



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

MINUTES of the proceedings held on February 18, 2019

PRESENT:

HON. SARAH JANE T. FERNANDEZ.....Associate Justice

HON. KARL B. MIRANDA.....Associate Justice

HON. KEVIN NARCE B. VIVERO.....Associate Justice

The following resolution was adopted:

SB-18-CRM-0536 –

PEOPLE vs. GERARDO A. NOVERAS, ET AL.

In her *Manifestation*,¹ accused Paz L. Lumasac-Torregosa manifested that (1) she is adopting the *Motion to Quash and Motion for Leave to File and Admit Attached Motion for Reinvestigation*² of accused Gerardo A. Noveras as her own, and (2) she is no longer the Provincial Legal Officer of Aurora as of June 30, 2016.

In its *Manifestation in Lieu of Comment*,³ the prosecution manifested that it is adopting its *Comment/Opposition*⁴ to said Motion of accused Gerardo A. Noveras as its comment and opposition to said Motion, as adopted by accused Torregosa.

This Court finds no reason to depart from its Resolution dated January 14, 2019,⁵ denying the *Motion to Quash and Motion for Leave to File and Admit Attached Motion for Reinvestigation* of accused Gerardo A. Noveras. Thus, this Court reiterates its rulings in said Resolution, the pertinent portions⁶ of which are hereunder quoted for convenience:

A. Motion for Reinvestigation

This Court denies the accused' Motion for leave to file the attached Motion for Reinvestigation because such Motion for Reinvestigation is a prohibited motion. The pertinent provision of the *Revised Guidelines for Continuous Trial of Criminal Cases* (Revised Guidelines) reads:

¹ Dated December 3, 2018, Record, pp. 386-388

² Dated November 12, 2018; Record, pp. 289-315

³ Dated February 11, 2019, Record, pp. 442-445

⁴ Dated November 23, 2018; Record, pp. 349-358

⁵ Record, pp. 392-400

⁶ Resolution dated January 14, 2019, pp. 4-8; Record, 395-399

x x x

In the attached Motion for Reinvestigation, accused Gerardo A. Noveras assails the credibility of Engr. Rodante A. Tolentino, who filed the *Complaint-Affidavit* dated December 10, 2015 against certain officials of the Province of Aurora, including the accused. Accused Gerardo A. Noveras further insists that he did not commit any crime. Clearly, the attached Motion for Reinvestigation is grounded on issues of credibility, and on his innocence. A preliminary investigation has actually been conducted, and hence, the motion sought to be filed and admitted is prohibited.

Even if such motion for reinvestigation is not prohibited under the Revised Guidelines, it must nevertheless be denied because, as pointed out by the prosecution, it was filed beyond the prescribed period for filing the same. Rule II, Sec. 7 of the *Rules of Procedure of the Office of the Ombudsman* provides:

x x x

Here, accused Gerardo A. Noveras received a copy of the Consolidated Resolution dated April 3, 2018 on June 5, 2018. He had five (5) days from said date within which to file his motion for reconsideration or reinvestigation. Obviously, the period for filing a motion for reinvestigation had already lapsed. At any rate, it appears that the accused had already filed their respective motions for reconsideration of said Consolidated Resolution,⁷ and that their motions for reconsideration had been denied in the Order dated June 28, 2018.⁸

B. Motion to Quash

x x x

A cursory reading of the Information would show that all the elements of violation of Sec. 3(e) of R.A. No. 3019 are sufficiently alleged.

Accused Gerardo A. Noveras argues that the Information is insufficient because it does not allege the element of causing undue injury to any party, including the government. The Court disagrees.

In *Braza v. Sandiganbayan*, the Supreme Court explained that there are two (2) ways by which Sec. 3(e) of R.A. No. 3019 may be violated, and that the accused may be charged under either mode or under both. *viz.*:

x x x

Similarly, herein accused are charged with violation of Sec. 3(e) of R.A. No. 3019 under the second mode. Specifically, the Information alleges that the accused public officers gave RMCR and/or accused private individual Ramos unwarranted benefit, advantage or preference by ensuring

⁷ Record, p. 24

⁸ Record, pp. 24-28

the award of the subject contract in favor of RMCR Construction, in the performance of their respective administrative and/or official functions. The Information need not allege "causing undue injury to any party" in addition to the allegation of "giving any private party any unwarranted benefit, advantage or preference."

The *Motion to Quash and Motion for Leave to File and Admit Attached Motion for Reinvestigation*, as adopted by accused Torregosa is hereby **DENIED**.

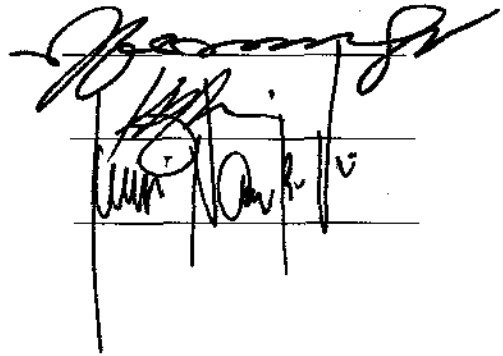
SO ORDERED.

APPROVED:

FERNANDEZ, SJ, J., *Chairperson*

MIRANDA, J.

VIVERO, J.

Handwritten signatures of Fernandez, SJ, J., Miranda, J., and Vivero, J. over horizontal lines.