



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 2, 2020** which reads as follows:*

**“G.R. Nos. 228809 & 228831 (*Francisco S. Senot v. Office of the Ombudsman and OMB-Field Investigation Office*).** – Before Us is a Petition for *Certiorari*<sup>1</sup> filed by Francisco S. Senot (petitioner) questioning the Joint Resolution<sup>2</sup> dated March 9, 2015 in OMB-P-C-13-0344 and OMB-P-F-13-0007 of the Office of the Ombudsman and the Joint Order<sup>3</sup> dated March 28, 2016 finding probable cause for the filing of Informations against petitioner for 11 counts of violation of Article 171 of the Revised Penal Code (RPC) and the filing of Forfeiture of Unlawfully Acquired Properties before the Sandiganbayan.

**Facts of the Case**

The Field Investigation Office (FIO) lodged a criminal complaint against petitioner for Falsification of Public Document under Article 171 of the RPC, in relation to Section 8(A)<sup>4</sup> of Republic

- over – nine (9) pages ...

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<sup>1</sup> *Rollo*, pp. 3-20.

<sup>2</sup> Penned by Graft Investigation and Prosecution Officer Eric Anthony A. Dumpilo; id. at 25-44.

<sup>3</sup> Id. at 45-48.

<sup>4</sup> Section 8. *Statements and Disclosure*. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) *Statements of Assets and Liabilities and Financial Disclosure*. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

Act No. (R.A.) 6713 or the “Code of Conduct and Ethical Standards for Public Officials and Employees” and Section 7<sup>5</sup> of R.A. 3019 or the “Anti-Graft and Corrupt Practices Act.” Further, a requisite preliminary forfeiture proceeding under R.A. 1379 or “An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Officer or Employee and Providing for the Proceedings Therefor” was likewise filed against petitioner.

Petitioner is a retired Chief Superintendent of the Bureau of Fire Protection (BFP) and last assigned at the Office of the Fire Chief, BFP – National Headquarters. Prior to his retirement, petitioner’s annual gross compensation is ₱130,656.18. On November 13, 2006, petitioner optionally retired.<sup>6</sup>

Petitioner is married to Nancy Viray-Senot (Nancy) with whom he has 4 children, namely: Joy Claire Senot born on March 4, 1978, Derick Senot (Derick) born on July 2, 1985, Franalyn Senot born on June 6, 1986, and Eleazar John Senot born on August 19, 1996.<sup>7</sup>

Petitioner declared in his 1999 to 2004 Statement of Assets, Liabilities and Networth (SALN) that Nancy is the registered owner of Nancy Sari-sari store established in 1988. The said sari-sari store has initial capital investment amounting to ₱195,000.00.<sup>8</sup>

Records with the Bureau of Internal Revenue (BIR) reveal that Nancy has two Tax Identification Numbers. However, there are no record of returns filed during the years 1992 to 2003, which is indicative of absence of any source of income.<sup>9</sup>

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<sup>5</sup> Section 7. *Statement of assets and liabilities.* – Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following months of January.

<sup>6</sup> *Rollo*, p. 59.

<sup>7</sup> *Id.* at 60.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

A Certification dated September 27, 2005 from the Assistant Revenue District Officer of BIR-Regional District Office (RDO) No. 53 (Las Piñas-Muntinlupa) reveals that TIN No. 212-344-976 was used by Nancy when she filed for Documentary Stamp Tax. Further, another Certification from BIR-RDO No. 56 stated that TIN No. 171-162-292 was registered as a One Time Transaction Taxpayer (ONETT). There is no record of Nancy with the GSIS. Verification with the SSS reveals that Nancy is a registered member but there is no record of yearly contribution from 1999 to 2004. Thus, it is clear that Nancy has no known legitimate source of income. Investigation of the children also shows that they have no visible sources of income. The BIR, GSIS, and SSS have no records of the children.<sup>10</sup>

The FIO claims that in the 2004 SALN of petitioner, his declared properties amount to ₱1,592,500.00. In his 1999 SALN, the total amount of properties of petitioner amounted to ₱1,212,500.00. Thus, from 1999 to 2004, petitioner has accumulated assets amounting to ₱380,000.00.<sup>11</sup>

However, per verification with the Registry of Deeds and Municipal/City Assessors, petitioner has several properties registered in the name of his spouse Nancy, and his child Derick, which are all undeclared amounting to ₱2,005,000.00, to wit: (1) a parcel of land situated at Kapayapaan Village Phase I-A, Canlubang, Calamba City, Laguna registered in the name of Nancy, Said property was acquired by Nancy on February 2004 amounting to ₱25,000.00; (2) a parcel of land situated at Camella Homes III, Tunasan, Muntinlupa City registered in the name of Nancy. The said property was acquired on July 26, 2001 amounting to ₱800,000.00; (3) a motor vehicle, Toyota Hi-Ace with plate number UNZ-991 registered in the name of Nancy acquired on November 12, 2001 amounting to ₱550,000.00; and (4) a motor vehicle, Honda CR-V, with plate number WBY 163 registered in the name of Derick acquired on June 4, 2003 amounting to ₱630,000.00.<sup>12</sup>

It is worth noting that Nancy has no visible means to acquire the said properties. On the other hand, Derick is also not financially capable to acquiring the motor vehicle as he was only 17 years old at the time of the purchase of the properties.<sup>13</sup>

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<sup>10</sup> Id. at 60-61.

<sup>11</sup> Id. at 61-62.

<sup>12</sup> Id. at 62-63.

<sup>13</sup> Id. at 63.

From the 1999 to 2004 SALNs of petitioner, he has a declared income in the amount of ₱2,087,770.00. On the other hand, petitioner had a change in his net worth, as declared in his SALNs from 1999 to 2004, amounting to ₱117,818.00. Also, petitioner's declared family expenses from 1999 to 2004 is ₱1,656,625.12.<sup>14</sup>

Petitioner's declared compensation/income of ₱2,087,770.00 is highly irreconcilable and manifestly out of proportion to the amount of ₱3,779,443.12 representing the declared and undeclared properties of petitioner and his family including their family expenses, considering that his wife and children has no known source of income.<sup>15</sup>

It is therefore presumed that the same are unlawfully acquired especially where its amount or value are manifestly disproportionate to his salary and other lawful income as a public officer.<sup>16</sup>

Petitioner argued that the two parcels of land under the name of his wife Nancy and the motor vehicle under her name are acquired without his knowledge. He claimed that his wife is very enterprising, energetic, and aggressive, as well as secretive. The motor vehicle registered in the name of his son Derick, was actually purchased by Nancy but it was named in Derick's name.<sup>17</sup>

He only knew those properties when his wife died in 2012 when he had access to her files. Thus, the non-inclusion of the properties was due to mistake and/or accident and was not intended to conceal the said properties. It is not suspicious that his wife had the capability to acquire the said properties because she was resourceful, enterprising, aggressive and energetic.<sup>18</sup>

### **Ruling of the Ombudsman**

On March 9, 2015, the Office of the Ombudsman issued a Joint Resolution<sup>19</sup> finding probable cause to indict petitioner for violation of Article 171 of the RPC and that petition for forfeiture of unlawfully acquired properties be filed against the petitioner.

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<sup>14</sup> Id. at 64-65.

<sup>15</sup> Id. at 65-66.

<sup>16</sup> Id.

<sup>17</sup> Id. at 82-83.

<sup>18</sup> Id. at 83.

<sup>19</sup> Supra note 2.

The Ombudsman ruled that the elements of falsification of public documents through an untruthful narration of facts are present. Petitioner has the legal obligation to disclose the truth of the facts as narrated in the SALN. It is incredulous to believe that petitioner's wife for 35 years would clandestinely purchase properties of significant amount without petitioner's knowledge, especially motor vehicles which could easily be seen. Thus, it is better to have a full blown trial to fully ventilate petitioner's defense.<sup>20</sup>

The allegation of petitioner that the complaint should have been dismissed because the same was filed more than one year from the act complained of cannot be considered. Section 20(5)<sup>21</sup> of R.A. 6770 or the "Ombudsman Act of 1989" is merely discretionary on the part of the Ombudsman. Further, the said provision only applies to administrative cases and not to criminal cases such as this case.<sup>22</sup>

As to the institution of forfeiture proceedings of unlawfully acquired properties, when an employee, during his incumbency, acquired properties, amount of which is manifestly out of proportion to his salary, the same shall be presumed *prima facie* to have been unlawfully acquired.<sup>23</sup>

Here, petitioner did not rebut the presumption. Other than his bare allegations that his wife has the capacity to acquire the said properties, no other evidence was presented to support the said allegation.<sup>24</sup> Thus:

WHEREFORE, let Informations (eleven [11] counts) for VIOLATION OF ARTICLE 171 OF THE REVISED PENAL CODE against FRANCISCO S. SENOT be FILED with the Sandiganbayan.

Further, let a PETITION for FORFEITURE OF UNLAWFULLY ACQUIRED PROPERTIES be also FILED with the Sandiganbayan against FRANCISCO S. SENOT.

SO ORDERED.<sup>25</sup> (Emphasis omitted)

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<sup>20</sup> Rollo, pp. 38-39.

<sup>21</sup> Section 20. *Exceptions.* – The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x

(5) Are in the exercise of discretionary powers but for an improper purpose; x x x.

<sup>22</sup> Rollo, pp. 40-41.

<sup>23</sup> Id. at 41.

<sup>24</sup> Id. at 42.

<sup>25</sup> Id. at 44.

Thereafter, petitioner filed his Motion for Reconsideration and/or Reinvestigation,<sup>26</sup> now alleging that he and his wife executed a pre-nuptial agreement before the celebration of their marriage agreeing a complete separation of property. As such, he is correct in not including the properties acquired by his wife in his SALN because of their agreed property regime.<sup>27</sup>

The OMB in its Joint Order<sup>28</sup> dated March 28, 2016, did not consider the new allegations of petitioner. It held that during the preliminary investigation, petitioner tethered his defense on mistake and/or accident in not including the properties purchased by his wife as he only learned of the same upon the death of his wife when he had access to the documents of his wife. He never mentioned the existence of the pre-nuptial agreement. Thus, the presentation of the pre-nuptial agreement is merely an afterthought to plead his case.<sup>29</sup>

Nevertheless, even with the existence of the pre-nuptial agreement, petitioner is still obligated to include and submit all their assets, liabilities, net worth and business interests including those of their spouses, and of unmarried children under 18 years of age. It does not distinguish between properties owned/acquired jointly by the spouses or separately acquired by reason of their property regime.<sup>30</sup>

Aggrieved, petitioner directly filed a Petition for *Certiorari* before Us alleging grave abuse of discretion on the part of the Ombudsman in finding probable cause for the filing of Information against him.<sup>31</sup>

### **Petitioner's Arguments**

Petitioner argues that the Ombudsman committed grave abuse of discretion in finding that the presentation of the pre-nuptial agreement is a mere afterthought.<sup>32</sup>

Further, he claims that the he acted in good faith in not including the properties of his wife because the said properties are the separate and exclusive properties of his wife pursuant to the pre-nuptial agreement. He knew that he had a pre-nuptial agreement with his wife but he was only able to locate the said document lately.

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<sup>26</sup> Id. at 50-56.

<sup>27</sup> Id. at 51-52.

<sup>28</sup> Supra note 3.

<sup>29</sup> *Rollo*, p. 46.

<sup>30</sup> Id. at 47.

<sup>31</sup> Id. at 19-20.

<sup>32</sup> Id. at 8-9.

Nonetheless, he was able to submit the same during the preliminary investigation. As he did not make any untruthful statements in his SALN, the crime of falsification of public document was not committed.<sup>33</sup>

### **Arguments of the Office of the Solicitor General**

The Office of the Solicitor General (OSG), in its Comment,<sup>34</sup> argues that petitioner availed of the wrong remedy since petitioner is essentially questioning the finding of probable cause made by the Ombudsman. He questioned the Ombudsman's appreciation of the pre-nuptial agreement. At most, petitioner was merely questioning an error of judgment which is not allowed in a petition for *certiorari*. The determination of whether or not a certain piece of evidence is credible and how much it should affect the outcome of the investigation is plainly within the discretion of the Ombudsman which conducted the investigation.<sup>35</sup>

Nevertheless, the Ombudsman did not commit grave abuse of discretion in finding that the presentation of the pre-nuptial agreement is a mere afterthought. The defenses raised by petitioner in his counter-affidavit and in his motion for reconsideration are completely contradictory. He went from claiming that he did not know the properties purchased by his wife and had he known them he would have included them in his SALN to insisting that he was correct in not including the properties in his SALN since the same were separate properties of his wife.<sup>36</sup> Also, the Ombudsman claimed that even if the pre-nuptial agreement is considered, petitioner still has the duty to include them in his SALN, the law does not distinguish as to whether the properties were owned separately by the spouses, petitioner must still include them in his SALN.<sup>37</sup>

### **Petitioner's Reply**

In petitioner's Reply<sup>38</sup> to the OSG's comment, he reiterated his arguments in the petition. Additionally, petitioner claimed that filing a petition for *certiorari* in questioning the Ombudsman's finding of probable cause is the proper remedy.<sup>39</sup>

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<sup>33</sup> Id. at 12-16.

<sup>34</sup> Id. at 102-115.

<sup>35</sup> Id. at 105-108.

<sup>36</sup> Id. at 108-113.

<sup>37</sup> Id. at 114-115.

<sup>38</sup> Id. at 124-131.

<sup>39</sup> Id.

**Issue**

Whether the Ombudsman committed grave abuse of discretion in finding probable cause for violation of Article 171 of the RPC against petitioner.

**Ruling of the Court**

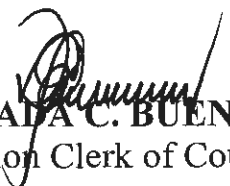
It appears that pending resolution of this present case, the Sandiganbayan issued a Resolution dated January 4, 2018 in SB-17-CRM-1770 to 1780 quashing the Informations filed against petitioner for his violation of Article 171 of the RPC for failure to include in his SALNs several properties in the name of his wife and son. The Sandiganbayan dismissed the criminal cases for violation of petitioner's right to speedy disposition of cases. Since no petition was filed with this Court questioning the Sandiganbayan Resolution, the present case is now rendered moot and academic.

Nevertheless, the fact that the Informations were quashed by the Sandiganbayan is without prejudice to the filing of a petition for Forfeiture of Unlawfully Acquired Properties under R.A. 1379, since the same is only civil in nature and does not involve proof beyond reasonable doubt.

**WHEREFORE**, the instant petition is rendered **MOOT** and **ACADEMIC** without prejudice to the filing of a petition for Forfeiture of Unlawfully Acquired Properties under Republic Act No. 1379.

**SO ORDERED."**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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