

Republic of the Philippines  
Sandiganbayan  
Quezon City

**FIFTH DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

*-versus-*

**SB-21-CRM-0014 to 0053**  
**For: *Violation of Section 3(e)***  
***of R.A. 3019, as amended***

**NASSER C. PANGANDAMAN,**  
**ET AL.,**

*Accused.*

X -----X

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

*-versus-*

**SB-21-CRM-0054 to 0093**  
**For: *Malversation of***  
***Public Funds through***  
***Falsification of Public***  
***Documents***

**NASSER C. PANGANDAMAN,**  
**ET AL.,**

*Accused.*

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

**Promulgated:**

X -----X  
July 19, 2022  
Guzel A. Guzman

**RESOLUTION**

**CORPUS-MAÑALAC, J.**

This resolves accused Janet Napoles' (accused Napoles) *Omnibus Motion (1. To Produce the Complete Records of the Preliminary Investigation supporting the allegations in the Informations; and 2. To Dismiss the above-entitled cases)*<sup>1</sup> dated June 22, 2022 as well as the prosecution's *Opposition*<sup>2</sup> thereto.

<sup>1</sup> Records, Volume (Vol.) 3, pages (pp.) 512-529.

<sup>2</sup> *Ibid.*, Vol. 4, pp. 63-68.

[Omnibus Motion (1. To Produce the Complete Records of the Preliminary Investigation supporting the allegations in the Informations; and 2. To Dismiss the above-entitled cases filed by accused Janet Napoles)]

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In the instant *motion*, accused Napoles prays that the complete records of the preliminary investigation of the subject cases be produced and that after due proceedings, the same be dismissed pursuant to the ruling in the *Okabe case*.<sup>3</sup>

Napoles states that in the *Okabe case*, the Supreme Court held that “Xxx, if the judge finds the records and/or evidence submitted by the investigating prosecutor insufficient, he may order the dismissal of the case, or direct the investigating prosecutor to submit more evidence or to submit the entire records of the preliminary investigation, to enable him to discharge his duty.”<sup>4</sup> On this basis, she argues that “**the above-entitled criminal cases should be dismissed because of the insufficiency of the records** which are required to be attached to the Informations, specifically, the fact that there is nothing in the records of the preliminary investigation attached to the subject Informations that will support the allegation therein that accused Napoles is **allegedly operating and/or controlling the NGOs** Agricultura Para sa Magbubukid Foundation, Inc. (APMFI), Countrywide Agri and Rural Economic Development Foundation, Inc. (CARED), Agri and Economic Program for Farmers Foundation, Inc. (AEPFFI), Philippine Agri and Social Economic Development Foundation, Inc. (PASEDFI), People’s Organization for Progress and Development Foundation, Inc. (POPDFI), Social Development Program for Farmers Foundation, Inc. (SDPFFI), and Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI) which is the reason why the PDAF Funds subject matter of the instant cases were allegedly diverted to her.”<sup>5</sup> Accused Napoles insists that the records attached to the subject Informations “do not show that she is an incorporator, owner, proprietor, member of the Board of Trustees, duly authorized representative, officer or even an employee of the said NGOs.”<sup>6</sup> She holds that if the prosecution fails to produce the complete records of the preliminary investigation that supports the allegations in the subject Informations, such allegations become conclusions of law rendering the Informations void pursuant to *People v. Solar*.<sup>7</sup> Accused Napoles further avers that her motion to dismiss is based on Section 3 (b), Rule 117, i.e. that the court trying the case has no jurisdiction over the offense charged.

The prosecution counters that the “motion for production of complete records of the preliminary investigation is unnecessary and without any

<sup>3</sup> *Teresita Tanghal Okabe v. Hon. Pedro De Leon Gutierrez, In his capacity as Presiding Judge of RTC, Pasay City, Branch 119; People of the Philippines; and Cecilia Maruyama*, G.R. No. 150185, May 27, 2004.

<sup>4</sup> Records, Vol. 3, p. 513 [Omnibus Motion (1. To Produce the Complete Records of the Preliminary Investigation supporting the allegations in the Informations; and 2. To Dismiss the above-entitled cases), p. 2, para. 2].

<sup>5</sup> *Ibid.*, p. 513 [Omnibus Motion, p. 2, para. 3].

<sup>6</sup> *Ibid.*, p. 513 [Omnibus Motion p. 2, para. 4].

<sup>7</sup> *People v. Rolando Solar*, G.R. No. 225595, August 6, 2019.

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basis. To begin with, accused Napoles participated during the preliminary investigation and was furnished pertinent copies of the Resolutions issued in those proceedings. The records of the preliminary investigation were likewise furnished to this Honorable Court upon the filing of the Informations and upon which records this Honorable Court determined the existence of probable cause for the issuance of a warrant of arrest. These records are accessible and readily available upon request.”<sup>8</sup>

The prosecution likewise points out that accused Napoles did not specifically describe what documents she is particularly asking in filing the instant motion and that the allegation that accused Napoles is operating and/or controlling the NGOs mentioned in the Informations is obviously a mere reiteration of one of the grounds she raised in her *Motion to Quash Information*<sup>9</sup> dated March 19, 2022 which was duly resolved by the Court in the *Resolution*<sup>10</sup> dated May 3, 2022.

### THE COURT’S RULING

The Court resolves to deny accused Napoles’ instant *motion*, as it finds no good cause to grant the same.

**The Okabe case relied upon by accused Napoles’ *motion* does not fall squarely with the subject criminal cases.**

Accused movant’s underpinning basis for her prayer to produce the complete records of the Preliminary Investigation supporting the allegations in the subject Informations is the *Okabe case*.

A cursory reading of the *Okabe case*, however, reveals that its factual circumstances do not fall squarely with the factual antecedents of the subject cases. In the *Okabe case*, the Supreme Court declared the respondent judge to have committed grave abuse of discretion amounting to excess or lack of jurisdiction in finding probable cause for the petitioner’s arrest in the absence of copies of the affidavits of the witnesses of the private complainant and her reply affidavit, the counter affidavit of the petitioner and the evidence adduced during the preliminary investigation before the investigating prosecutor. The Supreme Court declared in *Okabe*:

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<sup>8</sup> Records, Vol. 4, pp. 64 [Opposition to the Omnibus Motion, p. 2, para. 4].

<sup>9</sup> Records, Vol. 3, pp. 84-112.

<sup>10</sup> *ibid.*, pp. 286-298.

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In this case, the investigating prosecutor submitted to the respondent judge only his resolution after his preliminary investigation of the case and the affidavit-complaint of the private complainant, and failed to include the affidavits of the witnesses of the private complainant, and the latter's reply affidavit, the counter-affidavit of the petitioner, as well as the evidence adduced by the private complainant as required by case law, and now by Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure. The aforesaid affidavits, more specifically the fax message of Lorna Tanghal and the document signed by her covering the amount of US\$1,000, are of vital importance, as they would enable the respondent judge to properly determine the existence or non-existence of probable cause.

First. When respondent Maruyama handed the money to the petitioner, she did not require the latter to sign a document acknowledging receipt of the amount. The petitioner avers that it is incredible that Maruyama would entrust ₱3,993,500 in Japanese Yen to her without even requiring her to sign a receipt therefor, especially since respondent Maruyama was not even the owner of the money;

Second. The affidavit of Hermogena Santiago, a witness of the respondent, is unreliable, because it is based on information relayed to her by Lorna Tanghal that she (Tanghal) saw the petitioner carrying a Louis Vuitton bag while on board a Mitsubishi L300 van with the petitioner. It appears that Tanghal failed to submit any counter-affidavit to the investigating prosecutor;

Third. The affidavit of Marilette G. Izumiya, another witness of the respondent, is also unreliable, as it was based on information relayed to her by Thelma Barbiran, who used to work for the petitioner as a housemaid, that she (Barbiran) had in her possession a fax message from Lorna Tanghal, implicating the petitioner in the crime charged. Barbiran did not execute any affidavit;

Fourth. There is no indication in the resolution of the investigating prosecutor that the petitioner received the fax message of Lorna Tanghal;

Fifth. The private complainant claims that the petitioner tried to reimburse the ₱3,993,500 by remitting US\$1,000 to her. However, the latter admitted in her affidavit-complaint that the document evidencing the remittance was signed by Lorna Tanghal, not by the petitioner. The petitioner claimed that Lorna Tanghal had to remit US\$1,000 to respondent Maruyama because the latter made it appear to Tanghal that the police authorities were about to arrest the petitioner, and Tanghal was impelled to give the amount to respondent Maruyama to avert her arrest and incarceration;

Sixth. In her counter-affidavit, the petitioner alleged that respondent Maruyama had no case against her because the crime charged in the latter's affidavit-complaint was the same as that filed against her in the Metropolitan Trial Court of Bulacan, which was withdrawn by the complainant herself;

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Seventh. The investigating prosecutor stated in his resolution that the private complainant established the element of deceit. However, the crime charged against the petitioner as alleged in the Information is estafa with abuse of confidence.

In sum, then, we find and so declare that the respondent judge committed a grave abuse of his discretion amounting to excess or lack of jurisdiction in finding probable cause for the petitioner's arrest in the absence of copies of the affidavits of the witnesses of the private complainant and her reply affidavit, the counter-affidavit of the petitioner, and the evidence adduced during the preliminary investigation before the investigating prosecutor.

Here, the records of these cases are the voluminous documents submitted to this Court for consideration before it issued the *Warrant of Arrest*<sup>11</sup> against all the accused herein on February 7, 2022, after finding that sufficient grounds exist for the finding of probable cause to issue the same. Included in the records are the complaint-affidavits, counter-affidavits, numerous sworn statements of the mayors and representatives of different local government units, corporate records of the NGOs and financial records including the *Counter-Affidavit*<sup>12</sup> of accused movant who obviously participated during the preliminary investigation of these cases.

**The instant *motion* is patently a rehash of accused movant's duly denied *Motion to Quash* dated March 19, 2022.**

Too, a reading of the instant *motion* unveils that the arguments put forth therein are mere rehash of the arguments raised in her *Motion to Quash Information*<sup>13</sup> dated March 19, 2022 which this Court accordingly denied in its *Resolution*<sup>14</sup> dated May 12, 2022.

Accused Napoles insists that the failure of the prosecution to indict and/or implead the subject NGOs in the instant criminal cases violate the requirement of established liability to pierce the veil of corporate fiction of these NGOs. She argues that the fact that she is neither an incorporator, owner, proprietor, member of the Board of Trustees, duly recognized representative, officer or even an employee, makes the allegation in the Informations stating that she is **allegedly operating and/or controlling the NGOS**, a conclusion of law and cannot sufficiently indict her and establish her liability thereto. On this premise, she maintains that the same render the

<sup>11</sup> Minutes of the Proceedings dated February 7, 2022, Records, Vol. 2, pp. 94-95.

<sup>12</sup> Records, Vol. 1, pp. 451-608.

<sup>13</sup> Supra.

<sup>14</sup> Records, Vol. 3, pp. 286-298.

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Informations void and thus cases against her should be accordingly dismissed. These contentions, however, have been aptly assessed by the Court when it held in the aforesaid *Resolution*:

Indeed, from the recital of material allegations one can gather that accused Napoles, as a private person, is charged as a co-conspirator of the accused public officials and other private persons in the approval of anomalous transactions involving public funds which were used to pay for nonexistent projects and in the illegal use or malversation of public funds through falsification of public documents.

Contrary to accused Napoles' contention, control of the NGOs is not the overt act attributed to her. The phrase "operated and/or controlled by [accused] Napoles" appearing on each of the Informations, from which accused Napoles drew her argument, is merely descriptive of the NGOs mentioned therein.

That the Informations do not state whether accused Napoles is a stockholder, a member, a director, or an officer of the NGOs does not affect their validity. Such detail is evidentiary, which may be supplied and rebutted during trial. To reiterate, when conspiracy is considered as a mode of committing the crime, as in these cases, there is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the crimes charged.

Furthermore, accused Napoles' assertion that the NGOs should also be charged in these cases is untenable. It should be pointed out that the decision who to prosecute falls within the sound discretion of the Ombudsman. On this point, *Tan, Jr. v. Sandiganbayan* explains that:

Xxx the discretion who to prosecute depend on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. The Rule on Criminal Procedure that all criminal actions must be commenced in the name of the People of the Philippines "against all persons who appear to be responsible for the offense involved" does not mean that the prosecuting officer shall have no discretion at all. What the rule demands is that all persons who appear responsible shall be charged in the information, which conversely implies that those against whom no sufficient evidence exists are not required to be included. The Court cannot compel the prosecution who to charge because:

"(it) has consistently refrained from interfering with the exercise of the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. It is beyond the ambit of the Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it."

The rationale for this is that,

"Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the

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champion of the people and preserver of the integrity of the public service.”

Besides, the grounds to quash Information are limited to those specified in Rule 117, Section 3 of the Rules of Court. Non-inclusion of the person as an accused is not one of the grounds to quash an Information. As held in the case of Tan, Jr., cited above:

Xxx the non-inclusion of other persons who appear to be responsible for the crime charged is not one of the grounds under Section 3, Rule 117 for which a motion to quash the information may be filed.

Xxxx.

Further, accused movant’s assertion that this Court has no jurisdiction over the offense charged pursuant to Section 3(b), Rule 117 of the Revised Rules on Criminal Procedure is repetitious. The Court had explicitly elaborated and settled the argument in the same *Resolution*, viz:

Relevantly, jurisprudence instructs that private persons who conspired with high-ranking public officials may be tried before the *Sandiganbayan* for violation of Section 3(e) of RA 3019 and for malversation of public funds. In *Canlas v. People*, it was held that private persons who acted in conspiracy with public officials may be indicted and held liable for any of the offenses in Section 3 of the Anti-Graft and Corrupt Practices Act. Too, in *Barriga v. Sandiganbayan*, cited by the prosecution, it was held that a private individual may be held liable for malversation or illegal use of public funds if the said private individual has conspired with an accountable public officer.

Here, the challenged Informations explicitly charge accused Napoles with violation of Section 3(e) of RA 3019 and malversation of public funds through falsification of public documents for allegedly having conspired with high-ranking public officials, some of whom are occupying positions classified as salary grade 27. Therefore, the Court has jurisdiction over the crimes charged.

Candidly, it is quite perplexing that accused Napoles moved to quash the Informations on the ground that the Court has no jurisdiction over the crimes charged. A mere cursory reading of her motion to quash readily shows that she is aware that under prevailing jurisprudence private individuals, like her, could be, as in these cases, charged with violation of Section 3(e) of RA 3019 and malversation of public funds through falsification of public documents in conspiracy with high-ranking public officers and employees, viz:

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18. So why is accused Napoles impleaded in these anti-graft and Malversation cases if those elements do not apply to her?


19. The answer is very simple: because of the allegation of conspiracy in the subject Informations, since under the law, even a private person can be charged of violation To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantial justice. x x x The desired leniency cannot be accorded absent valid and compelling reasons for such a procedural lapse. x x x

**WHEREFORE**, premises considered, the instant motion is denied for utter lack of merit.

**SO ORDERED.**

  
**MARYANN E. CORPUS – MAÑALAC**  
Associate Justice

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

  
**MARIA THERESA V. MENDOZA – ARCEGA**  
Associate Justice