



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

MELCHOR M. QUEMADO, SR., G.R. No. 225404
 Petitioner,

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
 Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 BALTAZAR-PADILLA,* JJ.

SANDIGANBAYAN [SIXTH
 DIVISION] and PEOPLE OF
 THE PHILIPPINES,
 Respondents.

Promulgated:

14 SEP 2020

X ----- X

RESOLUTION

INTING, J.:

This resolves the Petition for *Certiorari* and Prohibition¹ filed by Melchor M. Quemado, Sr. (petitioner) pursuant to Rule 65 of the Rules of Court assailing the Resolutions² dated April 11, 2016 and June 13, 2016³ issued by the *Sandiganbayan* (SB)-Sixth Division in SB-16-CRM-0051 for violation of Section 3 (e) of Republic Act No. (RA) 3019.⁴ The assailed Resolution denied petitioner's Motion to Dismiss⁵ on the ground of inordinate delay in the disposition of the case.

* On leave.

¹ *Rollo*, pp. 3-15.

² *Id.* at 19-20; issued by Associate Justice Rodolfo A. Ponferrada, Chairperson, and Associate Justices Oscar C. Herrera, Jr. and Karl B. Miranda, Members.

³ *Id.* at 49-51.

⁴ Entitled "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.

⁵ *Rollo*, pp. 22-25.

The Antecedents

In a Letter⁶ dated September 25, 2006, addressed to the Office of the Ombudsman (OMB)-Visayas, the members of the *Sangguniang Bayan* of the Municipality of Sta. Fe, Leyte called attention to the “irregular and unnecessary transaction” entered into by petitioner, who was then the mayor of the municipality. The letter, which the OMB received on the same date, alleged, among others, that: (1) as local chief executive, petitioner approved the rental of an office space in Hayward Travelodge to be used by those involved in the preparation of a feasibility study of the municipality’s Infrastructure for Rural Productivity Enhancement Sector Project; (2) the rental was unnecessary since an office space is readily available in the municipality, while Hayward Travelodge is 21 kilometers away; (3) Hayward Travelodge is owned by petitioner’s brother, Anastacio M. Quemado; (4) the payment for the rent in the amount of ₱16,000.00 was made out to petitioner who also received the check therefor. The letter was docketed as CPL-V-06-0627 and treated as a regular complaint requiring further factual inquiry.⁷

On October 20, 2006, the OMB-Visayas endorsed the letter to the Commission on Audit (COA)-Regional Office No. VIII for the conduct of an audit examination on the alleged conflict of interest in the contract executed by and between petitioner and Hayward Travelodge.⁸

As it appeared that the COA took no action on the endorsement, Graft Investigation & Prosecution Officer (GIPO) II Alfred Yann G. Oguis (GIPO Oguis) submitted a Final Evaluation Report⁹ dated October 23, 2012. In the report, GIPO Oguis recommended that CPL-V-06-0627 be “considered closed and terminated, without prejudice to the COA adverse report on the matter.”¹⁰ The recommendation was based on an evaluation of the letter dated September 25, 2006 and the finding that therein complainants “appear to be reporting a case for Malversation of Public Funds” against petitioner, but the concurrence of the elements of the crime is wanting.¹¹

⁶ *Id.* at 26-27.

⁷ As culled from the Comment (On the Petition for *Certiorari* and Prohibition), *id.* at 78-79.

⁸ *Id.* at 79.

⁹ *Id.* at 97-100.

¹⁰ *Id.* at 99.

¹¹ *Id.* at 79.

On February 1, 2013, Ombudsman Conchita Carpio-Morales (Ombudsman Carpio-Morales) approved with modification the recommendation of the OMB-Visayas. Ombudsman Carpio-Morales wrote the following marginal note:

Dismissal of malversation case is in order. But DO Visayas is directed to consider if violation of Sec. 3(e) of RA 3019 and of the provisions of RA 9184 lies against respondent. DO Visayas is given thirty (30) days to submit its report hereon.¹² (Underscoring in the original.)

Subsequently, GIPO Oguis submitted another Final Evaluation Report¹³ dated February 25, 2013, which treated the letter dated September 25, 2006 as a complaint for: (1) malversation of public funds; and (2) violation of RA 3019. In the report, GIPO Oguis found sufficient basis for further proceedings and recommended that:

x x x the subject CPL be UPGRADED for preliminary investigation for possible violation of Sec. 3(e) of RA 3019, as amended, in relation to RA 9184, and administrative adjudication for a possible offense of Grave Misconduct/Conduct Prejudicial to the Best Interest of the Service against Melchor M. Quemado, Sr., Municipal Mayor of Sta. Fe, Province of Leyte.¹⁴

On June 17, 2013, Ombudsman Carpio-Morales approved the Final Evaluation Report dated February 25, 2013.¹⁵

Meanwhile, on February 28, 2013, Graft Investigation Officer (GIO) III Rosemarie Semblante Tongco (Tongco) of the OMB-Visayas executed an Affidavit¹⁶ to support the upgrading of the case for purposes of conducting a preliminary investigation on the alleged violation of Section 3(e) of RA 3019, as amended, in relation to RA 9184 known as the "Government Procurement Reform Act."¹⁷ GIO Tongco's Affidavit

¹² *Id.* at 100.

¹³ *Id.* at 28-32.

¹⁴ *Id.* at 32.

¹⁵ *Id.*

¹⁶ *Id.* at 33-35.

¹⁷ Entitled "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes," approved on January 10, 2003.

was filed before the OMB-Visayas on March 11, 2013 and docketed as OMB-V-C-13-0185.¹⁸ In view thereof, the Public Assistance and Corruption Prevention Office (PACPO) of the OMB-Visayas became the nominal complainant in the case against petitioner for violation of RA 3019.¹⁹

Preliminary investigation ensued. On September 2, 2013, the OMB-Visayas issued an Order²⁰ directing petitioner to file his counter-affidavit and other controverting evidence within 10 days from receipt thereof. Despite due receipt on October 18, 2013, petitioner did not file a counter-affidavit.²¹

In the Resolution²² dated April 25, 2014, GIPO II Portia Pacquiao-Suson (Pacquiao-Suson) found probable cause against petitioner for one count of violation of Section 3(e) of RA 3019, in relation to RA 9184, with respect to the questionable rental of office space in Hayward Travelodge. Ombudsman Carpio-Morales approved GIPO Pacquiao-Suson's Resolution on December 15, 2014.²³

In the course of the preparation and review of the Information against petitioner, the Office of the Special Prosecutor submitted a Memorandum²⁴ dated December 22, 2015, forwarding the revised Information²⁵ to Ombudsman Carpio-Morales. In turn, Ombudsman Carpio-Morales approved the Information on December 29 2015.²⁶ Subsequently, it was filed before the SB on February 2, 2016.²⁷

Petitioner was arraigned on March 9, 2016. Thereafter, on April 8, 2016, he filed a Motion to Dismiss²⁸ alleging that there was inordinate delay in the disposition of the case amounting to a violation of his constitutional right to the speedy disposition of his case.

¹⁸ *Rollo*, p. 80.

¹⁹ *Id.*

²⁰ *Id.* at 101.

²¹ *Id.* at 80.

²² *Id.* at 36-43.

²³ *Id.* at 42.

²⁴ *Id.* at 102.

²⁵ *Id.* at 103-105.

²⁶ *Id.* at 105.

²⁷ *Id.* at 103.

²⁸ *Id.* at 22-25.

On April 11, 2016, the SB rendered the assailed Resolution²⁹ denying the Motion to Dismiss and striking down the claim of inordinate delay. Petitioner filed a Motion for Reconsideration,³⁰ but the SB denied it in the subsequent Resolution³¹ dated June 13, 2016.

Hence, this petition raising a lone issue for resolution, to wit:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTIONS WITHOUT CONSIDERING THE ENTIRE FACTS OF THE CASE AND IN CONTRAST TO THE SUPREME COURT DECISION OF WHICH THE CHAIRMAN OF THE RESPONDENT COURT WAS THEN AN ASSOCIATE [sic] JUSTICE OF THE SANDIGANBAYAN FIRST DIVISION.³²

Petitioner contends that there was an unreasonable delay of almost 10 years, counted from the letter dated September 25, 2006 sent by the members of the *Sangguniang Bayan* of the Municipality of Sta. Fe, Leyte to the OMB-Visayas until the filing of the Information before the SB on February 2, 2016. Petitioner also asserts that the SB gravely abused its discretion when it selected facts that would support its Resolution denying his Motion to Dismiss. Further, he avers that the pronouncement of the SB is not consistent with the Court's Decision in *People v. Sandiganbayan, et al.*,³³ which declared as follows:

The guarantee of the speedy disposition of cases under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of any case.³⁴

²⁹ *Id.* at 19-20.

³⁰ *Id.* at 45-47.

³¹ *Id.* at 49-51; penned by Associate Justice Rodolfo A. Ponferrada, Chairperson, with Associate Justices Oscar C. Herrera, Jr. and Karl B. Miranda, concurring.

³² *Id.* at 8.

³³ 723 Phil. 444 (2013).

³⁴ *Id.* at 447.

The Court's Ruling

The petition has no merit.

In *Magante v. Sandiganbayan (Third Division)*³⁵ (*Magante*), the Court (Third Division) clarified that delay in the disposition of cases before the OMB begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations.³⁶ Thus, the period spent for fact finding investigations of the OMB prior to the filing of the formal complaint by the Field Investigation Office is irrelevant in determining inordinate delay.³⁷

Consistent with *Magante* is the subsequent *En Banc* Decision in *Cagang v. Sandiganbayan (Fifth Division)*³⁸ (*Cagang*). It declared as *abandoned* the ruling in *People v. Sandiganbayan, et al.*³⁹ that fact-finding investigations are included in the period for the determination of inordinate delay.

Significantly, the abandoned ruling in *People v. Sandiganbayan, et al.* is the one being invoked by petitioner in the instant case. In deciding to abandon the ruling, the Court in *Cagang* ratiocinated that the proceedings at the fact-finding stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused.⁴⁰

³⁵ G.R. Nos. 230950-51, July 23, 2018.

³⁶ *Id.*

³⁷ *Id.*

³⁸ G.R. Nos. 206438, 206458 and 210141-42, July 31, 2018.

³⁹ *People v. Sandiganbayan, et al.*, *supra* note 33.

⁴⁰ *Magante v. Sandiganbayan (Third Division), et al.*, *supra* note 35.

In addition, *Cagang* pronounced:

The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.⁴¹

Applying the foregoing pronouncements in the case at bar, the Court affirms the SB's finding that there was no inordinate delay. The SB aptly ruled, thus:

The Court is not inclined to give due course to the Motion it appearing that the complaint-affidavit of the *PACPO* was filed before the [OMB] on March 11, 2013, and the corresponding Information was filed in Court on February 2, 2016.

Thus, it took the [OMB] less than three (3) years to conduct and terminate the preliminary investigation. Such period of time can hardly be considered "inordinate" delay that would violate the right of the accused-movant to a speedy disposition of his case and warrant the dismissal of the case.

That the letter-complaint of the six (6) SB Members of Sta. Fe Leyte dated September 25, 2006, was presumably filed before the *PACPO* on said date should not be considered in computing the period in the conduct of the preliminary investigation as it was only a fact finding examination/investigation; and hence, the preliminary investigation proper commenced to run only on March 11, 2013, after the *PACPO* terminated its fact finding examination/investigation and filed before the [OMB] its complaint-affidavit against the accused-movant for preliminary investigation.⁴² (Italics omitted.)

The Court is mindful of the duty of the OMB under the 1987 Constitution (Constitution) and RA 6770,⁴³ otherwise known as "The Ombudsman Act of 1989," to act promptly on complaints brought before

⁴¹ *Cagang v. Sandiganbayan (Fifth Division)*, *supra* note 38.

⁴² *Rollo*, p. 50.

⁴³ Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes," approved on November 17, 1989.

it. Specifically, Section 16, Article III of the Constitution guarantees to all persons the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.⁴⁴ Thus, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice,⁴⁵ including the Ombudsman.

Further, the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed. Section 12, Article XI of the Constitution commands:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

To magnify the above constitutional mandate, Section 13 of RA 6770 provides:

Section 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

However, the duty of the OMB to act promptly on complaints before it should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.⁴⁶ It bears stressing that

⁴⁴ *Coscollueta v. Sandiganbayan*, 714 Phil. 55, 61 (2013).

⁴⁵ *Roquero v. The Chancellor of UP-Manila*, 628 Phil. 628, 639 (2010).

⁴⁶ *Raro v. The Honorable Sandiganbayan, (Second Division), et al.*, 390 Phil. 917, 948 (2000), citing *Dansal v. Hon. Fernando*, 383 Phil. 897, 908 (2000).

inordinate delay is determined not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.⁴⁷ It is the duty of the courts to appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution should be able to satisfactorily explain the reasons for the delay and that the accused did not suffer prejudice as a result.⁴⁸

Jurisprudence has listed the following factors to consider in treating petitions invoking the right to speedy disposition of cases: (1) length of the delay, (2) reasons for the delay, (3) assertion of right by the accused, and (4) prejudice to the respondent.⁴⁹ Taking these factors into consideration, the Court finds that there was no inordinate delay in the conduct of the preliminary investigation and the filing of the Information by the OMB.

It is notable that on September 2, 2013, the OMB-Visayas issued an Order directing petitioner to file his counter-affidavit and other controverting evidence within 10 days from receipt thereof. However, petitioner did not file a counter-affidavit despite due receipt of the Order on October 18, 2013. Further, it is worth mentioning that petitioner had the opportunity to seek reconsideration or move for a reinvestigation of the draft resolution approved by Ombudsman Carpio-Morales. Pursuant to Section 7(a), Rule II of Administrative Order No. 07, otherwise known as the *Rules of Procedure of the Office of the Ombudsman*, petitioner could have filed a motion for reconsideration or reinvestigation of the Resolution dated April 25, 2014, which Ombudsman Carpio-Morales approved on December 15, 2014, within five days from notice thereof with the OMB. He chose not to do so. Instead, he waited until the Information was filed against him with the SB on February 2, 2016.

⁴⁷ *Cagang v. Sandiganbayan*, supra note 38.

⁴⁸ *Id.*

⁴⁹ See *Revuelta v. People*, G.R. No. 237039, June 10, 2019; *Cagang v. Sandiganbayan*, supra note 38, citing *Barker v. Wingo*, 407 U.S. 514 (1972) in *Martin v. Soriano*, 208 Phil. 658, 664 (1983); *Magante v. Sandiganbayan*, supra note 33; and *The Ombudsman v. Jarado*, 583 Phil. 132, 145 (2008), citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

Additionally, the constitutional right to speedy disposition of cases, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.⁵⁰ Here, the Court does not find the period in question to be vexatious, capricious, or oppressive to petitioner as would warrant the dismissal of the case on the ground of inordinate delay. As stated by the prosecution, with respect to the period covering 2013 to 2016, the records will support the necessary delay that attended the resolution of the PACPO's complaint.⁵¹ Notably, petitioner's failure to file his counter-affidavit did not help and even contributed to the delay in the resolution of the complaint. The prosecution also explained that the levels of review that the case had to undergo were necessary to ensure that the probable cause finding and the indictment of petitioner will stand the grueling and exacting standards of trial.⁵² Moreover, apart from the volume of documents that the OMB had to peruse, worthy of note is the fact that the COA did not submit an audit report on the alleged conflict of interest in the contract executed by and between petitioner and Hayward Travelodge.⁵³ Taking these into account, the Court finds justifiable the period of time that the OMB spent for the resolution of the complaint.

On the other hand, petitioner failed to raise specific instances demonstrating that the proceedings were attended by vexatious, capricious, and oppressive delays. Furthermore, he failed to adequately show that he was prejudiced by the alleged delay.

Accordingly, the Court holds that the SB did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Dismiss.⁵⁴

WHEREFORE, the Petition is **DISMISSED**. The Resolutions dated April 11, 2016 and June 13, 2016 issued by the *Sandiganbayan - Sixth Division* in SB-16-CRM-0051 are **AFFIRMED**.

⁵⁰ *People v. The Sandiganbayan, Fifth Division, et al.*, 791 Phil. 37, 53 (2016).

⁵¹ *Rollo*, p. 85.


⁵² *Id.*

⁵³ *Id.*

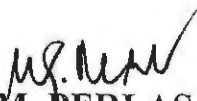
⁵⁴ *Id.* at 22-24.

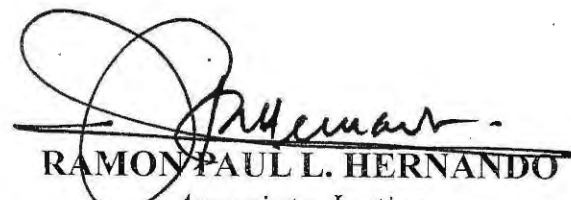
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SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

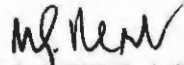

RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

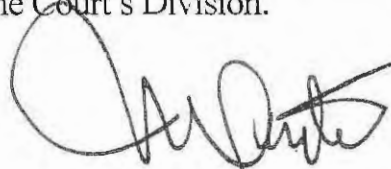
(On leave)
PRISCILLA BALTAZAR PADILLA
Associate Justice

ATTESTATION

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

**ESTELA M. PERLAS-BERNABE***Senior Associate Justice**Chairperson***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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*