Republic of the Philippines
SANDIGANBAYAN
Quezon City

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

CASIMIRO M. YNARES, JR., *et al.*,
Accused.

SB-17-CRM-0172-0173
For: *Violation of Section 3 (e) of R.A. No. 3019*

SB-17-CRM-0174-0175
For: Violation of Section 3 (g) of R.A. No. 3019

Present:
CABOTAJE-TANG, *P.J.*,
Chairperson,
FERNANDEZ, B. *J.* and
FERNANDEZ, S.J.[1] *J.*
Promulgated:

MAY 22, 2018

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R E S O L U T I O N

CABOTAJE-TANG, P.J.:

For resolution is the *Motion for Reconsideration dated December 19, 2017*,[2] filed by accused Casimiro M. Ynares and Romulo P. Arcilla, Jr., seeking reconsideration of the Court's *Resolution* promulgated on November 29, 2017. This *Resolution* denied, among other motions, said accused-movants' *Motion to Quash* dated September 28, 2017.[3]

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[1] J. Sarah Jane T. Fernandez, now Chairperson of the Sixth Division per *Administrative Order No. 314-2017* dated September 13, 2017, is a signatory to the assailed *Resolution*.
[2] p. 574, Vol. II, Record
[3] p. 433, *id*

The subject motion for reconsideration is anchored on the following arguments:

1. The Court erred in treating the accused-movants' motion to quash as a motion for reconsideration of the Court's earlier *Resolution* promulgated on August 25, 2017, considering that "*the same clearly states specific grounds and relief seeking to quash the informations filed and not seeking to reconsider any resolution of this Honorable Court*";[4]

1.1 The filing of their respective omnibus motions "*is akin to a special appearance,*"[5] conformably with the teachings of the Supreme Court in ***Miranda vs. Tuliao***;[6]

2. There is a ground to quash the subject *Informations* because the accused-movants alleged in their motion to quash that "*the information charges no offense*";[7]

3. The *Informations* in **SB-17-CRM-0172** and **SB-17-CRM-0173** allege that the "accused have acted with manifest partiality, evident bad faith or inexcusable negligence." "*This alone is a manifestation that indeed the informations alleged no offense as the informations is not even clear whether accused committed the acts either with (a) manifest partiality; (b) evident bad faith; OR (c) inexcusable negligence*";[8]

4. The undue injury or unwarranted benefits mentioned under Section 3 (e) of Republic Act (R.A.) No. 3019 "*should be in relation to the issuance or grant of licenses, permits or other concessions*;[9] and

5. Their criminal liability has been extinguished because the prosecution failed to adduce any plausible explanation for the delay in the preliminary investigation up to the filing of the *Informations* in these cases.[10]

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[4] Par. 5, p. 2, *Motion for Reconsideration*; p. 575, *id*
[5] par. 7, *id*; *id*
[6] 520 Phil. 907 (2006)
[7] Par. 12, p. 3, *Motion for Reconsideration*; p. 576, Vol. II, Record
[8] Par. 14, p. 4, *id*; p. 577, *id*
[9] Par. 19, p. 4, *id*; p. 577, *id*
[10] Par. 24, p. 5, *id*; p. 578, *id*

THE PROSECUTION'S COMMENT/OPPOSITION

On January 17, 2018, the prosecution submitted its *Comment/Opposition Re: Accused Casimiro Ynares and Romulo Arcilla, Jr.'s Motion for Reconsideration dated December 19, 2017.*[11] Therein, it prays for the denial of the subject motion because "*there is no cogent reason for the Honorable Court to reverse its findings in the Resolution dated 29 November 2017.*"[12]

THE RULING OF THE COURT

After a judicious evaluation of the arguments raised by the accused-movants in their subject motion for reconsideration and the comment/opposition thereto of the prosecution, the Court resolves to deny the same for reasons hereinafter discussed.

I. The Court properly treated the accused-movants' motion to quash as a motion for reconsideration of the Court's Resolution promulgated on August 27, 2017.

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The accused-movants assert that the Court erred in treating their *Motion to Quash* dated September 28, 2017,[13] as a motion for reconsideration of the Court's *Resolution* promulgated on August 25, 2017. According to them, the "*subject matter of the Resolution dated 25 August 2017 is the Omnibus Motion (1. To Suspend Proceedings 2. To Hold in Abeyance the Issuance of A Warrant of Arrest or 3. To Quash Information). In moving for the dismissal of the Informations, accused Ynares and Arcilla invoked their constitutional right as provided under Section 16, Article III of the 1987 Constitution. The ground for dismissal in the Omnibus Motion is not Section 3, Rule 117 of the Rules on Criminal Procedure.*"[14]

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[11] p. 593, *id*
[12] Par. 3, p. 2, *Comment/Opposition*; p. 594, *id*
[13] p. 433, *id*
[14] Par. 6, p. 2, *Motion for Reconsideration*; p. 575, *id*

The Court finds the aforesaid argument devoid of merit.

As stated in the assailed *Resolution*, prior to filing their motion to quash, accused Ynares filed an "*Omnibus Motion 1. To Suspend Proceedings, 2. To Hold in Abeyance the Issuance of Warrant of Arrest or, 3. To Quash Information* dated February 13, 2017."[15] Also, accused Arcilla, Jr. similarly filed an "*Omnibus Motion 1. To Suspend Proceedings, 2. To Hold in Abeyance the Issuance of Warrant of Arrest, or 3. To Quash Information* dated February 13, 2017."[16] In both omnibus motions, the accused-movants uniformly moved to quash the subject *Informations* because of the alleged inordinate delay which led to the purported violation of their right to a speedy disposition of their cases.

On the other hand, the accused-movants, in their motion to quash, claim that the subject *Informations "have been extinguished"*[17] because of the "*failure of the Office of the Ombudsman to immediately investigate, conduct preliminarily investigation and resolve the issues constitute the extinguishment of* [their] *criminal liability.*"[18]

To be sure, this issue on the purported inordinate delay was already squarely passed upon by the Court in its *Resolution* promulgated on August 27, 2017.[19] It was likewise sufficiently addressed by the Court in its assailed *Resolution.*[20]

Plainly, the accused-movants raised the same issue of inordinate delay in their motion to quash which they had earlier raised in their omnibus motion albeit differently phrased. The Court cannot thus be justly blamed for treating their motion to quash as a motion for reconsideration of its *Resolution* promulgated on August 27, 2017.

For the third time, through the subject motion for reconsideration, the accused-movants insist that there was inordinate delay in the conduct by the Office of the Ombudsman of the preliminary investigation of their case which warrants the dismissal of their cases. According to them, there "*was no*

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[15] pp. 525-555, Volume I, Record
[16] pp. 799-834, *id*
[17] p. 3, Accused Ynares and Arcilla, Jr.'s *Motion to Quash*; p. 435, *id*
[18] Par. 9, p. 3, *id*; *id*
[19] pp. 9-22 and 37-43, *Resolution* promulgated on August 27, 2017; pp. 67-80 and 95-101, Volume II, Record
[20] pp. 7-11, *Assailed Resolution*; pp. 551-555, Volume II, Record

plausible explanation provided by the Prosecution for such delay."[21]

As discussed above, the issue relative to the purported delay which attended the preliminary investigation of these cases had long been settled by the Court in its *Resolutions* promulgated on August 27, 2017 and November 29, 2017. In any case, the accused-movants miserably failed to raise matters substantially plausible or compellingly persuasive to prompt the Court to reconsider its earlier finding thereon.

The accused-movants' reliance on ***Miranda vs. Tuliao***,[22] in claiming that the Court should not have treated their motion to quash as a motion for reconsideration is misplaced.

The *lis mota* of ***Miranda*** is whether an accused, who is not yet arrested or otherwise deprived of their liberty, may seek any judicial relief from the Court. In answering the said issue, Supreme Court distinguished between custody of the law and jurisdiction over the person, thus:

> Our pronouncement in *Santiago* shows a distinction between *custody of the law* and *jurisdiction over the person.* Custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused. Custody of the law is accomplished either by arrest or voluntary surrender, while jurisdiction over the person of the accused is acquired upon his arrest or voluntary appearance. One can be under the custody of the law but not yet subject to the jurisdiction of the court over his person, such as when a person arrested by virtue of a warrant files a motion before arraignment to quash the warrant. On the other hand, one can be subject to the jurisdiction of the court over his person, and yet not be in the custody of the law, such as when an accused escapes custody after his trial has commenced. Being in the custody of the law signifies restraint on the person, who is thereby deprived of his own will and liberty, binding him to become obedient to the will of the law. Custody of the law is literally custody over the body of the accused. It includes, but is not limited to, detention.
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> The statement in *Pico v. Judge Combong, Jr.*, cited by the Court of Appeals should not have been separated from the issue in that case, which is the application for admission to bail of

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[21] Par. 24, p. 5, *Motion for Reconsideration*; p. 578, Vol. II, Record
[22] 520 Phil. 907 (2006)

someone not yet in the custody of the law. The entire paragraph of our pronouncement in *Pico* reads:

> A person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. A person who has not submitted himself to the jurisdiction of the court has no right to invoke the processes of that court. Respondent Judge should have diligently ascertained the whereabouts of the applicant and that he indeed had jurisdiction over the body of the accused before considering the application for bail.

While we stand by our above pronouncement in *Pico* insofar as it concerns bail, we clarify that, as a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. As we held in the aforecited case of *Santiago*, seeking an affirmative relief in court, whether in civil or criminal proceedings, constitutes voluntary appearance.

Pico deals with an application for bail, where there is the special requirement of the applicant being in the custody of the law. In *Feliciano v. Pasicolan*, we held that "[t]he purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is free. Thus, 'bail is the security required and given for the release of a person who is in the custody of law.'" The rationale behind this special rule on bail is that it discourages and prevents resort to the former pernicious practice wherein the accused could just send another in his stead to post his bail, without recognizing the jurisdiction of the court by his personal appearance therein and compliance with the requirements therefor.

There is, however, an exception to the rule that filing pleadings seeking affirmative relief constitutes *voluntary appearance*, and the consequent submission of one's person to the jurisdiction of the court. This is in the case of pleadings whose prayer is precisely for the avoidance of the jurisdiction of the court, which only leads to a *special appearance*. These pleadings are: (1) *in civil cases*, motions to dismiss on the ground of lack of jurisdiction over the person of the defendant, whether or not other grounds for dismissal are included; (2) in *criminal cases*, motions to quash a complaint on the ground of lack of jurisdiction over the person of the accused; and (3) motions to quash a warrant of arrest. The first two are consequences of the fact that failure to file them would constitute a waiver of the defense of lack of jurisdiction over the person. The third is a consequence of the fact that it is the very legality of the court process forcing the submission of the person of the accused that is the very issue in a motion to quash a warrant of arrest.

> To recapitulate what we have discussed so far, in criminal cases, jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when he invokes the special jurisdiction of the court by impugning such jurisdiction over his person. Therefore, in narrow cases involving special appearances, an accused can invoke the processes of the court even though there is neither jurisdiction over the person nor custody of the law. However, if a person invoking the special jurisdiction of the court applies for bail, he must first submit himself to the custody of the law.

Here, there is no issue as to the jurisdiction of the Court over the persons of the accused-movants as they have already sought affirmative relief from the Court numerous times as evidenced by their filing of the omnibus motions and the subject motion to quash. In fact, accused Ynares recently invoked again the jurisdiction of the Court when he filed his *Motion for Leave to Travel Abroad* dated February 8, 2018,[23] where he prayed that he be allowed to travel to the United States of America on March 21, 2018 to April 1, 2018. In a *Minute Resolution* dated February 20, 2018, the Court granted the said motion.[24]

II. There is no ground to quash the Informations charging the accused-movants with the crime of violation of Section 3 (e) of R.A. No. 3019.
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The accused-movants fault the Court in applying Section 9, Rule 117 of the Rules of Court[25] in denying their motion to quash. According to them, they are not deemed to have waived their right to file a motion to quash the *Information* because the "Information charges no offense," which is an exception under the aforesaid provision of the Rules of Court.

The Court finds the said argument devoid of merit.

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[23] p. 672, Vol. II, Record
[24] p. 684, *id*
[25] Section 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

Among the grounds relied upon by the accused-movants in moving to quash the subject *Informations* was the purported failure of the allegations in the said *Informations* to charge an offense. It is worthy to note, however, that such claim is anchored on the assertion that there "*was no allegation in the Informations that accused Ynares and Arcilla are public officers and employees charged with the grant of licenses and permits or other concessions.*"[26]

As held by the Court in its assailed *Resolution*, the said allegation is not required for a successful prosecution under Section 3 (e) of R.A. No. 3019.[27] Notably, the accused-movants did not include the same argument in their respective omnibus motions they earlier filed which likewise sought to quash the subject *Informations*.

At any rate, the Court did not merely deny the accused-movants' motion to quash because of their failure to comply with Section 9, Rule 117 of the Rules of Court. Had the accused-movants properly and objectively analyzed the Court's assailed *Resolution*, they would have surely realized that the Court in fact addressed why their argument, *i.e.*, they are not public officers and employees charged with the grant of licenses and permits or other concessions, is not a sufficient ground to quash the subject *Informations*.

Also, if the accused-movants judiciously perused the assailed *Resolution*, they would not insist on claiming that Section 3 (e) of R.A. No. 3019 limits its application "*to officers and employees of office or government corporations charged with the grant of licenses, permits or other concessions.*"[28] Again, the said argument was already passed upon by the Court in its assailed *Resolution*. Thus:

> At any rate, even if the Court glossed over the said error, there is still no valid reason to quash the subject *Informations*. It is now firmly settled that Section 3 (e) of R.A. No. 3019 is applicable to any public officer or employee although the latter is ***not*** connected with government offices or corporations charged with the grant of licenses or permits or other concessions. The teachings of the Supreme Court in ***Consigna vs. People***,[29] illumine:

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[26] Par. 2, p. 1, *Motion to Quash*; p. 433, Vol. II, Record
[27] pp. 12-13, *Assailed Resolution*; pp. 556-557, Vol. II, Record
[28] Par. 18, p. 4, *Motion for Reconsideration*; p. 577, Vol. II, Record
[29] 720 SCRA 350 (2014)

Given the above disquisition, it becomes superfluous to dwell further on the issue raised by petitioner that Sec. 3(e) applies only to officers and employees of offices or government corporations charged with the grant of licenses or other concessions. **Nonetheless, to finally settle the issue, the last sentence of the said provision is not a restrictive requirement which limits the application or extent of its coverage. This has long been settled in our ruling in *Mejorada v. Sandiganbayan*, where we categorically declared that a prosecution for violation of Sec. 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions."** Quoted hereunder is an excerpt from *Mejorada*:

> Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers (sic) declared unlawful. Its reference to "any public officer" is without distinction or qualification and it specifies the acts declared unlawful. **We agree with the view adopted by the Solicitor General that the last sentence of paragraph [Section 3] (e) is intended to make clear the inclusion of officers and employees of officers (sic) or government corporations which, under the ordinary concept of "public officers" may not come within the term. It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting licenses or permits or other concessions**. (Emphasis and underscoring supplied)

The above pronouncement was reiterated in ***Cruz v. Sandiganbayan***, where the Court affirmed the ***Mejorada* ruling that finally puts to rest any erroneous interpretation of the last sentence of Sec. 3(e) of the Anti-Graft Law**.[30]

Finally, the accused-movants insist that the *Informations* in **SB-17-CRM-0172** and **SB-17-CRM-0173** charging them with the crime of violation of Section 3 (e) of R.A. No. 3019 should be quashed because the allegation therein that the "*accused have acted with manifest partiality, evident bad faith*

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[30] pp. 12-13, *Assailed Resolution*; pp. 556-557, Vol. II, Record

or inexcusable negligence," is a manifestation that the *Informations* allege no offense as it is not even clear whether they committed the acts either with (a) manifest partiality; (b) evident bad faith; OR (c) inexcusable negligence.

The Court finds the insistence puerile.

In its *Resolution* promulgated on August 27, 2017,[31] the Court found the allegations in the subject *Informations* sufficient and discussed the basis for such finding.

At any rate, the fact that the *Informations* in **SB-17-CRM-0172** and **SB-17-CRM-0173** allege that "*accused have acted with manifest partiality, evident bad faith or inexcusable negligence,*" does not mean that said *Informations* are uncertain on how the herein accused committed the crime. As correctly argued by the prosecution, the allegation in the subject *Informations* that the accused-movants acted with manifest partiality, evident bad faith or gross inexcusable negligence, does not mean that they are being charged with three (3) distinct offenses. The said allegation merely describes the different modes of committing the offense as defined under Section 3 (e) of R.A. No. 3019 as held by the Supreme Court in ***Bautista vs. Sandiganbayan***,[32] to wit:

> By analogy, *Gallego v. Sandiganbayan* finds application in the instant case. There, petitioners claimed that the Information charged the accused with three (3) distinct offenses, to wit: (a) the giving of "unwarranted" benefits through manifest partiality; (b) the giving of "unwarranted" benefits through evident bad faith; and, (c) the giving of "unwarranted" benefits through gross inexcusable negligence while in the discharge of their official and/or administrative functions; and thus moved for the quashal of the Information. **The Sandiganbayan denied the motion to quash and held that the phrases "manifest partiality," "evident bad faith" and "gross inexcusable negligence" merely described the different modes by which the offense penalized in Sec. 3, par. (e), of RA 3019, as amended, could be committed, and the use of all these phrases in the same Information did not mean that the indictment charged three (3) distinct offenses.**[33]

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[31] pp. 37-43, *Resolution* promulgated on August 27, 2017; pp. 95-101, Volume II, Record
[32] 387 Phil. 872 (2000)
[33] Emphasis supplied

WHEREFORE, the *Motion for Reconsideration dated December 19, 2017*, filed by accused Casimiro M. Ynares and Romulo P. Arcilla, Jr., is ***DENIED*** for lack of merit.

SO ORDERED.
Quezon City, Philippines

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice

SARAH JANE T. FERNANDEZ
Associate Justice