EN BANC

G.R. Nos. 212593-94: JESSICA LUCILA G. REYES, *petitioner* v. **THE HONORABLE OMBUDSMAN,** *respondent;* **G.R. Nos. 213163-78: JESSICA LUCILA G. REYES,** *petitioner* v. **HONORABLE SANDIGANBAYAN [THIRD DIVISION] AND PEOPLE OF THE PHILIPPINES** *respondents;* **G.R. Nos. 213475-76: JOHN RAYMUND DE ASIS,** *petitioner* v. **CONCHITA CARPIO MORALES,** in her official capacity as **OMBUDSMAN, PEOPLE OF THE PHILIPPINES** and **SANDIGANBAYAN, THIRD DIVISION,** *respondents;* **G.R. Nos. 213540-41: JANET LIM NAPOLES,** *petitioner* v. **CONCHITA CARPIO MORALES,** in her official capacity as **OMBUDSMAN, PEOPLE OF THE PHILIPPINES** and **SANDIGANBAYAN THIRD DIVISION** *respondents;* **G.R. Nos. 213542-43: JO CHRISTINE NAPOLES** and **JAMES CHRISTOPHER NAPOLES,** *petitioners* v. **CONCHITA CARPIO MORALES,** in her official capacity as **OMBUDSMAN, PEOPLE OF THE PHILIPPINES** and **SANDIGANBAYAN THIRD DIVISION,** *respondents;* and **G.R. Nos. 215880-94: JO CHRISTINE NAPOLES** and **JAMES CHRISTOPHER NAPOLES,** *petitioners* v. **SANDIGANBAYAN THIRD DIVISION** and **PEOPLE OF THE PHILIPPINES,** *respondents*.

Promulgated:
March 15, 2016

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CONCURRING OPINION

LEONEN, *J*:

I concur with the ponencia of my esteemed colleague Associate Justice Estela M. Perlas-Bernabe. The Petitions should be dismissed. The Ombudsman did not act in grave abuse of discretion when it found probable cause to charge petitioners with Plunder under Republic Act No. 7080[1] and violation of Section 3(e)[2] of Republic Act No. 3019.[3]

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1 An Act Defining and Penalizing the Crime of Plunder (1991).

2 Rep. Act No. 3019 (1960), sec. 3 provides:
SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
. . . .
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

3 Anti-Graft and Corrupt Practices Act (1960).

In addition, the Petitions before us could also be dismissed for being moot and academic. When the Sandiganbayan issued warrants of arrest against petitioners after finding probable cause, all petitions questioning the Ombudsman's finding of probable cause, including these Petitions before us, have already become moot.

The determination of probable cause by the prosecutor is different from the determination of probable cause by the trial court.[4] A preliminary investigation is conducted by the prosecutor to determine whether there is probable cause to file an information or whether the complaint should be dismissed. Once the information is filed, the trial court acquires jurisdiction over the case. The trial court then determines the existence of probable cause for the issuance of a warrant of arrest. Any question relating to the disposition of the case should be addressed to the trial court.[5] In *Crespo v. Mogul*:[6]

> 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.[7]

Similarly, in *People v. Castillo and Mejia*:[8]

> 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

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4 *See People v. Castillo and Mejia*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].
5 *See Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].
6 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].
7 Id.
8 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

> probable cause, the judge cannot be forced to issue the arrest warrant.[9] (Emphasis supplied)

Although both the prosecutor and the trial court may rely on the same records and evidence, their findings are arrived at independently. Executive determination of probable cause is outlined by the Rules of Court,[10] Republic Act No. 6770,[11] and various issuances by the Department of Justice.[12] It is the Constitution, however, that mandates the conduct of judicial determination of probable cause:

> ARTICLE III
> BILL OF RIGHTS
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> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.* (Emphasis supplied)

In *Ho v. People*:[13]

> Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e. whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.
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> Second, since their objectives are different, *the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest.* Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, *the judge must decide independently. Hence, he must have*

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9 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].

10 *See* RULES OF COURT, Rule 112.

11 The Ombudsman Act of 1989.

12 The most common of these issuances is the 2000 NPS Rules on Appeal.

13 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].

> *supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land.* Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.
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> Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. *Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest.* This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[14] (Emphasis provided)

The conduct of a preliminary investigation is also not a venue for an exhaustive display of petitioners' evidence. It is merely preparatory to a criminal action. In *Drilon v. Court of Appeals*:[15]

> Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. *The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.* It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as

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[14] Id. at 611–612, *citing* RULES OF COURT, Rule 112, Section 6(b) and J. Reynato S. Puno, Dissenting Opinion in *Roberts Jr. vs. Court of Appeals*, 324 Phil. 568, 623–642 (1996) [Per J. Davide, Jr., En Banc].

[15] 327 Phil. 916 (1995) [Per J. Romero, Second Division].

> admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[16] (Emphasis supplied)

Thus, in *People v. Narca*,[17] this court pointed out that any alleged irregularity in the preliminary investigation does not render the information void or affect the trial court's jurisdiction:

> 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.*[18] (Emphasis supplied)

A trial court's finding of probable cause does not rely on the prosecutor's finding of probable cause. Once the trial court finds the existence of probable cause, which results in the issuance of a warrant of arrest, any question on the prosecutor's conduct of preliminary investigation has already become moot.

In *De Lima v. Reyes*,[19] we dismissed a Petition for Review on Certiorari questioning the Secretary of Justice's finding of probable cause against the accused. Once probable cause has been judicially determined, any question on the executive determination of probable cause is already moot:

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[16] Id. at 923, *citing Salonga v. Cruz-Paño,* 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per J. Laurel, En Banc]; *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 92 [Per J. Regalado, En Banc]; J. Francisco, Concurring Opinion in *Webb v. De Leon*, 317 Phil. 758, 809–811 (1995) [Per J. Puno, Second Division].

[17] 341 Phil. 696 (1997) [Per J. Francisco, Third Division].

[18] Id. at 705, *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*, 315 Phil. 657 (1995) [Per J. Quiason, First Division]; *Rodriguez v. Sandiganbayan*, 306 Phil. 567 (1983) [Per J. Escolin, En Banc]; *Webb v. De Leon*, 317 Phil. 758 (1995) [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].

[19] G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per J. Leonen, Second Division].

> 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 to cause 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.*
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> 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" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.
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> 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.[20] (Emphasis supplied)

In its July 3, 2014 Resolution, the Sandiganbayan categorically states that "it had 'personally [read] and [evaluated] the Information, the Joint Resolution dated March 28, 2013 and Joint Order dated June 4, 2013 of the [Ombudsman] together with the above-enumerated documents, including their annexes and attachments, which are all part of the records of the preliminary investigation.'"[21] In its Resolution dated September 29, 2014, the Sandiganbayan reiterated that "[a]fter further considering the records of these cases and due deliberations, the [Sandiganbayan] finds the existence of probable cause against said accused."[22] Warrants of arrest have already been issued against petitioners.[23] Thus, these Petitions questioning the Ombudsman's determination of probable cause have already become moot and academic.

ACCORDINGLY, I vote to **DISMISS** the Petitions.

MARVIC M.V.F. LEONEN
Associate Justice

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20 Id. at 20, *citing* RULES OF COURT, Rule 65, sec 1.
21 Ponencia, p. 38.
22 Id.
23 See ponencia, p. 3.

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SUPREME COURT