REPUBLIC OF THE PHILIPPINES

Sandiganbayan

QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**SB-18-CRM-0447 to 0448**
– versus –	For: Violations of section 3(e) of Rep. Act No. 3019
HUSSIN U. AMIN, NEDRA S. BURAHAN, OSCAR O. PARAWAN, SAMUEL M. SIMBAJON, MA. PERLICE SOCORRO G. JULIAN, and ADBULGAMAR J. INGUI, *Accused.*	

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PEOPLE OF THE PHILIPPINES, *Plaintiff*,	**SB-18-CRM-0449**
– versus –	For: Violation of section 3(e) of Rep. Act No. 3019
HUSSIN U. AMIN, NEDRA S. BURAHAN, OSCAR O. PARAWAN, ABUNDIO E. BERNARDO JR., MA. PERLICE SOCORRO G. JULIAN, and ADBULGAMAR J. INGUI, *Accused.*	Present: LAGOS, *J.*, Chairperson, MENDOZA-ARCEGA, and CORPUS-MAÑALAC, *JJ.* Promulgated: September 06, 2018

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RESOLUTION

LAGOS, *J.*:

For resolution are: (1) accused Bernardo, Julian, Parawan, and Simbajon's *Motion to Dismiss*;[1] and (2) accused Burahan's *Omnibus*

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[1] Dated 6 August 2018 and filed on 7 August 2018.

Motion to Quash Information & Defer Arraignment.[2] The prosecution filed its *Consolidated Comment* to these motions.[3]

Motion of accused-movants Bernardo, Julian, Parawan, and Simbajon

In their motion, accused Bernardo, Julian, Parawan, and Simbajon pray for the dismissal of the cases against them based on the violation of their right to speedy disposition of their cases. Accused Parawan invokes additionally the ground that the filing of the case against him violates the rule against forum-shopping.

They claim that there was inordinate, oppressive and unreasonable delay in the preliminary investigation and filing of these cases against them. They discussed the four factors of the balancing test, starting with the following timeline:

Date	Event/Action
February 2006	Task Force Abono – Field Investigation Office started fact-finding investigation into the fertilizer fund projects
3 March 2006	Date of COA Special Audit Report, which covered the transactions subject of these cases
28 October 2014	Date of the task force's complaint
3 February 2015	Filing of the complaint
5 February 2015	Date of order requiring the respondents to file their counter-affidavits
13 May 2015	The accused-movants filed their counter-affidavits as respondents
27 March 2017	Issuance of resolution finding probable cause
14 September 2017[4]	Receipt of resolution finding probable cause
20 September 2017	Filing of motion to reconsider the resolution
January 2018	Denial of motion for reconsideration
29 June 2018	Filing of the Informations with this Court

They claim that there was a delay of over twelve (12) years – from the creation of the task force to the filing of the Informations. This includes a period of three (3) years and four (4) months from the filing

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[2] Dated 6 July 2018 and filed on 7 August 2018. The prayer for deferment of the arraignment is mooted by the resetting of the arraignment to 14 September 2018 per Order of 10 August 2018.
[3] Dated 20 August 2018 and filed on even date.
[4] This appears to have been written erroneously as "14 September 2014" in the motion. See page 4 of the motion.

of the complaint on 3 February 2015 up to the filing of the Informations with this Court.

They argue that while the Ombudsman's Rules of Procedure does not provide a period for resolution, the period in the DOJ National Prosecution Service Manual should be applied by analogy to determine a reasonable period. They cite particularly section 58 thereof which provides a period of sixty days.

Citing the Court's resolution in a separate case, *People v. Villafuerte*,[5] they also invoke the ten (10) day period in Rule 112 of the Rules of Court, which was cited as something to be considered as a reasonable time frame. They also rely on the ruling in *Tatad v. Sandiganbayan*,[6] where a delay of three (3) years was enough to dismiss a case.

The case of *Torres v. Sandiganbayan (First Division)*[7] is cited ostensibly to mirror their situation. They argue that there was no reason for the delay since the complaint filed was based on a COA report issued on 3 March 2006. This report was already available to the task force and was even the basis for the filing of several other cases. They claim that the task force sat on the report for nearly nine (9) years and then simply based their complaint on the contents of such report.

They then cite *People v. Sandiganbayan (Fifth Division)*[8] to support their position that it is the prosecutor's duty to expedite cases whether or not the respondent objected to the delay. They also note the fact that they raised the issue of inordinate delay in their motion for reconsideration of the resolution finding probable cause, which issue was ignored by the Ombudsman.

They claim that they have suffered prejudice as they are in their advanced ages and some of them already suffer ailments, which affect their ability to travel to attend proceedings. They claim that their ability to defend themselves has been diminished by the passage of time.

They say that they do not have sufficient financial resources. Accused-movants Simbajon and Bernardo have long retired. Accused-movants Parawan and Julian were ordered dismissed in administrative cases against them. These cases are on appeal, but their retirement benefits have been withheld.

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[5] SB-18-CRM-0336 (Resolution), 4 July 2018.
[6] G.R. No. 72335-39, 21 March 1988.
[7] G.R. Nos. 221562-69, 5 October 2016.
[8] G.R. No. 199151-56, 25 July 2016.

They lament the fact that in cases similar to them, the complaints against the responsible officials, who were similarly situated and acted as they did, were dismissed. They view this as selective justice which violates their right to equal protection of the law.

Accused-movant Parawan claims additionally that there is a violation of the rule against forum-shopping. He discloses that he is charged as an accused in a case for violation of section 3(e) of Rep. Act No. 3019, pending before this Court's Second Division and docketed as SB-11-CRM-0092. He was charged for his actions when he was regional executive director for funds that came under his custody. That case involves the downloading by the DA Regional Field Unit IX of amounts covered by several sub-allotment advices, including Sub-Allotment Advice No. 101-2004-387. This is the same sub-allotment advice that is involved in the case at bar.

He views that case (SB-11-CRM-0092) as the "mother case," which covers the transfer of funds from various sub-allotment advice. Since that case also includes Sub-Allotment Advice No. 101-2004-387, that case therefore also includes the transactions subject of these present cases. He claims that he is in danger of being convicted twice of the same criminal offense for the same act.

Motion of accused Burahan

In her motion, accused Burahan raises two grounds: (1) that the facts charged in the Informations do not constitute an offense; and (2) there was inordinate delay that violated her constitutional right to speedy disposition of her case.

She claims that the acts alleged against her show that she had no involvement or that she just had passive or minimal participation in the transfer of funds, the procurement of supplies, the selection of suppliers, and the price of the procured items.

As she was not a member of the bids and awards committee, she says that she had no control over the bidding and the evaluation of the bidders. As the then municipal mayor and head of the procuring entity, she had ministerial approving authority. Her signing the MOA and the contract does not make her a conspirator or criminally liable. Such signing is ministerial to complete the process.

She cites the cases of *Arias v. Sandiganbayan*[9] and *Sistoza v. Desierto*[10] to support her claim that she relied in good faith on the acts of her subordinates. As she was responsible for the whole municipality,

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[9] G.R. Nos. 81563 & 82512, 19 December 1989.
[10] G.R. No. 144784, 3 September 2002.

it would have been counterproductive for her to examine each document that passed her office. The MOA and the contract do not appear irregular on their faces to warrant a detailed examination.

Anent the violation of right to speedy disposition of her cases, she claims there was inordinate delay in the fact-finding proceedings and preliminary investigation of her cases. She stresses that the acts subject of the cases took place over 14 years ago. She notes the following details:

Date	Event/Action
April, May and December 2014	Dates subject of these criminal cases
28 October 2014	Date of the task force's complaint
3 February 2015	Filing of the complaint
26 March 2015	Date accused Burahan filed her counter-affidavit as respondent
27 March 2017	Issuance of resolution finding probable cause

She finds the delay to be unjustified. The time before the Ombudsman was able to resolve the case was drawn-out. She claims that there is no plausible, special or novel reason to justify the delay in terminating the investigation. She points out that she raised the issue of speedy disposition in her counter-affidavit, but this was brushed aside.

She notes that she was not informed or was not made aware of the fact-finding investigation being conducted by the FIO. She only learned of such investigation when she received the order to file her counter-affidavit on 27 February 2015. She claims this is a violation of her right to due process.

She cites *Coscolluela v. Sandiganbayan*[11] and *Barker v. Wingo*[12] to explain any lack of follow-up of her case as well as to stress the Office of the Ombudsman's mandate to act promptly on complaints.

She also claims to have suffered prejudice, citing *Corpuz v. Sandiganbayan*.[13]

The prosecution's opposition

The prosecution's opposition only discusses the accused-movants' arguments on the violation of their right to speedy disposition of cases.

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[11] G.R. Nos. 191411 & 191871, 15 July 2013.
[12] 407 U.S. 514 (1972).
[13] G.R. No. 162214, 11 November 2004.

They provide a different timeline, excluding the period for fact-finding investigation. They explain that this cannot be considered part of the preliminary investigation to determine probable cause. There is nothing irregular when the subject of the fact-finding investigation is not informed of it because it is only for the gathering of evidence for the filing of a complaint.

In support of this position, the prosecution cites a Supreme Court press briefing as regards its disposition of a petition of one Cesar Cagang. They claim that report indicate that the Supreme Court interpreted the reckoning period for the right to speedy disposition of cases from the preliminary investigation of cases and not from the fact-finding stage.

They add that the fact-finding investigation took nine (9) years to complete due to the complexity of the fertilizer fund scam. They explain that although the COA special audit report was used, the resolution of these cases is complex as the culpability of each accused is defined. This requires considerable time and effort for case build-up. This shows that the Ombudsman did not rely heavily on the COA report.

DISCUSSION and RULING

The motions lack merit.

As a preliminary matter, the Court observes that the two motions under consideration principally invoke the same ground, but they are presented in different remedies. Accused Bernardo, Julian, Parawan, and Simbajon filed a motion to dismiss, while accused Burahan filed a motion to quash. These motions pray for the same relief and are based mainly on the argument that there was inordinate delay which violated the accused-movants' right to speedy disposition of case.

A motion to quash is a specific remedy in criminal cases to attack the validity of an information. Generally, it does not result in the final dismissal of the case, unless the defect is based on a ground barring further prosecution.[14] When a violation of the right to speedy disposition is invoked, it is not simply the information which is being assailed. The entire proceedings wherein there was inordinate delay is assailed. The principal relief in a remedy invoking the violation of the right to speedy disposition of cases is the dismissal of the pending case.

[14] Rule 117, section 6.

In cases decided by the Supreme Court, motions to dismiss and motions to quash have both been found to be available to one who invokes the violation of the constitutional right. The principal relief for a violation of the constitutional right is the dismissal of the case, which relief is prayed for in the motions of the accused-movants. A violation of a constitutional right is a grave allegation that cannot simply be brushed aside. Considering also that the effect of violation of the constitutional right to speedy disposition of cases is akin to the effect of some of the ground in a motion to quash, the motion to quash must be entertained.

I.
The accused-movants' allegation of violation of their right to speedy disposition of their cases

In determining whether a person's right to speedy disposition of cases has been violated, the Supreme Court has adopted for this jurisdiction a balancing test.[15] It examines the right of the State to prosecute crimes against a person's right to speedy disposition of cases.[16] It must be determined if there was a vexatious, capricious, and oppressive delay.

The balancing test examines four factors, namely: (1) the length of delay, (2) the reasons for the delay, (3) the assertion or non-assertion of the right, and (4) the prejudice caused by the delay. These factors are correlated and assessed together.

The length of delay

In the computation of the length of delay, the accused-movants contend that the period incurred for the fact-finding investigation must be included. The prosecution's opposition to this point is based on its appreciation and citation of a Supreme Court announcement on the Supreme Court's action in a case involving the petition of one Cesar Cagang. They claim that reports say that the Supreme Court ruled that the period for fact-finding investigation should not be included in the computation of the period of delay, with such period to start form the preliminary investigation only.

But no official copy of the decision was appended or cited in the prosecution's written opposition. The news reports and even the announcement of the Supreme Court PIO, which themselves were not shown or annexed to the opposition, are not enough to establish the actual ruling of the Court and its reasoning therefor. Even assuming

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[15] Coscolluela v. Sandiganbayan, *supra*.
[16] Dansal v. Fernandez, G.R. No. 126814, 2 March 2000.

that the Supreme Court spokesperson correctly announced the decision or holding of the Supreme Court, it cannot be ascertained what the ruling really is. Without any copy of the decision, We would be engaging in guesswork anent the content of the disposition of the Cagang case if We consider the same at this point.

By citing the decision, it behooved the prosecution to actually produce a copy of the decision since such copy is not yet publicly available. After all, it is also the Office of the Special Prosecutor which litigates cases in the Supreme Court involving the actions and judgments of this Court. The prosecution was therefore in the position to procure a copy of the decision it was pleading as part of its written opposition.

Be that as it may, such lapse does not effectively sap the strength of the People's opposition.

We take judicial notice of the Supreme Court's decision in *Magante v. Sandiganbayan (Third Division)*.[17] It is a recently promulgated decision concerning the question of inclusion of the period of fact-finding investigation in the computation of delay.[18]

In *Magante*, the Supreme Court clarified its earlier decisions on the inclusion of the period for fact-finding investigation by differentiating and delineating between two types of fact-finding investigation. The Supreme Court explained:

> "We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal criminal complaint had been initiated by a private complainant, the burden is upon such complainant to substantiate his allegations by appending all the necessary evidence for establishing probable cause. The fact-finding investigation conducted by the Ombudsman after the complaint is filed should then necessarily be included in computing the aggregate period of the preliminary investigation.
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> On the other hand, if the fact-finding investigation precedes the filing of a complaint as in incidents investigated *motu proprio* by the Ombudsman, such investigation should be excluded from computation. The period utilized for case build-up will not be counted in determining the attendance of inordinate delay.
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> It is only when a formal verified complaint had been filed would the obligation on the part of the Ombudsman to resolve the same promptly arise. Prior to the filing of a complaint, the party involved is

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[17] G.R Nos. 230950-51, 23 July 2018.
[18] Copy of promulgated Decision is available at http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/230950-51.pdf (last accessed on 3 September 2018).

not yet subjected to any adverse proceeding and cannot yet invoke the right to the speedy disposition of a case, which is correlative to an actual proceeding. In this light, the doctrine in *People v. Sandiganbayan* should be revisited.

With respect to investigations of anonymous complaints or *motu proprio* investigations by the Ombudsman, the date when the Ombudsman receives the anonymous complaint or when it started its *motu proprio* investigations and the periods of time devoted to said investigations cannot be considered in determining the period of delay. For the respondents, the case build-up phase of an anonymous complaint or a *motu proprio* investigation is not yet exposed to an adversarial proceeding. The Ombudsman should of course be aware that a long delay may result in the extinction of criminal liability by reason of the prescription of the offense."

In the cases at bar, it is not disputed that the fact-finding investigation was initiated when the Task Force Abono was constituted as a special task force to specifically investigate the so-called "fertilizer fund scam." With respect to the fact-finding investigation into the conduct of herein accused, they were covered in the task force's fact-finding investigation. The task force then filed the complaint-affidavit which initiated the preliminary investigation of these cases.

Evidently, the fact –finding investigation involving these present cases was not initiated through any formal or verified complaint. The constitution of the task force was for a *motu proprio* fact-finding investigation by the Office of the Ombudsman.

Following the clear standard laid down in *Magante*, the period incurred for fact-finding investigation of these cases should be excluded in the computation of delay.

This ruling is in keeping with settled principles or doctrines underlying the right to speedy disposition of cases and those of criminal laws in general.

We agree with the prosecution anent the nature of a fact-finding investigation. It is preparatory to the filing of a complaint, which complaint becomes the basis for the conduct of a preliminary investigation. It is at this point, when a formal complaint is filed, that the respondents are informed of and confronted with the charges against them.

During the fact-finding investigation, the case against the would-be respondents is being crafted by whatever investigatory process the responsible officials deem necessary or relevant. The respondents are not aware of this investigation and they are not exposed to such investigation.

It is also absurd to suggest that one's right to due process is being violated simply because one is being investigated. If such investigation is carried out within the bounds of the law, there is no basis to say that such is violative of due process.

It would be even more illogical to claim that one has a right to be informed if a fact-finding investigation is being conducted. This suggestion conflicts with the independent stature of the Office of the Ombudsman.

Moreover, the State is granted a period to look into and investigate possible criminal wrongdoings. This is precisely why there are prescriptive periods for the prosecution of crimes. The prescription of a crime or offense is the loss or waiver by the State of its right to prosecute an act prohibited and punished by law.[19]

These considerations are clearly demonstrated by way of an example in the admission of accused Burahan that she was not aware of the fact-finding investigation and that she came to know of such investigation when she was asked to submit her counter-affidavit to the complaint against her. She was subjected to proceedings only when the FIO complaint was filed against her. That was when she was exposed to adversarial proceedings. In the period prior to that, or when the fact-finding investigation was done, no such adversarial nature was present; it was clearly just a stage preparatory to the filing of a formal complaint.

Accused Bernardo, Julian, Parawan, and Simbajon reference the period in the DOJ Prosecution Service Manual and this Court's resolution finding relevant the period prescribed in the Rules of Court. It should be noted that these periods, as applied to the offices to which they originally pertain (the DOJ or the prosecution offices), are merely directory.[20]

With regard to the Office of the Ombudsman, there is no fixed period for the conduct of a preliminary investigation. Such being the case, the periods prescribed in the DOJ Manual and the Rules of Court may serve as guides, but, ultimately, the reasonableness of the actual period incurred by the Office of the Ombudsman would have to be adjudged on a case to case basis. The factual circumstances obtaining in each case must be taken into account.

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[19] Aquino, Ramon, The Revised Penal Code, Vol. I, p. 695 (1976).
[20] Dansal v. Fernandez, supra note 16.

Thus, this Court's reference to the period in the Rules of Court in *People v. Villafuerte*[21] must be read in relation with the finding therein that the total period of delay was about eleven (11) years.[22] Considering the circumstances obtaining therein, the great departure from the period prescribed in the Rules of Court was found to be unreasonable.

With the exclusion of the period for fact-finding investigation, We find the following timeline relevant to the determination of whether there was inordinate or oppressive delay in these cases:

Date	Event/Action
3 February 2015	Filing of the FIO complaint
5 February 2015	Date of order requiring the respondents to file their counter-affidavits
26 March 2015	Accused Burahan filed her counter-affidavit
13 May 2015	Accused Bernardo, Julian, Parawan, and Simbajon filed their counter-affidavits
27 March 2017	Issuance of resolution finding probable cause
20 September 2017	Filing by accused Bernardo, Julian, Parawan, and Simbajon of motion to reconsider the resolution
January 2018	Denial of motion for reconsideration
29 June 2018	Filing of the Informations with this Court

The preliminary investigation of these cases took about three (3) years and four (4) months. Not all of this period, however, may be attributable to the Office of the Ombudsman. We find the time period of delay to be about two (2) years and seven (7) months.

This is comprised of the following time periods: (i) from 13 May 2015, when the respondents have filed their counter-affidavits and the case was ripe for resolution, up to 27 March 2017, when the resolution finding probable cause was approved – a period of about one (1) year and 10 ½ months; and (2) from 20 September 2017, when the motion for reconsideration was filed, up to 29 June 2018, when these cases were filed with the Court – a period of a little over nine (9) months. These total to a delay period of about two (2) years and seven (7) months.

Reasons for the delay

The accused-movants contend that there was no reason for the prolonged period to terminate the investigation of these cases. The

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[21] Supra.
[22] This includes period for the fact-finding investigation as well as the period incurred to conduct and terminate the preliminary investigation proper, which was a delay of about four (4) years.

prosecution counters that these cases are complex, which required a considerable time and effort.

We find the reasons cited by the prosecution to be sufficient under the facts of these cases.

A perusal of the records would show the complexity of these cases. First, the FIO complaint raised a number of factual allegations and attached numerous documents. It would certainly take time to go through these and resolve them. Second, the complexity is compounded by the fact that there are a number of public-officer respondents, each of whom presented their defenses as well. Their side, of course, must be considered as well. Third, the Office of the Ombudsman's resolution finding probable cause shows that it evaluated the allegations and supporting evidence to determine the individual participation of the accused and their alleged scheme or conspiratorial actions. Thus, the time requirement to comb through all the allegations and documents is not unjustified. Fourth, the records show that the alleged criminal acts and or transactions subject of these cases are related to a larger case investigation into the so-called "fertilizer fund scam."

Accused Bernardo, Julian, Parawan, and Simbajon decry the fact that the FIO complaint filed on 3 March 2015 appears to rely heavily on the COA special audit report released as far back as March 2006.

It should be remembered, however, that the Office of the Ombudsman has wide investigatory powers and it may properly consider the reports or documents from other government agencies. Even if it were true that the FIO complaint relied on the COA report, it does not devalue the complaint or make the investigatory period oppressive. As explained by the prosecution, the report covers a wide range of transactions and had to be distilled to ascertain the individual participation of the accused.

Assertion or non-assertion of the right

The *Coscolluela* case is authority for the expected conduct or action of a respondent in a preliminary investigation – that he is not expected to follow-up on his case. The Supreme Court explained:

> "Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable

timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

> A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process."

Indeed, the resolution of a complaint should be completed even without any prodding or follow-up from the respondents. The Office of the Ombudsman has the duty to act promptly on all complaints. However, We clarify when such duty on the part of the Office of the Omubdman arises, as explained in *Magante*:

> "It is only when a formal verified complaint had been filed would the obligation on the part of the Ombudsman to resolve the same promptly arise. Prior to the filing of a complaint, the party involved is not yet subjected to any adverse proceeding and cannot yet invoke the right to the speedy disposition of a case, which is correlative to an actual proceeding. xxx xxx xxx"

Prejudice caused by the delay

The case of *Corpuz v. Sandiganbayan*,[23] which is often cited for its definition of what constitutes prejudice, explained:

> "xxx xxx xxx Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy."

While we commiserate with the difficulties of accused Bernardo, Julian, Parawan, and Simbajon, We nevertheless find that these are effects of the passage of time and of cases which are separate to or district from these present cases. They are not caused entirely or even mainly by the delay in these cases.

We also cannot judge the Office of the Ombudsman's function by looking into its disposition or dismissal of the cases against other persons in different cases. The disposition of the cases against other

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[23] Supra.

persons who may be similarly situated cannot be viewed as evidence of prejudice. Neither could it be considered a violation of the guarantee of equal protection of the law. Each case, including the cases at bar, is resolved based on the facts or circumstances peculiar to each.

With respect to accused Burahan, her explanation of the prejudice caused to her is in reality a mirror enumeration of prejudice found in jurisprudence. But We find that she has not demonstrated how these are applicable to her case or to her person. Citation of such examples is not sufficient to establish such claims in these present cases.

Conclusion

We stress that the period to be considered in the determination of the delay is limited to the conduct and termination of the preliminary investigation of these cases.

A discussion of the factors of the balancing test takes into consideration each of the factors. It requires an assessment of the factors by relating each one to the other, without any one factor taking preceding or importance.

A review of the records of the case led Us to a finding that the period of delay is only about two (2) years and seven (7) months and that the reasons for the delay are sufficient or reasonable under the circumstances of these cases.

The accused-movants have shown that they have raised the issue of delay earlier in the Office of the Ombudsman. But this does not automatically mean that their right has been transgressed. It is taken in light of the other factors of the balancing test.

We also found that while the accused-movants are presently suffering difficulties, they are not solely caused by the delay in these cases.

All told, We find no inordinate, vexatious or capricious delay in the conduct and termination of the preliminary investigation of these cases. On the contrary, the delay in the preliminary investigation of these cases was geared towards ensuring a proper and thorough disposition of these cases. Thus, We find no violation of the accused-movants' right to the speedy disposition of their cases.

II.
Accused Parawan's claim of violation of the rule against forum-shopping

Accused Parawan seeks the dismissal of the cases against him due to an alleged violation of the rule against forum-shopping. He argues that the transactions subject of these cases are already the subject of another pending criminal case.

We are not persuaded.

The Rules of Criminal Procedure does not have specific provisions regulating the forum-shopping in criminal cases. But there is also no specific rule barring its applicability in criminal cases. In fact in some decided cases, the Supreme Court engaged in a discussion of forum-shopping in criminal case.[24] Nevertheless, even after a consideration of the rules and considerations concerning forum-shopping, We find that the filing of the cases at bar do not constitute a violation of the prohibition against forum-shopping.

Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. [25] In *Pentacapital Investment Corporation v. Mahinay*,[26] it was explained that:

> "Forum-shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)"

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia*[27] are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the cases pending, there is

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[24] See: Paredes v. Sandiganbayan, G.R. No. 108251, 31 January 1996; Sps. Tiong v. Balboa, G.R. No. 158177, 28 January 2008.
[25] Yap v. Court of Appeals, G.R. No. 186730, 13 June 2012.
[26] G.R. Nos. 171736 & 181482, 5 July 2010.
[27] This doctrine technically involves civil actions. Even in jurisprudence involving criminal cases, the discussion of the doctrine revolves around the accompanying civil liability (See PNB-Republic Bank v. Court of Appeals, G.R. No. 127370, 14 September 1999; Sps. Tiong v. Balboa, supra.). We include it herein for a complete disposition of the issue.

identity of parties, rights or causes of action, and reliefs sought.[28] *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the cases, such that any judgment that may be rendered in the pending case would amount to *res judicata* in the other case.[29]

To substantiate his claim of violation of the rule prohibiting forum-shopping and have these cases dismissed against him, accused Parawan must show that among the cases, there is identity of parties, of set of facts alleged,[30] and of reliefs sought, and whether *res judicata* may apply.

A copy of the Information in SB-11-CRM-0092, which is appended to the motion, shows the alleged acts of accused Parawan subject of that case. He is alleged to have violated section 3(e) of Rep. Act No. 3019 when he failed to comply with the governing administrative rules. He is alleged to have failed to institute measures to ensure the proper handling of the funds which passed through his office, resulting in unliquidated balances that was considered as damage or injury to the government.

On the other hand, in the cases at bar, accused Parawan is alleged to have acted as a conspirator in the scheme to release and misuse the funds.

It is true that the funds subject of these cases is also one of the funds subject of SB-11-CRM-0092. These funds are covered by the same sub-allotment release order. But the fact that the same fund is the subject of different cases does not automatically mean that the cases seek to enforce criminal liability for the same actions. There can be multiple acts as sources of distinct criminal liability over the same government fund.

We find that the alleged acts of accused Parawan in these cases at bar are different from his alleged acts in SB-11-CRM-0092. Although the cases involve the same fund, these cases are not actually founded on the same facts. They share some details, but the acts alleged to be criminal are actually different.

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[28] Yap v. Court of Appeals, supra.
[29] Sps. Marasigan v. Chevron Phils., Inc., G.R. No. 184015, 8 February 2012.
[30] Since the equivalent of cause of action in criminal cases are the acts alleged to be the basis of criminal liability. Also, the delict is a cause of action for recovery of civil liability, as every person criminally liable is also civilly liable therefor.

In SB-11-CRM-0092, accused Parawan was charged by himself, whereas, in the cases at bar, he is alleged to have conspired with other public officers. There is no identity of parties as accused Parawan is indicted as a conspirator with other accused in these cases.

More importantly, the set of facts upon which these present cases are founded is different from those in SB-11-CRM-0092. Accused Parawan's alleged acts with respect to the subject fund are different in SB-11-CRM-0092 and in these cases. In the former, his alleged acts leading to the unliquidated balances are involves, while in the latter, his alleged conspiratorial acts to misuse the funds are involved. Also, in SB-11-CRM-0092, the damage or injury consisted of the funds which were eventually unliquidated due to the actions of accused Parawan. In each of these present cases, the damage or injury is the separate tranche payments.

A judgment in either SB-11-CRM-0092 or in any of these cases would not constitute *res judicata* in prison grey, or double jeopardy, upon each other. This follows from the observation that the alleged acts are different, and different acts produce separate criminal liabilities.

After applying the test laid down in jurisprudence, We find that among SB-11-CRM-0092 and these cases, there is no identity of parties, no identity of facts and reliefs, and no possibility of *res judicata* applying to each other. Considering these, We find that there is no merit to accused Parawan's claim that there was a violation of the rule against forum-shopping by the filing of these cases against him.

III.
Accused Burahan's prayer for quashal on the ground that the facts charged in the Informations do not charge an offense

Accused Burahan relies additionally on section 3(a) of Rule 117 of the Rules of Court to seek the quashal of the Informations in these cases against her. She argues that the facts charged in these Informations do not constitute 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.[31] 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

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[31] Galzote v. Briones, G.R. No. 164682, 14 September 2011.