

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0510

- versus -

For: Violation of Sections 3(e) of
R.A. No. 3019, as amended

RAFAEL F. MOSURA, JR., ET AL.,
Accused.

x-----x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0511

- versus -

For: Violation of Sections 3(e) of
R.A. No. 3019, as amended

MANUEL DINAMARCA ANDAL,
Accused.

x-----x

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0512

- versus -

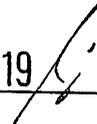
For: Violation of Sections 3(e) of
R.A. No. 3019, as amended

Present:

QUIROZ, J., *Chairperson,*
CRUZ, J., and
JACINTO, J.

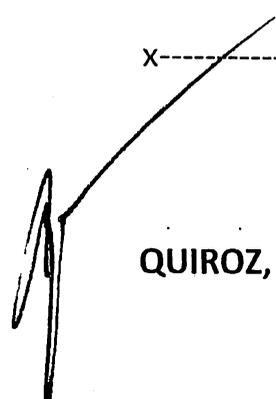
LYNNA GOYMA CHUNG,
Accused.

Promulgated:

MAR 21 2019 

x-----x

RESOLUTION

 QUIROZ, J.:

 Y

Before this Court are the following:

1. *Consolidated Manifestation with attached Amended Informations*¹ dated November 19, 2018 filed by plaintiff;
2. *Motion to Quash Amended Information*² dated December 4, 2018 filed by accused Lynna Goyma Chung (Chung);
3. *Comment/Opposition with Motion to Quash Information*³ dated December 26, 2018 filed by accused Manuel D. Andal (Andal); and
4. *Motion to Quash the Amended Information*⁴ dated February 6, 2019 filed by accused Rafael F. Mosura, Jr., Edgardo R. Remonte, and Constantino R. Dominguez (Mosura, et al.).

**Consolidated Manifestation with
Attached Amended Informations**

In the said Consolidated Manifestation, the plaintiff avers that during the preparation of the exhibits for the Pre-Trial Brief, it discovered some errors in the Informations filed against the accused. Since none of the accused have been arraigned under the cases, the plaintiff claims that it can amend the informations in form and substance without leave of court. The plaintiff likewise asserts that the rights of the accused will not be prejudiced by the amendment of the informations because the revisions were included in the complaint before the Office of the Ombudsman (Ombudsman), for which they were allowed to refute and have, in fact, refuted in their counter-affidavits. Hence, the plaintiff's prayer to note its consolidated manifestation and admit the amended informations attached thereto.

The first paragraph of Section 14, Rule 110 of the Revised Rules on Criminal Procedure states:

SEC. 14. Amendment. - The information or complaint may be amended, in substance or form, without leave of court, at any time

¹ Records Volume 2, pp. 546-560.

² Id. at 572-580.

³ Id. at 604-619.

⁴ Records Volume 3, pp. 21-25.

RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

Page 3 of 9

before the accused pleads, and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused.

To be clear, the amendment of a criminal charge depends on the time when the change is requested. If the request is before arraignment, it is a matter of right. Thus, no leave of court is necessary and the prosecution is free to do so even in matters of substance and in form. On the other hand, if the amendment is sought after the accused had already been arraigned, the amendment can only be made by a prior leave and at the discretion of the court, only as to matters of form when the same can be done without prejudice to the rights of the accused. In the instant cases, as all the accused have yet to be arraigned, the amendment requested is a matter of right even in matters of substance and form. Accordingly, the Court sees no legal impediment to the amendment of the informations against the accused.

**Motion to Quash Amended
Information filed by accused Chung**

Accused Chung moves for the quashal of the amended information for lack of authority of the Ombudsman to file the same due to the inordinate delay which attended the preliminary investigation. She also points out that the substitution of the phrase "that violated the contract's 15%-85% payment schedule and cause the release of said payments before Pandrol Korea's submission of the pre-requisite documents" with the phrase "despite irregularities in the conduct of Direct Contracting" contravenes the Ombudsman's Joint Resolution dated March 14, 2018, which declared that she cannot be charged for the offense as a member of the Philippine National Railways-Bids and Awards Committee (PNR-BAC), since she had no participation in the decision to recommend the resort to direct contracting. Accused Chung explains that the amendment, if admitted, would be seriously prejudicial to her as it would require her to defend herself against a criminal charge different from the present charge of violation of Section 3(e) of Republic Act (R.A.) No. 3019 for the alleged irregularities in the payments made by PNR to Pandrol Korea.

The plaintiff filed its opposition to accused Chung's motion averring that the Court should not be strained to repeat itself in resolving the issue



RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

Page 4 of 9

of inordinate delay as it had already considered and addressed the same in its Resolution dated October 8, 2018 denying her motion to quash the original information. The plaintiff reasons that the argument that she is now being charged as a member of the BAC which recommended direct contracting is misleading because nowhere in the Amended Information does it state that she is being charged as a member thereof. The plaintiff maintains that the Amended Information still charges accused Chung as the Manager of PNR's Administrative and Finance Department for authorizing or approving the payments to Pandrol Korea who was contracted through Direct Contracting without legal justification.⁵

The Court agrees with the plaintiff.

The issue of inordinate delay has long been settled and discussed at length by the Court in the Resolution dated October 8, 2018 denying accused Chung's motion to quash the original Information and Resolution dated December 4, 2018 denying a reconsideration thereof. The Court's position on this issue remains the same notwithstanding the amendment of the Information; hence, the discussion thereon need not be reiterated.

The accused's contention that the amendment of the Information contravenes the Ombudsman's Joint Resolution is devoid of merit. A careful comparison of the original and amended Informations reveals that the revision will not add anything new to the crime or change the basic theory of the prosecution. The Amended Information does not in any manner contravene the Ombudsman's Joint Resolution because accused Chung is not being charged as a member of the PNR-BAC. The amended information is still charging accused Chung as the Manager of PNR's Administrative and Finance Department for the same offense of Violation of Section 3(e) of R.A. No. 3019 for her role in authorizing or approving the payments to Pandrol Korea. There being no change or alteration in the crime charged under the original Information, any evidence the accused might have under her defense in the original Information is still very much available to her and applicable to the Amended Information. Consequently, it is but proper for the Court to deny accused Chung's motion to quash.

⁵ Records Volume 2, pp. 590-593.

RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

Page 5 of 9

**Comment/Opposition with Motion to
Quash Information filed by accused
Andal**

In its comment/opposition with motion to quash, accused Andal posits that the facts charged do not constitute an offense as it is the PNR-BAC which recommended and decided to procure the railway materials from Pandrol Korea through Direct Contracting; it is also the PNR-BAC which is duty-bound to secure the DOTC certification of compliance with all applicable laws and regulations; and the payments made to Pandrol Korea were not irregular and did not cause undue injury to any party, including the government, or gave any unwarranted benefits, advantage, or preference to another.

Accused Andal advances that the Consolidated Manifestation with Attached Amended Informations is an admission of the insufficiency of the original information. Accused Andal also insists that the addition of the phrase "despite knowledge of the irregularity in the resort to Direct Contracting with the latter, there being the existence of a suitable substitute in the market that can be obtained at more advantageous terms for the government" changes the plaintiff's theory of the case because it now seeks to accuse him of having knowledge of the alleged irregularity in the transaction and of the existence of suitable substitutes, which matters were not included in the Ombudsman's findings in the Joint Resolution. Moreover, the deletion of the phrase "which violated the contract's 15%-85% payment schedule and were released before the submission of pre-requisite documents" reveals that the plaintiff does not have a clear case against him. Thus, accused Andal contends that the Amended Information should not be admitted and must be quashed for it deviates from the findings of the Ombudsman's Resolution and is insufficient to convict him.

The plaintiff interposes its objection thereto and claims that the addition of the phrase "despite knowledge of the irregularity in the resort to Direct Contracting with the latter, there being the existence of a suitable substitute in the market that can be obtained at more advantageous terms for the government" does not in any way deviate from the Ombudsman's Joint Resolution. The plaintiff avers that accused Andal was aware that Direct Contracting should not have been resorted to in view of the existence of another suitable supplier because he was the one negotiating



RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

Page 6 of 9

with Pandrol Korea from the beginning and receiving letters from Nikka Trading of its intent to supply PNR with the same products. Thus, the plaintiff declares that the inclusion of the above-quoted phrase only clarifies the charges against accused Andal in accordance with the findings of the Ombudsman in the Joint Resolution.

The plaintiff likewise debunks accused Andal's assertion that the information does not charge an offense and counters that his assertions are factual and evidentiary in nature and are considered as matters of defense which should be ventilated in a full-blown trial.

Accused Andal's comment/opposition with motion to quash deserves scant consideration.

The addition of the phrase "despite knowledge of the irregularity in the resort to Direct Contracting with the latter, there being the existence of a suitable substitute in the market that can be obtained at more advantageous terms for the government" in and deletion of the phrase "which violated the contract's 15%-85% payment schedule and were released before the submission of pre-requisite documents" from the Amended Information do not contradict the findings of the Ombudsman in the Joint Resolution. In fact, the revisions find basis in the Ombudsman's conclusion that accused Andal, as then General Manager of the PNR who entered into contract with Pandrol Korea and Nikka Trading, should be indicted for two (2) counts of violation of Section 3(e) of R.A. No. 3019 as he "appears: (1) to have been the one negotiating with the company from the start" and "(3) to have authorized or approved the irregular payments to Pandrol Korea."⁶ To the Court's mind, the inclusion of the first phrase and deletion of the second phrase are but clearer restatements of the charge against accused Andal regarding his involvement in the alleged irregularities. They did not in any way introduce a new and material fact not found in the original Information. Clearly then, there is no truth to accused Andal's allegation that he would be prejudiced by the amendment as he never had the opportunity to confront and refute the new allegations during preliminary investigation.

⁶ Records Volume 1, p. 60.

RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

Page 7 of 9

The other contentions of accused Andal in support of his claim that the facts charged in the Amended Information do not constitute an offense have no leg to stand on. An examination of the Amended Information filed against him shows the sufficiency of the allegations therein to charge him for Violation of Section 3(e) of R.A. No. 3019. It appears that accused Andal's contentions of whether it is the PNR-BAC who recommended and decided to procure the railway materials from Pandrol Korea through Direct Contracting; whether it is PNR-BAC who is duty-bound to secure the DOTC certification of compliance with all applicable laws and regulations; and whether the payments to Pandrol Korea were irregular and caused undue injury to any party, including the government, or gave any unwarranted benefits, advantage, or preference to any party are factual and evidentiary in nature which may best be considered as matters of defense to be ventilated in a full-blown trial.⁷ These evidentiary matters are not the proper subjects of a motion to quash. Verily, the Court finds cause to deny accused Andal's motion to quash.

Motion to Quash the Amended Information filed by accused Mosura, et al.

In their motion, accused Mosura, et al. seek to quash the Amended Information against them on the grounds that the facts charged therein do not constitute an offense; and that the Amended Information is void because its material allegations went beyond the findings of the Ombudsman in its Joint Resolution.

In its *Comment/Opposition* thereto,⁸ the plaintiff counters that these arguments deserve scant consideration because they were already raised by accused Mosura, et al. in their Motion to Quash/Dismiss dated August 24, 2018 and were already denied by the Court in its Resolution dated October 11, 2018.

The motion to quash must be denied for lack of merit.

⁷ *People v. Tac-an*, 300 SCRA 265, 277 (1998).

⁸ Records Volume 3, pp. 31-35.



RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

Page 8 of 9

In the Resolution dated October 11, 2018, the Court resolved to deny the motion to quash of accused Mosura, et al. as follows:

A reading of the *Information* yields to the finding that the ultimate facts required to be alleged in a charge for Violation of Sec. 3(e) of R.A. No. 3019 had been included therein. Whether there is sufficient evidentiary basis to support the said allegations – such as whether accused-movants' allegedly undue recommendation resulted in unwarranted benefit having been conferred to Pandrol Korea – are matters that can only be properly addressed during trial and cannot be resolved in a Motion to Quash.

To reiterate, a Motion to Quash is limited to the sufficiency of an *Information*, or the jurisdiction of the Court to entertain the same, any attempt to urge the Court to inquire into evidentiary matters that should have been considered by the OMB during preliminary investigation or by the Court itself in order to commence trial amounts to a motion for judicial determination of probable cause, which is prohibited under A.M. No. 15-06-10-SC, and as such must be denied outright.

Finally, accused-movants' argument that the *Information* substantially deviated from the OMB's Joint Resolution has no merit. It is plainly apparent from the Joint Resolution that part of the actionable conduct found by the OMB to have been committed by accused-movants' is their undue recommendation for Direct Contracting; thus, the probable cause finding for Violation of Sec. 3(e) of R.A. No. 3019. The allegation that the said overt act is attended by evident bad faith, manifest partiality, or gross inexcusable negligence are modalities that have to be proven by the prosecution in order to sustain a conviction for the said offense. No additional finding thus resulted from the said allegations in the *Information*. Thus, their due process rights have not been transgressed in any manner.

Notwithstanding the minor revision made by the plaintiff in the Amended Information against accused Mosura, et al., the conclusions arrived at by the Court in the above-cited Resolution still rings true, especially considering that the arguments raised by accused Mosura, et al. as to the alleged defects in the Amended Information are the very same ones they previously raised in their earlier pleadings. It being apparent that no new issues are alleged in their present motion, the Court holds, as it did in their previous pleadings, that the motion to quash is clearly lacking in merit.



RESOLUTION

People vs. Mosura, et al.

SB-18-CRM-0510

People vs. Andal

SB-18-CRM-0511

People vs. Chung

SB-18-CRM-0512

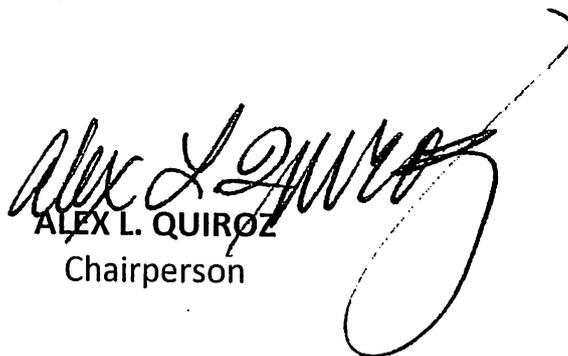
Page 9 of 9

WHEREFORE, premises considered:

1. the plaintiff's Consolidated Manifestation dated November 19, 2018 is **NOTED** and the Amended Informations attached thereto are **ADMITTED**;
2. The *Motion to Quash Amended Information* dated December 4, 2018 of accused Lynna Goyma Chung is **DENIED**;
3. The *Motion to Quash Information* dated December 26, 2018 of accused Manuel D. Andal is **DENIED**; and
4. The *Motion to Quash the Amended Information* dated February 6, 2019 of accused Rafael F. Mosura, Jr., Edgardo R. Remonte, and Constantino R. Dominguez is **DENIED**.

Let the arraignment and pre-trial of accused Lynna Goyma Chung and Manuel D. Andal be set on April 12, 2019 at 1:30 in the afternoon. Let the setting on even date and time of the arraignment and pre-trial of accused Rafael F. Mosura, Jr., Edgardo R. Remonte, and Constantino R. Dominguez proceed as previously scheduled.

SO ORDERED.


ALEX L. QUIROZ
Chairperson


REYNALDO P. CRUZ
Associate Justice


BAYANI H. JACINTO
Associate Justice