



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-19-CRM-0099
*For: Violation of Section
Section 3(e), R.A. No.
3019, as amended*

-versus-

ORVILLE ANO-OS FUA,
ET AL.,
Accused.

Present:

Cabotaje-Tang, A.M., *PJ,*
Chairperson
Fernandez, B.R., *J.* and
Moreno, R.B. *J.*

PROMULGATED:

AUGUST 9, 2022

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RESOLUTION

Moreno, J.:

For resolution are the *Motion to Quash Subpoena* dated June 20, 2022¹ filed by accused Rose Marie V. Tomogsoc, Ivan Y. Marchan, Sue Agnes A. Castillon and Natalio B. Jumawan, Jr. on June 27, 2022, and the *Manifestation Re: Subpoena* dated June 20, 2022² by accused Teodoro G. Jumadla, Jr. on June 30, 2022. The prosecution (through the Office of the Special Prosecutor) filed its *Opposition (Re: Motion to Quash Subpoena*

¹ Record, vol. IV., pp. 571-574.

² *Id.* at 625-627.

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dated June 20, 2022);³ *Manifestation with Motion for Leave of Court to Admit Attached Supplemental Opposition (Re: Manifestation filed by Accused Teodoro G. Jumadla, Jr.)*;⁴ and *Supplemental Opposition xxx*.⁵

In their Motion to Quash, Tomogsoc, et al. prayed that: (a) the subpoena dated June 20, 2022 addressed to Rowena Reyes of the Fertilizers Regulations Division be quashed for being oppressive, unreasonable and illegal; and (b) the Certifications dated June 22, 2022 be expunged from the record and excluded as evidence for having been improperly obtained.

Accused Tomogsoc, et al. claimed that the “tenor of the directive”⁶ of the subject subpoena was leading and suggestive of what the certification must contain; and that the certification had been crafted to ‘tailor fit’ the prosecution’s theory by “feeding the key word in complying with the subpoena.”⁷

The accused also alleged that the prosecution usurped and undermined the Sandiganbayan’s authority; and that the subpoena had been made to appear that it was issued and/or sanctioned by this Court though the use of the latter’s heading/letterhead.

Tomogsoc, et al. argued that “a subpoena may be issued only by the Court before whom the witness is required to attend.”⁸ They added that while other officers or agencies may be authorized by law to issue subpoena, the same shall only be in connection with investigations conducted by said officer or body. The accused likewise maintained that Section 15(8) of Republic Act No. 6770 limited the authority of the Ombudsman to issue *subpoena* and *subpoena duces tecum* to investigations or inquiry before it.

In its *Opposition x x x*, the prosecution countered that the issued subpoena was “in accordance with the usual caption of a pleading, which sets forth the name of the court, the title of the action and the docket number assigned.”⁹ It added that the Sandiganbayan’s logo was not used, and that there was no intent to deceive Rowena Reyes into believing that it was the Sandiganbayan which issued the subject subpoena.

The prosecution further argued that witness Reyes was directed to submit the certification to the prosecution’s office address; and that name of the issuer appeared on the subpoena itself.

³ *Id.* at 614-619.

⁴ *Id.* at 630-634.

⁵ *Id.* at 635-640

⁶ Record, p. 571.

⁷ *Supra*, note 1 at 571.

⁸ *Id.* at 572.

⁹ *Supra*, note 3 at 615.

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The prosecution maintained that the prosecutors of the Office of the Special Prosecutor are authorized to issue subpoenas to compel witnesses to submit documents relevant to the case being handled, pursuant to Section 31, paragraphs 8 of R.A. No. 6770. The prosecution additionally argued that the subpoena met the tests of relevancy and definiteness.

In his *Manifestation x x x*, accused Jumadla, Jr. joined Tomogsoc, et al. in their *Moton to Quash Subpoena*. He echoed the position of his co-accused that the power to compel the attendance of witnesses and production of documents in a pending case lies with the courts. Jumadla, Jr. maintained that the Ombudsman through the Office of the Special Prosecutor has no power or authority to issue *subpoena* and *subpoena duces tecum* while the case is already pending trial. According to him, the subpoena power of the Ombudsman is limited to inquiries or investigations before them, and that an application for *subpoena* or *subpoena duces tecum* should be made to the court.

Jumadla, Jr. additionally claimed that the OSP disregarded the subpoena power of this Court when it issued the *subpoena* and *subpoena duces tecum* to witness Reyes to appear, produce documents and testify before the Court. He thus posited that the OSP “deprived the Court of the opportunity to determine beforehand whether the production of the documents should be enforced.”¹⁰

In its *Supplemental Opposition x x x*, the prosecution countered that Section 31 of R.A. No. 6770 “applies to both investigations being conducted by the Office of the Ombudsman and the prosecution of cases being handled by its prosecutors.”¹¹ It added that Section 31 gave the prosecutors of the Office of the Ombudsman the authority to, among others, issue *subpoena* and *subpoena duces tecum*.

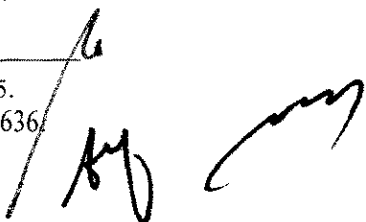
The prosecution also explained that subpoenas issued by the prosecutors of the OSP usually used the logo of both the Office of the Ombudsman and that of the OSP. It, however, admitted that the prosecutor who prepared the subpoena inadvertently copy-pasted the body of the subpoena to an old file used for pleading filed with the Sandiganbayan. The prosecution nonetheless contended that a reading of the body of the subpoena would show that there was no intent to deceive Rowena Reyes into believing that it was this Court which issued the same.

THE COURT’S RULING:

After due consideration, we DENY the *Motion to Quash Subpoena* dated June 20, 2022.

¹⁰ Supra, note 2 at 625.

¹¹ Record, vol. IV, p. 636.



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A *subpoena* is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition. In this jurisdiction, there are two (2) kinds of subpoena, to wit: subpoena *ad testificandum* and *subpoena duces tecum*. The first is used to compel a person to testify, while the second is used to compel the production of books, records, things or documents therein specified.¹²

In the present case, it is not disputed that the Office of the Special Prosecutor issued a subpoena to Rowena Reyes dated June 22, 2022. For clarity, the subpoena reads:

X X X X

TO: **ROWENA REYES**
Fertilizer Regulations Division
FPA Building, Bureau of Animal Industry Compound
Visayas Avenue, Diliman, Quezon City

GREETINGS:

In connection with the prosecution of the above-captioned case, you are hereby directed to SUBMIT on or before June 23, 2022 (Thursday) to the undersigned with office address at Prosecution Bureaus III and VIII, Office of the Special Prosecutor, 4th Floor Office of the Ombudsman Main Building, Agham Road, Diliman, Quezon City a **Certification** on 1) whether MRG Liquid Fertilizer and Del Gro Super Foliar Fertilizer are name brands; 2) the company/ies manufacturing the aforementioned fertilizers; and 3) whether the company/ies are duly licensed to manufacture said fertilizers in **2003, 2004 and 2005**.

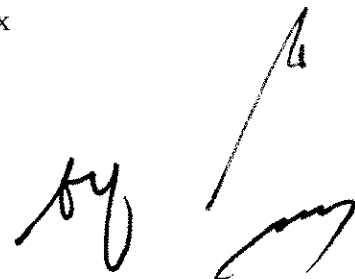
Further, you are hereby directed to appear before the undersigned prosecutor for a remote case conference, via MS Team app, on June 23, 2022 at 10:00 in the morning to discuss the requested Certification and for the preparation of a Judicial Affidavit as prosecution witness.

X X X X

ISSUED BY AUTHORITY OF
THE SPECIAL PROSECUTOR

BLESILDA T. OUANO
Graft Investigation and Prosecution Officer III

X X X X



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The accused alleged that the Ombudsman lacked the authority to issue this subpoena; and that a subpoena may be issued only by the Court before whom the witness is required to appear.

We disagree.

Section 31 of R.A. No. 6770 provides:

Section 31. Designation of Investigators and Prosecutors. — The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

The Ombudsman and his investigators and prosecutors, whether regular members of his staff or designated by him as herein provided, shall have authority to administer oaths, to issue subpoena and subpoena duces tecum, to summon and compel witnesses to appear and testify under oath before them and/or bring books, documents and other things under their control, and to secure the attendance or presence of any absent or recalcitrant witness through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witness or evidence is found.¹³

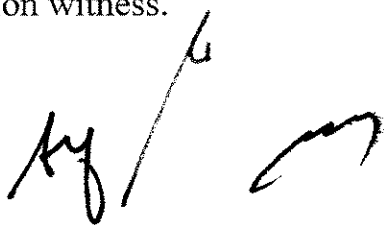
From this provision, it is clear that the prosecutors of the Office of the Special Prosecutor, Office of the Ombudsman, had the authority to issue subpoenas and compel witnesses to submit documents in connection the case being handled. Corollarily, the subpoena issued to Rowena Reyes specifically stated that this was “[i]n connection with the prosecution of the above-captioned case” that is, SB-19-CRM-0099 - the case being handled by the OSP.

We cannot subscribe to the contention of the herein accused that the subpoena had been made to appear that it was issued and/or sanctioned by this Court by the use of the latter’s heading/letterhead.

A careful examination of the subpoena showed the following undisputed facts: *first*, it was issued by authority of the Special Prosecutor; *second*; it was signed by Graft Investigation and Prosecution Officer III Blesilda Ouano; *third*, witness Rowena Reyes was directed to submit the requested certifications to GIPO Ouano at her office address i.e., Prosecution Bureaus III and VIII, Office of the Special Prosecutor, 4th Floor Office of the Ombudsman Main Building, Agham Road, Diliman, Quezon City; and, *finally*, Reyes was directed to appear before GIPO Ouano for a remote case conference to discuss the requested Certification and for the preparation of a Judicial Affidavit as prosecution witness.

¹³

Underscoring supplied.

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From these circumstances, it could not be concluded that the prosecution attempted to mislead witness Reyes into believing that the subpoena had been issued and/or sanctioned by this Court. Significantly, witness Reyes sent the requested certifications to GIPO Ouano's office address:

Admittedly, the name of this Court appeared on the subpoena's heading. Nonetheless, in the absence of clear and compelling evidence showing of ill-motive on the part of the handling prosecutor, we are inclined to believe that this was due to the mere inadvertence.

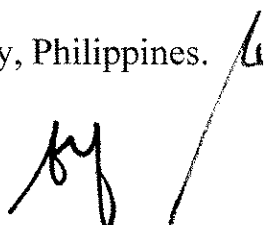
We likewise find baseless the argument of the accused that the certification issued pursuant to the subpoena had been crafted to tailor fit the theory of the prosecution.

To be sure, witness Reyes was directed to submit the following certifications on or before June 23, 2022, viz: (1) whether MRG Liquid Fertilizer and Del Gro Super Foliar Fertilizer are name brands; (2) the company/ies manufacturing the aforementioned fertilizers; and (3) whether the company/ies are duly licensed to manufacture said fertilizers in 2003, 2004 and 2005. Reyes was not at all dictated on what she should state on her certification. If supported by the records, she could have stated in the certification matters that would weaken the prosecution's position. Accordingly, we find no reason to expunge from the record the Certifications dated June 22, 2022.

WHEREFORE, premises considered, the Court rules as follows:

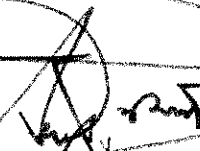
- (a) the *Motion to Quash Subpoena dated June 20, 2022* filed by accused Rose Marie V. Tomogsoc, Ivan Y. Marchan, Sue Agnes A. Castillon and Natalio B. Jumawan, Jr., to which Teodoro Jumadla, Jr. joined in via his *Manifestation* of June 29, 2022, is hereby **DENIED** for lack of merit;
- (b) the *Manifestation Re: Subpoena dated June 20, 2022* by accused Teodoro G. Jumadla, Jr. is **NOTED**; and
- (c) the Office of the Special Prosecutor is **REMINDED** to be more circumspect with respect to the heading and/or caption of issuances coming from its office.

SO ORDERED.

Quezon City, Philippines. 




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RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice