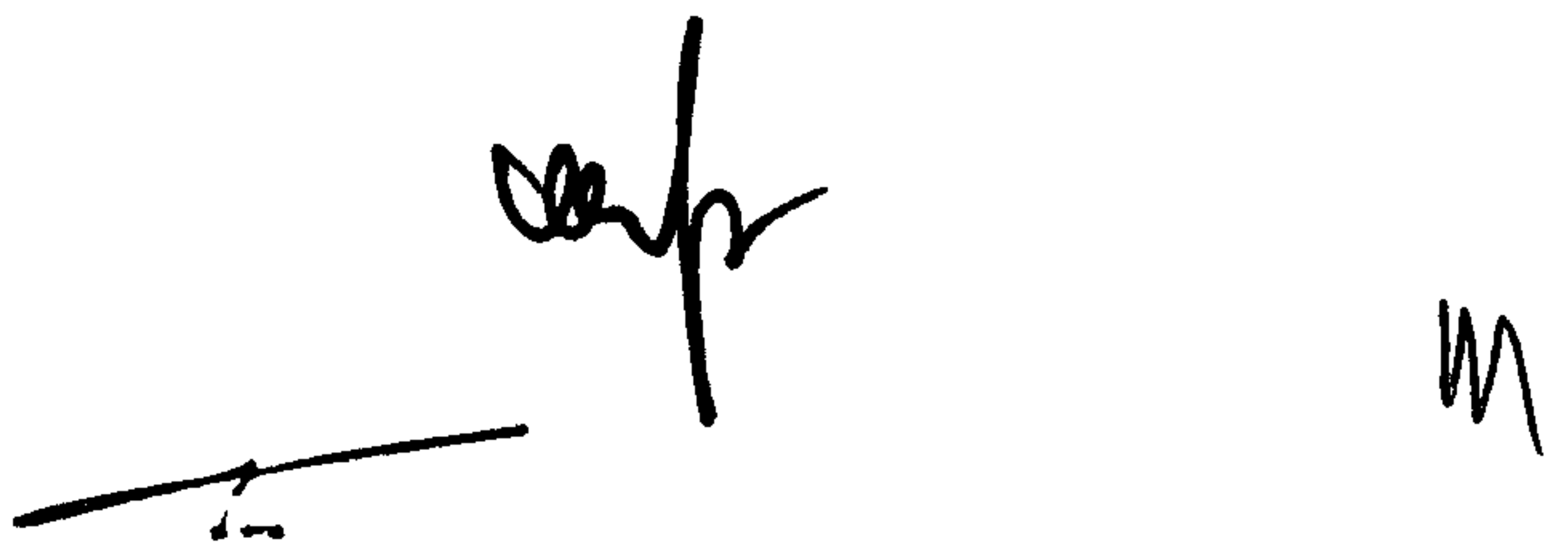
In view of the foregoing, the quashal of the subpoenae in question, both for the appearance of the bank officials for a conference or for the taking of their Judicial Affidavits, should be effected. For emphasis, however, it must be stated that such quashal is based purely on the above reasons and not necessarily on the respondents' arguments that the documents in the possession of the petitioner have been illegally obtained, or that the documents to be produced by virtue of the subpoenae are privileged documents. Such objections can be ruled upon when the documents in question are presented during the trial. For the Court to pass upon those issues at this instance would be premature.

It is sufficient for the Court to state that at this particular point in the development of this case, it will not oblige itself to be a fishing tool for any party."<sup>12</sup>

In its ***Motion For Clarification And/Or Reconsideration, etc.***, petitioner contends that it requested for the subpoenas in question as part of the procedure for examining its witnesses, pursuant to the ***A. M. No. 12-8-8-SC***, otherwise known as the ***Judicial Affidavit Rule***. Petitioner claims

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<sup>12</sup> Id, pp. 2334-2335

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that the **Judicial Affidavit Rule** applies in the instant case because proceedings under **Republic Act (R.A.) No. 1379** are civil in nature.

After a careful study, the Court finds merit in granting a reconsideration of the **Resolution** of April 28, 2016.

Indeed, **Section 5 of the Judicial Affidavit Rule** provides:

**“Sec. 5. Subpoena.** - If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, **the requesting party may avail himself of the issuance of a subpoena and testificandum or duces tecum under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be ex parte.**”

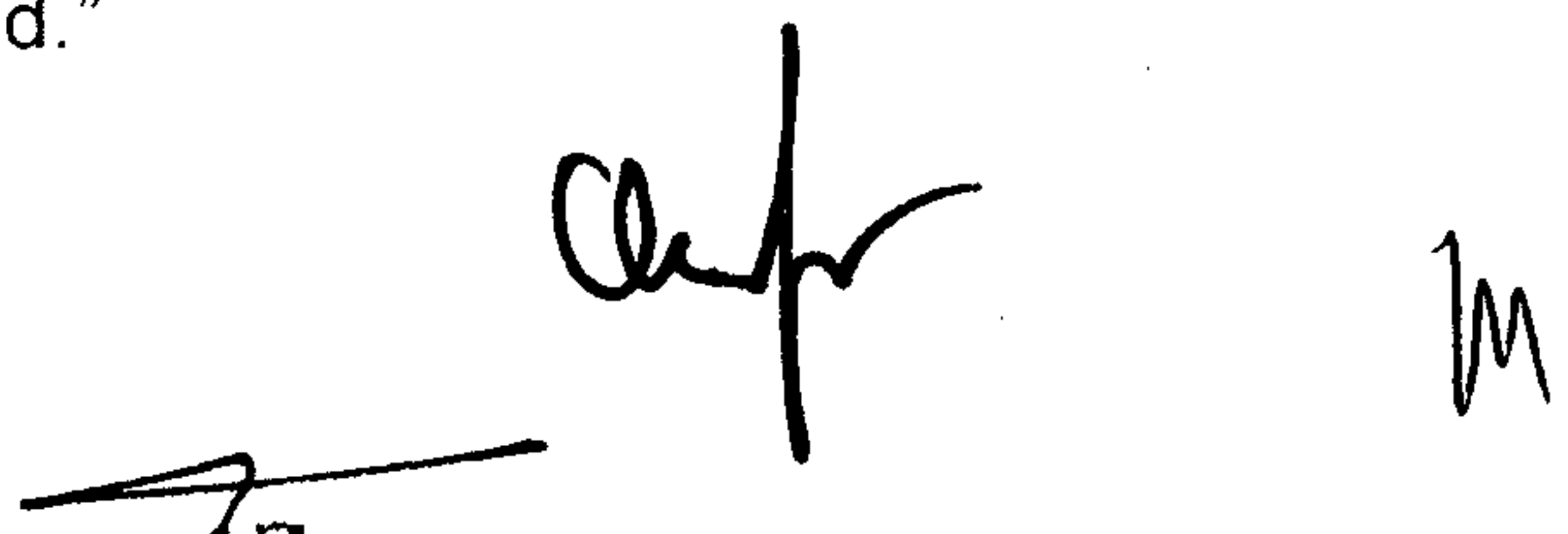
In any event, **Republic Act (R.A.) No. 6770, the Ombudsman Act of 1989**, grants the Ombudsman, its investigators and prosecutors the authority to issue subpoena and *subpoena duces tecum*, or make an application for the issuance of such subpoenas before the Sandiganbayan.

**Section 31 of R.A. 6770** provides, insofar as pertinent:

**“Sec. 31. Designation of Investigators and Prosecutors.** --

xxx.

The Ombudsman and his investigators and prosecutors, whether regular members of his staff or designated by him as herein provided, shall have authority to administer oaths, to issue subpoena and subpoena duces tecum, to summon and compel witnesses to appear and testify under oath before them and/or bring books, documents and other things under their control, and to secure the attendance or presence of any absent or recalcitrant witness through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witness or evidence is found.”

The bottom of the page features three handwritten marks. On the left, there is a horizontal line with a small flourish underneath. In the center, there is a large, stylized signature that appears to be 'Carp'. On the right, there is a smaller, vertical signature that looks like the letter 'M'.


There can be no infraction of the policy of secrecy of bank deposits. Bank deposits can be inquired into upon order of this Court if said deposits are the subject of litigation, like in this case.

**Section 2 of Republic Act (R.A.) No. 1405, The Law on Secrecy of Bank Deposits, entitled An Act Prohibiting Disclosure Of Or Inquiry Into Deposits With Any Institution And Providing Penalty Therefor, as amended by Section 1 of Presidential Decree (P.D.) No. 1792, provides:**

**“Sec. 2.** All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except when the examination is made in the course of a special or general examination of a bank and is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity, or when the examination is made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank, or upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of litigation.”

Dollar accounts, which are foreign currency deposits, are considered absolutely confidential under **Republic Act (R.A.) No. 6426, entitled An Act Instituting A Foreign Currency Deposit System In The Philippines, And For Other Purposes.** This law, which was approved on April 4, 1974, provides in **Section 8** thereof:

**“Sec. 8. Secrecy of foreign currency deposits.** – All foreign currency deposits authorized under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no



instance shall foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative, or any other entity whether public or private; *Provided, however,* That said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever. (As amended by PD No. 1035, and further amended by FD No. 1246, prom. Nov. 21, 1977.)"

However, **R.A. 6770**, a much later law which was approved in November 17, 1989, provides in **Section 15(8)** thereof that:

"**Sec. 15. Powers, Functions and Duties.** – The Office of the Ombudsman shall have the following powers, functions and duties:

xxx.

(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records."

WHEREFORE, premises considered, the **Resolution** dated April 28, 2016, which granted the **Omnibus Motion** dated February 1, 2016 of respondents Renato C. Corona and Cristina R. Corona, is hereby reconsidered and set aside.

SO ORDERED.

  
OSCAR C. HERRERA, JR.  
Chairperson

We concur:

  
MICHAEL FREDERICK L. MUSNGI  
Associate Justice

  
LORIFEL L. PAHIMNA  
Associate Justice