



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0158
SB-18-CRM-0159
SB-18-CRM-0165

- versus -

JEJOMAR C. BINAY, JR., *et al.*,
Accused.

Present:

Lagos, J., Chairperson
Mendoza-Arcega, J., and
Corpus-Mañalac, J.

Promulgated:

August 07, 2018 *Jal*

x -----x

RESOLUTION

CORPUS - MAÑALAC, J.:

For the Court's resolution is accused Eleno M. Mendoza, Jr.'s "*Motion for Reconsideration*" filed on July 17, 2018 relative to the Court's *June 18, 2018 Resolution* denying his *Motion to Quash Information and/or Dismiss the Case* in the instant cases.

In support thereof, accused Mendoza, Jr. raises the following ratiocinations, *viz*:

1. His singular participation in **SB-18-CRM-0158**, as allegedly admitted by the prosecution,¹ is the countersigning of the checks issued by the City Treasurer in the exercise of his functions as then Acting City Administrator. He argues that doing so does not

¹ Page 68 of the Ombudsman Joint Resolution dated July 10, 2017

x-----x

amount to “processing of payments” to Hilmarc’s as alleged in the Information which calls for discretion, thus, he committed no crime citing the case of *Jaca vs. People*;²

2. His alleged participation in the award of Phase VI Construction as stated in the Information in **SB-18-CRM-0159** essentially relates to matters of posting and contents of the IAETB, as well as preparing and signing of the Abstract of Bids, which are functions of the BAC Secretariat/Technical Working Group, of which he was not alleged to be a member;
3. Citing the case of *People vs. Albano*,³ Mendoza alleged that in determining whether the facts alleged constitute an offense, the inquiry should only be on the averments of the Information as hypothetically admitted, facts admitted by the prosecution, and indubitable facts. Allegedly, the facts alleged in the charge of Falsification in **SB-18-CRM-0165** specifically paragraphs (a) (b) (c) and (d) are not indubitable. The record allegedly shows that the Invitation to Bid was published as certified to by the Daily Tribune,⁴ posted in PhilGEPS⁵ and in the official website of Makati City.⁶ The allegation that no public bidding took place, and that Hilmarc’s was the sole bidder as shown in the Abstract of Bids, which submitted the Lowest Calculated and Responsive Bid, are not false, hence, there is no Falsification in this case.

The prosecution filed an *Opposition* thereto on July 19, 2018.

It avers that the motion was not set for hearing within ten (10) days from its filing on June 27, 2018 as required under Section 5, Rule 15 of the Rules of Court.⁷ Also, it alleges that the motion is a mere replication of the Motion to Quash and/or Dismiss which was already considered and found to be of no merit. Reiterating, the prosecution avers that the

² GR Nos. 166967, 166974, January 28, 2013

³ GR No. L-45376-77, July 26, 1988

⁴ Page 7 of the Ombudsman Joint Resolution dated July 10, 2017

⁵ Ibid, Note 3

⁶ Printout from the official website of Makati City as Annex “1”

⁷ SECTION 5. Notice of hearing. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

X-----X

allegations in the Informations subject of the motion constitute *ultimate facts* respectively amounting to violations of RA 3019 Section 3(e) and Falsification, whereas the details thereof need not be stated. The arguments of the accused, according to the prosecution, are evidentiary.

Ruling of the Court

To the prosecution's argument that the motion failed to comply with Section 5 of Rule 15, Rules of Court, the Court is not persuaded.

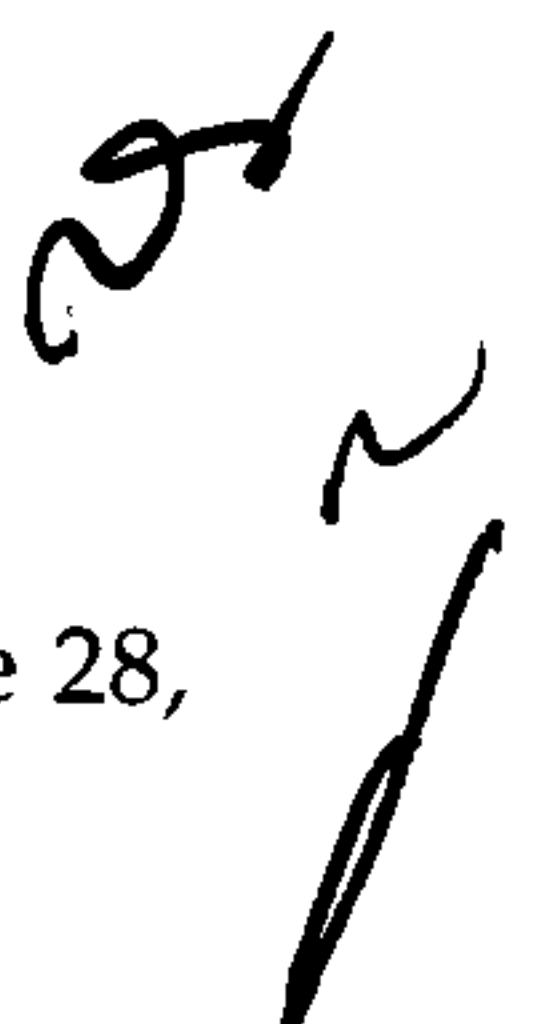
The Supreme Court in *Anama v. Court of Appeals*,⁸ citing the case of *Jehan Shipping Corporation vs. National Food Authority* held that there is substantial compliance with the requirements of due process found in Sections 4 and 5 of Rule 15 of the Rules where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. As enunciated, the test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.⁹ Here, the prosecution was given time to comment, as in fact it was able to file its opposition, thus, herein motion of the accused cannot be voided on said ground.

On the substantive aspect of the motion, however, the Court sides with the prosecution.

As correctly pointed out, Mendoza's motion is a mere duplication of his *Motion to Quash and/or Dismiss the Case*, which was denied in the assailed Resolution dated June 18, 2018 wherein Mendoza's arguments have been extensively taken into consideration, reviewed and passed upon. Apparently in the present Motion for Reconsideration, no new or substantial matters was raised that was not previously thought of, and discussed, hence, there is no basis to deviate from the ruling or otherwise warrant the dismissal of these cases against Mendoza. Relevant to quote at this juncture the pertinent disposition of the assailed Resolution addressing the herein issues of Mendoza, to wit:

⁸ G.R. No. 187021, January 25, 2012

⁹ Fausto R. Preysler, Jr. v. Manila South Coast Development Corporation, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.



X-----X

On Mendoza's arguments in SB-18-CRM-0158 and 0159 that: (1) it could not have been possible for him to commit the crime which allegedly took place prior to his appointment as City Administrator; (b) he does not process or release the payments; (3) he does not participate in the bidding process or alleged simulation thereof; (4) as City Administrator, it is not incumbent upon him to examine each step of the bidding process, scrutinize the bidding documents, the implementation of the project and the propriety of the billings of the contractor; and (5) his duty is only to countersign the check which happens only after payment has been approved by the mayor; all these are matters of evidence best addressed during trial. They are not generally to be considered in a Motion to Quash. Similarly, his argument in SB-18-CRM-0165 that and none of the facts in the 19 July 2013 BAC Resolution and its alleged supporting documents alleged to have been falsified is false, is evidentiary, thus, based on the principle that evidence *aliunde* or extrinsic matters need no consideration in a motion to quash,¹⁰ the same should rather be threshed out in a full blown litigation.

Misplaced is Mendoza's argument that the *Information* for Falsification contains averments, particularly paragraphs [a], [b], [c] thereof, which if true, show that there was a competitive bidding defined in Section 5[e] of RA 9184, thus, they constitute justification that merits dismissal of the charge. On the contrary, the allegations of the *Information* taken in its entirety, rather clearly charges falsification of the July 19, 2013 BAC Resolution, "by making it appear therein that a public bidding for the said Phase VI Construction was conducted," while the accused allegedly "very well knew," and "they being required to disclose the truth of such facts" that "there was no such public bidding conducted, there being no newspaper publication of the ITB, no such posting of the ITB, and Hilmarc's could not have been found to have submitted the Lowest Calculated Responsive Bid."

It is also important to note that all the accused in these cases, Mendoza included, were charged of "conspiracy." Jurisprudence dictates that in conspiracy charge, "the precise extent of or modality of participation of each of the alleged conspirator becomes secondary, because all of them are principals in the accomplishment of the alleged common design,¹¹ which in this case is allegedly to give advantage to Hilmarc's to the damage and prejudice to the government. In *People vs. Quitlong*,¹² it was held that an accused must know from the *Information* whether he faces a criminal responsibility not only for his acts but also for the acts of his co-accused as well. x x x

Reiterating, the rules require that an *Information* needs only to state the ultimate facts showing the acts or omissions amounting to a violation of RA 3019 Section 3(e) and Falsification which were sufficiently alleged in these cases, while other details as argued by Mendoza would pertain to evidentiary facts.

¹⁰ People v. Balao, G.R. No. 176819, January 26, 2011, 640 SCRA 565, 573; Go v. The Fifth Division, Sandiganbayan, 549 Phil. 783, 805 (2007), cited in People vs. Odtuhan, G.R. No. 191566, July 17, 2013

¹¹ People vs. Dollendo, GR No. 181701, January 18, 2012

¹² 354 Phil 372

In *Licomcen Incorporated v. Foundation Specialists, Inc.*,¹³ citing *Ortigas and Company Limited Partnership v. Velasco*,¹⁴ the Supreme Court held that:


“The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; x x x It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.”

WHEREFORE, premises considered, accused **Eleno M. Mendoza Jr.’s Motion for Reconsideration is DENIED**. The scheduled arraignment on August 17, 2018 at 8:30 in the morning is maintained.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹³ *Licomcen Incorporated v. Foundation Specialists, Inc.*, G.R. Nos. 167022 & 169678, August 31, 2007

¹⁴ *Ortigas and Company Limited Partnership v. Velasco*, G.R. Nos. 109645 & 112564, March 4, 1996