**EN BANC**

**G.R. No. 229781 (SENATOR LEILA M. DE LIMA *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)**

Promulgated: October 10, 2017

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## SEPARATE CONCURRING OPINION

**TIJAM, *J.*:**

It is settled that social and public interest demand the punishment of the offender.[1] It is likewise equally true that in a criminal prosecution, the accused has at stake interests of immense importance, both because of the possibility that he may lose his liberty or even his life upon conviction and because of the certainty that he would be stigmatized by the conviction.[2] With the public position of the accused being a Senator of the Philippines, and a former Secretary of Justice, it is easy to fall into the temptation of extremely scrutinizing the events that led to the instant quandary. It bears to keep in mind, however, that the instant case is one under Rule 65, a Petition for *Certiorari*. Hence, the facts of the case should be examined with a view of determining whether the respondents committed grave abuse of discretion in filing the charges against petitioner, and eventually ordering her arrest.

In this petition, Senator De Lima seeks to correct the grave abuse of discretion purportedly committed by respondent Judge Juanita Guerrero, presiding judge of the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 in connection with the criminal action for alleged illegal drug trading docketed as Criminal Case No. 17-165, and entitled, "*People of the Philippines v. Leila M. de Lima, Rafael Marcos Z. Ragos, Ronnie Palisoc Dayan.*"

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[1] *Binay v. Sandiganbayan*, G.R. Nos. 120681-83 & G.R. No. 128136, October 1, 1999.

[2] *People v. Baldogo*, G.R. Nos. 128106-07, January 24, 2003.

Specifically assailed in this petition are the following:

1. The Order dated February 23, 2017 wherein respondent judge found probable cause for the issuance of arrest warrants against all the accused, including Petitioner Leila M. De Lima;
2. The Warrant of Arrest against Petitioner also dated February 23, 2017, issued by respondent judge pursuant to the Order dated the same day;
3. The Order dated February 24, 2017, committing Petitioner to the custody of the PNP Custodial Center; and
4. The omission of respondent judge in failing or refusing to act on Petitioner's Motion to Quash, through which Petitioner seriously questions the jurisdiction of the lower court.

Petitioner prays that this Court annul the aforesaid orders and restore the parties to the *status quo* prior to the issuance of the said orders. Petitioner also prays that the respondent judge be compelled to resolve the motion to quash.

For their part, respondents maintain the validity of their actions insofar as petitioner's case is concerned. They claim that there is probable cause to charge petitioner with the offense of Conspiracy to Commit Illegal Drug Trading. They also affirm the RTC's jurisdiction to try the case. Also, respondents claim that respondent judge observed the constitutional and procedural rules in the issuance of the questioned orders and warrants of arrest.

*With the foregoing in mind, and for reasons hereafter discussed, I concur with the vote of the majority that the instant petition should be denied. Petitioner was unable to establish that grave abuse of discretion attended the proceedings a quo.*

***The petition is procedurally infirm***

A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion

amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[3]

In this case, the last two requisites are lacking. As will be discussed hereafter, petitioner was not able to discharge the burden of establishing that there was grave abuse of discretion on the part of respondent judge. Neither did she establish that there was no other remedy available to her in the ordinary course of law.

What is peculiar with the instant case is that it imputes grave abuse of discretion to an act of omission. Petitioner ultimately questions respondent judge's failure to act on her motion to quash. I am of the view that the circumstances sorrounding the respondent judge's inaction are not sufficient to justify resort to a petition for *certiorari* directly with this court.

For one, there is no showing that petitioner gave the trial court an opportunity to rule on the motion to quash. Without an actual denial by the Court, it would seem that the basis for petitioner's prayed reliefs are conjectures. To my mind, the trial court's inaction is an equivocal basis for an extraordinary writ of *certiorari,* and petitioner has failed to establish that such inaction requires immediate and direct action on the part of this Court. On this note, I agree with Justice Velasco that a petition for mandamus is available to compel the respondent judge to resolve her motion. Assuming further that the issuance of a warrant of arrest constituted as an implied denial of petitioner's motion to quash, jurisprudence[4] is consistent that the remedy against the denial of a motion to quash is for the movant accused to enter a plea, go to trial, and should the decision be adverse, reiterate on appeal from the final judgment and assign as error the denial of the motion to quash.

That the trial court has yet to rule directly on the jurisdictional issue also highlights the forum shopping committed by petitioner. Should respondent judge grant the motion to quash, then it fundamentally makes the instant petition moot and academic, as the underlying premise of the instant case is the "implied" denial of the RTC of petitioner's motion to quash. On the other hand, should this Court grant the instant petition, then the RTC is left with no option but to comply therewith and dismiss the case. It is also possible that this Court confirms the respondent judge's actions, but the latter, considering the time period provided under Section 1(g)[5] of Rule 116,

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[3] *Tan v. Spouses Antazo*, G.R. No. 187208, February 23, 2011.

[4] *See Enrile v. Judge Manalastas*, G.R. No. 166414, October 22, 2014; Soriano vs. People, G.R. Nos. 159517-18, June 30, 2009

[5] (g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.

grants petitioner's prayer for the quashal of the information. Any permutation of the proceedings in the RTC and this Court notwithstanding, I find that filing the instant petition to this Court is clear forum shopping. It should have been outrightly dismissed if this Court is indeed keen in implementing the policy behind the rule against forum shopping. Verily, forum shopping is a practice which ridicules the judicial process, plays havoc with the rules of orderly procedure, and is vexatious and unfair to the other parties to the case.[6] Our justice system suffers as this kind of sharp practice opens the system to the possibility of manipulation; to uncertainties when conflict of rulings arise; and at least to vexation for complications other than conflict of rulings.[7]

In the same vein, the failure of petitioner's to await the RTC's ruling on her motion to quash, and her direct resort to this Court violates the principle of hierarchy of courts. Other than the personality of the accused in the criminal case, nothing is exceptional in the instant case that warrants relaxation of the principle of hierarchy of courts. I am of the view that the instant case is an opportune time for the Court to implement strict adherence to the principle of hierarchy of courts, if only to temper the trend in the behaviour of litigants in having their applications for the so-called extraordinary writs and sometimes even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land.[8] The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.[9] Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[10]

Even if we disregard such procedural flaw, the substantial contentions of the petitioner fail to invite judgment in her favor.

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[6] *Heirs of Penaverde v. Heirs of Penaverde*, G.R. No. 131141, October 20, 2000.

[7] *See Madara et al. v. Judge Perello*, G.R. No. 172449, August 20, 2008.

[8] *See Quesada v. Department of Justice*, G.R. No. 150325, August 31, 2006, citing *People of the Philippines v. Cuaresma*, G.R. No. 67787, April 18, 1989

[9] *Banez v. Concepcion*, G.R. No. 159508, August 29, 2012.

[10] Id.

***The warrant of arrest was validly issued***

The argument that respondent judge did not make a personal determination of probable cause based on the wordings of the February 23, 2017 Order is inaccurate and misleading.

Undisputably, before the RTC judge issues a warrant of arrest under Section 6, Rule 112[11] of the Rules of Court, in relation to Section 2, Article III[12] of the 1987 Constitution, the judge must make a personal determination of the existence or non-existence of probable cause for the arrest of the accused. The duty to make such determination is personal and exclusive to the issuing judge. He cannot abdicate his duty and rely on the certification of the investigating prosecutor that he had conducted a preliminary investigation in accordance with law and the Rules of Court.[13]

Personal determination of probable cause for the issuance of a warrant of arrest, as jurisprudence teaches, requires a personal review of the recommendation of the investigating prosecutor to see to it **that the same is supported by substantial evidence.** The judge should consider not only the report of the investigating prosecutor but also the affidavits and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.[14]

In this case, the fact that respondent judge relied on the "*Information and all the evidence during the preliminary investigation*", as stated in the February 27, 2017 Order, does not invalidate the resultant warrant of arrest just because they are not exactly the same as the documents mentioned in Section 6 of Rule 112, *viz*: prosecutor's resolution and its supporting documents. As aptly discussed in the majority decision, citing relevant jurisprudence, the important thing is that the judge must have sufficient

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[11] Sec. 6. *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 clearly fails to 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 7 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 of information.

[12] 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.

[13] *Okabe v. Gutierrez*, G.R. No. 150185, May 27, 2004.

[14] Id.

supporting documents other than the recommendation of the prosecutor, upon which to make his independent judgment.

Contrary to petitioner's argument, the wordings of the February 27, 2017 Order reveal that respondent judge reviewed the available evidence and evaluated whether the same corresponds to the allegations in the Information. On this note, I agree with Justice Velasco that the respondent judge can be said to have even exceeded what is required of her under our procedural rules. In reviewing the evidence presented during the preliminary investigation and the Information, the respondent judge made a *de novo* determination of whether probable cause exists to charge petitioner in court.

Neither can respondent judge be held to have committed grave abuse of discretion when she issued a warrant of arrest against petitioner before resolving her motion to quash. There is simply no urgency that justifies overriding the 10-day period set forth in Section 5(a) of Rule 112 of the Rules of Court for judicial determination of probable cause. It bears to be reminded that under Section 9[15] of Rule 117 of the Rules of Court, the court's lack of jurisdiction over the offense charged is a non-waivable ground to quash the information, which may be raised by the accused and resolved by the court even after the accused enters his plea.[16] Neither has petitioner presented a legal principle or rule which requires the court to resolve the motion to quash before issuance of the warrant of arrest.

The dissenting opinions posit that the judge should have resolved the issue of the RTC's jurisdiction of the case simultaneously with determining probable cause to order the arrest of the accused. It is interesting, however, to note that the dissenting opinions also recognize that **there is no written rule or law which requires the judge to adopt such course of action**. To my mind, the absence of an express rule that specifically requires the judge to resolve the issue of jurisdiction before ordering the arrest of an accused, highlights the lack of grave abuse of discretion on the part of respondent judge. To be sure, *certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with

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[15] Sec. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

[16] *See Marcos v. Sandiganbayan*, G.R. Nos. 124680-81, February 28, 2000; Madarang and Kho vs. Court of Appeals, G.R. No. 143044. July 14, 2005.

grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, not to be used for any other purpose, such as to cure errors in proceedings or to correct erroneous conclusions of law or fact. A contrary rule would lead to confusion, and seriously hamper the administration of justice.[17]

***The RTC has jurisdiction to try the case against petitioner***

Conspiracy to commit illegal trading under Section 5,[18] in relation to Section 3(jj),[19] Section 26 (b)[20] and Section 28[21] of Republic Act (R.A.) No. 9165 or the "Comprehensive Dangerous Drugs Act of 2002" is within the jurisdiction of the RTC. This is plain from the text of the first paragraph of Section 90 of R.A. No. 9165, to wit:

> Sec. 90. ***Jurisdiction.*** – The Supreme Court shall designate special courts from among **the existing Regional Trial Courts** in each judicial region **to exclusively try and hear cases involving violations of this Act.** The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.
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> x x x x (Emphasis ours)

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[17] *Heirs of Bilog v. Melicor*, G.R. No. 140954, April 12, 2005.

[18] 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. x x x

[19] (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, email, 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.

[20] 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;

[21] Sec. 28. *Criminal Liability of Government Officials and Employees.* – The maximum penalties of the unlawful acts provided for 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.

Confusion as to the court which should properly take cognizance of petitioner's case is understandable. Truly, under Presidential Decree No. 1606, as amended by R.A. No. 8249 and R.A. No. 10660 (otherwise known as the Sandiganbayan Law), the law grants Sandiganbayan a broad authority to try high-ranking public officials. Further, Section 4(b) of the said law grants Sandiganbayan jurisdiction over "*b. Other offenses or felonies committed by public officials and employees mentioned in subsection (a) of this section in relation to their office.*" In *Lacson v. Executive Secretary, et al.,*[22] this Court declared that the phrase "*other offenses or felonies*" is too broad as to include the crime of murder, provided it was committed in relation to the accused's official functions. Thus, under said paragraph "b", what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender that is, whether he is one of those public officers or employees enumerated in paragraph "a" of Section 4. Petitioner's argument espousing that the Sandiganbayan has jurisdiction, is therefore, not totally unfounded.

However, the specific grant of authority to RTCs to try violations of the Comprehensive Dangerous Drugs Act is categorical. Section 90 thereof explicitly provides that, "*The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to* ***exclusively try and hear cases*** *involving violations of this Act.*"

By virtue of such special grant of jurisdiction, drugs cases, such as the instant case, despite the involvement of a high-ranking public official, should be tried by the RTC. The broad authority granted to the Sandiganbayan cannot be deemed to supersede the clear intent of Congress to grant RTCs exclusive authority to try drug-related offenses. The Sandiganbayan Law is a general law encompassing various offenses committed by high-ranking officials, while R.A. No 9165 is a special law specifically dealing with drug-related offenses. A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.[23]

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[22] G.R. No. 128096, January 20, 1999, 301 SCRA 298.

[23] *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007.

Neither does the amendment[24] in the Sandiganbayan Law, introduced in 2015, through R.A. No. 10660, affect the special authority granted to RTCs under R.A. No. 9165. It is a well-settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject unless it clearly appears that the legislature has intended by the latter general act to modify or repeal the earlier special law. *Generalia specialibus non derogant* (a general law does not nullify a specific or special law).[25]

Also, R.A. No. 10660, in giving the RTC jurisdiction over criminal offenses where the information does not allege any damage to the government, or alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (PhP 1 Million), cannot be used as a basis to remove from the RTC its jurisdiction to try petitioner's case just because the information alleges an amount involved exceeding PhP 1 Million.

It is useful to note that R.A. No. 10660 contains a transitory provision providing for the effectivity of the amendment, as follows:

> SEC. 5. *Transitory Provision.* – This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun: Provided, That: (a) **Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on "Jurisdiction";** and (b) Section 3, amending Section 5 of Presidential Decree No. 1606, as amended, on "Proceedings, How Conducted; Decision by Majority Vote" **shall apply to cases arising from offenses committed after the effectivity of this Act**. (Emphasis ours)

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[24] 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:

x x x x

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

**Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00).**

**Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.**

x x x x (Emphasis ours)

[25] *Social Justice Society v. Atienza*, G.R. No. 156052, February 13, 2008.

Based from the provisions of R.A. No. 10660, it is clear that the changes introduced therein, particularly on jurisdiction, were made to apply to acts committed **after** the law's effectivity. Considering that the information alleges that the offense was committed on various occasions from November 2012 to March 2013, or two years before the effectivity of R.A. No. 10660 on May 5, 2015, said law cannot be applied to clothe Sandiganbayan jurisdiction over petitioner's case by virtue of the amount alleged in the Information.

The conclusion that the RTC has jurisdiction over the subject matter of petitioner's case is also supported by related provisions in R.A. No. 9165. Perusal of the said law reveals that public officials were never considered excluded from its scope. This is evident from the following provisions:

> Section 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 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.
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> **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.
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> Section 28. *Criminal Liability of Government Officials and Employees.* – The maximum penalties of the unlawful acts provided for 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.** (Emphasis supplied)

Taken with Section 90 of the same law, which states that RTCs are to **"exclusively try and hear cases"** involving violations of the Dangerous Drugs Act, it becomes apparent that public officials, so long as they are charged for the commission of the unlawful acts stated in R.A. No. 9165,

may be charged in the RTC.

As to petitioner's allegation that her position as former Justice Secretary at the time the offense was purportedly committed removes the case from the RTC's jurisdiction, We agree with the discussion of the majority that since public or government position is not an element of the offense, it should not be deemed to be one committed in relation to one's office. Hence, the offense cannot be deemed as one sufficient to transfer the case to the Sandiganbayan.

Further, petitioner's insistence that the crime charged is Direct Bribery, instead of Conspiracy to Commit Illegal Trading, springs from a piecemeal reading of the allegations in the Information.

Under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in our jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition.[26] In this case, mere conspiracy to commit illegal drug trading is punishable in itself. This is clear from Section 26 of R.A. No. 9165, to wit:

> 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:
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> x x x x
>
> (b) Sale, **trading,** administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
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> x x x x.

When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information.[27] For example, the crime of "conspiracy to commit treason" is committed when, in time of war, two or more persons come to an agreement to levy war against the Government or to adhere to the enemies and to give them aid or comfort, and decide to commit it. The elements of this crime are: (1) that the offender owes allegiance to the Government of the Philippines; (2) that there is a war in which the Philippines is involved; (3) that the offender and other person or persons come to an agreement to:

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[26] *Lazarte v. Sandiganbayan*, G.R. No. 180122, March 13, 2009.

[27] *See People of the Philippines v. Ara*, G.R. No. 185011, December 23, 2009.

(a) levy war against the government, or (b) adhere to the enemies, to give them aid and comfort; and (4) that the offender and other person or persons decide to carry out the agreement. These elements must be alleged in the information.[28]

Applying the foregoing to the case at bar, in order to prosecute the offense of conspiracy to commit illegal trading, only the following elements are necessary:

1. that two or more persons come to an agreement;
2. the agreement is to commit drug trading, as defined in R.A. No. 9165, which refers to *any transaction 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, email, 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.*
3. That the offenders decide to commit the offense.

A cursory reading of the Information charged against petitioner shows the aforesaid elements. To quote the Information:

INFORMATION

> 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:
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> 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**

[28] *See Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002.

> **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 ours)

The agreement to commit illegal drug trading is clear from the allegation that petitioner, along with her co-accused, solicited money from the inmates, and "by reason of which" the inmates were able to deal illegal drugs through the use of electronic devices inside NBP. Petitioner's assent to the said agreement is also apparent from the allegation that she received or collected from the inmates, through her co-accused, the proceeds of illegal trading on various occasions. Clearly, the information alleges that illegal drug trading inside the New Bilibid prison was facilitated or tolerated because of, or "by reason" of the money delivered to then Secretary of Justice, petitioner.

Necessarily, I disagree with the point raised by Justice Carpio as to the necessity of including in the Information the elements of illegal sale of dangerous drugs. As stated above, **what is punished in case of conspiracy is not the sale of the drugs itself, but the agreement itself to commit the offense of illegal trading.** The gist of the crime of conspiracy is unlawful agreement, and where conspiracy is charged, it is not necessary to set out the criminal object with as great a certainty as is required in cases where such object is charged as a substantive offense.[29] Note must be taken of the definition used in R.A. No. 9165 that trading refers to all transactions involving "*illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals x x x.*" Under Section 3(r) of R.A. No. 9165, trafficking covers "*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.*" To my mind, the aforesaid provisions highlight the Congress' intent to punish the illegal system or scheme of peddling illegal drugs, different or distinct from the component act of selling drugs. Hence, there is no need to treat the offense of conspiracy to commit illegal trading in the same way as illegal sale of drugs. The allegation of conspiracy in the Information should not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of

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[29] *Estrada v. Sandiganbayan,* supra note 28.

an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of the evidence on the conspiracy is not necessary in the Information.[30]

Further, I am also wary of the practical repercussions of requiring specific details of the component illegal transactions in an Information charging conspiracy of illegal drug trading. If allegations of the identities of the buyer, seller, consideration, delivery of the drugs or mode of payment thereof are to be required in the Information, it will be too unduly burdensome, if not outright unlikely, for the government to prosecute the top level officials or "big fish" involved in organizations or groups engaged in illegal drug operations. This is because top level officials would not be concerned with the day-to-day or with the minute details in the transactions at the grassroots level. In any case, the lack of knowledge on the part of the top persons in the drug operation organizations as to the individual transactions concerning the group, does not necessarily equate to their lack of assent to the illegal agreement.

***No reason to reverse the preliminary recommendation of the DOJ Panel of Prosecutors***

Petitioner also attacks the purported irregularities during the preliminary investigation and alleges that the filing of a criminal charge against her is mere political harassment. She also claims that her constitutional rights have been violated throughout the conduct of preliminary investigation, citing the cases of *Salonga v. Paño*,[31] *Allado v. Diokno*[32] and *Ladlad v. Velasco.*[33]

Petitioner failed to establish merit to the aforesaid contentions.

The court's review of the executive's determination of probable cause during preliminary investigation is not broad and absolute. The determination of probable cause during a preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor.[34] In our criminal justice system, the public prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. **Courts must respect the exercise of such discretion when the information filed against the accused is valid on its face, and**

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[30] *Lazarte v. Sandiganbayan*, supra note 26.
[31] G.R. No. L-59524, February 18, 1985.
[32] G.R. No. 113630 , May 5, 1994.
[33] G.R. Nos. 172070-72, June 1, 2007.
[34] *Dupasquier v. Court of Appeals*, G.R. Nos. 112089 & 112737, January 24, 2001.

**no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor.**[35]

In this case, the fact that the primary basis of the Information was the testimonies of convicts in the National Bilibid Prison does not, of itself, indicate grave abuse of discretion, nor negate the existence of probable cause. Considering that the illegal trading was alleged to have been committed in the country's main penal institution, as well as the peculiar nature of the crime alleged to have been committed, the logical source of information as to the system and process of illegal trading, other than petitioner and her co-accused, are the prisoners thereof, who purportedly participated and benefitted from the scheme.

Petitioner's clamour to apply the rules on evidence is misplaced. This is because preliminary investigation is not part of the trial. In *Artillero v. Casimiro*,[36] citing *Lozada v. Hernandez*,[37] this Court explained the nature of a preliminary investigation in relation to the rights of an accused, as follows:

> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, **its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof**. (U.S. vs. Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law". (U.S. vs. Grant and Kennedy, 18 Phil., 122). (Emphasis ours)

Verily, the credibility and weight of the testimonies of the convicts are matters which are properly subject to the evaluation of the judge during trial of the instant case. For the purpose of determining whether the petitioner should be charged with Conspiracy to Commit Illegal Drug Trading, the statements of the witnesses, as discussed in the majority opinion, suffice. Further, whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information. Hence, it is not incumbent upon this Court to rule thereon, otherwise, this Court might as well sit as a trier of facts.

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[35] Id.

[36] G.R. No. 190569, April 25, 2012.

[37] 92 Phil. 1051 (1953).

Neither can We reverse the DOJ's determination by the invocation of this Court's ruling in *Allado, Salonga,* and *Ladlad* and declare that petitioner is politically persecuted for the simple reason that there are glaring factual differences between the said cases and the one at bar.

In the case of *Allado*, the Presidential Anti-Crime Commission operatives who investigated the murder of therein victim, claimed that petitioners were not the mastermind of the crime, and it was actually another person.

Meanwhile, in the case of *Salonga*, this Court invalidated the resolutions of therein respondent judge finding probable cause against Salonga because the prosecution's evidence miserably failed to establish Salonga's specific act constituting subversion. In that case, Salonga was tagged as a leader of subversive organizations because: 1) his house was used as a "contactpoint"; and (2) *"he mentioned some kind of violent struggle in the Philippines being most likely should reforms be not instituted by President Marcos immediately."* The alleged acts do not obviously constitute subversion.

Similarly, in the case of *Ladlad*, majority of the prosecution witnesses did not name Crispin Beltran as part of a rebellion plot against the government.

Certainly, the aforesaid circumstances do not obtain in the case of petitioner. Her co-accused, along with the NBP inmates, uniformly name her as the "big fish", in the scheme to trade illegal drugs in prison. Such statements, which petitioner failed to rebut by countervailing evidence, suffice to establish a *prima facie* case against her. The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction.[38]

Owing primarily to the nature of preliminary investigation, and being cognizant of the stage at which the case is currently in, it would be baseless, not to mention unfair, to examine every single piece of evidence presented by the prosecution under the same rules observed during trial. Petitioner is surely familiar with the legal principle that during preliminary investigation, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.[39]

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[38] *Bautista v. Court of Appeals*, G.R. No. 143375, July 6, 2001.

[39] *People v. Castillo and Mejia*, G.R. No. 171188, June 19, 2009.

Indeed, courts are bound to respect the prosecution's preliminary determination of probable cause absent proof of manifest error, grave abuse of discretion and prejudice. The right to prosecute vests the prosecutor with a wide range of discretion—the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.[40]

For sure, the conclusion herein reached merely touches on the preliminary issue of the propriety of the course of action taken by the DOJ Panel of Prosecutors and by respondent judge in petitioner's case. It has no relation nor bearing to the issue of petitioner's innocence or guilt on the offense charged. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper.[41] In any case, as discussed above, the circumstances of the instant case fails to establish that respondents' acts were exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility.

**WHEREFORE**, I vote to **DENY** the petition.

**NOEL GIMENEZ TIJAM**
Associate Justice

[40] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010.
[41] *United Coconut Planters Bank v. Looyuko and Go*, G.R. No. 156337, September 28, 2007.