

Republic of the Philippines

Sandiganbayan

Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus-

JEJOMAR ERWIN SOMBILLO

BINAY, JR., ET AL.,

Accused.

SB-18-CRM-0158

SB-18-CRM-0159

For: *Violation of Section 3(e)*
of R.A. 3019

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PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus-

JEJOMAR ERWIN SOMBILLO

BINAY, JR., ET AL.,

Accused.

SB-18-CRM-0165

For: *Falsification of*
Public Document

Present:

LAGOS, *J.*, *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, *JJ.*

Promulgated:

21 June 2022

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Genel A. Graw

RESOLUTION

This resolves accused-movant Eleno M. Mendoza, Jr.'s *Manifestation with Omnibus Motion*¹ dated May 11, 2022 as well as the prosecution's *Comment*² thereto.

Accused-movant seeks the dismissal of the criminal cases (SB-18-CRM-0158, SB-18-CRM-0159 and SB-18-CRM-0165) filed against him for lack of probable cause in view of the alleged "*supervening event*" brought

¹ Records, Volume (Vol.) 9, pages (pp.) 94-209.

² *Ibid.*, pp. 218-225.

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[Manifestation with Omnibus Motion filed by Eleno Mendoza, Jr.]

SB-18-CRM-0153 to 0165

People v. Binay, Sr., et al.

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about by the *May 28, 2019 Consolidated Decision*³ of the Court of Appeals (**CA Decision**) in CA-GR SP Nos. 154151, 154160, 154204, 154250, 154250 and 154471, modifying the *July 10, 2017 Joint Decision* of the Office of the Ombudsman in OMB-C-A-15-0176 and OMB-C-A-15-0177 against accused-movant and other public officials of Makati City relative to the procurement of the construction of the Makati Science High School Building, particularly Phases V and VI, thereof.

The Ombudsman found accused-movant guilty of Serious Dishonesty and Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service relative to his participation in the aforesaid projects as City Administrator. However, in the aforesaid CA Decision, accused-movant was only found administratively liable for Simple Misconduct and was meted the lesser penalty of suspension of six (6) months without pay, the dispositive portion of which reads:

WHEREFORE, premises considered, the 10 July 2017 Joint Decision and 8 December 2017 Joint Order issued by the Office of the Ombudsman in OMB-C-A-15-0171 to OMB-C-A-15-0177 are **AFFIRMED** with **MODIFICATIONS** in that:

(a) the administrative Complaints against petitioner Jejomar Erwin S. Binay, Jr. in OMB-C-A-15-0171, OMB-C-A-15-0175 and OMB-C-A-15-0176 are hereby **DISMISSED** on the basis of the condonation doctrine;

(b) however, in OMB-C-A-15-0177 covering Phase VI of the MSHS Building, petitioner Jejomar Erwin S. Binay, Jr. is found **GUILTY** of Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and is hereby meted the penalty of dismissal from service which shall carry with it all its accessory penalties as provided in the 10 July 2017 Joint Decision and 8 December 2017 Joint Order;

(c) petitioner Eleno M. Mendoza is found **ADMINISTRATIVELY LIABLE** for Simple Misconduct only and meted the penalty of suspension of six (6) months without pay; and

(d) in all other respects, the 10 July 2017 Joint Decision and 8 December 2017 Joint Order finding the rest of the petitioners guilty of Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service are affirmed.

SO ORDERED.⁴

Accused-movant submits that in view of the foregoing findings of the Court of Appeals, “the actual judicial controversy pertaining to the alleged violations of Sections 3(e) of Republic Act No. 3019, as amended, had

³ *Ibid.*, pp. 121-209 [Annex “A” of the Manifestation with Omnibus Motion].

⁴ Records, Vol. 9, p. 208 [Annex “A” of the Manifestation with Omnibus Motion contained in the Consolidated Decision dated March 17, 2022 of the Court of Appeals, p. 87].

already ceased to exist.”⁵ He argues that the very same acts alleged in the present criminal cases pertaining to the construction projects allegedly executed in favor of Hilmarc’s were also the subject of the related administrative cases filed against him before the Office of the Ombudsman, which was the subject of the CA Decision. Accused-movant lifts the following discussion from the said decision:

Mendoza, as City Administrator, countersigned Check Nos. 00066, 00068, 00082 and 1002 with Barlis. However, he is only liable for Simple Misconduct absent any showing of willful intent to violate the law or to disregard established rules. As City Administrator, his key functions do not relate to the management of or accounting of the funds of the local government unit or to internal audit. His concern is the overall administration and management of the affairs of the local government as a whole. Given the prior certifications of the other offices, Mendoza’s act of countersigning the checks amounted only to Simple Misconduct.⁶

Relying thereto, he advances that “it is evident that ‘*manifest partiality, evident bad faith or gross inexcusable negligence*’ on the part of accused-movant is lacking, as per Consolidated Decision of the Court of Appeals, and could no longer satisfy the second element for violation of Section 3(e) of Republic Act No. 3019.”⁷

He likewise “moves to dismiss Criminal Case No. SB-18-CRM-0165 for falsification of public documents for lack of probable cause since records bear that none of the facts alleged to have been falsified in the *July 19, 2013 Resolution of the Bids and Awards Committee (BAC)* are false.”⁸

Accused-movant stresses that “this omnibus motion is not a motion for reconsideration of this Honorable Court’s earlier denial of the motions to quash but a *Motion to Dismiss based on Supervening Event* merely akin to quashal of information based on newly discovered evidence.”⁹ He states that “had the Court of Appeals’ Consolidated Decision dated May 28, 2019 been rendered earlier, the matter pertaining to accused-movant’s downgraded administrative liability would have been included as a ground for accused-movant’s *Motions to Quash Information and/or Dismiss the Case*.”¹⁰

Accused-movant begs this Court to consider the CA Decision and regards the same as a “persuasive ruling”¹¹ since it involve the same issues, subject matter and parties.

⁵ Records, Vol. 9, p. 96 [Manifestation with Omnibus Motion, p. 3, paragraph 3].

⁶ *Ibid.*, pp. 207-208 [[Annex “A” of the Manifestation with Omnibus Motion contained in the Consolidated Decision dated March 17, 2022 of the Court of Appeals, pp. 86-87].

⁷ *Ibid.*, p. 101 [Manifestation with Omnibus Motion, p. 8, paragraph 1].

⁸ *Ibid.*, p. 96 [Manifestation with Omnibus Motion, p. 3, paragraph 5].

⁹ *Ibid.*, p. 102 [Manifestation with Omnibus Motion, p. 9, paragraph 4].

¹⁰ *Ibid.*, pp. 102-103 [Manifestation with Omnibus Motion, pp. 9-10, paragraph 4].

¹¹ *Ibid.*, p. 106 [Manifestation with Omnibus Motion, p. 13, paragraph 2].

He maintains that “[i]n the absence of substantial evidence to support an administrative charge as aptly ruled by the Court of Appeals xxx there could be no sufficient basis to warrant a conclusion that there is probable cause for violation of Section 3(e) of R.A. No. 3019, and even the alleged falsification of documents relative thereto.”¹²

Citing the case of *People of the Philippines v. Sandiganbayan*,¹³ he reiterates that “if the criminal case will be prosecuted based on the same facts and evidence as that in the administrative case, and the court trying the latter already squarely ruled on the absence of facts and/or circumstances sufficient to negate the basis of the criminal indictment, then to still burden the accused to present controverting evidence despite the failure of the prosecution to present sufficient and competent evidence, will be a futile and useless exercise.”¹⁴

On the other hand, the prosecution counters that it is basic and rudimentary that administrative cases are independent from criminal actions arising from the same act or omission. Citing the cases of *Paredes v. CA*,¹⁵ *Barillo v. Gervacio*,¹⁶ *Paredes, Jr. v. Sandiganbayan*¹⁷ and *People v. Sandiganbayan*,¹⁸ it maintains that the fact that accused-movant was found to have been administratively liable for Simple Misconduct only and meted a penalty of suspension of six (6) months without pay does not *ipso facto* mean that the subject criminal cases against him should be dismissed. It maintains that the failure to adduce substantial evidence against petitioner in the former is not a ground for the dismissal of the latter as these cases are separate and distinct; hence, independent from each other.

The prosecution further avers that while criminal and administrative proceedings may involve similar operative facts, each requires a different quantum of evidence such that the findings and conclusions in an administrative case is not and should not inevitably be binding on the criminal case, and vice-versa. In view of which, the prosecution reiterates that it must not be precluded from adducing evidence to discharge the burden of proof required in the criminal cases. It adds that the issue of guilt of accused-movant Mendoza is subject to the evidence to be presented by the parties in the trial of this case.

The prosecution also contends that the instant *Manifestation with Omnibus Motion* is in actuality a *Motion to Quash* based on lack of probable

¹² Records, Vol. 9, p. 119 [Manifestation with Omnibus Motion, p. 26, paragraph 2].

¹³ *People of the Philippines v. Sandiganbayan (1st Division), et al.*, G.R. No. 164577, July 5, 2010.

¹⁴ Records, Vol. 9, p. 119 [Manifestation with Omnibus Motion, p. 26, paragraph 3].

¹⁵ *Brigido Paredes v. The Honorable Court of Appeals, The People of the Philippines and Bernardino Teloren*, G.R. No. 169534, July 30, 2007.

¹⁶ *Dr. Mussolini Barillo v. Hon. Margarito Gervacio, et al.*, G.R. No. 155088, August 31, 2006.

¹⁷ *Ceferino S. Paredes, Jr. and Mansueto J. Honrada v. The Honorable Sandiganbayan, et al.*, G.R. No. 108251, January 31, 1996.

¹⁸ *People v. Sandiganbayan*, G.R. No. 164577, July 5, 2010.

cause, which is not one of the grounds enumerated in Rule 117 of the Revised Rules on Criminal Procedure and must be denied. Too, if the same is treated as a motion for judicial determination of probable cause, the same will not prosper as it is a prohibited pleading under the Revised Guidelines for Continuous Trial.

THE COURT'S RULING

The instant *Omnibus Motion* should be denied outright.

A careful examination of the same, discloses that the accused-movant's motion is apparently one of the prohibited motions enumerated in *Sec. 2 (a) and (d) of Rule VII of the 2018 Revised Internal Rules of the Sandiganbayan*.¹⁹ Despite accused-movant's manifestation that his omnibus motion is not a motion for reconsideration of this Honorable Court's earlier denial of the motions to quash but rather a *Motion to Dismiss based on Supervening Event* "merely akin to quashal of information based on newly discovered evidence"; still, he wants this Court to look into and determine the presence or absence of probable cause and accordingly dismiss the same for alleged lack of it.

A motion to quash is a mode by which an accused, before entering his plea, challenges the complaint or information for insufficiency on its face in point of law, or for defects apparent on its face.²⁰ Section 3, Rule 117 of the Revised Rules of Criminal Procedure enumerates the grounds for the quashal of a complaint or information, as follows:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;

¹⁹ *Sec. 2. Prohibited Motions* – The following are prohibited motions:

(a) Motion for judicial determination of probable cause;

xxx

(d) Motion to quash information when the ground is not one of those stated in Section 3, Rule 117;

xxx

The Sandiganbayan shall deny outright any prohibited motion.

²⁰ *Atty. Edward Serapio v. Sandiganbayan, et al.*, G.R. No. 148468, January 28, 2003

- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (3a)

Clearly, a *supervening event*, as the accused-movant insists, is not among the grounds enumerated, more particularly, after arraignment has been concluded.²¹ Further, this Court prior to the issuance of a Warrant for his Arrest, it has already made the determination of probable cause and has patently found the same. To reiterate on the matter would be a futile exercise of judicial determination.

Nonetheless, this Court would want to stress on some points to settle the issues raised once and for all.

First. Accused-movant's hefty reliance on the CA Decision is misplaced. A reading thereof shows that he was in fact found administratively liable for Simple Misconduct and is meted the penalty of suspension of six (6) months without pay. The CA ruling simply downgraded the original penalty of dismissal from service with its accessory penalties. Essentially, accused-movant was never exonerated. As a matter of relevance the same CA Decision relied upon stresses that:

Although Mendoza is only found administratively liable for Simple Misconduct, it must be clarified that he shall not be entitled to back salaries, considering that he was not exonerated of the charges but was, instead, found culpable for another offense emanating from the same acts that were the basis of the original charges against him, and thus, merely removed from the severe consequences of the penalty of dismissal from service. Jurisprudence is settled that before a government employee may be entitled to back salaries, two conditions must be met, to wit: a) the employee must be found innocent of the charges; and b) his suspension must be unjustified. To be considered innocent of the charges, the Supreme Court explained that there must be complete exoneration of the charges levelled against the employee. These conditions were clearly not met in this case.

Second. Accused-movant seem to bank on the belief that the CA Decision has in effect altered the outcome of the criminal cases filed against him before this Court, such that he related to the same as a "*supervening event*." Palpably, accused-movant is mistaken. The Supreme Court has

²¹ Accused-movant was arraigned on September 7, 2018.

explicitly pronounced in *Maravilla*²² what qualifies a *supervening event*, to wit:

We deem it highly relevant to point out that a **supervening event is an exception to the execution as a matter of right of a final and immutable judgment rule**, only if it directly affects the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable. **A supervening event consists of facts that transpire after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time.** In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.

Obviously, the CA Decision relied upon, does not qualify as such. In fact, there is even no showing that the same has already attained finality. Further, this Court is justifiably not bound by the ruling of the Court of Appeals in the administrative cases filed against the accused-movant as the disposition of the criminal cases herein is separate, distinct and independent as correctly pointed out by the prosecution.

Finally. Records would show that this is not the first time that the accused-movant has took the opportunity to dismiss the subject criminal cases pending before this Court. In fact, some of the arguments raised in the instant motion have already been considered and ruled upon by this Court in its *June 18, 2018 Resolution*²³ denying accused-movant's *Motion to Quash Information and/or Dismiss the Case*. Furthermore, the arguments posed by the accused-movant are evidentiary matters that must be presented and heard during the trial. To prematurely dismiss the cases would be a denial on the part of the prosecution to adduce evidence necessary to discharge the burden of proof required in the criminal cases. As correctly stressed by the prosecution, "[t]he issue of guilt of accused-movant Mendoza is subject to the evidence to be presented by the parties in the trial of this case."

WHEREFORE, premises considered, the instant *Omnibus Motion* is hereby **DENIED** for utter lack of merit.

²² *Heirs of Zosimo Q. Maravilla, et al. v. Privaldo Tupas*, G.R. No. 192132, September 14, 2016.


²³ Records, Vol. 2, pp. 408-416.

Let the continuation of preliminary conference **PROCEED**, as scheduled, on *June 16, 2022 at 9:30 in the morning*.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice