



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

SPECIAL THIRD DIVISION

**PEOPLE
OF THE
PHILIPPINES,**

OF

THE

**Criminal Case/s Nos. SB-
16-CRM-0439 to 0442**

Plaintiff,

*For: Violation of Sec. 3 (e) of
R.A. No. 3019*

-versus -

**Criminal Case No. SB-16-
CRM-0443**

*For: Malversation of Public
Funds*

**JEJOMAR C. BINAY, SR., ET
AL.**

Accused.

**Criminal Cases Nos. SB-16-
CRM-0444 to 0445, SB-16-
CRM-0447 to 0453**

*For: Falsification of Public
Documents*

Present:

**CABOTAJE-TANG, PJ
FERNANDEZ, B., J. and
FERNANDEZ, SJ.,¹ J.**

Promulgated:

APM 19/2018

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R E S O L U T I O N

CABOTAJE-TANG, P.J.:

¹ As per *Administrative Order No. 316-2017* dated September 13, 2017

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For resolution is the *Motion for Reconsideration Ex Abundanti Ad Cautelam (Re: Resolution dated 05 February 2018)* dated February 19, 2018,² filed by accused Jejomar C. Binay, Sr. This motion seeks the reversal of the Court's *Resolution* promulgated on February 5, 2018,³ which denied, among other motions, accused-movant's "*Urgent Motion to Quash Information Ex Abundanti Ad Cautelam – Alternatively – Motion for Suspension of Proceedings*" dated September 21, 2017.⁴

Accused Binay, Sr. prays for the reversal of the Court's assailed *Resolution* based on the following arguments:

1. The *Informations* charging him with the crimes of falsification of public documents, malversation of public funds and violation of Section 3 (e) of Republic Act (R.A.) No. 3019, utterly fail to allege specific facts constituting the elements of the offenses charged which would show how he could have committed the said offenses;⁵ and

2. The issues he raised in the petitions for certiorari which he filed before the Supreme Court, *i.e.*, "*Jejomar C. Binay vs. Hon. Conchita Carpio-Morales, in her capacity as the Ombudsman, et al.*," docketed as SC-G.R. No. 223437-40, and "*Jejomar C. Binay, Sr. vs. Sandiganbayan (Third Division), et al.*," docketed as SC-G.R. No. 232739-52, necessarily limit the jurisdiction of this Court to continue to act on the subject *Informations*. This, together with the strong probability that any further action of this Court in the present cases, would "*render moot and moribund any resolution to be made by the Honorable Supreme Court on the said issues, the principle of judicial courtesy is warranted and for this Honorable Court to refrain from ruling on the merits of the case until the said issues are resolved.*"⁶

THE PROSECUTION'S OPPOSITION

On March 5, 2018, the prosecution submitted its *Opposition (to the Motion for Reconsideration Ex Abundanti Ad Cautelam Re: Resolution dated 05 February 2018)*.⁷ Therein, it prays for the outright denial of the subject motion for

² p. 123, Volume IV, Record

³ p. 825, Vol. III, *id*

⁴ p. 299, Vol. III, *id*

⁵ Par. 5, p. 3, *Motion for Reconsideration*, p. 125, Vol. IV, *id*

⁶ Par. 92, p. 31, *id*; p. 153, *id*

⁷ p. 204, Vol. IV, *id*

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reconsideration “for merely reiterating the same arguments which were already considered by the Honorable Court.”⁸ “Considering that accused Binay, Sr. failed to offer new and convincing arguments, then the Resolution dated 05 February 2018 must be maintained and the proceedings in these cases must not be suspended.”⁹

THE RULING OF THE COURT

After an assiduous evaluation of the arguments raised by accused Binay, Sr. in his motion for reconsideration and the opposition thereto of the prosecution, the Court finds no cogent reason to reverse its assailed *Resolution*.

I. Accused Binay, Sr. failed to advance any compelling reason for the Court to reverse its findings that the allegations in the subject Informations sufficiently charge the crimes of falsification of public documents, malversation of public funds and violation of Section 3 (e) of R.A. No. 3019.

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The accused-movant insists that the allegations in the *Informations* charging him with the crimes of falsification of public documents, malversation of public funds and violation of Section 3 (e) of R.A. No. 3019 do not charge the said offenses because:

Falsification cases

1. The second element of the crime of falsification of public documents, *i.e.*, the offender takes advantage of his official position in falsifying the document, is not present in the purported falsification of the Balita Newspapers and Affidavits of Publication since, as the City Mayor or Head of the Procuring Entity (HoPE), he did not have the duty to make or prepare nor could he have intervened in the preparation of the said

⁸ Par. 5, p. 2, *Opposition*; p. 205, *id*

⁹ Par. 21, p. 7; *id*; p. 210, *id*

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newspapers and affidavits of publication. Neither did his position as such make him the official custodian of the said documents;¹⁰

2. The third element of the crime of falsification of public documents, *i.e.*, the offender falsified a document by committing any acts under Article 171 of the Revised Penal Code, is likewise not present since the *Informations* do not state the facts on how he "*wrote, prepared, or executed any of the issues of the newspapers. Neither do the Informations state what portion of the issues of the newspapers were supposedly falsified*".¹¹ He further asserts that the "*Informations do not allege that accused Binay, Sr. has any hand in the preparation of the Affidavits of Publication. Accused Binay, Sr., or any of his co-accused for that matter, is also not the signatory to the Affidavits of Publication.*"¹²

3. The allegation of conspiracy must likewise fail as the same requires that the accused must have acted in concert pursuant to the same objective in the commission of the crime;¹³

4. The allegations in the *Informations* are mere characterization of the acts allegedly committed and are, thus, insufficient and incomplete to sustain the charges in the *Informations* xxx for being mere conclusions of law;¹⁴

5. It is antithetical for the Prosecution to simultaneously claim that the newspapers are falsified for not having the Invitation to Apply for Eligibility and to Bid (IAETB) and that the corresponding Affidavits of Publication therefor falsely stated that the IAETBs were published;¹⁵

6. The Affidavits of Publication, on their face, have no semblance of falsehood and anomaly. These were notarized documents, which, by law, are entitled to full faith and credit upon their faces;¹⁶

7. With regard to the alleged falsification of the Bids and Awards Committee (BAC) Resolutions, the Court committed reversible error when it held that the *Informations* pertaining to

¹⁰ Please see par. 14, p. 5, and Par. 29, p. 9, *Motion for Reconsideration*; p. 127 and p. 131, Vol. IV, Record.

¹¹ Par. 19, p. 7, *id*; p. 129, *id*

¹² Par. 33, p. 11, *id*; p. 133, *id*

¹³ Par. 23, p. 8, *id*; p. 130, *id*

¹⁴ Par. 25, p. 8 and par. 35, p. 133, *id*; *id*, p. 133, *id*

¹⁵ Par. 26, *id*; *id*

¹⁶ Par. 36, pp. 11-12, *id*; pp. 113-134, *id*

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the supposed falsification sufficiently allege the ultimate facts to establish the actual elements for this kind of falsification when it limited itself to the three (3) elements under Article 171 of the RPC as with the other charges of falsification;¹⁷

8. It does not appear at all in the face of the *Informations* that there was any overt act attributable to accused Binay, Sr. to show that he made or had anything to do with the supposed untruthful statements in the narration of facts contained in the BAC Resolutions;¹⁸

9. The *Informations* do not show that accused Binay, Sr. himself had any legal obligation to disclose the truth of the facts supposedly narrated in the BAC Resolutions as constitutive of the second element of the crime charged;¹⁹

10. Neither do the *Informations* show that the facts narrated in the documents were absolutely false, that accused Binay, Sr. had any knowledge of the falsity of the facts narrated therein or that it was made with the wrongful intent of injuring a third party;²⁰

11. No specific allegations were cited in the *Informations* to show that the IAETB was not published and posted in accordance with R.A. No. 9184, that no bidder purchased bid documents, or that no public bidding was conducted;²¹ and

12. Section 41 of R.A. No. 9184 requires that *prima facie* evidence is needed before the HoPE, as the approving authority, can reject the award of the project recommended by the BAC. There was, however, no semblance of irregularity on the Affidavits of Publication and other supporting documents presented to accused Binay, Sr.²²

Malversation case

13. Nowhere is it alleged in the *Information* in the malversation case that accused Binay, Sr. ever received public funds in the course of events leading to the present case. Verily,

¹⁷ Par. 41, p. 16, *id*; p. 138, *id*

¹⁸ Par. 42, *id*, *id*

¹⁹ Par. 44, *id*, *id*

²⁰ Par. 46, p. 17, *id*; p. 139, *id*

²¹ Par. 47, *id*, *id*

²² Par. 48, p. 17, *id*; p. 139, *id*

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he could not have asported something that he, in the first place, never had in his hands;²³ and

14. Inasmuch as accused Binay, Sr., by virtue of his position as City Mayor or HoPE, did not have custody or control of the funds subject of the instant case as defined in the case he cited, the failure of the prosecution to allege additional matter, *i.e.*, that accused received or was in possession of such funds, renders the Information for Malversation incomplete and insufficient.²⁴

Violation of Section 3 (e) of R.A. No. 3019

15. The *Informations* charging him with the said crime failed to ascribe any specific act of accused Binay, Sr. which would be tantamount to manifest partiality, evident bad faith or gross inexcusable negligence;²⁵

16. The *Informations* for violations of R.A. No. 3019 merely quoted verbatim the designation of the offenses in the said law without alleging the specific acts of accused Binay, Sr. which would constitute “manifest partiality, “bad faith” or “gross negligence”;²⁶ and

17. The mere use of the word conspire, without alleging any act on the part of the accused showing his conscious and common design to commit an offense with his co-accused, renders the pertinent *Informations* insufficient and defective to indict accused Binay, Sr.²⁷

The issue on the sufficiency of the allegations in the *Informations* charging accused Binay, Sr. with the crimes of falsification of public documents, malversation of public funds and violation of Section 3 (e) of R.A. No. 3019 was already passed upon by the Court in the assailed *Resolution*. After a painstaking and judicious review of the allegations in the subject *Informations vis a vis* the requirements of the Rules of

²³ Par. 59, p. 20, *id*; p. 142, *id*

²⁴ Par. 65, p. 22, *id*; p. 144, *id*

²⁵ Par. 68, p. 23, *id*; p. 145, *id*

²⁶ Par. 73, p. 25, *id*; p. 147, *id*

²⁷ p. 25; *id*, *id*

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Court and related jurisprudence, the Court ruled in the affirmative.²⁸

It thus behooves accused Binay, Sr. to advance compelling reasons to prove that the Court erred in ruling that the allegations in the subject *Informations* sufficiently charged the constitutive elements of the aforesaid crimes. However, a simple perusal of accused Binay, Sr.'s motion for reconsideration easily reveals that it miserably failed to raise any new or persuasive arguments to prompt the Court to reverse its aforesaid findings; hence, his bid to reverse said findings must necessarily fail.

Further, as may be readily gleaned from the above enumerated arguments raised by accused Binay, Sr, the same are mere rehash, and/or re-phrasing, of the arguments he raised in his *Urgent Motion to Quash Information Ex Abundanti Ad Cautelam - Alternatively - Motion for Suspension of Proceedings*" dated September 21, 2017.²⁹ To be sure, these matters were already sufficiently passed upon by the Court in its assailed *Resolution*.³⁰

While it is true that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that the accused-movant failed to raise matters substantially plausible or compellingly persuasive to warrant his desired course of action.³¹

II. There is no legal basis for the Court to suspend the proceedings herein absent any temporary restraining order or injunctive writ issued by the Supreme Court.

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Accused Binay, Sr. insists that the principle of judicial courtesy applies to these cases because of the pendency of the

²⁸ Please refer to pp. 20-49 of the *Assailed Resolution*; pp. 844-873, Vol. III, Record.

²⁹ p. 299, Vol. III, *id*

³⁰ pp. 45-49, *Assailed Resolution*; pp. 869-873, *id*

³¹ *Shangri-La International Hotel Management, Ltd. Vs. Developers Group of Companies, Inc.*, 512 SCRA 143 (2007).

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petitions for certiorari which he filed before the Supreme Court. According to him, the first petition he filed before the Supreme Court questions the jurisdiction of the Ombudsman to investigate and indict him for the offenses charged at the time he was still an impeachable officer.³² On the other hand, his second petition raises issues emanating from the premature and improper consolidation of his cases with that of the other pending cases; hence, *“there is a strong probability that the proceedings before the Honorable Supreme Court may be rendered moot by the continued failure of this Honorable Court to abide by its own rules regarding the raffling of cases despite the fact that the consolidated cases do not involved common questions of fact and law.”*³³

The Court finds the said insistence futile.

As was already explained by the Court in its assailed *Resolution*, Section 7, Rule 65 of the Rules of Court explicitly mandates that the *“public respondent [Court] shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.”*

Accused Binay, Sr. admits anew that the Supreme Court has not issued any temporary restraining order or injunctive relief in his favor;³⁴ hence, the Court is duty-bound to proceed with the trial of these criminal cases.

There is simply no merit in accused Binay, Sr.’s insistence that the principle of judicial courtesy warrants the suspension of the proceedings in these criminal cases. As held by the Court in its assailed *Resolution*:

Accused Binay, Sr.’s invocation of the principle of judicial courtesy to sway the Court to suspend its proceedings is misplaced. The concept of judicial courtesy was explained by the Supreme Court in ***Trajano vs. Uniwide Sales Warehouse Club***, in this wise:

Trajano alleges in his petition that the RTC did not set the case for trial due to the pendency of CA-G.R. SP No. 95885 and subsequently, G.R.

³² Par. 85, p. 29, *Motion for Reconsideration*, p. 151, Vol. IV, Record

³³ Par. 90, pp. 30-31, *id*, pp. 152-153, *id*

³⁴ Par. 88, p. 30, *Motion for Reconsideration*, p. 152, Vol. IV, Record

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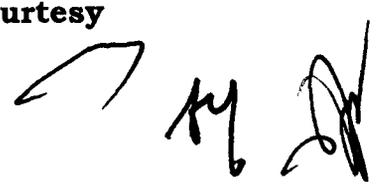
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No. 193972. **The mere pendency of a special civil action for certiorari commenced in relation to a case pending before a lower court does not automatically interrupt the proceedings in the lower court.** A petition for certiorari does not divest the lower courts of jurisdiction validly acquired over the case pending before them. A petition for certiorari, unlike an appeal, is an original action; it is not a continuation of the proceedings in the lower court. It is designed to correct only errors of jurisdiction, including grave abuse of discretion amounting to lack or excess of jurisdiction.

Under Section 7, Rule 65 of the Rules of Court, the higher court should issue against the public respondent a temporary restraining order or a writ of preliminary injunction in order to interrupt the course of the principal case. The petitioner in a Rule 65 petition has the burden of proof to show that there is a meritorious ground for the issuance of an injunctive writ or order to suspend the proceedings before the public respondent. He should show the existence of an urgent necessity for the writ or order, so that serious damage may be prevented. Nonetheless, even if an injunctive writ or order is issued, the lower court retains jurisdiction over the principal case.

Indeed, we introduced in *Eternal Gardens Memorial Park v. Court of Appeals* the principle of judicial courtesy to justify the suspension of the proceedings before the lower court even without an injunctive writ or order from the higher court. In that case, we pronounced that "[d]ue respect for the Supreme Court and practical and ethical considerations should have prompted the appellate court to wait for the final determination of the petition [for certiorari] before taking cognizance of the case and trying to render moot exactly what was before this [C]ourt". We subsequently reiterated the concept of judicial courtesy in *Joy Mart Consolidated Corp. v. Court of Appeals*.

We, however, have qualified and limited the application of judicial courtesy in *Go v. Abrogar* and *Republic v. Sandiganbayan*. **In these cases, we expressly delimited the application of judicial courtesy to maintain the efficacy of Section 7, Rule 65 of the Rules of Court, and held that the principle of judicial courtesy**



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applies only "if there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court." Through these cases, we clarified that the principle of judicial courtesy remains to be the exception rather than the rule.³⁵

Here, the Court should proceed to hear these criminal cases because there appears to be no strong probability that the issues brought by accused Binay, Sr. before the Supreme Court *via* his petitions for certiorari would be rendered moot and moribund by the continuation of the herein proceedings.

As admitted by accused Binay, Sr., the petition for certiorari he filed in the Supreme Court, which is docketed as **G.R. No. 223437-40**, touches on the issue of whether the Office of the Ombudsman has jurisdiction to conduct the investigation against him during his incumbency as the Vice-President of the Republic. To be sure, the continuation of the proceedings in these criminal cases would have no material bearing on the determination by the Supreme Court of the said primary issue since the Court is not even a party to the said petition.

On the other hand, accused Binay, Sr.'s petition for certiorari docketed as **G.R. No. 232739-52** assails the Court's *Resolutions* denying his *Motion to Raffle*. He claims in the said petition that the Court gravely abused its discretion when it ordered the consolidation of the criminal cases filed against him with the criminal cases pending before this Division of the Court. However, the continuation by the Court of its proceedings in these criminal cases would certainly not render moot and academic the issue brought by accused Binay, Sr. in the Supreme Court regarding the purported grave abuse of discretion committed by the Court.³⁶

FINAL WORD

The last paragraph of accused Binay, Sr.'s motion for reconsideration reads:

93. Accused Binay, Sr.'s hope for justice is the belief that the Honorable Court would not allow itself to be used in the sinister agenda of his political enemies to humiliate and harass

³⁵ Emphasis and underscoring supplied

³⁶ pp. 51-53, *Assailed Decision*, pp. 875-877, Vol. III, Record

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the Accused and tarnish his reputation. They have already succeeded in bringing down Accused's candidacy to be the President of the country by persecuting him in the eye of the public. Accused thus humbly comes to this Honorable Court to once again discharge its lawful mandate and stop this continued political persecution.³⁷

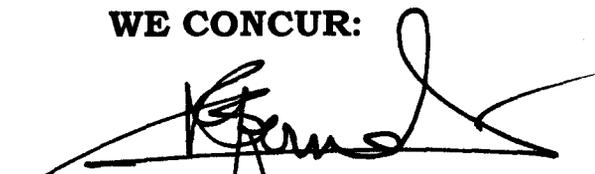
Let this be spread into the records of these cases. This Court has never been swayed by external forces nor will it ever allow itself to be so swayed or to be used by anyone, much more by the supposed perceived "political enemies" of accused Binay, Sr., whom he has not identified and the Court is not wont to know. All the resolutions of this Court in connection with these criminal cases, or in any case for that matter, were purely based on the Court's objective assessment of the applicable law, provisions of the Rules of Court and pertinent jurisprudence on the matter *vis a vis* the facts of the case. **NO MORE, NO LESS.**

WHEREFORE, the *Motion for Reconsideration Ex Abundanti Ad Cautelam (Re: Resolution dated 05 February 2018)* dated February 19, 2018, filed by accused Jejomar C. Binay, Sr. is **DENIED** for lack of merit.

SO ORDERED.


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice

³⁷ Par. 93, p. 31, *Motion for Reconsideration*; p. 153, Vol. IV, Record