REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

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PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**CRIM. CASE NO.** **SB-18-CRM-0011**
- versus -	**For: Violation of Sec. 67, Book V, EO 292, in relation to Sec. 121 of the RRACCS**
RAMONITO D. DURANO III, *Accused.*	Present: **Lagos, *J.*,** Chairperson, **Mendoza-Arcega, *J.*,** and **Corpus-Mañalac, *J.***
	Promulgated: June 19, 2018

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RESOLUTION

MENDOZA-ARCEGA, *J.*:

Before this Court for resolution are the following:

(1) *Motion to Quash Information*[1] filed by accused Ramonito D. Durano III (hereinafter, accused-movant) dated 12 February 2018, with the prosecution's *Comment/Opposition*[2] dated 28 February 2018, and accused-movant's *Rejoinder to the Prosecution's Comment*[3] dated 12 March 2018.

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[1] Records, Volume II, pages 13-56.
[2] Ibid, pages 67-71.
[3] Ibid, pages 67-72.

(2) Accused-movant's *"Motion to Admit Additional Evidence in Support of the Motion to Quash"* dated 18 May 2018 and the prosecution's *"Comment/Opposition (Re: Accused's Motion to Admit Additional Evidence in Support of the Motion to Quash"* dated 28 May 2018.

Accused-movant anchors his motion to quash on the following grounds:

1. That the facts stated in the Information do not constitute an offense since there is a patent defect in the Information there being an absence in the allegation as to when the Decision should have been implemented by the accused;

2. That the Information filed is vague and ambiguous and violates the constitutional right of the accused to be properly and sufficiently informed of the nature and cause of accusation against him;

3. That the Information is defective in form and in substance.

The Office of the Ombudsman, finding probable cause to indict the accused, filed an Information for violation of Section 67, Book V of Executive Order No. 292 (Administrative Code of 1987), in relation to Section 121 of the Revised Rules of Administrative Cases in the Civil Service (RRACCS), a portion of said Information reads as follows:

> *That on or about 23 February 2015, or sometime prior or subsequent thereto, in Danao City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused RAMONITO DUTERTE DURANO III, a high-ranking public officer, being the City Mayor of Danao, Cebu, in such capacity and taking advantage of his official position, committing the crime in relation to his office, did then and there willfully, unlawfully and criminally refuse or neglect to implement the 14 August 2014 Decision No. 14-0068 and the 28 October 2014 Resolution No. 14-00607 of the Civil Service Commission Regional Office No. VII directing/ordering the reinstatement of certain employees of the City of Danao to their former positions and the payment of their back wages, leave credits and other benefits, despite the fact that the said decision and order had become final and executory, to the prejudice of the said employees and detriment of public service.*
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> *CONTRARY TO LAW.*

To appropriately rule upon the present motion, we have culled the salient facts and circumstances pertaining to this case.

STATEMENT OF THE CASE

On 1 July 2013, herein accused-movant, as then Mayor of Danao City, issued Memorandum No. 005 Series of 2013[4] revoking and recalling all issued appointment of employees during Mayor Ramon D. Durano Jr's term for violating the provisions of City Ordinance No. 55-10 Series of 2010[5], which abolished certain offices and positions; and the provisions of Presidential Decree No. 807[6] as well as Republic Act No. 7160[7], which required all appointments to undergo the screening processes of the Personnel Selection Board (PSB) that is duly constituted by a resolution of the Sangguniang Panlungsod. On even date, the accused-movant likewise issued Memorandum No. 023 Series of 2013[8] directing all appointments which were in the nature of promotions be recalled and/or revoked, and instructing that the employees be restored to their former positions.

Pursuant to the aforementioned Memoranda, the accused-movant also issued Memorandum No. 056 Series of 2013[9] to cease and desist from allowing the said employees from staying in their offices and performing any of their functions.

Aggrieved by the issued Memoranda, the employees filed a Letter for Reconsideration on 11 July 2013 to the office of accused-movant imploring for its reconsideration and recall. Consequently, the employees prayed to be reinstated to their positions as approved by the Civil Service Commission (CSC).

In August of 2013, for failure of the accused-movant to act on the said letter, the employees filed their appeal before the CSC Regional Office (CSCRO) No. VII. Thereafter, on 14 August 2013, said office decided[10] for the reinstatement of the employees and ruled that the appointments issued by then Mayor Ramon D. Durano Jr. cannot be recalled by the accused-movant on his own accord. The employees prayed for Partial Reconsideration of the CSCRO No. VII decision, insisting the inclusion of their backwages and leave credits. Likewise, herein accused-movant filed for reconsideration of the said decision.

On 28 October 2014, CSCRO No. VII granted the employees' demand for backwages and leave credits and denied the accused-movant's motion for

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[4] Records, Volume I, pages 31-47.
[5] "Reorganizing the Waterworks Division and Market Division of the Office of the City Administrator, Office of the City Accounting and Internal Audit Services, Office for the Development of Cooperatives, City Assessor's Office, City Engineering Office, General Services Office and Creating Additional Positions in the Office of the City Mayor and Sangguniang Panlungsod, and For Other Purposes."
[6] The Civil Service Decree of the Philippines.
[7] The Local Government Code of 1991.
[8] Records, Volume I, page 48.
[9] Records, Volume I, page 49.
[10] Records, Volume I, pages 50-60.

reconsideration. The employees filed for the Immediate Execution of the decision on 15 January 2015. In part, the decision[11] of CSCRO No. VII holds:

> *x x x WHEREFORE, the Motion for Reconsideration filed by Mayor Ramon D. Durano III of Danao City, Cebu is hereby DENIED for lack of merit. Accordingly, this Office's Decision No. 14-0068 date August 14, 2014, STANDS. This Office further resolves that Barby M. Simbajon and thirty-eight (38) other employees are ENTITLED to the payment of their backwages and leave credits for the entire period of their illegal dismissal. x x x*

On 11 May 2015, accused-movant filed a Petition for Review with the CSC, Main Office which denied the same on 14 October 2015. It was only on 14 December 2015 when accused-movant issued Memorandum No. 609 Series of 2015 ordering the employees to resume their work and their official functions. Upon this directive, the employees were reinstated to their posts, however, the payment of their backwages and leave credits were not complied with. For accused-movant's failure to implement the CSCRO VII decision, the Office of Special Prosecution charged him of violation of Section 67, Book V, Executive Order No. 292, in relation to Section 121 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

The accused-movant now questions the sufficiency of the charges against him based on the succeeding grounds and allegations.

Discussion

The Information does not constitute an offense.

The accused-movant submits that there is patent defect in the Information when it manifestly failed to allege essential facts to be accountable under Executive Order No. 292. As to the accused-movant, the following ultimate facts must be present and alleged in the information:

1. The Decision is already final and executory;
2. That there is already an Entry of final Judgment showing that there is no more pending remedy being availed of by either party;
3. There was already a writ of execution issued and served on the accused;
4. The accused is a public official;
5. That accused must have the sole control and power to execute the decision (reinstatement and payment of backwages);
6. There was already an appropriation to pay the backwages of the subject employees;
7. That a clearance had already been issued by the Commission on Audit (COA) to pay the claims of the said employees;

[11] Records, Volume I, pages 61-70.

8. That despite the presence of the requisites to disburse public funds, the accused refused on neglected to pay the subject employees;
9. That the period to implement the said Decision had already lapsed;
10. That there was damage and prejudice to public service as a result of the non-implementation of the said decision.[12]

From all the foregoing elements, the accused-movant asserts that only items 1, 4, and 10 were alleged in the information. Accused-movant maintains that even if the decision is already final and executory, there were no entry of final judgment, writ of execution, and clearance, issued by the Commission on Audit (COA) for the disbursement of public funds. It is submitted that execution of the decision would still be premature and unfounded.[13] The accused-movant claims that he assailed the CSCRO No. VII decision via a Petition for Review filed to the CSC, Main Office, which impedes the finality of the regional office's judgment.

In its Comment/Opposition, the prosecution emphasizes that to be charged for violation under the provisions of Section 67 of E.O. 292 and Section 121 of RRACCS, a public officer or employee must willfully refuse to implement the final resolution, decision, order, or ruling of the Civil Service Commission (CSC) to the prejudice of the public service and the affected party. As to the prosecution, the accused-movant failed to implement the decision and resolution issued by the CSCRO No. VII, dated 14 August 2014 and 28 October 2014, respectively, when these issuances became final and executory as early as 23 February 2014.

In the accused-movant's rejoinder, he reiterates that the Information must allege the ultimate facts necessary to properly charge the accused. He specifically pointed out that the information must include the fact that the CSC Decision became final and executory and that the period to implement the same had already lapsed. In relation to these facts, according to him, the Information must allege that the implementation of the Decision must be within the sole control and exclusive power of the accused-movant.

The Information is vague and ambiguous.

Accused-movant reiterates that lacking the ultimate facts to constitute an offense charged, the Information is vague to the extent that accused is prevented from knowing the nature and cause of the accusation against him. For all the deficiencies, that Information is void.

[12] Records, Volume II, page 19.
[13] Records, Volume II, page 20.

avoid surprise at the trial. Thus, an Information must sufficiently state the facts and circumstances constituting the essential elements of the crime charged. Furthermore, in *People vs. Dimaano*[15], the Court emphasized that:

> "For a complaint or information to be sufficient, it must state 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 time of the commission of the offense, and the place wherein the offense was committed. x x x Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense."

It is also appropriate for this Court to examine the provisions of the violated provisions. Thus, Section 121 of RRACCS and Section 67, Book V of E.O. No 292, respectively provides:

> **Section 121. Non-execution of Decision.** – Any officer or employee who willfully refuses or fails to implement the final resolution, decision, order, or ruling of the Commission to the prejudice of the public and the affected party, may be cited in indirect contempt of the Commission and may be administratively charged with Conduct Prejudicial to the Best Interest of the Service or Neglect of Duty or be held criminally liable under Section 67 of Book V, of Executive Order No. 292 otherwise known as the Administrative Code of 1987.
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> **Section 67. Penal Provision.** – Whoever makes any appointment or employs any person in violation of any provision of this Title or the rules made thereunder or whoever commits fraud, deceit, or intentional misrepresentation of material facts concerning other civil service matters, or whoever violates, refuses or neglects to comply with any of such provisions or rules, shall upon conviction be punished by a fine not exceeding one thousand pesos or by imprisonment in the discretion of the court.

To be properly indicted under Section 121 of RRACCS the following elements must be alleged in the Information:

(1) The accused must be a public officer or employee;
(2) He willfully refuses or fails to implement the final resolution, decision, order, or ruling of the CSC; and

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[15] G.R. No. 168168, September 14, 2005, cited in People vs. Valdez, G.R. No. 175602, January 18, 2012.

(3) His action caused prejudice to public service and the affected party.

In the present case, there is no dispute as to the fact that accused-movant is a public officer being the Mayor of Danao City, Cebu at the time of the commission of the offense. He failed to implement the final resolution and decision promulgated by the Civil Service Commission Regional Office No. VII dated 14 August 2014 and 28 October 2014, respectively. These issuances directed the accused-movant to reinstate certain employees of Danao City and consequently, pay their backwages. Despite the fact that these issuances became final and executory, he refused and failed to implement them causing prejudice to public service and to the affected employees.

From the said rules and pronouncements of the Supreme Court and upon re-examination of the questioned Information, We maintain that the Information has substantially complied with requirements set by law, and therefore, sufficient.

Assuming arguendo that the Information filed by the prosecution was defective, the automatic quashal of the present case is not the appropriate remedy but rather, an amendment of the Information. The case of *People vs. Sandiganbayan, et al.*[16] citing *People vs. Andrade*[17] explained that "when a motion to quash is filed challenging the validity and sufficiency of an Information, and the defect may be cured by amendment, courts must deny the motion to quash and order the prosecution to file an amended Information." It is also settled that the courts are mandated not to automatically quash the Information; rather, it should grant the prosecution the opportunity to cure the defect through an amendment. Finally, the Court enunciated in the said cases that the purpose of this rule is to avoid unnecessary appeals based on technical grounds which only prolong the proceedings.[18]

In the same vein, when the allegations in the Information are vague or indefinite, the remedy of the accused is not a motion to quash, but a motion for bill of particulars. The case of *Enrile vs. Sandiganbayan*[19] expounded the purpose of a bill of particulars, thus:

> "The purpose of a bill of particulars is to supply vague facts or allegations in the complaint or information to enable the accused to properly plead and prepare for trial. It presupposes a valid Information, one that presents all the elements of the crime charged, albeit under vague terms. Notably, the specifications that a bill of particulars may supply are only formal amendments to the complaint or Information."

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[16] G.R. No. 160619, September 09, 2015.
[17] G.R. No. 187000, November 24, 2014.
[18] Id.
[19] G.R. No. 213455, August 11, 2015.

This Court is certain that the questioned Information does not lack any material element of the crime charged, nor is it ambiguous that would prevent the accused-movant to prepare for his defense. The ultimate facts which he claims to be the facts and circumstances which must be alleged in the information are not the essential elements of the crime, these are evidentiary matters which must be presented before the court in a full-blown trial. As the Court reiterated in *Enrile*[20] citing the case of *Tantuico, Jr. vs. Republic*[21], "while it is fundamental that every element of the offense must be alleged in the information, matters of evidence – as distinguished from the facts essential to the nature of the offense – do not need to be alleged." Whatever facts and circumstances must necessarily be alleged are to be determined based on the definition and the essential elements of the specific crimes.[22]

Ultimately, to emphasize the clarity and sufficiency of the Information, we raise the accused-movant's allegations in his own motions. These allegations gave the Court the impression that the accused has a clear grasp of the charge against him which defeats his own assertion for vagueness of the Information.

Thus, this Court also denies to admit the additional exhibit filed by the movant. We agree with the prosecution that these additional evidence do not support any of the grounds discussed under the Motion to Quash. Accordingly, the dismissal of the administrative case filed against the movant will not necessarily dismiss the criminal case filed against him. It is well settled that a single act may offend against two or more distinct and related provisions of law or that the same act may give rise to criminal as well as administrative liability. As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense.[23] As squarely adduced by the Supreme Court in the case of *People vs. Sandiganbayan*[24]:

> "Administrative liability is one thing; criminal liability for the same act is another. The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability. Although the dismissal of the criminal case cannot be pleaded to abate the administrative proceedings primarily on the ground that the quantum of proof required to sustain

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[20] Id.
[21] G.R. No. 89114, December 2, 1991.
[22] Id.
[23] Paredes vs. Sandiganbayan, G.R. No. 108251, January 31, 1996.
[24] G.R. No. 164577, July 5, 2010, citing the case of Paredes vs. Sandiganbayan, G.R. 108251 and Parades vs. CA, G.R. No. 169534.

administrative charges is significantly lower than that necessary for criminal actions, the same does not hold true if it were the other way around, that is, the dismissal of the administrative case is being invoked to abate the criminal case. The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case."

WHEREFORE, accused RAMONITO DUTERTE DURANO III's *Motion to Quash* and *Motion to Admit Additional Evidence in Support of the Motion to Quash* are hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

RAFAEL R. LAGOS
Chairperson
Associate Justice

MARYANN E. CORPUS-MAÑALAC
Associate Justice