REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

MARIANO Y. BLANCO III, ET AL.,
Accused.

SB-17-CRM-2169 to 2183
For: Violation of Section 3(e) of R.A. No. 3019, as amended

Present

FERNANDEZ, SJ, *J.,*
Chairperson
MIRANDA, *J.* and
VIVERO, *J.*

Promulgated:

JUN 27 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Mariano Y. Blanco III's *Motion to Quash Information/Judicial Determination of Probable Cause*.[1]

Accused Blanco prays that this Court quash the fifteen (15) Informations in the present cases for failure to allege facts constituting an offense and that the cases be dismissed as to him for failure to establish probable cause. He avers:

1. Under Rule 117, Sec. 2 of the Rules of Court, a motion to quash may be based on factual and legal grounds. Therefore, it follows that facts outside the Information may be introduced to prove such grounds.

2. In *Garcia v. Court of Appeals* and *People v. De La Rosa*, citing *People v. Navarro*, the Supreme Court held that facts outside the information may be introduced even where the ground

[1] Dated May 2, 2018; Record, pp. 280-291

invoked is that the allegations in the information do not constitute the offense charged.

3. The fifteen (15) Informations in the present cases do not charge an offense because they do not allege the elements of (a) acting through manifest partiality, evident bad faith, or gross inexcusable negligence, and (b) causing any undue injury to any party, including the Government, or giving any unwarranted benefits, advantage or preference.

4. There could have been no undue injury caused or unwarranted benefits, advantage or preference given because there is no law expressly penalizing the facts charged in the Information, *i.e.* the failure to post the invitation to bid notice in the PhilGEPS.

5. The Informations do not indicate how such failure to post such invitation to bid may have caused undue injury or the giving of unwarranted benefits. Assuming that the same was proven, it must still be shown to have been done with manifest partiality, evident bad faith or gross inexcusable negligence.

6. Private complainant Jonald Ungab, in his Complaint-Affidavit, failed to indicate how injury or the giving of unwarranted benefits was caused.

7. Private complainant even admitted that invitations to apply for eligibility and to bid were posted at the bulletin board of the Municipality of Ronda. Moreover, Notices were sent to the Commission on Audit (COA) every time a bidding was conducted by the Bids and Awards Committee (BAC) of Ronda.

8. The surrounding circumstances, in its entirety, would show that the BAC members complied with the bidding rules, except for the contentious issue of the online posting.

9. The alleged unwarranted benefits are only mere speculation. There is no proof that the winning bidder unduly benefited from the alleged acts of the accused.

10. At the time of the alleged commission of the offense, internet connection was scarce or unavailable. The parties, despite all efforts, simply could not have posted the invitations to bid.

11. There is a need for a judicial determination of probable cause to prevent unnecessary litigation.

    a. Under Rule 112, Sec. 5(a) of the Rules of Court, a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause.

b. He should not have been included in the charges because there is nothing in the Informations that suggests that he is complicit in the facts charged.

c. The posting of the Invitation to Bid, Notice of Award and Notice to Proceed are functions of the BAC Secretariat. He had no involvement in such posting.

d. He was implicated by reason of his position as Municipal Mayor of Ronda, on the basis of the principle of command responsibility.

e. He was exonerated by the Office of the Ombudsman in the administrative charges against him.

f. He could only be held responsible for acts he personally committed. He cannot be held liable for acts allegedly committed by his co-accused.

In its *Comment/Opposition (To the Motion to Quash Information/Judicial Determination of Probable Cause)*, [2] the prosecution counters:

1. A motion to quash on the ground that the facts charged do not constitute an offense raises the issue of whether or not the allegations in the information are sufficient to establish the elements of the crime charged without considering matters *aliunde*.

2. The presence or absence of the elements of the crime are evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.

3. Sections 8 and 21 of R.A. No. 9184 provide that all Invitations to Bid (ITB) for contracts under competitive bidding shall be advertised and posted by the Procuring Entity in the PhilGEPS. The Informations allege that the accused did not observe such mandatory requirement, and thereby gave the winning contractor unwarranted benefit, advantage or preference.

4. An Information is required only to state the ultimate facts constituting the offense. It is not necessary to allege the finer details of why and how the offense was committed.

5. Under the *Revised Guidelines for Continuous Trial of Criminal Cases*, a motion for judicial determination of probable cause is a prohibited motion and should be denied outright.

[2] Dated May 28, 2018; Record, pp. 295-301

6. Accused Blanco voluntarily surrendered to the Court's jurisdiction when he posted bail for his provisional liberty after the issuance of a warrant of arrest against him. He has, thus, waived his right to object.

7. The Informations allege conspiracy as a mode of committing the crime. It is not necessary to state the participation of each of the accused. Each of the conspirators will be equally responsible for the acts of the others.

THE COURT'S RULING

The Court resolves to deny accused Blanco's Motion.

First, the matter of judicial determination of probable cause. Under the *Revised Guidelines for Continuous Trial of Criminal Cases*,[3] a motion for judicial determination of probable cause is a prohibited motion. III. 2. (b) i. thereof reads:

> (b) *Prohibited Motions.* – Prohibited motions shall be denied outright before the scheduled arraignment without need of comment and/or opposition.
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> The following motions are prohibited:
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> i. Motion for judicial determination of probable cause.

Even assuming that such motion for judicial determination of probable cause is not among the prohibited motions, accused Blanco's motion still fails. In *Leviste v. Alameda*,[4] it was held:

> The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is a necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. Paragraph (a), Section 5, Rule 112[5] of the Rules of Court outlines the procedure to be followed by the RTC.

[3] A.M. No. 15-06-10-SC

[4] G.R. No. 182677, August 3, 2010

[5] **Sec. 5.** *When warrant of arrest may issue.* – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a

> To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is *first* and *foremost* to determine the existence or non-existence of probable cause for the arrest of the accused.

Long before accused Blanco filed his motion, this Court, in the Resolution dated December 15, 2017,[6] already performed its duty when it determined the existence of probable cause and ordered the issuance of a warrant of arrest[7] against the accused.

Now, the matter of accused Blanco's Motion to Quash Information on the ground that the facts charged do not constitute an offense.[8]

A motion to quash on the ground that the facts charged do not constitute an offense assails the sufficiency of the Information. In resolving a motion to quash on such ground, the Court only considers the allegations in the Information, and need not go beyond its four corners. In *People v. Sandiganbayan*,[9] it was held:

> A motion to quash an Information on the ground that the facts charged do not constitute an offense should be resolved on the basis of the allegations in the Information whose truth and veracity are hypothetically admitted. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters aliunde. In proceeding to resolve this issue, courts must look into three matters: (1) what must be alleged in a valid Information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

Rule 110, Sec. 6 of the Rules of Court provides for the contents of a sufficient Information. To wit:

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commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

[6] Record, p. 149

[7] Dated December 15, 2017; Record, p. 154

[8] *Rules of Court*. Rule 117, Sec. 3(a)

[9] G.R. No. 160619, September 9, 2015

> **Sec. 6.** *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
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> When an offense is committed by more than one person, all of them shall be included in the complaint or information.
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> (underscoring supplied)

The Information in the present cases charge the accused with violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019). The essential elements of the offense are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;

2. The accused must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3. Such action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his or her functions.[10]

The Information in Crim. Cases No. SB-17-CRM-2169 to 2183 are similarly worded, except for the dates of the alleged commission of the offense and the subject projects. The Information in Crim. Case No. SB-17-CRM-2169 alleges the following:

1. The accused, namely Mariano Y. Blanco III (Municipal Mayor), Oscar M. Pilapil (BAC Chairman), Thelma R. Landiza (BAC Vice-Chairman), Brigida M. Cabaron, Frauline F. Requilme and Evelina Tan (BAC Members), are all public officers discharging official and administrative functions.

2. The accused, committing the offense in relation to, and taking advantage of their office, conniving, confederating and mutually helping one another, and acting with manifest partiality, evident bad faith or gross inexcusable negligence, proceeded with the public bidding for the supply of materials for the construction of 2

[10] *Consigna v. People*, G.R. No. 175750-51, April 2, 2014

CL school building at Madanglog Elementary School, Vive, Ronda, Cebu, despite the fact that the Invitation to Bid (ITB) for said project was not posted on the PhilGEPS, as mandatorily required under Sections 8 and 21 of R.A. No. 9184 and its Implementing Rules and Regulations (IRR).

3. Through the aforementioned act of the accused, the winning private contractor to whom the contract was awarded, was given unwarranted benefit, advantage and preference, to the damage and injury of the Municipality of Ronda, Province of Cebu.

The Court finds that the Informations sufficiently allege all the elements of violation of Sec. 3(e) of R.A. No. 3019. The rest of accused Blanco's arguments are matters of defense which are better threshed out during the trial on the merits.

Accused Blanco's claim that introduction of facts outside the Information may be allowed even where the motion to quash is on the ground that the facts charged do not constitute an offense is untenable. Indeed, Rule 117, Sec. 2[11] of the Rules of Court provides that the motion to quash may be based on factual and legal grounds. However, it must be emphasized that the facts charged do not constitute an offense is but one ground for a motion to quash. A motion to quash may also be based on other grounds such as prescription[12] or double jeopardy,[13] which would necessitate an inquiry into facts outside the Information.

Accused Blanco's reliance on *Garcia v. Court of Appeals*[14] and *People v. De La Rosa*,[15] citing *People v. Navarro*,[16] is also misplaced. In *Garcia*, the motion to quash was on the ground of prescription. On the other hand, in *De La Rosa*, it was held that facts outside the Information itself may be introduced even if the motion to quash is on the ground that the facts charged do not constitute an offense, but only as an exception to the general rule. This was clarified in *Valencia v. Sandiganbayan*.[17]

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[11] **Sec. 2.** *Form and contents.* – The motion to quash shall be in writing, signed by the accused or his counsel and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except lack of jurisdiction over the offense charged. (underscoring supplied)

[12] Rule 117, Sec. 3(g)

[13] Rule 117, Sec. 3(i)

[14] G.R. No. 119063, January 27, 1997

[15] G.R. No. L-34112, June 25, 1980

[16] G.R. Nos. L-1 and L-2, December 4, 1945

[17] G.R. No. 141336, June 29, 2004

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In *Valencia*, it was explained that the general rule remains to be that a motion to quash on the ground that the facts charged do not constitute an offense should be resolved only on the basis of the allegations in the Information. However, as in the cases of *De La Rosa* and *Navarro*, the introduction of facts outside the Information may be allowed, but only as an exception to the general rule. *Viz.*:

> Save where the Rules expressly permit the investigation of facts alleged in a motion to quash, the general rule is that in the hearing of such motion, only such facts as are alleged in the information, and those admitted by the prosecutor, should be taken into account in the resolution thereof. Matters of defense can not be produced during the hearing of such motions, except where the rules expressly permit, such as extinction of criminal liability, prescription and former jeopardy. Otherwise put, facts which constitute the defense of the accused against the charge under the information must be proved by them during the trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.
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> As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. The information need only state the ultimate facts; the reasons therefor could be proved during the trial.
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> The fundamental test in reflecting on the viability of a motion to quash under this particular ground is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in the law. In this examination, matters *aliunde* are not considered. However, inquiry into facts outside the information may be allowed where the prosecution does not object to the presentation thereof. In the early case of *People v. Navarro,* we held:
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>> *Prima facie*, the facts charged are those described in the complaint, but they may be amplified or qualified by others appearing to be additional circumstances, upon admissions made by the people's representative, which admissions could anyway be submitted by him as amendments to the same information. It would seem to be pure technicality to hold that in the consideration of the motion the parties and the judge were precluded from considering facts which the fiscal admitted to be true, simply because they were not described in the complaint. Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence. But we see no reason to prohibit the fiscal from making, in all candor, admissions of undeniable facts, because the principle can never be sufficiently reiterated that such

> official's role is to see that justice is done: not that all accused are convicted, but that the guilty are justly punished. Less reason can there be to prohibit the court from considering those admissions, and deciding accordingly, in the interest of a speedy administration of justice.
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> It should be stressed, however, that for a case to fall under the exception, it is essential that there be no objection from the prosecution. Thus, the above rule does not apply where the prosecution objected to the presentation of extraneous facts and even opposed the motion to quash.
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> (underscoring supplied)

De La Rosa squarely falls under said exception to the general rule. In *De La Rosa*, not only did the prosecution fail to object to the introduction of facts extraneous to the Information. It asked the court to be allowed to present evidence. Thereafter, the defense also presented its evidence. In effect, there was a trial on the merits. *Viz.*:

> It is of relevance to note that the City Fiscal of Pasay, after proper preliminary investigation resolved to dismiss the complaint against the accused. It must be safe to assume that the City Fiscal found no probable cause to hold the accused for trial. When the State Prosecutor took over from the City Fiscal and filed the information, and later an amended information, he must have thought that trial on the merits would follow, as a matter of course. He did not reckon on the filing of a motion to quash on the ground that the allegations in the amended information do not charge an offense. But such motion was filed, and not only was a hearing had thereon, but the prosecution asked the court to be allowed to present evidence, as did the other party, the accused. The State Prosecutor presented evidence and made certain admissions. This could have proved to be their tactical mistake. For with all the evidence presented before the court, the respondent judge cannot discard the same in resolving the motion to quash on the mere technicality that the motion should be resolved solely on the basis of the allegations of the informations, closing its eyes to evidence *aliunde* duly presented at the instance of the prosecution itself, followed by the defense presenting its own evidence. The result was, in effect, a trial on the merits, and an insistence on the part of the petitioner to restore the informations already quashed in order that trial on the merits could proceed, as prayed for in this petition fails to find support upon consideration of substantial justice. It is a resort to mere technicality so strongly frowned upon by the courts and expressly discouraged by our own rules of procedure. It would not also seem in keeping with the true role of the prosecutor to see that justice is done.

In contrast, the cases at bar do not fall under said exception. In its *Comment/Opposition*, the prosecution objected to the introduction

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of extraneous facts. Thus, the general rule applies. As discussed earlier, this Court finds that the fifteen (15) Informations charging the accused with violation of Sec. 3(e) of R.A. No. 3019 are sufficient based on the allegations therein.

WHEREFORE, accused Blanco's *Motion* is hereby DENIED for lack of merit.

SO ORDERED.

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:

KARL B. MIRANDA
Associate Justice

KEVIN NARCE B. VIVERO
Associate Justice