



REPUBLIC OF THE PHILIPPINES  
**Sandiganbayan**  
QUEZON CITY

-----  
**SEVENTH DIVISION**

*MINUTES of the proceedings held on August 23, 2018.*

*Present:*

*MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson*  
*ZALDY V. TRESPESES ----- Associate Justice*  
*GEORGINA D. HIDALGO ----- Associate Justice*

The following resolution was adopted:

***SB-18-CRM-0379 – People v. Mario Patricio Paraz Barcenas, et al.***

This resolves the following:

1. Accused Mario Patricio Paraz Barcenas' "Omnibus Motion (to Quash the Criminal Information, to Quash the Warrant of Arrest and/or to Dismiss the Case)" dated June 26, 2018;<sup>1</sup>
2. Prosecution's "Comment/Opposition" dated July 20, 2018.<sup>2</sup>

---

***GOMEZ-ESTOESTA, J.:***

The present case for *Violation of Section 3 (e) of Republic Act No. 3019 ("R.A. 3019")* is but one of the numerous incidents that have gained notoriety as "fertilizer fund scam." It stemmed from the questioned purchase of one hundred sixty-six (166) liters/bottles of foliar fertilizers, through direct contracting, between the local government unit of Carcar, Cebu, Philippines and M.M. Castillo General Merchandise ("MMCGM"). But before he could be arraigned, **accused Mario Patricio Paraz Barcenas** ["**accused Barcenas**"] filed his *Omnibus Motion (to Quash the Criminal Information, to Quash the Warrant of Arrest and/or to Dismiss the Case)*.

---

<sup>1</sup> Records, pp. 151-168

<sup>2</sup> *Id.* at 341-355

1,  
y.  
5

*Accused Barcenas' Omnibus Motion*

Accused Barcenas, former Municipal Mayor of Carcar (now Vice Mayor), seeks the quashal of the Information filed against him on ground that the facts charged do not constitute an offense. He also moves for the lifting of the warrant issued against him, and the dismissal of the present case. The following are the salient points he raised in his pleading:

1. Direct contracting is not per se illegal as it is expressly allowed under Section 50 of *Republic Act No. 9184*.

No actual injury was caused because the purchase of the fertilizers was not a ghost project, nor was there incomplete delivery of the same. All 166 liters of foliar fertilizers were delivered to the intended beneficiaries, and duly accounted for.

2. The disbursement voucher has been reviewed by three (3) personnel before it came to accused Barcenas, namely: accused Roque R. Sarcauga, a certain Tanagras and one Rasonable. On said voucher's face, everything appeared to be in order.

There can be no manifest partiality on the part of accused Barcenas because he relied on the signatures of his subordinates in approving payment for the foliar fertilizers. Neither was there any evident bad faith nor gross inexcusable negligence since he relied on the prior approval and/or endorsements of his subordinates with respect to the purchase of fertilizer.

3. Conspiracy was not established simply because accused Barcenas, in his capacity as then Municipal Mayor, issued the check in favor of MMCGM. He had no other recourse but to approve the payment in favor of MMCGM because the latter was the duly approved supplier of the fertilizer.

Accused Sarcauga was the one who changed the program of work specifications from "common" to "foliar" fertilizer.

**Accused Valentin A. Gamutan, Jr.** ["accused Gamutan"], in his capacity as Bids and Awards Committee ("BAC") Chairperson introduced **accused Marlyn M. Castillo** ["accused Castillo"], representative of MMCGM, for pre-qualification of bidder for direct contracting. Further, accused Gamutan facilitated the submission, verification, and approval of MMCGM as a qualified direct contractor of the municipality.

BAC Vice Chairperson Engr. Jose Paninsoro moved to recommend direct contracting as the mode of procurement, and for MMCGM as the supplier, which had been unanimously approved by the BAC.

↑  
γ  
r

The speed by which the transaction was consummated was necessary in order to effect the early release of the fertilizers to his constituents in need.

4. Accused Barcenas had filed a petition for *certiorari* before the Supreme Court questioning the Office of the Ombudsman's determination of probable cause. As such, he seeks the deferment of further proceedings in this case.
5. His right to speedy disposition of cases has been violated by the Office of the Ombudsman ("Ombudsman"). Since the filing of the complaint with said Office on November 28, 2011, it took almost *seven (7) years* before the present Information was filed before this Court on May 4, 2018. In the intervening time, he suffered prejudice and was unduly burdened during his terms in office. Moreover, in assailing the length of the proceedings before the Ombudsman, accused Barcenas cited the cases of *People v. Sandiganbayan*,<sup>3</sup> *Tatad v. Sandiganbayan*.<sup>4</sup>

Accused Barcenas thus prays that: the proceedings be held in abeyance, the present information and warrant of arrest be quashed, and the case dismissed.

*Prosecution's Comment/Opposition (on Accused Barcenas' Omnibus Motion)*

The prosecution argues that the Information sufficiently alleges the elements of the crime charged, such that if the allegations were hypothetically admitted it would establish a violation of Section 3 (e) of *R.A. 3019*. The information need only aver the ultimate facts constituting the offense, not the details of why and how the illegal acts allegedly amounted to violation of said law. The contentions raised by accused Barcenas focus on evidentiary matters or matters of defense which would be better resolved in a full-blown trial.

The filing by accused Barcenas of a petition for *certiorari* before the Supreme Court is not a ground to defer present proceedings absent a temporary restraining order or writ of preliminary injunction.

Moreover, accused Barcenas' constitutional right to speedy disposition was not violated. In the first place, the cases cited by him are not on point. Secondly, the preliminary investigation against accused Barcenas has been disposed within a reasonable period of time considering the volume of the counter-affidavits to consider and the attached annexes. In fact, a Special Panel had been created to handle the preliminary investigation of fertilizer

<sup>3</sup> G.R. Nos. 188165 & 189063, December 11, 2013

<sup>4</sup> G.R. Nos. 72335-39, March 21, 1988

1  
2  
4

fund scam cases, which included the case of accused Barcenas. Given the number of incidents handled by the Special Panel, it needed sufficient time to conduct a thorough evaluation of the respective case records. Thirdly, the period taken by the preliminary investigation was not deliberate as to delay, harass, and violate the constitutional right of the accused. Additionally, the right of the accused to speedy disposition of cases should be harmonized with the prerogative of the government to prosecute criminal cases so that all who approach the bar of justice be afforded a fair opportunity to present their side.

Lastly, there was no showing that accused Barcenas suffered prejudice by the length of the preliminary investigation. He held the mayoral position for three (3) terms and is now the incumbent Vice Mayor. That he was able to be duly elected to said offices goes to discredit his allegation that he was burned by the preliminary investigation.

The prosecution thus prays that accused Barcenas' Motion be denied.

### **This Court's Ruling**

The Motion is denied.

#### THE FACTS AS CHARGED IN THE INFORMATION ARE SUFFICIENT

As a rule, an information need only state the *ultimate facts* constituting the offense and not the finer details of why and how the crime was committed.<sup>5</sup> Evidentiary matters and other details can be provided during the trial.<sup>6</sup>

In considering a motion to quash on the ground that the facts charged do not constitute an offense, the test to be applied is "whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information."<sup>7</sup>

The following matrix juxtaposes the elements of the crime charged and the facts as alleged in the Information:

<b>Elements of violation of Section 3 (e) of R.A. 3019<sup>8</sup></b>	<b>Salient portions as alleged in the Information</b>
--	---

<sup>5</sup> *People v. Sandiganbayan*, G.R. No. 160619, September 9, 2015

<sup>6</sup> *People v. Romualdez*, G.R. No. 166510, July 23, 2008

<sup>7</sup> *Soriano v. People*, G.R. No. 162336, February 1, 2010

<sup>8</sup> *Lim v. Deputy Ombudsman for the Military and Other Law Enforcement Officers*, G.R. No. 201320, September 14, 2016

82.4

<p>(1) the offender must be a public officer discharging administrative, judicial, or official functions;</p>	<p>“accused MARIO PATRICIO PARAZ BARCENAS (Barcenas), a high-ranking public official, being then the Municipal Mayor of Carcar Cebu, with ROQUE RELLON SARCAUGA (Sarcauga), and VALENTIN A. GAMUTAN[,] JR. (Gamutan), also public officers being the Municipal Agriculturist and Municipal Planning and Development Coordinator/Bids and Awards Committee Chairman, respectively, of the Municipal Government of Carcar, Cebu”</p>
<p>(2) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and</p>	<p>“acting with manifest partiality, evident bad faith or gross inexcusable negligence”</p>
<p>(3) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.</p>	<p>“give MMCGM, through Castillo, unwarranted benefits, privilege and advantage by entering into a contract to purchase 166 liters/bottles of foliar fertilizers with brand name Ferti King Foliar Fertilizer at Php1,500.00 per liter/bottle, and causing the payment thereof for a total amount of Php239,040.00 (Php249,000.00 less Php9,960.00 tax withheld) through the following individual and/or collective acts:</p> <p style="text-align: center;">xxx</p> <p>to the damage and prejudice of the government in the amount of Php239,040.00.</p>

After judiciously examining the Information filed, We find that the prosecution sufficiently averred the ultimate facts comprising the elements of the crimes for which accused was charged. Verily, what accused Barcenas actually raised are matters of defense or evidentiary in nature.<sup>9</sup> These are: that direct contracting, as a mode of procurement, is permissible under Section 50 of *Republic Act No. 9184*; that there was nothing defective or irregular in the process of approving the disbursement voucher; and that there was no conspiracy involving accused Barcenas and his co-accused in committing the crime charged. At this point, accused Barcenas’ contentions are best left to be resolved only after a full-blown trial on the merits.

It is therefore unwarranted to quash the Information on ground that the facts charged do not constitute an offense.

Besides, a review of accused Barcenas’ Motion shows that what he essentially raised are grounds assailing the Ombudsman’s determination of probable cause. Such issue would be better ventilated in a proper petition filed

<sup>9</sup> *People v. Sandiganbayan*, G.R. No. 160619, September 9, 2015

12.1

before the Supreme Court, as in fact, accused Barcenas has already filed a petition for *certiorari* questioning the Ombudsman's findings before the Highest Court. Curiously, that accused Barcenas referred to himself, on several instances, as the "petitioner" in the present Motion suggests that he merely rehashed the same arguments from his petition for *certiorari*. However, it is underscored that this Court does not sit as an appellate court of the prosecutor. Case law is clear on this matter: courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.<sup>10</sup>

For now, it is the Court's judicial determination of probable cause which should sustain the filing of the present charge.

NO INORDINATE DELAY ON THE PART OF  
THE OMBUDSMAN

The right of speedy disposition of cases is guaranteed by no less than Section 16, Article 3 of the *Constitution* which provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."<sup>11</sup>

This constitutional right is violated 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."<sup>12</sup>

The *balancing test* is used in determining whether the right to speedy disposition of cases has been violated. This test evaluates cases on an *ad hoc* basis and weighs the conduct of both the prosecution and defendant in light of the following four factors: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.<sup>13</sup> None of these factors, however, is either a necessary or sufficient condition; they are related and must be considered together with other relevant circumstances.<sup>14</sup> These factors have no talismanic qualities as courts must still engage in a difficult and sensitive balancing process.<sup>15</sup>

<sup>10</sup> *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016, which cited *Mendoza v. People*, G.R. No. 197293, April 21, 2014

<sup>11</sup> PHIL. CONST. art. 3, § 16

<sup>12</sup> *People v. Sandiganbayan*, G.R. Nos. 188165 & 189063, December 11, 2013

<sup>13</sup> *Remulla v. Sandiganbayan (Second Division)*, G.R. No. 218040, April 17, 2017

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

17

While accused Barcenas decries the length of time the Ombudsman allegedly lulled in completing its preliminary investigation, which he claims took almost seven (7) years, he does not claim that he has been vexed by the long interval, except for the mathematical computation he construed from the timeline. It must be emphasized that a mere mathematical reckoning of the time involved is not sufficient to constitute inordinate delay.<sup>16</sup> The realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum.<sup>17</sup>

Records show that, after the Complaint was filed by the Field Investigation Office on November 28, 2011, standard procedure was followed by the Ombudsman in its evaluation of the case. The Ombudsman issued an order requiring the accused to file their counter-affidavits with supporting documents, which was followed by the accused's filing of the required pleadings. The period was then prolonged by the accused when they filed their respective motions for reconsideration of the Resolution dated September 11, 2014 rendered by the Special Panel for Fertilizer Fund Scam. This was further compounded by accused Barcenas when he filed, on two occasions, pleadings containing supplemental arguments in support of his position. The Ombudsman then issued its Joint Order dated June 1, 2016 denying the accused's motions for reconsideration. Ultimately, the Information was filed before this Court on May 4, 2018, or at which time approximately **six (6) years and five (5) months** lapsed since the commencement of the preliminary investigation proceeding.

The latest ruling of the Supreme Court on the issue of inordinate delay is the case of *People v. Sandiganbayan (Fourth Division)*,<sup>18</sup> which teaches:

XXX

**At this juncture, this Court takes judicial notice of the fact that these cases are not the only ones pending before the OMB.** As can be gleaned from the assailed resolutions, these circumstances were not considered by the court a quo as it, evidently, merely ventured into a mathematical computation of the period from the filing of the First Complaint to the filing of the Informations before it.

It is relevant to note that while procedural periods to act upon complaints and motions are set by the rules, these may not be absolute. The law and jurisprudence allow certain exceptions thereto, as this Court and the law recognizes the fact that judicial, as well as investigatory, proceedings do not exist in a vacuum and must contend with the realities of everyday life. It bears stressing that in spite of the prescribed periods, jurisprudence continues to adopt the view that the fundamentally recognized principle is that the concept of speedy trial, or speedy disposition of cases for that matter, is a relative term and must necessarily be a flexible concept. (Emphasis supplied)

XXX

<sup>16</sup> *Republic v. Desierto*, G.R. No. 131966, August 31, 2005 which cited *Dela Peña vs. Sandiganbayan*, G.R. No. 144542, June 29, 2001

<sup>17</sup> *See Uy v. Adriano*, G.R. No. 159098, October 27, 2006

<sup>18</sup> G.R. Nos. 232197-98, April 16, 2018

17.

In light of the circumstances, the period of about six (6) years and five (5) months cannot simply be tagged as delay, much less inordinate delay, that prejudices the constitutional right of accused Barcenas. Neither can the length of time utilized by the Ombudsman be labelled as vexatious, capricious, or oppressive absent any circumstance proving that there was an unwarranted deviation from the standard procedure in the prosecution of the accused. Until the Information was filed before this Court, it cannot be said that the Ombudsman lazily dragged its feet in resolving the proceedings before it.

While accused Barcenas alluded to certain cases decided by the Supreme Court in which inordinate delay was found (*People v. Sandiganbayan*<sup>19</sup> involving a 5-year preliminary investigation and *Tatad v. Sandiganbayan*<sup>20</sup> involving an almost 3-year preliminary investigation), it must be remembered that the facts and circumstances attendant in said jurisprudence are not on all fours with the present case.

In *People v. Sandiganbayan*, the Highest Court admonished State officials for marking time until two (2) treaties<sup>21</sup> were ratified by the Senate before it would proceed with the preliminary investigation against the accused. The resulting delay would deliberately give the prosecutorial officials an undue advantage unavailable at the time of the investigation.

In *Tatad v. Sandiganbayan*, the Supreme Court ruled that Tatad's prosecution was politically-tainted, and that there was a deviation from established procedures prescribed for preliminary investigation. The nearly 3-year delay from the filing of the last affidavit was unreasonable, as three of the five cases were for his failure to file his Statement of Assets Liabilities and Net Worth, and as such, did not necessitate a grueling scrutiny of evidence. The other two cases for bribery and giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, did not justify the 3-year period to resolve the cases.

Without any showing that delay was deliberately chosen by the prosecution to obtain an acute advantage, or that there was an unnecessary deviation from regular protocols in the stages of preliminary investigation, accused Barcenas' case has no parallelism to *Tatad* and *People v. Sandiganbayan*, which would result in the grant of the radical relief sought. Absent evidence to the contrary, it is concluded that the Ombudsman followed standard procedure in resolving accused Barcenas' case with due observance of his right to speedy disposition of cases.

Additionally, although accused Barcenas avers that he was prejudiced from the length of preliminary investigation, he has not shown any concrete proof to substantiate his assertion. Prosecution is not persecution. True enough, persons subjected to preliminary investigation go through some form of anxiety, expenses and constraints. But in his case, it may even be said that accused Barcenas was not overburdened by the proceedings other than what

<sup>19</sup> G.R. Nos. 188165 & 189063, December 11, 2013

<sup>20</sup> G.R. Nos. 72335-39, March 21, 1988

<sup>21</sup> Namely, the RP-HKSAR (Hong Kong Special Administrative Region) Agreement and the Swiss-RP MLAT (Mutual Legal Assistance in Criminal Matters).

12.4

is attributable to the nature of preliminary investigation. In fact, he was successfully elected as Vice Mayor of Carcar, Cebu, in 2010, and then re-elected to the same office back-to-back in 2013 and in 2016. Without proof to the contrary, any prejudice perceived by the accused remains to be seen.

Based on the foregoing, there was no contravention of the accused Barcenas' right to speedy disposition of cases.

SUSPENSION OF THE PROCEEDINGS IS  
NOT WARRANTED

*Ramiscal, Jr. v. Sandiganbayan* holds that "the mere filing of a petition for certiorari under Rule 65 of the Rules of Court does not by itself merit a suspension of the proceedings before the Sandiganbayan, unless a temporary restraining order or a writ of preliminary injunction has been issued against the Sandiganbayan."<sup>22</sup> Conformably therewith, the deferment of the proceedings sought by accused Barcenas is unwarranted absent any showing that a temporary restraining order or writ of preliminary injunction has been issued by the Supreme Court.

**WHEREFORE**, in view of the foregoing, accused Mario Patricio Paraz Barcenas' *Omnibus Motion (to Quash the Criminal Information, to Quash the Warrant of Arrest and/or to Dismiss the Case)* dated June 26, 2018 is **DENIED**.

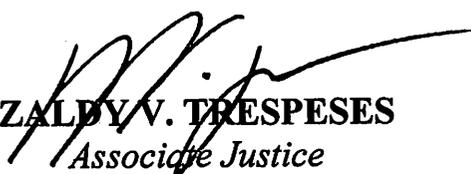
Let the arraignment of accused Barcenas proceed on September 10, 2018 at 8:30 in the morning during the Court's provincial hearing at the Regional Trial Court of Dumaguete City, Province of Negros Oriental.

**SO ORDERED.**

  
**MA. THERESA DOLORES C. GOMEZ-ESTOESTA**

*Associate Justice*  
*Chairperson*

WE CONCUR:

  
**ZALDY V. TRESPESES**  
*Associate Justice*

  
**GEORGINA D. HIDALGO**  
*Associate Justice*

<sup>22</sup> G.R. Nos. 172476-99, September 15, 2010; See also 1997 RULES OF CIVIL PROCEDURE, rule 65, § 7