



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 25 October 2018.

Present:

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

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0340 - People vs. ISIDORO E. REAL, JR., ET AL.

This resolves the following:

1. Accused Oscar Parawan's "MOTION FOR RECONSIDERATION (OF THE ORDER DISMISSING ACCUSED'S PARAWAN'S MOTION TO QUASH)" dated October 4, 2018;¹
2. The prosecution's "COMMENT/OPPOSITION (to the Motion for Reconsideration and Motion to Quash)" dated October 15, 2018.²

TRESPESES, J.

This resolves the Motion for Reconsideration (of the Order Dismissing Accused Parawan's Motion to Quash) filed by accused Oscar O. Parawan and the prosecution's Comment/Opposition (to the Motion for Reconsideration and Motion to Quash).

Record shows that accused Parawan previously filed a Motion to Quash, which was set for hearing on 11 September 2018. However, on the scheduled date for the hearing of the said motion, accused and his counsel of record, Atty. Floyd P. Lalwet, failed to appear. Hence, the motion to quash was denied outright.

¹ *Rollo*, Vol. 2, pp. 127-151.

² *Id.* at 162-169.

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ACCUSED PARAWAN'S MOTION FOR RECONSIDERATION

In the instant motion for reconsideration, accused Parawan apologizes for failure to attend the hearing in Dumaguete City and now seeks the indulgence of the Court to reconsider the Order dated 11 September 2018, dismissing his motion to quash.

In the same motion, accused reiterates the allegations in his motion to quash. Accused avers that he was also the accused in Criminal Case No. SB-11-CRM-0092 pending before the Second Division for the same offense of violation of Sec. 3(e) of Republic Act. No. 3019.

The said criminal case was based on the Complaints filed before the Ombudsman in OMB-C-C-08-0448-I, OMB-C-C-08-0449 to 50-I and OMB-C-C-10-0053-B which were filed based on the Commission on Audit (COA) "Report on the Audit of the Php728 Million GMA Farm Input Fund." Accused avers that in OMB-C-C-08-0448-I, he was charged for the four fund transfers that went through Regional Field Unit IX, including the one that was proposed by Isidoro E. Real, Jr. of the 1st District of Zamboanga del Sur, in the amount of ₱5,000,000.00. The transaction was covered by SARO No. E-04-00164.

In the Joint Resolution in OMB-C-C-08-0448-I, OMB-C-C-08-0449 to 50-I and OMB-C-C-10-0053-B, the Ombudsman stated that the cases focused mainly on the liability of the Department of Agriculture (DA) senior officials, which includes accused Parawan, who was the Regional Executive Director, RFU-IX. With respect to the proponents in the SARO, a separate investigation was conducted as against them. The pertinent portion of the Joint Resolution is quoted hereunder:

Before we delve into a thorough discussion, it is worth mentioning that these cases picture the story of the scam only insofar as some regions are concerned. **While most regional directors of the DA are already included as respondents in OMB-C-C-08-0448-I, FIO-TF Abono noted that focus was made therein only on the liability of the respondents' DA senior officials (DA Central Office to Regional Field Units). A separate investigation is still being conducted against named-proponents in the SARO.**

Accused contends that after the conclusion of the separate investigation conducted against Isidoro E. Real, a complaint was filed against Real including him (Parawan) in the alleged conspiracy for violation of Sec. 3(e) of RA 3019. Accused claims that there are now two pending cases for violation of Sec. 3(e) of RA No. 3019 filed against him for the same transaction. Accused thus prays that the instant case be dismissed on the ground of *litis pendentia* and/or forum shopping and multiplicity of suits.

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THE PROSECUTION'S COMMENT/OPPOSITION

The prosecution counters that this is not the first time accused Parawan filed a motion to quash. Record shows that accused has already moved for the dismissal of the case on the ground of violation of right to speedy disposition of cases, which was denied in the Resolution dated 12 July 2018. Accused Parawan's failure to assert in the first motion the grounds herein raised are considered waiver as provided in Sec. 9 of Rule 117 of the Rules of Criminal Procedure.

The prosecution likewise contends that *litis pendentia* and forum shopping are not grounds to quash the Information under Sec. 3 of Rule 117 of the Rules of Criminal Procedure.

Further, the criminal case pending before the Second Division is different from the case at bar. Criminal Case No. SB-11-CRM-0092 charges accused of failing to observe General Order No. 2, Series of 2001 issued by then DA Secretary Leonardo Q. Montemayor, by transferring fertilizer funds to beneficiaries/proponents, in excess of his authority, and failure to take necessary measures and precautions to safeguard and monitor the disbursements and/or use thereof. This resulted in the loss, misappropriation and embezzlement in the amount of ₱8,502,000.00, more or less.

On the other hand, the Information in the instant case charges accused, in conspiracy with other public official, for entering into a Memorandum of Agreement with the *Masaganang Ani Para sa Magsasaka* Foundation, Inc. (MAMFI) in exchange for ₱5,000,000.00 for the supply of 6,250 bottles of fertilizers without public bidding for the price of ₱800.00 per bottle, when the prevailing rate was only ₱190.00; thereby causing undue injury to the government in the amount of ₱8,812,500.00.

The prosecution claims that the two cases are offshoot of the fertilizer fund scam. Therefore, it is expected that there will be identical evidence. Also, in Criminal Case No. SB-11-CRM-0092, accused Parawan was charged alone while in the instant case, he was charged for allegedly conspiring and confederating with other co-accused since he was a signatory to the Memorandum of Agreement between Real and MAMFI, and because he signed checks which facilitated the release of the funds. The prosecution asserts that dropping accused Parawan will prejudice the conspiracy angle.

OUR RULING

We resolve to **deny** accused's motions for lack of merit.

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On the motion for reconsideration

At the outset, while accused has apologized, the Court notes that no reason was given why he and his counsel failed to attend the hearing of his own motion to justify their absence that would warrant a reconsideration thereof.

A perusal of the record shows that accused Parawan has filed a motion to quash³ and set the hearing on the said motion on 11 September 2018. At the same time, accused Parawan's counsel, Atty. Floyd Lalwet, filed a Manifestation with Ex-Parte Motion to Re-Set Arraignment (for accused Samuel Simbajon and Abundio E. Bernardo, Jr.),⁴ requesting for the resetting of the 11 September 2018 arraignment. A reading of the manifestation reveals that the resetting was sought not because of Atty. Lalwet's unavailability but because accused Simbajon and Bernardo were allegedly suffering from cardio-vascular diseases.

However, on 11 September 2018, accused Parawan and even his counsel, Atty. Lalwet, failed to attend the hearing on the motion to quash sans notice or motion for postponement. By seeking relief through a motion to quash, accused should have displayed respect to the Court by personally appearing on the hearing of his own motion, or he should have at least informed the Court of his or his counsel's inability to attend. This, accused failed to do. For failure of accused and his counsel to appear absent any justification, the motion to quash was correctly denied.

The instant motion for reconsideration also failed to comply with Sec. III, Paragraph 2 (c) of A.M. No. 15-06-10-SC or the Revised Guidelines for Continuous Trial of Criminal Cases, which provides:

2. Motions

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(c) Meritorious Motions- Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious, such as:

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The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for

³ Rollo, Vol. 2, pp. 75-82.

⁴ Id. at 72-74.

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reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.

Accused's counsel received the assailed Order on 21 September 2018.⁵ Thus, accused had until 26 September 2018 within which to file a motion for reconsideration. However, the instant motion was only filed on 06 October 2018. Clearly, the motion for reconsideration was filed out of time.

Nonetheless, even if we consider the motion for reconsideration and admit the motion to quash, the same still lacks merit.

On the motion to quash

A motion to quash is the mode by which an accused assails, before entering his plea, the validity of the criminal complaint or the criminal information filed against him for insufficiency on its face in point of law, or for defect apparent on the face of the Information.⁶

In the instant case, accused anchors his motion to quash on the grounds of *litis pendentia*, and/or forum shopping and multiplicity of suits. Accused argues that the pendency of Criminal Case No. SB-11-CRM-0092 wherein he was solely accused of violation of Sec. 3(e) of RA No. 3019, and the subsequent filing of the Information in the instant case which charges the same offense warrants the dismissal of the latter for violation of the rule on *litis pendentia*.

Accused's contention is misplaced.

Litis pendentia is a Latin term, which literally means "a pending suit." *Litis pendentia* as a ground for the *dismissal of a civil action* refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.⁷

In here, the filing of the criminal action, the civil action for the recovery of the civil liability arising from the offense is impliedly instituted. The Court maintains that the causes of action and the reliefs sought in the two criminal actions are different.

In the instant case, the cause of action was based on the fact that the government suffered undue injury as a result of the conspiracy of accused

⁵ Dorsal portion of the Order dated 11 September 2018 (*Rollo*, Vol. 2, pp. 96-97).

⁶ *Bumatay v. Bumatay*, G.R. No. 191320, 25 April 2017.

⁷ *Villamor, Jr. v. Manalastas*, G.R. No. 171247, 22 July 2015.

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Parawan, Real, Abundio E. Bernardo, Jr., Samuel M. Simbajon, Ma. Perlice Socorro G. Julian, and Maribel V. Abdulbari, in giving MAMFI unwarranted benefit, advantage and preference by endorsing the latter to implement accused Real's Farm Inputs/Farm Implements Program. Funds were released to MAMFI for the supply of 6,250 bottles of liquid fertilizers without public bidding, for the price of ₱800.00 per bottle where the current market price prevailing was only ₱190.00. The relief sought in the civil aspect is the restitution of the damage sustained by the government for the overpriced amount of ₱3,812,500.00.

Whereas in Criminal Case No. SB-11-CRM-0092,⁸ accused Parawan was charged of causing undue injury to the government in the amount of ₱8,502,000.00 representing the unliquidated portion of the fertilizer funds, which he received for the implementation of the Farm Inputs/Farm Implements Project. Accused Parawan allegedly failed to observe General Memorandum No. 2, Series of 2001 issued by then DA Secretary Leonardo Q. Montemayor by transferring the funds to the beneficiaries/proponents in excess of authority, and upon turn-over of the said amount, failed to observe measures and precautions to secure, safeguard and monitor the disbursement and/or use thereof which resulted in the loss, misappropriation and embezzlement in the amount of ₱8,502,000.00. The relief sought in the civil aspect refers to the ₱8,502,000.00 unliquidated portion of the ₱54,000,000.00.

From the foregoing, it appears that the two cases were products of different criminal intents, committed under different modes, perpetrated by different offenders through different acts, on different occasions. Hence, *litis pendentia* does not exist in the instant case.

Besides, accused's allegations that the subject in the instant case is similar with one of the transactions covered by SB-11-CRM-0092, and that the similarity in the documentary exhibits of the two cases constitutes *litis pendentia* are evidentiary in nature, the truth of which can be best passed upon after a full-blown trial on the merits.

Moreover, under Sec. 3, Rule 117 of the Revised Rules on Criminal Procedure, a motion to quash may be filed on any of the following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;

⁸ *Rollo*, Vol. 2, pp. 83-85.

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- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

The ground of *litis pendentia* and forum shopping does not appear under Section 3 of Rule 117. It has been held that the delimitation of the grounds available in a motion to quash suggests that a motion to quash is a class in itself, with specific and closely-defined characteristics such that where the grounds cited are those listed under Sec. 3, the proper remedy is a motion to quash.⁹ When the ground is not among those enumerated, as in this case, then a motion to quash is not the proper remedy.

Moreover, Sec. 2(b)(iv) of the Revised Guidelines for Continuous Trial of Criminal Cases considers a “motion to quash information when the ground is not one of those stated in Sec. 3, Rule 117,” as a prohibited pleading.

It should also be stressed that an accused’s failure to assert any ground of a motion to quash before he pleads to the complaint or information shall be deemed a waiver of any objection.¹⁰

In the instant case, record reveals that on 19 June 2018, accused Parawan together with accused Maribel Abdulbari, Abundio Bernardo, Ma. Perlce Socorro Julian and Manuel Simbahon has filed a Motion to Dismiss¹¹ on the ground of violation of their right to speedy disposition of their cases. The motion to dismiss was denied by the Court in the Resolution dated 12 July 2018.¹²

⁹ *Los Baños v. Pedro*, 604 Phil. 215-236 (2009).

¹⁰ Sec. 9, Rule 117 of the Rules of Criminal Procedure- Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections EXCEPT THOSE based in the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

¹¹ *Rollo*, Vol. 1, pp. 402-411

¹² *Id.* at 485-495

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While the first motion was labeled as "motion to dismiss," it is no different from a "motion to quash," because both motions pray for the same relief. As the Supreme Court explained in *Romualdez v. Sandiganbayan*:¹³

There is no substantial distinction between a "motion to quash" and a "motion to dismiss." Both pray for an identical relief, which is the dismissal of the case. Such motions are employed to raise preliminary objections, so as to avoid the necessity of proceeding to trial. A motion to quash is generally used in criminal proceedings to annul a defective indictment. A motion to dismiss, the nomenclature ordinarily used in civil proceedings, is aimed at summarily defeating a complaint. Thus, our Rules of Court use the term "motion to quash" in criminal, and "motion to dismiss" in civil, proceedings. (Emphasis added)

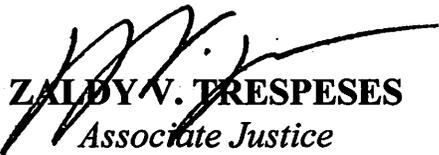
Thus, accused Parawan's failure to include in the first motion any other grounds for motion to quash is deemed a waiver thereof. While Sec. 9, Rule 117 admits of certain exceptions, as when: (1) that the facts charged do not constitute an offense; (2) that the court trying the case has no jurisdiction over the offense charged; (3) that the criminal action or liability has been extinguished; and (4) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent- the grounds herein alleged by accused Parawan are not covered by the exception, they are not even grounds for a motion to quash.

WHEREFORE, premises considered, accused Oscar O. Parawan's Motion for Reconsideration and Motion to Quash are hereby **DENIED** for lack of merit.

The arraignment of accused Parawan tentatively set on **14 November 2018 at 8:30 a.m.** is maintained.

SO ORDERED.

Quezon City, Philippines.


ZALBY V. TRESPESES
Associate Justice

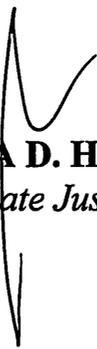
¹³ 479 Phil. 265-308 (2004).



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WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


GEORGINA D. HIDALGO
Associate Justice

