



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

**Criminal Case No. SB-23-
CRM-0035**

*For: Violation of Section 3 (h) of
Republic Act No. 3019 (Anti-
Graft and Corrupt Practices
Act), as amended*

- versus -

Present:

**JED PATRICK ESCALANTE
MABILOG and PLARIDEL
CORDERO NAVA II,**

Accused.

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

Cabotaje-Tang, P.J.

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RESOLUTION

CABOTAJE-TANG, P.J.

This pertains to the “*Motion to Quash Information (The facts charged do not constitute an offense)*” dated July 21, 2023,¹ filed by accused Plaridel Cordero Nava II and the prosecution’s “*Comment/Opposition (Re: Motion to Quash dated 21 July 2023 filed by accused Nava II)*” dated August 9, 2023.²

¹ pp. 334-344, Record

² pp. 376-385, Record

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In his Motion, accused-movant Nava II prays for the quashal of the *Information* and the dismissal of the case against him on ground that the facts charged in the *Information* against him allegedly do not constitute an offense.³

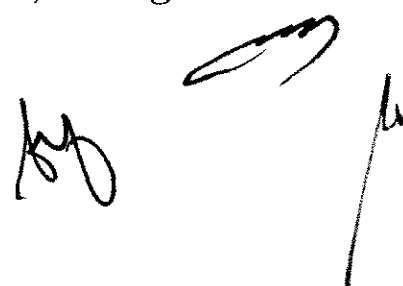
To support his bid for the quashal of the *Information* against him, accused-movant Nava II proffers the following arguments:

First, he emphasizes that while he was a public officer at the time the crime was allegedly committed, being then a member of the local legislative body, his primary duty was to legislate laws. As such, he was neither a signatory to the Memorandum of Agreement (MOA) entered into by the City of Iloilo with 3L Towing Services nor was he empowered to issue any business permit or licenses to 3L Towing Services.

Second, he adds that the allegations that he (a) sponsored Regulation Ordinance No. 2015-049, which added the provisions allowing a private person or entity owning or possessing Denver boots or wheel clamps to enter into a MOA with the City Government with a reward of seventy percent (70%) of the fines collected, (b) drafted the MOA incorporating said amendments with 3L Towing Services in mind, and (c) publicly defended the MOA with 3L Towing Services do not satisfy the element of "intervention" contemplated by Section 3 (h) of R.A. No. 3019, and as interpreted by the Supreme Court in the case of ***Trieste, Sr. v. Sandiganbayan***.⁴ He asserts that Section 3 (h) aims to prevent the use by the accused of his influence, authority, and power. In this case, he claims that there was no allegation in the *Information* that he used his influence, power, and authority over accused Mabilog to get him to sign the MOA with 3L Towing Services. As for the ordinance, while he admits that he was the principal sponsor for its passage and approval, he argues that

³ p. 342, Record

⁴ 229 Phil. 505 (1986)



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the same was not his personal action but was rather a collegial decision of the entire *Sangguniang Panlungsod* of Iloilo City. Additionally, he only became the sponsor of the ordinance because he was then the chairperson of committee on transportation and as such the duty to legislate the ordinance rested on his shoulders. He states that he could not shirk his sworn duty just to avoid malicious suspicion that he had pecuniary interest in 3L Towing Services.

Third, he claims that the allegations in the *Information* regarding his direct or indirect financial or pecuniary interest in 3L Towing Services are “bare and unsubstantiated allegations ... which are anchored on conjectures,”⁵ and that assuming they are true, they do not *ipso facto* constitute any financial or pecuniary interest on his part nor are they conclusive proof of such interest.⁶

Fourth, accused-movant Nava II asserts that even if all the allegations in the *Information* are true, the alleged crime was “mooted by the fact that the contract, the agreement and transaction has not materialized after accused Mabilog and Leny Garcia of 3L Towing Services have mutually canceled and rescinded the MOA prior to its full implementation.”⁷

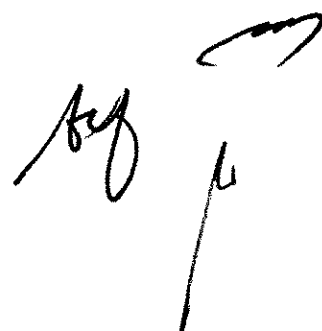
In response to accused-movant Nava II’s Motion, the prosecution filed its *Comment/Opposition* praying for the denial of the motion for lack of merit.

At the outset, the prosecution argues that the Motion should be denied for violating the “Omnibus Motion Rule,” under Rule 15, Section 8, in relation to Rule 9, Section 1 of the Rules of Court which states that 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. It recalls that on March 30, 2023,

⁵ p. 338, Record

⁶ p. 339, Record

⁷ *Id*

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accused-movant Nava II already filed a prior *Motion to Dismiss/Quash* the *Information*, which motion was found unmeritorious by this Court in a *Resolution* dated June 23, 2023. As he did not raise his current argument in his previous motion to quash the *Information* against him, the prosecution argues that the Omnibus Motion Rule bars the filing of the present Motion as the same rendered his current objections waived.⁸

The prosecution posits that assuming *arguendo* that the accused-movant may still assail the validity and sufficiency of the *Information*, the factual allegations therein are nevertheless sufficient to constitute a violation of Section 3 (h) of R.A. No. 3019.

Relying on the precedent set by the Supreme Court in ***Lorenzo v. Sandiganbayan***⁹ and ***People v. Solar***,¹⁰ the prosecution counters accused-movant Nava II's argument that the allegations in the *Information* are "bare and unsubstantiated ... which are anchored on conjectures," and submits that a motion to quash is a hypothetical admission of the facts alleged in the *Information*. Thus, as a general rule, the courts will not consider allegations contrary to those appearing on the face of the *Information* in ruling on such motions and will only test whether the material facts alleged in the *Information* will establish the essential elements of the offense charged as defined in the law.¹¹

In addition to the ruling in ***Lorenzo*** and ***Solar***, the prosecution likewise cites the case of ***People v. Sandiganbayan***,¹² as to the three (3) matters which must be looked into to determine whether the allegations in an *Information* are sufficient, namely: what must be alleged in a

⁸ p. 377, Record

⁹ G.R. No. 242506, September 14, 2022

¹⁰ G.R. No. 225595, August 9, 2019

¹¹ p. 379, Record

¹² 770 SCRA 160 (2015)

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valid Information, what the elements of the crime charged are, and whether these elements are sufficiently stated in the Information.¹³

To determine whether the essential elements of the offense charged are sufficiently alleged in the assailed *Information*, as instructed by the Supreme Court in **People**, the prosecution turns to Section 6 of Rule 110 of the Revised Rules of Criminal Procedure which states that an Information is sufficient if it states the name of the accused; the designation of the offense as given by the statute; the acts or omissions 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.

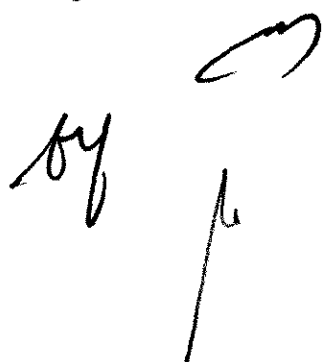
Relying on the discussion above, the prosecution contends that the allegations in the assailed *Information*, if hypothetically admitted, are sufficient to establish the offense charged, specifically the elements of Violation of Section 3 (h) of R.A. No. 3019, as defined in the case of **Domingo v. Sandiganbayan**.¹⁴ Comparing the elements outlined in **Domingo** vis-à-vis the allegations in the *Information*, it submits that the following allegations are undoubtedly sufficient to establish the offense charged:

- a) accused-movant Nava II, then a Member of the *Sangguniang Panlungsod* of Iloilo City, was a public officer;¹⁵
- b) while in the performance and taking advantage of their official functions, conspiring and confederating with one another, they have a direct financial or pecuniary interest in creating 3L Towing Services and appointing as its dummy owner one Leny B. Garcia:

¹³ *Id*

¹⁴ 474 SCRA 203 (2005)

¹⁵ p. 381, Record

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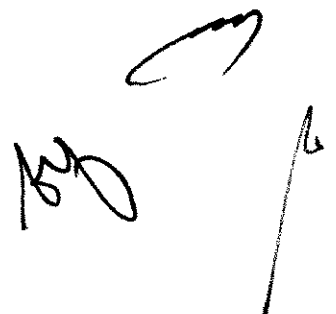
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- accused Mabilog contributed Php500,000.000 as initial capital and issued its business and mayor's permit without Ms. Garcia applying for the same in the Iloilo City Hall; and
 - accused-movant Nava II researched for possible suppliers of wheel clamps from China and prepared the documents for 3L Towing Services' registration with the Department of Trade and Industry and the Bureau of Internal Revenue.¹⁶
- c) they intervened or took part in their official capacity in connection with such interest in the following manner:
- accused Mabilog instructed accused-movant Nava II to draft the MOA without incorporating the requirements of R.A. No. 6957 to favor 3L Towing Services, secured the services of another lawyer to review/revise the draft MOA, requested authority from the *Sangguniang Panlungsod* to sign the MOA with 3L Towing Services and signed the MOA; and
 - accused-movant Nava II, on the other hand, sponsored on January 20, 2015, Regulation Ordinance No. 2015-049, amending Regulation Ordinance No. 2014-191, drafted the MOA incorporating said amendments with 3L Towing Services in mind, and publicly defended the MOA with 3L Towing Services.¹⁷

In addition to the allegations above, the prosecution likewise emphasizes that accused-movant Nava II was charged with conspiring and confederating with accused Mabilog in Violation of Section 3 (h) of R.A. No. 3019. Thus, it contends that accused-movant Nava II's specific acts as alleged in the *Information*, when read together with the

¹⁶ *Id*

¹⁷ pp. 381-382, Record

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specific acts of his co-accused Mabilog, fit squarely into the elements of the said crime. Citing **Domingo** as well as **Lazarte, Jr. v. Sandiganbayan**,¹⁸ the prosecution asserts that conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It also explains that conspiracy is significant only because it changes the criminal liability of all accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime as the liability of the co-conspirators is collective and each participant will be equally responsible for the acts of others since the act of one is the act of all. It likewise argues that the allegation of conspiracy in the *Information* should not be confused with the adequacy of evidence that may be required to prove it as a statement of the evidence on the conspiracy is not necessary in the *Information*. Lastly, it avers that the other details cited by accused-movant Nava II are matters of evidence best raised during trial.

THE RULING OF THE COURT

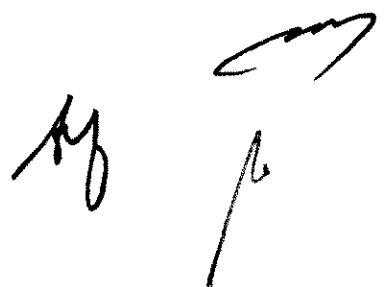
The Court finds the subject motion unmeritorious.

A. Non-applicability of the Omnibus Motion Rule.

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In its Comment/Opposition, the prosecution raised the contention that the Omnibus Motion Rule under Rule 15, Section 8, in relation to Rule 9, Section 1 of the Rules of Court, bars the second filing by accused-movant Nava II of a motion to quash, given that he has already previously filed a motion to quash the *Information* against him and failed to

¹⁸ 581 SCRA 431 (2009)



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plead the ground that the facts charged therein do not constitute an offense.

Rule 117, Section 9 of the Rules of Criminal Procedure, however, specifically provides that the failure of the accused to assert any ground for a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or **failed to allege the same in said motion, shall be deemed a waiver of any objections except those** based on the grounds provided for in **paragraphs (a), (b), (g), and (i)** of Section 3 of the Rule. In this case, accused-movant Nava II **relies on paragraph (a) in support of his present motion**. Thus, while the general rule on motions provides that the failure of a movant to plead all objections then available shall be deemed a waiver of those objections not pleaded, **Rule 117 must be given precedence by the Court since it specifically governs and lays down the procedure pertaining to motions to quash.**

B. The facts charged in the Information constitute a Violation of Section 3 (h) of R.A. No. 3019.

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It is jurisprudentially settled that the fundamental test in appreciating a motion to quash on the ground that the facts charged in the Information do not constitute an offense is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in law, without considering matters *aliunde* or matters extrinsic of the Information.¹⁹ In other words, in this case, the Court must limit itself to the four (4) corners of the *Information* vis-à-vis the elements of the offense charged in determining whether or not the allegations in it aptly

¹⁹ See *People v. Odtuhan*, 701 SCRA 506 (2013), *Lazarte v. Sandiganbayan*, 581 SCRA 431 (2009) and *People v. Romualdez and Sandiganbayan*, 559 SCRA 492 (2008)

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constitute an offense against the accused.

The subject *Information* charges the accused with a Violation of Section 3 (h) of R.A. No. 3019, as amended. The elements of a Violation of Section 3 (h), as laid down in **Teves v. Sandiganbayan**,²⁰ are as follows:

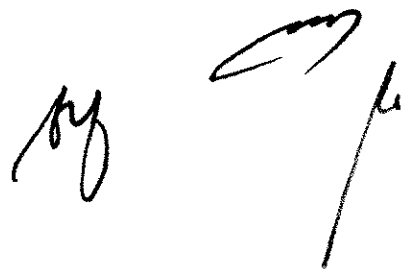
1. The accused is a public officer;
2. He/she has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
3. He/she either:
 - a) intervenes or takes part in his/her official capacity in connection with such interest; or
 - b) is prohibited from having such interest by the Constitution or by any law.

Based on **Teves**, there are two (2) modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3 (h) of the Anti-Graft Law. The first mode is if in connection with his/her pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his/her official capacity. The second mode is when he/she is prohibited from having such interest by the Constitution or any law. In this case, the prosecution accuses both accused-movant Nava II and accused Mabilog of violating Section 3 (h) under the first mode.

The factual allegations in the *Information* in this case read:

That on the 20th day of January 2015, or for some time prior or subsequent thereto, at the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named accused JED PATRICK ESCALANTE MABILOG and PLARIDEL CORDERO NAVA II, both public officers, being then the City Mayor and a Member of the Sangguniang Panlungsod, respectively, of Iloilo City, in such capacity and

²⁰ 488 Phil. 311 (2004)



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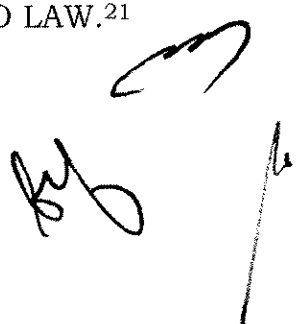
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committing the offense in relation to office, while in the performance and taking advantage of their official functions, conspiring and confederating with one another, did then and there willfully, unlawfully, and criminally, have a direct financial or pecuniary interest in creating 3L Towing Services and appointing as its dummy owner one Leny B. Garcia, with accused Mabilog contributing FIVE HUNDRED THOUSAND PESOS, Philippine Currency (Php500,000.00) as initial capital and issuing its business and mayor's permits without Ms. Garcia applying for the same in the Iloilo City Hall, and accused Nava researching for possible suppliers of wheel clamps from China, preparing the documents for 3L Towing Services' registration with the Department of Trade and Industry and Bureau of Internal Revenue, which business entity was eventually awarded the Memorandum of Agreement (MOA) with the City Government of Iloilo to undertake clamping and/or towing of illegally parked vehicles within its territorial jurisdiction without competitive processes as provided under Republic Act No. 6957, As Amended (An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes), with both accused intervening in their official capacity in the following manner: accused Mabilog instructed accused Nava to draft the above-named MOA without incorporating the requirements of R.A. No. 6957 to favor 3L Towing services, secured the services of another lawyer to review/revise the draft MOA, requested authority from the Sangguniang Panlungsod to sign the MOA with 3L Towing Services, and signed the MOA, while accused Nava on the other hand, sponsored on 20 January 2015 Regulation Ordinance No. 2015-049, amending Regulation Ordinance No. 2014-191 (Towing Ordinance of Iloilo City), by adding provisions allowing a private person or entity owning or processing Denver boots or wheel clamps to enter into a MOA with the City Government with a reward of 70% of the fines collected, drafted the MOA incorporating said amendments with 3L Towing Services in mind and publicly defended the MOA with 3L Towing Services, all to the detriment of public service.

CONTRARY TO LAW.²¹

²¹ pp. 1-2, Record

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Applying settled jurisprudence, the Court finds that the elements of a Violation of Section 3 (h) of R.A. No. 3019, through the first mode discussed above, are aptly alleged in the *Information* in this case. Below is a chart depicting the presence of the elements of the said crimes *vis-à-vis* the alleged facts and/or circumstances appearing in the *Information*, to wit:

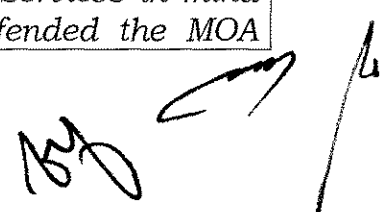
Elements of Section 3 (h)	Allegations in the Information
The accused is a public officer;	“...above-named accused JED PATRICK ESCALANTE MABILOG and PLARIDEL CORDERO NAVA II, both public officers, being then the City Mayor and a Member of the Sangguniang Panlungsod, respectively, of Iloilo City, in such capacity and committing the offense in relation to office, while in the performance and taking advantage of their official functions, conspiring and confederating with one another,”
He/she has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and	“have a direct financial or pecuniary interest in creating 3L Towing Services and appointing as its dummy owner one Leny B. Garcia, with accused Mabilog contributing FIVE HUNDRED THOUSAND PESOS, Philippine Currency (Php500,000.00) as initial capital and issuing its business and mayor’s permits without Ms. Garcia applying for the same in the Iloilo City Hall, and accused Nava researching for possible suppliers of wheel clamps from China, preparing the documents for 3L Towing Services’ registration with the Department of Trade and Industry and Bureau of Internal Revenue, which business entity was eventually awarded the

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Elements of Section 3 (h)	Allegations in the Information
	<i>Memorandum of Agreement (MOA) with the City Government of Iloilo to undertake clamping and/or towing of illegally parked vehicles within its territorial jurisdiction without competitive processes as provided under Republic Act No. 6957, As Amended (An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes),”</i>
<p>He/she either:</p> <p>a) intervenes or takes part in his official capacity in connection with such interest; or</p> <p>b) is prohibited from having such interest by the Constitution or by any law.</p>	<i>“with both accused intervening in their official capacity in the following manner: accused Mabilog instructed accused Nava to draft the above-named MOA without incorporating the requirements of R.A. No. 6957 to favor 3L Towing services, secured the services of another lawyer to review/revise the draft MOA, requested authority from the Sangguniang Panlungsod to sign the MOA with 3L Towing Services, and signed the MOA, while accused Nava on the other hand, sponsored on 20 January 2015 Regulation Ordinance No. 2015-049, amending Regulation Ordinance No. 2014-191 (Towing Ordinance of Iloilo City), by adding provisions allowing a private person or entity owning or processing Denver boots or wheel clamps to enter into a MOA with the City Government with a reward of 70% of the fines collected, drafted the MOA incorporating said amendments with 3L Towing Services in mind and publicly defended the MOA</i>



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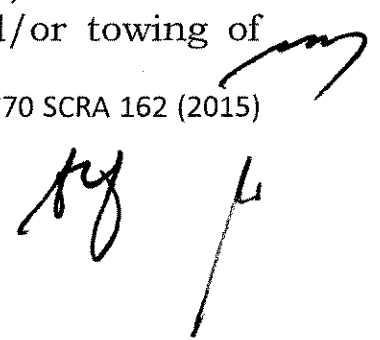
Elements of Section 3 (h)	Allegations in the Information
	<i>with 3L Towing Services, all to the detriment of public service."</i>

As earlier discussed, the quashal of an Information on the ground that the facts charged do not constitute an offense can only be predicated on the allegations contained in the four (4) corners of the *Information* assailed, the truth and veracity of which are hypothetically admitted by the movant. In this regard, the question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged **without considering matters *aliunde***.

Additionally, in issues concerning the sufficiency of allegations in an Information, the Rules of Criminal Procedure and jurisprudence only require an Information to state the **ultimate facts** constituting the offense and **not** the finer details of how and why the alleged crime was committed by the accused because these matters are more appropriate for trial.²² Simply put, matters of evidence and other details, *i.e.*, the facts supporting the ultimate facts, need not be alleged in the Information.

Given these, the Court deems the assailed *Information* to be sufficient as it states all the essential elements of the charge or the ultimate facts constituting the crime of Violation of Section 3 (h) of R.A. No. 3019, as shown by the table above. Contrary to accused-movant Nava II's submissions, the allegations in the *Information* against him tend to establish the crime of Violation of 3 (h) of R.A. No. 3019 since the totality of the same show that accused-movant Nava II, in conspiracy with accused Mabilog, (1) sponsored and eventually helped pass the ordinance for the privatization of clamping and/or towing of illegally parked vehicles within Iloilo City, (2) organized 3L Towing Services, a business primarily intended to undertake clamping and/or towing of

²² Rule 110, Sections 6 and 9; See also *People v. Sandiganbayan*, 770 SCRA 162 (2015) and *People v. Romualdez*, 559 SCRA 492 (2008).



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parked vehicles, and eventually (3) through their intervention and machinations, made sure 3L Towing Services was able to secure a MOA with the City of Iloilo for the clamping and/or towing of illegally parked vehicles within the city.

A perusal of the arguments raised by accused-movant Nava II in his present Motion shows that he is challenging the allegations for being “bare and unsubstantiated,” and “anchored on conjectures.” However, it is a basic principle that by filing his Motion, accused-movant Nava II is deemed to have **hypothetically admitted the truth of all the allegations contained in the assailed *Information***. Thus, he cannot seek the remedy of the quashal of the *Information* against him on the ground that the allegations therein do not constitute an offense and in the same breath argue that the allegations found therein are bare and unsubstantiated since the premise of his quashal prevents him from raising the latter argument.

Accused-movant Nava II likewise claims that the allegations in the *Information* are not sufficient to establish the elements of a Violation of Section 3 (h) since (1) the existence of a relationship *per se* does not automatically translate to having a direct or indirect financial interest in the subject contract, (2) the passage of Regulation Ordinance No. 2015-049 was not his personal act but was rather a collegiate effort by the *Sangguniang Panlungsod* of the City of Iloilo, (3) he was not a signatory to the MOA, and (4) the MOA was already mutually cancelled by the parties and was rescinded prior to its implementation. However, some of these arguments **are matters *aliunde* to the *Information*** and as such, cannot be considered by the Court in determining the merits of the present Motion. Moreover, they already pertain to the presence or absence of the elements of the crime which **are evidentiary in nature and are matters of defense that are better threshed out during the trial of the case, and**

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not prior thereto.²³

WHEREFORE, in view of the foregoing, accused-movant Plaridel Cordero Nava II's "*Motion to Quash Information (The facts charged do not constitute an offense)*" dated July 21, 2023, is hereby **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


RONALD B. MORENO
Associate Justice

²³ *Singian, Jr., v. Sandiganbayan*, 478 SCRA 348 (2005); See also *Unilever v. Tan*, 715 SCRA 36 (2014), *United Coconut Planters Bank v. Looyuko*, 534 SCRA 322 (2007), *People v. Yecyec*, 739 SCRA 719 (2014), *Clay and Feather International, Inc. v. Lichaytoo*, 649 SCRA 516 (2011) and *Lee v. KBC Bank N.V.*, 610 SCRA 117 (2010)