Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SECRETARY LEILA DE LIMA, ASSISTANT STATE PROSECUTOR STEWART ALLAN A. MARIANO, ASSISTANT STATE PROSECUTOR VIMAR M. BARCELLANO and ASSISTANT STATE PROSECUTOR GERARD E. GAERLAN, Petitioners,	**G.R. No. 209330** Present: CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*

-versus-

MARIO JOEL T. REYES, Respondent.

Promulgated: 11 JAN 2016

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DECISION

LEONEN, *J.*:

The Secretary of Justice has the discretion, upon motion or *motu proprio*, to act on any matter that may cause a probable miscarriage of justice in the conduct of a preliminary investigation. This action may include, but is not limited to, the conduct of a reinvestigation. Furthermore, a petition for certiorari under Rule 65 questioning the regularity of preliminary investigation becomes moot after the trial court completes its determination of probable cause and issues a warrant of arrest.

This Petition for Review on Certiorari assails the Decision[1] dated March 19, 2013 and Resolution[2] dated September 27, 2013 of the Court of

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1 *Rollo*, pp. 52–71. The Decision was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Special Tenth Division

Appeals, which rendered null and void Department of Justice Order No. 710[3] issued by the Secretary of Justice.[4] The Department Order created a second panel of prosecutors to conduct a reinvestigation of a murder case in view of the first panel of prosecutors' failure to admit the complainant's additional evidence.

Dr. Gerardo Ortega (Dr. Ortega), also known as "Doc Gerry," was a veterinarian and anchor of several radio shows in Palawan. On January 24, 2011, at around 10:30 am, he was shot dead inside the Baguio Wagwagan Ukay-ukay in San Pedro, Puerto Princesa City, Palawan.[5] After a brief chase with police officers, Marlon B. Recamata was arrested. On the same day, he made an extrajudicial confession admitting that he shot Dr. Ortega. He also implicated Rodolfo "Bumar" O. Edrad (Edrad), Dennis C. Aranas, and Armando "Salbakotah" R. Noel, Jr.[6]

On February 6, 2011, Edrad executed a Sinumpaang Salaysay before the Counter-Terrorism Division of the National Bureau of Investigation where he alleged that it was former Palawan Governor Mario Joel T. Reyes (former Governor Reyes) who ordered the killing of Dr. Ortega.[7]

On February 7, 2011, Secretary of Justice Leila De Lima issued Department Order No. 091[8] creating a special panel of prosecutors (First Panel) to conduct preliminary investigation. The First Panel was composed of Senior Assistant Prosecutor Edwin S. Dayog, Assistant State Prosecutor Bryan Jacinto S. Cacha, and Assistant State Prosecutor John Benedict D. Medina.[9]

On February 14, 2011, Dr. Patria Gloria Inocencio-Ortega (Dr. Inocencio-Ortega), Dr. Ortega's wife, filed a Supplemental Affidavit-Complaint implicating former Governor Reyes as the mastermind of her husband's murder. Former Governor Reyes' brother, Coron Mayor Mario T. Reyes, Jr., former Marinduque Governor Jose T. Carreon, former Provincial Administrator Atty. Romeo Seratubias, Marlon Recamata, Dennis Aranas, Valentin Lesias, Arturo D. Regalado, Armando Noel, Rodolfo O. Edrad, and several John and Jane Does were also implicated.[10]

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of Five. Associate Justices Noel G. Tijam and Romeo F. Barza dissented. Associate Justice Acosta penned a Separate Concurring Opinion.

2 Id. at 121–126. The Resolution was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Special Tenth Division of Five. Associate Justices Noel G. Tijam and Romeo F. Barza voted to grant the Motion.

3 Id. at 169.

4 Id.

5 Id. at 846, Department of Justice Resolution dated March 12, 2012.

6 Id. at 53, Court of Appeals Decision dated March 19, 2013.

7 Id.

8 Id. at 1066.

9 Id. at 54, Court of Appeals Decision.

10 Id. at 53–54.

On June 8, 2011, the First Panel concluded its preliminary investigation and issued the Resolution[11] dismissing the Affidavit-Complaint.

On June 28, 2011, Dr. Inocencio-Ortega filed a Motion to Re-Open Preliminary Investigation, which, among others, sought the admission of mobile phone communications between former Governor Reyes and Edrad.[12] On July 7, 2011, while the Motion to Re-Open was still pending, Dr. Inocencio-Ortega filed a Motion for Partial Reconsideration Ad Cautelam of the Resolution dated June 8, 2011. Both Motions were denied by the First Panel in the Resolution[13] dated September 2, 2011.[14]

On September 7, 2011, the Secretary of Justice issued Department Order No. 710 creating a new panel of investigators (Second Panel) to conduct a reinvestigation of the case. The Second Panel was composed of Assistant State Prosecutor Stewart Allan M. Mariano, Assistant State Prosecutor Vimar M. Barcellano, and Assistant State Prosecutor Gerard E. Gaerlan.

Department Order No. 710 ordered the reinvestigation of the case "in the interest of service and due process"[15] to address the offer of additional evidence denied by the First Panel in its Resolution dated September 2, 2011. The Department Order also revoked Department Order No. 091.[16]

Pursuant to Department Order No. 710, the Second Panel issued a Subpoena requiring former Governor Reyes to appear before them on October 6 and 13, 2011 and to submit his counter-affidavit and supporting evidence.[17]

On September 29, 2011, Dr. Inocencio-Ortega filed before the Secretary of Justice a Petition for Review (Ad Cautelam) assailing the First Panel's Resolution dated September 2, 2011.[18]

On October 3, 2011, former Governor Reyes filed before the Court of Appeals a Petition for Certiorari and Prohibition with Prayer for a Writ of Preliminary Injunction and/or Temporary Restraining Order assailing the

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11 Id. at 546–567.
12 Id. at 54, Court of Appeals Decision.
13 Id. at 726–731.
14 Id. at 54, Court of Appeals Decision..
15 Id. at 169.
16 Id. at 55, Court of Appeals Decision.
17 Id. at 170.
18 Id. at 55, Court of Appeals Decision.

creation of the Second Panel. In his Petition, he argued that the Secretary of Justice gravely abused her discretion when she constituted a new panel. He also argued that the parties were already afforded due process and that the evidence to be addressed by the reinvestigation was neither new nor material to the case.[19]

On March 12, 2012, the Second Panel issued the Resolution finding probable cause and recommending the filing of informations on all accused, including former Governor Reyes.[20] Branch 52 of the Regional Trial Court of Palawan subsequently issued warrants of arrest on March 27, 2012.[21] However, the warrants against former Governor Reyes and his brother were ineffective since the two allegedly left the country days before the warrants could be served.[22]

On March 29, 2012, former Governor Reyes filed before the Secretary of Justice a Petition for Review Ad Cautelam[23] assailing the Second Panel's Resolution dated March 12, 2012.

On April 2, 2012, he also filed before the Court of Appeals a Supplemental Petition for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order impleading Branch 52 of the Regional Trial Court of Palawan.[24]

In his Supplemental Petition, former Governor Reyes argued that the Regional Trial Court could not enforce the Second Panel's Resolution dated March 12, 2012 and proceed with the prosecution of his case since this Resolution was void.[25]

On March 19, 2013, the Court of Appeals, in a Special Division of Five, rendered the Decision[26] declaring Department Order No. 710 null and void and reinstating the First Panel's Resolutions dated June 8, 2011 and September 2, 2011.

According to the Court of Appeals, the Secretary of Justice committed grave abuse of discretion when she issued Department Order No. 710 and created the Second Panel. The Court of Appeals found that she should have modified or reversed the Resolutions of the First Panel pursuant to the 2000

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19 Id.
20 Id. at 56.
21 Id.
22 Id. at 20, Petition for Review.
23 Id. at 880–944.
24 Id. at 56, Court of Appeals Decision.
25 Id.
26 Id. at 52–71.

NPS Rule on Appeal[27] instead of issuing Department Order No. 710 and creating the Second Panel. It found that because of her failure to follow the procedure in the 2000 NPS Rule on Appeal, two Petitions for Review Ad Cautelam filed by the opposing parties were pending before her.[28]

The Court of Appeals also found that the Secretary of Justice's admission that the issuance of Department Order No. 710 did not set aside the First Panel's Resolution dated June 8, 2011 and September 2, 2011 "[compounded] the already anomalous situation."[29] It also stated that Department Order No. 710 did not give the Second Panel the power to reverse, affirm, or modify the Resolutions of the First Panel; therefore, the Second Panel did not have the authority to assess the admissibility and weight of any existing or additional evidence.[30]

The Secretary of Justice, the Second Panel, and Dr. Inocencio-Ortega filed a Motion for Reconsideration of the Decision dated March 19, 2013. The Motion, however, was denied by the Court of Appeals in the Resolution[31] dated September 27, 2013.

In its Resolution, the Court of Appeals stated that the Secretary of Justice had not shown the alleged miscarriage of justice sought to be prevented by the creation of the Second Panel since both parties were given full opportunity to present their evidence before the First Panel. It also ruled that the evidence examined by the Second Panel was not additional evidence but "forgotten evidence"[32] that was already available before the First Panel during the conduct of the preliminary investigation.[33]

Aggrieved, the Secretary of Justice and the Second Panel filed the present Petition for Review on Certiorari[34] assailing the Decision dated March 19, 2013 and Resolution dated September 27, 2013 of the Court of Appeals. Respondent Mario Joel T. Reyes filed his Comment[35] to the Petition in compliance with this court's Resolution dated February 17, 2014.[36] Petitioners' Reply[37] to the Comment was filed on October 14, 2014 in compliance with this court's Resolution dated June 23, 2014.[38]

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27 *See* 2000 NATIONAL PROSECUTION SERVICE RULE ON APPEAL, sec. 12.
28 *Rollo*, pp. 61–65, Court of Appeals Decision.
29 Id. at 66.
30 Id. at 67.
31 Id. at 121–126.
32 Id. at 124, Court of Appeals Resolution.
33 Id. at 123–126.
34 Id. at 10–50.
35 Id. at 1028–1066.
36 Id. at 1021.
37 Id. at 1114–1132.
38 Id. at 1084.

Petitioners argue that the Secretary of Justice acted within her authority when she issued Department Order No. 710. They argue that her issuance was a purely executive function and not a quasi-judicial function that could be the subject of a petition for certiorari or prohibition.[39] In their submissions, they point out that under Republic Act No. 10071 and the 2000 NPS Rule on Appeal, the Secretary of Justice has the power to create a new panel of prosecutors to reinvestigate a case to prevent a miscarriage of justice.[40]

Petitioners' position was that the First Panel "appear[ed] to have ignored the rules of preliminary investigation"[41] when it refused to receive additional evidence that would have been crucial for the determination of the existence of probable cause.[42] They assert that respondent was not deprived of due process when the reinvestigation was ordered since he was not prevented from presenting controverting evidence to Dr. Inocencio-Ortega's additional evidence.[43] Petitioners argue that since the Information had been filed, the disposition of the case was already within the discretion of the trial court.[44]

Respondent, on the other hand, argues that the Secretary of Justice had no authority to order *motu proprio* the reinvestigation of the case since Dr. Inocencio-Ortega was able to submit her alleged new evidence to the First Panel when she filed her Motion for Partial Reconsideration. He argues that all parties had already been given the opportunity to present their evidence before the First Panel so it was not necessary to conduct a reinvestigation.[45]

Respondent argues that the Secretary of Justice's discretion to create a new panel of prosecutors was not "unbridled"[46] since the 2000 NPS Rule on Appeal requires that there be compelling circumstances for her to be able to designate another prosecutor to conduct the reinvestigation.[47] He argues that the Second Panel's Resolution dated March 12, 2012 was void since the Panel was created by a department order that was beyond the Secretary of Justice's authority to issue. He further argues that the trial court did not acquire jurisdiction over the case since the Information filed by the Second Panel was void.[48]

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39 Id.at 26–33, Petition for Review.
40 Id. at 34–35.
41 Id. at 34.
42 Id. at 24–36.
43 Id. at 1116–1117, Reply.
44 Id. at 41.
45 Id. at 1045–1050, Comment.
46 Id. at 1050.
47 Id. at 1050–1052.
48 Id. at 1059–1063.

The issues for this court's resolution are:

First, whether the Court of Appeals erred in ruling that the Secretary of Justice committed grave abuse of discretion when she issued Department Order No. 710, and with regard to this:

a. Whether the issuance of Department Order No. 710 was an executive function beyond the scope of a petition for certiorari or prohibition; and

b. Whether the Secretary of Justice is authorized to create *motu proprio* another panel of prosecutors in order to conduct a reinvestigation of the case.

Lastly, whether this Petition for Certiorari has already been rendered moot by the filing of the information in court, pursuant to *Crespo v. Mogul*.[49]

I

The determination by the Department of Justice of the existence of probable cause is not a quasi-judicial proceeding. However, the actions of the Secretary of Justice in affirming or reversing the findings of prosecutors may still be subject to judicial review if it is tainted with grave abuse of discretion.

Under the Rules of Court, a writ of certiorari is directed against "any tribunal, board or officer exercising judicial or quasi-judicial functions."[50] A quasi-judicial function is "the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature."[51] Otherwise stated, an administrative agency performs quasi-judicial functions if it renders awards, determines the rights of opposing parties, or if their decisions have the same effect as the judgment of a court.[52]

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49 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

50 RULES OF COURT, Rule 65, sec. 1.

51 *Securities and Exchange Commission v. Universal Rightfield Property Holdings, Inc.*, G.R. No. 181381, July 20, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/181381.pdf> [Per J. Peralta, Third Division], *citing United Coconut Planters Bank v. E Ganzon, Inc.*, 609 Phil. 104, 122 (2009) [Per J. Chico-Nazario, Third Division].

52 *See Santos v. Go*, 510 Phil. 137 (2005) [Per J. Quisumbing, First Division].

In a preliminary investigation, the prosecutor does not determine the guilt or innocence of an accused. The prosecutor only determines "whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[53] As such, the prosecutor does not perform quasi-judicial functions. In *Santos v. Go*:[54]

> [T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.
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> Though some cases describe the public prosecutors power to conduct a preliminary investigation as quasi-judicial in nature, this is true only to the extent that, like quasi-judicial bodies, the prosecutor is an officer of the executive department exercising powers akin to those of a court, and the similarity ends at this point. A quasi-judicial body is as an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making. A quasi-judicial agency performs adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court. Such is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice is reviewing the formers order or resolutions.[55]

In *Spouses Dacudao v. Secretary of Justice*,[56] a petition for certiorari, prohibition, and mandamus was filed against the Secretary of Justice's issuance of a department order. The assailed order directed all prosecutors to forward all cases already filed against Celso de los Angeles of the Legacy Group to the Secretariat of the Special Panel created by the Department of Justice.

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53 RULES OF COURT, Rule 112, sec. 1.

54 510 Phil. 137 (2005) [Per J. Quisumbing, First Division].

55 Id. at 147–148, *citing Bautista v. Court of Appeals*, 413 Phil. 159, 168–169 (2001) [Per J. Bellosillo, Second Division]; *Cojuangco, Jr. v. Presidential Commission on Good Government*, 268 Phil. 235 (1990) [Per J. Gancayco, En Banc]; *Koh v. Court of Appeals*, 160-A Phil. 1034 (1975) [Per J. Esguerra, First Division]; *Andaya v. Provincial Fiscal of Surigao del Norte*, 165 Phil. 134 (1976) [Per J. Fernando, First Division]; *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

56 G.R. No. 188056, January 8, 2013, 688 SCRA 109 [Per J. Bersamin, En Banc].

This court dismissed the petition on the ground that petitions for certiorari and prohibition are directed only to tribunals that exercise judicial or quasi-judicial functions. The issuance of the department order was a purely administrative or executive function of the Secretary of Justice. While the Department of Justice may perform functions similar to that of a court of law, it is not a quasi-judicial agency:

> *The fact that the DOJ is the primary prosecution arm of the Government does not make it a quasi-judicial office or agency. Its preliminary investigation of cases is not a quasi-judicial proceeding. Nor does the DOJ exercise a quasi-judicial function when it reviews the findings of a public prosecutor on the finding of probable cause in any case*. Indeed, in *Bautista v. Court of Appeals*, the Supreme Court has held that a preliminary investigation is not a quasi-judicial proceeding, stating:
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> > . . . [t]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal.
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> There may be some decisions of the Court that have characterized the public prosecutor's power to conduct a preliminary investigation as quasi-judicial in nature. Still, this characterization is true only to the extent that the public prosecutor, like a quasi-judicial body, is an officer of the executive department exercising powers akin to those of a court of law.
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> But the limited similarity between the public prosecutor and a quasi-judicial body quickly ends there. For sure, a quasi-judicial body is an organ of government other than a court of law or a legislative office that affects the rights of private parties through either adjudication or rule-making; it performs adjudicatory functions, and its awards and adjudications determine the rights of the parties coming before it; its decisions have the same effect as the judgments of a court of law. In contrast, that is not the effect whenever a public prosecutor conducts a preliminary investigation to determine probable cause in order to file a criminal information against a person properly charged with the offense, or whenever the Secretary of Justice reviews the public prosecutor's orders or resolutions.[57] (Emphasis supplied)

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[57] Id. at 120–121, *citing Bautista v. Court of Appeals*, 413 Phil. 159, 168–169 (2001) [Per J. Bellosillo, Second Division].

Similarly, in *Callo-Claridad v. Esteban*,[58] we have stated that a petition for review under Rule 43 of the Rules of Court cannot be brought to assail the Secretary of Justice's resolution dismissing a complaint for lack of probable cause since this is an "essentially executive function":[59]

> A petition for review under Rule 43 is a mode of appeal to be taken only to review the decisions, resolutions or awards by the quasi-judicial officers, agencies or bodies, particularly those specified in Section 1 of Rule 43. In the matter before us, however, the Secretary of Justice was not an officer performing a quasi-judicial function. In reviewing the findings of the OCP of Quezon City on the matter of probable cause, the Secretary of Justice performed an essentially executive function to determine whether the crime alleged against the respondents was committed, and whether there was probable cause to believe that the respondents were guilty thereof.[60]

A writ of prohibition, on the other hand, is directed against "the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions."[61] The Department of Justice is not a court of law and its officers do not perform quasi-judicial functions. The Secretary of Justice's review of the resolutions of prosecutors is also not a ministerial function.

An act is considered ministerial if "an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done."[62] In contrast, an act is considered discretionary "[i]f the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed."[63] Considering that "full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation,"[64] the functions of the prosecutors and the Secretary of Justice are not ministerial.

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58 G.R. No. 191567, March 20, 2013, 694 SCRA 185 [Per J. Bersamin, First Division].

59 Id. at 197.

60 Id. at 196–197, *citing Bautista v. Court of Appeals*, 413 Phil. 159 (2001) [Per J. Bellosillo, Second Division].

61 RULES OF COURT, Rule 65, sec. 2.

62 *Ferrer, Jr. v. Bautista*, G.R. No. 210551, June 30, 2015 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/210551.pdf> [Per J. Peralta, En Banc], *citing Ongsuco, et al. vs. Hon. Malones*, 619 Phil. 492, 508 (2009) [Per J. Chico-Nazario, Third Division].

63 *Carolino v. Senga*, G.R. No. 189649, April 20, 2015 http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/april2015/189649.pdf> [Per J. Peralta, Third Division], *citing Heirs of Spouses Venturillo v. Judge Quitain*, 536 Phil. 839, 846 (2006) [Per J. Tinga, Third Division].

64 *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591 (2007) [Per J. Austria-Martinez, Third Division], *citing Metropolitan Bank & Trust Co. v. Tonda*, 392 Phil. 797, 814 (2000) [Per J. Gonzaga-Reyes, Third Division].

However, even when an administrative agency does not perform a judicial, quasi-judicial, or ministerial function, the Constitution mandates the exercise of judicial review when there is an allegation of grave abuse of discretion.[65] In *Auto Prominence Corporation v. Winterkorn*:[66]

> In ascertaining whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in his determination of the existence of probable cause, the party seeking the writ of certiorari must be able to establish that the Secretary of Justice exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough; it must amount to lack or excess of jurisdiction. Excess of jurisdiction signifies that he had jurisdiction over the case, but (he) transcended the same or acted without authority.[67]

Therefore, any question on whether the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming, reversing, or modifying the resolutions of prosecutors may be the subject of a petition for certiorari under Rule 65 of the Rules of Court.

II

Under existing laws, rules of procedure, and jurisprudence, the Secretary of Justice is authorized to issue Department Order No. 710.

Section 4 of Republic Act No. 10071[68] outlines the powers granted by law to the Secretary of Justice. The provision reads:

> Section 4. Power of the Secretary of Justice. - The power vested in the Secretary of Justice includes authority to act directly on any matter involving national security or a probable miscarriage of justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor and to review, reverse, revise, modify or affirm on appeal or petition for review as the law or the rules of the Department of Justice (DOJ) may provide, final judgments and orders of the prosecutor general, regional prosecutors, provincial prosecutors, and city prosecutors.

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65 *See* CONST., art. VIII, sec. 1. *See also Unilever, Philippines v. Tan*, G.R. No. 179367, January 29, 2014, 715 SCRA 36 [Per J. Brion, Second Division].

66 597 Phil. 47 (2009) [Per J. Chico-Nazario, Third Division].

67 Id. at 57, *citing Sarigumba v. Sandiganbayan*, 491 Phil. 704 (2005) [Per J. Callejo, Sr., Second Division].

68 The Prosecution Service Act of 2010.

A criminal prosecution is initiated by the filing of a complaint to a prosecutor who shall then conduct a preliminary investigation in order to determine whether there is probable cause to hold the accused for trial in court.[69] The recommendation of the investigating prosecutor on whether to dismiss the complaint or to file the corresponding information in court is still subject to the approval of the provincial or city prosecutor or chief state prosecutor.[70]

However, a party is not precluded from appealing the resolutions of the provincial or city prosecutor or chief state prosecutor to the Secretary of Justice. Under the 2000 NPS Rule on Appeal,[71] appeals may be taken within 15 days within receipt of the resolution by filing a verified petition for review before the Secretary of Justice.[72]

In this case, the Secretary of Justice designated a panel of prosecutors to investigate on the Complaint filed by Dr. Inocencio-Ortega. The First Panel, after conduct of the preliminary investigation, resolved to dismiss the Complaint on the ground that the evidence was insufficient to support a finding of probable cause. Dr. Inocencio-Ortega filed a Motion to Re-Open and a Motion for Partial Investigation, which were both denied by the First Panel. Before Dr. Inocencio-Ortega could file a petition for review, the Secretary of Justice issued Department Order No. 710 and constituted another panel of prosecutors to reinvestigate the case. The question therefore is whether, under the 2000 NPS Rule on Appeal, the Secretary of Justice may, even without a pending petition for review, *motu proprio* order the conduct of a reinvestigation.

The 2000 NPS Rule on Appeal requires the filing of a petition for review before the Secretary of Justice can reverse, affirm, or modify the appealed resolution of the provincial or city prosecutor or chief state prosecutor.[73] The Secretary of Justice may also order the conduct of a reinvestigation in order to resolve the petition for review. Under Section 11:

> SECTION 11. Reinvestigation. If the Secretary of Justice finds it necessary to reinvestigate the case, the reinvestigation shall be held by the investigating prosecutor, unless, for compelling reasons, another prosecutor is designated to conduct the same.

Under Rule 112, Section 4 of the Rules of Court, however, the Secretary of Justice may *motu proprio* reverse or modify resolutions of the

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69 See RULES OF COURT, Rule 110, sec. 1(a) and Rule 112, sec. 1.
70 RULES OF COURT, Rule 112, sec. 4.
71 Department Circular No. 70 (2000).
72 2000 NATIONAL PROSECUTION SERVICE RULE ON APPEAL, sec. 2 and 4.
73 2000 NATIONAL PROSECUTION SERVICE RULE ON APPEAL, sec. 12.

provincial or city prosecutor or the chief state prosecutor even without a pending petition for review. Section 4 states:

> SEC. 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.
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> . . . .
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> *If upon petition by a proper party under such rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.* The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

The Secretary of Justice exercises control and supervision over prosecutors and it is within her authority to affirm, nullify, reverse, or modify the resolutions of her prosecutors. In *Ledesma v. Court of Appeals*:[74]

> Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.
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> Section 39, Chapter 8, Book IV in relation to Section 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:
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> > (1) Supervision and Control. Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review,

[74] 344 Phil. 207 (1997) [Per J. Panganiban, Third Division].

> approve, reverse or modify acts and decisions of subordinate officials or units[.][75]

Similarly, in *Rural Community Bank of Guimba v. Hon. Talavera*:[76]

> The actions of prosecutors are not unlimited; they are subject to review by the secretary of justice who may affirm, nullify, reverse or modify their actions or opinions. Consequently the secretary may direct them to file either a motion to dismiss the case or an information against the accused.
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> In short, the secretary of justice, who has the power of supervision and control over prosecuting officers, is the ultimate authority who decides which of the conflicting theories of the complainants and the respondents should be believed.[77]

Section 4 of Republic Act No. 10071 also gives the Secretary of Justice the authority to *directly* act on any "probable miscarriage of justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor." Accordingly, the Secretary of Justice may step in and order a reinvestigation even without a prior motion or petition from a party in order to prevent any probable miscarriage of justice.

Dr. Inocencio-Ortega filed a Motion to Re-Open the preliminary investigation before the First Panel in order to admit as evidence mobile phone conversations between Edrad and respondent and argued that these phone conversations tend to prove that respondent was the mastermind of her husband's murder. The First Panel, however, dismissed the Motion on the ground that it was filed out of time. The First Panel stated:

> Re-opening of the preliminary investigation for the purpose of receiving additional evidence presupposes that the case has been submitted for resolution but no resolution has been promulgated therein by the investigating prosecutor. Since a resolution has already been promulgated by the panel of prosecutors in this case, the motion to re-open the preliminary investigation is not proper and has to be denied.[78]

In the same Resolution, the First Panel denied Dr. Inocencio-Ortega's Motion for Partial Reconsideration on the ground that "the evidence on

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75 Id. at 228–229.

76 A.M. No. RTJ-05-1909, 495 Phil. 30 (2005) [Per J. Panganiban, En Banc].

77 Id. at 41–42, *citing Roberts Jr. v. Court of Appeals*, 324 Phil. 568 (1996) [Per J. Davide, Jr., En Banc]; *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc]; *Jalandoni v. Secretary Drilon*, 383 Phil. 855 (2000) [Per J. Buena, Second Division]; *Vda. de Jacob v. Puno*, 216 Phil. 138 (1984) [Per J. Relova, En Banc].

78 *Rollo*, p. 737, Resolution dated September 2, 2011.

record does not suffice to establish probable cause."[79] It was then that the Secretary of Justice issued Department Order No. 710, which states:

> In the interest of service and due process, and to give both parties all the reasonable opportunity to present their evidence during the preliminary investigation, a new panel is hereby created composed of the following for the purpose of conducting a reinvestigation . . . .
>
> . . . .
>
> *The reinvestigation in this case is hereby ordered to address the offer of additional evidence by the complainants, which was denied by the former panel in its Resolution of 2 September 2011 on the ground that an earlier resolution has already been promulgated prior to the filing of the said motion*, and such other issues which may be raised before the present panel.[80] (Emphasis supplied)

In her reply-letter dated September 29, 2011 to respondent's counsel, the Secretary of Justice further explained that:

> The order to reinvestigate was dictated by substantial justice and our desire to have a comprehensive investigation. We do not want any stone unturned, or any evidence overlooked. As stated in D.O. No. 710, we want to give "both parties all the reasonable opportunity to present their evidence."[81]

Under these circumstances, it is clear that the Secretary of Justice issued Department Order No. 710 because she had reason to believe that the First Panel's refusal to admit the additional evidence may cause a probable miscarriage of justice to the parties. The Second Panel was created not to overturn the findings and recommendations of the First Panel but to make sure that *all* the evidence, including the evidence that the First Panel refused to admit, was investigated. Therefore, the Secretary of Justice did not act in an "arbitrary and despotic manner, by reason of passion or personal hostility."[82]

Accordingly, Dr. Inocencio-Ortega's Petition for Review before the Secretary of Justice was rendered moot with the issuance by the Second Panel of the Resolution dated March 12, 2012 and the filing of the Information against respondent before the trial court.

III

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79 Id.

80 Id. at 169.

81 Id. at 1067.

82 *Auto Prominence Corporation v. Winterkorn*, 597 Phil. 47 (2009) [Per J. Chico-Nazario, Third Division].

The filing of the information and the issuance by the trial court of the respondent's warrant of arrest has already rendered this Petition moot.

It is settled that executive determination of probable cause is different from the judicial determination of probable cause. In *People v. Castillo and Mejia*:[83]

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[84] (Emphasis supplied)

The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.[85]

A preliminary investigation is "merely inquisitorial,"[86] and is only conducted to aid the prosecutor in preparing the information.[87] It serves a two-fold purpose: first, to protect the innocent against wrongful prosecutions; and second, to spare the state from using its funds and resources in useless prosecutions. In *Salonga v. Cruz-Paño*:[88]

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83 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

84 Id. at 764–765, *citing Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per J. Regalado, En Banc]; *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620–621 (1996) [Per J. Davide, Jr., En Banc]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per J. Panganiban, En Banc].

85 *See Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

86 *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 357 [Per J. Nocon, En Banc].

87 Id.

88 219 Phil. 402 (1985) [Per J. Gutierrez, Jr., En Banc].

> The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials.[89]

Moreover, a preliminary investigation is merely preparatory to a trial. It is not a trial on the merits. An accused's right to a preliminary investigation is merely statutory; it is not a right guaranteed by the Constitution. Hence, any alleged irregularity in an investigation's conduct does not render the information void nor impair its validity. In *Lozada v. Fernando*:[90]

> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law."[91] (Citations omitted)

People v. Narca[92] further states:

> It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the records of the case in court. Parties may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating officer. In fact, a preliminary investigation may even be conducted ex-parte in certain cases. Moreover, in Section 1 of Rule 112, the purpose of a preliminary investigation is only to determine a well grounded belief if a crime was probably committed by an accused. *In any case, the invalidity or absence of a preliminary investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair the validity of the information or otherwise render it defective.*[93] (Emphasis supplied)

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89 Id. at 428, *citing Trocio v. Manta*, 203 Phil. 618 (1982) [Per J. Relova, First Division]; and *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per J. Laurel, En Banc].

90 92 Phil. 1051 (1953) [Per J. Reyes, En Banc].

91 Id. at 1053, *citing U.S. v. Yu Tuico*, 34 Phil. 209 [Per J. Moreland, Second Division]; *People v. Badilla*, 48 Phil. 716 (1926) [Per J. Ostrand, En Banc]; II Moran, Rules of Court, 1952 ed., p. 673; *U.S. v. Grant and Kennedy*, 18 Phil. 122 (1910) [Per J. Trent, En Banc].

92 341 Phil. 696 (1997) [Per J. Francisco, Third Division].

93 Id., citing *Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per J. Reyes, En Banc]; RULES OF COURT, Rule 112, sec. 8; RULES OF COURT, Rule 112, sec. 3(e); RULES OF COURT, Rule 112, sec. 3(d); *Mercado v. Court of Appeals*, G.R. No. 109036, July 5, 1995, 245 SCRA 594 [Per J. Quiason, First Division];

Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. In *Crespo v. Mogul*:[94]

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.
>
> *Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.*
>
> However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.
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> The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his

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Rodriguez v. Sandiganbayan, 306 Phil. 567 (1983) [Per J. Escolin, En Banc]; *Webb v. De Leon*, G.R. No. 121234, August 23, 1995, 247 SCRA 652 [Per J. Puno, Second Division]; *Romualdez v. Sandiganbayan*, 313 Phil. 870 (1995) [Per C.J. Narvasa, En Banc]; and *People v. Gomez*, 202 Phil. 395 (1982) [Per J. Relova, First Division].

94 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

> opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.
>
> *The rule therefore 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 in 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. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.*[95] (Emphasis supplied)

Thus, it would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent.[96] The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause. In *Mendoza v. People*:[97]

> While it is within the trial court's discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor's determination of probable cause; rather, the judge makes a

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[95] Id. 474–476, *citing Herrera v. Barretto*, 25 Phil. 245 (1913) [Per J. Moreland, En Banc]; *U.S. v. Limsiongco*, 41 Phil. 94 (1920) [Per J. Malcolm, En Banc]; *De la Cruz v. Moir*, 36 Phil. 213 (1917) [Per J. Moreland, En Banc]; RULES OF COURT, Rule 110, sec. 1; RULES OF CRIM. PROC. (1985), sec. 1; 21 C.J.S. 123; Carrington; *U.S. v. Barreto*, 32 Phil. 444 (1917) [Per Curiam, En Banc]; *Asst. Provincial Fiscal of Bataan v. Dollete*, 103 Phil. 914 (1958) [Per J. Montemayor, En Banc]; *People v. Zabala*, 58 O. G. 5028; *Galman v. Sandiganbayan*, 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc]; *People v. Beriales*, 162 Phil. 478 (1976) [Per J. Concepcion, Jr., Second Division]; *U.S. v. Despabiladeras*, 32 Phil. 442 (1915) [Per J. Carson, En Banc]; *U.S. v. Gallegos*, 37 Phil. 289 (1917) [Per J. Johnson, En Banc]; *People v. Hernandez*, 69 Phil. 672 (1964) [Per J. Labrador, En Banc]; *U.S. v. Labial*, 27 Phil. 82 (1914) [Per J. Carson, En Banc]; *U.S. v. Fernandez*, 17 Phil. 539 (1910) [Per J. Torres, En Banc]; *People v. Velez*, 77 Phil. 1026 (1947) [Per J. Feria, En Banc].

[96] *Rollo*, p. 56, Court of Appeals Decision.

[97] G.R. No. 197293, April 21, 2014, 722 SCRA 647 [Per J. Leonen, Third Division].

> determination of probable cause independent of the prosecutor's finding.[98]

Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.

The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy"[99] provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.

The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.

WHEREFORE, the Petition is **DISMISSED** for being moot. Branch 52 of the Regional Trial Court of Palawan is **DIRECTED** to proceed with prosecution of Criminal Case No. 26839.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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98 Id. at 656.
99 RULES OF COURT, Rule 65, sec 1.

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice