



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

**Criminal Cases Nos. SB-17-
CRM-0642 to 0643**

For: Violation of Section 3(e) of
Republic Act (R. A.) No. 3019

-versus -

MARC DOUGLAS CHAN
CAGAS IV, *et. al.*,

Accused.


**Criminal Cases Nos. SB-17-
CRM-0644 to 0645**

For: Malversation through
Falsification and Malversation
of Public Funds

Present:

**CABOTAJE-TANG, PJ
FERNANDEZ, SJ., J. and
FERNANDEZ, B., J.**

Promulgated

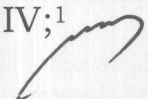
JULY 10, 2017 

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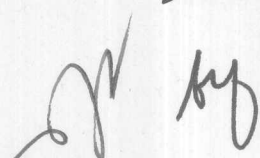
RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution are the following:

1. *Urgent Motion for Judicial Determination of Probable Cause With Entry of Appearance* dated March 31, 2017 filed by accused Marc Douglas Chan Cagas IV;¹ 

¹ pp. 398—414, Record



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2. *Extremely Urgent Omnibus Motion (1) For Reinvestigation; (2) To Set Aside No Bail Recommendation for Crim Case No. SB-17-CRM-0644 for Malversation through Falsification; (3) To Fix the Amount of Bail in Crim Case No. SB-17-CRM-0644 for Malversation through Falsification; and (4) To Defer the Issuance of Warrants of Arrest dated April 5, 2017 filed by accused Johanne Edward B. Labay.*²

In praying that the Court conduct a judicial determination of probable cause, accused Cagas IV argues that there is no evidence on record that he participated in the supposed criminal scheme which made possible the commission of malversation. Contrary to the findings of the Office of the Ombudsman, he claims that (1) there is no proof that he identified the projects to be funded by his PDAF and chose the non-governmental organization (NGO) to implement the said project and points to the implementing agency (IA) as the one that decides which NGO to engage; (2) he did not prepare the letter specifying the NGO to partner with the IA because his signature thereon was forged and that allegedly, he only made recommendations to the IA as to which NGO to engage.; and (3) he had no hand in the implementation of his PDAF-funded projects because the implementation is between the IA and the NGO as spelled out in the Memorandum of Agreement (MOA). Thus, he allegedly would not know the beneficiaries of the projects as well as the expenditures made to implement his PDAF projects.³

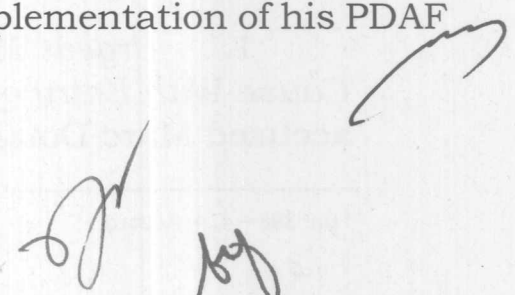
Accused Cagas IV also argues that the PDAF never passed through his hands. Instead, the Department of Budget and Management (DBM) directly releases the PDAF to the IAs. Thus, he contends that he is not an accountable officer; hence, he cannot be held liable for malversation.⁴

Insofar as the charge for violation of Section 3(e) of R. A. No. 3019 is concerned, accused Cagas IV argues that choosing an NGO as a project partner for the implementation of his PDAF

² pp. 452-472, Record

³ at pp. 3-8; pp. 400-405, Record

⁴ at pp. 10-12; pp. 407-12, Record



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projects is not part of his official duty or even related to his official functions as a member of the Congress.⁵

Further, accused Cagas IV assails the Office of the Ombudsman's finding of conspiracy among the accused. He claims that he does not even know accused Samillano whom he supposedly authorized to sign the MOA on his behalf.⁶

The prosecution filed its comment claiming that the filing of a motion for judicial determination of probable cause is unnecessary because, with or without such motion, the task of the judge is to determine the existence of probable cause for the arrest of the accused.⁷ At any rate, the prosecution argues that the elements of malversation, malversation through falsification and violation of Section 3(e) of R. A. No. 3019 are present, the participation of the accused was sufficiently established and extensively discussed in the Resolution and Order of the Office of the Ombudsman. It points to the 2007-2009 Commission on Audit Special Audits Office Report, as well as the field validation conducted by the Field Investigation Office of the Office of the Ombudsman, which reveals the "scheme" employed in the widespread misuse of the PDAF allotted to accused Cagas IV. It also points out that the issue on whether a legislator is an accountable officer insofar as his PDAF is concerned has been settled in **Belgica, et al. vs. Executive Secretary, et al.**⁸ Anent the issue on conspiracy, the prosecution contends that the individual acts of the accused when taken as a whole showed that they acted in conspiracy and cooperated with one another in defrauding the government for their personal benefits. At any rate, the prosecution argues that the presence or absence of conspiracy involves evidentiary matters. Thus, it is better left ventilated during trial.⁹

Accused Labay, on the other hand, moves for the remand of these cases to the Office of the Ombudsman for the conduct of a preliminary investigation. Invoking decisions in several cases, accused Labay argues that he was denied his right to have a full preliminary investigation which constitutes

⁵ at pp. 13-14; pp. 410-411, Record

⁶ at pp. 15-16; p. 412, Record

⁷ at pp. 1-2; pp. 563-564, Record

⁸ 701 SCRA 1 (2013)

⁹ at pp. 3-6; pp. 565-569, Record

Handwritten signatures and a checkmark. There are two distinct signatures, one appearing to be 'Jr' and another 'My', and a checkmark to the right.

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deprivation of his constitutional right to due process. According to him, he was not served a copy of the order to file counter-affidavit and the Office of the Ombudsman refused to give him copies of the complaint-affidavit and its supporting documents. Instead, he was given a copy of the complaint only after the Informations have been filed before this Court.¹⁰ He also argues that the conduct of a reinvestigation in these cases will serve the interest of the State from the burden of unnecessary expense involved in holding trials based on the false and groundless charges against him and will prevent miscarriage of justice.¹¹

Finally, accused Labay prays that the no bail recommendation in Criminal Case No. SB-17-CRM-0644 for malversation through falsification be set aside and the Court fix the amount of bail pursuant to **People vs. Valdez**.¹²

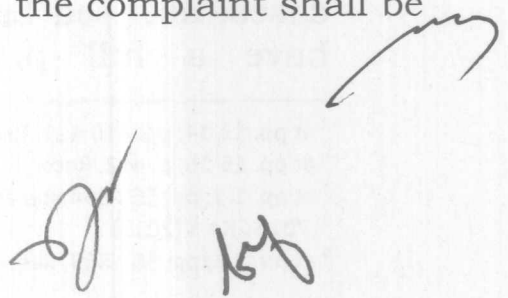
The prosecution opposes accused Labay's motion for a reinvestigation on the ground that the issue he raises, *i.e.* he was not furnished a copy of the complaint-affidavit and its supporting documents, was already raised in his motion for reinvestigation and motion for reconsideration. Both motions were denied by the Office of the Ombudsman. According to the prosecution, a copy of the order to file counter-affidavit was personally served on accused Labay at his address indicated in the Articles of Incorporation of Farmerbusiness Development Corporation (FDC) as an incorporator and at the office address of the FDC. The personal service to the residential house of accused Labay was not completed because he is unknown in the said place and the same is occupied by a certain Ligaya Cortez. The service on the office address of the FDC was likewise returned on the ground that accused Labay is no longer involved with the National Anti-Poverty Commission (NAPC) and there is no information on his whereabouts.¹³ In further objecting to accused Labay's motion, the prosecution invokes Section 4(e) of Administrative Order No. 07 which provides, among others, that if respondent cannot be served or having been served does not comply therewith, the complaint shall be

¹⁰ at pp. 5-10; pp. 456-461, Record

¹¹ at p. 17; p. 468, Record

¹² at pp. 18-19; pp. 469-470, Record, 776 SCRA 672 (2015)

¹³ at pp. 2-3; pp. 584-585, Record



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submitted for resolution on the basis of the evidence on record.¹⁴

On the matter of bail, the prosecution claims that it already filed a manifestation acknowledging that the complex crime of malversation through falsification of public documents is a bailable offense and recommended the amount of P200,000.00 to be imposed as bail for each accused consistent with the **Valdez case**.¹⁵

Accused Labay filed a reply to the prosecution's opposition. He argues that the prosecution admits that he was not served a copy of the order directing him to file his counter-affidavit and he was not furnished copy of the complaint-affidavit and its supporting documents. Thus, he insists that a full preliminary investigation should be conducted to accord him the opportunity to refute the charges against him. He claims that despite the fact that he voluntarily appeared before the Office of the Ombudsman while the preliminary investigation was pending, the Office of the Ombudsman deliberately did not allow him the slightest opportunity to intelligently and fully participate therein and refused to serve on him a copy of the complaint and its annexes.¹⁶

THE RULING OF THE COURT

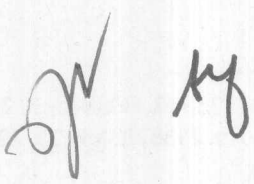
- I. There is probable cause that violations of Section 3(e) of R. A. No. 3019 and malversation were committed by accused Cagas IV; hence, he ought to be arrested and brought to trial.***



¹⁴ at pp. 3-4; pp. 585-586, Record

¹⁵ at p. 4; p. 586, Record

¹⁶ at p. 2-3, 7; pp. 618-619, 623, Record



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Judicial determination of probable cause refers to the prerogative of the judge to ascertain if a warrant of arrest should be issued against the accused. At this stage, the judge makes a preliminary examination of the evidence submitted, and on the strength thereof, and independent from the findings of the public prosecutor, determines the necessity of placing the accused under immediate custody in order not to frustrate the ends of justice.¹⁷

Hearing a motion for judicial determination of probable cause, however, is a mere superfluity, for with or without such motion[s], the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.¹⁸

In this case, accused Cagas IV argues that there is no probable cause for the issuance of a warrant of arrest and to bring him to trial allegedly because there is no evidence that he participated in the supposed criminal scheme which made possible the commission of malversation. According to him, there is no evidence that he identified the project and the IA, that he prepared the letter specifying the NGO which will handle the project funded by his PDAF, and, that he entered into a MOA for the implementation of the project. He claims that his signature on the letter specifying the NGO to implement his project is forged. He also claims that since the PDAF never passed through his hands, he is not an accountable officer. Insofar as the charges for violation of Section 3(e) of R. A. No. 3019 are concerned, he argues that the selection of an NGO as partner in the implementation of his PDAF projects is not part of his official duty or even related to his official functions as a member of the Congress. Finally, he assails the Office of the Ombudsman's finding of conspiracy.

The Court finds the arguments bereft of merit.

¹⁷ *Young vs. People*, G.R. No. 213910, February 3, 2016

¹⁸ *Napoles vs. De Lima*, G.R. No. 213529, July 13, 2016, citing *Leviste vs. Alameda*, 626 SCRA 574 (2010)

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Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense was committed by the person sought to be arrested. This must be distinguished from the prosecutor's finding of probable cause which is for the filing of the proper criminal information. Probable cause for warrant of arrest is determined to address the necessity of placing the accused under custody in order not to frustrate the ends of justice.¹⁹

Here, after an examination of the Resolution dated May 10, 2016 and Order dated November 25, 2016, both issued by the Office of the Ombudsman, and the voluminous documents attached thereto,²⁰ the Court finds that, more likely than not, the crimes charged have been committed and that the accused are probably guilty thereof. Thus, the issuance of a warrant of arrest against accused Cagas IV, along with the other accused, becomes imperative.

Accused Cagas IV's arguments, *i.e.*, the existence or inexistence of conspiracy, his alleged lack of participation in the commission of the crimes charged and his allegation that his signature is forged, are all matters of defense and are evidentiary in nature. They are best left for the court to resolve after a full-blown trial on the merits.²¹

It is important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or on the admissibility or veracity of testimonies presented. What is merely required is "probability of guilt." Moreover, its determination does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits. Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.²²

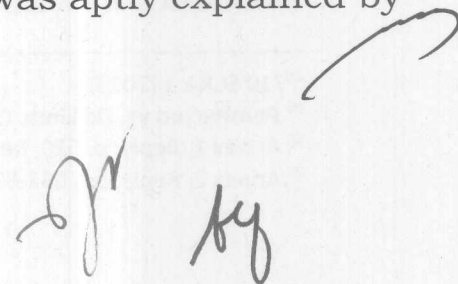
The issue of whether accused Cagas IV is an accountable officer insofar as his PDAF is concerned was aptly explained by

¹⁹Hao vs. People, G. R. No. 183345, September 17, 2014

²⁰ pp. 8-395, Record

²¹ Co vs. Republic, 539 SCRA 147 (2007)

²²Unilever Philippines, Inc. vs. Tan, 715 SCRA 36 (2014)



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the Office of the Ombudsman in its Resolution dated May 10, 2016. Citing **Belgica, et al. vs. Executive Secretary Ochoa, et al.**,²³ it held that “it is the legislator who exercises actual control and custody of the PDAF share allocated to him or her by the appropriation statute.”

II. Accused Labay was not deprived of his right to due process; hence, his motion for reinvestigation has no basis.

The Court finds accused Labay’s motion for reinvestigation bereft of merit.

The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case. What the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.²⁴

Admittedly, there is no showing that accused Labay was served a copy of the order requiring him to file his counter-affidavit. The record shows, however, that on October 4, 2016, accused Labay wrote the Office of the Ombudsman requesting information on the case numbers and titles of the cases it referred to in its press release where his name appears.²⁵ In reply to the said letter, the Office of the Ombudsman confirmed that accused Labay is a respondent in two (2) cases and furnished him copies of the Resolutions dated May 10, 2016 and June 3, 2016. It also reminded accused Labay that he has five (5) days from notice within which to file a motion for reconsideration.²⁶

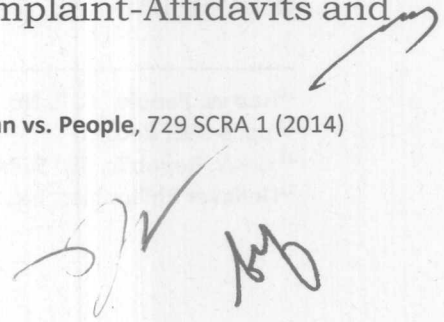
Thus, on November 16, 2016, accused Labay filed a Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavits and

²³710 SCRA 1 (2013)

²⁴ **Pemberton vs. De Lima**, G.R. No. 217508, April 18, 2016, citing **Suyan vs. People**, 729 SCRA 1 (2014)

²⁵ Annex 1, Reply; p. 629, Record

²⁶ Annex 2, Reply; pp. 632-633, Record



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Supporting Documents assailing the Office of the Ombudsman's Resolution dated May 10, 2016, finding probable cause to indict him. The said motion was denied by the Office of the Ombudsman in its Order dated November 25, 2016 upon the following ratiocination:²⁷

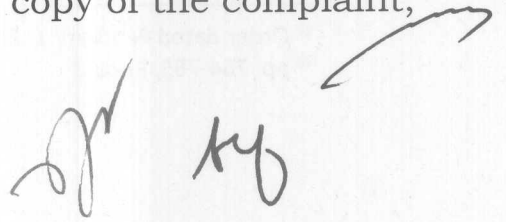
Labay claims that he did not receive a copy of the complaint and its supporting evidence, or any other similar document filed in relation to the present case. He also asserts that this Office did not serve upon him any order requiring him to refute the accusations against him, and he only acquired knowledge of the present case upon reading the 19 September 2016 press release of this Office. On 11 November 2016, he was furnished a copy of the 10 May 2016 Resolution.

This Office has exerted diligent efforts to serve on Labay copies of 1 September 2015 Order directing him to submit his counter-affidavit and the 10 May 2016 Resolution finding him probably guilty of the charges. The same were sent to his office and at his last known address and were returned unserved because he was no longer employed in that office, or was unknown at the given address. There was sufficient compliance with due process.

The filing by Labay of the *Omnibus Motion for Reinvestigation* on 16 November 2016 cured whatever defect in the observance of due process. *Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.*

Thereafter, accused Labay filed an Omnibus Motion for Reconsideration and Deferment of Filing of Information assailing the above order. In denying the said motion, the Office of the Ombudsman pointed out that while accused Labay asserted that he did not commit the crimes imputed to him and that he did not participate in any conspiracy in the commission of the crimes, he prayed that the Office of the Ombudsman conduct a reinvestigation, furnish him a copy of the complaint,

²⁷ at pp. 16-17; pp. 71-72, Record; emphasis theirs



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allow him to gather evidence and submit counter-affidavit. Further, the Office of the Ombudsman held that when accused Labay filed his second motion, he already exhausted his remedy under Section 7(a), Rule II of the Rules of Procedure of the Office of the Ombudsman which allows the filing of only one (1) motion for reconsideration or reinvestigation.²⁸

The above circumstances unerringly show that accused Labay was accorded due process by filing two (2) motions before the Office of the Ombudsman.

III. Accused Labay's prayer to set aside the no bail recommendation in SB-17-CRM-0644 is moot.

In its Resolution dated May 24, 2017, the Court granted accused Labay's motion to set aside the no-bail recommendation indicated in the Information dated November 25, 2016 for the crime of malversation of public funds through falsification in SB-17-CRM-0644 and fixed the bail in the amount of two hundred thousand pesos (P200,000.00) for each of the accused.²⁹

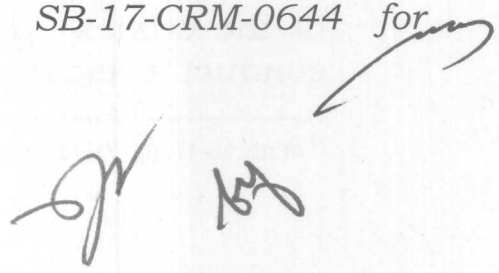
WHEREFORE, the Court -

(1) **DECLARES** the existence of probable cause in these cases. Accordingly, let warrants of arrest be issued against all the accused except for accused Marc Douglas Chan Cagas IV who had already posted bail;

(2) **NOTES** the *Urgent Motion for Judicial Determination of Probable Cause With Entry of Appearance* dated April 4, 2017, filed by accused Marc Douglas Chan Cagas IV; and the motion *To Set Aside No Bail Recommendation in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification and To Fix the Amount of Bail in Crim Case No. SB-17-CRM-0644 for*

²⁸ Order dated February 1, 2017, pp. 77-89, Record

²⁹ pp. 764-765, Record



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Malversation Through Falsification filed by accused Johanne Edward B. Labay; and

(3) **DENIES** the *Motion For Reinvestigation and To Defer the Issuance of Warrants of Arrest* filed by accused Johanne Edward B. Labay for lack of merit.

SO ORDERED.

Quezon City, Metro Manila



AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

WE CONCUR:



SARAH JANE T. FERNANDEZ

Associate Justice



BERNELITO R. FERNANDEZ

Associate Justice