



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

FIFTH DIVISION

\*\*\*

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

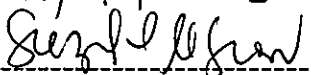
Criminal Case No.:  
SB-22-CRM-0051  
*For: Violation of Sec. 3(e) of  
R.A. No. 3019 as amended.*

- versus -

ROLEN CALIXTO PAULINO, et al.,  
Accused.

Present:  
Lagos, J., Chairperson,  
Mendoza –Arcega, and  
Corpus-Mañalac, JJ.

Promulgated:

July 12, 2022  


X-----X

**RESOLUTION**

**MENDOZA-ARCEGA, J.:**

Before this Court for resolution is the prosecution's *Motion for Reconsideration (re: Honorable Court's Resolution issued on April 1, 2022)*<sup>1</sup> filed and dated April 8, 2022 and the separate *Comment/Opposition (to the Motion for Reconsideration dated April 8, 2022)* filed by accused Aquilino Y. Cortez<sup>2</sup> (Cortez), and that filed by accused Rolen Calixto Paulino, Elena Calma Dabu, Benjamin Gregorio Cajudo II, Noel Yabut Atienza, Alreuella Mauro Bundang-Ortiz, Edna Alviz Elane, Randy Dela Cruz Sionzon, Egmidio Manzano Gonzales, Tony-Kar Balde III, Cristiflor Buduhan, Anna Marin Sison-Bonza and Joy Fernandez Cahilig<sup>3</sup> (Paulino, et al.) dated June 1, 2022.

<sup>1</sup> Records, pages 466-470.

<sup>2</sup> Records, pages 486-504.

<sup>3</sup> Records, pages 505-515.

*The Court's Resolution dated April 1, 2022*

The prosecution's Motion for Reconsideration mainly questions this Court's Resolution during its proceedings held on April 1, 2022. Said resolution adopted the following matters:

“ x x x the Court finds that there are no sufficient grounds for the finding of probable cause to issue a Warrant of Arrest against herein accused.

Firstly, the matters raised in the Information have been sufficiently addressed by the Seventh Division of this Court when it dismissed the original Information, dated February 6, 2018, and the Amended Information filed thereafter for the same alleged violation. With the dismissal by the Seventh Division of this Court, the prosecution admits that this deserved and was worthy of a Petition for *Certiorari* via Rule 65 to the Supreme Court based on “the sheer magnitude of its Constitutional implications” as the prosecution viewed this as a gross error by the Seventh Division of the Court. The prosecution argues that this new “improved” Information, which is the present subject matter of this case, is the speediest and most beneficial legal route to take.

We do not agree. The correct remedy would really have been the filing of Petition for *Certiorari*, citing any alleged grave abuse of discretion and denial of due process by the Seventh Division in dismissing the previous Informations. We surmise, however, that the period to file a *Certiorari* petition may have lapsed, thus, a resort to the re-filed Information. The “improvement” cited by the prosecution is nowhere to be found because the allegations which states, “... *and where the structures actually erected, built, assembled and constructed by SMPHI are those structures which are covered by, and fall under BOT Law, thereby giving unwarranted benefit, advantage or preference to SM Prime Holdings Incorporated [SMPHI], to the damage and prejudice of the Government.*” were already present in the Amended Information which was previously dismissed. These allegations were in the dismissed Amended Information, albeit not contained in the last paragraph, as seen in the present Information.

The added allegation which reads “... *where by its terms and conditions the said agreement is governed, covered by, and is under Republic Act No. 6957, otherwise known as “An Act Authorizing the Financing, Construction, Operation, and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes” as amended by Republic Act No. 7718*

*and its Implementing Rules and Regulations (IRR) [BOT Law] albeit disguised as an ordinary lease agreement, to evade compliance with and in fact executed without complying with the requisites and provisions prescribed by the (sic) this Law (BOT Law)."* is also not an improvement because the original and Amended Information previously dismissed by the Seventh Division of this Court, already and emphatically alleged that the acts committed by the accused "did not comply with R.A. 6957, as amended by R.A. 7718 and its IRR" which was nothing else but the BOT Law. Therefore, the additional allegation mentioned above that the accused did not comply with the requisites and provisions prescribe by the BOT Law serves no purpose being superfluous.

Lastly, while it may not be strictly and legally be characterized as forum shopping, the re-filing of an Information which contains intrinsically the same allegations in a previously dismissed Information and Amended Information may be taken to be a calculated move in the hope that the re-filed Information would be re-raffled to a division other than the Seventh Division which had previously dismissed the same. x x x "4

**The Prosecution's Motion for Reconsideration**

In its motion, the prosecution argues that *"the Court committed grave abuse of discretion in ruling that the allegations in the "improved" Information were already present in the dismissed Amended Information"*. It likewise avers that *"the Court committed grave abuse of discretion when it held that the additional allegations that the accused did not comply with the requisites prescribed by the BOT Law serves no purpose being superfluous."*5

The prosecution now alleges that the filing of the "improved" Information is based on the Seventh Division's Resolution that "since the Amended Information failed to allege that the Lease Agreement was covered by the BOT Law as amended and its IRR, it was found defective for having failed to allege facts that constitute an offense." For the prosecution, this defect is cured in the "improved" Information now filed before this Division. The prosecution avers that what was lacking in the Amended Information filed before the Seventh Division was filled-up accordingly in the "improved" Information which now clearly states that the Lease Agreement was covered by the BOT Law as amended and its IRR. Supplying the said insufficiency in the present motion, the prosecution posits that the "improved" Information filed before Us, sufficiently charges the accused for violation of Section 3(e) of R.A. 3019.

---

4 Minutes of the proceedings held on April 1, 2022; Records, pages 461-462.

5 Records, page 467.

**Accused Cortez Jr.'s Separate Comment/Opposition**

In the separate Comment/Opposition filed by accused Cortez Jr., he claims that “when the court finds no probable cause (to issue a warrant of arrest), then the court’s first option under Section 6, Rule 112 of the Rules of Court is for it to ‘immediately dismiss the case if the evidence on record clearly fails to establish probable cause.’” Furthermore, Cortez Jr. claims “that even assuming that the ‘improved’ Information was valid, the Honorable Court still had the discretion to make its own finding of whether probable cause existed to order the arrest of the accused and proceed with trial.”

**Paulino, et al.'s Separate Comment/Opposition**

Paulino, et al. aver that the revival of the Information must fail since it does not bring anything materially new to the original and amended Information. They claim that the Seventh Division clearly discussed the deficiencies in the original and amended Informations and explained in detail the terms of the Lease Agreement. For them, no amount of superfluity will improve the current Information that would warrant any further consideration from this Court.

They likewise allege that the prosecution’s legal remedy against the dismissal of the Information and Amended Information should have been to file a petition for Certiorari under Rule 65 of the Rules of Court, however, the period for the prosecution to file such petition lapsed since more than two years have passed since the resolution was promulgated. The revival of the Information is now a futile attempt to circumvent procedural rules. Lastly, accused Paulino Jr with his co-accused posit that the re-filing of the new Information violates their right to speedy disposition of cases and must be dismissed.

**The Court’s Ruling**

Ultimately, from the arguments raised by the prosecution in its motion for reconsideration and those raised by the accused in their separate comment/opposition, the core issue to be resolved is whether there is probable cause to issue a Warrant of Arrest against herein accused.

Before discussing the merits of this case, it is most appropriate to discuss the procedural matter underlying the re-filing of the Information. In the assailed Minute Resolution, this Division ruled that the proper remedy for the prosecution was to file a Petition for *Certiorari* under Rule 65 of the Rules of Court on the alleged grave abuse of discretion and denial of due process by the Sandiganbayan 7<sup>th</sup> Division when it granted the quashal of the Amended Information.

Clearly, the amendment of the Information was granted by the Seventh Division even prior to the resolution of the motions filed by the accused

insofar as the Original Information was concerned. However, the grounds alleged in the said motions were sustained to challenge the Amended Resolution. The relevant section of the dispositive portion of said Resolution, reads:

“**WHEREFORE**, the Court **GRANTS** the following motions:

1. The *Motion to Quash Information* filed by accused Rolan C. Paulino, Aquilino Yorac Cortez, Jr., Elena Calma Dabu, Benjamin Cajudo II, Eduardo Guerrero Guerrero, Noel Yabut Atienza, Alreuela Mauro Bundang-Ortiz, Edna Alviz Elane, Emerito Linus Dolatre Bacay, Randy Dela Cruz Sionzon, and Egmidio Manzano Gonzales, Jr.; and

2. The *Motion to Quash Information* filed by filed by (sic) accused Tony-Kar Mora Balde III, Cristiflor Dogui-Is Buduhan, Anna Marin Florentino Sison, Mamerto B. Malabute, and Joy Fernandez Cahilig

Since it is the Amended Information which is fatally defective for having failed to allege facts that constitute an offense, let *Criminal Case No. SB-19-CRM-0027* be **DISMISSED** against all accused.

X X X ”

Subsequently, the prosecution filed a Motion for Reconsideration and Supplemental Motion for Reconsideration on the purported grave abuse of discretion committed by the Court when it granted accused’s motion to quash. These motions were denied<sup>6</sup> by the Seventh Division leading the prosecution to file anew the Information before Us.

We rule that the refileing of the present Information was within the bounds set out under the Rule 117 of the Rules of Court. Thus, the pertinent Sections of Rules 117 which are applicable in this case are as follows:

Sec. 4. *Amendment of complaint or information.* – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by an amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Sec. 5. *Effect of sustaining the motion to quash.* – If the motion to quash is sustained, the court may order that another complaint or

<sup>6</sup> 7<sup>th</sup> Division’s Resolution dated 27 September 2019; Records, pages 26-41.

RESOLUTION

SB-22-CRM-0051

People vs. Rolan Calixto Paulino, et al.

*information be filed except as provided in Section 6 of this rule.* If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.

The foregoing provisions was thoroughly explained in the Supreme Court's ruling in *Gonzales v. Salvador*<sup>7</sup> where it was resolved whether the order to file another information was discretionary with the court. It succinctly ruled:

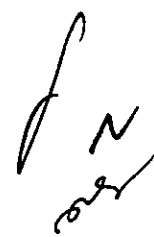
“The amendment of an information under Section 4 of Rule 117 applies if the trial court finds that there is a defect in the information and the defect can be cured by amendment, in which case the court shall order the prosecution to amend the information. Once the court issues an order granting the motion to quash the information and such order becomes final and executory, however, there is nothing more to amend.

In cases falling under Section 5 of Rule 117, where the motion to quash is sustained on grounds other than those stated in Section 6 of the same Rule, the trial court has the discretion to order the filing of another information within a specified period which is extendible to such further time as the court may allow for good cause. The order to file another information, if determined to be warranted by the circumstances of the case, must be contained in the same order granting the motion to quash. If the order sustaining the motion to quash does not order the filing of another information, and said order becomes final and executory, then the court may no longer direct the filing of another information.

It is gathered that petitioner never asserted the propriety of amending the Information, he having maintained that the allegations in the Information provided sufficient and adequate bases to confer jurisdiction. When the trial court granted the motion to quash, petitioner did not assail the same within the reglementary period. The order quashing the information thus became final and executory.

x x x this order to file another information, if the trial court finds that circumstances warrant its issuance, must be included in the order granting the motion to quash. The time limitation in the rule was intended to prevent the accused from being unnecessarily detained at the whim of the prosecution. Since the order granting the motion to quash had attained finality, it had become immutable.

X X X



<sup>7</sup> G.R. No. 168340. December 5, 2006.

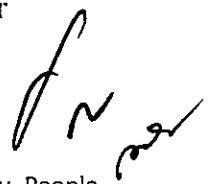
**At all events, the prosecution is not, under the circumstances attendant to the case, precluded from refiling an information against respondent as long as prescription has not set in.”**

Well-settled is the rule that a defect pertaining to the failure of an information to charge facts constituting an offense may be cured by amendment, thus the Courts are mandated not to automatically quash the Information, but rather the prosecution should be given the opportunity to correct the defect by way of amendment. This will allow the Courts to proceed without undue delay. Therefore, unnecessary appeals based on technical grounds are avoided.<sup>8</sup> Despite the fact that the Seventh Division’s Resolution did not order such amendment, the Rules still allows the refiling of another information for as long as the crime has not prescribed, thus the present Information filed in accordance with procedural rules. The same is provided under Section 6, Rule 117:

Sec. 6. Order sustaining the motion to quash not a bar to another prosecution: exception. – An order sustaining the motion to quash is not a bar to another prosecution for the same offense **unless** the motion was based on the grounds specified in Section 3(g) and (i) of this Rule.

This Court is convinced that the present Information is also sufficient to indict herein accused for violation of Section 3(e) under Republic Act 3019, as amended. It must be emphasized that Section 2 of Republic Act 7718 defined Private sector infrastructure or development projects, which included “*infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act*”. Section 2 of RA 7718, reads:

“Sec. 2 [a] ***Private sector infrastructure or development projects.*** – The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads, and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid wastes management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, **and other infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act.** Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.”



<sup>8</sup> People vs. Sandiganbayan, G.R. No. 160619, September 9, 2015, 770 SCRA 162 cited in Lazaro v. People, G.R. No. 230018, June 2021.

RESOLUTION

SB-22-CRM-0051

People vs. Rolan Calixto Paulino, et al.

The Seventh Division's Resolution dated September 27, 2019 may have denied the prosecution's motions solely based on the wrong remedy it sought from the very beginning, it however ruled that:

"Haplessly, the strain this gets in the interpretation of the law could have been obviated **had the Amended Information alleged, at the first instance, that the Lease Agreement was covered by the BOT Law.** Such was the dearth at the instance, which cannot be overlooked. For it is only from an allegation that the Lease Agreement was covered by the BOT Law could the adjoining allegation, "non-compliance with RA 6957, as amended by RA 7718 and IRR" could fully translate into a criminal charge."

Consequently, the additional allegation in the present information, "... where by its terms and conditions the said agreement is governed, covered by, and is under Republic Act No. 6957, otherwise known as "An Act Authorizing the Financing, Construction, Operation, and Maintenance of Infrastructure Projects by the Private Sector, and for other Purposes" as amended by Republic Act No. 7718 and its Implementing Rules and Regulations (IRR) [BOT Law] albeit disguised as an ordinary lease agreement, to evade compliance with and in fact executed without complying with the requisites and provisions prescribed by the (sic) this Law (BOT Law)" was sufficient to constitute an offense.

Finally, giving the prosecution an opportunity to correct the defect in the Amended Information though the filing of the present information will not only carry with it practical considerations, but also due process implications.<sup>9</sup> This doctrine was emphasized by the Supreme Court in the case of *People v. Andrade*<sup>10</sup>, it was held that:

x x x When there is any doubt about the sufficiency of the complaint or information, the court should direct its amendment or that a new information be filed, and save the necessity of appealing the case on technical grounds when the complaint might easily be amended.

x x x

The CA, however, still upheld the ruling of the RTC, stating that "whatever perceived error the trial court may have committed is inconsequential as any intended amendment to the informations filed surely cannot cure the defects," and to justify such conclusion, the CA proceeded to decide the merits of the case based merely on the allegations in the Information. Such pronouncement, therefore, is speculative and premature without giving the prosecution the opportunity to present its evidence or, to at least, amend the Informations. In *People v. Leviste*, **we stressed that the State, like**

<sup>9</sup> Lazaro v. People, G.R. No. 230018, June 23, 2021.

<sup>10</sup> G.R. No. 187000, November 24, 2014, 741 SCRA 460, cited in Lazaro v. People, *Supra* note 9.



RESOLUTION

SB-22-CRM-0051

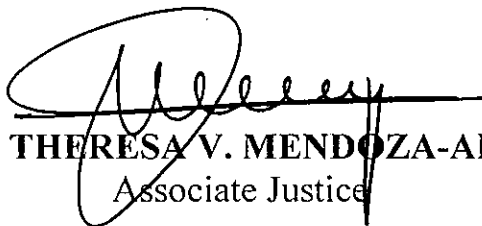
People vs. Rolan Calixto Paulino, et al.

**any other litigant, is entitled to its day in court; in criminal proceedings, the public prosecutor acts for and represents the State, and carries the burden of diligently pursuing the criminal prosecution in a manner consistent with public interest.** The prosecutor's role in the administration of justice is to lay before the court, fairly and fully, every fact and circumstance known to him or her to exist, without regard to whether such fact tends to establish the guilt or innocence of the accused and without regard to any personal conviction or presumption on what the judge may or is disposed to do. The prosecutor owes the State, the court and the accused the duty to lay before the court the pertinent facts at his disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in his evidence to the end that the court's mind may not be tortured by doubts; that the innocent may not suffer; and that the guilty may not escape unpunished. In the conduct of the criminal proceedings, the prosecutor has ample discretionary power to control the conduct of the presentation of the prosecution evidence, part of which is the option to choose what evidence to present or who to call as witness. **Thus, the RTC and the CA, by not giving the State the opportunity to present its evidence in court or to amend the Informations, have effectively curtailed the State's right to due process.**

After allowing the State to correct the defect in the Amended Information, We now find that the allegations in the present Information sufficient to constitute an offense. Consequently, from the perusal of the resolution issued by the Office of the Ombudsman and the pieces of evidence in support of the said Information, this Court determines the existence of probable cause to issue a warrant of arrest against all herein accused.

**WHEREFORE**, premises considered, the Court hereby resolves to **GRANT** the Prosecution's Motion for Reconsideration (*re: Honorable Court's Resolution issued on April 1, 2022*). The Resolution dated April 1, 2022 is hereby **SET ASIDE**. Therefore, the Court orders that a warrant of arrest be issued against all herein accused.

**SO ORDERED.**




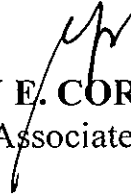
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice



RESOLUTION  
SB-22-CRM-0051  
People vs. Rolan Calixto Paulino, et al.

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

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