



Republic of the Philippines

*SANDIGANBAYAN*

Quezon City

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**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

- *versus* -

**SB-17-CRM-0683 to 0727**

*For: Violation of Section 3(e) of  
RA 3019, as amended*

**ANTONIO D. BELICENA,  
ULDARICO P. ANDUTAN, JR.,  
ASUNCION M. MAGDAET,  
EMELITA T. TIZON,  
MELCHOR P. TAN,  
GENOVEVA P. TAN,  
JULIO P. TAN, JR.,  
BLANQUITA P. TAN,  
EDGARDO C. OLANDEZ,  
BERNARD P. FARIN,  
EDMUND T. ARANDIA,  
MICHAEL RAY N. QUIMPO,  
ALICIA L. BAUTISTA,  
CRISTINA Y. CASTILLO,  
LEONARDO W. RAÑA,  
ELENA BUENAVENTURA, and  
DONDON PAMATMAT.**

*Accused.*

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*Present:*

**CABOTAJE-TANG, A., PJ**

*Chairperson*

**FERNANDEZ, B., J**

**FERNANDEZ, S.J.\*, J**

**Promulgated on:**

AUGUST 1, 2018

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## RESOLUTION

### **FERNANDEZ, B. J.;**

Before this Court are three (3) incidents for its consideration, namely - -

(1) Motion for Reconsideration dated October 27, 2017 of accused-movants Melchor P. Tan; Julio P. Tan, Jr.; Blanquita P. Tan; Bernard P. Farin; and, Elena Buenaventura;

(2) Motion to Quash/Dismiss dated November 22, 2017 of accused-movants Merosé Tordesillas; Charmelle Recoter; Marife S. Cabiden; Purita Napenas; Cherry Gomez; and, Sylvialina Daguimol; and,

(3) Urgent Omnibus Motion to Quash Information with Motion to Defer Arraignment dated December 4, 2017 of accused-movants Paul Patricio J. Senador and Manuel Rigor.

We will resolve the Motions *in seriatim*.

(1) Motion for Reconsideration dated October 27, 2017 of accused-movants Melchor P. Tan; Julio P. Tan, Jr.; Blanquita P. Tan; Bernard P. Farin; and, Elena Buenaventura.

The accused-movants principally pray that this Court recall its October 3, 2017 Resolution denying their Motion for judicial determination of probable cause and, in its stead, a new resolution be issued recalling all the forty-five (45) Informations filed.

In this Motion, the accused-movants insist that there was inordinate delay in the conduct of the preliminary investigation by the Office of the Ombudsman. They aver that as early as 2001, there were already fact-finding committees - Special



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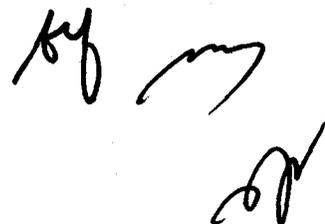
Presidential Task Force 156 (SPTF156) and Fact Finding & Intelligence Bureau (FFIB) - tasked to investigate the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (OSS-CENTER) of the Department of Finance, which led to the filing by the Bureau of Customs (BOC) of a civil case for collection of sum of money against Mannequin International Corporation (Mannequin) and the accused-movants, in their capacity as either stockholders, incorporators or members of the board of directors.

Accused-movants contend that, with the investigation conducted by the BOC, all the agencies concerned already had in their possession the necessary evidence to file the criminal complaints against the accused-movants. Moreover, the investigation of the tax credit certificates presumably involved in these cases was conducted before 2001 and alleged in the civil complaint filed by the BOC as - - *The tax credit certificates enumerated in Annex "A" hereof are fraudulently secured tax credit certificates and are therefore void ab initio. They are void ab initio because they have been fraudulently secured on the basis of fake and forged documents, such as fake/forged bills of lading, bank documents, invoices and other commercial papers.*

However, it took more than ten (10) years or only in 2012, to file these criminal cases against the accused-movants, with laches and prescription setting in. Furthermore, the Office of the Ombudsman took more than five (5) years for it to conduct its preliminary investigation. Thus, the accused-movants maintain that this long delay in the filing of the Informations was inordinate and oppressive and an outright violation of the accused-movants' right under the Constitution to a speedy disposition of cases.

In its Opposition dated November 24, 2017, the prosecution states that the allegations in the subject Motion for Reconsideration are mere reiterations of arguments raised by the accused-movants in their Motion seeking a judicial determination of probable cause. The prosecution also observes that the subject Motion is a dilatory tactic to further delay the arraignment of the accused-movants.

We find this Motion to be without merit.

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A judicious perusal of the subject Motion will clearly reveal that there are indeed no new or substantial matters that can convince this Court to amend, alter, revise or even reverse its Resolution of October 3, 2017. The arguments posed by the accused-movants were sufficiently passed upon and already considered by this Court.

We can only reiterate the pertinent portions of the assailed October 3, 2017 Resolution, to wit - -

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As regards the issue that the OMB unduly delayed the preliminary investigation of the case which amounted to loss of jurisdiction and authority to file the case, this Court immediately noted the voluminous records submitted to the OMB in resolving the Complaint.

In Ombudsman vs. Ben Jurado (G.R. No. 154155, August 6, 2008), our Supreme Court declared that the concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.

We note that the accused-movants were not deprived of their available remedies before the OMB. Taking into account the number of TCCs involved and the complexities of the transactions, a period of five (5) years cannot be considered inordinate. In the absence of substantive proof showing that the alleged delay was vexatious, capricious and oppressive, the presumption of regularity must stand.

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On the specific issue of prescription, it must be noted that the accused-movants are being charged for violation of Section 3(e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act. Under Section 11 of the said law, it states that all offenses punishable under the said Act shall prescribe in fifteen (15) years. Therefore, assuming arguendo, that the Office of the Ombudsman knew of the commission of the

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offense in 2001, as advanced by the accused-movants, still, the offense they are being charged with has not yet prescribed when the Ombudsman filed the criminal complaint in 2012. This issue of prescription will be further underscored in the discussions relative to the third Motion.

(2) Motion to Quash/Dismiss  
dated November 22, 2017  
of accused-movants Meroso  
Tordesillas; Charmelle Recoter;  
Marife S. Cabiden; Purita  
Napenas; Cherry Gomez; and,  
Sylvialina Daguimol;

In this Motion, the accused-movants seek to have the Informations filed against them dismissed on the sole ground that there was inordinate delay in the conduct of the preliminary investigation before the Office of the Ombudsman in violation of their constitutional right to speedy disposition of cases.

Accused-movants aver that, from a reading of the Complaint-Affidavit, the offenses were allegedly committed sometime in 1995. The Office of the Ombudsman instituted the criminal complaint in 2005 while the Informations were filed before the Sandiganbayan more than ten (10) years thereafter. They contend that the preliminary investigation was inordinately delayed for more than five (5) years causing undue prejudice to the accused-movants.

The prosecution, in its Opposition dated December 4, 2017, maintains that there was no inordinate delay. Based on its record, the preliminary investigation formally commenced on December 27, 2012 when a complaint was filed by the Ombudsman Field Investigation Office (OMB-FIO) before the Ombudsman proper. It asserts that the period it took to file the forty-five (45) Informations before the Sandiganbayan is still reasonable, taking into consideration the complexities and sensitivity of the subject cases involving (a) voluminous records of the cases; (b) huge losses to the government totaling P112,606,076.00; (c) more than eighty (80) persons subjected to preliminary investigation; and, (d) fifty-three (53) Tax Credit Certificates originally considered in the investigation.

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Moreover, the prosecution claims that the accused-movants did not assert their right to a speedy disposition of the cases during the preliminary investigation and only raised the issue of inordinate delay only after they received an unfavorable resolution from the Office of the Ombudsman. Finally, the prosecution believes that the instant Motion was intentionally filed merely to delay the scheduled arraignment of the accused-movants.

We also find this Motion to be unmeritorious.

The principal issue of inordinate delay raised in this Motion was already ruled upon in the first Motion subject of this Resolution. Nevertheless, it would be worthy to stress that in the case of Ombudsman vs. Ben Jurado (*ibid.*), although the Constitution guarantees the right to the speedy disposition of cases, this is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

The records herein show that the preliminary investigation formally commenced on December 27, 2012 when a complaint was filed by OMB Field Investigation Office before the Ombudsman proper. Thereafter, and on various dates in 2013, some of the private respondents filed their respective counter-affidavits.

Meanwhile, accused-movants Tordesillas, Gomez and Cabiden, despite notice to file their counter-affidavits, failed to do so. On the other hand, accused-movants Daguimol, Napeñas and Recoter, were either unknown or cannot be located in the address indicated in the Complaint and its supporting documents.

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In due course, the Resolution of the Office of the Ombudsman was issued on October 10, 2014, finding probable cause to indict respondents for violation of Section 3(e) of R. A. No. 3019. Although a Motion for Reconsideration was subsequently filed by some of the respondents sometime in 2015, this was resolved in an Order dated July 24, 2015. Eventually, forty-five (45) Informations were filed on April 7, 2017 before this Court.

This Court finds the period it took to file the forty-five (45) Informations before the Sandiganbayan to be reasonable, taking into consideration the complexities and sensitivity of the subject cases.

It is likewise noted that it was only upon receipt of the unfavorable Resolution from the Office of the Ombudsman did the accused-movants start raising the issue of inordinate delay.

Finally, we find that the Office of the Ombudsman conducted its preliminary investigation promptly. There does not appear to be any showing of any vexatious, arbitrary, capricious or oppressive delay in the disposition of the cases.

(3) Urgent Omnibus Motion  
to Quash Information with  
Motion to Defer Arraignment  
dated December 4, 2017 of  
accused-movants Paul Patricio  
J. Senador and Manuel Rigor.

Herein, the accused-movants supports their Urgent Motion on the ground that the facts charged do not constitute an offense and that the criminal action or liability has been extinguished or has prescribed.

Accused-movants aver that the Tax Credit Certificate (TCC) pertaining to accused-movant Rigor III was issued on March 13, 1995 while that of accused-movant Senador was issued on January 31, 1996. They claim that, as early as 2001, the Bureau of Customs, through the Fact Finding and Intelligence Bureau, were already conducting an investigation on the said TCCs. Thus, the concerned government agency, particularly the Bureau of Customs had in their possession documents which can be the basis for the filing of a criminal

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complaint against the accused-movants. The accused-movants now contend that the offense charged has prescribed based on Section 11 of R. A. No. 3019 which provides that all offenses punishable under this Act shall prescribe in ten (10) years.

Citing Republic vs. Cojuangco, Jr., *et al.* (G. R. No. 139930, June 26, 2012), the accused-movants insist that R. A. No. 3019, being a special penal law, the applicable law for the computation of the prescriptive period is Section 2, Act No. 3326, to wit - - Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.

Hence, the accused-movants assert that the reckoning date should be the date of the issuance of the TCCs. Since the TCCs were processed and in the possession of the DOF and/or BOC, this amounts to the "discovery" of the offense.

The accused-movants further contend that the action prescribed even if the prescriptive period is reckoned from the year 2001 when the BOC conducted its investigation on the subject TCC or from the year 2002 when the BOC filed the civil case for sum of money, since more than ten (10) years had already lapsed at the time the complaint was filed by the OMB-FIO on December 27, 2012 before the Office of the Ombudsman.

Finally, the accused-movants also seek to quash the Informations as it failed to state what particular acts of the accused-movants constitute a violation of Section 3(e) of R. A. No. 3019. The Informations neither alleges the particular acts of the accused-movants which constitutes bad faith, gross inexcusable negligence or partiality towards co-accused officers of Mannequin International Corporation.

They allege that nothing in the Informations would show that they had knowledge or information that the public documents submitted by Mannequin in support of its tax credit applications were fake and spurious. Also, there is no allegation in the Informations that the accused-movants are parties to the fabrication of the spurious or fake documents.



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For its part, the prosecution, in its Opposition dated December 27, 2017, argues that no one, except the accused, would have known that the subject transactions in these cases were anomalous at the time they took place. Thus, the reckoning point to begin counting the prescriptive period should be at the time of the discovery of the commission of the offense. Such commission could have been discovered by complainant Field Investigation Office (FIO) of the Ombudsman only, at the earliest, on August 22, 2005 when a complaint was filed before the OMB-Propert by concerned citizens Biomal C. Bhandari, Lorna B. Bhandari and Rodolfo Del Castillo, Jr.

The prosecution further emphasizes that the preliminary investigation in these cases commenced on December 27, 2012 when the FIO in turn filed the complaint before the Preliminary Investigation and Adjudication Bureau (PIAB) of the Ombudsman-Propert. This filing effectively suspended the running of the prescriptive period pursuant to the suppletory provision of Section 2 of Act No. 3326.

Citing *Ingco vs. Sandiganbayan* (338 Phil. 1061 [1997]), *Sanrio Company Limited vs. Lim* (G.R. No. 168662, February 19, 2008, 546 SCRA 303) and even *SEC vs. Interport Resources Corporation, et al.* (G. R. No. 135808, October 6, 2008), the prosecution notes that for Anti-Graft and Intellectual Property cases, both special laws, the rule is that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

Anent the ground that the facts charged do not constitute an offense, the prosecution insists that the allegations posed by the accused-movants are evidentiary in nature best threshed out in the course of the trial on the merits.

This Motion must also fail for being without merit.

On the issue of prescription, We find instructive *Domingo vs. Sandiganbayan, et al.* (G. R. No. 109376, January 20, 2000). It ruled that - -

In resolving the issue of prescription of the offense charged, the following should be considered:  
(1) the period of prescription for the offense charged;  
(2) the time the period of prescription starts to run;

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and (3) the time the prescriptive period was interrupted.

The Anti-Graft and Corrupt Practices Act (R.A. No. 3019) provides for its own prescriptive period. Section 11 thereof reads: "All offenses punishable under this Act shall prescribe in ten years." This was later amended by Batas Pambansa Blg. 195, approved on 16 March 1982, which increased the prescriptive period of the crime from ten years to fifteen years.

Since the law alleged to have been violated, R.A. No. 3019, as amended, is a special law, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, which provides:

SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

This simply means that if the commission of the crime is known, the prescriptive period shall commence to run on the day the crime was committed. However, if the violation of the special law is not known at the time of its commission, prescription begins to run only from the discovery thereof, *i.e.*, discovery of the unlawful nature of the constitutive act or acts.

In this case, the accused-movants are being charged with a violation of Section 3(e), of R. A. No. 3019 which now prescribes in fifteen (15) years (Batas Pambansa Blg. 195, March 16, 1982). Hence, there is no legal basis for the accused-

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movants to insist on the 10-year prescriptive period for the offense charged because the alleged offense was committed after the amendment.

More importantly, the correct determination of the start of the prescriptive period should be from the discovery of the alleged offense because, prior to the discovery, only the accused knew and were aware of the anomalous transactions and the use of the spurious or fraudulent tax credit certificates.

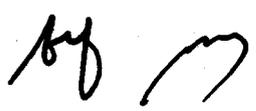
Thus, discovery should be reckoned from the filing of the complaint of concerned citizens Biomal C. Bhandari, Lorna B. Bhandari and Rodolfo Del Castillo, Jr. before the Office of the Ombudsman on August 22, 2005.

Even assuming that the prescriptive period commenced either in 2001 when the BOC conducted its investigation on the subject TCCs or in 2002 when the BOC filed the civil case for sum of money, as alleged by the accused-movants, this would still be within the 15-year prescriptive period because the preliminary investigation that began on December 27, 2012 effectively interrupted the running of the prescriptive period pursuant to the suppletory provision of Section 2 of Act No. 3326.

On the ground that the facts charged in the Information do not constitute an offense, We also find the earlier cited Domingo case as guide. It ruled - -

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 informations need only state the ultimate facts; the reasons therefor could be proved during the trial.

Herein, the accused-movants are charged for a violation of Section 3(e), of Republic Act No. 3019, as amended.


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The law provides - -

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

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(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.

From the foregoing, the elements of the offense are - - (1) that the accused is a public officer or a private person charged in conspiracy with the former; (2) that the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (3) that he or she causes undue injury to any party, whether the government or a private party; (4) that such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and, (5) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

A reading of the Informations charging accused-movants Rigor III and Senador similarly alleged, as follows - -

(1) That Manuel C. Rigor III and Paul Patricio Joaquin Senador, both Tax Specialist I, are public officers of the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance;

(2) That on March 13, 1995 (Rigor, III) and January 31, 1996 (Senador), or sometime prior or subsequent thereto, they took advantage of their

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official functions and committed the offense in relation to office;

(3) That tax credits were granted and utilized under Tax Debit Memo 95-0483-C-I and 95-2030-C-I (Rigor, III) and Tax Debit Memo No. 96-0434-C-I (Senador) to the damage and prejudice of the government in the aforestated amount of P2,832,358.00 and P2,706,994.00, respectively;

(4) That they did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Mannequin International Corporation (Mannequin) by causing the approval and issuance of - -

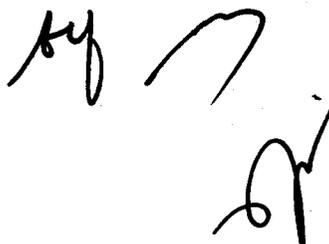
(For Rigor, III) Tax Credit Certificate No. 2156 issued on March 13, 1995 in the amount of Two Million Eight Hundred Thirty Two Thousand Three Hundred Fifty Eight Pesos (P2,832,358.00) and

(For Senador) Tax Credit Certificate No. 4053 issued on January 31, 1996 in the amount of Two Million Seven Hundred Six Thousand Nine Hundred Ninety Four Pesos (P2,706,994.00),

in favor of said Mannequin despite not being legally entitled thereto considering that it had no export of its products and that the supporting public documents attached to its tax credit application are either fake, spurious and/or non-existent; and,

(5) That they acted with evident bad faith, gross inexcusable negligence and/or manifest partiality.

Suffice it to state that the facts alleged in the Informations, if hypothetically admitted, would establish the essential elements of Section 3(e) of R.A. 3019.

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**WHEREFORE**, in view of the foregoing, the - -

(1) Motion for Reconsideration dated October 27, 2017 of accused-movants Melchor P. Tan; Julio P. Tan, Jr.; Blanquita P. Tan; Bernard P. Farin; and, Elena Buenaventura;

(2) Motion to Quash/Dismiss dated November 22, 2017 of accused-movants Merose Tordesillas; Charmelle Recoter; Marife S. Cabiden; Purita Napenas; Cherry Gomez; and, Sylvialina Daguimol; and,

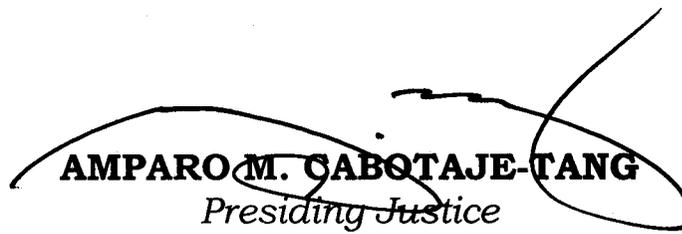
(3) Urgent Omnibus Motion to Quash Information with Motion to Defer Arraignment dated December 4, 2017 of accused-movants Paul Patricio J. Senador and Manuel Rigor.

are all **DENIED** for lack of merit.

**SO ORDERED.**

  
**BERNELITO R. FERNANDEZ**  
*Associate Justice*

We concur:

  
**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice*  
Chairperson

  
**SARAH JANE T. FERNANDEZ\***  
*Associate Justice*