



Republic of the Philippines
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1722 to 1723
For: Violation of Article 220 of
the Revised Penal Code

- versus -

Present

FERNANDEZ, SJ, J.
Chairperson
MIRANDA, J. and
VIVERO, J.

CHRISTOPHER LEONES
MILLARE, SR.,

Accused.

Promulgated:

NOV 09 2018 

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RESOLUTION

VIVERO, J.:

For the Court's consideration is the ***Motion to Dismiss and/or Motion to Quash***¹ filed by Christopher Leones Millare, Sr. (Millare, *for brevity*), former Mayor of the municipality of Licuaan-Baay, Abra. Said motion assails the validity of the two informations filed against him for being violative of accused's right to due process and speedy disposition of cases.² Accused Millare allegedly caused the unlawful disbursements of P1,200,000.00 in 2011 and P2,000,000.00 in 2012 from the 20% Development Fund of the

¹ Motion to Dismiss and/or Motion to Quash dated September 28, 2018, of Christopher L. Millare, Sr., pp. 1 - 7 (Records, pages 121 - 127).

² Id., p. 6.

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municipality of Licuaan-Baay, province of Abra for the rehabilitation of the municipal hall of said local government unit (LGU).³

To put things in proper perspective, a careful scrutiny of the chronology of events is crucial. Said events, as culled from the records, are as follows:

- On **October 29, 2012**, Supon A. Pio, Jhonny B. Flores and Raymond T. Sales, Filipino taxpayers and *bona fide* residents of the municipality of Licuaan-Baay, Abra filed a joint affidavit-complaint⁴ against then Mayor of said local government unit (LGU), Christopher Leones Millare, Sr., before the Office of the Ombudsman for alleged violation of the Department of the Interior and Local Government and Department of Budget and Management (DILG-DBM) Joint Memorandum Circular (JMC) No. 2011-1, entitled "*Guidelines on the Appropriation and Utilization of the 20% Annual Internal Revenue Allotment (IRA) for Development Projects.*"⁵
- On **January 4, 2013**, the Office of the Ombudsman issued an Order directing the person complained of, Mayor Millare, Sr., to submit his counter-affidavit.
- On **February 26, 2013**, Millare filed a motion for extension of time (i.e. thirty days) within which to file his counter-affidavit.
- On **March 15, 2013**, Millare asked for fifteen (15) days more for the filing of his counter-affidavit. Yet, he failed to comply therewith by not filing altogether his aforesaid counter-affidavit for which he asked for an extension of forty-five (45) days.
- On **March 14, 2014**, the Office of the Ombudsman issued a resolution finding probable cause for the indictment of Millare for illegal use of public funds, a felony defined and penalized under Article 220 of the Revised Penal Code of the Philippines.

³ Pre-trial Brief for the Accused dated September 5, 2018, pp. 1 – 3 (Records, Vol. 1, pp. 112 – 114).

⁴ Joint Affidavit-Complaint dated October 26, 2012, of Supon A. Pio, Jhonny B. Flores and Raymond T. Sales, pp. 1 – 3; Records, Vol. 1, pp. 16 – 25.

⁵ Records, Vol. 1, pp. 19 – 22.

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- On **September 11, 2017**, the Office of the Ombudsman filed two (2) informations⁶ against Millare before the Sandiganbayan.
- On **July 31, 2018**, Millare was arraigned and he pleaded "**Not Guilty**" to the informations appurtenant to SB-17-CRM-1722 and SB-17-CRM-1723.⁷
- On **September 28, 2018**, accused filed a *Motion to Dismiss and/or Motion to Quash*.⁸
- On **October 5, 2018**, the pre-trial was held wherein the parties pre-marked exhibits, made stipulation of facts, and delimited the issue, among others.⁹

The Court now resolves.

Millare's motion is **time-barred**. Rule 117 of The Revised Rules of Criminal Procedure provides, *inter alia*:

"**Sec. 1. Time to move to quash.** - At any time **BEFORE ENTERING HIS PLEA**, the accused may move to quash the complaint or information."

"**Sec. 3. Grounds.** - The accused may move to quash the complaint or information on any of the following grounds:

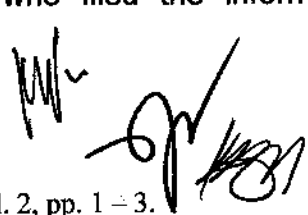
- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;

⁶ Records, Vol. 1, pp. 1 - 3; Records, Vol. 2, pp. 1 - 3.

⁷ Records, Vol. 1, pp. 99 - 104.

⁸ *Supra*, Note 1.

⁹ Records, Vol. 1, pp. 128 - 131.



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- (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.

Sec. 9. Failure to move to quash or to allege any ground therefore. – 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 on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (Emphasis and Capitalization Supplied.)

Prescinding from the foregoing, Millare's motion for quashal of the informations **two months AFTER** his arraignment no longer merits consideration. Accordingly, his motion should be dismissed outright.

Granting *arguendo* that no procedural infirmity exists, accused Millare's motion must still fail.

Accused Millare cites the four-fold factors laid down by the Supreme Court in ***Coscoluella v. Sandiganbayan***¹⁰ as rubric of analysis. Thence, he asserts that:

"All the elements of a violation of the Constitutional right to due process and to a speed disposition of cases are present in these cases of the herein accused.

¹⁰ G.R. Nos. 191411 & 191871, July 15, 2013,

MLC
[Signature]

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"First, the preliminary investigation proceedings took a protracted amount of time to complete.

"All of these cases, SB17 Crim. Nos. 1722 and 1723 were instituted on **October 29, 2012**. The information's (sic) were only filed on September 11, 2017 or more **than 4 years and eleven months** later. The delay is (sic) exacerbated by the fact that the resolution was **approved** by Ombudsman Carpio Morales on March 13, 2015 and were **filed only two years and six months from its approval**. The inordinate delay in resolving these cases **violated** the **right** of the accused to a **speedy resolution** of his case.

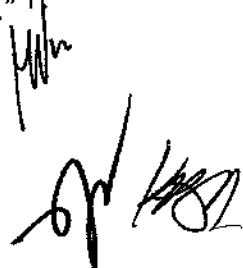
"Second, there is **no valid reason** for the gross inefficiency and delay in the resolution of the case of the accused. There are no voluminous documents to study. Only questions of law are involved in this case.

"Third, there was **no delay** in the assertion of accused's right to due process and speedy disposition of their (sic) cases.

"Fourth, the gross delay in the filing of *Informations* would affect accused[s] ability to procure evidence in their (sic) defense. Due to the long period of time, they (sic) may no longer be in possession of the documents which will conclusively show that there is no probable cause against them (sic). Moreover, the long delay has made it impossible for them (sic) to determine the whereabouts of their (sic) witnesses, as well as impaired their (sic) ability to recall events which have happened more than five (5) years ago.

"In conclusion, the unjustified delay in the filing of the informations on September 11, 2017, more **than 4 years and eight months** after these cases were instituted despite the fact that the resolution was approved by Ombudsman Carpio Morales on March 13, 2015 or **two years and one month later** after receipt by the Office of the Ombudsman of the recommendation of the Graft Investigation and Prosecution Officer and the prejudice caused to the accused by such delay, are clear violations of accused's constitutional rights to due process and speedy disposition of the cases filed against them. Moreover, such delay and prejudice also grossly disregards the Honorable Ombudsman's duty, under the Constitution and Republic Act No. 6770, to act promptly on complaints before them (sic). As the delay in the Ombudsman's resolution of the herein cases, as well as the filing of the informations before this Court, is unjustified, the dismissal of the said cases is warranted."¹¹

¹¹ Supra, Note 1, at pp. 5 - 6.



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Accused Millare's motion is devoid of merit.

To cling obstinately to the Supreme Court's *dictum* in the ***Coscoluella*** case and seek to apply it to the instant case is a futile pursuit. The *dictum* therein is moribund. Truth to tell, it has been debunked in the contemporaneous ruling in ***Cesar M. Cagang v. Sandiganbayan, Fifth Division, et. al.***,¹² wherein the Supreme Court laid down a perspicuous and definitive guideline, to wit:

"Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that **for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.** In *People v. Sandiganbayan, Fifth Division* (sic), **THE RULING THAT FACT-FINDING INVESTIGATIONS ARE INCLUDED IN THE PERIOD FOR DETERMINATION OF INORDINATE DELAY IS ABANDONED.**"¹³ (Capitalization and Underscoring Supplied.)

The ***Cagang*** ruling came on the heels of the High Tribunal's pronouncement in ***Magante v. Sandiganbayan (Third Division) and People***,¹⁴ which this Court cited in the fairly recent cases of ***People v. Leonard B. Martin, Sr., et. al.***¹⁵ and ***People v. Reinerio B. Belarmino, et. al.***¹⁶ Salient excerpts from the *ponencia* of Justice Presbitero J. Velasco, Jr. are quoted below, viz:

"We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal 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.

¹² G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018.

¹³ *Ibid.*

¹⁴ G.R. Nos. 230950-51, July 23, 2018.

¹⁵ SB-18-CRM-0369, October 15, 2018.

¹⁶ SB-CRM-0351 to 0366, October 18, 2018.

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"On the other hand, **IF THE FACT-FINDING INVESTIGATION PRECEDES THE FILING OF A COMPLAINT AS IN INCIDENTS INVESTIGATED *MOTU PROPIO* BY THE OMBUDSMAN, SUCH INVESTIGATION SHOULD BE EXCLUDED FROM THE COMPUTATION. THE PERIOD UTILIZED FOR CASE BUILD-UP WILL NOT BE COUNTED IN DETERMINING THE ATTENDANCE OF INORDINATE DELAY.**

"**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. In this light, the doctrine in *People v. Sandiganbayan*¹⁷ should be revisited.

"With respect to investigations relating to 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 such 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.

"Even if the person accused of the offense subject of said anonymous complaint or *motu proprio* investigations by the Ombudsman is asked to attend invitations by the Ombudsman for the fact-finding investigations, this directive cannot be considered in determining inordinate delay. These conferences or meetings with the persons subject of the anonymous complaints or *motu proprio* investigations are simply preludes to the filing of a formal complaint if it finds it proper. This should be distinguished from the exercise by the Ombudsman of its prosecutor powers which involve determination of probable cause to file information with the court resulting from official preliminary investigation. Thus, **THE PERIOD SPENT FOR FACT-FINDING INVESTIGATIONS OF THE OMBUDSMAN PRIOR TO THE FILING OF THE FORMAL COMPLAINT BY THE FIELD INVESTIGATION OFFICE OF THE OMBUDSMAN IS IRRELEVANT IN DETERMINING INORDINATE DELAY.**

¹⁷G.R. No. 188165, December 11, 2013.



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"In sum, **THE RECKONING POINT WHEN DELAY STARTS TO RUN IS THE DATE OF the filing of the formal complaint by a private complainant or THE FILING BY THE FIELD INVESTIGATION OFFICE WITH THE OMBUDSMAN OF A FORMAL COMPLAINT based on an anonymous complaint or AS A RESULT OF ITS MOTU PROPRIO INVESTIGATIONS.** The period devoted to the fact-finding investigations prior to the date of filing of the formal complaint with the Ombudsman shall not be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact-finding investigations shall always be factored in."¹⁸

"x x x [T]he period spent for fact-finding investigations of the Ombudsman prior to the filing of the formal complaint by the Field Investigation Office of the Ombudsman is irrelevant in determining inordinate delay."

"x x x." ¹⁹ (Capitalization Supplied.)

Mere mathematical reckoning of time involved would not be sufficient to warrant the Court's *imprimatur* to the radical relief prayed for by accused-movant.²⁰ In *People v. Sandiganbayan (Fourth Division), Alejandro E. Gamos and Rosalyn G. Gile, G.R. Nos. 232197 – 98, April 16, 2018*, the Supreme Court held that although "7 years had passed since the filing of the first Complaint in 2008 until the filing of the information before it," this, without more, did not constitute inordinate delay. Considering that the alleged delay herein is less than seven (7) years, this Court is loath to veer away from this precedent. ***Judicia posteriora sunt in lege fortiora*** (The later decisions are the stronger in law.)

The constitutional guarantee of speedy disposition of cases is a relative or flexible concept.²¹ Corollarily, the totality of the facts and circumstances peculiar to each case must be examined.²² The *desideratum* of a speedy disposition of cases should not, if at all possible, result in the precipitate loss of a party's right to present

¹⁸ *Magante v. Sandiganbayan (Third Division) and People*, G.R. Nos. 230950-51, July 23, 2018.

¹⁹ *Supra*. Note 20.

²⁰ *Mendoza-Ong v. Sandiganbayan*, G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426; *Gaas and Gomera v. Mitmug*, G.R. No. 165776, April 30, 2008, 553 SCRA 335; *Guiani v. Sandiganbayan*, G.R. Nos. 146897-917, August 6, 2002; *De la Peña v. Sandiganbayan*, G.R. No. 144542, June 29, 2001..

²¹ *Torres v. Sandiganbayan*, G.R. Nos. 221562 – 69, October 5, 2016; Joaquin Bernas, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, VOL. I, First Edition, p. 421.

²² *Binay v. Sandiganbayan*, G.R. Nos. 120681 – 83, October 1, 1999. 316 SCRA 65.

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evidence and either in a plaintiffs being non-suited or the defendant's being pronounced liable under an *ex parte* judgment.²³

Further, accused Millare failed to timely invoke his right to speedy disposition of the case. As aptly stated in the *Alvizo v. Sandiganbayan*,²⁴ he was insensitive to the implications and contingencies of the projected criminal prosecution posed against him by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, hence impliedly with his acquiescence. No overt act showed that Millare asserted his right at the earliest opportunity by filing an urgent motion to expedite the probe. *Tout au contraire*, he asked for a forty-five (45) day extension for the filing of his counter-affidavit. Curiously, he never did.

Furthermore, accused maintains that the Supreme Court's pronouncements in *Tatad v. Sandiganbayan*,²⁵ *Angchangco, Jr. v. Ombudsman*,²⁶ *Roque v. Office of the Ombudsman*,²⁷ and *Cervantes v. Sandiganbayan*,²⁸ among others,²⁹ find application herein. Contrariwise, the peculiar facts and circumstances in these cases are not on all fours with the factual milieu in the instant case. In this regard, the resolution of the Supreme Court in *Varela v. Sandiganbayan, Fifth Division*³⁰ is instructive. Pertinent excerpts therefrom are quoted below: *viz*:

“ . . . [T]he accused failed to present evidence to prove that the delay was due to an intentional, capricious, whimsical, or probable politically-motivated (as present in the *Tatad*³¹ case) delaying tactics employed by the prosecutors; or that the accused has remained under cloud as the petitioner in the *Anchangco*³² case; or that accused could not have urged the speedy resolution of the case against him considering that he was completely unaware that the investigation against him was still ongoing, as what happened in the *Duterte*³³ case; or that the initiatory pleading was filed six (6) years

²³ *Padua v. Ericta*, 161 SCRA 458.

²⁴ G.R. No. 101689, March 17, 1993; 454 Phil. 34; 220 SCRA 55.

²⁵ G.R. No. L-72335-39, March 21, 1998, 159 SCRA 70.

²⁶ G.R. No. 122728, February 13, 1997, 268 SCRA 301.

²⁷ G.R. No. 129978, May 12, 1999, 307 SCRA 104.

²⁸ G.R. No. 108595, May 18, 1999, 307 SCRA 149.

²⁹ *Supra*. Note 1, at p. 16.

³⁰ G.R. No. 203564, December 3, 2014.

³¹ *Supra*. Note 25.

³² *Supra*. Note 26.

³³ *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721.

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thereafter from the time the sworn complaint was filed, as present in the *Cervantes*³⁴ case. x x x [T]he delays in the instant case were caused by the prosecution's regular exercise of its investigatory power and accused's exhaustion of available remedies. For this reason, the instant Motion to Quash necessarily fails."³⁵ (Emphasis and Underscoring Supplied.)

Absent any allegation and proof that accused Millare was persecuted, oppressed or made to undergo any vexatious process, as in the *Tatad* and *Angchangco* cases, during the investigation, impugning the validity of the informations because of the sluggish, albeit tedious, process is untenable. Besides, the inexcusable delays incurred by the Office of the Ombudsman during the investigative phase in the aforementioned *Cervantes* and *Roque*³⁶ cases, as well as in the *Duterte* case, are not extant in the instant case.

More.

This Court agrees with the prosecution's argument, which runs thus:

"11. . . . [I]t took the Office of the Ombudsman one (1) year and five (5) months from the filing of the Joint Affidavit-Complaint to resolve the complaint filed by the private complainants. It must be noted, however, that during that period, accused sought two extensions, one asking for thirty (30) days and another extension of fifteen (15) days or a total of forty-five (45) days, to file his counter-affidavit. There being no counter-affidavit forthcoming from the accused, the Office [of the Ombudsman] issued the resolution on 12 March 2014. The period it took the Office to resolve the complaint was reasonably utilized to conduct [the] preliminary investigation which included the following: issuance of [the] order; evaluation, examination and confirmation of allegations; and preparation of the investigation report, including the drafting and finalization of [the] Resolution and the Order, to ensure due process.
x x x.

"12. While it is true that the Resolution dated 12 March 2014 was approved by the Ombudsman on 13 March 2015, the same cannot be considered as vexatious, capricious and oppressive delay, absence (sic) any proof

³⁴ *Supra.* Note 28.

³⁵ *Supra.* Note 30.

³⁶ *Supra.* Note 27.

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that indeed, such delay was deliberately employed in order to harass and violate the right of the accused to speedy disposition of cases. x x x." ³⁷ (Emphasis Ours.)

The guiding principle in determining whether or not accused's right to speedy disposition of his case was infringed was laid down in *Dansal vs. Fernandez, Sr.*³⁸ wherein the Supreme Court enunciated that the Ombudsman's duty "should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness."³⁹ Notably, the period during which the records of this case were examined and reviewed for case build-up, the time poured into the research of pertinent laws and jurisprudence, the thoroughness of analysis add up to the ostensibly grinding pace.

A final note. Transcendental significance should be ascribed to the *raison d'tre* of the Office of the Ombudsman. In *Francisco Guerrero vs. Court of Appeals, et al.*,⁴⁰ the Supreme Court declared:

"While this Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although this Court has always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, at the same time, we hold that a party's individual rights should not work against and preclude the people's equally important right to public justice.
x x x."

Parenthetically, the protection under the right to a speedy disposition of cases should not operate as to deprive the government of its inherent prerogative in prosecuting criminal cases or generally in seeing to it that all who approach the bar of justice be afforded a fair opportunity to present their side. *Nihil infra regnum subditos magis conservat in tranquillitate et concordia quam debita legume administratio.* (Nothing more preserves in tranquility and concord those subjected to the government than a due administration of the laws.)


³⁷ Comment/Opposition (Re: Accused[‘s] Motion to Dismiss and/or Motion to Quash dated October 15, 2018, pp. 3 – 4 (Records, Vol. 1, pp. 139 – 140).

³⁸ G.R. No. 126814, March 2, 2000, 327 SCRA 145, 153.

³⁹ *Ibid.*

⁴⁰ G.R. No. 107211, June 28, 1996, 257 SCRA 703, 716.

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In sum, a fatal, procedural flaw, plus, and perhaps more importantly, substantive arguments anchored on contemporaneous case law leads this Court to the inescapable conclusion that the subject motion deserves scant consideration. Hence, its denial is proper.

WHEREFORE, premises considered, this Court **DENIES** the **Motion to Dismiss and/or Motion to Quash** of accused Christopher Leones Millare, Sr. for sheer lack of merit.

SO ORDERED.



KEVIN NARCE B. VIVERO
Associate Justice

WE CONCUR:



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson



KARL B. MIRANDA
Associate Justice