

Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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Second Division

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

Crim. Cases Nos. SB-22-CRM-0004 and 0005

-versus-

Present:  
Herrera, Jr., J. Chairperson  
Musngi, J. &  
Malabaguio, J.

GONDELINA G. AMATA, ET.AL,  
*Accused.*

Promulgated:  
July 21, 2022 ant

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**RESOLUTION**


**HERRERA, JR., J.:**

Before the Court is an *Omnibus Motion Ad Cautelam* (1) *To Produce the Complete Records of the Preliminary Investigation supporting the allegations in the Information;* 2) *To Quash the Information;* 3) *With Motion to Suspend Arraignment/Proceedings)*<sup>1</sup> dated May 30, 2022 filed by accused Janet Lim Napoles, through counsel, to which the plaintiff, through the Office of the Special Prosecutor, Office of the Ombudsman, filed a *Comment/Opposition To Accused Napoles' Omnibus Motion Ad Cautelam dated May 30, 2022:* 1) *To produce the complete records with the preliminary investigation supporting the allegations in the Information;* 2) *to quash the Information;* and 3) *with Motion to suspend Arraignment/Proceedings*<sup>2</sup> dated June 8, 2022.

Accused Napoles, jointly with others, is charged with *Violation of Section 3 (e) of Republic Act (R.A.) No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act, and Malversation of Public Funds or Property, defined and penalized in Article 217 of the Revised Penal Code.*

<sup>1</sup> Record, Vol. 2, pp. 579-594

<sup>2</sup> Record, Vol. 3, pp. 10-18





In Criminal Case No. SB-22-CRM-0004, where the charge is **Violation of Section 3 (e) of R.A. No. 3019**, the accusatory portion of the **Information**<sup>3</sup> reads:

“ That during the period covering 3 December 2008 to 24 June 2009, or sometime prior or subsequent thereto, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, accused **GONDELINA G. AMATA** (Amata), a high-ranking public officer, being the President of the National Livelihood and Development Council (NLDC) with Salary Grade 30, **GREGORIA G. BUENAVENTURA** (Buenaventura), Division Chief III, with Salary Grade 24, likewise a public officer of NLDC, while in the performance of their administrative and/or official functions and taking advantage of their official positions, conspiring with one another and with **ZENAIDA G. CRUZ-DUCUT** (Ducut), Chairperson of the Energy Regulatory Commission, and private individual **JANET LIM NAPOLES** (Napoles), Proprietor of the Social Development Program for Farmer's Foundation, Inc. (SDPFFI), acting with manifest partiality, evident bad faith and/or gross inexcusable negligence; did then and there willfully, unlawfully and criminally cause undue injury to the government in the amount of **FIVE MILLION PESOS (Php5,000,000.00)**, more or less, through a scheme described as follows:

- a. accused **Amata**, for NLDC, entered into a Memorandum of Agreement dated 27 May 2009 with SDPFFI; signed Disbursement Voucher Nos. 09050645, 09060706 and 09060782, and Check Nos. 918457, 918468 and 918475 transferring Cong. Victor Francisco C. Ortega's (Cong. Ortega) PDAF funds to SDPFFI covered by Special Allotment Release Order (SARO) No. ROCS 08-09687 despite the questionable credentials of SDPFFI to act as NLDC's project partner in the implementation of Cong. Ortega's livelihood project in the 1<sup>st</sup> District of La Union;
- b. **Buenaventura** validated the questionable credentials of SDPFFI;
- c. **Napoles**, took hold of the PDAF Fund totaling to FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND PESOS (Php4,850,000.00) received by SDPFFI from NLDC;
- d. **Amata**, failed to account for the remaining ONE HUNDRED FIFTY THOUSAND PESOS (Php150,000.00), utilized by NLDC as administration cost;
- e. **Ducut**, received commission or kickback from Napoles for purportedly acting as agent of Cong. Ortega in this particular transaction and assisted in the consummation of the anomaly;
- f. That Congressman Ortega's PDAF funds amounting to Php5,000,000.00 did not go to the people of the 1<sup>st</sup> District of La Union, the intended beneficiaries of the project, but to Napoles, Ducut and Amata to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.”

<sup>3</sup> Id, pp. 1-4



In Criminal Case No. SB-22-CRM-0005, where the charge is **Malversation of Public Funds or Property**, the accusatory portion of the **Information**<sup>4</sup> reads:

"That during the period covering 3 December 2008 to 24 June 2009, or sometime prior or subsequent thereto, in Makati City, Philippines, and within the jurisdiction of this Honorable Court, accused **GONDELINA G. AMATA** (Amata), a high-ranking public officer, being the President of the National Livelihood and Development Council (NLDC) with Salary Grade 30, and as such is accountable for public funds by reason of the duties of his office; **GREGORIA G. BUENAVENTURA** (Buenaventura), Division Chief III, with Salary Grade 24, likewise a public officer of NLDC, while in the performance of their official functions and committing the offense in relation to office, taking advantage of their official positions, conspiring and confederating with one another, together with **ZENAIDA G. CRUZ-DUCUT** (Ducut), Chairperson of the Energy Regulatory Commission, and private individual **JANET LIM NAPOLES** (Napoles), Proprietor of the Social Development Program for Farmer's Foundation, Inc. (SDPFFI), did then and there willfully, unlawfully and feloniously consent or permit, through abandonment and negligence, Napoles of SDPFFI, a non-government organization (NGO) assigned to implement Congressman Victor Francisco C. Ortega's (Cong. Ortega) livelihood project in the 1<sup>st</sup> District of La Union financed by his Priority Development Assistance Fund (PDAF) amounting FIVE MILLION PESOS (Php5,000,000.00), the misappropriation of public funds, through a scheme described as follows:

- a. Accused **Amata**, for NLDC, entered into a Memorandum of Agreement dated 27 May 2009 with SDPFFI; signed Disbursement Voucher Nos. 09050645, 09060706 and 09060782, and Check Nos. 918457, 918468 and 918475 transferring, in part, a total of FOUR MILLION TWO HUNDRED FIFTY THOUSAND PESOS (Php4,850,000.00) of Cong. Ortega's PDAF funds to SDPFFI covered by Special Allotment Release Order (SARO) No. ROCS 08-09687 despite the questionable credentials of SDPFFI to act as NLDC's project partner in the implementation of Cong. Ortega's livelihood project in the 1<sup>st</sup> District of La Union;
- b. **Buenaventura** validated the questionable credentials of SDPFFI;
- c. **Napoles**, took hold of the PDAF fund totaling more or less to FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND PESOS (Php4,850,000.00) received by SDPFFI from NLDC;
- d. **Amata**, failed to account for the remaining ONE HUNDRED FIFTY THOUSAND PESOS (Php150,000.00), more or less, utilized by NLDC as administration cost;
- e. **Ducut**, received commission or kickback from Napoles for purportedly acting as agent of Cong. Ortega in this particular transaction and assisted in the consummation of the anomaly;
- f. That Congressman Ortega's PDAF funds amounting to Php5,000,000.00 did not go to the people of the 1<sup>st</sup> District of La Union, the intended beneficiaries of the project, but to Napoles, Ducut and Amata to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW."

<sup>4</sup> Id, pp. 5-7



In first praying for the production in Court of the complete records of the preliminary investigation, accused Napoles cites **Section 8, Rule 112 of the Rules of Criminal Procedure** which provides:

*"Sec. 8. Records. – (a) Records supporting the information or complaint. – An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.*

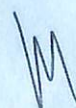
*(b) Record of preliminary investigation. – The record of the preliminary investigation, whether conducted by a judge or a prosecutor, **shall not form part of the record of the case.** However, the court, on its own initiative or on motion of any party, may order the production of the record or any of its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party."*

In connection with **paragraph (a)** quoted above, the **Information** filed in Court is supported by the **Resolution** of the Office of the Ombudsman and its supporting evidence. This enabled the Court to make a judicial determination of probable cause as contained in its **Resolution**<sup>5</sup> dated March 2, 2022, conformably with **Section 5, Rule 112 of the Rules of Criminal Procedure**.

In **paragraph (b) of Section 8** quoted above, it is clear that the records of preliminary investigation does not form part of the record of the case in court. Its production may be ordered by the Court when necessary in the resolution of the case or any incident therein, "or when to be introduced as an evidence in the case by the requesting party". However there is no pending incident to be resolved by the Court where it finds the need for the production of the entire records of the preliminary investigation. To repeat, it has already made a judicial determination of probable cause in its **Resolution** dated March 2, 2022. On the other hand, accused Napoles essentially contends that the entire records is necessary to determine if the prosecution can prove the allegation in the **Information** that accused Napoles is a proprietor of the Social Development for Farmer Foundation, Inc. (SDPFFI). The Court, however, rules that it is a matter that concerns the prosecution and not

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<sup>5</sup> Record, Vol. 1, p. 169





accused Napoles. The burden is on the prosecution to establish with the requisite quantum of proof the allegations in the **Information**.

Accused Napoles next moves for the quashal of the **Information** on the following grounds:

- a) The Court has no jurisdiction over the offenses charged; and
- b) The Court trying the case has no jurisdiction over the person of the accused.

Jurisdiction over the offense charged is determined by the allegations in the **Information** and the applicable law.

Here, the allegations in the **Information** in Criminal Case No. SB-22-CRM-0004 charge the accused Napoles with **Violation of Section 3 (e) of R.A. 3019**, while the allegations in the **Information** in SB-22-CRM-0005 charges the accused with **Malversation of Public Funds or Property, defined and penalized in Article 217 of the Revised Penal Code**. In both cases, she is charged jointly with Gondelita G. Amata, a public officer with Salary Grade 30, among other accused. Both cases, as charged in the **Informations** filed, fall under the exclusive original jurisdiction of the Sandiganbayan, as provided for a **Presidential Decree (P.D.) No. 1606**, as amended by **Republic Act (R.A.) No. 10660**.

On the alleged lack of jurisdiction over her person, accused Napoles is under detention by virtue of a warrant of arrest/commitment order issued by the Court. Likewise, she was validly arraigned in these cases on June 10, 2022.<sup>6</sup> The Court has acquired jurisdiction over the person of accused Napoles. Hence, the prayer for suspension of the arraignment/proceedings in these cases has become moot and academic.

**WHEREFORE**, premises considered, the Court hereby denies the **Omnibus Motion Ad Cautelam (1) To Produce the Complete Records of the Preliminary Investigation supporting the allegations in the Information; 2) To Quash the Information; 3) With Motion to Suspend**

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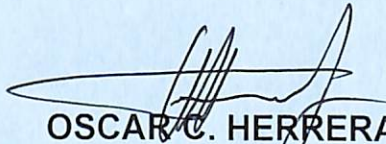
<sup>6</sup> Record, Vol. 3, p. 31-32





**Arraignment/Proceedings.)** dated May 30, 2022 filed by accused Janet Lim Napoles, through counsel.

**SO ORDERED.**

  
**OSCAR C. HERRERA, JR.**  
Chairperson  
Associate Justice

*We concur:*

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

  
**ARTHUR O. MALABAGUIO**  
Associate Justice

