



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

SIXTH DIVISION

**PEOPLE OF THE PHILIPPINES, SB-18-CRM-0552**  
Plaintiff, For: Violation of Section 3(e)  
of Republic Act No. 3019

*Present*

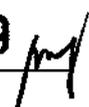
- versus -

**FRANCISVIC S. VILLAMERO,  
ET AL.,**

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

**Accused.**

*Promulgated:*

**MAR 01 2019** 

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## RESOLUTION

**FERNANDEZ, SJ, J.**

This resolves the *Formal Entry of Appearance With Motion for Suspension of Criminal Action on the Ground of Prejudicial Question*<sup>1</sup> filed by accused Rogelim A. Cabrales and Noe C. Gozalo.

In their Motion, accused Cabrales and Gozalo pray for the suspension of the proceedings on the ground of pendency of a prejudicial question in a civil action. They aver:

1. Sec. 6, Rule 111 of the Rules of Criminal Procedure allows the suspension of criminal actions based on the pendency of a prejudicial question in a civil action.
2. The elements of a prejudicial question under Sec. 7, Rule 111 of the Rules of Criminal Procedure are present.

<sup>1</sup> Dated November 28, 2018; Record, Vol. 2, pp. 8-197



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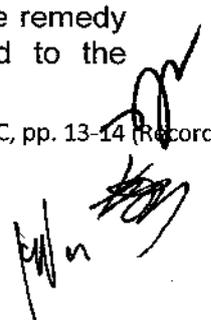
3. On June 5, 2018, they filed a Petition for Review under Rule 43 of the Rules of Court with the Court of Appeals, Mindanao Station to nullify the Ombudsman's resolution in the criminal proceedings docketed as OMB-M-C-16-0217, and the decision in the administrative proceedings docketed as OMB-M-A-16-0262.
4. The issues raised in said Petition for Review pending before the Court of Appeals, Mindanao Station are the same as those in the present case. A favorable resolution of said petition will necessarily exculpate them from criminal liability. The aforementioned issues are as follows:<sup>2</sup>
  - I. Did Public Respondent (Ombudsman) truly peruse the Petitioners' (Cabrales and Gozalo's) Motions for Reconsideration?
  - II. Can an Alternate Chairman or Member of a Bids and Awards Committee (BAC) be held collegially accountable and liable even if he had not once assumed as regular chairman during its deliberations involving the transaction in issue?
  - III. Can a regional newspaper qualify as a newspaper of nationwide circulation where it maintains its own website and claims to have subscribers in major cities of Cebu and Manila?
  - IV. x x x
  - V. x x x
  - VI. Has Public Respondent proven the element of alleged conspiracy in the bidding process involving the procurement of the Tukuran-LGU's Motor Grader in 2011?

In its *Comment/Opposition (to accused Rogelim A. Cabrales and Noe C. Gozalo's Motion for Suspension of Criminal Action on the Ground of Prejudicial Question)*,<sup>3</sup> the prosecution counters:

1. The jurisdiction of the Court of Appeals over the decisions of the Office of the Ombudsman is limited to administrative cases.
2. Decisions or orders of the Office of the Ombudsman in criminal cases, such as its resolution finding probable cause to indict the accused, may only be assailed through certiorari proceedings before the Supreme Court.
3. Accused Cabrales and Gozalo correctly availed of the remedy of Petition for Review under Rule 43 with regard to the

<sup>2</sup> *Motion for Suspension* dated November 28, 2018, p. 4 (Record, Vol. 2, p. 11); Annex C, pp. 13-14 (Record, Vol. 2, pp. 26-27)

<sup>3</sup> Dated February 13, 2019; Record, Vol. 2, pp. 214-218



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administrative case, but they erroneously availed of the same remedy in the criminal case.

4. There is no prejudicial question that would warrant the suspension of the proceedings in the present case.
5. The Petition for Review pending before the Court of Appeals is not the civil suit contemplated under the rule of prejudicial question.

During the hearing of the motion under consideration on February 15, 2019, the accused, by counsel, further argued:<sup>4</sup>

1. Their Petition for Review pending before the Court of Appeals touches upon the administrative aspect of the case, but it cannot convert the proceedings into an administrative case or action.
2. In said Petition for Review, they raised the following important issues:
  - a. Alternate members may be implicated only as to their direct participation. Nowhere in the records can it be seen that accused Gozalo assumed the position of Acting Chairman of the Bids and Awards Committee.
  - b. Accused Cabrales filed a motion to review and cancel the award to Ivan Carr. Therefore, he could not have conspired with the other accused.

The prosecution then pointed out that such arguments are matters of defense which are better threshed out in a full-blown trial, and that the issues raised by the accused were the same as those in their instant motion.<sup>5</sup>

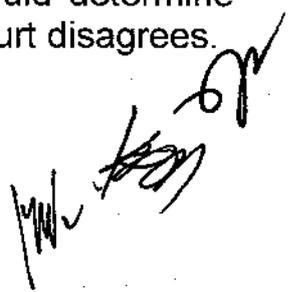
### THE COURT'S RULING

The Court resolves to deny the Motion of accused Cabrales and Gozalo.

Accused Cabrales and Gozalo contend that the proceedings in the present case must be suspended because the resolution of their Petition for Review filed with the Court of Appeals would determine whether or not the present case may proceed. This Court disagrees.

<sup>4</sup> TSN, February 15, 2019, pp. 4-5

<sup>5</sup> TSN, February 15, 2019, p. 5



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Sections 6 and 7 of Rule 111 of the Rules of Court, which provide for the suspension of proceedings on the ground of prejudicial question, read:

**Sec. 6. Suspension by reason of prejudicial question.** – A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

**Sec. 7. Elements of prejudicial question.** – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Here, it is apparent that there is no prejudicial question because there is no “previously instituted civil action.” Accused Cabrales and Gozalo’s Petition for Review filed with the Court of Appeals is not the civil action contemplated in Sec. 7, Rule 111 of the Rules of Court. It is an appellate remedy for the Office of the Ombudsman’s Decision in the administrative case docketed as OMB-M-A-16-0262. Parenthetically, although said administrative case arose from the same set of facts as that in the present criminal case, the resolution thereof by the Court of Appeals will not determine whether or not the present case may proceed.

In *Villaseñor v. Sandiganbayan*,<sup>6</sup> the Supreme Court explained that criminal and administrative cases are separate and distinct, and thus, may proceed independently of each other. *viz.*:

Significantly, there are three kinds of remedies that are available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.

Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereunder, as different degrees of evidence are required in these

<sup>6</sup> G.R. No. 180700, March 4, 2008

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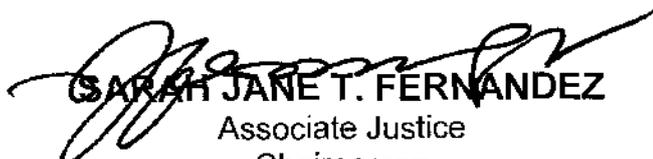
several actions. In criminal cases, proof beyond reasonable doubt is needed whereas a mere preponderance of evidence will suffice in civil cases. In administrative proceedings, only substantial evidence is required.

It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. Verily, administrative cases may proceed independently of criminal proceedings.

On the other hand, in *Gatchalian v. Office of the Ombudsman*,<sup>7</sup> the Supreme Court emphatically held that the Court of Appeals does not have jurisdiction over the Ombudsman's orders and decisions in non-administrative cases. For non-administrative cases—including criminal cases—the appropriate remedy is to file a petition for certiorari under Rule 65 with the Supreme Court. Thus, even assuming that the Court of Appeals resolves the Petition for Review, insofar as the criminal aspect is concerned, in favor of accused Cabrales and Gozalo, the same will have no effect on the present case.

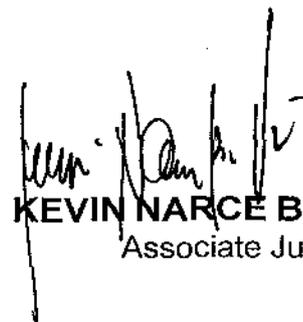
**WHEREFORE**, the *Motion for Suspension of Criminal Action* filed by accused Cabrales and Gozalo is hereby **DENIED** for lack of merit.

SO ORDERED.

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

**We Concur:**

  
**KARL B. MIRANDA**  
Associate Justice

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

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<sup>7</sup> G.R. No. 229288, August 1, 2018