



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0101**
Plaintiff, For: Violation of Sec. 3(h)
of Republic Act No. 3019

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.
ANTONIO R. FLOIRENDO, JR.,
Accused.

Promulgated:

SEP 11 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Antonio R. Floirendo, Jr.'s *Motion for Reconsideration (Re: Resolution dated 7 August 2018)*.¹

The accused prays that this Court reconsider and set aside its Resolution dated August 7, 2018,² quash the Information, and dismiss the present case. He argues:

1. The recital of facts in the Information is insufficient to charge violation of Sec. 3(h) of R.A. No. 3019.
 - a. Sec. 14 of Art. VI of the Constitution does not contemplate absolutely prohibiting members of the Congress from entering into commercial transactions with the government.

¹ Dated August 20, 2018; Record, Vol. 3, pp. 187-199

² Record, Vol. 2, pp. 188-193

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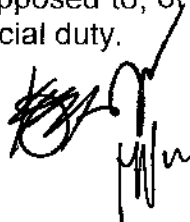
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- b. It is absurd to prohibit a member of the Congress from being a passive investor of an insubstantial amount in a company that enters into a contract with the government.
 - c. It is not sufficient to allege that the accused owns shares in a corporation that transacts with the government. The Information must also specify facts showing that the accused has a substantial or controlling interest in said corporation.
 - d. The prosecution failed to specify facts indicating that his shareholdings are substantial, such that he could exert control or influence on the transactions for his pecuniary interest.
2. The Information does not allege that he used his official position to influence the execution or negotiation of a contract involving the government, or the grant of a franchise or privilege.
 3. The Information does not allege that he used his official position to obtain pecuniary advantage.
 4. Financial or pecuniary interest also refers to actively engaging in the operation or management of a business organization that enters into a contract with the government. Mere shareholding in a corporation does not suffice.
 - a. R.A. No. 3019 aims to prevent the "dominant use of influence, authority and power." As long as a public official does not do anything for the firm and/or corporation, in connection with the contract with the government, there is no need to dispose of the shares in such corporation.
 - b. His nominal shareholding in TADECO is insufficient to indict, much less convict him of violation of Sec. 3(h) of R.A. No. 3019.
 - c. The deliberations on the bills show that the legislators did not intend to penalize possession of insignificant interest in a business.
 - d. The Information does not allege that he received any benefit in connection with the Joint Venture Agreement (JVA).
 - e. The ownership or substantial interest in a business must be coupled with overt acts showing that such ownership or substantial interest is opposed to, or would affect the faithful performance of official duty.



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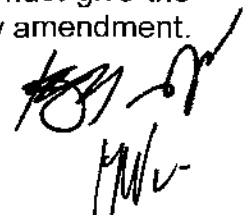
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5. The failure to allege all facts constituting the elements of violation of Sec. 3(h) of R.A. No. 3019 is a fatal defect which cannot be cured by amendment.

In its Comment/Opposition (To the Motion for Reconsideration [Re: Resolution dated 7 August 2018]),³ the prosecution counters:

1. The accused' arguments are a mere rehash of those in his *Motion to Quash*. These had already been addressed in the assailed Resolution.
2. The test in appreciating a Motion to Quash on the ground that the facts alleged in the Information do not constitute an offense is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law, without considering matters *aliunde*.
3. The accused is charged with violation of Sec. 3(h) of R.A. No. 3019 under the second mode, *i.e.*, the public officer is prohibited from having such interest by the Constitution or by law.
4. The Information alleges all elements of violation of Sec. 3(h) of R.A. No. 3019 under the second mode.
5. There is no need to allege that (a) the accused used his position or influence in connection with the negotiation of the terms of the JVA or its execution; (b) he intended to gain or obtain pecuniary advantage through the use of his influence, office or position; and (c) his shareholdings are substantial.
6. Under the second mode of violation of Sec. 3(h) of R.A. No. 3019, mere prohibition by the Constitution against having financial interest in a contract would suffice.
7. The accused' indictment is not based on "conflict of interest," but on the proscription under Sec. 14, Art. VI of the Constitution.
8. All other matters raised by the accused are matters *aliunde*.
9. Rule 117, Sec. 4 of the Rules of Court expressly provides that if the Motion to Quash is based on the ground that the facts charged do not constitute an offense, the Court must give the prosecution an opportunity to correct the defect by amendment.



³ Dated August 29 2018; Record, Vol. 3, pp. 204-211

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THE COURT'S RULING

The Court resolves to deny the accused' *Motion for Reconsideration*.

The accused contends that the Information does not allege all elements of violation of Sec. 3(h) of R.A. No. 3019 because there is no allegation to the effect that (a) he used his official position to influence the execution or negotiation of a contract involving the government, or the grant of a franchise or privilege; and (b) he used his official position to obtain some pecuniary advantage. This contention is untenable.

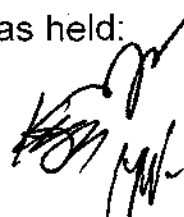
It bears stressing that there are two (2) modes by which Sec. 3(h) of R.A. No. 3019 may be violated. In *Domingo v. Sandiganbayan*,⁴ the Supreme Court held:

In other words, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

The accused may be charged under either only the first or the second mode, or under both. Here, the Information alleges only the second mode by which violation of Sec. 3(h) of R.A. No. 3019 may be committed. "x x x, despite being prohibited by Article VI, Section 14 of the 1987 Constitution from having such financial interest" is a sufficient allegation of facts constituting the third element of the offense.

The other arguments of the accused are a mere reiteration or rehash of those in his *Motion to Quash the Information*.⁵ These had already been considered and found to be without merit in the assailed Resolution. Hence, it is unnecessary to discuss them anew.

In *Mendoza-Ong v. Sandiganbayan*,⁶ it was held:



⁴ G.R. Nos. 149175 and 149406, October 25, 2005

⁵ Included in his *Opposition to the Motion to Suspend the Accused and Motion to Quash the Information* dated June 27, 2018; Record, Vol. 2, pp. 137-157

⁶ G.R. Nos. 146368-69, October 18, 2004

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Concerning the first ground abovecited, the Court notes that the motion contains merely a reiteration or rehash of arguments already submitted to the Court and found to be without merit. Petitioner fails to raise any new and substantial arguments, and no cogent reason exists to warrant a reconsideration of the Court's Resolution. It would be a useless ritual for the Court to reiterate itself.

In *Komatsu Industries (Phils.) Inc. v. Court of Appeals*,⁷ it was held:

In the same manner, we readily found that, despite the lengthy and repetitious submissions of petitioner in its pleadings filed with this Court as earlier enumerated, all the arguments therein are also mere rehashed versions of what it posited before respondent court. We have patiently given petitioner's postulates the corresponding thorough and objective review but, on the real and proper issues so completely and competently discussed and resolved by respondent court, petitioner's obvious convolutions of the same arguments are evidently unavailing. x x x

The pertinent portion⁸ of the assailed Resolution addressing the accused' arguments is hereunder quoted for convenience:

In resolving a motion to quash on the ground that the facts charged do not constitute an offense, which assails the sufficiency of the Information, the Court need not go beyond the allegations of the Information whose truth and veracity are hypothetically admitted. In *People v. Sandiganbayan*, it was held that courts must look into the following matters:

x x x (1) what must be alleged in a valid information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

Rule 110, Sec. 6 of the Rules of Court provides for the contents of a sufficient Information. To wit:

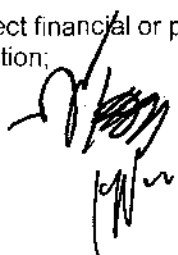
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The accused is charged with violation of Sec. 3(h) of R.A. No. 3019, the elements of which are as follows:

1. The accused is a public officer;
2. The accused has a direct or indirect financial or pecuniary interest in any business, contract or transaction;

⁷ G.R. No. 127682; April 24, 1998

⁸ pp. 4-6; Record, Vol. 2, pp. 191-193



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3. The accused either: (a) intervenes or takes part in his or her official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by law.

On the other hand, the Information in the present case alleges:

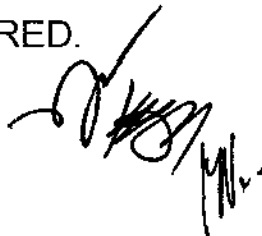
1. x x x accused **ANTONIO DEL ROSARIO FLOIRENDO, JR.**, a high-ranking public officer, being then the Representative of the 2nd District of Davao del Norte, x x x
2. x x x. did then and there willfully, unlawfully and criminally have direct and/or indirect financial interest in the 21 May 2003 Agreement between the Bureau of Corrections and Tagum Agricultural Development Company, Inc. (TADECO), in which company he then owned seventy-five thousand shares of stocks worth Seven Million and Five Hundred Thousand Pesos, and which company's (TADECO) majority stocks were in turn owned by and under the control of accused's family through Anflo Management and Investment Corporation, x x x
3. x x x, despite being prohibited by Article VI, Section 14 of the 1987 Constitution from having such financial interest.

At this point, there is no need to look into matters beyond the four corners of the information. This Court finds that the facts charged in the Information sufficiently allege the essential elements of the second mode of violation of Sec. 3(h) of R.A. No. 3019.

The other arguments of the accused are matters of defense which are better threshed out during the trial on the merits.

WHEREFORE, the Motion for Reconsideration of the accused is hereby **DENIED** for lack of merit.

SO ORDERED.



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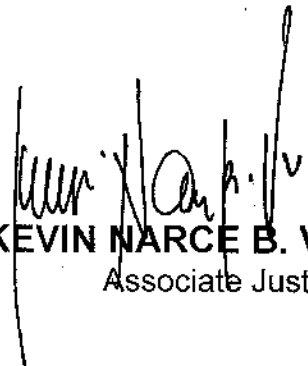
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SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice