



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN**

QUEZON CITY

THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,
Plaintiff,**

**CRIM. CASE NO. SB-
22-CRM-0219**

-versus-

**For: Violation of Section
3 (E) OF R.A. NO. 3019, as
amended**

**TEDDY ELSON ELMEDOLAN
RIVERA, ET AL.,**


Accused.

Present:

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CABOTAJE-TANG, P.J.,
Chairperson
**FERNANDEZ, B., J and
MORENO, R., J.**

PROMULGATED:

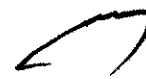
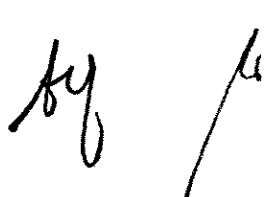
FEBRUARY 27, 2023


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RESOLUTION

CABOTAJE-TANG, P.J.:

This resolves accused Jesus Biscocho Cantos' *Motion for Reconsideration with Urgent and Ex Parte Motion to Defer*


by 

Proceedings Pending Resolution on the Motion for Reconsideration dated January 03, 2023,¹ filed on even date.

In its Resolution adopted on January 04, 2023, the Court gave the prosecution a non-extendible period of five (5) days from receipt thereof within which to file its comment and/or opposition to the aforesaid motion. Thereafter, the same motion shall be deemed submitted for resolution.²

The prosecution filed its *Comment/Opposition* dated January 16, 2023 within the required period.³

THE ACCUSED'S SUBMISSIONS

In support of his motion, accused-movant Cantos alleges that (i) he was deprived of due process allegedly because of his failure to submit his motion for reconsideration of the Office of the Ombudsman's (OMB's) Resolution dated February 18, 2018, finding probable cause for his indictment for Violation of Section 3 (e) of R.A. No. 3019, as amended. Allegedly, he never received a copy of the said OMB resolution and the subsequent *OMB Resolution dated August 24, 2018*, denying his co-accused Jacqueline C. Mendoza and Elvira C. Aspa's *motions for reconsideration* thereof;⁴ (2) the Information is allegedly defective since the narration of facts does not support the findings of probable cause for lack of the elements of graft and corruption under Section 3 (e) of R.A. No. 3019, as amended;⁵ and (3) the OMB already dismissed the administrative complaint of this case. Allegedly, the subject criminal case has the same set of facts as that of the administrative complaint. Accused-movant Cantos posits that if the OMB did not find any substantial evidence to make him liable for an administrative offense, it is with more reason in this criminal case.⁶

¹ pp. 453-462, Record

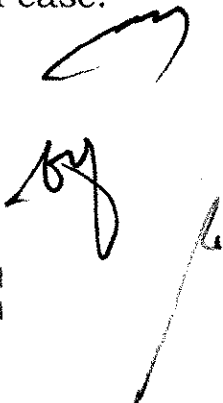
² p. 496, Record

³ pp. 513-518, Record

⁴ p. 2, Motion at p. 454, Record

⁵ pp. 2-4, Motion at pp. 454-456, Record

⁶ pp. 6-8, Motion at pp. 458-460, Record

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THE PROSECUTION'S OPPOSITION

In its Comment/Opposition dated January 16, 2023, the prosecution presents the following arguments:

1. The subject motion is not the proper remedy to assail the OMB *resolutions*;
2. If the subject motion would be treated as a motion to re-open preliminary investigation, the same must be denied for being unreasonable and based on unmeritorious grounds; and
3. The grounds for the dismissal of the administrative case against accused Cantos are independent of the grounds to hold him criminally liable.⁷

THE COURT'S RULING

The Court finds accused-movant Cantos' *Motion for Reconsideration with Urgent and Ex Parte Motion to Defer Proceedings Pending Resolution on the Motion for Reconsideration* bereft of merit.

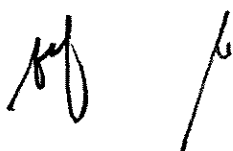
- I. The subject motion assailing the OMB Resolutions dated February 18, 2018 and August 24, 2018 was improperly filed with this Court.**

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A cursory reading of the subject motion readily reveals that the assailed *resolutions* were rendered by the OMB in relation to the criminal complaint filed against the accused-movant Cantos with the said office.



⁷ pp. 2-5, Prosecution's Comment/Opposition dated January 16, 2023 at pp. 514-517, Record

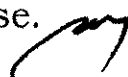
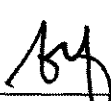


The Supreme Court has consistently held that it has jurisdiction over petitions for *certiorari* questioning the resolutions or orders of the Ombudsman in criminal cases. The Ombudsman's determination of probable cause may only be assailed through *certiorari* proceedings before the said Court on the ground that such determination is tainted with grave abuse of discretion.⁸

Here, accused-movant Cantos is asking the Court to remand this case to the Office of the Ombudsman for "*reconsideration*"⁹ obviously of the finding of probable cause made by the same office. This simply cannot be done. Accused-movant Cantos should have filed his motion for reconsideration with the OMB since the said office issued the assailed resolutions or file with the Supreme Court a petition for *certiorari* challenging such finding of probable cause, as mentioned above, within the period prescribed under the Rules. This he failed to do. Thus, he cannot now invoke the Court's intervention to remand this case to the OMB for reconsideration of the latter's finding of probable cause. To be sure, this Court has no power to direct the Office of the Ombudsman to reconsider its own *resolutions*.

II. The present motion was filed out of time.

At any rate, even if the subject motion were treated as a motion to re-open the preliminary investigation, the Court cannot remand it to the OMB for appropriate action because it was filed out of time. The Court notes that the subject OMB resolutions were issued more than five (5) years already and copies thereof were sent to accused-movant Cantos' addresses on record.¹⁰ It is only now that accused-movant Cantos is questioning the finding of probable cause.

⁸ *Kuizon v. Desierto*, 354 SCRA 158 (2001)

⁹ Relief being asked by accused Cantos at p. 8 of his motion, p. 459, Record

¹⁰ pp. 143 and 164, Record



Section 7 of the Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) provides:

*Section 7. **Motion for reconsideration** - a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed **within five (5) days**¹¹ from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;*

b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2000)

While accused-movant Cantos denies having received the said OMB resolutions, he nevertheless knew that an Information was filed against him for Violation of Section 3 (e) of R.A. No. 3019, as amended, and **admittedly** secured copies of the assailed OMB resolutions when he posted his bail on **December 19, 2022**.¹² Thus, he could have, at the very latest, filed his motion within five (5) days from receipt of a copy of the Information and said OMB resolutions or, on December 24, 2022 which he failed to do. He only filed the subject motion on **January 03, 2023**, or after the lapse of fifteen (15) days from receipt thereof.



¹¹ emphasis supplied

¹² p. 1, Accused Cantos' Motion at p. 453, Record; pp. 385-388, Record

III. Accused-movant Cantos was not deprived of his right to due process.

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Accused-movant Cantos claims that he was deprived of due process when he failed to file his motion for reconsideration of the OMB's resolution finding probable cause for his indictment and resolution denying his co-accused's motions for reconsideration allegedly because he never received copies thereof.

The claim lacks merit.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.¹³

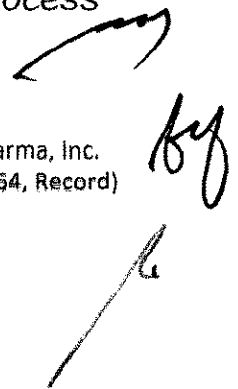
In this case, the records actually show that accused-movant Cantos was able to file his Counter Affidavit dated September 30, 2015¹⁴ with the OMB in the proceedings before it (OMB-C-C-15-0243). The subject OMB Resolution dated February 28, 2018 and August 24, 2018 were both sent through registered mail to accused Cantos' given addresses¹⁵ on record. His given address in No. 28N Eton Parkview Greenbelt, 112 Gamboa St., Legaspi Village, San Lorenzo, Makati City 1223, is the same address where the summons was sent. He was able to file his Counter Affidavit dated September 30, 2015, after the summons was sent to him. Clearly, accused Cantos was given the opportunity to be heard. He merely failed to file a motion for reconsideration through no fault of the OMB. Such failure is the result of his own negligence.

While the filing of a motion for reconsideration is an integral part of the preliminary investigation proper, however, "*due process*

¹³ *Luzon Surety Co., Inc. v. Jesus Panaguigon*, 173 Phil. 355 (1978)

¹⁴ pp. 165-212, Record

¹⁵ 28N Eton Parkview, Greenbelt, 112 Gamboa St., Legaspi Village, San Lorenzo, Makati City and PITC Pharma, Inc. 2nd Floor, NDC Building, 116 Tordesillas Street, Salcedo Village, Quezon City, Metro Manila (p. 143 and 164, Record)



simply demands an opportunity to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Where an opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process.”¹⁶

IV. The present Information sufficiently alleges all the elements of the crime charged.

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Accused-movant Cantos also argues that the Information charging him with a Violation of Section 3 (e) of R.A. No. 3019, as amended, fails to enumerate all the elements of such violation.

The argument is not correct.

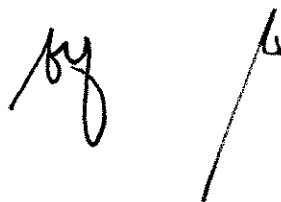
Sections 6 and 9 of Rule 110 of the Revised Rules of Court provide:

Sec. 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.

... .. 

¹⁶ Catacutan v. People of the Philippines, 656 SCRA 524 (2011)



Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

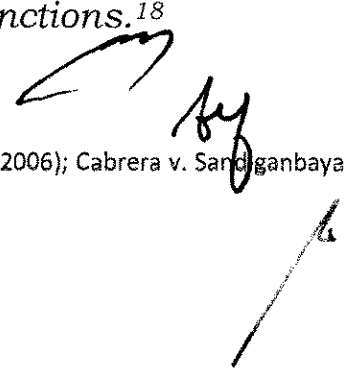
In ***Lazarte v. Sandiganbayan***,¹⁷ the Supreme Court explained the two (2) important purposes underlying the rule. First, it enables the accused to suitably prepare their defense. Second, it allows the accused, if found guilty, to plead their conviction in a subsequent prosecution for the same offense. Thus, the High Court held that the true test in ascertaining the validity and sufficiency of an Information is "*whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged.*"

In this case, accused-movant Cantos is charged with a Violation of Section 3(e) of R.A. No. 3019, the elements of which are as follows:

1. *The accused must be a public officer discharging administrative, judicial or official functions;*
2. *He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and*
3. *That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.*¹⁸

¹⁷ 581 SCRA 431 (2009)

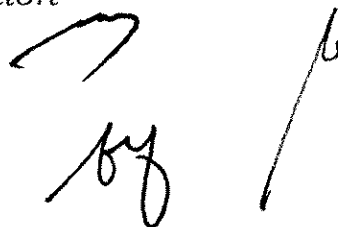
¹⁸ *Uriarte v. People*, 511 SCRA 471 (2006) citing *Santos v. People*, 485 SCRA 185 (2006); *Cabrera v. Sandiganbayan*, 441 SCRA 377 (2004); and *Jacinto v. Sandiganbayan*, 178 SCRA 254 (1989)



The subject Information filed against accused-movant Cantos reads:

That from 7 May 2007 to 24 May 2007, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused public officers TEDDIE ELSON ELMEDOLAN RIVERA (Rivera), Chief Operating Officer, JESUS B. CANTOS (Cantos), Vice President, Logistics and Supply Chain, JACQUELINE CATRAL MENDOZA (Mendoza), Vice President for Finance, ELVIRA CANIMO ASPA (Aspa), Logistics and Procurement Manager, and KRISANTO KARLO ESTRADA NICOLAS (Nicolas), Legal Manager, all of the Philippine International Trading Corporation, Pharma, Inc. (PPI), while in the performance of their administrative and/or official functions, 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 and advantage to Biolink Pharma, Medgen Laboratories and Alphamed Pharma, Inc., by procuring branded medicines from them through Direct Contracting even without the conditions stated by Section 50 of Republic Act 9184, which branded medicines were more expensive by more or less PhP19,697,775.00 compared to their generic counterpart, thereby causing undue injury to the government in the said amount, with the accused acting in conspiracy with one another thusly:

- a) Rivera approved the resolution for Direct Contracting and Purchase Orders (POs),*
- b) Cantos signed said Resolution and recommended approval of POs,*
- c) Mendoza signed said Resolution and Disbursement Vouchers and certified POs,*
- d) Nicolas signed said Resolution, and*
- e) Aspa signed said Resolution*

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CONTRARY TO LAW.

We find that the afore-quoted Information sufficiently alleges the essential elements of a Violation of Section 3 (e) of R.A. No. 3019, as amended. The Information specifically alleges that (1) accused Cantos is the Vice President of PPI who, in such official capacity, (2) with evident bad faith, manifest partiality, or at the very least, through gross inexcusable negligence, willfully, unlawfully and criminally (3) gave unwarranted benefits, preference and advantage to Biolink Pharma, Medgen Laboratories and Alphamed Pharma, Inc. by procuring branded medicines from said pharmaceutical companies through direct contracting in violation of the procurement law, R.A. No. 9184, which branded medicines were more expensive by more or less, Php19,697,775.00 compared to the generic counterpart, thereby causing undue injury to the government in the said amount.

V. The dismissal of the administrative aspect of this case does not necessarily result in the dismissal of this case.

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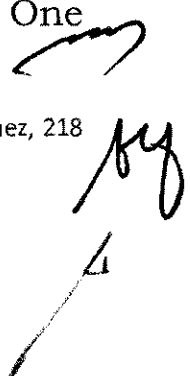
Lastly, accused-movant Cantos maintains that this criminal case must be dismissed because it has the same set of facts as that of the administrative complaint already dismissed by the OMB.

The claim lacks merit.

It is a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission.¹⁹ Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa.²⁰ One

¹⁹ People v. Judge Toledano, 387 Phil. 957 (2000)

²⁰ Tan v. Commission on Elections, 237 SCRA 353 (1994) citing Office of the Court Administrator v. Enriquez, 218 SCRA 1 (1993)

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thing is administrative liability; quite another thing is the criminal liability for the same act.²¹

Verily, the fact that the required quantum of proof was not adduced to hold accused-movant Cantos administratively liable for Misconduct and Conduct Prejudicial to the Best Interest of the Service in relation to Rule 10, Section 46 (A) (3); and (B) (8), respectively, of the Revised Rules on Administrative Cases in Civil Service, does not *ipso facto* mean that this criminal case filed against him for Violation of Section 3 (e) of R.A. No. 3019, as amended, should now be dismissed. The failure to adduce substantial evidence against him in the former is not a ground for the dismissal of the latter. These two (2) cases are separate and distinct; hence, independent from each other.²²

The quantum of evidence required in an administrative case is less than that required in a criminal case.²³ Criminal and administrative proceedings may involve similar operative facts but each requires a different quantum of evidence. Administrative cases require only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.²⁴ In contrast, in this criminal case, the prosecution is required to proffer proof beyond reasonable doubt to secure accused-movant Cantos' conviction.

Rule 133 of the Revised Rules on Evidence provides:

Sec. 2. Proof beyond reasonable doubt. - In a criminal case, the accused is entitled to an acquittal, unless their guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

²¹ Paredes, Jr. v. Sandiganbayan, 322 Phil. 709 (1996)

²² *ibid.*

²³ Carlos v. Civil Service Commission, 228 SCRA 262 (1993)

²⁴ Lumiqued v. Exevea, 346 Phil. 807 (1997); Office of the Court Administrator v. Sumilang, 338 Phil. 28 (1997); Mariano v. Roxas, 434 Phil. 742 (2002)



Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other.²⁵ Indeed, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases.

At any rate, accused Cantos' *motion* is highly improper considering that this Court had already found probable cause in this case when it issued the warrant of arrest²⁶ against him on November 17, 2022. In fact, accused Cantos already posted bail for his provisional liberty on December 19, 2022.²⁷

The rule in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.²⁸ Based on the record of this case, the Court reiterates the existence of probable cause against accused Castor.

WHEREFORE, the Court hereby **DENIES** the *Motion for Reconsideration with Urgent and Ex Parte Motion to Defer Proceedings Pending Resolution on the Motion for Reconsideration* dated January 03, 2023, of accused-movant Jesus Biscocho Cantos for lack of merit. Let the arraignment of Accused Cantos be set on March 10, 2023 at 8:30 in the morning.

SO ORDERED.

 
²⁵ De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region, 464 Phil. 1033 (2004), citing Ocampo v. Office of the Ombudsman, 322 SCRA 17 (2000)

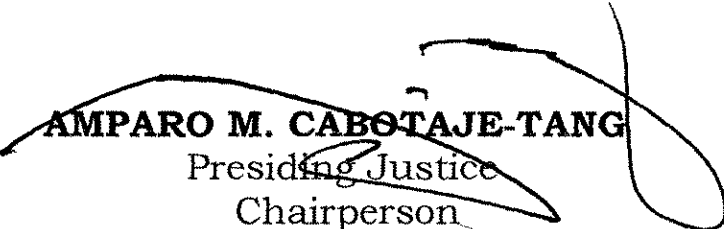
²⁶ p. 287, Record

²⁷ pp. 385-390, Record

²⁸ Arroyo v. Sandiganbayan and People, G.R. No. 210488, January 27, 2020 citing Crespo v. Mogul, 235 Phil. 465 (1987)

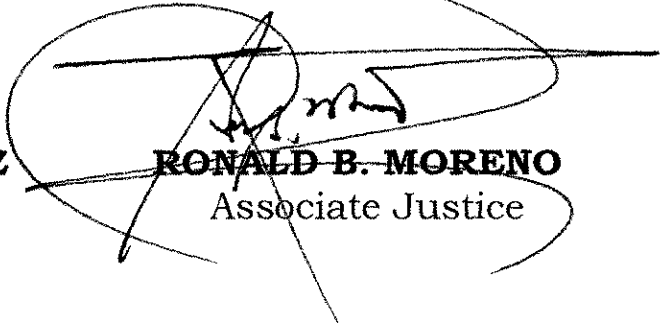
Resolution
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Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice