Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SALACNIB F. BATERINA, *Petitioner,*	**G.R. Nos. 239203-09**
	Present:
- versus -	PERLAS-BERNABE, *S.A.J.*, *Chairperson*, HERNANDO, INTING, GAERLAN, and ROSARIO,* *JJ.*
HON. MICHAEL FREDERICK L. MUSNGI, HON. OSCAR C. HERRERA JR., and HON. LORIFEL L. PAHIMNA, all the Justices constituting THE HONORABLE SANDIGANBAYAN, SECOND DIVISION, *Respondents.*	Promulgated: JUL 28 2021

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RESOLUTION

INTING, *J.*:

Before the Court is a Petition for *Certiorari* and Prohibition[1] under Rule 65 of the Rules of Court seeking to nullify the Resolutions dated March 13, 2018[2] (first assailed Resolution) and April 23, 2018[3] (second assailed Resolution) of the Sandiganbayan, Second Division, which

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* Designated additional member per Special Order No. 2835 dated July 15, 2021.

1 *Rollo*, pp. 3-44.

2 *Id.* at 71; approved by Associate Justices Oscar C. Herrera, Jr., Michael Frederick L. Musngi, and Lorifel L. Pahimna.

3 *Id.* at 72.

denied Salacnib F. Baterina's (petitioner) Request for Inhibition[4] (Request) and his subsequent Motion for Reconsideration.[5]

The Antecedents

The case stemmed from the Priority Development Assistance Fund (PDAF) cases filed against Mario L. Relampagos (accused Relampagos), Rosario S. Nuñez, Lalaine N. Paule, and Marilou D. Bare (collectively, other accused) involving the utilization of the PDAF or pork barrel funds of certain lawmakers, including herein petitioner, as then Representative of the 1st District of Ilocos Sur from 1997 to 2007.[6]

On November 29, 2013, the National Bureau of Investigation (NBI) filed a complaint (NBI-Baligod Complaint), docketed as OMB-C-C-13-0409), against petitioner on several charges involving the misuse of his PDAF allotment for 2007 amounting to ₱35,000,000.00 covering Special Allotment Release Order (SARO) No. 07-00710.[7]

Then, on May 29, 2015, the Field Investigation Office (FIO) of the Office of the Ombudsman (OMB) filed a complaint (FIO-Complaint), docketed as OMB-C-C-15-0150, covering the same SARO subject of the NBI-Baligod Complaint, and in addition, included the PDAF covered by SARO Nos. D-07-03368 and ROCS 07-03009.[8]

The amount of ₱35,000,000.00 was allegedly released to Technology Resource and Livelihood Center (TRC) through the three SAROs issued by then Department of Budget and Management Secretary Rolando G. Andaya, Jr. The TRC transferred the whole amount to Philippine Development Foundation, Inc. and *Kaagapay Magpakailanman* Foundation, Inc. allegedly to cover the implementation of various livelihood projects in the 1st District of Ilocos Sur.[9]

On May 4, 2016, after due proceedings, the OMB issued a Joint Resolution finding probable cause to indict petitioner and other accused in the case for three counts of violation of Section 3(e) of Republic Act

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4 *Id.* at 55-59.
5 *Id.* at 62-67.
6 *Id.* at 101-102.
7 *Baterina v. Sandiganbayan*, G.R. Nos. 236408 and 236531-36, July 7, 2021.
8 *Id.*
9 *Id.* at 101-102.

No. (RA) 3019[10] and three counts of Malversation, defined and penalized under Article 217 of the Revised Penal Code (RPC). Also, a separate Information for Direct Bribery under Article 210 of the RPC was filed against petitioner.[11]

On June 24, 2016, petitioner filed a Motion for Reconsideration which the OMB denied in a Joint Order dated November 7, 2016.[12]

On March 17, 2017, seven (7) Informations were filed with the Sandiganbayan and raffled to the Second Division.[13]

On March 28, 2017, accused Relampagos and other accused filed with the Sandiganbayan a Joint Omnibus Motion, to wit: (1) Motion for Judicial Determination of Probable Cause; (2) Motion to Hold in Abeyance the Issuance of Warrant of Arrest; (3) Motion for Bill of Particulars; and (4) Motion for Reduction of Bail.[14]

While on May 25, 2017, petitioner filed an Omnibus Motion seeking to quash the Informations filed against him for allegedly violating his constitutional right to due process of law.[15]

On September 22, 2017, the Sandiganbayan issued a Resolution denying the Omnibus Motion for lack of merit.[16] The dispositive portion of the Resolution reads:

> "WHEREFORE, in light of the foregoing, the Omnibus Motion filed by accused SALACNIB F. BATERINA is hereby DENIED for lack of merit.
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> SO ORDERED."[17]

Petitioner filed a motion for reconsideration which the

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[10] Entitled, "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.
[11] *Rollo*, p. 102.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 13.
[15] *Id.* at 103.
[16] *Id.* at 74.
[17] *Id.*

Sandiganbayan likewise denied in the Resolution[18] dated December 12, 2017 on the ground that there was no cogent reason to disturb OMB's earlier pronouncement, thus:

> WHEREFORE, in light of the foregoing, the *Motion for Reconsideration* filed by accused SALACNIB F. BATERINA is hereby DENIED for lack of merit.
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> SO ORDERED.[19]

On December 18, 2017, the Sandiganbayan issued a Resolution[20] on the Joint Omnibus Motion of accused Relampagos and other accused, which inadvertently included the name of petitioner which reads:

> WHEREFORE, in light of the foregoing, the *Joint Omnibus Motion* filed by accused SALACNIB F. BATERINA is hereby DENIED for lack of merit.
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> SO ORDERED.[21]

Consequently, on January 15, 2018, the Sandiganbayan issued a Resolution[22] *nunc pro tunc* in order to clarify the Resolution dated December 18, 2017. The following correction to the dispositive portion of the Sandiganbayan Resolution dated December 18, 2017, reads:

> WHEREFORE, in light of the foregoing, the *Joint Omnibus Motion* filed by accused Mario L. Relampagos, Rosario Nunez, Lalaine Paule, and Marilou Bare is hereby DENIED for lack of merit.
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> SO ORDERED.[23]

On February 22, 2018, petitioner filed the Request on the grounds of bias, partiality, and prejudice on the part of respondents or the members of the Sandiganbayan, Second Division.[24] According to petitioner, respondents already prejudged the case against him because

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[18] *Id.* at 73-76; penned by Associate Justice Michael Frederick L. Musngi with Associate Justices Oscar C. Herrera, Jr. And Lorifel L. Pahimna, concurring.
[19] *Id.* at 76.
[20] *Id.* pp. 48-51.
[21] *Id.* at 51.
[22] *Id.* at 119-120.
[23] *Id.* at 120.
[24] *Id.* at 104.

the Sandiganbayan Resolution dated December 18, 2017 wrongfully included his name in the dispositive portion even if he was not one of the parties who filed the Joint Omnibus Motion being resolved.[25]

During the arraignment set on February 23, 2018, petitioner refused to enter his plea. Thus, the Sandiganbayan ordered that a plea of not guilty be entered on record on petitioner's behalf.[26]

On March 13, 2018, the Sandiganbayan issued the first assailed Resolution[27] denying petitioner's Request for lack of merit.

On Motion for Reconsideration,[28] petitioner prayed before the Sandiganbayan that his Request be reconsidered and that the members be refrained from further hearing the case insofar as he is concerned.

On April 23, 2018, the Sandiganbayan issued the second assailed Resolution[29] denying the motion after finding no compelling reason to grant it.

Hence, the present petition.

Grounds in Support of the Petition

Petitioner laid the following grounds for consideration of the Court:

> I. WHETHER OR NOT THE RESPONDENTS ACTED WITH BIAS WHEN THEY MENTIONED PETITIONER BATERINA IN DENYING THE "JOINT OMNIBUS MOTION" WHICH HE DID NOT FILE.
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> II. WHETHER OR NOT THE RESPONDENTS ACTED WITH BIAS WHEN THEY ORDERED THE PETITIONER TO ENTER HIS PLEA DESPITE THE PENDENCY OF HIS "REQUEST FOR INHIBITION".

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[25] *Id.* at 56.
[26] *Id.* at 7.
[27] *Id.* at 62-67.
[28] *Id.* at 71.
[29] *Id.* at 72.

III. WHETHER OR NOT THE RESPONDENTS ACTED WITH BIAS WHEN THEY REJECTED PETITIONER'S "REQUEST FOR INHIBITION" ON THE GROUND OF TECHNICALITY AND WITHOUT OBSERVING A.M. NO. 15-06-10-SC.

IV. WHETHER OR NOT A TEMPORARY RESTRAINING ORDER CAN BE ISSUED AGAINST THE RESPONDENTS WHILE THE ISSUE OF BIAS IS BEING RESOLVED.

V. WHETHER OR NOT CONSOLIDATION OF THIS PETITION WITH G.R. NO. 236408 IS PROPER OR IN THE ALTERNATIVE, WHETHER THIS PETITION MAY BE CONSIDERED AS A SUPPLEMENTAL PETITION CONSIDERING THE INTERTWINED AND CONJOINED DATA THAT ARE COMMON TO THE TWO PETITIONS. [30]

Issue

Whether respondents acted with grave abuse of discretion amounting to lack of jurisdiction in denying petitioner's Request.

The Court's Ruling

The petition is devoid of merit.

A study of the petition shows that petitioner is primarily imputing bias on the part of respondents based on the following grounds: (1) the Sandiganbayan's issuance of the Resolution dated December 18, 2017 which denied accused Relampagos and other accused's Joint Omnibus Motion but included the name of petitioner in its dispositive portion; (2) the Sandiganbayan's order to petitioner, during arraignment, to enter his plea despite the pendency of the Request; and (3) the Sandiganbayan's failure to observe A.M. No. 15-06-10-SC.[31]

The Court elucidates on the matter.

On the allegation of bias and partiality on the part of respondents, the Court finds it unsubstantiated.

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[30] *Id.* at 13.

[31] Revised Guidelines for Continuous Trial of Criminal Cases, approved on April 25, 2017.

Section 1 of Rule 137 of the Rules of Court (Rules) reads:

> Disqualification of Judicial Officers
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> Section 1. Disqualification of judges. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The Request speaks of the second paragraph of the Rules which is voluntary inhibition, where the question of whether respondents can sit and try the case before them rests soundly on their sound discretion. This exercise of discretion depends on the existence of just and valid reasons not mentioned or included in the first paragraph of the Rules, and in the valid exercise of respondents' discretion, they are called to rely on their conscience.[32]

Undeniably, the grounds relied upon by petitioner in his Request are allegations of predisposition and prejudice committed by respondents. Thus, the sought inhibition is merely voluntary on the part of respondents. It cannot be compelled unto them as what petitioner Baterina is asking the Court to do in this petition.

To stress, petitioner's allegation that respondents acted with bias when the dispositive portion of the Resolution dated December 18, 2017 included his name is merely based on speculations and conjectures unsupported by proof.

The Resolution dated December 18, 2017 pertained to the Joint Omnibus Motion of accused Relampagos and the other accused. It

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[32] *Lai v. People*, 762 Phil. 434, 444 (2015), citing *Pagoda Phils., Inc. v. Universal Canning, Inc.*, 509 Phil. 339, 345 (2005).

erroneously contained a dispositive portion implicating the name of petitioner. However, the subsequent issuance of Resolution dated January 15, 2018, in the nature of *nunc pro tunc,* cured the error in the dispositive portion.

In fact, a careful reading of the Resolution dated December 18, 2017 shows that the Sandiganbayan meticulously discussed the issues raised by accused Relampagos and the other accused in their Joint Omnibus Motion. It is likewise clear that what the Sandiganbayan ordered was the denial for lack of merit of the issues raised therein. Therefore, the dispositive portion of the Resolution dated December 18, 2017 which pertained to petitioner was a mere act of inadvertence on the part of respondents and does not in any way qualify as proof of respondents' bias or partiality against petitioner.

Notably, nowhere in the petition did petitioner ever mention the existence of the Resolution dated January 15, 2018. Hence, with the legal concept and nature of *nunc pro tunc* judgments or orders, it follows that petitioner's allegations that he was already prejudged and his case was already predisposed by respondents would be rendered nugatory.

The Court in *Mercury Drug Corp., et al. v. Sps. Huang, et al.*,[33] is instructive in this wise:

> "*Nunc pro tunc*" is a Latin phrase that means "now for then." A judgment *nunc pro tunc is made to enter into the record an act previously done by the court, which had been omitted either through inadvertence or mistake.* It neither operates to correct judicial errors nor to "supply omitted action by the court." Its sole purpose is to make a present record of a "judicial action which has been actually taken."
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> The concept of *nunc pro tunc* judgments was sufficiently explained in *Lichauco v. Tan Pho*, thus:
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> > *[A judgment nunc pro tunc] may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken.* If the court has not rendered a judgment that it might or should have rendered, or if it has rendered an imperfect or improper judgment, it has no power to remedy these errors or omissions by ordering the entry nunc pro tunc of a proper judgment. Hence a court in

[33] 817 Phil. 434 (2017).

> entering a judgment nunc pro tunc has no power to construe what the judgment means, but only to enter of record such judgment as had been formerly rendered, but which had not been entered of record as rendered. In all cases the exercise of the power to enter judgments *nunc pro tunc presupposes the actual rendition of a judgment,* and a mere right to a judgment will not furnish the basis for such an entry.
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> x x x x
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> If the court has omitted to make an order, which it might or ought to have made, it cannot, at a subsequent term, be made *nunc pro tunc*. According to some authorities, in all cases in which an entry nunc pro tunc is made, the record should show the facts which authorize the entry, but other courts hold that in entering an order nunc pro tunc the court is not confined to an examination of the judge's minutes, or written evidence, but may proceed on any satisfactory evidence, including parol testimony. In the absence of a statute or rule of court requiring it, the failure of the judge to sign the journal entries or the record does not affect the force of the order grante[d].
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> x x x x
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> The object of a judgment *nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.*
>
> The exercise of issuing *nunc pro tunc orders or judgments is narrowly confined to cases where there is a need to correct mistakes or omissions arising from inadvertence so that the record reflects judicial action, which had previously been taken. Furthermore, nunc pro tunc judgments or orders can only be rendered if none of the parties will be prejudiced.*[34] (Italics supplied.)

Further, petitioner alleges that his Request was filed *a day prior to his arraignment*, but respondents ordered the continuation of the arraignment instead of ruling first on the Request to the detriment and

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[34] *Id.* at 449-451. Citations omitted.

damage of petitioner.[35] According to him, the order of respondents to arraign him before the determination on the merits of the Request had placed him in a position of great difficulty because if it was found that respondents were predisposed against him, then the arraignment should not have been done during their watch.[36] He also alleges that respondents failed to observe the revised guidelines for the continuous trial of criminal cases pursuant to A.M. No. 15-06-10-SC because it took respondents 18 days to resolve the Request instead of two days per guidelines.[37]

The Court finds that the period of 18 days *per se* did not mean that the proceedings before the Sandiganbayan were already attended by delay. Records of the case reveal that petitioner was duly arraigned on schedule and was asked to enter his plea according to the Rules. The arraignment pursued notwithstanding the pendency of the Request because its mere filing did not necessarily have the effect of suspending the ordinary course of judicial proceedings before the Sandiganbayan, in the absence of a writ issued against respondents prohibiting them from further hearing the case.

Needless to say, the movant seeking the inhibition of the respondents is duty-bound to present clear and convincing evidence of bias to justify the Request.[38] However, in the case before the Court, petitioner failed to satisfy the burden and merely imputed bias based on conjectures and speculations. In other words, petitioner did not show strong and compelling evidence to establish that there was actual bias and partiality on the part of respondents.

Petitioner Baterina needs to be reminded again that the Court "*does not rule on allegations which are manifestly conjectural, as these may not exist at all. The Court deals with facts, not fancies; on realities, not appearances. When the Court acts on appearances instead of realities, justice and law will be short-lived.*"[39]

The Court also rules that the other issues raised by petitioner fall outside the scope of a petition for *certiorari* and need no further

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[35] *Rollo*, p. 18.
[36] *Id.* at 19.
[37] *Id.* at 23.
[38] See *Marcos, Jr. v. Robredo*, P.E.T. Case No. 005 (Resolution), November 17, 2020.
[39] *Abakada Guro Party List v. Hon. Exec. Sec. Ermita*, 506 Phil 1, 116 (2005).

discussion by the Court. The issue of the propriety of consolidation of this case with another Petition for *Certiorari* docketed as G.R. No. 236408 is not within the confines of Rule 65.

The Court in *Pahila-Garrido v. Tortogo, et al.*,[40] defines *certiorari* in this manner:

> *Certiorari* is a writ issued by a superior court to an inferior court of record, or other tribunal or officer, exercising a judicial function, requiring the certification and return to the former of some proceeding then pending, or the record and proceedings in some cause already terminated, in cases where the procedure is not according to the course of the common law. The remedy is brought against a lower court, board, or officer rendering a judgment or order and seeks the annulment or modification of the proceedings of such tribunal, board or officer, and the granting of such incidental reliefs as law and justice may require. It is available when the following indispensable elements concur, to wit:
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> 1. That it is directed against a tribunal, board or 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; and
> 3. That there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.
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> *Certiorari* being an extraordinary remedy, the party who seeks to avail of the same must strictly observe the rules laid down by law. The extraordinary writ of certiorari may be availed of only upon a showing, in the minimum, that the respondent tribunal or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion.
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> *For a petition for certiorari and prohibition to prosper and be given due course, it must be shown that: (a) the respondent judge or tribunal issued the order without or in excess of jurisdiction or with grave abuse of discretion; or (b) the assailed interlocutory order is patently erroneous, and the remedy of appeal cannot afford adequate and expeditious relief. Yet, the allegation that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction or with grave abuse of discretion will not alone suffice. Equally imperative is that the petition must satisfactorily specify the acts committed or omitted by the tribunal, board or officer that constitute grave abuse of discretion.*[41] (Italics supplied.)

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[40] 671 Phil. 320 (2011).

[41] *Id.* at 336-337. Citations omitted.

Therefore, the Court finds that respondents acted well within the scope of their jurisdiction and authority when they denied petitioner's Request for Inhibition. There is no showing of bias or prejudice on the part of respondents that will necessitate the grant of the extraordinary writ of *certiorari* and prohibition.

As things stand, petitioner failed to sufficiently show in the present petition that respondents gravely abused their discretion in denying his Request.

WHEREFORE, the instant petition is **DISMISSED**. The Resolutions dated March 13, 2018 and April 23, 2018 of the Sandiganbayan, Second Division, are **AFFIRMED**.

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

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
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.

ALEXANDER G. GESMUNDO
Chief Justice