



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

LABUALAS B. MAMANSUAL
and FRANCIS B. NADAR,
 Petitioners,

G.R. Nos. 240378-84

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

HON. SANDIGANBAYAN (5TH
DIVISION) and PEOPLE OF
THE PHILIPPINES, represented
by the OFFICE OF THE
SPECIAL PROSECUTOR OF
THE OFFICE OF THE
OMBUDSMAN,
 Respondents.

Promulgated:

NOV 03 2020

X-----X

DECISION

CAGUIOA, J.:

This is a Petition for *Certiorari* and Prohibition¹ (Petition) filed under Rule 65 of the Rules of Court (Rules), assailing the Resolutions dated May 21, 2018² and June 7, 2018³ of the Sandiganbayan, Fifth Division, in Cases Nos. SB-17-CRM-0023 to 0029 denying petitioners' motion to quash Informations and to dismiss the above-entitled cases with prayer to cancel the April 28, 2018 scheduled arraignment and pre-trial and suspension of further proceedings and seeking the extraordinary remedy of Prohibition against the setting of their arraignment on July 28, 2018 and the conduct of further proceedings by the respondent Court.

Facts

On December 9, 2011, a Complaint-Affidavit was filed by Abubakar P. Maulana (Maulana), who was then the incumbent Mayor of the Municipality of Palimbang, Province of Sultan Kudarat, with the National

¹ *Rollo*, pp. 3-50.
² *Id.* at 53-58.
³ *Id.* at 77-79.

Office of the Office of the Ombudsman (OMB).⁴ The Complaint-Affidavit charged petitioners Labualas B. Mamansual (Mamansual) and Francis B. Nadar (Nadar), as well as Zaida D. Apil (Apil) and Pukog P. Makakua (Makakua), who were the former Mayor, Treasurer, Budget Officer, and Accountant, respectively, of Palimbang, with Malversation of Public Funds under Article 217 and Removal, Concealment, or Destruction of Documents under Article 226 of the Revised Penal Code (RPC).⁵

On the basis of the said Complaint-Affidavit, the OMB's Field Investigation Office (FIO) conducted a fact-finding investigation, which resulted in the filing of a Complaint on May 14, 2012, against Mamansual, Nadar, Apil and Makakua — respondents before the OMB — for violation of Articles 217 and 226 of the RPC.⁶ The Complaint alleged that the Municipal Government of Palimbang maintains a Current Account with the Land Bank of the Philippines (LBP) with Deposit No. 2802-1045-30.⁷ From April 27, 2010 to June 29, 2010, before the term of office of Mamansual expired on June 30, 2010, seven LBP checks naming Nadar as payee were signed and drawn by Mamansual against the said account, amounting to a total of ₱13,003,776.71.⁸ It was further alleged that the encashment of checks through the signatures of Mamansual and Nadar did not represent any project or appropriation; nor were there any liquidations made by them relative to the encashment of the checks.⁹

On November 8, 2013, the OMB issued a Joint Order directing Mamansual, Nadar, Apil, and Makakua to file their Counter-Affidavits.¹⁰ Mamansual and Nadar filed their Counter-Affidavits with the OMB on December 5, 2013 and January 9, 2014, respectively.¹¹ Apil and Makakua filed their Counter-Affidavits on December 11, 2013.¹²

On October 12, 2015, the OMB prepared a Resolution finding probable cause to file Informations against the four respondents for violations of Articles 217 and 226 of the RPC.¹³ This Resolution was approved by former Ombudsman Conchita Carpio Morales (Ombudsman Morales) on November 23, 2015.¹⁴ Therein respondents filed Motions for Reconsideration of the OMB Resolution on December 15 and 21, 2015.¹⁵ These Motions were denied by Resolution dated January 15, 2016 and was approved by Ombudsman Morales on March 30, 2016.¹⁶

⁴ Id. at 281.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id. at 282.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.



On August 3, 2016, two Informations were filed with the Sandiganbayan against Mamansual, Nadar, Apil, and Makakua for violations of Articles 217 and 226 of the RPC.¹⁷ These were raffled to the Sandiganbayan, First Division, which issued a Resolution on August 5, 2016, ordering the issuance of warrants of arrest against the four accused.¹⁸

On October 6, 2016, Mamansual, Nadar, and Makakua filed an Omnibus Motion,¹⁹ praying for (a) reinvestigation of the cases and referral to the Commission on Audit (COA) for the conduct of a special audit; (b) dismissal of the cases; (c) deferment of arraignment/cancellation of hearings; and (d) suspension of further proceedings. During the hearing for this Omnibus Motion on October 13, 2016, Mamansual and Nadar moved to withdraw the same and instead requested arraignment.²⁰ The Office of the Special Prosecutor (OSP) of the OMB opposed, saying that it had filed on October 12, 2016, a Motion to Withdraw Informations.²¹

The OSP's Motion to Withdraw Informations stated that, after a thorough review of the records of the case, the handling prosecutor prepared a Memorandum recommending that the two Informations for violation of Articles 217 and 226 of the RPC filed before the Sandiganbayan be withdrawn, and instead, seven Informations be filed against Mamansual and Nadar for seven counts of violation of Article 217 only.²² The prosecutor's Memorandum explained that there was nothing in the records which would support the existence of the documents subject of the charge for violation of Article 226 — *i.e.*, vouchers, certifications, documents, or papers in connection with the issuance of the subject seven checks; hence, it was proper that these charges be dropped.²³ By Resolution dated December 5, 2016, the Sandiganbayan, First Division granted the OSP's Motion.²⁴

On January 13, 2017, seven new Informations against Mamansual and Nadar for seven counts of violation of Article 217 of the RPC were filed by the OSP before the Sandiganbayan, which were raffled to the latter Court's Fifth Division.²⁵ On January 23, 2017, Mamansual and Nadar filed an Urgent Omnibus Motion, praying that (a) the OMB be directed to conduct preliminary investigation, or, in the alternative, reinvestigation of these cases;²⁶ (b) the issuance of warrants of arrest be deferred and any further proceedings be suspended; and (c) that the cases be transferred to the Sandiganbayan, First Division.²⁷

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 108-119.

²⁰ Id. at 7.

²¹ Id. at 120-123.

²² Id. at 121.

²³ Id. at 130-131.

²⁴ Id. at 283.

²⁵ Id. at 13 and 283.

²⁶ Id. at 14 and 283.

²⁷ Id. at 14.



On May 9, 2017, the Sandiganbayan, Fifth Division²⁸ granted petitioners' Motions and directed the OSP to conduct preliminary investigation as regards the seven new Informations.²⁹ Pursuant thereto, the OSP directed petitioners to file their respective counter-affidavits.³⁰ Petitioners refused and instead filed a Manifestation with Motion for Inhibition,³¹ claiming that the OSP is not the proper body to conduct the preliminary investigation because it cannot be objective and impartial.³²

On December 1, 2017, the OSP denied petitioners' Motion for Inhibition and issued a Resolution finding probable cause for the filing of the seven Informations.³³ This Resolution was submitted to the Sandiganbayan, Fifth Division on December 18, 2017.³⁴ By Resolution dated December 19, 2017, the Sandiganbayan, Fifth Division found probable cause for issuance of warrants of arrest against petitioners.³⁵ Petitioners moved for reconsideration,³⁶ but the same was denied.³⁷

On April 16, 2018, petitioners filed a Motion to Quash Informations and to Dismiss the Above-Entitled Cases with Prayer to Cancel the April 28, 2018 Schedule Arraignment and Pre-Trial and Suspension of Further Proceedings³⁸ (Motion). Petitioners claimed therein that there was inordinate delay in the conduct by the OMB of preliminary investigation and that the total delay is at six years and one month (five years and eight months, if excluding the fact-finding investigation).³⁹

RULING OF THE SANDIGANBAYAN

In its assailed Resolutions, the Sandiganbayan, Fifth Division denied petitioners' Motion finding that petitioners merely enumerated material dates and were not able to establish the delay by the OMB. It also applied the balancing test in *Barker v. Wingo*,⁴⁰ and found that (a) petitioners failed to point out where in the timeline the delay occurred; (b) petitioners could have raised the matter of delay when the earlier two Informations were filed, but they failed to do so; (c) petitioners could have raised the matter of delay when the new set of seven Informations were filed; instead, they requested that a new preliminary investigation be conducted and that proceedings

²⁸ Sandiganbayan Associate Justices Rafael R. Lagos, Maria Theresa V. Mendoza-Arcega, and Maryann E. Corpus-Mañalac.

²⁹ *Rollo*, p. 207.

³⁰ *Id.* at 283.

³¹ *Id.* at 225 and 283.

³² *Id.* at 283.

³³ *Id.* at 227 and 283-284.

³⁴ *Id.* at 284.

³⁵ *Id.* at 253 and 284.

³⁶ *Id.* at 256.

³⁷ *Id.* at 264.

³⁸ *Id.* at 59.

³⁹ *Id.* at 73.

⁴⁰ 407 U.S. 514 (1972).

before the Sandiganbayan, Fifth Division be suspended; and (d) petitioners failed to identify the prejudice caused to them by the supposed delay.

Hence, this Petition.

ISSUES

For resolution by this Court is the procedural issue of whether the Petition has become moot after the Sandiganbayan, Fifth Division found probable cause and issued warrants of arrest against petitioners, and the substantive issue of whether the Sandiganbayan, Fifth Division acted with grave abuse of discretion in finding that there was no inordinate delay in the conduct of the preliminary investigation by the OMB.

I

In its Comment, the OMB cited the case of *De Lima v. Reyes*⁴¹ (*De Lima*) in arguing that, since the Sandiganbayan, Fifth Division already found probable cause for the purpose of issuing warrants of arrest against petitioners, the petition for *certiorari* assailing the regularity of preliminary investigation becomes moot and ceases to be the “plain, speedy, and adequate remedy” under the law.⁴² The Court disagrees.

De Lima is not on all fours with this case. In *De Lima*, the violation of the right of the accused therein to speedy disposition of cases was not in issue, and the preliminary investigation therein was assailed on an entirely different and unrelated matter. A finding of probable cause for issuing warrants of arrest against petitioners will not resolve the primary issue raised by petitioners in this case — that of violation of their right to speedy disposition of cases. If indeed there has been inordinate delay and their right has been violated, proceeding to trial before the Sandiganbayan, Fifth Division is decidedly not a plain, speedy, and adequate remedy; on the contrary, it would further put petitioners’ rights in jeopardy.

Where there is no other plain, speedy, and adequate remedy, and where allegations of grave abuse of discretion are made in the petition, the remedy of *certiorari* may lie. Thus, in *Galzote v. Briones*,⁴³ the Court said:

Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. In past cases, we have cited the interest of a “more enlightened and substantial justice”; the promotion of public welfare and public policy; cases that “have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof”;

⁴¹ G.R. No. 209330, January 11, 2016, 779 SCRA 1.

⁴² *Rollo*, p. 306.

⁴³ G.R. No. 164682, September 14, 2011, 657 SCRA 535.



or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for certiorari.

In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.⁴⁴

II

Petitioners assert that the OMB grossly delayed in the conduct of the first preliminary investigation. In the Petition, they claim:

x x x x

39. On January 13, 2017, the Office of the Ombudsman, through its Office of the Special Prosecutor, implementing the afore-mentioned recommendation contained in the Memorandum attached to the MOTION TO WITHDRAW INFORMATIONS, filed against the accused-movants, the attached **SEVEN (7) INFORMATIONS** for Malversation.

40. Reckoned from December 9, 2011 to January 13, 2017, there was already a TOTAL DELAY OF SIX (6) YEARS AND ONE MONTH. Clearly, there is here an INORDINATE DELAY in the investigation of the complaint against the Petitioners. And if the date to be reckoned is from May 14, 2012 to January 13, 2017, there was a DELAY OF FIVE (5) YEARS AND EIGHT MONTHS.⁴⁵

In *Cagang v. Sandiganbayan*⁴⁶ (*Cagang*), the Court laid down the following guidelines in resolving issues concerning the right to speedy disposition of cases:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

⁴⁴ Id. at 541. Emphasis and underscoring supplied; citations omitted.

⁴⁵ *Rollo*, p. 34. Emphasis in the original.

⁴⁶ G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove, *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.⁴⁷

The petitioners' claim of violation of their right to speedy disposition of cases shall be evaluated in light of the foregoing framework.

⁴⁷ Id. at 449-451.



The OMB was in delay in the conduct of preliminary investigation in the first set of cases filed.

Consistent with the first principle above, petitioners are invoking their right to speedy disposition of cases against the OMB, which conducted preliminary investigation in both the first and second set of cases ultimately filed before the Sandiganbayan. While the OMB has not yet set periods within which preliminary investigation shall be completed, Rule 112 of the Revised Rules of Criminal Procedure may be applied suppletorily for purposes of the second principle above. Section 3(f) of Rule 112 provides:

SEC. 3. Procedure.—The preliminary investigation shall be conducted in the following manner:

x x x x

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

Furthermore, Section 4 of the same Rule provides:

SEC. 4. Resolution of investigating prosecutor and its review.—If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

x x x x

In other words, the investigating prosecutor or officer of the OMB has 10 days from submission of the case for resolution, or upon submission of the last pleading required by the OMB or its rules within which to conclude the preliminary investigation and submit his resolution to the Ombudsman for approval. Upon receipt, the Ombudsman has, in turn, 10 days from receipt within which to act upon the investigating officer's resolution and to immediately inform the parties of its action.



The relevant dates in this case are as follows:

Submitted for Resolution (last pleading submitted)	January 9, 2014	<u>1 year, 9 months and 8 days</u>
OMB Resolution	Submitted to Ombudsman Morales on October 12, 2015	
	Approved by Ombudsman Morales on November 23, 2015	<u>1 month and 12 days</u>

As may be clearly seen from above, the OMB's investigating officer took one year, nine months, and eight days to come up with a resolution on petitioners' case, and it took former Ombudsman Morales another one month and 12 days to approve the same. This amounts to a total period of one year, 10 months, and 20 days, an inordinate amount of time in excess of that provided in Rule 112 of the Revised Rules of Criminal Procedure.

The OMB's protracted delay in the conduct of the preliminary investigation shifts the burden of proving that there was no violation of the right to speedy disposition of cases to the prosecution, consistent with the third and fourth principles in *Cagang*. Hence, the prosecution must be able to prove that the delay was justified because of the complexity of issues and volume of evidence, and that the accused suffered no prejudice as a result of the delay.

The OMB did not offer any explanation for its delay.

In its Comment,⁴⁸ the OMB asserted that petitioners failed to point out any delay whatsoever in the entire process of preliminary investigation; hence, there is no further need to discuss the reasons for the delay. The OMB claims that petitioners merely listed the material dates in this case, and even from their enumeration, no clear delay can be pointed out. This is an unacceptable argument.

As discussed above, the OMB took almost two years to resolve the preliminary investigation from the time that petitioners — and their co-respondents before the OMB — had filed all their counter-affidavits. In this instance, there was no longer any participation from petitioners which could have caused the almost two-year delay in deciding the case before the OMB.

Contrary to the assertions of the OMB as well as the findings of the respondent Sandiganbayan, Fifth Division, there is a need for the OMB to explain why such a delay has been incurred. Pursuant to this Court's ruling in *Cagang*, the OMB must be able to establish that the complexity of issues and volume of evidence necessitated the delay, and that the accused—herein

⁴⁸ *Rollo*, pp. 280-309.

petitioners— suffered no prejudice as a result of the delay. On this point, the OMB has failed to comply.

Petitioners did not timely raise their right to speedy disposition of cases and acted in acquiescence with the delay.

Notably, petitioners herein raised the issue of violation of their right to speedy disposition of cases for the first time before the Sandiganbayan, Fifth Division in their Motion. This is after the second set of seven Informations was already filed with the Sandiganbayan, raffled to the respondent said Court's Fifth Division, and after petitioners posted bail. At the outset, the Court emphasizes that this, in itself, does not conclusively establish acquiescence in the delay or failure of petitioners to timely raise the issue of speedy disposition of cases. The peculiar context of the case must be considered.

Petitioners claim that the issue of inordinate delay was raised only after the second set of Informations was filed because (a) the Sandiganbayan, First Division had already dismissed the first two cases when the OMB moved to withdraw the Informations; (b) at the time that the OMB moved to withdraw the Informations, it also admitted that it could not prove the case for violation of Article 226 of the RPC; hence, strategy-wise, petitioners believed the better choice would be to demand to be arraigned under the already existing two Informations; (c) when the second set of seven Informations was filed, petitioners believed that their priority should have been to ask for preliminary investigation because if they did not, their right to the same would have been waived.⁴⁹ None of these explanations convince this Court that the belated invocation of their right to speedy disposition of cases was justified, as none of the foregoing could have prevented petitioners from invoking such right.

Ultimately, however, it is not the belated invocation of the right to speedy disposition of cases that negates petitioners' claim of violation such right. What strongly militates against the conclusion that petitioners were injured by the violation of their right are the remedies they sought instead of bewailing the OMB's delay.

First, when the initial set of Informations was filed against petitioners, they filed an **Omnibus Motion** praying for (a) **reinvestigation of the cases and referral to the COA for the conduct of a special audit**; (b) dismissal of the cases; (c) **deferment of arraignment/cancellation of hearings**; and (d) **suspension of further proceedings**.⁵⁰ These Informations were subsequently withdrawn by the OSP with leave of court, but not before

⁴⁹ Id. at 42-43.

⁵⁰ Supra note 19.

petitioners withdrew their own Omnibus Motion in order to be arraigned under these two Informations. When the Sandiganbayan, Fifth Division in its assailed resolution, noted that petitioners had not raised the issue of inordinate delay at this point, petitioners explain as follows:

31. Continuing with what the [Sandiganbayan, Fifth Division] said in its assailed Resolution:

“Then, after the cases were withdrawn and these present seven (7) case were filed, the accused could also have raised the issue of inordinate delay much earlier. They instead asked for the conduct of a preliminary investigation, which has several implications.

Seeking a new preliminary investigation seems incongruent with the notion that these cases have been delayed since such new preliminary investigation will inevitably prolong the cases. If they thought there was already an inordinate delay, their prayer for the preliminary investigation compounded such delay.”

32. COMMENT: With due respect, the [Sandiganbayan, Fifth Division] did not fully appreciate the factual antecedents of the seven (7) cases. When the first two cases were filed with the First Division, the Prosecution, realizing that it had no documentary evidence to prove SB-16-CRM-0464 For: Violation of Art. 226 of RPC, move[d] to withdraw the two cases at the same time attaching already the seven (7) informations for filing with the Court once the motion to withdraw is granted.

x x x x

34. **The opposition of the accused was directed at the motion to withdraw the two cases because they realized that the Prosecution made the admission that they could not prove the case for violation of Art. 226 of RPC, so strategy-wise, they demanded instead to be arraigned under the two informations filed in the two cases.** And by way of comment, they pointed out to the impropriety of filing the seven (7) informations against the accused without affording them a preliminary investigation. The Court First Division, noted the comment and objection of the accused but opined that it could not yet rule on it because the seven (7) informations were not yet filed in court and there is no assurance that the same cases, once filed, will be raffled to it.⁵¹

In other words, petitioners were willing to prolong the proceedings by having the cases reinvestigated and referred to the COA for a special audit, and in the meantime, the proceedings before the Sandiganbayan, Fifth Division would be suspended. On another point, petitioners' admission likewise inspires the conclusion that, strategy-wise, it was more beneficial to them to be arraigned and proceed with trial under an Information which the prosecution admitted they did not have enough evidence for. These actuations are not consistent with one whose right to speedy disposition of cases has been violated.

⁵¹ Id. at 43. Emphasis and underscoring supplied.

Second, despite the delay in the initial preliminary investigation, when the subsequent seven Informations were filed, **petitioners filed an Urgent Omnibus Motion asking for suspension of proceedings before the Sandiganbayan and the conduct of another preliminary investigation or reinvestigation.** In itself, this request is not erroneous. But there was nothing prohibiting petitioners from also invoking at that time whatever inordinate delay they had already suffered through during the preliminary investigation.

The Sandiganbayan, Fifth Division's observations on this matter are well-taken. In its assailed Resolution dated May 21, 2018, the Sandiganbayan, Fifth Division said:

Seeking a new preliminary investigation seems incongruent with the notion that these cases have been delayed since such new preliminary investigation will inevitably prolong the cases. If they thought there was already an inordinate delay, their prayer for the preliminary investigation compounded such delay.

This is not to say that the preliminary investigation was not warranted because, as previously ruled by the Court, a new preliminary investigation had to be conducted as a matter of due process. The point is that the timing of the current motion to dismiss affects its efficacy. Procedurally, the accused's arguments on inordinate delay could be considered barred under the omnibus motion rule.⁵²

In *Cagang*, citing *Corpuz v. Sandiganbayan*,⁵³ the Court explained the precise nature of the right to speedy disposition of cases and the harm which it seeks to prevent:

x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: **to prevent oppressive [pre-trial] incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired.** Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.⁵⁴

Likewise cited in *Cagang* was *Coscolluela v. Sandiganbayan*,⁵⁵ in which this Court said:

Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the

⁵² Id. at 57.

⁵³ G.R. No. 162214, November 11, 2004, 442 SCRA 294.

⁵⁴ Id. at 313. Emphasis and underscoring supplied.

⁵⁵ G.R. Nos. 191411 & 191871, July 15, 2013, 701 SCRA 188.

administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its “salutary objective” is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual. x x x⁵⁶

Whether or not an individual subjected to criminal prosecution suffers from the oppression, anxiety, and concerns tied to being under such prosecution need not be proven by such individual — these may be presumed and even assumed, as these are inherent in the experience of being at the receiving end of any criminal accusation, especially when the finger pointed squarely at him or her is that of the state. But the very same individual’s acts may belie any presumed prejudice he or she may have suffered and, as acknowledged by the Court in *Cagang*, may imply that he or she had acquiesced to the delay. In the same vein, not every delay results in a tactical disadvantage on the part of the defense.

In this case, the Court takes the fact that petitioners (a) filed an Omnibus Motion asking for, among others, reinvestigation and referral of the initial two cases to the COA for special audit and suspension of the proceedings before the Sandiganbayan; (b) filed an Urgent Omnibus Motion asking for the conduct of another preliminary investigation by the OMB and suspension of proceedings before the Sandiganbayan, Fifth Division; coupled with their omission to air their grievances against the OMB’s delay for purposes of determining whether they were unduly prejudiced by the OMB’s delay.

At any rate, nothing in the Petition nor in the records would indicate that petitioners lost a potential defense due to the delay, or that the OMB’s delay caused them to no longer be able to acquire relevant evidence or testimonies in their favor. In fact, the records would show that they were able to attach vouchers and other documents to their counter-affidavits during the first preliminary investigation showing proof of actual release of funds.⁵⁷

On balance and guided by the principles laid out in *Cagang*, while the Court acknowledges that there was unexplained delay on the part of the OMB, it is constrained to rule that, in the peculiar circumstances of this case, petitioners cannot invoke a violation of their right to speedy disposition of cases.

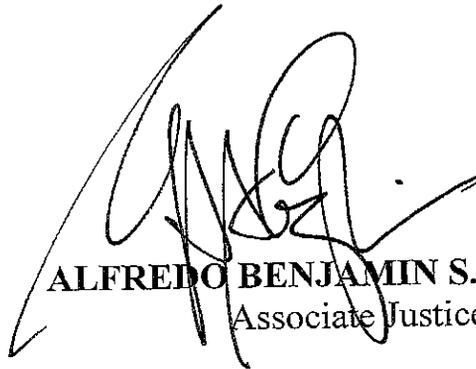
WHEREFORE, premises considered, the Petition is **DISMISSED**. The Sandiganbayan is **DIRECTED** to resolve Cases Nos. SB-17-CRM-0023 to 0029 with dispatch.

⁵⁶ Id. at 199-200. Emphasis and underscoring supplied.

⁵⁷ *Rollo*, p. 235.



SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

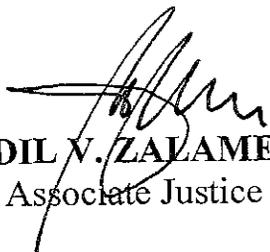
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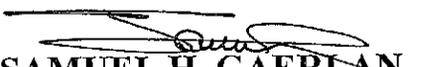
DIOSDADO M. PERALTA
Chief Justice
Chairperson



ROSMARI D. CARANDANG
Associate Justice



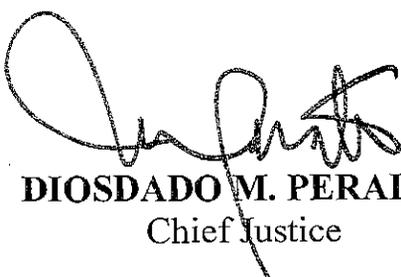
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice