



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

MINUTES of the proceedings held on 27 July 2022.

Present:

Justice ZALDY V. TRESPESES ----- Acting Chairperson
Presiding Justice AMPARO M. CABOTAJE-TANG ----- Member*
*Justice ARTHUR O. MALABAGUIO**----- Member*

The following resolution was adopted:

Crim. Case No. SB-22-CRM-0117 - People vs. MARC RED ARCADIO MARIÑAS, et al.

This resolves the following:

1. Accused Aurelio III S. Lucero, George V. Bituin, and Salahudin P. Hadjinoor's "MOTION TO QUASH" dated July 8, 2022;¹
2. Prosecution's "COMMENT/OPPOSITION (on Lucero, Bituin and Hadjinoor's Motion to Quash)" dated and electronically filed on July 19, 2022.²

TRESPESES, J.

This resolves the Motion to Quash filed by accused Aurelio III S. Lucero, George V. Bituin, and Salahudin P. Hadjinoor and the Prosecution's Comment/Opposition thereto.

ACCUSED'S MOTION

Accused Anthony D. Lopez, Francis Dennis T. Robles, and Erwin S. Ortañez (collectively, "accused") move to quash the Information on the grounds of this Court's lack of jurisdiction over the offense charged and/or

*Sitting as Special Member per Administrative Order No. 138-2022 dated 20 June 2022 in view of the inhibition of Justice Ma. Theresa Dolores C. Gomez-Estoesta.

**Sitting as Special Member per Administrative Order No. 0165-2022 dated 26 July 2022 in lieu of Justice Georgina D. Hidalgo, who is on leave.

¹ Records, Vol. 5, pp. 443-450

² Id. at Vol 6, pp. 238-248

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lack of jurisdiction over the person of the accused, and the facts charged do not constitute an offense.

In accused's Motion to Quash dated July 8, 2022, they listed down reasons why the Information should be quashed and be filed with the court of proper jurisdiction, to wit:

First, none of the accused is occupying a position with SG 27 or higher. They are occupying position [sic] ranging from SG 11 to 19 while four (4) is [sic] with no salary grade.

Second, the designation of accused Marc Red A. Mariñas as a Deputy Commissioner with SG 27 is erroneous. Accused Mariñas was a mere appointed [sic] as officer-in-charge sometime on May 2, 2018. But on October 15, 2018, he resigned or *ipso facto* resigned from officer [sic] upon filing his Certificate of Candidacy for mayoralty [sic] position in Muntinlupa City. His OIC term was just about six (6) months. This can be gleaned from the service of records [sic] attached in [sic] the record of the case.

Third, the Information did not state that the alleged "*pastillas scheme*" was committed between May 2018 to October 2018, a material time, when accused Mariñas was an OIC Deputy Commissioner. In fact, the consolidated resolution of the Ombudsman did not even mention that alleged "scheme" occurred when he was an acting deputy commissioner.

Fourth, while the information specifically mentioned material dates which [sic] foreign "passengers" arrived in the Philippines who were allegedly facilitated by the "pastillas group," it contradicts to [sic] the date that Accused Mariñas was acting Deputy Commissioner.

Accused also say that since this Court does not have jurisdiction over the offense, the information should be dismissed for being filed in the wrong venue.

Accused further contend that the facts charged do not constitute an offense. They claim that the Information is so vague that no undue injury is specified nor is there any person mentioned who was granted a favor by the alleged "*pastillas*" group.

Moreover, accused allege that the Information does not specify any law, rules, or memorandum that was violated.

Accused are questioning the sufficiency of the Information, concluding that the facts charged do not constitute an offense thus, it must be quashed.

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THE PROSECUTION'S OPPOSITION

The prosecution notes that the supposed issue of lack of jurisdiction based on accused Mariñas's appointment as "officer-in-charge" Deputy Commissioner was raised by accused Lopez, Ortañez, and Robles in their Motion to Quash dated June 27, 2022³. The prosecution argues that the designation of Mariñas in an officer-in-charge capacity does not divest this Court of jurisdiction, citing R.A. No. 10660, which provides:

Sec 4. Jurisdiction – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

- a. Violations of Republic Act No. 3019, as amended, otherwise known as the ANTI-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

xxx xxx xxx

Additionally, the prosecution contends that the jurisdiction of the Sandiganbayan does not distinguish the nature of the appointment to the position, as it covers permanent, acting, or interim capacity.

As regards the allegation that the Information did not state that the "pastillas scheme" was committed during the time that Mariñas was Deputy Commissioner, the prosecution maintains that the Information states the material time to be "in the year 2017 to 2020, or sometime prior or subsequent thereto."

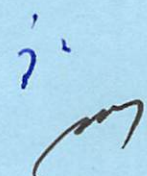

The prosecution cites Section 6 and 11, Rule 110 of the Revised Rules of Criminal Procedure which provide:

Section 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

xxx xxx xxx

³ Records, Vol 3, pp. 347-360



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Section 11. Date of commission of the offense. — It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (11a)

The prosecution observes that nowhere in the Information is it stated that the offense was only committed from January 2020 to February 2020 as it clearly alleged the material dates to be the years 2017 to 2020.

The prosecution stands by the sufficiency of the Information and points out specific parts of the Information which addresses the accused's claim that there is neither an undue injury specified, nor a person mentioned who was granted any favor by the "pastillas" group.

The prosecution claims that this Court has jurisdiction over the offense and the accused, and that the facts charged constitute an offense. Hence, the prosecution prays that accused's Motion to Quash be denied.

OUR RULING

We **deny** the motion to quash for lack of merit.

The Sandiganbayan has jurisdiction over the offense and the accused.

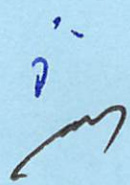
As noted by the prosecution, the issue of lack of jurisdiction based on the first two reasons submitted by accused, that is (1) none of the accused is occupying a position with Salary Grade 27 or higher; and, (2) the designation of Mariñas was as an officer-in-charge, were raised by accused Anthony Lopez, Francis Dennis Robles, and Erwin Ortañez in their own Motion to Quash dated June 27, 2022⁴. This Court then resolved to deny their motion, the pertinent parts of the Minute Resolution dated July 14, 2022⁵ are quoted below:

After a careful perusal of the arguments raised by accused, this Court resolves to deny accused's motion to quash for its failure to show this Court's lack of jurisdiction.

Accused insist that all accused mentioned in the Information never held a position with a Salary Grade of 27 or higher, and that Mariñas was

⁴ Records, Vol 3, pp. 347-360

⁵ Records, Vol 6, pp. 90-94



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only mistakenly classified as having a Salary Grade of 27, his designation as Deputy Commissioner not being permanent in character.

We find the argument devoid of merit.

R.A. No. 10660 states that this Court has jurisdiction over cases of graft and corruption where at least one of the accused is either occupying a position with a Salary Grade of 27 or higher, or the position is one of those enumerated in the law, whether in a permanent, acting or interim capacity. To reiterate:

SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

- a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

- (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758) xxx xxx xxx (Underscoring supplied)

Accused do not dispute that a Deputy Commissioner falls under Salary Grade 27. The fact that Mariñas's appointment did not become permanent is of no moment.

In *People v. Dapitan*,⁶ the issue of whether an accused who was merely designated as a manager falls under the jurisdiction of this Court was briefly passed upon by the Supreme Court, to wit:

In this regard, Dapitan's claim that he was merely designated in the foregoing position is of no moment, as Section 4 of R.A. 8249 covers all officials occupying positions in the government, whether in a permanent, acting, or interim capacity.

There is no doubt that Mariñas's designation as officer-in-charge is either in an acting, or interim capacity. Precisely, within the jurisdiction of this Court.

xxx xxx xxx

In view of the foregoing, there is no mistaking that Mariñas occupied a position with a Salary Grade of 27, albeit not permanently. As aforementioned, such designation is sufficient for this Court to exercise its jurisdiction.

⁶ G.R. No. 253975, September 27, 2021

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The arguments in the present motion do not deviate from Lopez, et al.'s motion to quash as regards the above issues, and so this Court does not find any reason to stray from its earlier resolution.

As regards accused's contention that the case is filed in the wrong venue, we find the same to be unmeritorious. Venue is irrelevant in this case as R.A. 8249⁷ vests the Sandiganbayan with jurisdiction over violations of R.A. 3019,⁸ the subject matter of the case at hand.

The Information is sufficient in form and substance – the facts as charged constitute an offense.

In *Villarba v. Court of Appeals and People*,⁹ the Supreme Court listed down the allegations fundamental to an Information, namely:

- (1) the accused's name;
- (2) the statute's designation of the offense;
- (3) the acts or omissions complained of that constitute the offense;
- (4) the offended party's name;
- (5) the approximate date of the offense's commission; and
- (6) the place where the offense was committed.

This Court will discuss each requisite juxtaposed with the present Information below.

1. *The accused's name*

The names and matching salary grades of all the accused implicated in this case can be gleaned from the Information itself.

2. *The statute's designation of the offense*

Accused's contention that the Information did not specify any law, rule, or memorandum violated by the accused is bereft of merit.

⁷ An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, and For Other Purposes.

⁸ Section 4, R.A. 8249

⁹ G.R. No. 227777, June 15, 2020

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After a careful scrutiny of the Information, this Court finds that the Information specifically mentions, in the first paragraph thereof, the law which accused violated, that is Section 3(e) of R.A. 3019¹⁰, as amended.

*3. The acts or omissions complained
of that constitute the offense*

In *Keh and Quiballo v. People*,¹¹ it was held that the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential element of the crime defined by law. Therefore, each element of an offense must correspond to a specific allegation in the information.

In *Sabaldan vs. Office of the Ombudsman*,¹² the Supreme Court enumerated the elements of the violation of Section 3(e) of R.A. 3019 as follows:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference

The first two elements are satisfied as the Information lists down the names and positions as public officers of the accused, except for one Liya Wu, who is a private individual.

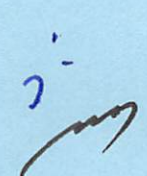

The third element is express in the Information when the prosecutor described how the offense was committed. The pertinent portion of the Information is quoted, to wit:

... xxx ... conspiring and confederating with ... xxx ... acting with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally give unwarranted benefits, preference or advantage to foreign passengers ... xxx ... through a scheme ... xxx ...

¹⁰ Sec. 3(e) - Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

¹¹ G.R. Nos. 217592-93, July 13, 2020

¹² G.R. No. 238014, June 15, 2020



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The fourth element is fulfilled when the Information continues to state who was given unwarranted benefits, and who was unduly injured by the acts of accused. As stated by the prosecution in their Comment/Opposition dated July 19, 2022:

Acts of accused (a) caused undue injury and damage to 143 foreign passengers identified by the National Bureau of Investigation-SAU in the amount of PhP10,000.00 per passenger, or a total of more or less PhP1,430,000.00; and (b) gave unwarranted benefits, preference or advantage to foreign passengers when they allowed their entry into the country without going through regular and stringent profiling or screening processes in violation of existing immigration rules and procedures, to the prejudice of the government and public interest.

All the essential elements of the crime are averred thus, there is a valid designation of the offense.

4. *The offended party's name*

As discussed above, the Information provides that 143 foreign passengers were unduly injured by the “*pastillas*” scheme, identifying them as the offended party. R.A. 3019 also provides that the Government, named in the Information, may be the injured party.

5. *The approximate date of the offense's commission*

As correctly pointed out by the prosecutor, the Rules of Criminal Procedure¹³ already indicate that it is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense.

In *People v. ZZZ*,¹⁴ it was held that “An information is valid as long as it distinctly states the elements of the offense and the acts or omission constitutive thereof. The exact date of the commission of a crime is not an essential element of the crime charged.”

The approximation of the date as “*in the year 2017 to 2020, or sometime prior or subsequent thereto*” in the Information suffices to fulfill the above requisite for its validity since the precise date of the commission of the offense is not an essential element of the crime charged.

¹³ Sec. 11, Rule 110, Revised Rules of Criminal Procedure

¹⁴ G.R. No. 232329, April 28, 2021

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Still, however, accused insist that the arrival dates of the foreigners facilitated by the “pastillas group” are beyond the time Mariñas was acting as Deputy Commissioner.

This Court reminds accused that the arrival dates are not the only relevant dates to this case, the whole period indicated in the Information must also be examined. Accused’s claim involves evidentiary matters which can be better resolved in the course of trial.

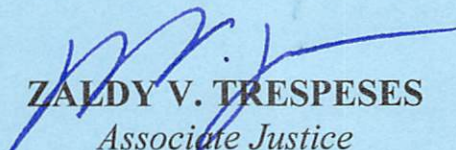
6. *The place where the offense was committed*

As alleged in the Information, the offense was committed in Pasay City. This satisfies the last requisite of a valid information.

WHEREFORE, premises considered, accused Aurelio III S. Lucero, George V. Bituin, and Salahudin P. Hadjinoor’s Motion to Quash dated 08 July 2022 is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Philippines



ZALDY V. TRESPESES

*Associate Justice
Acting Chairperson*

WE CONCUR:



AMPARO M. CABOTAJE-TANG

Presiding Justice



ARTHUR O. MALABAGUIO

Associate Justice