



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on August 8, 2023.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA -----Chairperson
Justice ZALDY V. TRESPESES -----Member
Justice GEORGINA D. HIDALGO -----Member

The following resolution was adopted:

SB-23-CRM-0060 – People v. Rhodora J. Cadiao

This resolves the following:

1. Accused Rhodora Cadiao’s “**MOTION FOR RECONSIDERATION** (Resolution dated July 19, 2023)” dated July 26, 2023;¹
2. Prosecution’s “**OPPOSITION to the Motion of Reconsideration** dated July 26, 2023 with Ex-Parte Motion” dated August 2, 2023.²

GOMEZ-ESTOESTA, J.:

Before the court is accused Cadiao’s *Motion for Reconsideration* which seeks a reconsideration of the Resolution dated July 19, 2023 denying her *Omnibus Motion to Quash Information, Recall Warrant of Arrest and Dismiss the Case*.

THE MOTION FOR RECONSIDERATION

The *Motion* resuscitates grounds that were already weighed and discussed in the questioned Resolution, but which accused Cadiao now asks the court to give a second look; however, the *Motion* also brings in new matters as grounds to support her present *Motion*. To synthesize:

¹ Records, pp. 384-405. Electronically received on July 28, 2023 at 5:05 PM.

² Records, pp. 420-427. Electronically received on August 02, 2023 at 1:35 PM.

<p align="center">Grounds Cited in the Omnibus Motion</p>	<p align="center">New Grounds Raised in the Motion for Reconsideration</p>
<p>1. The Information does not charge an offense.</p> <ul style="list-style-type: none"> - the claims for payment by the complainant Dela Vega for his unpaid salaries, Representation and Travel Allowance and other benefits are matters under or within the jurisdiction of the Commission on Audit (COA). It is a condition precedent that matters such as liquidated money claims need an imprimatur of the COA before the same may be paid. The jurisdiction of the COA over money claims is exclusive. - as the claim was not brought before the COA, much less approved by COA, the non-payment thereof does not constitute a criminal offense; hence, the Information must be quashed on the ground that it does not charge a criminal offense and that this court has no jurisdiction over the money claims of the complainant. 	<p>1. The payment of salaries is not among the duties of the accused.</p> <ul style="list-style-type: none"> - Nowhere in Section 465 of the Local Government Code is it stated that part of the powers, duties, and functions of the provincial governor is the payment of claims for salaries, RATA and other benefits of an employee. Accused cannot be held liable for an omission of an act which she is not duty-bound to perform in the first place, as further shown under the Government Accounting Manual for Local Government Units. - the disbursement of local funds for regularly recurring expense, such as "payroll for regular or permanent employees" does not require the approval of the local chief executive. Hence, the element of the crime that <i>"the act was done in the discharge of the public officer's official, administrative, or judicial function"</i> was lacking.
<p>2. The preliminary investigation was terminated beyond the period prescribed by the rules and the delay was unjustified and unexplained.</p> <ul style="list-style-type: none"> - Gauged from the Rules of Procedure of the Office of the Ombudsman and the Revised Rules on Criminal Procedure, the complaint was resolved beyond the prescribed period, which rules of procedure the Ombudsman himself violated. Failure to substantially adhere to the requirements of the law governing the conduct of preliminary investigation, including the time limitation prescribed by law for the resolution of the case by the 	<p>2. The Information alleges or charges more than one offense.</p> <ul style="list-style-type: none"> - a government employee such as Dela Vega is regularly paid his salaries and RATA on a monthly basis if his claims are supported by the required documents, which means that his claims correspond to his monthly salaries and RATA for twenty (20) months covering "the period July 2016 to February 2018." The Information, therefore, as presently worded, comes across to the accused as attributing and charging her of twenty (20) counts of unjustly refusing to pay Dela Vega his monthly

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Minute Resolution

People v. Rhodora J. Cadio

SB-23-CRM-0060

Page 3 of 7

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<p>prosecutor, violates the procedural due process guaranteed by the Constitution.</p> <ul style="list-style-type: none">- The preliminary investigation of the complaint filed by Dela Vega took at least four (4) years and ten (10) months to be resolved, computed from the filing of the complaint, as shown by a presented timeline.³	<p>salaries and RATA every month for twenty (20) months, which are multiple offenses.</p>
<p>3. The warrant of arrest is defective and the Information is void.</p> <ul style="list-style-type: none">- a challenge on the legality of the warrant of arrest is made prior to the arraignment of the accused, pursuant to Section 26, Rule 114 of the Rules of Criminal Procedure, and is not waived upon application for bail.	
<p>4. The preparation of the Information was premature.</p> <ul style="list-style-type: none">- the Information is void because it has been signed, subscribed, and sworn to by ASP II Dimayuga before ASP II Hernandez on October 26, 2022. However, the Order dated March 30, 2022 denying accused's Motion for Reconsideration was only approved by Ombudsman Martires on January 20, 2023. As of October 26, 2022, ASP II Dimayuga was not yet authorized to prepare and sign the Information and declare under oath that there is probable cause to indict Cadio for violation of Section 3(e) of RA No. 3019 because ASP II Dimayuga, at that time, did not have personal knowledge yet whether the Motion for Reconsideration will be granted or denied by the Ombudsman.	

³ Records, pp. 398.

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PROSECUTION'S OPPOSITION

In its *Opposition*, the prosecution argues:

First, accused Cadio only had five (5) days from receipt of the assailed Resolution dated July 19, 2023, duly received by all parties on July 20, 2023, to file her motion for reconsideration under the Revised Guidelines for Continuous Trial of Criminal Cases,⁴ or until July 25, 2023. However, the instant motion was filed only on July 28, 2023, or three (3) days beyond the reglementary period to file the same.

Second, the Information unmistakably charged Cadio and would clearly show that the material averments therein, if hypothetically admitted, sufficiently alleged all the elements constitutive of violation of Section 3(e) of R.A. No. 3019, as amended.

Third, the second element of the crime, i.e., "*that the act was done in the discharge of the public officer's official, administrative, or judicial function,*" is clearly present because accused Cadio's act of reassigning Dela Vega and her refusal to pay the latter's salaries and RATA from July 2016 to February 2018 are obviously part of Cadio's duties and functions as governor and chief executive officer of the local government unit of Antique under the Local Government Code.⁵

Fourth, there is only one offense charged in the Information based on the cause of the accusation therein which is self-explanatory.

Fifth, there is no inordinate delay in the disposition of this case. In *Magsaysay et al. vs. Sandiganbayan*,⁶ the Court opined that the right to a speedy disposition of a case, like the right to a speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. The movant failed to show that such circumstances were attendant in the disposition of the case against her by the Office of the Ombudsman, as revealed by her own timeline.

Sixth, there is nothing irregular surrounding the filing of the Information. To repeat, the Resolution finding probable cause against Cadio was approved by the Ombudsman on October 22, 2021. The motion for reconsideration of Cadio was received by the Office of the Ombudsman on February 03, 2022. The Order denying the motion for reconsideration was

⁴ AM. No. 15-06-10-SC, April 15, 2017.

⁵ R.A. No. 7160.

⁶ G.R. No. 128136, October 1, 1999.

signed by the Ombudsman on January 20, 2023. The Information was approved on May 04, 2023 by the authorized official of the Ombudsman. From the foregoing, there is nothing irregular factually and legally.

Meantime, the prosecution moved that the filing of the pre-trial brief for the prosecution be extended for ten (10) days after the arraignment of the accused considering that it still needed to conduct case conferences with its intended witnesses, having only conferred with three out of twelve thus far, and that the pre-trial conferences be set thereafter for comparison and marking of exhibits.

THE COURT'S RULING

In relation to an interlocutory order which does not disallow the filing of a motion for reconsideration, the purpose of the filing thereof is palpable in its context. Like any other motion for reconsideration of a judgment or final order, the purpose of a motion for reconsideration is for the moving party to point purported errors in the assailed resolution to give the court an opportunity to re-examine the same. Unlike a motion for reconsideration of a judgment or final order, however, as in this case, there can be no referral to evidence based on fact and law in the resolution of the *Motion*. This is only because trial is yet to begin. No facts can be assumed; hence, the application of law cannot yet be made.

It is at this instance that a perusal of the present *Motion* immediately reveals loopholes.

First, the *Motion* relied on the **same grounds** as in the earlier motion by merely expanding the rationale of the arguments, but *without* specifically pointing to any error which this court may have committed. A reiteration of the same rehashed versions that have already been considered and resolved in the questioned Resolution will only be repetitive and hence, does little to sway this court to backtrack on its original ruling.

Second, the *Motion* invested on **new matters** that were not raised in the earlier motion. This is a fatal flaw in line with the Omnibus Motion Rule embodied in Section 8, Rule 15,⁷ in relation to Section 1, Rule 9⁸ of the 2019 Amendments to the Rules of Civil Procedure, that takes suppletory application

⁷ Section 9. *Omnibus motion*. - Subject to the provisions of [S]ection 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. (8a)

⁸ Section 1. *Defenses and objections not pleaded*. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (1)

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in this case.⁹ The Omnibus Motion Rule states that all available objections be included in a party's motion, otherwise, said objections shall be deemed waived; and, the only grounds the court could take cognizance of, even if not pleaded in said motion are: (a) *lack of jurisdiction over the subject matter*; (b) *existence of another action pending between the same parties for the same cause*; and (c) *bar by prior judgment or by statute of limitations*.¹⁰

Since these new matters that were only brought at this time were not raised in the original motion, these are deemed waived and can no longer forestall the original ruling already made by the court. The exception do not apply in this case.

The time-bar in the filing of the motion raised by the prosecution at the outset necessarily becomes moot. The arraignment of the accused should only proceed, unabated.


WHEREFORE, it is resolved thus:

1. the "**MOTION FOR RECONSIDERATION** (Resolution dated July 19, 2023)" dated July 26, 2023 filed by accused Rhodora J. Cadio is **DENIED**; and

2. Prosecution's motion for extension of the filing of the pre-trial brief is deemed **MOOTED**, with the filing of the Pre-Trial Brief on August 7, 2023. Likewise, the Pre-Trial Brief filed by accused Cadio on even date is **NOTED**.

The arraignment and pre-trial of accused Mayor Rhodora J. Cadio shall thus proceed on *August 10, 2023 at 8:30 in the morning* before the Fourth/Seventh Division courtroom.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson

⁹ Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases (*People v. Ang*, G.R. No. 231854, October 06, 2020).

¹⁰ *Pilipinas Shell Petroleum Corp. v. Romars International Gases Corp.*, G.R. No. 189669, [February 16, 2015], 753 PHIL 707-719).

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WE CONCUR:



ZALPY V. TRESPESES
Associate Justice



GEORGINA D. HIDALGO
Associate Justice



CLERK OF THE COURT
COUNTY OF SAN DIEGO
JULY 11 2023