



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
 Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-1385

For: Violation of Section 7, Par. (d),
 R.A. No. 6713

- versus -

Present:

AILEEN CYNTHIA M. AMURAO,
ET AL.

FERNANDEZ, SJ, J.
Chairperson

Accused.

MIRANDA, J., and
VIVERO, J.

Promulgated:

FEB 20 2019 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the following:

1. *Motion for Leave to File Demurrer to Evidence*¹ filed on January 23, 2019 by accused Michael Angelo L. Aquino, Jr., Joyce C. Enriquez, and Michie H. Meneses; and,
2. *Motion for Leave of Court to File Demurrer to Evidence*² filed on January 28, 2019 by accused Aileen Cynthia M. Amurao;

together with the prosecution's separate *Comment/Opposition (Re: Motion for Leave to File Demurrer to Evidence)* filed on January 28, 2019³ and January 31, 2019,⁴ respectively

¹ Dated January 23, 2019; Record, Vol. II, p. 177.
² Dated January 28, 2019; Record, Vol. II, p. 185.
³ Dated January 28, 2019; Record, Vol. II, p. 181.
⁴ Dated January 29, 2019; Record, Vol. II, p. 190.

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Accused Aquino, et al., contend that the evidence presented by the prosecution is insufficient to support their conviction for the crime charged.⁵ They argue:

1. The prosecution was not able to prove that there was conspiracy among the accused to solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or anything of any monetary value from the private establishment recipients of sponsorship letters for "Pangalipay sa Baybay" from April 1 to May 31, 2014. The evidence does not show the accused' participation in the alleged solicitation to establish that the accused have conspired to violate the law.

The prosecution was only able to prove the existence of the subject sponsorship letters. But it was not able to prove how the letters were prepared and distributed by the accused to the recipients.⁶

2. Accused Aquino was not a public official or employee of the City Tourism Office of Puerto Princesa City at the time the alleged solicitation happened. Hence, the provisions of Republic Act No. 6713, or the *Code of Conduct and Ethical Standards for Public Officials and Employees*, do not apply to him.

He was only dragged into the controversy because of the alleged conspiracy among the accused. But the prosecution did not offer any evidence to show that accused Aquino conspired with accused Amurao, Meneses and Enriquez, who are all employees of City Tourism Office of Puerto Princesa City, in the alleged acts of solicitation.⁷

3. The prosecution did not offer any evidence to prove the specific participation of each of the accused in the preparation and distribution of sponsorship letters for "Pangalipay sa Baybay" in 2014.⁸

Accused Amurao similarly claims that the prosecution failed to discharge its burden of proving her guilt beyond reasonable doubt.⁹ She argues:

1. While accused Amurao is the designated Chairman of the annual event 10th *Pangalipay sa Baybay* held on April 1 to May 31, 2014, she is not concerned with the request for

⁵ Accused Aquino, et al.'s Motion for Leave dated January 23, 2019, p. 1.
⁶ Accused Aquino, et al.'s Motion for Leave dated January 23, 2019, pp. 1-2
⁷ Accused Aquino, et al.'s Motion for Leave dated January 23, 2019, p. 3.
⁸ Accused Aquino, et al.'s Motion for Leave dated January 23, 2019, pp. 3-4.
⁹ Accused Amurao's Motion for Leave dated January 28, 2019, p. 1.

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sponsorship. The letters attached by complainants Suelo, et al., to their complaint (Exhibits F, G, K, DD, N, O, P, Q, R and W-3), which letters were disseminated without her knowledge, asked for sponsorship, not solicitation.¹⁰

2. The prosecution's evidence is weak; there is no basis to charge accused Amurao of soliciting, accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of her duties or in connection with any operation being regulated by, or any transaction which may be affected by the function of her office. The categorical statement pertains to a request to be one of the sponsors of *Pangalipay sa Baybay*. There were no solicitations. The outright dismissal of this case is warranted as no proof was presented showing that accused Amurao and her co-accused solicited money, favor, gifts or any form of benefit from anybody.¹¹

The prosecution argues that it was able to present sufficient evidence to show that accused violated Section 7(d) of R.A. No. 6713. The prosecution argues:

As to accused Aquino, Enriquez and Meneses:

1. The conspiracy among the accused was sufficiently established by the prosecution. The prosecution presented testimonial and documentary evidence (Exhibits F, G, H, I, K, N, O, P, Q, R, W-3, V, X, DD) to establish that accused Amurao sent out various illegal solicitation letters addressed to private entities in Puerto Princesa City, Palawan, with the help of accused Aquino, Enriquez and Meneses.
2. Exhibits D-1, I, L series, W series, X, FF, and HH clearly show the participation of accused Aquino, Enriquez and Meneses in the illegal solicitations done by accused Amurao. Accused Meneses and Aquino directly benefitted or received the fruits of their illegal solicitations.
3. Accused Aquino cannot hide under the cloak of his claim that he is not an employee of the City Government of Palawan. It must be stressed that he was under a Contract of Service (Exhibit D) as a Special Operations Assistant of the Tourism Office of the City of Puerto Princesa during the period material to this case. Accused Aquino submitted his Personal Data Sheet (Exhibit D-2) for said position.
4. Even assuming that accused Aquino is not a government employee, he can still be charged of conspiracy to commit

¹⁰ Accused Amurao's Motion for Leave dated January 28, 2019, p. 2.

¹¹ Accused Amurao's Motion for Leave dated January 28, 2019, p. 2.

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violation of R.A. No. 6713, pursuant to Section 11(c) of the same law.

5. The evidence for the prosecution clearly shows that accused Aquino, Enriquez and Meneses prepared and participated in the distribution of the subject solicitation letters.
6. The prohibition under Section 7(d), R.A. No. 6713 is considered *malum prohibitum*. It is the commission of the act as defined by law, and not the character or effect thereof that determines whether or not the prohibition was violated. Thus, it is immaterial whether accused Aquino, Enriquez and Meneses received gifts, gratuity, favor or money from their sponsors as the law prohibits the mere act of solicitation.¹²

As to accused Amurao:

1. Accused Amurao is charged under Section 7(d) of R.A. No. 6713 precisely because of her action, in conspiracy with the other accused, of sending various letters illegally soliciting sponsorship for the City Government of Puerto Princesa's tourism activities and related projects.¹³
2. Said acts of soliciting "sponsorship" are mere smokescreen on the part of the accused to give a semblance of legality to their acts of extorting from private tourism stakeholders of Puerto Princesa City. Exhibits CC and JJ clearly show that there is no need for "sponsorship" since the cost and expenses for various tourism activities are included in the budget of the City. The proceeds of the solicitation for "sponsorships" were not properly turned over to the Puerto Princesa City Government (Exhibit BB).
3. Testimonial and documentary evidence show that accused Amurao, in conspiracy with the other accused, had a hand in the preparation and distribution of the subject solicitation letters. The money given by Smart Communications, through Excite Touchpoint Solutions Team, Inc., was directly deposited to the bank account of accused Amurao in Allied Bank Puerto Princesa under Account No. 001291-01390-2 (Exhibit V). The amount deposited was acknowledged by accused Aquino (Exhibit W).
4. The prohibition under Section 7(d), R.A. No. 6713 is considered *malum prohibitum*. It is the commission of the act as defined by law, and not the character or effect thereof that determines whether or not the prohibition was violated. Thus, it is immaterial whether accused Aquino, Enriquez and

¹² Comment/Opposition dated January 28, 2019, p. 2.

¹³ Comment/Opposition dated January 29, 2019, p. 1.

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Meneses received gifts, gratuity, favor or money from their sponsors as the law prohibits the mere act of solicitation.¹⁴

RULING

After a careful study of the documentary and testimonial evidence presented by the prosecution, the Court finds that, if unrebutted, the same is sufficient to support a verdict of guilt against accused Aileen Cynthia M. Amurao, Michael Angelo L. Aquino, Jr., Joyce C. Enriquez, and, Michie H. Meneses, for violation of Section 7, Par. d of Republic Act No. 6713. The Court hereby **DENIES** the *Motions for Leave to File Demurrer to Evidence* filed by the accused.

This is without prejudice to the filing by the accused of a *Demurrer to Evidence* without prior leave of court, but subject to the legal consequence provided under *Section 23, Rule 119 of the Revised Rules of Criminal Procedure*, that is, they shall waive their right to present evidence and are submitting this case for judgment on the basis of the evidence adduced by the prosecution.

The accused are given a period of five (5) days from receipt of this Resolution within which to file, by personal filing and service, or through courier, their *Manifestation* to inform this Court whether they will file a *Demurrer to Evidence*, without leave of court.

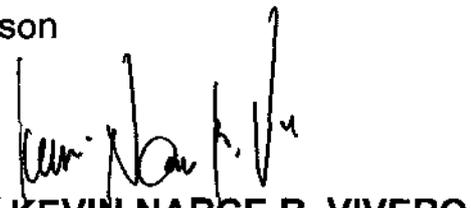
The hearings set for the accused to present their evidence on March 6, 7, 18, and, 19, 2019, all at 1:30 in the afternoon, are maintained. The said scheduled dates will be considered automatically cancelled upon receipt by the Court of the *Demurrer to Evidence* of the accused.¹⁵

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

WE CONCUR:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹⁴ Comment/Opposition dated January 29, 2019, p. 2.

¹⁵ Pursuant to A.M. No. 15-06-10-SC, Revised Guidelines for Continuous Trial of Criminal Cases