



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0153 to 0156
Plaintiff,

– versus –

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

JEJOMAR C. BINAY SR., ET
AL.,

Accused.

SB-18-CRM-0160 to 0162

For: Violations of article 171 of
the Revised Penal Code

Present:

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

Promulgated:

June 18, 2018 *Jal*

X-----X

RESOLUTION

LAGOS, J.:

Accused Jejomar C. Binay, Sr. filed an Urgent Motion to Quash Informations *Ex Abundante Cautela*¹. The prosecution filed its Comment/Opposition thereto² and therefore this incident was considered submitted for resolution.

Thereafter and notwithstanding the Court's no longer allowing accused-movant to file a Reply, the latter filed a *Motion for Leave to File and Admit Attached Reply Ex Abundante Cautela*.

¹ Dated 24 April 2018; Records, Vol. 2, pp. 4-42.

² Dated 26 April 2018; Records, Vol. 2, pp. 91-115.

The accused-movant invokes a sole ground for the quashal of the Informations – that the facts charged therein do not constitute an offense. He contends that the essential elements of the crimes charged, violations of section 3(e) of Rep. Act No. 3019 and of article 171 of the Revised Penal Code (RPC), are lacking.

In SB-18-CRM-0153 to 0156, where he is charged with violations of section 3(e) of Rep. Act No. 3019, the accused-movant claims that only the first element of the offense charged is properly alleged. He says that the irregular acts alleged were committed not by the accused-movant but by his co-accused.

He identifies the acts he allegedly committed and he asserts that these overt acts attributed to him were official acts he performed as part of the functions of his office; hence, these cannot be the bases of liability. These acts, he continues, cannot be considered as having been done through manifest partiality, evident bad faith, or gross inexcusable negligence.

He views the allegations as generalizations that lack a showing that the accused-movant acted with dishonesty, conscious doing of a wrong, or a breach of duty with ill motive or will.

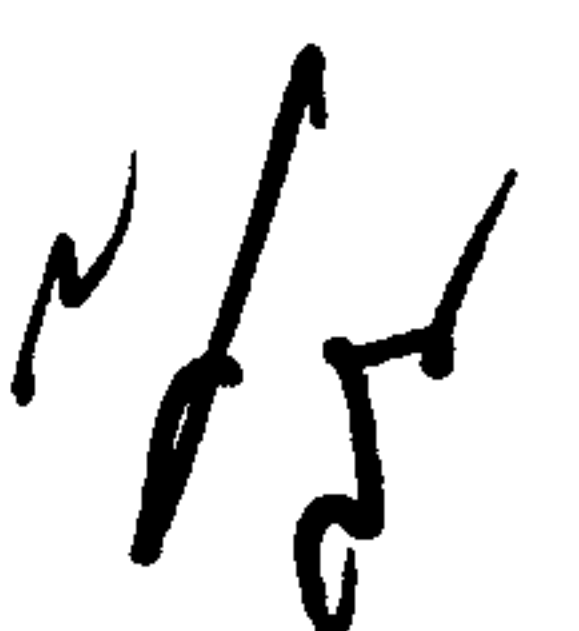
In SB-18-CRM-0160 to 0162, the accused-movant is charged with violations of article 171 of the RPC. He claims again that only the first element of the felony is alleged.

He avers that his alleged acts of approving the subject BAC resolutions could not constitute the offense of falsification of public documents. He says that he did not take advantage of his official position as he had no duty to make or prepare the subject document or take custody of the same. He maintains he cannot be held liable for irregularities in the procurement transactions.

He says that the Informations failed to state that he caused or made the narrations of facts or prepared the BAC resolutions. None of the accused were also alleged to have the legal obligation to disclose the truth under the facts stated.

The accused-movant then asserts that the allegation of conspiracy is faulty. He does not find any allegation showing that the accused engaged in a common design. His official acts, which he was duty-bound to make, could not be the basis for a finding of conspiracy.

He cites and quotes jurisprudence where the Supreme Court ruled, in varying circumstances, that an accused's mere signatures on



documents could not make him or her criminally liable. As applied to him, he claims that his signatures on the BAC resolutions, awards of contracts, and disbursement vouchers are not sufficient bases to allege that he acted in conspiracy with others to commit the crimes charged.

In its comment, the prosecution opposes the motion and starts by saying that the accused-movant's alleged acts involved his judgement and discretion. He had responsibility and authority over the activities of the city. He had options and discretion granted by law, and so he cannot simply say that he had no choice.

The prosecution argues that the cases cited by the accused-movant are not applicable in these present cases. His participation in the alleged acts show his manifest partiality, gross ignorance, and evident bad faith.

It then contends that the Informations in these cases are not defective or infirm as they allege all the elements of the crimes charged therein. They are sufficient in form and in substance. It then provides a tabular breakdown of the elements of the crime, together with the corresponding facts charged in the Informations, The table also includes the evidence to establish the facts alleged in the Information.

The prosecution then concludes that the Informations are clear enough and do not suffer from any defect or infirmity. It claims that all the elements of the crimes charged are in the Informations.

DISCUSSION and RULING

The accused-movant, citing section 3(a) of Rule 117 of the Rules of Court, seeks to quash the Informations in these cases against him, He argues that the facts charged in these Informations do not make charge an offense against him.

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

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

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

At the outset, it should be highlighted that the Informations allege that the accused-movant acted in conspiracy with other accused. In alleging conspiracy as a mode of commission of an offense, the Supreme Court explained:⁵

“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.”

A reading of each of the Informations in these cases show that each one, in no uncertain terms, allege the existence of a conspiracy. Each of these Informations also state the participation of every accused. Each one also provides the details of the project or contract involved, including the amounts of damage and payments. In short, 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 information.

There is no basis for the accused-movant’s claim that his alleged acts cannot be the basis for alleging conspiracy. That these acts were done in good faith is a matter of defense and should not be considered in a motion to quash. Moreover, the Informations sufficiently allege the conspiratorial scheme by detailing the acts of each of the accused.

The accused-movant’s challenge against the allegations of conspiracy, as contained in the Informations, must therefore fail.

He also would like the Court to resolve his motion by merely looking at the acts he allegedly committed. This, too, must fail.

It must be remembered that in a conspiracy, the act of one is the act of all.⁶ Thus, in examining the text of an information which alleges conspiracy, the acts of every accused cannot be viewed separately. In other words, when a conspiracy is alleged, the accused cannot insist that no offense is charged and ask that only his alleged acts be

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

⁶ Quidet v. People, G.R. No. 170289, 8 April 2010.

examined. That would render inutile conspiracy as a mode of commission of felonies or offenses.

As applied to the accused-movant, the acts he allegedly committed cannot simply be the ones examined to test the validity of the Informations. If all the allegations of the Informations are hypothetically admitted, the conspiracy alleged binds all of the accused. To view his acts separately would ignore the hypothetical admission of the alleged conspiracy.

There is no doubt that the Informations properly allege the existence of conspiracies. Thus, the accused-movant's arguments against the invalidity or insufficiency of the conspiracy allegations are not meritorious.

*SB-18-CRM-0153 to 0156 –
Violations of section 3(e) of
Rep. Act No. 3019*

The accusatory portion of the Information in SB-18-CRM-0153 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;
- 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.”

The accusatory portion of the Information in SB-18-CRM-0154 reads:

“In December 2007 to December 2008, or thereabout, in Makati City, Philippines, and within this Honorable Court’s jurisdiction, accused **JEJOMAR C. BINAY, SR.** (Binay, Sr.), then City Mayor; **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; **GIOVANNI I. CONDES** (Condes), then BAC Secretary and Head of the BAC Secretariat; **RODEL R. NAYVE** (Nayve), then Head of the BAC Technical Working Group (BAC-TWG); **LEONILA D. G. QUERIJERO** (Querijero), then City Accountant; **NELIA A. BARLIS** (Barlis), then City Treasurer; **RALPH E. LIBERATO** (Liberato), then BAC Secretariat Member; and **NORMAN D. FLORES** (Flores), then Computer Operator at the General Services Division (GSD), 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) and **JULIUS V. RAMOS** (Ramos), both 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 99,631,205.15 for Phase I 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, Sr., De Veyra, Dasal, Amores, Condes** and **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, Sr., De Veyra, Dasal, Amores, Condes, Nayve, Flores, Liberato** and **Ramos** collectively making it appear in the BAC resolution and the Abstract of Bids that Hilmarc's, through **Canlas**, became the highest bidder with the Lowest Calculated and Responsive Bid (LCRB), as against JBros Construction and ITP Construction, which documents were signed and approved by **Binay, Sr.** despite knowing the absence of public bidding;

c) Entering, through **Binay, Sr.**, into the Contract for the Phase I construction of the Science Building with **Canlas**, on behalf of Hilmarc's, and proceeding with the said project despite the absence of the project's architectural design and detailed engineering plans; and

d) Processing and releasing of the payments amounting to Php 93,404,254.82, more or less, to Hilmarc's by **De Veyra, Amores, Querijero, Barlis**, which payments were approved by **Binay, Sr.** and received by **Canlas**, despite deficiencies in the required supporting documents.

CONTRARY TO LAW."

The Informations in SB-18-CRM-0155 to 0156 are similarly worded with that in SB-18-CRM-0154, with differences in certain matters alleged:

Case Number	Date of commission	Project involved	Amount of damage to	Amount of	Other differences

			government (PhP)	payments to Hilmarc's (PhP)	
SB-18-CRM-0155	November 2008 to July 2009	Phase II construction of the Science Building	174,508,398.69	163,601,623.77	Norman D. Flores is not an accused in this case.
SB-18-CRM-0156	April 2009 to February 2010	Phase III construction of the Science Building	149,405,024.00	140,160,022.49	Giovanni I. Condes, Rodel R. Nayve, Ralph E. Liberato, and Norman D. Flores are not accused in this case. Other accused in this case is Ulysses E. Orienza – Acting Department Head II Sub-items of paragraph (a) is different. This case only has two sub-items: (i) resorting to negotiated procurement instead of public bidding despite absence of conditions in RA 9184 and its IRR; and (ii) not posting IAETB in PhilGEPS.

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 certain private individuals. This provision of law 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.

The criminal scheme alleged are similar in these cases. A reading of the Informations shows that the elements of the offense charged are all present. The individual conspiratorial acts of the accused are specified and these acts satisfy the elements of the offense charged. 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 private individuals. The positions held by the public officers at the time material to the cases are likewise 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.

These acts were similarly alleged to be attended with manifest partiality, evident bad faith, or gross inexcusable negligence.

Finally, it is also specified in the Information in SB-18-CRM-0153 that the government suffered undue injury, and that Infiniti was given undue benefits, advantage and preference; and in the Informations in SB-18-CRM-0154 to 0156, Hilmarc's was allegedly given undue benefits, advantage and, preference, that the government suffered undue injury.

It should be stressed that the accused-movant's claims – that his alleged acts are part of his official function and therefore not malicious or criminal – are matters of defense. He is precisely alleged to have committed acts in violation of or contrary to the law. Claims of good

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

faith or proper exercise of functions do not affect the validity of the allegation in the Informations.

Moreover, as discussed above, since the accused is alleged to have acted in conspiracy with other persons, the allegations against all of the named accused must be considered. Separating the allegations against him from the allegations against the others is not proper in resolving the motion to quash.

The accused-movant's reliance on provisions of law detailing his functions and responsibilities as city mayor, specifically section 455 of the Local Government Code, are premature. Just because the law provides his official functions does not automatically mean that he carried out such functions without transgressing the law. For now, whether he carried out his functions in accordance with law is not relevant. As these are extrinsic to the Informations, these are not proper issues for resolution in a motion to quash. These are matters to be threshed in the trial of these cases, and they do not relate to the sufficiency of the allegation of the offense's elements.

*SB-18-CRM- 0160 to 0162 –
Violation of article 171 of the
Revised Penal Code*

The accusatory portion of the Information in SB-18-CRM-0160 provides:

“On 19 September 2007, or thereabout, in Makati City, Philippines and within this Honorable Court's jurisdiction, accused Makati City public officers City Mayor and Head of the Procuring Entity (HOPE) **JEJOMAR CABAUTAN BINAY, SR. (Binay, Sr.)**, City Administrator and Chairperson of the Bids and Awards Committee (BAC) **MARJORIE A. DE VEYRA (De Veyra)**, City Legal Officer and BAC Member **PIO KENNETH ILANO DASAL (Dasal)**, City Budget Officer and BAC Member **LORENZA PUNZALAN AMORES (Amores)**, and Engineering Assistant and BAC Secretariat Member **NORMAN DOMINGO FLORES (Flores)**, while in the performance and taking advantage of their official functions as such, conspiring with one another, did then and there willfully, unlawfully and feloniously falsify the 19 September 2007 BAC Resolution (Award), an official document, and its supporting documents, declaring Infiniti Architectural Works (Infiniti) as the most qualified consulting firm with recommendation to award it the architectural and engineering services contract for the Makati Science High School Building (Science Building), and approved by **Binay, Sr.** as HOPE, by making it appear therein that:

a) seven consulting firms – Infiniti, BLG Design Services (BLG), Genesis RR Engineering Services (Genesis), R.B. Padolina & Associates (R.B. Padolina), Jorge A. Paras/Architects (JAPA),

MANA Architecture & Interior Design Co. (MANA), and JFR Aquino Design (JFR) – were sent and received letters inviting them to submit project and contract proposals;

b) the seven firms each submitted their respective proposals and participated in the procurement/negotiation process; and

c) Infiniti was found to be the most qualified upon opening and evaluating each of the submitted proposals;

when in truth and in fact, as said accused very well knew, that JFR and Genesis did not so participate in the procurement/negotiation process for the architectural and engineering services for the Science Building.

CONTRARY TO LAW.”

The accusatory portion of the Information in SB-18-CRM-0161 provides:

“On 11 January 2008, or thereabout, in Makati City, Philippines and within this Honorable Court’s jurisdiction, accused Makati City public officers City Mayor and Head of the Procuring Entity (HOPE) **JEJOMAR CABAUTAN BINAY, SR. (Binay, Sr.)**, City Administrator and Chairperson of the Bids and Awards Committee (BAC) **MARJORIE A. DE VEYRA (De Veyra)**, City Legal Officer and BAC Member **PIO KENNETH ILANO DASAL (Dasal)**, City Budget Officer and BAC Member **LORENZA P. AMORES (Amores)**, and City Chief Administrative Officer and BAC Secretariat Head **GIOVANNI ILIO CONDES (Condes)**, City Department Head II and BAC Technical Working Group (TWG) Head **RODEL REBUSTILLO NAYVE**, and Engineering Assistant and BAC Secretariat Member **NORMAN DOMINGO FLORES**, while in the performance and taking advantage of their official functions as such, conspiring with one another, did then and there willfully, unlawfully and feloniously falsify the 11 January 2008 BAC Resolution, an official document, and its supporting documents, declaring Hilmarc’s Construction Corporation (Hilmarc’s) as the bidder who submitted the Lowest Calculated Responsive Bid, with the recommendation to award to it the contract for Phase I Construction of the Makati Science High School Building (Science Building), which was approved by **Binay, Sr.** as HOPE, by making it appear therein that a public bidding for the said Phase I Construction, compliant with the provisions of Republic Act 9184 (Government Procurement Reform Act) and its implementing rules and regulations (IRR), was conducted, such that:

a) the Invitation to Apply for Eligibility and to Bid (IAETB) was published in newspapers of general circulation;

b) the IAETB was posted in the PhilGEPS, in the City’s official website, and in conspicuous places of Makati City;

c) the public bidding was participated in by Hilmarc's, JBros Construction (JBros) and ITP Construction (ITP), submitting their respective bids;

d) Hilmarc's was found to have submitted the Lowest Calculated Bid; and

e) after post-qualification, Hilmarc's was found to have submitted the Lowest Calculated Responsive Bid;

when in truth and in fact, as said accused very well knew, being legally bound to disclose the truth of such facts as required by RA 9184 and its IRR, that there was no such public bidding conducted, there being such newspaper publication of the IAETB, no such posting of the IAETB, and Hilmarc's could not have been found to have submitted the Lowest Calculated Responsive Bid for it to be awarded the contract for the Phase I Construction of the Science Building.

CONTRARY TO LAW."

The Information in SB-18-CRM-0162 is similarly worded with that in SB-18-CRM-0161, with differences in some alleged details:

Date of commission	Project involved	Falsified document	Other differences
5 January 2009	Phase II Construction of the Science Building	BAC Resolution dated 5 January 2009 and its supporting documents	Rodel R. Nayve and Norman D. Flores are not accused in this case. Paragraph (c) of this case states that Hilmarc's was the sole participant which submitted its bid

In these cases, the accused-movant is charged with violations of article 171 of the RPC, which provide:

Article 171. Falsification by public officer, employee or notary or ecclesiastic minister. - The penalty of prision mayor and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

The elements of falsification by a public officer or employee or notary public as defined in article 171 of the RPC are:

- (1) the offender is a public officer or employee or notary public;
- (2) the offender takes advantage of his official position; and
- (3) he or she falsifies a document by committing any of the acts mentioned in Article 171 of the Revised Penal Code.⁸

In SB-18-CRM-0160, the accused are charged with violating article 171 of the RPC by committing paragraph (2) thereof. This is done by:

- (1) falsifying a document by causing it to appear that persons have participated in any act or proceeding.
- (2) that such person or persons did not in fact so participate in the proceeding.⁹

From a reading of the facts alleged in the Informations in SB-18-CRM-0161 and 1062, it is apparent that the accused are charged therein with violating article 171 of the RPC by committing paragraph (4) thereof. This is committed when:

- (1) the offender makes in a document untruthful statements in a narration of facts;
- (2) he has a legal obligation to disclose the truth of the facts narrated by him; and

⁸ Garong v. People, G.R. No. 172539, 16 November 2016.

⁹ Goma v. CA, G.R. No. 168437, 8 January 2009.

(3) the facts narrated by the offender are absolutely false.¹⁰

All these elements are properly alleged in the Informations in these cases.

The accused in these cases are all public officers and their respective positions are identified.

The Informations' listing of the acts of the accused public officers show that there are proper allegations showing that these accused took advantage of their official positions. Their participation in the procurement activities was due to their public positions and the documents they allegedly falsified was related to said procurement activities. Their act of falsifying documents was borne out of their functions as public officers.

In SB-18-CRM-160, the text of the Information clearly alleges that the accused caused it to appear in the subject BAC resolution and its supporting documents that other consulting firms have participated in the procurement activities, when in fact not all of those firms participated. The documents allegedly falsified are identified and the falsities in them are likewise identified.

In SB-18-CRM-0161 and 0162, the text of the Information clearly allege that the accused falsified the subject BAC resolutions and their supporting document by stating that a public bidding was conducted, when no such bidding and its component activities was actually conducted. The accused were also alleged to have the duty to disclose the truth, as required by Rep. Act No. 9184 and its IRR.

At this point, the Court cannot consider the accused-movant's claim that he cannot be charged for the irregularities in the procurement activities since such procurement activities are within the functions of other people. In the first place, the accused are alleged to have acted in conspiracy with each other. Thus, similar to the discussion above, the resolution of the motion to quash cannot be done by only examining the allegations against accused-movant. Moreover, the allegations in the Information detail the accused's participation with respect to the subject falsified documents.

Additionally, his claim of exercising his own functions properly in accordance with law is essentially a matter of defense. His reference to provisions of law or rules – specifically section 455 of the Local Government Code again – do not affect the sufficiency of the allegations in the Informations. It is, for the moment, extraneous to the

¹⁰ Layno v. People, G.R. No. 93842, 7 September 1992.

Informations and cannot be considered in his motion to quash. It is a matter to be resolved in the trial of these cases.

In all the Informations subject of accused-movant's motion to quash, a hypothetical admission of all the facts alleged therein would reveal that all the elements of the crimes charged would be established. The allegations of conspiracy in each are also alleged and detailed. The accused-movant has not shown any defect or infirmity apparent on the faces of the Informations. He relies heavily on matters extrinsic to the Informations, which cannot be considered in a motion to quash.

Thus, the accused-movant's Urgent Motion to Quash Informations *Ex Abundante Cautela* must be denied for lack of merit. Considering this, the *Motion for Leave to File and Admit Attached Reply Ex Abundante Cautela* need no longer be acted upon and is merely noted by the Court.

WHEREFORE, accused Binay, Sr.'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