G.R. No. 229781 – *Senator Leila M. de Lima v. Hon. Juanita Guerrero*

Promulgated: October 10, 2017

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SEPARATE CONCURRING OPINION

DEL CASTILLO, *J.*:

On February 17, 2017, an Information was filed against petitioner Senator Leila M. De Lima before the Regional Trial Court (RTC) of Muntinlupa City which reads:

> INFORMATION
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> The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:
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> > That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position, and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly *"tara"* each from the high profile inmates in the New Bilibid Prison.

CONTRARY TO LAW.

Docketed as Criminal Case No. 17-165, the case was raffled off to Branch 204 presided over by respondent Judge Juanita Guerrero.

On February 23, 2017, the RTC issued an Order finding probable cause for the issuance of warrant of arrest against all the accused including petitioner. On even date, a warrant of arrest was issued. On February 24, 2017, the RTC issued an Order directing the commitment of petitioner at the PNP Custodial Center.

Aggrieved by the foregoing issuances, and by the RTC's alleged failure or refusal to act on her motion to quash Information whereby petitioner questions the jurisdiction of the RTC, petitioner instituted the instant Petition for *Certiorari* and Prohibition directly before this Court.

The issue that now confronts the Court is whether the RTC has jurisdiction over Crim. Case No. 17-165.

An examination of the Information reveals that petitioner was charged with violation of Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Section 5 refers to x x x ***trading*** *x x x of dangerous drugs x x x.* Here, the Information specifically alleged petitioner of having engaged in trading and trafficking of dangerous drugs.

Meanwhile, **Section 3(jj)** defines **trading** as *transactions involving illegal trafficking of dangerous drugs x x x* ***using electronic devices*** *x x x.* Again, the subject Information specifically alleged that petitioner and co-accused used mobile phones and other electronic devices in trading and drug trafficking.

On the other hand, **Section 26(b)** punishes "attempt or **conspiracy**" to **trade** illegal drugs. The Information specifically stated that petitioner conspired with Dayan and Ragos in trading in illegal drugs.

And lastly, **Section 28** provides for the imposition of the **maximum penalties** if those found guilty are **government officials** and employees.

It is clear from the foregoing allegations that petitioner is being charged with conspiring to engage in trading of illegal drugs, a case that is cognizable by and within the jurisdiction of the RTC.

The mention in the Information of the phrases "taking advantage of public office" and "with the use of their power, position, and authority", vis-à-vis the rest of the allegations in the Information, does not wrest from the RTC its jurisdiction over the case. To my mind, said phrases were mentioned specifically to highlight the fact that some of the personalities involved are public officials, in view of the fact that **Section 28** of RA 9165 specifically deals with the "criminal liability of government officials and employees" and provides for the imposition of the maximum penalties if the violators were government officials and employees. By their being government officials and employees, their liability is aggravated and would necessitate the imposition of the maximum penalty, pursuant to Section 28.

It could therefore be construed that said phrases were mentioned in the Information precisely in view of Section 28.

Similarly, the mention of the phrases "offense in connection with official duties" in Section 3, RA 3019, and "in relation to office" in Section 4(sub-paragraph b) of RA 8249 (An Act Further Amending the Jurisdiction of the *Sandiganbayan*) would not wrest from the RTC its jurisdiction over the case. As held in *Barriga v. Sandiganbayan*:[1]

> x x x There are two classes of public office-related crimes under subparagraph (b) of Section 4 of Rep. Act No. 8249: first, those crimes or felonies in which the public office is a constituent element as defined by statute and the relation between the crime and the offense is such that, in a legal sense, the offense committed cannot exist without the office; second, such offenses or felonies which are intimately connected with the public office and are perpetrated by the public officer or employee while in the performance of his official functions, through improper or irregular conduct.

It is my opinion that that the offense with which petitioner was charged, that is, trading and trafficking of illegal drugs in conspiracy with her co-accused, can exist whether she holds public office or not, and regardless of the public position she holds, for the reason that public office is not a constituent element of the crime; otherwise stated, the offense of trading and trafficking of illegal drugs can exist independently of petitioner's public office. Moreover, the offense of trading in illegal drugs could not be said to be intimately connected to petitioner's office or that the same was done in the performance of her official functions.

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[1] 496 Phil. 764, 773 (2005).

The mere fact that the salary grade corresponding to the position of a Secretary of Justice is within the ambit of the *Sandiganbayan* jurisdiction does not necessarily mean that said court should take cognizance of the case. It must be stressed that it is not the salary grade that determines which court should hear or has jurisdiction over the case; it is the nature thereof and the allegations in the Information. RA 9165 specifically vested with the RTC the jurisdiction over illegal drugs cases. On the other hand, the *Sandiganbayan* was specially constituted as the anti-graft court. And since petitioner is being charged with conspiring in trading of illegal drugs, and not with any offense involving graft, it is crystal clear that it is the RTC which has jurisdiction over the matter as well as over the person of the petitioner.

Incidentally, it must be mentioned at this juncture that in the case of *People v. Morilla*[2] decided by the Court on February 5, 2014, a case involving transportation of illegal drugs by a town mayor, the same was heard by the RTC although his salary grade was within the ambit of the *Sandiganbayan.*

Finally, the Petition for *Certiorari* and Prohibition suffers from several infirmities.

First, petitioner has several available remedies to take before resort is made to this Court. As enumerated in the Separate Concurring Opinion of Justice Peralta, the following options were available to petitioner: "1) filing of counter-affidavit with an alternative prayer for referral of the case to the Ombudsman; 2) filing a motion for re-investigation before the information is filed in court; 3) filing of a motion for leave of court to file a motion for re-investigation if an information has been filed; 4) filing of a motion for judicial determination of probable cause; 5) motion for bill of particulars; and 6) motion to quash warrant of arrest."[3] Unfortunately, petitioner did not opt to avail of any of these remedies before bringing her suit to the Court of last resort. Petitioner's claim, that it was pointless for her to avail of any of these remedies, not only lacks basis but also strikes at the very core of our judicial system. Rules are basically promulgated for the orderly administration of justice. The remedies chosen by the parties must be in accordance with the established rules and should not depend on their whims.

Second, petitioner is guilty of forum shopping; the petition suffers from prematurity. The instant Petition was filed before this Court despite the pendency of the motion to quash before respondent Judge. Suffice it to say that between the motion to quash and the instant Petition, there is identity of parties; the prayers in

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2 726 Phil. 244 (2014).

3 Separate and Concurring Opinion of J. Peralta, p. 2.

the two suits are similar; and the resolution of one will result in *res judicata* to the other.

Third, the Petition suffers from defective verification, a ground for outright dismissal pursuant to Rule 7 of the Rules of Court.

ACCORDINGLY, I vote to **DISMISS** the Petition.