



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0153
Plaintiff,

– versus –

For: Violation of sec. 3(e) of
Rep. Act No. 3019

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

X-----X

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0157 and 0158
Plaintiff,

– versus –

For: Violations of sec. 3(e) of
Rep. Act No. 3019

JEJOMAR ERWIN S. BINAY
JR., ET AL.,
Accused.

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

Promulgated:

June 18, 2018 *lal*

X-----X

RESOLUTION

LAGOS, J.:

This resolves accused Cecilio P. Lim III's *Motion to Quash*.¹ The prosecution filed its *Opposition*² to this motion.

¹ Dated 22 April 2018.

² Dated 3 May 2018.

M/S

In his motion, the accused-movant prays for the quashal of the Informations in these cases. He starts by reviewing prior case events, particularly the contents of the complaint and his counter-affidavit in answer thereto. He then points out items within the Informations and argues that these Informations' allegations do not constitute an offense.

He claims that the allegation of conspiracy is lacking because it does not provide with certainty and accuracy the specific acts he allegedly commit. He avers that the Informations do not allege overt acts which may be considered criminal or conspiratorial. In his view, the Informations have failed to show, demonstrate or prove how he could have participated in a criminal scheme.

He further argues that the Informations failed to allege the elements of violation of section 3(a) of Rep. Act No. 3019.

In its opposition, the prosecution contends that the issues raised by the accused-movant are evidentiary in nature and are best passed upon in the trial of these cases. It says that the accused-movant's denial of the allegations and his claims of good faith and regularity of performance of duty are inapplicable.

DISCUSSION and RULING

The motion lacks merit.

The accused-movant prays for quashal of the Informations in these cases, relying on section 3(a) of Rule 117 of the Rules of Court as a ground. He argues that the facts charged in these Informations do not constitute an offense against him.

A perusal of the Informations and a review of the relevant laws and jurisprudence, however, negate his position. The Informations properly allege the elements of the offenses charged and the overt acts of the accused-movant, which acts form the basis for the conspiracy allegation.

In a motion to quash on the ground that the facts charged do not constitute an offense, the fundamental test in determining the sufficiency of the material averments of the assailed information is whether the facts alleged therein, which are hypothetically admitted, would establish the essentials elements of the crime defined by law.

It is well-settled that a motion to quash assails the validity of an information for defects or defenses apparent on the face of such



information.³ Evidence *aliunde*, or matters extrinsic to the Information, are not be considered.⁴

The accusatory portion of the Information in SB-18-CRM-0153, which charges violation of section 3(e) of Rep. Act No. 3019, reads:

“In September 2007 to March 2012, or thereabout, in Makati City, Philippines, and within this Honorable Court’s jurisdiction, accused **JEJOMAR C. BINAY, SR.** (Binay, Sr.), City Mayor for the period 2007 to 2010; **JEJOMAR ERWIN S. BINAY, JR.** (Binay, Jr.), City Mayor for the period 2010 to 2013; **MARJORIE A. DE VEYRA** (De Veyra), then City Administrator and Chairperson of the Bids and Awards Committee (BAC); **PIO KENNETH I. DASAL** (Dasal), then City Legal Officer and BAC Member; **LORENZA P. AMORES** (Amores), then City Budget Officer and BAC Member; **LEONILA D. G. QUERIJERO** (Querijero), then City Accountant; **CECILIO P. LIM III** (Lim), then City Accountant; **NELIA A. BARLIS** (Barlis), then City Treasurer; **NORMAN D. FLORES (Flores)**, then BAC Secretariat Member, all public officers of Makati City, while in the performance of their administrative and/or official functions and committing the offense in relation to office, conspiring with one another and with private individual **VIRGINIA P. GARCIA (Garcia)**, representative of Infiniti Architectural Works (Infiniti), acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the government of the City of Makati and give unwarranted benefits, advantage and preference to Infiniti, through Garcia, in the amount of P17,372,062.00, more or less, by awarding the Architectural and Engineering Services Contract (Contract) for the Ten-Storey Makati Science High School with Four-Storey Dormitory to Infiniti, in violation of RA 9184 (Government Procurement Reform Act) and its implementing rules and regulations (IRR), and causing the payment of said amount to Infiniti, through the following scheme:

- a) Ensuring that the Contract was awarded to Infiniti through the resort to negotiated procurement or limited source bidding by the BAC composed of **De Veyra, Dasal, and Amores**, without complying with the conditions for such under RA 9184 and its IRR, and without the required posting of the Invitation to Apply for Eligibility and to Bid (IAETB) in the official website and in conspicuous places of Makati City and in the Philippine Government Electronic Procurement System, among other things;
- b) Falsification by **Flores**, as instructed by **Binay, Sr.** and **accused BAC members**, of bid proposals for the Contract to make it appear that Infiniti was the most qualified proponent;
- c) Entering through **Binay, Sr.** into the said Contract with **Garcia**, as representative of Infiniti, despite the glaring flaws in the procurement process;

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

⁴ People v. Dumlao, G.R. No. 168918, 2 March 2009.

d) Processing and releasing of payments to Infiniti by **Querijero** and **Lim**, acting as City Accountant on different occasions, **De Veyra**, as City Administrator, **Amores** as City Budget Officer, **Barlis** as City Treasurer, which release of payments were approved by **Binay, Sr.** (in 2008) and **Binay, Jr.** (in 2012), and accepted by **Garcia**, on behalf of Infiniti in the aforesaid sum, despite the lack of required documents and non-compliance with the requirements under RA 9184 and its IRR.

CONTARY TO LAW.”

In SB-18-CRM-0157 and 0158, the offense charged is also violation of section 3(e) of Rep. Act No. 3019. The accusatory portion of the Information in SB-18-CRM-0157 reads:

“In July 2011 to August 2012, or thereabout, in Makati City, Philippines, and within this Honorable Court's jurisdiction, accused **JEJOMAR S. BINAY, JR.** (Binay, Jr.), then City Mayor; **MARJORIE A. DE VEYRA** (De Veyra), then City Administrator and Chairperson of the Bids and Awards Committee (BAC); **GERARDO K. SAN GABRIEL** (San Gabriel), then BAC Vice Chairman; **PIO KENNETH I. DASAL** (Dasal), then City Legal Officer and BAC Member; **LORENZA P. AMORES** (Amores), then City Budget Officer and BAC Member; **MANOLITO N. UYACO** (Uyaco), then BAC Secretary and Head of the BAC Secretariat; **RODEL R. NAYVE** (Nayve), then Head of the BAC Technical Working Group (BAC-TWG); **CECILIO P. LIM III** (Lim), then City Accountant; **NELIA A. BARLIS** (Barlis), then City Treasurer; and **RALPH E. LIBERATO** (Liberato), then BAC Secretariat Member, all public officers of Makati City, while in the performance of their administrative and/or official functions and committing the offense in relation to office, conspiring with one another and with private individuals **EFREN M. CANLAS** (Canlas) of Hilmarc's Construction Corporation (Hilmarc's), acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to Hilmarc's, and cause undue injury to the government by awarding Hilmarc's the Contract in the amount of PhP 394,140,442.66 for Phase IV construction of the Ten-Storey Makati Science High School Building (Science Building) through a simulated public bidding, in violation of RA 9184 and its implementing rules and regulations (IRR), as follows:

- a) Circumvention of the provisions of RA 9184 by **Binay, Jr., De Veyra, San Gabriel, Dasal, Amores, Uyaco, Nayve** by, among other things:
- 1) Falsifying the publication of the Invitation to Apply for Eligibility and to Bid (IAETB) in *Balita* newspaper;
 - 2) not posting the IAETB in the official website of Makati City;
 - 3) not complying with the required number of days of the posting of the IAETB in the City's conspicuous places;

- 4) not including in the IAETB the relevant eligibility criteria by which the bids shall be compared; and
 - 5) preparing and signing the Abstract of Bids and Post-Qualification Report despite knowing the absence of public bidding;
- b) **Binay, Jr., De Veyra, San Gabriel, Dasal, Amores, Uyaco, Nayve and Liberato** collectively making it appear in the BAC resolution and the Abstract of Bids that Hilmarc's, through **Canlas** was the highest bidder with the Lowest Calculated and Responsive Bid, which documents were signed and approved by **Binay, Jr.** despite knowing the absence of public bidding;
- c) Entering, through **Binay, Jr.**, into the Contract for the Phase IV construction of the Science Building with **Canlas**, on behalf of Hilmarc's, and proceeding with the said project despite the glaring violations of RA 9184 and its IRR.
- d) Processing and releasing of the payments amounting to Php 382,425,110.67, more or less, to Hilmarc's by **De Veyra, Amores, Lim, Barlis**, which payments were approved by **Binay, Jr.** and received by **Canlas**, despite deficiencies in the required supporting documents.

CONTRARY TO LAW."

The accusatory portion of the Information in SB-18-CRM-0158 is similarly worded, with several key different details:

Project involved	Amount of damage to government (PhP)	Amount of payments to Hilmarc's (PhP)	Other differences
Phase V construction of the Science Building	349,559,778.00	328,114,957.48	Other accused in this case: Raydes B. Pestaño - Acting Makati City Accountant, Eleno M. Mendoza Jr. - Acting City Administrator. The newspaper in paragraph a(1) is <i>Metro Profile</i> .

An Information is considered sufficient if it complies with section 6, Rule 110 of the Rules of Court, which provides:

Section 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.

Contrary to the accused-movant's claims, the Informations allege overt acts which he allegedly committed. The accused-movant is clearly alleged to have participated in the processing and releasing of the payments even if there were deficiencies in the required supporting documents. This is clearly an allegation that he did his functions in a manner contrary to law. There is even an identification of the law and regulations governing the matter.

There is also a clear reference, in each of the Informations, as regards what contract or project was involved in the payments processed and released. The absence of a detailed list – of what documents were not present when the payments were processed – does not cloud the allegations against the accused-movant. Since the projects and the definite amounts are also alleged, there is no confusion as to the particular payments in which the accused-movant is alleged to have had some participation.

It should be noted that an Information only has to allege ultimate facts.⁵ A detailed listing of the documents pertains to evidentiary facts, which should be provided during the trial of these cases.

There is therefore no basis for the accused-movant's claim that there is a lack of specificity of the alleged overt acts.

In alleging conspiracy as a mode of commission of an offense, the Supreme Court clearly explained:

“We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.

It is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word “conspire,” or its derivatives or synonyms, such as confederate, connive, collude; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.”⁶

The Informations categorically allege conspiracy, and the same is alleged in definite terms. Conspiracy is not merely generally alleged, but supporting allegations are made. The text of the Informations satisfy the manner by which a conspiracy should be alleged in an

⁵ Enrile v. Sandiganbayan, G.R. No. 213455, 11 August 2015.

⁶ Id.

information. The Informations sufficiently allege the conspiratorial scheme by detailing the acts of each of the accused.

There is no basis for the accused-movant's claim that his alleged acts cannot be the basis for alleging conspiracy or for any criminal liability. The accused-movant, like the other accused, is alleged to have performed administrative and/or official acts in an irregular manner. Whether these acts were done in good faith is a matter of defense and cannot be considered in a motion to quash. Claims of good faith or proper exercise of functions do not affect the validity of the allegations in the Informations.

The accused-movant's claim that the elements of violation of section 3(a) of Rep. Act No. 3019 are not alleged is off-tangent as such offense is not even charged in these cases. A reading of the captioned offense charged and the text of the accusatory portions of the Informations reveal that there is no attempt to allege or establish such violation.

In these cases, the accused-movant is charged with violations of section 3(e) of Rep. Act No. 3019, in conspiracy with other public officers and private individuals. The Court shall proceed to examine these Informations for their sufficiency in alleging the essential elements of the actual offense charged, as captioned and detailed in the body of the Information.

Section 3(e) of Rep. Act No. 3019 provides:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

xxx xxx xxx

The following are the essential elements of this offense:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.⁷

Contrary to the accused-movant's position, all of these elements are properly alleged in the Informations. The Informations only need to allege the elements of the offense charged, not provide evidentiary support therefor.

All of the accused public officers, including the accused-movant, are each alleged to have committed some overt act which was a discharge of their respective official or administrative functions. The Informations list the accused public officers and the private individual. The positions held by the public officers at the time material to the cases are specified.

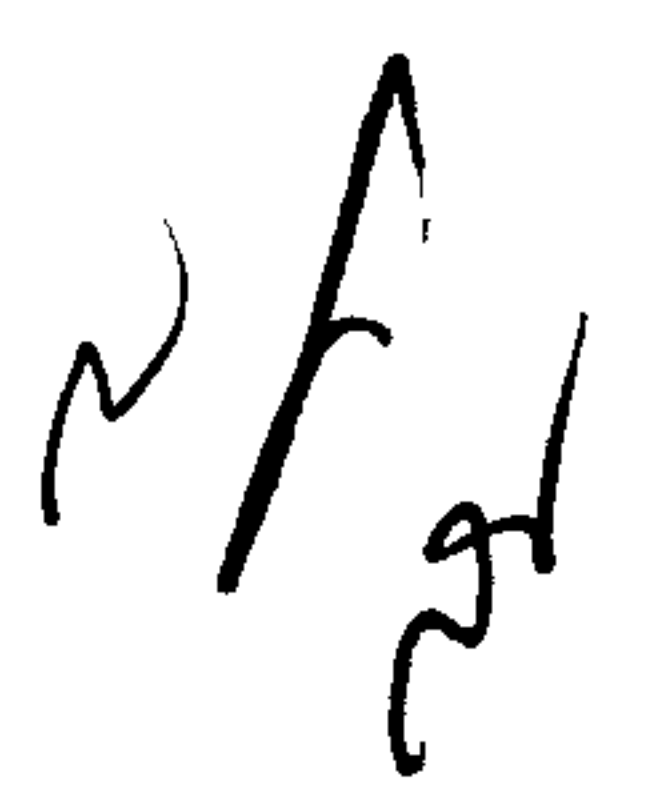
Paragraphs (a) to (d) of the Informations detail the participation of the accused. These acts are alleged to be the accused's acts while in the performance of their official or administrative functions. The accused-movant's alleged acts are contained in paragraph (d) of the Informations. As discussed above, this allegation is a sufficient allegation of an overt act.

These acts were similarly alleged to be attended with manifest partiality, evident bad faith, or gross inexcusable negligence. The accused-movant's complaint that these are mere conclusions of law does not consider the fact that, as noted above, the Informations detail the participation of the accused, thereby alleging how their actions were attended with manifest partiality, evident bad faith, or gross inexcusable negligence.

Finally, in SB-18-CRM-0153, it is alleged that the government suffered undue injury, and that Infiniti was given undue benefits, advantage and preference; and in the Informations in SB-18-CRM-0157 and 0158, Hilmarc's was allegedly given undue benefits, advantage and preference, and that the government suffered undue injury.

The accused-movant's motion to quash is anchored heavily on evidentiary matters, which cannot be considered in assessing whether the Informations contain defects on their faces. The text of the Informations contain the alleged acts committed by the accused-movant. A hypothetical admission of all the allegations in the

⁷ Ampil v. Office of the Ombudsman, G.R. No. 192685 & 199115, 31 July 2013.




Informations would sustain the essentials elements of the offense charged therein.

WHEREFORE, accused Cecilio P. Lim III's motion to quash is hereby **DENIED**.

SO ORDERED.


RAFAEL R. LAGOS
Chairperson
Associate Justice

WE CONCUR:


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


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