



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-18-CRM-0371 to 0374
Plaintiff, For: Violation of Section 3(e)
of R.A. No. 3019

SB-18-CRM-0375 to 0378
For: Malversation of Public Funds
under Art. 217 of the RPC

- versus -

Present

FERNANDEZ, SJ, J.,

Chairperson

MIRANDA, J. and

VIVERO, J.

MIGUEL D. ESCOBAR, ET AL.

Accused.

Promulgated:

FEB 20 2019 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Arthur A. Aller's *Motion for Reconsideration of the Resolution dated December 13, 2018.*¹

Accused Aller prays that this Court reverse, set aside and reconsider the Resolution dated December 13, 2018,² and dismiss the present cases for violation of his constitutional rights to due process and to speedy disposition of cases, and for lack of jurisdiction to try the cases. He avers:

1. He was deprived of his right to due process during the conduct of the preliminary investigation.

¹ Dated January 17, 2019; Record, Vol. 2, pp. 328-379

² Record, Vol. 2, pp. 254-262

[Signatures]

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- a. He was not able to participate in the conduct of the preliminary investigation because he was neither informed nor given notice thereof.
 - b. He learned that he was subjected to a preliminary investigation only when he received the Office of the Ombudsman's Resolution dated July 27, 2017 on October 20, 2017.
 - c. He filed his *Motion for Reconsideration and/or Reinvestigation (of the Resolution dated 26 July 2017)* by registered mail on October 25, 2017—within the 5-day reglementary period for filing the motion.
 - d. However, the Office of the Ombudsman, in the Joint Resolution dated March 9, 2018, denied his Motion on the ground that it was filed beyond the reglementary period under Rule II, Sec. 7 of Administrative Order No. 7.
2. The Court erroneously ruled that there was no violation of his constitutional right to due process.
- a. The deprivation of the right to preliminary investigation is tantamount to a violation of the constitutional right to due process of law.
 - b. Although the right to preliminary investigation is statutory rather than constitutional in its fundament, it is a component part of due process in criminal justice. The right to a preliminary investigation is not a mere formal or technical right; it is a substantive right.
 - c. Right to due process simply demands an opportunity to be heard. This is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.
3. He did not waive his constitutional right to speedy disposition of cases.
- a. In *Cagang v. Sandiganbayan*,³ it was held that the right to speedy disposition of cases must be invoked once delay has become prejudicial to the accused.
 - b. The prejudice caused by inordinate delay in the conduct of the preliminary investigation became apparent to him only when the Informations were filed with the Court.

³ G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018



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- i. The 5-day reglementary period under Administrative Order No. 7 was not sufficient for him to collect documents regarding the transactions that occurred more than thirteen (13) years ago.
 - ii. During the 5-day period, he was able to obtain only the documents he had access to at the WCP, such as the certification of registration and business permits of WCP.
 - iii. Sometime in May 2018, he tried to obtain a record from the Land Bank of the Philippines to know who was the payee of, and who encashed, the P5 million WCP check. The bank informed him that such record was no longer available because the maximum retention period of bank records was only ten (10) years.
 - iv. Sometime in June 2018, he tried to locate Mr. Patricio Sol, who designated the type of fertilizer required, as instructed by the Department of Agriculture. It was only then when he learned that Mr. Sol had already died.
 - v. WCP disposed of its old files. Some documents were also lost due to the frequent transfer of WCP's business address from 2004 to 2015.
- c. The waiver of the right to speedy disposition of cases is premised on the presumption that the accused is fully aware that the preliminary investigation was being conducted.
 - d. He became aware that the preliminary investigation was conducted only after he received the Office of the Ombudsman's Resolution recommending the filing of the criminal complaint against him.
4. The fact-finding investigation should be considered in determining if the right to speedy disposition of cases was violated.
 - a. The fact-finding investigation was conducted for around five (5) years, starting sometime in 2007, and ending when the formal complaint was filed in March 2013.
 - b. If Task Force Abono expeditiously conducted its investigation, he could have obtained the bank records and necessary documents to defend himself.
 5. Even if the fact-finding investigation is excluded, there would still be violation of his right to speedy disposition of cases.



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- a. The preliminary investigation took around four (4) years and four (4) months to conduct.
- b. The Office of the Ombudsman failed to justify the delay in the conduct of the preliminary investigation.
 - i. The case did not involve voluminous documents, but only one (1) transaction covered by two (2) payments, four (4) disbursement vouchers, one (1) official receipt, and one (1) check.
 - ii. There was only one (1) non-government organization, one (1) supplier of fertilizer, the Province of Sarangani, and the Department of Agriculture Regional Field Unit XIII.
 - iii. The evidence supporting the complaint was already in the possession of the Office of the Ombudsman prior to the filing of the formal complaint.
- c. He invoked his right to speedy disposition of cases only after the filing of the Informations because it was only then that the prejudice to him became apparent.
- d. Because of the inordinate delay, he could no longer obtain the documents and witnesses needed for his defense.
6. The Court has no jurisdiction to try the case because courts are ousted from their jurisdiction where there is a violation of basic constitutional rights.

In its *Comment/Opposition (To Accused Arthur Aller's Motion for Reconsideration)*,⁴ the prosecution counters:

1. Accused Aller's motion should be denied for being filed beyond the non-extendible period for filing a motion for reconsideration under the *Revised Guidelines for Continuous Trial of Criminal Cases*. He received, by counsel, a copy of the assailed Resolution on January 3, 2019, and had only until January 8, 2019 within which to file his Motion.
2. The arguments in his Motion for Reconsideration are a mere rehash of those in his *Motion to Quash Information/Dismiss the Case* dated August 17, 2018.
3. Accused Aller's right to speedy disposition of cases was not violated.


⁴ Dated January 22, 2019; Record, Vol. 2, pp. 384-391

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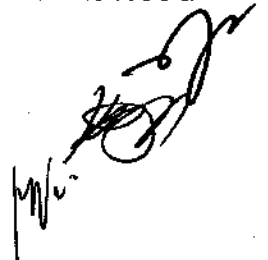
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- a. The preliminary investigation was concluded around four (4) years and five (5) months from the filing of the Complaint on March 5, 2013. Such period was reasonable, considering voluminous records involved.
 - b. The right to speedy disposition of cases is violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without having the case tried.
 - c. The inclusion of the fact-finding investigation in computing the length of delay is improper.
 - d. The Supreme Court has taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.
4. Contrary to accused Aller's claim that notices were sent to a certain "Arthur H. Aller," with address at "CIMP Bldg., Santiago Subdivision, General Santos City," only the Resolution dated July 26, 2017 was sent to such address. The Order dated April 18, 2013 and the Joint Order dated December 27, 2017 were sent to "ARTHUR A. ALLER, Chairman, Worker's Cooperative of the Phils., CIMPC Bldg., Santiago Subd., Gen. Santos City," and to "ARTHUR A. ALLER, CIMP Bldg., Santiago Subd., General Santos City," respectively.
 5. The Office of the Ombudsman sent the notices to the last known address of the Worker's Cooperative of the Philippines (WCP), where accused Aller served as its Chairman.
 6. Accused Aller was given the opportunity to defend himself and explain his side when he filed his Motion for Reconsideration dated October 25, 2017.

THE COURT'S RULING

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

Accused Aller's Motion was filed beyond the period for filing a motion for reconsideration of a meritorious motion under the *Revised*

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*Guidelines for Continuous Trial of Criminal Cases*⁵ (Revised Guidelines). According to him, he received a copy of the assailed Resolution on January 3, 2019. Thus, he had five (5) days, or until January 8, 2019 within which to file his motion for reconsideration. Accused Aller filed his Motion only on January 18, 2019, which was beyond the 5-day period.

Even considering the merits of his Motion, the Court must still deny the same.

A. *Right to due process*

Accused Aller insists that the present cases must be dismissed because his constitutional right to due process was violated when he was not given the opportunity to participate in the preliminary investigation. This is the very same argument in his *Motion to Quash Information/Dismiss the Case*. This Court, in the assailed Resolution, already considered such argument and found the same to be without merit. The pertinent portion⁶ of the assailed Resolution is hereunder quoted for convenience:

An examination of the Office of the Ombudsman's Joint Order dated December 27, 2017, however, would show that the denial of accused Aller's Motion for Reconsideration was not solely on the ground that his Motion was filed beyond the reglementary period. It appears that the Office of the Ombudsman considered the points raised by therein respondents-movants, and found the same to be without merit. Page 4⁷ of said Joint Order reads:

x x x

At any rate, even assuming that his Motion for Reconsideration of the Resolution dated July 26, 2017 was denied solely on the ground that it was filed beyond the reglementary period, the same is not a ground for dismissing the present cases. In fact, the Supreme Court categorically ruled that the lack of preliminary investigation is not a ground for a motion to quash, or to dismiss; and that preliminary investigation, being merely a statutory right, may be

⁵ III. 2. (c) x x x 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 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. x x x

⁶ Resolution dated December 13, 2018, pp. 4-5; Record, Vol. 2, pp. 257-258

⁷ Record, p. 58

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done away with entirely without infringing the constitutional rights of an accused.

For the sake of greater clarity, this Court must reiterate that the lack of preliminary investigation is not a ground for a motion to quash or for dismissing the case. In *Pilapil v. Sandiganbayan*,⁸ the Supreme Court held that the remedy for the lack of preliminary investigation is to hold in abeyance the proceedings and to order the conduct of a preliminary investigation. The High Court then went on to reject the very same argument being raised by accused Aller, *i.e.*, lack of jurisdiction. To wit:

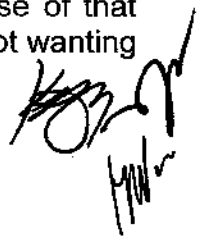
At the outset, this Court bears mention of the rudimentary rule that the absence of a preliminary investigation is not a ground to quash a complaint or information under Section 3, Rule 117 of the Rules of Court. The proper procedure in case of lack of preliminary investigation is to hold in abeyance the proceedings upon such information and the case remanded to the Office of the Provincial Fiscal or the Ombudsman, for that matter, for him or the Special Prosecutor to conduct a preliminary investigation. Thus, We enunciated in *Sanciango, Jr. vs. People*, and reiterated in *Dormal vs. Sandiganbayan*, that:

"The absence of preliminary investigation does not affect the court's jurisdiction over the case. Nor do they impair the validity of the information or otherwise render it defective, but, if there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, instead of dismissing the Information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted..."

Petitioner takes exception to the doctrine and urges this Court to take a second look arguing that lack of preliminary investigation affects the court's jurisdiction because it is violative of due process. He reasons out that jurisprudence abounds with the rule that denial of due process is grave jurisdictional defeat rendering the judgment void.

We are not persuaded. The lack of jurisdiction contemplated in Section 3(b), Rule 117 of the Revised Rules of Court refers to the lack of any law conferring upon the court the power to inquire into the facts, to apply the law and to declare the punishment for an offense in a regular course of judicial proceeding. When the court has jurisdiction, as in this case, any irregularity in the exercise of that power is not a ground for a motion to quash. Reason is not wanting

⁸ G.R. No. 101978, April 7, 1993



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for this view. Lack of jurisdiction is not waivable but absence of preliminary investigation is waivable. In fact, it is frequently waived.

(underscoring supplied)

This ruling was repeated in later cases⁹ wherein the issue of the lack of preliminary investigation was raised.

The matter of whether or not the lack of preliminary investigation warrants the dismissal of the cases having been settled, the Court finds that there is no need to suspend the proceedings in these cases because, as this Court held in the assailed Resolution, accused Aller was given the opportunity to participate in the preliminary investigation when he filed his *Motion for Reconsideration and/or Reinvestigation (of the Resolution dated 26 July 2017)*.¹⁰ Accused Aller's claim that his *Motion for Reconsideration and/or Reinvestigation* was denied solely based on technical grounds is belied by the Joint Order dated December 27, 2017.¹¹

In said Joint Order, the Office of the Ombudsman found that both Motions for Reconsideration of accused Ismael, Bayao and Sabay, and of accused Aller, were filed beyond the 5-day reglementary period. Notwithstanding its finding—whether right or wrong—that the Motions were filed beyond the reglementary period for filing the same, the Office of the Ombudsman nonetheless passed upon the merits of the Motions but found no reason to set aside or modify its Resolution.¹²
viz.:

Both Motions for Reconsideration are bereft of merit. The motions were filed way beyond the 5-day reglementary period under Section 7, Rule II of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman). Respondents-movants Ismael, Bayao and Sabay received a copy of the Resolution on September 28, 2017, while respondent-movant Aller received a copy of the same on October 20, 2017. Hence, they had up to October 3, 2017 and October 25, 2017, respectively, to file their motions for reconsideration. As reflected above, they filed their separate motions out of time.

⁹ *Villaflor v. Vivar*, G.R. No. 134744, January 16, 2001; *Yusop v. Sandiganbayan*, G.R. No. 138859-60, February 22, 2001; and *Romualdez v. Sandiganbayan*, G.R. No. 152259, July 29, 2004

¹⁰ Annex B of *Motion for Reconsideration* dated January 17, 2019; Record, Vol. 2, pp. 365-374

¹¹ Record, Vol. 1, pp. 55-59

¹² Joint Order dated December 27, 2017, pp. 3-4; Record, Vol. 1, pp. 57-58

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Parenthetically, on the merits, respondents-movants proffer no newly discovered evidence or grave errors of facts or laws or serious irregularities committed by the Office prejudicial to their interest.

More, the points raised by respondents were already discussed in the assailed Resolution.

B. Right to speedy disposition of cases

This Court finds that accused Aller has convincingly shown that the prejudice became apparent to him only after the filing of the Informations with the Court, and thus, he should not be deemed to have waived his right to speedy disposition of cases.

An examination of his *Motion for Reconsideration and/or Reinvestigation (of the Resolution dated 26 July 2017)*¹³ would show that he raised the matter of the unreasonable delay in the conduct of the investigation, and requested to be allowed to file supplemental pleadings as he continues to gather more evidence. *viz.:*

34. Considering the unreasonable delay in the conduct of investigation, the undersigned likewise moves that he be allowed to present supplemental pleadings, affidavits or the like since the undersigned continues to exert effort to locate relevant records including witnesses who Aller believes are very much willing to execute affidavit/s to attest to the foregoing;

Such request was reasonable, considering that peculiar to accused Aller are the circumstances that he learned of the preliminary investigation only after he received a copy of the Office of the Ombudsman's Resolution dated July 26, 2017 on October 20, 2017, and that he had only five (5) days from his receipt of the said Office of the Ombudsman's Resolution within which to file a motion for reconsideration or reinvestigation.

It appears that accused Aller believed that he could gather more documentary evidence and find witnesses if he was given more time to do so. It was only after the denial of his *Motion for Reconsideration and/or Reinvestigation* in the Office of the Ombudsman's Joint Order, and the filing of the Informations with the Court on May 4, 2018, while

¹³ Annex B of *Motion for Reconsideration* dated January 17, 2019, p. 10; Record, Vol. 2, p. 374

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he was in the process of requesting certain documents and locating witnesses, that he realized that the same were no longer available.

Notwithstanding the fact that accused Aller is not deemed to have waived his right to speedy disposition of cases, this Court must still deny his Motion for Reconsideration.

The Court is not unmindful of the fact that the accused may suffer some form of prejudice as a result of being criminally charged. However, it must be clarified that the prejudice which justifies the dismissal of a case on the ground of violation of the right to speedy disposition of cases refers to serious prejudice caused by inordinate delay. In *Corpuz v. Sandiganbayan*,¹⁴ the Supreme Court explained:

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay, and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

(underscoring supplied)

In the assailed Resolution, although this Court held that there was no violation of accused Aller's right to speedy disposition of cases because he is deemed to have waived his right thereto, it must be emphasized that such waiver was not the sole basis, but only one of the bases, for this Court's conclusion that there was no violation of his right to speedy disposition of cases. In the Resolution dated November 14, 2018¹⁵ denying accused Bayao, Sabay and Ismael's *Motion to Quash Information/Dismiss the Case* on the same ground, which this Court adopted in the Resolution being assailed by accused Aller, this Court found that the time it took the Office of the Ombudsman to conduct its investigation was not unreasonable, given the circumstances. Thus, there was no inordinate delay. The pertinent

¹⁴ G.R. No. 162214, November 11, 2004

¹⁵ Record, Vol. 2, pp. 221-234

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portion¹⁶ of the Resolution dated November 14, 2018 is hereunder quoted for convenience:

The preliminary investigation of the Office of the Ombudsman Luzon, which lasted from the filing of the complaint by Task Force Abono-Field Investigation Office on March 5, 2013 to the approval of the draft resolution finding probable cause against all of the accused on August 1, 2017, or *four (4) years, four (4) months and twenty-seven (27) days*, is not entirely attributable to the Office of the Ombudsman Visayas.

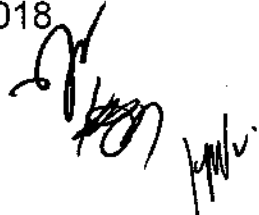
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In sum, the total periods of *six (6) months and three (3) days* (attributable to all of the accused) and an undetermined period of fact-finding investigation should be excluded from the time spent by the Office of the Ombudsman Luzon to terminate the preliminary investigation, and for the OSP to file the corresponding informations with the Sandiganbayan.

Subtracting the periods attributable to all of the accused and the fact-finding investigation, the total period it took the Office of the Ombudsman Luzon to finish its preliminary investigation, and for the OSP to file the corresponding informations is only ***four (4) years, seven (7) months, and twenty-five (25) days***. The Court considers this period reasonable because the investigating prosecutor had to carefully evaluate the complaint and the supporting documents to determine whether probable cause for violation of Section 3(e) of R.A. No 3019 and Malversation of Public Funds existed against all of the accused. The Office of the Ombudsman considered the right of all the accused to due process. The OSP had to review the case again so that only the case that could stand the rigors of trial would be filed. Also, these cases involve eight respondents, two (2) criminal charges, two (2) administrative charges, and voluminous records because it is part of the fertilizer fund scam cases involving several government officials and employees around the country. Under these circumstances, the said period is not capricious, oppressive and vexatious.

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In fine, this Court finds no reason that would warrant the reversal of the Resolution dated December 13, 2018.



¹⁶ Resolution dated November 14, 2018, pp. 6-8; Record, Vol. 2, pp. 226-228

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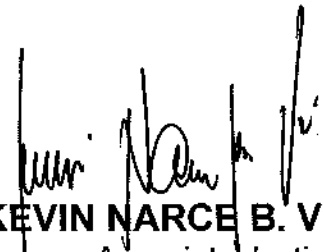
WHEREFORE, accused Aller's *Motion for Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice