



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-17-CRM-0023 to 0029
Plaintiff,

– versus –

For: Malversation of Public
Funds

LABUALAS B. MAMANSUAL,
and FRANCIS B. NADAR,
Accused.

Present:
LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

May 21, 2018 *Jal*

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RESOLUTION

LAGOS, J.:

Accused Mamansual and Nadar filed their *Motion to Quash Informations and To Dismiss the Above-Entitled Seven Cases*.¹ The prosecution filed its *Opposition* to the motion.²

In their motion, the accused seek the quashal of the Informations or the dismissal of these cases. They claim that there is a total delay of six (6) years and one (1) month, if the fact-finding investigation is included, or five (5) years and eight (8) months, if such investigation is excluded. They argue that this delay has violated their right to speedy disposition of their cases.

They state that a complaint was filed with the Office of the Ombudsman on 9 December 2011, which was subjected to a fact-finding investigation. Then, on 14 May 2012, the same office's Field

¹ Record, pp. 410-473. They also prayed for the cancellation of the arraignment and pre-trial scheduled on 20 April 2018, which was cancelled and reset by the Court in its Order of 20 April 2018.

² Id., pp. 477-481.

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Investigation Office filed a complaint which was then subjected to a preliminary investigation. This was terminated when the Office of the Ombudsman filed two criminal cases, SB-16-CRM-0463 and 0464, with the Court on 3 August 2016. These cases were raffled to the Court's First Division.

The accused thereafter recounted proceedings in these two cases, which proceedings resulted in the withdrawal of the same and the filing of seven (7) cases on 13 January 2017, which were raffled to this Court's Division. These seven (7) cases are the present cases that the accused seek to dismiss.

In its opposition, the prosecution argues that the accused failed to support their claim of inordinate delay. It points out that the accused discussed matters that were already passed upon, specifically the withdrawal of the two previously filed cases. It also claims that the accused have belatedly raised their claim of inordinate delay, as these cases are already set for arraignment and pre-trial. It concludes by stating that the grounds relied upon are not those listed under Rule 117, sec. 3 of the Rules of Court.

DISCUSSION and RULING

The motion lacks merit.

It is noted that the ground invoked for the motion to quash is not clearly stated, much less discussed. The only mention of the apparent grounds relied upon are in the last paragraph of the motion, just before the prayer for reliefs, when the accused state that their cited antecedents resulted in the Office of the Ombudsman's loss of authority to file the Informations, which also affects the Court's jurisdiction. But these grounds are not substantiated.

The function of a motion to quash is to test the validity of the Information on its face.³ There is no discussion how the cited antecedents invalidate the Informations of these cases or how they actually affect the authority of the Office of the Ombudsman to file the Informations. The authority of the Ombudsman to file these cases is governed by the Constitution and the law.⁴ The accused have not shown why or how the Ombudsman could have lost such authority.

As regards the motion to dismiss these cases, it is well-settled that in determining whether there has been a violation of the right to speedy disposition of cases, four factors must be examined: (1) the

³ Galzote v. Briones, G R. No. 164682, 14 September 2011.

⁴ See CONST., art. XI, sec. 12 and 13; Rep. Act No. 6770, sec. 11 and 15.

length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.⁵

It is not clear what period is considered by the accused to be inordinate. The Court sees two different proceedings lumped together by the accused. The first is the conduct of the fact-finding investigation and preliminary investigation proper by the Office of the Ombudsman, prior to the filing of the two (2) criminal cases. The second is the proceedings for the two (2) criminal cases, SB-16-CRM-0463 and 0464 up to the filing of these present seven (7) cases. In all of these, the accused have not discussed the four factors to be examined and balanced to determine whether their right to speedy disposition has been violated.

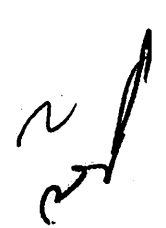
With respect to the first proceedings, the accused simply mention the dates of the filing of the original complaint-affidavit, the FIO's complaint-affidavit, and the filing of SB-16-CRM-0463 and 0464. There is no mention of specific events that would even tend to establish fault on the part of the Office of the Ombudsman. The accused simply calculated the time period elapsed between the start and end of the proceedings in the Office of the Ombudsman.

The original complaint-affidavit was filed on 9 December 2011. The fact-finding investigation for this was terminated when the FIO filed its complaint-affidavit on 14 May 2012, or after only about five (5) months from the filing of the original complaint. The preliminary investigation proper took nearly four (4) years and three (3) months. Without substantiation or even a description of the events within this period, no unreasonable delay can be attributed to the Office of the Ombudsman.

As regards the court proceedings for SB-16-CRM-0463 and 0464, the Court sees no delay that may constitute a violation of the accused's right to speedy disposition of cases or even to a speedy trial. There is not even delay that may be attributed to the Office of the Ombudsman or the prosecution. The procedure for the withdrawal of these two criminal cases were followed. These present seven (7) cases were then seasonably filed.

To recall, the prosecution withdrew the Information for SB-16-CRM-0464, which charged violation of article 216 of the Revised Penal Code, and the Information for SB-16-CRM-0463, which charged malversation. In place of SB-16-CRM-0463, the Office of the

⁵ Coscolluela v. Sandiganbayan, G.R. No. 191411 & 191871, 15 July 2013.



Ombudsman filed these present seven (7) cases against accused Mamansual and Nadar only.

The accused's lumping of the proceedings appears to have been made to project an elongated period of delay. But, a review of the cited period shows that there is really no delay. Without anything more than a narration of key dates, the Court cannot find that delay in the period cited by accused as inordinate, whether such is viewed altogether or as component proceedings.

Without properly establishing the complained delay, the accused also failed to show the reasons for the delay.

With regard to the third factor, there have been a number of decided cases on how to treat the actions of an accused during and after the preliminary investigation stage. As discussed in *Remulla v. Sandiganbayan*,⁶ this must be related to the other factors:

"Based on the foregoing, there is no conflict between the first and the second set of cases. In the first set, the Court did not solely rely on the failure of the accused to assert his right; rather, the proper explanation on the delay and the lack of prejudice to the accused were also considered therein. In the same manner, the Court in the second set of cases took into account several factors in sustaining the right of the accused to a speedy disposition of cases, such as the length of delay, the failure of the prosecution to justify the period of delay, and the prejudice caused to the accused. The utter failure of the prosecution to explain the delay of the proceedings outweighed the lack of follow ups from the accused.

Accordingly, both sets of cases only show that "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc basis*." To reiterate, none of the factors in the balancing test is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances. xxx xxx"

That the motion was filed as a pre-arraignment remedy does not, by itself, mean that the accused have acted belatedly. However, a review of the circumstances of these cases leads the Court to take the third factor against the accused.

It is clear that the accused have had multiple opportunities to raise the issue of inordinate delay. When the first two (2) criminal cases were filed, the accused could have questioned the length of the preliminary investigation. Then, after the cases were withdrawn and these present seven (7) cases were filed, the accused could also have

⁶ G.R. No. 218040, 17 April 2017.

raised the issue of inordinate delay much earlier. They instead asked for the conduct of a preliminary investigation, which has several implications.

Seeking a new preliminary investigation seems incongruent with the notion that these cases have been delayed since such new preliminary investigation will inevitably prolong the cases. If they thought there was already an inordinate delay, their prayer for the preliminary investigation compounded such delay.

This is not to say that the preliminary investigation was not warranted because, as previously ruled by the Court, a new preliminary investigation had to be conducted as a matter of due process. The point is that the timing of the current motion to dismiss affects its efficacy. Procedurally, the accused's arguments on inordinate delay could be considered barred under the omnibus motion rule.⁷

The accused also failed to discuss or even identify any prejudice to them caused by the supposed delay. Also, in asking for a new preliminary investigation, the accused thereby showed their intent and willingness to submit controverting evidence or arguments. At the very least, this shows that they believe that they have available defenses to resist the criminal prosecution.

It is clear that the accused have failed to support their motion to dismiss these cases. They failed to even identify the four factors which are relevant to the determination of violations of the right to speedy disposition of cases. Instead of discussing these factors, they engaged in a mere mathematical reckoning of the period constituting the alleged delay, which is specifically proscribed.

The accused also questioned the prosecution's conclusion in its preliminary investigation and recommendation to maintain these seven (7) cases. They opine that these cases ceased to exist when a new preliminary investigation was ordered.

This is an erroneous view of these proceedings. When the Court ordered the conduct of a preliminary investigation, these cases were certainly not dismissed but merely suspended until the completion of the preliminary investigation. The accused actually prayed for and the Court declared the suspension of proceedings. The order to conduct a new preliminary investigation does not impair this Court's jurisdiction of these cases.⁸

⁷ Rule 15, sec. 8, which provides: "Section 8. Omnibus motion. — Subject to the provisions of section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived."

⁸ Villaflo v. Vivar, G.R. No. 134744, 16 January 2001.


The prosecution's observation that the accused's motion merely reiterated matters that were already passed upon is well-taken. A reading of the motion shows that a substantial portion of it was dedicated to a narration of past events which have no bearing upon the accused's prayer for quashal of the Informations or dismissal of the cases.


WHEREFORE, the motion is hereby **DENIED**. The arraignment and pre-trial shall proceed as previously set to 25 May 2018 at 8:30 in the morning.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson

WE CONCUR:


**MARIA THERESA V.
MENDOZA-ARCEGA**
Associate Justice


**MARYANN E. CORPUS-
MAÑALAC**
Associate Justice