EN BANC

G.R. No. 229781 – Senator Leila M. De Lima, *petitioner,* ***versus*** **Hon. Juanita Guerrero, in her capacity as Presiding Judge, Regional Trial Court of Muntinlupa City, Branch 204, People of the Philippines, P/Dir. Gen. Ronald M. Dela Rosa, in his capacity as Chief of the Philippine National Police, PSupt. Philip Gil M. Philipps, in his capacity as Director, Headquarters Support Service, Supt. Arnel Jamandron Apud, in his capacity as Chief, PNP Custodial Service Unit, and all persons acting under their control, supervision, instruction or direction in relation to the Orders that may be issued by the Court,** *respondents*

Promulgated:

October 10, 2017

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DISSENTING OPINION

CAGUIOA, *J.*:

Again, I dissent.

First and foremost is the Constitution. And the Court is its most valiant guardian with the sacred duty to nip in the bud any erosion, derogation or diminution of its primacy.

This case, in almost every aspect, involves a constitutional issue — and presents itself as a moment in the country's history where the Court could, as indeed it was called upon, to lay down clear and unambiguous positions on the primacy of the Constitution. Instead of seizing this golden opportunity, and bravely asserting its role as guardian, the Court, speaking through the majority, has chosen to, once again, retreat and find refuge in technical and procedural niceties, totally brushing aside the paramount constitutional significance of this case.

The constitutional questions raised in this case are crystal clear:

Can an Information — void on its face — warrant a determination of probable cause against petitioner and justify the issuance of an arrest warrant against her and cause her arrest and detention without violating her constitutional right to be informed of the nature and cause of the accusation against her — when this very same Court *en banc* has previously ruled[1] that

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[1] *People v. Pangilinan*, 676 Phil. 16 (2011) [Per J. Peralta, with JJ. Velasco, Jr., Abad, Perez and Mendoza concurring, Third Division] and *People v. Dela Cruz*, 432 Phil. 988 (2002) [Per J. Kapunan, with JJ. Bellosillo, Vitug, Mendoza, Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez and Corona concurring, *En Banc*].

such an Information is violative of the right of the accused to be informed of the nature and cause of the accusation against him and should be acquitted?

Can a trial judge, when called upon to determine probable cause to issue a warrant of arrest, simply ignore the accused's motion to quash the Information raising lack of jurisdiction — on the expedient pretext that the rules of procedure are silent in this respect, without violating these constitutional rights of the accused?

Is it constitutional to first incarcerate an indicted person charged by a void Information, and then afterwards order its amendment because that is what the rules of procedure insinuate, without violating the accused's constitutional rights?

Can a trial judge postpone the resolution of a motion to quash the Information — based on the ground of lack of jurisdiction where the accused is charged with a violation of the Dangerous Drugs Act of 1972 (Republic Act No. 9165) without any reference to a specific dangerous drug (the *corpus delicti*), and the specific acts constituting the offense and all the elements of the offense averred in statements of fact (and not conclusions of law) — until after the determination of probable cause to issue a warrant of arrest, without violating his constitutional rights?

Are the above constitutional issues not sufficient to warrant the relaxation of the rigid application of the rules of procedure in this case — when, in innumerable other occasions,[2] this very same Court had given due course to a *certiorari* petition despite its procedural defects?

In his Dissenting Opinion in *Cambe v. Office of the Ombudsman*,[3] where former Senator Ramon "Bong" Revilla, Jr. is one of the accused, the *ponente* invoked, as an argument to free the accused, the balancing rule (ensuring that, on one hand, probable criminals are prosecuted, and, on the other, the innocent are spared from baseless prosecution). This balancing rule, according to the *ponente*, is intended to guarantee the right of every person from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed and to guard the State against the burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges, so that the Court's duty is to temper the prosecuting authority when it is used

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[2] See *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*, 568 Phil. 810 (2008) [Per J. Velasco, Jr., with JJ. Quisumbing, Carpio, Carpio-Morales and Tinga concurring, Second Division] and *Marcos-Araneta v. Court of Appeals*, 585 Phil. 38 (2008) [Per J. Velasco, Jr., with JJ. Quisumbing, Carpio-Morales, Tinga and Brion concurring, Second Division].

[3] G.R. Nos. 212014-15, 212427-28, 212694-95, 212794-95, 213477-78, 213532-33, 213536-37 & 218744-59, December 6, 2016.

for persecution.[4] Why is the *ponente* not according petitioner here the same treatment?

In *Macapagal-Arroyo v. People*,[5] the majority of the Court decreed that the situations in which the writ of *certiorari* may issue should not be limited because to do so would destroy its comprehensiveness and usefulness. This was the reasoning of the majority to justify the Court's cognizance of a special civil action for *certiorari* assailing the denial of former President Gloria Macapagal-Arroyo's demurrer to evidence before the lower court notwithstanding the express procedural rule[6] that an order denying a demurrer shall not be reviewable by appeal or *certiorari* before judgment. Why could not petitioner, in this case, be allowed to avail of the comprehensive and useful *certiorari* action even if she did not comply strictly with the procedural rules? Why is she being treated differently?

Unfortunately, these questions have become rhetorical in light of the Decision of the majority. Nevertheless, I find that there is an imperative need to discuss and answer these issues, which I do so through this dissent.

Indeed, while the confluence of stunning revelations and circumstances attendant in this case makes this case unique, its legal ramifications make it unparalleled and one of first impression. The right to liberty and the concomitant rights to due process, to be presumed innocent, to be informed of the nature and cause of the accusation against the accused; the crimes of conspiracy to trade and trading of illegal drugs; the elements of illegal drug trading; the determination of probable cause by a trial judge who is confronted with an Information with unquestionable insufficiency and a pending motion to quash the Information; and the jurisdiction over a public official who is allegedly involved in illegal trading of drugs and a recipient of its proceeds — these are the key legal concepts that define and circumscribe the unprecedented importance of this case.

The Constitution affords the individual basic universal rights that must be safeguarded, protected and upheld before he is detained to face trial for a crime or offense leveled against him in an Information or complaint.

The Constitution guarantees under the first section of the Bill of Rights that no person shall be deprived of **liberty** without due process of law. In the words of Justice Malcolm:

> Civil liberty may be said to mean that measure of freedom which may be enjoyed *in a civilized community*, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from

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4 Id. at 16-17.

5 G.R. Nos. 220598 & 220953, July 19, 2016, 797 SCRA 241 [Per J. Bersamin, with JJ. Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Del Castillo, Perez, Mendoza. Reyes and Jardeleza concurring. *En Banc.*]

6 RULES OF COURT, Rule 119, Sec. 23.

> arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. x x x [L]iberty includes the right of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. x x x[7]

Section 2 of the Article on Bill of Rights is indispensably linked with Section 1. It provides:

> SEC. 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.

Without cavil, before a person is deprived of his liberty, he must be accorded due process, and a determination of probable cause by the judge is mandatory before a warrant for his arrest may issue. Truly, the proper determination of probable cause is the cornerstone of the right to liberty.

The Constitution further provides under Section 14, Article III that "(1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right x x x to be informed of the nature and cause of the accusation against him x x x."

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee these basic rights, *viz.*:

Under the Declaration:

> Article 3: Right to life
>
> Everyone has the right to life, liberty and security of person.
>
> x x x x
>
> Article 9: Ban on arbitrary detention
>
> No one shall be subjected to arbitrary arrest, detention or exile.

And, under the Covenant:

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[7] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 705 (1919) [Per J. Malcolm, *En Banc*].

> Article 9
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> 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
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> 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
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> 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
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> 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
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> 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The Rules of Court echo the right "[t]o be presumed innocent until the contrary is proved beyond reasonable doubt,"[8] and re-affirm the right of the accused in all criminal proceedings "[t]o be informed of the nature and cause of the accusation against him."[9] These rights reinforce the accused's right to due process before his liberty may be curtailed.

The Rules of Court has a counterpart provision on determination of probable cause for the issuance of a warrant of arrest, *viz.*:

> SEC. 5. *When warrant of arrest may issue.* – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record fails to clearly establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Still another mechanism in the Rules to safeguard the accused's right to liberty is the motion to quash under Rule 117 of the Rules of Court.

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8 RULES OF COURT, Rule 115, Sec. 1(a).

9 Id., Sec. 1(b).

Section 1 of Rule 117 allows the accused to file a motion to quash the Information or complaint at any time before entering his plea. Under Section 3 of Rule 117, the accused may move to quash the complaint or Information on the grounds, among others, that (a) the facts charged do not constitute an offense, and (b) the court trying the case has no jurisdiction over the offense charged.

Even before an Information is filed before the court, the preliminary investigation stage — which is an inquiry or proceeding to determine 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 — is part and parcel of the accused's right to due process before he can be deprived of his right to liberty.

These basic, fundamental universal rights, enshrined and cast in stone in our Constitution, are ***guaranteed***. Thus, the pivotal issue in this case is this: Were Petitioner Leila M. De Lima's (Petitioner) constitutional rights violated in the proceedings below?

Given the constitutional ramifications and novel questions of law involved in this case, it is *apropos* to discuss the substantive issues ahead of the procedural ones.

The Substantive Issues

The Information leveled against Petitioner under the caption "For: *Violation of the Comprehensive Dangerous Drugs Act of 2002*, Section 5, in relation to Section 3(jj), Section 26(b), and Section 28, Republic Act No. 9165[10] ***(Illegal Drug Trading***[11]***)***," states:

> The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for **violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165**, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:
>
> > That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, **conspiring and confederating with** accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence

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[10] Hereinafter referred to as RA 9165.

[11] Emphasis supplied.

> over inmates in the New Bilibid Prison, **did then and there commit illegal drug trading, in the following manner**: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, **did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million (P5,000,000.00) Pesos on 24 November 2012, Five Million (P5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (P100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.
>
> **CONTRARY TO LAW.** (Emphasis and underscoring supplied)

The plain language of the Information reveals that it: (1) does ***not*** charge Petitioner with "attempt or conspiracy to commit illegal trading of dangerous drugs" under Section 26(b) of RA 9165; (2) does ***not*** charge Petitioner with illegal "Trading" of dangerous drugs as defined under the Act; (3) is ***fatally defective*** as an indictment of illegal drug "trading" as the term is ordinarily understood; (4) does ***not*** charge Petitioner with violation of Sections 27 and 28 of the Act; and (5) does ***not*** validly charge Petitioner with any unlawful act under the Act.

The Information does NOT charge "attempt or conspiracy to commit illegal trading of dangerous drugs" under Section 26(b) of RA 9165.

The caption and the prefatory clause or preamble of the Information unequivocally states that Petitioner is being charged with "violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28," of RA 9165.

Notably, Section 3(jj) is not a separate offense because it merely defines the term "trading," while Section 28, in turn, relates only to the imposable penalties on government officials and employees, to wit: "The maximum penalties of the unlawful acts provided in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees." In simple terms, therefore, the lynchpin to the charge of the Information is the violation of Section 5 of RA 9165.

It is thus immediately evident that "Section 5 in relation to x x x Section 26(b)" is a misnomer, if not totally nonsensical because Section 5

and Section 26(b) are two separate unlawful acts or offenses penalized under RA 9165.

Section 26(b) of RA 9165 in part states:

> SEC. 26. *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:
>
> x x x x
>
> (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

Clearly, the foregoing provision punishes the mere agreement or conspiracy to commit illegal trading. This is one of those situations where the law itself makes the mere agreement punishable. That said, it is likewise ineluctably clear that what Section 26(b) means is that the illegal trading has ***not been committed*** — which is completely opposite to the situation of Section 5 which requires that the trading has already been committed. In other words, the moment the illegal trading has been committed, then it is Section 5 that is the applicable provision of RA 9165 and no longer Section 26(b) — which is the commonsensical conclusion to make especially since the penalty in the latter is provided to be the same penalty provided for Section 5, or the consummated act.

A fair reading of the body or factual recitals of the Information is that Petitioner is being charged with violation of Section 5 and not violation of Section 26(b). Again, the nomenclature "violation of Section 5, in relation to Section 26(b)" is simply nonsensical.

What exactly was Petitioner charged with by the Information? Once more, the body of the Information reads:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, **conspiring and confederating with** accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, **did then and there commit illegal drug trading, in the following manner**: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, **did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of**

> **illegal drug trading** amounting to Five Million (P5,000,000.00) Pesos on 24 November 2012, Five Million (P5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (P100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison. (Emphasis and underscoring supplied)

On its face, the Information unmistakably describes ***past or consummated acts*** – "all of them [including Petitioner] **DID** x x x commit illegal drug trading," "the inmates x x x **DID** x x x trade and traffic dangerous drugs," and "[the inmates] **DID** give and deliver to De Lima (Petitioner) x x x the proceeds of illegal drug trading."[12]

Nothing could be clearer: the purported offense described in the Information is illegal drug trading ***as a consummated crime***, and ***not*** as a conspiracy to commit the same. Thus, the claim that Petitioner was charged for conspiracy to commit illegal drug trading under Section 26(b) of RA 9165[13] is egregious error, if not a clear afterthought on the part of the Office of the Solicitor General (OSG) after it had itself realized that, for the reasons to be stated later, the Information filed by the Department of Justice (DOJ) which charges a violation of Section 5, RA 9165, is wholly insufficient and void.

To be sure, nowhere in the language and wording of the Information can a conspiracy or attempt to commit trading of dangerous drugs be even inferred. To read the above-quoted acts in the Information to only be at the preparatory stage, or just about to be committed, is an unforgivable perversion of the English language and an insult to the intelligence of the Court.

Again, the gravamen of conspiracy as a distinct crime is the agreement itself. In this jurisdiction, conspiracy embraces either one of two forms – as a crime by itself or as a means to commit a crime. In the first instance, the mere act of agreeing to commit a crime and deciding to commit it is already punishable, but only in cases where the law specifically penalizes such act and provides a penalty therefor. In the latter instance, conspiracy assumes importance only with respect to determining the liability of the perpetrators charged with the crime.[14] Under this mode, once conspiracy is proved, then all the conspirators will be made liable as co-principals regardless of the extent and character of their participation in the commission of the crime: "the act of one is the act of all."[15]

Here, the Information clearly charges Petitioner with illegal drug "trading" *per se* under Section 5 of RA 9165, and **not** for conspiracy to commit the same under Section 26(b). While the phrase "conspiring and confederating" appears in the Information, such phrase is, as explained

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12 Emphasis, capitalization and underscoring supplied.
13 Memorandum for Respondents, p. 58.
14 See *Macapagal-Arroyo v. People*, supra note 5, at 311.
15 *People v. Peralta*, 134 Phil. 703, 718 (1968) [*Per Curiam*, En Banc].

above, used merely to describe the means or the mode of committing the consummated offense so as to ascribe liability to all the accused as co-principals.

The Court's ruling in *Macapagal-Arroyo v. People*[16] lends guidance. Petitioner therein was charged under an Information for Plunder, which bears a resemblance to the Information in the case at hand. Therein, the phrase "conniving, conspiring and confederating with one another" similarly preceded the narration of the overt acts of "amass[ing], accumulat[ing], and/or acquir[ing] x x x ill-gotten wealth," which demonstrates the intention of the prosecution to use conspiracy **merely to impute liability on the petitioner therein for the collective acts of her co-accused**, *viz.*:

> The information reads:
>
> x x x x
>
> That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, x x x, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, **conniving, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire**[, d]irectly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY-FIVE MILLION NINE HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:
>
> x x x x
>
> **A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement.** It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.
>
> x x x x
>
> Nevertheless, **the Prosecution insists that GMA, Uriarte and Aguas committed acts showing the existence of an implied conspiracy among themselves, thereby making all of them the main plunderers**. On this score, the Prosecution points out that the sole overt act of GMA to become a part of the conspiracy was her approval *via* the marginal note of

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[16] *Macapagal-Arroyo v. People*, supra note 5.

> "OK" of all the requests made by Uriarte for the use of additional intelligence fund. x x x[17] (Emphasis supplied)

Similar to *Macapagal-Arroyo*, the phrase "conspiring and confederating" in the Information against Petitioner precedes the overt acts of "trad[ing] and traffic[king]" and "giv[ing] and deliver[ing]" — which means that "conspiring and confederating" was alleged to be the means by which the crime of trading was committed. As well, the phrase "did then and there commit" confirms the *consummation* of a prior alleged agreement. In fact, to dispel all doubt, the narration of the alleged delivery of the proceeds of illegal trading to Petitioner unmistakably shows that the alleged conspiracy of illegal drug trading had already been carried out and that Petitioner was to be prosecuted for such — and *not* for her act of allegedly agreeing to commit the same. Indeed, even as to the allegations of giving and delivering of the so-called "*tara*" by the unidentified high-profile inmates in the New Bilibid Prison (NBP), this is clearly phrased as being the result of consummated acts of illegal trading.

Most importantly, the DOJ Resolution[18] itself, upon which the Information is based, confirms that the sense in which conspiracy was used was merely as the manner or mode of imputing liability, and not as a crime in itself:

> From the foregoing, it is clear that there was conspiracy among De Lima, Bucayu, Elli, Sebastian, Dayan, Sanchez and JAD to commit illegal drug trading, hence, **the guilt of one of them is the guilt of all** x x x.
>
> It is a time-honored principle in law that direct proof is not essential to prove conspiracy. x x x In other words, conspiracy may be inferred from the collective acts of respondents before, during and after the commission of the crime **which point to a joint purpose, design, concerted action, and community of interests.**[19] (Emphasis supplied)

On this score, in *People v. Fabro*,[20] the very case cited by the OSG,[21] the Court appreciated the language of the Information there — ***which is almost identical to the Information against Petitioner here*** — as charging the crime of consummated drug sale and not a conspiracy to commit.

In that case, the respondent was charged under an Information designated as a "violation of Section 21 (b) Art. IV, in relation to Section 4, Art. II of Republic Act No. 6425, as amended."[22] Section 21(b) is the counterpart provision of Section 26(b) of RA 9165 whereas Section 4 is the counterpart provision of Section 5 of RA 9165. Notably, the Court therein

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17 Id. at 270-271, 317 and 322.

18 DOJ Joint Resolution dated February 14, 2017 in NPS No. XVI-INV-16J-00313, NPS No. XVI-INV-16J-00315, NPS No. XVI-INV-16K-00331, NPS No. XVI-INV-16K-00336 and NPS No. XVI-INV-16L-00384.

19 Id. at 44.

20 382 Phil. 166 (2000) [Per J. Kapunan, First Division].

21 Memorandum for Respondents, par. 129, pp. 55-56.

22 Otherwise known as the "The Dangerous Drugs Act of 1972."

disregarded the charge for conspiracy to sell, administer, or deliver illegal drugs and instead convicted the respondent for violation of Section 4, Article II of RA 6425 (which, again, is now Section 5 of RA 9165), which punishes the sale and/or delivery of illegal drugs as a consummated crime. In affirming the lower court's conviction *in toto*, **the Court interpreted the recital of facts in the Information to be one for *consummated* sale, and not for conspiracy to sell, based on the language used:**

> Appellant Berly Fabro y Azucena, together with her common-law husband Donald Pilay y Calag and Irene Martin, was charged with the crime of "violation of Section 21 (b) Art. IV, in relation to Section 4, Art. II of Republic Act No. 6425, as amended," under Criminal Case No. 11231-R of the Regional Trial Court of Baguio City, in an information that reads:
>
> > That on or about the 7th day of April 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **conspiring, confederating and mutually aiding one another, did then and there willfully, unlawfully and feloniously sell and/or deliver** to PO2 ELLONITO APDUHAN, who acted as poseur-buyer, one (1) kilo of dried marijuana leaves, a prohibited drug without any authority of law, in violation of the aforementioned provision of law.
> >
> > CONTRARY TO LAW.
>
> x x x x
>
> On January 4, 1994, the trial court rendered the Decision disposing of Criminal Case No. 11231-R as follows:
>
> > WHEREFORE, **the Court Finds the accused Berly Fabro guilty beyond reasonable doubt of the offense of Violation of Section 4 Article II of Republic Act No. 6425 as amended (Sale and/or Delivery of Marijuana) <u>as charged in the body of the Information, not its caption</u>**, and hereby sentences her to Life Imprisonment and to pay a Fine of Twenty Thousand Pesos (₱20,000.00) without subsidiary imprisonment in case of Insolvency and to pay the costs.
> >
> > x x x x
>
> A final note. **The information denotes the crime as a "VIOLATION OF SECTION 21 (b) ART. IV IN RELATION TO SECTION 4/ARTICLE II OF REPUBLIC ACT 6425 AS AMENDED." <u>This is an erroneous designation of the crime committed</u>.** Section 21 of R.A. 6425 reads:
>
> > SEC. 21. Attempt and Conspiracy. — The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any x x x conspiracy to commit the same in the following cases:

> x x x x
>
> b) Sale, administration, delivery, distribution and transportation of dangerous drugs.
>
> It is clear that Section 21 (b) of R.A. 6425 punishes the mere conspiracy to commit the offense of selling, delivering, distributing and transporting of dangerous drugs. Conspiracy herein refers to the mere agreement to commit the said acts and not the actual execution thereof. While the rule is that a mere conspiracy to commit a crime without doing any overt act is not punishable, the exception is when such is specifically penalized by law, as in the case of Section 21 of Republic Act 6425. **Conspiracy as crime should be distinguished from conspiracy as a manner of incurring criminal liability the latter being applicable to the case at bar.**
>
> In any event, such error in the information is not fatal. **The body of the information states that the crime for which the petitioner is charged is as follows:**
>
> > "the above-named accused, **conspiring, confederating and mutually aiding one another, did there willfully, unlawfully and feloniously sell and/or deliver** to PO2 Elonito Apduhan, who acted as poseur buyer, one (1) kilo of dried marijuana leaves . . ."
>
> **It has been our consistent ruling that what is controlling [is] the actual recital of facts in the body of the information and not the caption or preamble of the crime.**
>
> Having considered the assignments of error and finding no basis which, from any aspect of the case, would justify us in interfering with the findings of the trial court, it results that the appealed decision must be *AFFIRMED in toto.*[23] (Emphasis and underscoring supplied)

Following *Fabro*, which is on all fours with the situation of Petitioner, there is therefore no other acceptable reading of the Information than that it actually charges Petitioner with illegal drug trading under Section 5 ***and not a conspiracy to commit under Section 26(b)***.

It is noted that Respondents correctly stressed that the unlawful act of "trading" is a separate and distinct offense from conspiracy to commit the same, which are respectively punished under separate provisions of RA 9165.[24] Unfortunately, by the same claim, Respondents fall on their own sword. Given that the two offenses are different from each other, Petitioner cannot now be charged with one crime and yet be convicted of the other. The Court cannot allow the Prosecution's strategy to flourish without infringing on the fundamental right of Petitioner to due process.

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[23] *People v. Fabro*, supra note 20, at 170, 175 and 178-179.

[24] Memorandum for Respondents, p. 56.

By constitutional mandate, a person who stands charged with a criminal offense has the right to be informed of the nature and cause of the accusation against him. As a necessary adjunct of the right to be presumed innocent and to due process, the right to be informed was enshrined to aid the accused in the intelligent and effective preparation of his defense. In the implementation of such right, trial courts are authorized under the Rules of Court to dismiss an Information upon motion of the accused, should it be determined that, *inter alia*, such Information is defective for being in contravention of the said right.

Therefore, Petitioner is correct when she argues in her Memorandum that her right to be informed of the nature and cause of the accusation against her was violated when she was charged, arrested, and detained for consummated illegal drug trading despite Respondents' claim, now, that she was really charged for conspiracy to commit illegal drug trading. Indeed, Respondents' sudden change in stance, through the OSG, along with the subsequent concurrence of the DOJ, violated Petitioner's right to be informed of the nature and cause of the accusation against her.

Given the foregoing, the insistence of some members of the Court that the Information, as worded, validly indicts Petitioner with conspiracy to engage in illegal drug trading, referring to an unconsummated act, is beyond comprehension.

The Information does NOT charge Petitioner with illegal "Trading" of dangerous drugs as defined under RA 9165.

Section 5, which penalizes illegal trading of dangerous drugs, states:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
>
> The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions. (Underscoring supplied)

Section 3(jj) in turn defines "Trading" in the following manner:

> (jj) *Trading.* – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act. (Underscoring supplied)

To be sure, the definition of "[t]rading" above does not identify the act or acts that the offender must commit to make him liable for illegal drug trading. It merely refers to "[t]ransactions involving the illegal trafficking of dangerous drugs."

"Illegal Trafficking," on the other hand, is defined in Section 3(r):

> SEC. 3. *Definitions.* – As used in this Act, the following terms shall mean:
>
> x x x x
>
> (r) *Illegal Trafficking.* – The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.
>
> x x x x

Based on the foregoing definitions, the term "illegal trading" is nothing more than "illegal trafficking" "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions." Or stated differently, illegal trading is "[t]he illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical" "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions."

Thus, while "trading" does not articulate the underlying specific unlawful acts penalized under RA 9165, its use of the term "illegal trafficking" constitutes a specific reference to the unlawful acts enumerated under illegal trafficking, *i.e.*, cultivation or culture (Section 16), delivery, administration, dispensation, sale, trading, transportation or distribution (Section 5), importation (Section 4), exportation, manufacture (Section 8), and possession (Section 11) of dangerous drugs. The terms "Administer," "Cultivate or Culture," "Deliver," "Dispense," "Manufacture," "Sell," and "Use" are in turn defined under Section 3, subsections (a), (i), (k), (m), (u), (ii), and (kk).

In this regard, the term "trading" in the definition of "illegal trafficking" should now be understood in its ordinary acceptation – the "buy[ing] and sell[ing] of goods, exchang[ing] (something) for something else, typically as a commercial transaction.[25]

While the Information employs the terms "drug trading" and "trade and traffic dangerous drugs," **it does not, however, contain a recital of the facts constituting the illegal "trade" or "traffic" of dangerous drugs**. Since "trading" and "illegal trafficking" are defined terms under RA 9165, their use in the Information will carry with them their respective definitions. Viewed in the foregoing light, the Information is ***fatally defective*** because it does not allege the specific acts committed by Petitioner that constitute illegal "trading" or "illegal trafficking" of dangerous drugs as defined in Section 3(jj) and Section 3(r) of the Act. Rather, it relies only on conclusionary phrases of "drug trading" and "trade and traffic of dangerous drugs."

To restate: the Information did not mention any of the following transactions involving dangerous drugs:

(a) cultivation or culture – planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug;[26]

(b) delivery – passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration;[27]

(c) administration – introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself;[28]

(d) dispensation – giving away, selling or distributing medicines or any dangerous drugs with or without the use of prescription;[29]

(e) manufacture – production, preparation, compounding or processing of any dangerous drug and/or controlled precursor and essential chemical, either directly or indirectly, or by extraction from substance of natural origin, or independently by chemical synthesis or by a combination of extraction and chemical synthesis, including packaging or re-packaging of such substances, design or configuration of its form, labeling or relabeling of its container;[30]

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25 Available online at: https://en.oxforddictionaries.com/definition/trade. Last accessed: July 23, 2017.
26 RA 9165, Sec. 3(i).
27 Id., Sec. 3(k).
28 Id., Sec. 3(a).
29 Id., Sec. 3(m).
30 Id., Sec. 3(u).

(f) sale – giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration;[31]

(g) transportation; distribution;

(h) importation – bring into the Philippines any dangerous drug, regardless of the quantity and purity involved;[32]

(i) exportation;

(j) possession; and

(k) acting as broker in any other preceding transactions.

Without doubt, the Information did not mention if Petitioner cultivated, cultured, delivered, administered, dispensed, manufactured, sold, transported, distributed, imported, exported, possessed or brokered in any transaction involving the illegal trafficking of any dangerous drug.

Accordingly, while the word "trading" is attributed to Petitioner in the Information, ***the essential acts committed by Petitioner from which it can be discerned that she did in fact commit illegal "trading" of dangerous drugs as defined in RA 9165 are not alleged therein***.

Since the Information does not mention the constitutive acts of Petitioner which would translate to a specific drug trafficking transaction or unlawful act pursuant to Section 3(r), then it is fatally defective on its face. Thus, it was improvident for the respondent Judge to issue a warrant of arrest against Petitioner.

Additionally, on the matter of illegal "trading" of dangerous drugs, the *ponencia* quotes with approval Justice Martires' explanation that the averments on solicitation of money in the Information form "part of the description on how illegal drug trading took place at the NBP." However, the Information's averments on solicitation of money, including those on the use of mobile phones and other electronic devices, **without the factual allegations of the specific transaction involving the illegal trafficking of dangerous drugs as defined in Section 3(r)**, are still insufficient to validly indict Petitioner with illegal drug "trading" under Section 5 in relation to Sections 3(jj) of RA 9165. The "solicitation of money" would only indicate that the "transaction involving the illegal trafficking of dangerous drugs" was "for money." That is all.

It bears repeating that the Information sorely lacks specific factual allegations of the illegal trafficking transaction which Petitioner purportedly

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[31] Id., Sec. 3(ii).
[32] Id., Sec. 4.

got involved with in conspiracy with her co-accused. The Information does NOT contain factual allegations of illegal cultivation, culture, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of specific and identified dangerous drugs. Again, the Information simply states: "accused x x x De Lima x x x and accused x x x Ragos x x x, conspiring and confederating with accused x x x Dayan x x x did then and there commit illegal drug trading, in the following manner: De Lima and Ragos x x x demand, solicit and extort money from the high profile inmates in the [NBP] x x x; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs x x x."

The averments of "illegal trading," "unlawfully trade and traffic," and "dangerous drugs" are **conclusions of law and *not* factual allegations**. Such allegations do not sufficiently inform Petitioner of the specific accusation that is leveled against her.

The *ponencia*, while it enumerates the purported two modes of committing illegal trading: (1) illegal trafficking using electronic devices; and (2) acting as a broker in any transaction involved in the illegal trafficking of dangerous drugs, and as it correctly points out that the crime of illegal trading has been written in strokes much broader than that for illegal sale of dangerous drugs, **still conveniently avoids specifying and enumerating the elements of illegal trading**. How can the sufficiency of the Information be determined if not even the elements of the crime it is supposedly charging are known?

Illegal sale of dangerous drugs has defined and recognized elements. Surely, illegal trading of dangerous drugs, like every crime and offense, must have defined and recognized elements. Without defining and identifying the elements of illegal trading of dangerous drugs, the *ponencia's* reasoning is not only incomplete and insufficient, worse, it tends to validate the dangerous and anomalous situation where an ordinary citizen can be arrested **by mere allegation in an Information** that he committed "illegal trading of dangerous drugs using mobile phones and other electronic devices." It is highly lamentable that the majority of the members of the Court have put their imprimatur to this insidious manner of phrasing an Information concerning illegal drugs offenses to detain an unsuspecting individual. The real concern is this: if this can be done to a sitting Senator of the Republic of the Philippines, then this can be done to any citizen.

As to the purported first mode of committing illegal trading, the Information is thus void as it fails to identify the illegal trafficking transaction involved in this case, and fails to sufficiently allege the factual elements thereof.

As to the purported second mode — acting as a broker in any transactions involved in the illegal trafficking of dangerous drugs — this requires the **existence** of an illegal trafficking transaction. Without a **predicate transaction**, an individual cannot be accused of acting as its broker.

While it may be true that a person accused of illegal "trading" by acting as a broker need not get his hands on the substance or know the meeting of the seller and the buyer, **still, the transaction that he purportedly brokered should be alleged in the Information for the latter to be valid, and thereafter proved beyond reasonable doubt, for the accused to be convicted**. **The seller and the buyer or the persons the broker put together must be identified. If he brokered an illegal sale of dangerous drugs, then the identities of the buyer, seller, the object and consideration are essential**.

Thus, I take exception to the wholesale importation of the concept of "brokering" in the offense of illegal "trading" of dangerous drugs without specifying the predicate illegal trafficking transaction which the accused "brokered". To repeat, this transaction must be sufficiently alleged in charges against an accused indicted for having acted as a broker **because that is the requirement of the law** — "acting as a broker in any of such **transactions** [involving the illegal trafficking of dangerous drugs]".

As well, and as will be explained further, the specific "dangerous drugs" that are the object of the transaction must likewise be alleged and identified in the Information.

In fine, while the *ponencia* indulges in hypotheticals as to what transactions can or cannot be covered by "illegal trading" by "brokering," it fails miserably to identify the elements of "illegal trading" committed by acting as a broker. There is nothing in the Information against Petitioner from which it can reasonably be inferred that she acted as a broker in an illegal trafficking of dangerous drugs transaction — the Information does not even identify the seller/s and buyer/s of dangerous drugs that Petitioner supposedly brought together through her efforts. If Petitioner was supposedly the broker, then who were the NBP high-profile inmates supposed to be? Sellers? Buyers? Likewise, the Information is dead silent on the specific dangerous drugs consisting of the object of the transaction.

The Information does NOT charge Petitioner with illegal drug "trading" as the term is ordinarily understood.

In *People v. Valdez,*[33] the Court described a sufficient Information, thus:

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[33] 679 Phil. 279 (2012) [Per J. Bersamin, First Division].

It cannot be otherwise, for, indeed, the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of facts in the complaint or information. In *People v. Dimaano*, the Court elaborated:

> For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense[;] and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.** [emphasis supplied]
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> x x x x

To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice, for, as the Court fittingly said in *United States v. Lim San*:

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. xxx. **That to which his**

> **attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. *For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not "Did you commit a crime named murder.*" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court to say what the crime is or what it is named.** xxx. (emphasis supplied)[34] (Italics supplied)

Does the Information under scrutiny comply with the requirement of sufficiency as explained above? ***It clearly does not***. The elements of the offense or unlawful act charged are not contained in the Information.

To reiterate, the unlawful act of "trading" of dangerous drugs is penalized under Section 5 of RA 9165, to wit:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transaction. The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions. (Underscoring supplied)

While "sell" is defined under Section 3(ii), "trade" is not defined in the same fashion. It is "trading" that is defined under Section 3(jj) and, as

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[34] Id. at 293-295.

explained above, the defined term "illegal trafficking" is imbedded therein. Since "trade" in Section 5, for purposes of this discussion, is to be understood in its ordinary meaning, and "sell" and "trade" involve analogous or similar acts, then logic dictates that the elements of illegal trade of dangerous drugs or "illegal drug trading" should have the same jurisprudentially sanctioned elements of illegal sale of dangerous drugs.

Well-entrenched is the rule that for the prosecution of illegal sale of drugs, the following elements must be proved: (1) the identity of the buyer and seller, the object and the consideration; and (2) the delivery of the thing sold and its payment.[35]

Bearing in mind these elements, the elements of illegal trade or trading of dangerous drugs are thus: (1) the identity of the trader or merchant and purchaser or customer, the object and the consideration (money or other consideration per Section 3[jj]); (2) delivery of the thing traded and its consideration; and (3) the use of electronic devices such as text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms to facilitate the transaction. If the accused acted as a broker, then such fact must be alleged as an additional element.

The object of the trade or trading is a specific dangerous drug that is included in the definition under Section 3(j) of RA 9165 and described with specificity in the Information. In cases involving dangerous drugs, the *corpus delicti* is the presentation of the dangerous drug itself.[36] **Without the averment of the *corpus delicti*, the Information is deficient because an element of the offense is missing**.

Are all the elements of illegal trade or trading of dangerous drugs by Petitioner alleged in the Information? Again, ***they are not***.

To recall, the Information pertinently states:

> That x x x **accused Leila M. De Lima** x x x and accused Rafael Marcos Z. Ragos, x x x conspiring and confederating with accused Ronnie P. Dayan x x x **did then and there commit illegal drug trading, in the following manner**: **De Lima** and Ragos x x x **demand, solicit and extort money from the high profile inmates** in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, **the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima,** through Ragos and Dayan, **the proceeds of illegal drug trading** amounting to Five Million (P5,000,000.00) Pesos on 24 November 2012, Five Million (P5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (P100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison. (Emphasis and underscoring supplied)

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35 *People v. Blanco*, 716 Phil. 408, 414 (2013); cases cited omitted [Per J. Perez, Second Division].

36 *People v. Climaco*, 687 Phil. 593, 603 (2012) [Per J. Carpio, Second Division].

As to the averments of the Information regarding Petitioner's acts, it only states that Petitioner "commit(ted) illegal drug trading in the following manner: [Petitioner] x x x demand[ed], solicit[ed] and extort[ed] money from the high profile inmates in the New Bilibid Prison" and Petitioner received from the inmates proceeds of illegal drug trading.

None of the elements of illegal drug trade or trading is present in the Information insofar as Petitioner is concerned. The Information does not identify Petitioner as the trader, or merchant, or broker. There is no indication in the Information that she ever possessed any dangerous drug prior to the purported trading. The Information does not identify any purchaser or customer. It does not state the consideration. It does not identify the specific dangerous drug that she traded or brokered. If Petitioner acted as the broker, who were the seller/s and the buyer/s? The Information is once more silent on these crucial facts. There is even no mention in the Information that Petitioner used any electronic device in her participation, if any, in the purported illegal activity. Given these glaring infirmities that can be easily seen from a plain, unbiased reading of the Information, there is no conclusion other than it is fatally defective.

Even with respect to the acts attributed to the unnamed NBP high-profile inmates, the Information fails to also allege the elements of illegal drug trade or trading that they committed. The Information merely states that "the inmates x x x through the use of mobile phones and other electronic devices x x x trade[d] and traffic[ked] dangerous drugs, and thereafter [gave] and deliver[ed] to [Petitioner] x x x the proceeds of illegal drug trading." Again, the Information does not mention the purchaser or customer, the specific dangerous drug traded, the consideration and the identity of the inmates. While Petitioner and her co-accused, Rafael Marcos Z. Ragos and Ronnie P. Dayan, are identified in the Information, the identities of the NBP inmates have been intentionally omitted.

The employment of the term "dangerous drugs" in the Information does not satisfy the requirement of specificity of the *corpus delicti*. "Dangerous Drugs" is a catch-all term — to "[i]nclude those listed in the Schedule annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotrophic Substances as enumerated in the attached annex which is an integral part of this Act."[37] The Information does not state the specific dangerous drugs traded by the so-called high-profile NBP inmates.

In *People v. Posada*,[38] an Information where the objects of illegal sale and illegal possession of dangerous drugs were lumped together and commingled, the Court found such as defective and ambiguous, *viz.*:

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37 RA 9165, Sec. 3(j).

38 684 Phil. 20 (2012) [Per J. Reyes, Second Division].

The unfortunate fact of this case is that rather than separately charging Emily for the sale of the one sachet of *shabu* and charging both Emily and Roger for possession of the 12 sachets of *shabu*, the public prosecutor lumped the charges together to sale of 12 sachets of *shabu*. This is wrong. The Information is defective for charging the accused-appellants of selling 12 sachets of *shabu* when, in fact, they should have been charged of selling one sachet of *shabu* and possessing 12 sachets of *shabu*. From the evidence adduced, Emily and Roger never sold the 12 sachets of *shabu*. They possessed them. Thus, they should have not been convicted for selling the 12 sachets of *shabu*. However, this was exactly what was done both by the trial court and the CA. Without basis in fact, they convicted the couple for selling the 12 sachets of *shabu*.

Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does not charge an offense[39] or when an essential element of the crime has not been sufficiently alleged.[40] In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify in the Information the subject matter of the sale or the *corpus delicti*. We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with certainty the *corpus delicti*. Here, the prosecution took the liberty to lump together two sets of *corpora delicti* when it should have separated the two in two different informations. To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very *corpus delicti* of the crime.

Furthermore, when ambiguity exists in the complaint or information, the court has no other recourse but to resolve the ambiguity in favor of the accused.[41] Here, since there exists ambiguity as to the identity of *corpus delicti*, an essential element of the offense charged, it follows that such ambiguity must be resolved in favor of the accused-appellants. Thus, from the foregoing discussion, we have no other choice but to acquit the accused-appellants of sale of 12 sachets of *shabu*.

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> Possession is a necessary element in a prosecution for illegal sale of prohibited drugs. It is indispensable that the prohibited drug subject of the sale be identified and presented in court. That the *corpus delicti* of illegal sale could not be established without a showing that the accused possessed, sold and delivered a prohibited drug clearly indicates that possession is an element of the former. The same rule is applicable in cases of delivery of prohibited drugs and giving them away to another.[42] x x x

x x x x

Finally, we cannot let this case pass us by without emphasizing the need for the public prosecutor to properly evaluate all the pieces of

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39 *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 723 (2003) [Per J. Azcuna, First Division].
40 *People v. Galido*, 470 Phil. 348 (2004) [Per J. Panganiban, First Division].
41 *People v. Ng Pek*, 81 Phil. 562, 565 (1948) [Per J. Ozaeta, En Banc].
42 *People v. Lacerna*, 344 Phil. 100, 120 (1997) [Per J. Panganiban, Third Division].

> evidence and file the proper information to serve the ends of justice. The public prosecutor must exert all efforts so as not to deny the People a remedy against those who sell prohibited drugs to the detriment of the community and its children. Many drug cases are dismissed because of the prosecutor's sloppy work and failure to file airtight cases. If only the prosecution properly files the Information and prosecutes the same with precision, guilty drug pushers would be punished to the extent allowed under the law, as in this case.[43]

If an averment of commingled sachets of *shabu* in an Information is not sufficient, then, **with greater reason**, the mere invocation of the term "dangerous drugs," — a defined term in RA 9165, and thus a conclusion of law, without identifying the specific drug — renders the Information fatally defective.

A charge under Section 5 of RA 9165 requires allegation of corpus delicti.

As a rule, an Information need only state the ultimate facts constituting the offense, as evidentiary details are more appropriately threshed out during trial. However, as a consequence of the accused's right to be informed of the nature and cause of the accusation against him, the Information must allege clearly and accurately the elements of the crime charged.[44] In *People v. Posada*,[45] the Court stressed the importance of alleging and identifying in the Information the *corpus delicti* and explained that ***the failure of the prosecution to particularly identify the dangerous drug in the Information was tantamount to a deprivation of the accused's right to be informed of the nature of the offense being charged***.

It must also be stressed that in prosecutions involving narcotics and other illegal substances, the substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[46]

The crime of "trading" dangerous drugs is punished alongside "selling" under Section 5 of RA 9165. However, the offenses differ only as to the overt acts involved, where "[a]ny act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration" constitutes "selling" while "[t]ransactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals x x x using electronic devices x x x whether for money or any other consideration" amounts to "trading."[47]

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43 Supra note 38, at 40-47.

44 *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 316-317 (2009) [Per J. Brion, Second Division].

45 Supra note 38, at 46.

46 *People v. Suan*, 627 Phil. 174, 179 (2010) [Per J. Del Castillo, Second Division], citing *Carino v. People*, 600 Phil. 433, 444 (2009) [Per J. Tinga, Second Division]; *People v. Simbahon*, 449 Phil. 74, 81 and 83 (2003) [Per J. Ynares-Santiago, First Division].

47 RA 9165, Sec. 3(ii) and (jj).

There is no difference, however, with respect to the subject matter of both transactions: *they remain to be dangerous drugs and/or controlled precursors and essential chemicals*. There is thus no significant reason to treat prosecutions involving the unlawful act of selling differently from illegal trading, insofar as they require the allegation and identification of the *corpus delicti* in the Information is concerned.

The Court in *People v. Enumerable*,[48] citing *People v. Watamama*,[49] held that the existence of the dangerous drug ***and the chain of its custody*** have to be proven **in *all* prosecutions** for violations of RA 9165:

> It is settled that in prosecutions for illegal sale of dangerous drug, not only must the essential elements of the offense be proved beyond reasonable doubt, but likewise the identity of the prohibited drug. **The dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.**
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> Necessarily, the prosecution must establish that the substance seized from the accused is the same substance offered in court as exhibit. **In this regard, the prosecution must sufficiently prove the unbroken chain of custody of the confiscated illegal drug.** In *People v. Watamama*, the Court held:
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> > **In all prosecutions for the violation of the Comprehensive Dangerous Drugs Act of 2002, the existence of the prohibited drug has to be proved.** The chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was seized up to the time it is offered in evidence. To this end, the prosecution must ensure that the substance presented in court is the same substance seized from the accused.
> >
> > While this Court recognizes substantial adherence to the requirements of R.A. No. 9165 and its implementing rules and regulations, not perfect adherence, is what is demanded of police officers attending to drugs cases, still, such officers must present justifiable reason for their imperfect conduct and show that the integrity and evidentiary value of the seized items had been preserved x x x
>
> In *People v. Climaco*, citing *Malillin v. People*, the Court held:
>
> > x x x **[T]o establish guilt of the accused beyond reasonable doubt in cases involving dangerous drugs, it is important that the substance illegally possessed in the first place be the same substance offered in court as exhibit.** This chain of custody requirement ensures that unnecessary doubts are removed concerning the identity of

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48 751 Phil. 751 (2015) [Per J. Carpio, Second Division].

49 692 Phil. 102, 106-107 (2012) [Per J. Villarama, Jr., First Division].

> the evidence. When the identity of the dangerous drug recovered from the accused is not the same dangerous drug presented to the forensic chemist for review and examination, nor the same dangerous drug presented to the court, the identity of the dangerous drug is not preserved due to the broken chain of custody. With this, an element in the criminal cases for illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, is not proven, and the accused must then be acquitted based on reasonable doubt. For this reason, [the accused] must be acquitted on the ground of reasonable doubt due to the broken chain of custody over the dangerous drug allegedly recovered from him.[50]

Indeed, the State can never fulfill its burden to establish the chain of custody of the concerned dangerous drug, as required under Section 21 of RA 9165, without the dangerous drug being identified with specificity in the Information. Absent such allegation in the Information, it is impossible to validate that the dangerous drug presented in court is the very same one that the Information speaks of and for which the accused stands indicted.

Thus, when the majority finds, as it has so found, that the Information against Petitioner is sufficient for illegal "trading" of dangerous drugs, **then this case goes down in history as the ONLY criminal case involving dangerous drugs where the Information is totally silent on the *corpus delicti* of the illegal trading and yet is still held sufficient by its mere averment of the phrase "dangerous drugs"**. This farce now opens the floodgates to the unparalleled filing of criminal cases on the mere allegation in the Information that the accused had sold or traded "dangerous drugs", and will indubitably lead to an endless string of prosecutions — **in blatant violation of an accused's constitutionally guaranteed rights to not be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against him**, the strict requirements of Section 21 of RA 9165 having been effectively repealed.

The Information does NOT validly charge Petitioner with violation of Sections 27 and 28 of the Act.

Section 27 of RA 9165 provides:

> SEC. 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.* – The penalty of life imprisonment to death and a fine ranging from Five

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50 *People v. Enumerable*, supra note 48, at 755-757.

> hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.
>
> Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations.

The Information partly states that:

> x x x De Lima and Ragos, with the use of their power, position and authority [as then Secretary of the Department of Justice and Officer-in-Charge of the Bureau of Corrections, respectively], demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, x x x through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading, amounting to Five Million (P5,000,000.00) Pesos on 24 November 2012, Five Million (P5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (P100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison. (Underscoring provided)

The quoted portion of the Information is not sufficient to charge Petitioner with the unlawful act of misappropriation, misapplication and failure to account for the proceeds obtained from illegal drug trading allegedly committed by high-profile NBP inmates. Petitioner, as then DOJ Secretary, did not have any legal duty or obligation to take custody of or account for proceeds obtained from unlawful acts committed under RA 9165. Without the allegation in the Information that, as DOJ Secretary, Petitioner had such duty or obligation, she could not have committed misappropriation, misapplication and failure to account for the so-called "proceeds of illegal drug trading." Besides, as explained above, "illegal drug trading" is a conclusion of law and not an averment of specific facts. At the very least, the specific acts of Petitioner constituting illegal "trading" of dangerous drugs should be alleged in the Information. Again, there is even no mention in the Information that Petitioner transacted dangerous drugs "using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, [etc.]."

Also, Petitioner cannot be held liable under the second paragraph of Section 27. She was ***not*** an "**elective local or national official**" when "proceeds of illegal drug trading" were purportedly delivered to her. The Information does not even allege the specifics of the trading and trafficking of dangerous drugs which the high-profile inmates purportedly committed. Nor does the Information allege that the said inmates had been "found guilty of trafficking dangerous drugs" and such proceeds were derived from the illegal trafficking committed by them and for which they had been convicted.

Section 28 of RA 9165 cannot as well be invoked as a possible source of Petitioner's indictment because it does not provide an additional unlawful act for which a penalty is provided. Rather, it only provides the appropriate penalty to be imposed if a government official or employee is found guilty of any unlawful act under RA 9165.

The Information does NOT validly charge Petitioner with any unlawful act under the Act.

Guided by the foregoing, the **patent glaring defects on the face[51] of the Information** in the present case present themselves – the *corpus delicti* or the "dangerous drugs" subject of the case is not particularly alleged or identified; the use of the term "trading" is without the specific acts committed by Petitioner as there is no averment of any or all the elements of said unlawful acts, including her use of identified electronic device/s; the names of the so-called "high profile inmates in the New Bilibid Prison" are not provided; and the purported acts of the said inmates constituting illegal "trade and traffic [of] dangerous drugs" (from which the "proceeds" were derived) are not alleged.

Following the previous discussion, the sweeping use of the terms "dangerous drugs," "illegal drug trading," "trade and traffic dangerous drugs," and "proceeds of illegal drug trading" hardly suffice — and cannot and should not be held by the Court to suffice — for the required particularity of an Information involving violations of RA 9165. By omitting to mention the specific type and amount of the alleged drugs involved, the specific acts constitutive of trading and trafficking by both Petitioner and the so-called high-profile inmates where all the elements of those unlawful acts are described, the Information against Petitioner for illegal trading of drugs under Section 5 in relation to Section 3(r) is perforce ***fatally defective***. Accordingly, Petitioner is effectively deprived of the fair opportunity to prepare her defense against the charges mounted by the Government as she is left to rely on guesswork and hypotheticals as to the subject matter of the offense. Under these circumstances, by no means is

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[51] Double redundancy intended for emphasis.

Petitioner properly equipped to face the awesome power and resources of the State, there being no sufficient factual allegations of the specific, actual offense that she is charged with and its *corpus delicti.*

Petitioner was no doubt deprived of her right to be informed of the nature and cause of the accusation against her. She has been deprived her liberty without due process and to be presumed innocent.

In *People v. Pangilinan*,[52] the Court, through Justice Diosdado M. Peralta, held, citing the *en banc* case of *People v. Dela Cruz*,[53] that a **defective or deficient information is void**, *viz*:

> x x x We again quote the charging part of the Information for easy reference, thus:
>
> > That on or about 1995 up to about June 2001 at Barangay Apsayan, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, did then and there willfully, unlawfully and criminally commit acts of lasciviousness upon the person of AAA, a minor subjected to sexual abuse.
> >
> > That accused is the stepfather of AAA who was born on January 29, 1988.
> >
> > Contrary to law.
>
> Under Section 8, Rule 110 of the Rules of Criminal Procedure, it provides:
>
> > Sec. 8. *Designation of the offense.* – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.
>
> A reading of the allegations in the above-quoted Information would show the insufficiency of the averments of the acts alleged to have been committed by appellant. It does not contain the essential facts constituting the offense, but a statement of a **conclusion of law**. Thus, appellant cannot be convicted of sexual abuse under such Information.
>
> In *People v. Dela Cruz*, wherein the Information in Criminal Case No. 15368-R read:
>
> > That on or about the 2nd day of August, 1997, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then

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52 Supra note 1.

53 Supra note 1, at 992 and 1014-1016.

> and there willfully, unlawfully and feloniously commit sexual abuse on his daughter either by raping her or committing acts of lasciviousness on her, which has debased, degraded and demeaned the intrinsic worth and dignity of his daughter, x x x as a human being.
>
> CONTRARY TO LAW.

We dismissed the case after finding the Information to be **void** and made the following ratiocinations:

> The Court also finds that accused-appellant cannot be convicted of rape or acts of lasciviousness under the information in Criminal Case No. 15368-R, which charges accused-appellant of a violation of R.A. No. 7610 (The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), "either by raping her or committing acts of lasciviousness."
>
> It is readily apparent that the facts charged in said information do not constitute an offense. The information does not cite which among the numerous sections or subsections of R.A. No. 7610 has been violated by accused-appellant. Moreover, it does not state the acts and omissions constituting the offense, or any special or aggravating circumstances attending the same, as required under the rules of criminal procedure. Section 8, Rule 110 thereof provides:
>
> x x x x
>
> The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter x x x either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are **conclusions of law, not facts**. The information in Criminal Case No. 15368-R is therefore **void** for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.

The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.[54] (Emphasis and underscoring supplied)

The dispositive portion of *People v. Pangilinan* is noteworthy, thus:

> **WHEREFORE**, x x x

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[54] *People v. Pangilinan*, supra note 1 at 26-28.

> The Information in Criminal Case No. 11769 is declared null and void for being violative of the appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him. The case for Child Sexual Abuse under Section 5 (b) of RA No. 7160 against appellant is therefore *DISMISSED*.[55]

Thus, an Information which fails the sufficiency requirement of Section 8, Rule 110 of the Rules of Court is ***null and void*** for being violative of the accused's right to be informed of the nature and cause of the accusation against him.

The constitutionally-guaranteed right of the accused to be informed of the nature and cause of the accusation against him is assured and safeguarded under Sections 6, 8 and 9 of Rule 110 of the Rules of Court. Under Section 6, on the sufficiency of information, "[a] complaint or information is sufficient if it states[, among others,] x x x the designation of the offense given by the statute[, and] the acts or omissions complained of as constituting the offense. Section 8, on the designation of the offense, mandates that "[t]he complaint or information shall state the designation of the offense given by the statute[; and] aver the acts or omissions constituting the offense x x x." As to the cause of accusation, Section 9 provides:

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

The Information in this case, following *People v. Pangilinan* and *People v. Dela Cruz*, is, without doubt, ***fatally defective*** as an indictment against Petitioner for an unlawful act under RA 9165. The allegation in the Information that Petitioner "did then and there commit illegal drug trading" is not a sufficient averment of the essential facts constituting the offense or unlawful act as required under Section 8, Rule 110 of the Rules of Court for this is a **conclusion of law, and not an averment of facts**. The same holds true with respect to the allegation in the Information that "the inmates x x x through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs" because this too is a conclusion of law.

If a criminal case merits dismissal when the Information from which it arose is void for being insufficient pursuant to *People v. Pangilinan* and *People v. Dela Cruz*, then, ***and with more reason***, should the Information be quashed and the criminal case dismissed at the very outset.

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[55] Id. at 38.

To let the accused suffer the travails of a protracted criminal trial only to be acquitted in the end on the ground that the Information from which the case originated was null and void is totally unjust and inhuman, and should not be countenanced by the Court.

It is true that under Section 3(a), Rule 117, the accused may move to quash the complaint or Information on the ground that "the facts charged do not constitute an offense." It is likewise true that amendment of the Information is possible under Section 4 thereof, to wit:

> SEC. 4. *Amendment of complaint or information.* – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

However, these provisions simply do not, as they cannot, apply to a situation where, as here, there are no factual allegations in the Information constituting an offense or unlawful act that Petitioner purportedly committed under RA 9165, which accordingly renders the Information null and void. In plain terms, the foregoing remedies need not be availed of by the accused — they do not apply when the defect of the Information cannot be cured by an amendment because a null and void Information ***cannot*** be cured by an amendment.

Given the nullity of the Information, the respondent Judge had no legal basis to issue the warrant of arrest against Petitioner and the Information should have been quashed or nullified by the respondent Judge at the very outset.

Indeed, even if it could be assumed for the sake of argument that the Information may be cured by an amendment, still, **the respondent Judge should have awaited the amendment to be properly made before she issued the warrant of arrest against Petitioner**. To detain or restrain the liberty of Petitioner on the strength of a fatally defective Information, or pending the amendment thereof to conform to the requirements of the Rules of Court, was to consciously and maliciously curtail Petitioner's constitutionally-guaranteed rights to be presumed innocent, to be informed of the nature and cause of the accusation against her, and not to be deprived of her liberty without due process. ***These rights stand supreme in the absence of a showing of any countervailing, convincing and compelling ground to detain Petitioner in the meantime***. Without question, respondent Judge acted whimsically, capriciously and despotically.

The acts alleged in the Information constitute, at most, a charge for indirect bribery.

Petitioner asserts that the offense charged by the Information is neither illegal sale of dangerous drugs, nor conspiracy to commit the same — positing instead that the acts alleged in the Information constitute direct bribery penalized under Article 210[56] of the Revised Penal Code (RPC).

Direct bribery has the following elements:

> x x x (1) that the accused is a public officer; (2) that he received directly or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer.

Accordingly, Petitioner's Memorandum asserts:

> 72. The allegations in the Information and the import of the plain terms used therein refer to the crime of bribery.
>
> 73. First, [Petitioner] is a public officer as defined in Article 203 x x x
>
> 74. Second, the Information alleges that [Petitioner] demanded, solicited and/or extorted and eventually received through intermediaries, money from the NBP Inmates x x x
>
> 75. **Third, it is also alleged that the money is given in exchange for special consideration, such as convenient and comfortable spaces**

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[56] Article 210 of the Revised Penal Code provides:

> ART. 210. *Direct bribery.* - Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.
>
> If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of not less than twice the value of such gift.
>
> If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.
>
> In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.
>
> The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

> **in the NBP or just not being transferred to a less hospitable detention area.**
>
> 76. Lastly, the Information also alleged facts that relate the special consideration/protection to be a function of the accused as Secretary of Justice. x x x[57] (Emphasis supplied)

However, while the first, second, and fourth elements of direct bribery are indeed alleged in the Information, the third is not. **Nowhere within the four corners of the Information is it alleged that the money or "proceeds" purportedly delivered to Petitioner by the NBP high-profile inmates was premised upon any agreement to afford special consideration and/or treatment in their favor.**

It is a fundamental assumption in criminal actions that the accused has no independent knowledge of the facts constituting the crime charged. As a necessary complement of the accused's constitutional right to be informed of the nature and cause of the accusation against him, the Information must therefore contain a complete narration of the essential elements of the offense. In this regard, the accused must strictly rely on the allegations in the Information and no conviction can result for a crime that has not been sufficiently detailed in the same. Thus, applied to this case, contrary to the claim of Petitioner, no direct bribery is discernible from the Information.

Instead, based on the ultimate facts alleged, the Information supplies a basis for a charge of indirect bribery.[58] The essential element of indirect bribery, as defined in Article 211 of the RPC, is the acceptance by a public officer of a gift or material consideration.[59] In this respect, the Court held in *Pozar v. Court of Appeals*[60]:

> It is well to note and distinguish direct bribery from indirect bribery. In both crimes, the public officer receives gift. **While in direct bribery, there is an agreement between the public officer and the giver of the gift or present, <u>in indirect bribery, usually no such agreement exists</u>**. In direct bribery, the offender agrees to perform or performs an act or refrains from doing something, because of the gift or promise; in indirect bribery, it is not necessary that the officer should do any particular act or even promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office.[61] (Emphasis and underscoring supplied)

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57 Petitioner's Memorandum, pp. 29-30.

58 Article 211 of the Revised Penal Code provides:

> ART. 211. *Indirect bribery.* - The penalties of *prision correccional* in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

59 *Garcia v. Sandiganbayan,* 537 Phil. 419, 441-442 (2006). [Per J. Chico-Nazario, First Division]

60 217 Phil. 698 (1984) [Per J. Guerrero, Second Division].

61 Id. at 708.

Indirect bribery is an offense cognizable by the Sandiganbayan and not the Regional Trial Court.

As fully explained above, the Information cannot validly indict Petitioner with any unlawful act penalized under RA 9165. Under its Section 90, "the existing Regional Trial Courts in each judicial region [designated by the Court] to exclusively try and hear cases involving violations of this Act" have jurisdiction over such violations. Since this case, however, does not involve any violation of RA 9165, and the only possible felony that the Information may charge Petitioner with is indirect bribery, then the Regional Trial Court is completely bereft of jurisdiction to take cognizance of the case.

Pursuant to Section 4 of Presidential Decree No. (PD) 1606,[62] indirect bribery falls within the exclusive original jurisdiction of the Sandiganbayan when committed by officials of the executive branch occupying positions classified as Salary Grade 27 or higher, it being among the offenses treated in Chapter II, Section 2, Title VII, Book II of the RPC, *viz.*:

> SEC. 4. *Jurisdiction.* – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
>
> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and **Chapter II, Section 2, Title VII, Book II of the Revised Penal Code**, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as **Grade "27" and higher**, of the Compensation and Position Classification Act of 1989 x x x[.] (Emphasis supplied)

Under the Compensation and Position Classification Act,[63] the position of department secretary is classified as Salary Grade 31. Hence, the offense – indirect bribery – that Petitioner may be charged with in the Information, having been allegedly committed at the time when Petitioner occupied the office of DOJ Secretary, undoubtedly falls within the exclusive original jurisdiction of the Sandiganbayan. Thus, the respondent Judge had no jurisdiction to take cognizance of the case and issue the warrant of arrest against Petitioner.

In this regard, I adopt the further disquisition of Associate Justice Perlas-Bernabe supporting the conclusion that it is the Sandiganbayan that has jurisdiction over the offense charged against Petitioner.

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62 As amended by RA 10660.

63 RA 6758 (1989), Sec. 8.

Since the only possible offense that may be leveled against Petitioner, based on the acts alleged in the Information, is indirect bribery, which is exclusively cognizable by the Sandiganbayan, then the DOJ Panel of Prosecutors violated the Memorandum of Agreement between the DOJ and the Office of the Ombudsman dated March 29, 2012 (MOA) which recognizes the primary jurisdiction of the Ombudsman in the conduct of preliminary investigation and inquest proceedings for crimes and offenses over which the Sandiganbayan has exclusive jurisdiction.

Thus, when it became apparent that the case involved any of the crimes and offenses specified in Annex A of the MOA, which includes indirect bribery, it behooved the DOJ to already inform the complainant to file the complaint directly with the Ombudsman.

By this statement, no determination is being made that an indictment of indirect bribery should already be filed against Petitioner. The Court cannot second guess what the decision of the Ombudsman would be after the appropriate proceedings concerning a complaint for indirect bribery against Petitioner have been conducted by her Office.

The respondent Judge effectively denied Petitioner's Motion to Quash when she took cognizance of the case and found probable cause to issue a warrant of arrest against Petitioner.

Petitioner's Motion to Quash raised, among others, the lack of jurisdiction of the Regional Trial Court (RTC) over the offense charged against Petitioner, the lack of authority of the DOJ Panel to file the Information, and the defects in the Information.

As stated earlier, the availment by an accused of a motion to quash the information is in furtherance of his constitutional rights not to be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against him. These same rights are safeguarded by the provision requiring the determination of probable cause before the issuance of a warrant of arrest. Thus, both should be decided prior to or simultaneous with the issuance of a warrant of arrest.

While the Rules do not expressly require such simultaneous resolution, there is also nothing in the Rules that bars the judge from doing so. In fact, the preferred sequence should be that the trial court should first rule on the motion to quash before it can even determine probable cause. Certainly, however, it behooves the trial court to at least rule on the motion to quash ***simultaneously with the determination of probable cause*** before it issues the warrant of arrest against the accused. Postponing the resolution of the motion to quash to after the issuance of the arrest warrant is certainly inconsistent with the accused's constitutional rights. Such a stance is

constitutionally unsound. Between the lack of an express provision in the Rules and the constitutional guarantee that the said rights be respected, the express provisions of the Constitution must prevail.

And, if there is a doubt on that matter, the doubt should be resolved in favor of the accused. It is indeed more favorable to the accused and in keeping with his rights that his motion to quash be first resolved — at the earliest opportunity and before the arrest warrant is issued against him. ***The essence of due process is after all the right to be heard before one is deprived of his right to liberty.*** And Petitioner, being an accused, is no exception even if she is an avowed critic of the incumbent President.

Justice Peralta's Concurring Opinion points out that under the 1940 and 1964 Rules of Court, it was provided that the motion to quash shall be heard immediately on its being made unless, for good cause, the court postpone the hearing; and all issues whether of fact or law, which arise on a motion to quash shall be tried by the court. It also points out that the period to file the motion to quash is before the accused enters his plea. On the premise that this no longer appears in the current Rules of Court, a conclusion is reached that the motion to quash should, at the least, be resolved before arraignment — thus implying that the respondent Judge did not commit grave abuse of discretion by not immediately ruling on the motion to quash because she had, after all, the period to do so prior to the entry of plea. The Concurring Opinion implies as well that there was no error on the part of the respondent Judge in issuing a warrant of arrest prior to resolving the motion to quash.

I do not agree. The absence of such provision in the present Rules does not mean that the judge should not rule on the motion to quash immediately, especially bearing in mind the constitutional rights of the accused. As already explained, to belatedly rule on the motion directly runs counter to these rights.

In plain language, the provision, in providing a period within which to file the motion to quash, intends to put a time limit on when the motion can be entertained by the trial court. **It does *not* provide that the resolution of the motion cannot be made during the determination of probable cause to issue the warrant of arrest.**

As already explained, the respondent Court's jurisdiction over the case is, given the language of the Information, tenuous at best. Thus, when the respondent Judge took cognizance of the case despite the clearly insufficient manner in which the Information charges Petitioner with a violation of RA 9165, she effectively denied the ground in Petitioner's Motion to Quash that the RTC does not have jurisdiction over the case. By the same token, she also denied the ground that the allegations and recital of facts in the Information do not allege the *corpus delicti* of the unlawful act penalized under RA 9165 which the Information is supposed to charge.

As well, inasmuch as the Ombudsman is the proper official who has jurisdiction to conduct preliminary investigation in complaints for possible indirect bribery, the respondent Judge, in asserting jurisdiction, likewise effectively denied the Motion to Quash's ground that the DOJ had no authority to file the Information.

To recall, the Motion to Quash was filed by Petitioner during the probable cause determination stage — *i.e.*, at that time when the respondent Judge was confronted with the question of whether or not a warrant for the arrest of Petitioner should be issued, and where the very jurisdiction of the RTC and sufficiency of the Information had been put in issue. Petitioner even invoked her constitutional right to be informed of the nature and cause of the accusation against her.

Under Section 5, Rule 112, the judge has 10 days from the filing of the Information to determine probable cause for the issuance of an arrest warrant. ***These same 10 days were more than ample time for respondent Judge to concurrently rule on the Motion to Quash***. It is thus ludicrous to assert that respondent Judge can still rule on the Motion to Quash even after she had already ordered Petitioner's arrest — as this cannot now undo the prior curtailment of Petitioner's rights to liberty, to due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her.

Justice Peralta's Concurring Opinion also observes that sustaining the contention that a judge must first act on a pending motion to quash the information before she could issue a warrant of arrest would render nugatory the 10-day period to determine probable cause to issue a warrant of arrest under Section 5, Rule 112. Again, this is incorrect. As stated, in the face of the constitutional rights of an accused, that same 10-day period was ample time for respondent Judge to simultaneously rule on the motion to quash and determine probable cause — especially where, as in this case, the Information is patently defective.

The respondent Judge thus acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

The Court in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*[64] stated:

> Where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the **petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be**

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64 713 Phil. 500 (2013) [Per J. Leonardo-De Castro, First Division].

> **equivalent to lack of jurisdiction**. This is so because "grave abuse of discretion" is well-defined and not an amorphous concept that may easily be manipulated to suit one's purpose. In this connection, *Yu v. Judge Reyes-Carpio*, is instructive:
>
> > The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the **petitioner could manifestly show that such act was patent and gross**. x x x.[65] (Emphasis supplied; citations omitted)

The respondent Judge's grave abuse of discretion is evident from the following:

(1) She issued the warrant of arrest against Petitioner despite the patent defects evident on the face of the Information;

(2) She made a determination of probable cause for violation of RA 9165 against Petitioner despite the absence of sufficient factual averments in the Information of the specific acts constituting such violation;

(3) She disregarded established and hornbook jurisprudence requiring the presence of *corpus delicti* in dangerous drugs cases, thus characterizing her act of issuing a warrant of arrest as gross ignorance of the law;

(4) She totally ignored or purposely closed her eyes to a plethora of cases which held that Informations that aver conclusions of law, and not specific facts, as to the offense allegedly committed, are null and void for being violative of the accused's right to be informed of the nature and cause of the accusation against him;

(5) She assumed jurisdiction over the case despite the fact that the Information had not validly charged Petitioner with any offense under RA 9165, it being patent that the only crime the

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[65] Id. at 515-516.

Information could sustain is one exclusively cognizable by the Sandiganbayan;

(6) She disregarded and violated Petitioner's rights not to be deprived of liberty without due process of law and to be presumed innocent when she purposely did not rule on Petitioner's Motion to Quash before she issued a warrant for her arrest, showing extreme and utter malice and bias against Petitioner;

(7) If there was a doubt as to whether the Motion to Quash was to be resolved simultaneously with the determination of probable cause, she should have resolved the doubt in Petitioner's favor which is the general and accepted rule; and since she did not do so, this again showed her bias against Petitioner;

(8) She acted without jurisdiction when she took cognizance of the case despite the fatal defect on the face of the Information that it could not have validly charged any violation of RA 9165 against Petitioner and that what is apparent therein is only a possible charge of indirect bribery, which is exclusively cognizable by the Sandiganbayan; and

(9) In finding probable cause against Petitioner for violation of RA 9165 and issuing the warrant of arrest against her despite the nullity of the Information, she disregarded and curtailed Petitioner's right to be informed of the nature and cause of the accusation against her and to be presumed innocent, again showing bias against Petitioner.

Clearly, there is no conclusion that can be derived from the foregoing other than a finding of grave abuse of discretion on the part of the respondent Judge. The respondent Judge acted **in a capricious, whimsical, arbitrary or despotic manner in the exercise of her jurisdiction as to be equivalent to lack of jurisdiction**. Thus, Petitioner has availed of the proper remedy – a petition for *certiorari* under Rule 65 of the Rules.

The Procedural Issues

Proceeding now to the procedural issues, the *ponencia* asserts that the Petition is plagued with procedural defects that warrant its outright dismissal.

This is error.

The Court in numerous cases has set aside procedural issues to give due course to *certiorari* petitions. Surely, each member of the Court has

invoked, and will so continue to invoke, the Constitution to justify the relaxation of the application of procedural rules. However, the majority finds that Petitioner here has not made out a case falling under any of the recognized exceptions to procedural rules applicable to the Petition.

If the Constitution is the fundamental and highest law of the land, why should its invocation to clothe the Court with jurisdiction be an exception to procedural rules? Should not the invocation of the Constitution be the general rule?

The verification and certification requirements under Rule 65 were substantially complied with.

The *ponencia* takes note of the statements in the Affidavit executed by Atty. Maria Cecile C. Tresvalles-Cabalo (Atty. Tresvalles-Cabalo) confirming that Petitioner affixed her signature on the Petition's Verification and Certification Against Forum Shopping before the same was transmitted to the former for notarization. The *ponencia* submits, on the basis of *William Go Que Construction v. Court of Appeals*[66] and *Salumbides, Jr. v. Office of the Ombudsman*[67] that such fact renders the Petition fatally defective, due to non-compliance with the mandatory verification and certification requirements under Rule 65 of the Rules.

That the petitioners in *William Go Que Construction* and *Salumbides, Jr.* failed to strictly comply with the verification and certification requirements under the Rules is undisputed. However, the circumstances in these cases significantly differ from those obtaining in this case, and preclude the adoption of the Court's rulings therein in the present Petition.

In *William Go Que Construction,* respondents therein failed to comply with the verification and certification requirements since the corresponding *jurat* did not indicate the pertinent details regarding their respective identities. For this reason, the Court was left with no means to ascertain whether *any* of said respondents had, in fact, signed the verification and certification in question. In *Salumbides, Jr.*, the verification portion of the petition therein did not carry a certification at all. Accordingly, the Court held that non-compliance with the certification requirement, as distinguished from *defective* compliance, served as sufficient cause for dismissal without prejudice.

The foregoing circumstances do not obtain in this case. As stated in Atty. Tresvalles-Cabalo's Affidavit,[68] Petitioner's staff informed her in advance that the Petition had already been signed by Petitioner, and that the same was ready for notarization. Thereafter, the signed Petition was handed

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66 G.R. No. 191699, April 19, 2016, 790 SCRA 309 [Per J. Perlas-Bernabe, First Division].
67 633 Phil. 325 (2010) [Per J. Carpio-Morales, En Banc].
68 Affidavit dated March 20, 2017.

to her by a staff member. Because of her familiarity with Petitioner's signature, Atty. Tresvalles-Cabalo was able to ascertain that the signature appearing on the Verification and Certification Against Forum Shopping appended to the Petition was Petitioner's.[69] Nonetheless, Atty. Tresvalles-Cabalo still requested, and was thereafter provided a photocopy of Petitioner's passport.[70]

Based on the foregoing narrative, Atty. Tresvalles-Cabalo was able to sufficiently ascertain that the person who had signed the Petition and the Verification and Certification Against Forum Shopping appended thereto was, in fact, Petitioner herself.[71] **No doubt exists as to the identity of Petitioner as the affiant, and the authenticity of the signature appearing on the document in question. Petitioner herself does not question the authenticity of her signature.** Hence, it is crystal clear that the reasons which impelled the Court to rule as it did in *William Go Que Construction* and *Salumbides, Jr.* do not exist in the present case.

Verily, the Court, in *William Go Que Construction,* acknowledged that failure to strictly comply with the verification and/or certification requirements shall not constitute a fatal defect, *provided* there is substantial compliance therewith:

> In this case, it is undisputed that the Verification/Certification against Forum Shopping attached to the petition for *certiorari* in C.A.-G.R. S.P. No. 109427 was not accompanied with a valid affidavit/properly certified under oath. This was because the *jurat* thereof was defective in that it did not indicate the pertinent details regarding the affiants' (*i.e.*, private respondents) competent evidence of identities.
>
> x x x x
>
> x x x To note, it cannot be presumed that an affiant is personally known to the notary public; the *jurat* must contain a statement to that effect. Tellingly, the notarial certificate of the Verification/Certification of Non-Forum Shopping attached to private respondents' petition before the CA did not state whether they presented competent evidence of their identities, or that they were personally known to the notary public, and, thus, runs afoul of the requirements of verification and certification against forum shopping under Section 1, Rule 65, in relation to Section 3, Rule 46, of the Rules of Court.
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> **In *Fernandez v. Villegas (Fernandez)*, the Court pronounced that noncompliance with the verification requirement or a defect therein "does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby." "Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the**

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69 Id.
70 Id.
71 Id.

> **allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**" Here, there was no substantial compliance with the verification requirement as it cannot be ascertained that any of the private respondents actually swore to the truth of the allegations in the petition for *certiorari* in C.A.-G.R. S.P. No. 109427 given the lack of competent evidence of any of their identities. Because of this, the fact that even one of the private respondents swore that the allegations in the pleading are true and correct of his knowledge and belief is shrouded in doubt.
>
> For the same reason, neither was there substantial compliance with the certification against forum shopping requirement. **In *Fernandez*, the Court explained that "non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'"** Here, the CA did not mention — nor does there exist — any perceivable special circumstance or compelling reason which justifies the rules' relaxation. At all events, it is uncertain if any of the private respondents certified under oath that no similar action has been filed or is pending in another forum. x x x[72] (Emphasis and underscoring supplied)

Petitioner, being the sole party in interest in the present case, undoubtedly qualifies as one with ample knowledge to affirm the veracity of the allegations in the Petition, and with sufficient capacity to certify that its filing does not constitute forum shopping. This serves, as it should, as sufficient basis to hold that the verification and certification requirements have been substantially complied with.

The principle of substantial compliance remains controlling with respect to the verification and certification requirements under Rule 65.

It has been argued that while there is jurisprudence to the effect that an irregular notarization does not necessarily affect the validity of a document, but merely reduces its evidentiary value to that of a private one, such principle should not be deemed controlling with respect to petitions filed under Rule 65, since the Rule specifically mandates that petitions for *certiorari* be verified and accompanied by a sworn certificate against forum shopping. This position proffers the view that strict compliance with the verification and certification requirements shall, at all times, be necessary. Again, this is wrong.

In *Rombe Eximtrade (Phils.), Inc. v. Asiatrust Development Bank*,[73] the Court held that the Court of Appeals (CA) correctly resolved the petition

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72 Supra note 66, at 321-325.

73 Supra note 2.

for *certiorari* filed by respondent bank notwithstanding allegations that the party who signed the verification and certification thereof was not duly authorized to do so. In so ruling, the Court applied the principle of substantial compliance with respect to a petition for *certiorari* filed under Rule 65:

> On the matter of verification, the purpose of the verification requirement is to assure that the allegations in a petition were made in good faith or are true and correct, not merely speculative. **The verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the petition signed the verification attached to it, and when matters alleged in the petition have been made in good faith or are true and correct. In this case, we find that the position, knowledge, and experience of Ferrer as Manager and Head of the Acquired Assets Unit of Asiatrust, and his good faith, are sufficient compliance with the verification and certification requirements**. This is in line with our ruling in *Iglesia ni Cristo v. Ponferrada*, where we said that it is deemed substantial compliance when one with sufficient knowledge swears to the truth of the allegations in the complaint x x x[74] (Emphasis and underscoring supplied)

Further, in *Marcos-Araneta v. Court of Appeals,*[75] the Court held that verification is not a jurisdictional requirement but a formal one which may be subsequently corrected or cured upon order of the courts. The Court further held that contrary to the actuations of petitioners therein, the CA did not err when it permitted respondent's counsel to cure the defects in the verification and certification appended to the joint petition for *certiorari* which respondent filed before the CA *via* Rule 65.

Still, in the more recent case of *Ingles v. Estrada*,[76] the Court held that the CA erred when it dismissed the *certiorari* petition filed by petitioners therein on the ground of non-compliance with Section 1 of Rule 65, because its verification and certification lacked the signatures of 3 out of the 5 named petitioners. In so ruling, the Court found that the verification and certification requirements should be deemed to have been substantially complied with.

The foregoing cases, among others,[77] illustrate that while the verification and certification requirements are explicit under Rule 65, they remain within the ambit of the principle of substantial compliance.

The Petition constitutes an exception to the principle of hierarchy of courts, as it presents novel questions of law

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74 Id. at 816-817.

75 Supra note 2, at 52.

76 708 Phil. 271, 303-306 (2013) [Per J. Perez, Second Division].

77 See *Bacolor v. VL Makabali Memorial Hospital, Inc.*, G.R. No. 204325, April 18, 2016, 790 SCRA 20 [Per J. Del Castillo, Second Division].

and raises genuine constitutional issues.

The *ponencia* holds that Petitioner violated the rule on hierarchy of courts and failed to sufficiently establish the existence of reasons that warrant the application of its recognized exceptions. As discussed in the first portion of this Dissenting Opinion, the Petition involves novel questions of law and genuine constitutional issues that justify a direct resort to this Court.

Foremost is the recognition and application of the constitutionally-guaranteed rights of Petitioner, as an accused, to be informed of the nature and cause of the accusation against her and to be presumed innocent given the nullity of the Information because it does not contain the essential facts constituting the unlawful act of illegal trading of dangerous drugs. Whether the Motion to Quash should be resolved simultaneously with the determination of probable cause for the issuance of the warrant of arrest against Petitioner, so that her right not to be deprived of liberty without due process would not be curtailed, is a novel question of law.

The nature of the charge involved in the present Petition and the apparent conflict between RA 9165 and RA 10660[78] in respect of jurisdiction over offenses committed by public officials in relation to their office, presents another novel issue based on the observations of some members of the Court. In fact, the specific circumstances which set this case apart from previously decided cases were expounded upon during Justice Carpio's interpellation:

> **JUSTICE CARPIO:**
> Counsel, what is the latest law on the charter of the Sandiganbayan?
>
> **ATTY. HILBAY:**
> The latest law, Your Honor, is [RA] 10-6-60 (sic) which was passed in, I think, June or July of 2014.
>
> x x x x
>
> **JUSTICE CARPIO:**
> Okay. What does it say on *jurisdiction?*
>
> **ATTY. HILBAY:**
> Okay. If I may read, Your Honor, Section 2 (sic), Section 4 of the same decree: *As amended is hereby further amended to read as follows:*
>
> *Section 4. Jurisdiction. The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving (a)...*

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[78] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

JUSTICE CARPIO:

x x x x

When it says "exclusive" that means no other court can acquire?

ATTY. HILBAY:

You are correct, Your Honor.

JUSTICE CARPIO:

When it says "in all cases", it means there is no exception?

ATTY. HILBAY:

Correct, Your Honor.

JUSTICE CARPIO:

So, it reiterates the word, the meaning of "exclusive" with the phrase "in all cases". So, "in all cases" means no exception at all?

ATTY. HILBAY:

It exhausts all possibilities, Your Honor.

x x x x

JUSTICE CARPIO:

Okay, and one case is if the respondent, public respondent has a salary grade of 27 or higher?

ATTY. HILBAY:

Yes.

x x x x

JUSTICE CARPIO:

So, if one of the respondents is a public official with salary grade of 27...

x x x x

JUSTICE CARPIO:

And above, then the case falls under the Sandiganbayan if there is a violation of laws, correct?

x x x x

JUSTICE CARPIO:

Yes. Any criminal law, any crime?

x x x x

ATTY. HILBAY:

In letter B, Your Honor, which is the catch all provision: "Other offenses and felonies whether simple or complex with other crimes committed by public officials and employees mentioned in sub-section A those with salary grade 27 and above, in general, of this section in relation to their office."

x x x x

JUSTICE CARPIO:

If he commits a crime not falling under those crimes mentioned expressly but he commits it in relation to his office and he is salary grade 27 or above...

x x x x

JUSTICE CARPIO:

...it will fall under the Sandiganbayan?

ATTY. HILBAY:

Exclusive original jurisdiction.

JUSTICE CARPIO:

And that is your claim now, that the petitioner here has a salary grade of 27...

x x x x

JUSTICE CARPIO:

...at the time of the commission her salary grade was 27 and above?

ATTY. HILBAY:

31.

JUSTICE CARPIO:

31. And the Information charges her with the crime in relation to her office that she took advantage of her position or authority?

ATTY. HILBAY:

That's very clear in the Information, Your Honor.

JUSTICE CARPIO:

Yes, okay. So that's your basis for filing this petition basically on that jurisdictional ground?

ATTY. HILBAY:

Yes, Your Honor.

JUSTICE CARPIO:

Okay. So, that's the latest expression of the law. But there are two previous cases, *People [v.] Benipayo,* where this Court said that despite the charter of the Sandiganbayan even if the respondent is a public official with the salary grade above 27, still it will fall under RTC because the crime is libel?

ATTY. HILBAY:

Yes, Your Honor.

JUSTICE CARPIO:

How do you answer that?

ATTY. HILBAY:

No. 1, Your Honor, in the Benipayo case, the statute clearly says it is the RTC that has exclusive jurisdiction over all libel cases. No. 2, also, Your Honor, you don't have to be a (sic) COMELEC Chair Benipayo to commit libel, he could be Professor Benipayo or any other, you know, he could have done that, committed libel in any other capacity. In this case, Your Honor, it's very different. There is no other law that provides exclusive jurisdiction to the RTC. And in fact, in this case the case of petitioner (sic) falls squarely within Section 4 of P.D. 1606 whether it is, in fact, Direct Bribery under Section A or Drug Trading which would fall under Section B because both of them were done in relation to her public office.

x x x x

JUSTICE CARPIO:

In Benipayo, did the prosecution allege that Benipayo committed libel in relation to his office?

ATTY. HILBAY:

No, Your Honor, I don't think so.

JUSTICE CARPIO:

Here, the prosecution alleged that. So it's the prosecution who's claiming that the offense committed by the petitioner is in relation to her office?

ATTY. HILBAY:

Your Honor, as I stated in my opening statement, the prosecution itself has clearly embedded those cooperative phrases.[79] (Emphasis supplied)

The novelty of the issues raised in the Petition was further emphasized during the interpellation of Justice Leonen:

JUSTICE LEONEN:

In the structure of the Sandiganbayan, there are three justices that hear the case and for a Regional Trial Court, there is one judge. And many of you have practiced, I have practiced in our trial courts, *mas madaling kausapin ang isa kaysa tatlo,* correct?

ATTY. HILBAY:

I would suppose, Your Honor.

x x x x

JUSTICE LEONEN:

x x x But the point there is, there is a certain reason why the Sandiganbayan is composed of three justices at the level of the Court of Appeals, at the appellate level and they all hear one case. This is a case involving whatever the Sandiganbayan law says. Why? Why is the structure of the Sandiganbayan different?

x x x x

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79 TSN, March 14, 2017, pp. 51-57.

JUSTICE LEONEN:

Is it possible, in order that high public officials especially the very high public officials cannot avail of the mechanisms of government or the network that they left behind in government in order to be able to influence a case... (interrupted)

x x x x

JUSTICE LEONEN:

...because three justices at the appellate level, very close to being promoted to the Supreme Court, will be, I think, a better buffer than simply one lonely in (sic), let us say, in Muntinlupa whose promotion and whose future may be affected by cases that she or he decides by himself or herself, correct?

ATTY. HILBAY:

Correct, Your Honor.

x x x x

JUSTICE LEONEN:

Yes. Now here we have this particular case so I will not go into the text, I will just go into the purpose; and I will not even go to the general or specific rule because that has already been covered. Here we have a case and De Lima, Leila De Lima was what?

ATTY. HILBAY:

Secretary of Justice...

JUSTICE LEONEN:

And Secretary of Justice means a cabinet official and cabinet official that may have had hand in appointments in many of the judicial offices, right?

ATTY. HILBAY:

Possibly...

JUSTICE LEONEN:

Or for that matter, may have left a network in the Department of Justice, I do not know, or may have a hand in the legal sector of the...our economy and, therefore, there is need that certain kinds of cases of this nature, not because she is Leila De Lima but because she was a Cabinet Secretary. Even [if] it was an offense punishable by the Revised Penal Code, there is reason that it be given to the Sandiganbayan, correct?

ATTY. HILBAY:

Correct, Your Honor.

x x x x

JUSTICE LEONEN:

Okay, would you tell us if there is any precedent on Trading, not Illegal Sale, on Trading?

ATTY. HILBAY:
We're not aware, Your Honor, but we'll do the research.

JUSTICE LEONEN:
None, okay. There is no case. This is the first case, if ever there is such an offense, correct?

ATTY. HILBAY:
Correct, Your Honor.[80] (Emphasis supplied)

In addition, it should not be overlooked that the Petition averred that undue haste attended the issuance of the warrant of arrest against Petitioner.[81] Moreover, it bears emphasizing that the Petitioner asserted that the Information against her failed to inform her of the specific nature and cause of the accusation against her, for while she was charged with consummated drug trading under Section 5 of RA 9165, the Information is bereft of any allegation as to the sale and delivery of any specific drug, or the character and quantity thereof.[82]

These issues strike at the very heart of the constitutional right to criminal due process, the importance of which had been painstakingly stressed by the Court in *Enrile v. People,*[83] thus:

> Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him. This right has long been established in English law, and is the same right expressly guaranteed in our 1987 Constitution. This right requires that the offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense.
>
> In the 1904 case of *United States v. Karelsen*, the Court explained the purpose of informing an accused in writing of the charges against him from the perspective of his right to be informed of the nature and cause of the accusation against him:
>
> > The object of this written accusation was — First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. x x x In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must

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80 Id. at 131-134.
81 Petition, p. 22.
82 Id. at 42.
83 766 Phil. 75 (2015) [Per J. Brion, En Banc].

> contain a specific allegation of every fact and circumstances necessary to constitute the crime charged. x x x
>
> **The objective, in short, is to describe the act with sufficient certainty to fully appraise the accused of the nature of the charge against him and to avoid possible surprises that may lead to injustice. Otherwise, the accused would be left speculating on why he has been charged at all.**
>
> In *People v. Hon. Mencias, et al.*, the Court further explained that a person's constitutional right to be informed of the nature and cause of the accusation against him signifies that an accused should be given the necessary data on why he is the subject of a criminal proceeding. The Court added that the act or conduct imputed to a person must be described with sufficient particularity to enable the accused to defend himself properly.
>
> The general grant and recognition of a protected right emanates from Section 1, Article III of the 1987 Constitution which states that no person shall be deprived of life, liberty, or property without due process of law. The purpose of the guaranty is to prevent governmental encroachment against the life, liberty, and property of individuals; to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice x x x; and to secure to all persons equal and impartial justice and the benefit of the general law.
>
> **Separately from Section 1, Article III is the specific and direct underlying root of the right to information in criminal proceedings — Section 14(1), Article III — which provides that *"No person shall be held to answer for a criminal offense without due process of law."* Thus, no doubt exists that the right to be informed of the cause of the accusation in a criminal case has deep constitutional roots that, rather than being cavalierly disregarded, should be carefully protected.**[84] (Emphasis and underscoring supplied; citations omitted)

As tersely observed in *Arroyo v. Department of Justice*,[85] direct relief has been granted by the Court to rectify a manifest injustice suffered by parties whose right to criminal due process had been violated:

> This is not the first time that the Court is confronted with the issue of jurisdiction to conduct preliminary investigation and at the same time with the propriety of the conduct of preliminary investigation. In *Cojuangco, Jr. v. Presidential Commission on Good Government [PCGG]*, the Court resolved two issues, namely: (1) whether or not the PCGG has the power to conduct a preliminary investigation of the anti-graft and corruption cases filed by the Solicitor General against Eduardo Cojuangco, Jr. and other respondents for the alleged misuse of coconut levy funds; and (2) on the assumption that it has jurisdiction to conduct such a preliminary investigation, whether or not its conduct constitutes a violation of petitioner's right to due process and equal

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84 Id. at 98-100.

85 695 Phil. 302 (2012) [Per J. Peralta, En Banc].

> protection of the law. The Court decided these issues notwithstanding the fact that Informations had already been filed with the trial court.
>
> In *Allado v. Diokno,* in a petition for *certiorari* assailing the propriety of the issuance of a warrant of arrest, **the Court could not ignore the undue haste in the filing of the information and the inordinate interest of the government in filing the same. Thus, this Court took time to determine whether or not there was, indeed, probable cause to warrant the filing of information. This, notwithstanding the fact that information had been filed and a warrant of arrest had been issued. Petitioners therein came directly to this Court and sought relief to rectify the injustice that they suffered.**[86] (Emphasis supplied)

The need for the Court's direct action is made more manifest by the fact that while Petitioner had been charged, arrested, and detained for consummated drug trading under Section 5, of RA 9165,[87] the OSG now claims that the offense she had allegedly committed was conspiracy to commit drug trading — an entirely different offense punishable under Section 26 (b) of the same statute.[88]

The principle of hierarchy of courts is not an iron-clad rule.[89] Accordingly, the Court has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it if warranted by the nature of the issues raised in therein.[90] In this connection, the Court ruled in *The Diocese of Bacolod v. Commission on Elections*[91]:

> x x x [T]he Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent should not be emasculated by the doctrine in respect of the hierarchy of courts. That has never been the purpose of such doctrine.
>
> Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine:
>
> x x x x
>
> ***Third*, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter** x x x[92] (Emphasis supplied)

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86 Id. at 333-334.
87 Petition, pp. 18-19.
88 TSN, March 28, 2017, p. 16.
89 *Maza v. Turla,* G.R. No. 187094, February 15, 2017, p. 11 [Per J. Leonen, Second Division] citing *The Diocese of Bacolod v. Commission on Elections,* 751 Phil. 301, 330 (2015) [Per J. Leonen, En Banc].
90 Id. at 330-331.
91 Supra note 89.
92 Id. at 330-333.

The Petition, having presented, at the very least, a question of first impression and a genuine constitutional issue, is exempted from the rule on hierarchy of courts. Hence, it is indeed lamentable that the majority of the Court has shirked its duty to resolve the Petition to determine whether Petitioner's rights to due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her had in fact been violated in the face of apparent defects plaguing the Information. ***To uphold the technical rules of procedure without due deference to these fundamental constitutional rights would be to defeat the very purpose for which such rules, including the hierarchy of courts, were crafted***.

The factual precedents that gave rise to this Petition have left Petitioner with no other plain, speedy, and adequate remedy in the ordinary course of law.

The *ponencia* finds that the Petition is premature, as there is still something left for the trial court to do — that is, resolve petitioner's Motion to Quash. Such position is anchored on the cases of *Solid Builders Inc. v. China Banking Corporation*[93] (*Solid Builder's*), *State Investment House, Inc. v. Court of Appeals*[94] (*State Investment House*) and *Diaz v. Nora*[95] (*Diaz*), which uphold the dismissal of the petitions therein on the ground of prematurity.

However, as previously narrated, considering that the Petition had been prompted precisely by the RTC's inaction on Petitioner's Motion to Quash, then the cases relied upon to support the contrary view are inapplicable.

It bears noting that subject matter jurisdiction was not an issue in *Solid Builder's* and *State Investment House*. Moreover, while subject matter jurisdiction was raised as an issue in *Diaz*, the antecedents which prompted the Court to dismiss the petition for *mandamus* filed by petitioner therein on the ground of prematurity substantially differ from those in the present case.

In *Diaz,* petitioner filed a complaint for illegal suspension and damages before the National Labor Relations Commission (NLRC), and subsequently secured a favorable decision from the Labor Arbiter (LA). Respondent therein appealed said decision to the NLRC. Immediately thereafter, petitioner filed a motion for execution before the LA, alleging that respondent failed to file the necessary bond which precluded the perfection of the appeal, thereby rendering the LA's decision final and

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93 707 Phil. 96 (2013) [Per J. Leonardo-De Castro, First Division].
94 527 Phil. 443 (2006) [Per J. Corona, Second Division].
95 268 Phil. 433 (1990) [Per J. Gancayco, First Division].

executory. Instead of acting on petitioner's motion, the LA forwarded the records of the case to the NLRC. Aggrieved, petitioner filed a petition for *mandamus* before the Court to compel the remand of the records of the case to the LA to facilitate the issuance of a writ of execution. The Court dismissed the petition for being premature because **petitioner failed to give the NLRC the opportunity to determine whether or not it has jurisdiction over respondent's appeal,** thus:

> Petitioner argues that a motion for reconsideration cannot be filed with the respondent labor arbiter as the latter merely failed to resolve the motion for execution and sent the records of the case to respondent NLRC. Petitioner further contends that he cannot seek a reconsideration from respondent NLRC as it has no jurisdiction over the appeal private respondent having failed to perfect its appeal. Petitioner asserts that it is the ministerial duty of the respondent NLRC to remand the records and for the respondent labor arbiter to execute his decision.
>
> **The proper step that the petitioner should have taken was to file a motion to dismiss appeal and to remand the records with the respondent NLRC alleging therein that the decision had become final and executory.** It is not true that respondent NLRC has no jurisdiction to act on this case at all. It has the authority to dismiss the appeal if it is shown that the appeal has not been duly perfected. It is only when the respondent NLRC denies such motion and the denial appears to be unlawful that this petition for *mandamus* should be filed in this Court.
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> x x x x
>
> In this case it has not been shown that either the respondent labor arbiter or respondent NLRC has unlawfully neglected the performance of an act which the law specifically enjoins them as a duty to perform or has otherwise unlawfully excluded petitioner from a right he is entitled to. In the case of the respondent labor arbiter, he has not denied the motion for execution filed by the petitioner. He merely did not act on the same. Neither had petitioner urged the immediate resolution of his motion for execution by said arbiter. **In the case of the respondent NLRC, it was not even given the opportunity to pass upon the question raised by petitioner as to whether or not it has jurisdiction over the appeal, so the records of the case can be remanded to the respondent labor arbiter for execution of the decision**.
>
> Obviously, petitioner had a plain, speedy and adequate remedy to seek relief from public respondents but he failed to avail himself of the same before coming to this Court. To say the least, the petition is premature and must be struck down.[96] (Emphasis and underscoring supplied)

To be sure, what impelled the Court to rule as it did in *Diaz* was the failure of petitioner therein to give the NLRC the opportunity to determine the jurisdictional issue subject of the *mandamus* petition. *Diaz* thus instructs that in assailing matters of jurisdiction, the speedy, adequate, and appropriate remedy lies, in the first instance, with the court or body whose

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[96] Id. at 436-438.

jurisdiction is being assailed. Consequently, should this remedy fail, resort to the next available remedy provided under the Rules should be permitted.

Proceeding therefrom, it bears stressing that Petitioner filed her Motion to Quash before the RTC precisely for the purpose of assailing the latter's jurisdiction. Through the filing of the Motion to Quash, the RTC was afforded the opportunity to address the issue head on. By failing to seasonably rule on the same — and instead, immediately ordering Petitioner's incarceration with the issuance of a warrant of arrest — the respondent Judge left Petitioner with no other recourse but to elevate the matter to this Court *via* Rule 65, in view of the nature of the issues herein. Thus, to dismiss the Petition on the ground of prematurity would be to punish Petitioner for the respondent Judge's inaction, over which she has no control.

Not only was there inaction on the part of the respondent Judge, her Order for the issuance of the warrant of arrest against Petitioner without resolving the Motion to Quash (which put in question the court's very jurisdiction and the sufficiency of the Information) **effectively denied the Motion to Quash**. The respondent Judge had in effect found that the Information was sufficient pursuant to the Rules of Court and the trial court had jurisdiction over the case. For her to subsequently "rule" on the Motion to Quash would be illusory — because by refusing to rule on the Motion to Quash simultaneously with the determination of probable cause, the respondent Judge had already disregarded and trampled upon Petitioner's rights not to be held to answer for a criminal offense without due process, not to be deprived of liberty without due process, to be presumed innocent and to be informed of the nature and cause of the accusation against her.

With the glaring defects in the Information and the patent violation of Petitioner's constitutional rights smacking of grave abuse of discretion on the part of respondent Judge, it will be the height of unfairness to insist that the speedy, adequate, and appropriate remedy is to proceed to trial.

The rule against forum shopping was not violated.

In the recent case of *Ient v. Tullett Prebon (Philippines), Inc.*,[97] the Court had the occasion to determine whether petitioners therein committed forum shopping, as they resolved to file a petition for *certiorari* before this Court during the pendency of their motion to quash with the RTC. Ruling in the negative, the Court held:

> **Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by**

[97] G.R. Nos. 189158 and 189530, January 11, 2017 [Per J. Leonardo-De Castro, First Division].

> **appeal or special civil action for *certiorari***. It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. **There is no forum shopping where the suits involve different causes of action or different reliefs.**[98] (Emphasis and underscoring supplied)

On such basis, no forum shopping was committed in this case for two primary reasons.

First, the criminal case pending with the RTC, on the one hand, and the Petition on the other, involve different causes of action. The former is a criminal action which seeks to establish criminal liability, while the latter is a special civil action that seeks to correct errors of jurisdiction. *Second,* the two cases seek different reliefs. The RTC case seeks to establish Petitioner's culpability for the purported acts outlined in the Information, while the Petition seeks to correct the grave abuse of discretion allegedly committed by the respondent Judge when she proceeded to issue a warrant of arrest against Petitioner despite the pendency of the latter's Motion to Quash, which, in turn, assailed the respondent Judge's very jurisdiction to take cognizance of the case.[99]

The rules of procedure are intended to facilitate rather than frustrate the ends of justice.

Notwithstanding the foregoing disquisition, it is necessary to stress that the Rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts are promulgated by the Court under Section 5(5) of Article VIII of the Constitution. It cannot diminish or modify substantive rights,[100] much less be used to derogate against constitutional rights. The Rules itself provides it must be construed liberally to promote the just, speedy and inexpensive disposition of every action and proceeding[101] and thus must always yield to the primary objective of the Rules, that is, to enhance fair trials and expedite justice.

Time and again, this Court has decreed that rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration.[102] This principle finds emphatic application in this case.

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98 Id. at13-14.
99 Petition, p. 20.
100 CONSTITUTION, Art. VIII, Sec. 5(5).
101 RULES OF COURT, Rule 1, Sec. 6.
102 *Alcantara v. Philippine Commercial and International Bank*, 648 Phil. 267, 279 (2010) [Per J. Leonardo-De Castro, First Division].

Closing

When the very rights guaranteed to an accused by our Constitution are disregarded and the rules of procedure are accorded precedence — that is abhorrent and preposterous. That is plain and simple injustice.

The separate and discordant voices of the members of the Court have been heard. Yet, there is no direct pronouncement that the Information against Petitioner and her co-accused is valid. The impression that can be gathered is that if it is defective, then it can anyway be subsequently amended. In the meantime, Petitioner must continue to languish in jail — even if the Information cannot possibly be amended because it is fatally defective. This case thus highlights the need for the immediate resolution of a motion to quash that is filed during the determination of probable cause stage if only to avoid the curtailment of an accused's constitutional rights, especially his right to be presumed innocent and to not be deprived of his liberty without due process of law. Where, as here, the Information only contains defined legal terms and conclusions of law, without specific factual allegations of the elements of the offense charged — thus, a sham, and showcasing the lack of jurisdiction of the trial court, then there is a clear need that the motion to quash raising these grounds, when filed during the determination of probable cause stage, should be resolved and cannot be postponed to a time after the arrest of the accused.

In this case, unfortunately, the Constitution is deemed no match to the absence of a specific procedural rule that a motion to quash should be ruled upon simultaneously with the determination of probable cause — even if the Information indicting the accused is void on its face and the very jurisdiction of the criminal court is being questioned. The majority of the Court has succeeded, by its Decision, to make the Constitution subservient to the rules of procedure. They now allow for the deprivation of an individual's liberty while waiting for the correct and legally sufficient Information to be filed and approved by the criminal court.

The message is clear and unmistakable: Arrest first; resolve the motion to quash and amend the Information later; then proceed to trial; finally, acquit after ten years or so. It does not matter if the accused is to languish in detention. Never mind the accused's constitutional right to be presumed innocent, to be informed of the nature and cause of the accusation against him and not to be held to answer for a criminal offense without due process of law. Never mind if the Information is void for containing mere conclusions of law, for failing to identify and quantify the specific dangerous drug which is the object or *corpus delicti* of the alleged RA 9165 violation, and for not alleging all the facts needed to establish the elements of the offense charged. Never mind if previously this same Court has ruled that such a void Information warrants the acquittal of the accused.

And when the accused is finally acquitted, then the Constitution can finally be invoked to justify the acquittal — his constitutional rights can then belatedly be declared to have been violated. In the end, ***years down the road,*** the Constitution would then be given its due importance. But TODAY, to the majority, the Constitution can wait.

When I took my oath of office, I swore to uphold and defend the Constitution. This dissent is in keeping with that oath. I submit that the Constitution must reign supreme NOW and ALWAYS.

We've unmasked madmen, Watson, wielding scepters. Reason run riot. Justice howling at the moon.
- Sherlock Holmes[103]

WHEREFORE, I vote to **GRANT** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[103] *Murder by Decree* – The Movie (1979), http://www.quotes.net/movies/7825, last accessed October 11, 2017.