SUPREME COURT OF THE PHILIPPINES
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G.R. No. 229781 (*Senator Leila M. De Lima v. Hon. Juanita Guerrero, etc., et al.*).

Promulgated:

October 10, 2017

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SEPARATE OPINION

PERALTA, *J.*:

I concur with the *ponencia* that the instant Petition for *Certiorari* and Prohibition should be denied on the grounds of prematurity, forum shopping, for being improperly verified, and for lack of merit.

However, in light of the novelty and the transcendental importance of the jurisdictional issue raised by petitioner Senator Leila M. De Lima, I find it necessary to go over the records of the deliberation in the Congress to verify if the exclusive original jurisdiction of Regional Trial Courts (*RTCs*) under Section 39 of Republic Act (*R.A.*) No. 6425, or the *Dangerous Drugs Act of 1972*, was carried over to Section 90 of R.A. No. 9165, as amended, or the *Comprehensive Dangerous Drugs Act of 2002*. Since the legislature clearly intended to confer to Regional Trial Courts exclusive original jurisdiction over drug cases under R.A. No. 9165, respondent judge, the Hon. Juanita T. Guerrero, should be ordered to resolve the motion to quash, taking into account the discussion on the definition of conspiracy to commit illegal drug trading, the principles in determining the sufficiency of an information, and the remedies relative to motion to quash under Sections 4, 5 and 6, Rule 117 of the Rules of Court.

I also submit that respondent judge did not commit grave abuse of discretion, amounting to lack or excess of jurisdiction, when she issued the warrant of arrest against petitioner despite the pendency of her motion to quash, because there is no law, jurisprudence or rules of procedure which requires her to first resolve a motion to quash before issuing a warrant of arrest. Respondent judge should be ordered to resolve the pending motion to quash in order to give her opportunity to correct the errors raised by petitioner.

On procedural grounds, I agree with the *ponencia* that the Petition for *Certiorari* and Prohibition must be dismissed on the grounds of prematurity and forum shopping, as well as for being improperly verified.

For one, petitioner Senator Leila M. De Lima failed to avail of the plain, speedy and adequate remedies before the DOJ and the respondent judge. During the Oral Arguments, it was conceded that before filing the petition at bar, petitioner failed to avail of a wide array of remedies before the DOJ and the respondent judge, such as: (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. Thus:

> JUSTICE PERALTA:
>
> Okay. Now, I was looking at your petition, and you missed out [on] a lot of remedies that should have been undertaken by Senator De Lima. **In the conduct of the preliminary investigation before the DOJ, she did not file a counter-affidavit**. Because if there was lack of jurisdiction from the very beginning, she should have filed a counter-affidavit presenting her countervailing evidence. **And alternatively, ask for the dismissal of the case because the DOJ has no jurisdiction, because a motion to dismiss is not allowed**. You have to file a counter-affidavit, thus, she waived it. That should have been the best time to argue that the DOJ has no jurisdiction. Then after that, x x x if there was a resolution by the DOJ, then you can file a motion for re-investigation.
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> ATTY. HILBAY:
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> Your Honor, according to the lawyers down below they filed an Omnibus Motion.
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> JUSTICE PERALTA:
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> Now, therefore, there was an Omnibus Motion
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> ATTY. HILBAY:
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> Yes.
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> JUSTICE PERALTA:
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> There was a resolution, but she did not do anything. **She should have filed a motion for re-investigation before the Information is filed before the court and ask the court to suspend the proceedings.** And then, require the panel of the prosecutors to resolve the motion for re-investigation which she did not do.
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> ATTY. HILBAY:
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> I think, Your Honor, given the lawyers' experience with the panel of prosecutors in that case because they realized that it was pointless...

JUSTICE PERALTA:

Yeah, the other thing is that. Assuming that there was already an information filed, and she was not given a chance to file her countervailing evidence with the DOJ, then, **Senator De Lima could have filed a motion for leave of court to file a motion for re-investigation so that the judge could have required the panel of the prosecutors to reinvestigate or to reconsider the resolution**, which she did not. There were remedies, so many remedies available under the rules.

ATTY. HILBAY

You're correct, Your Honor, that there are lot of abstract options that are available to petitioner in this case.

JUSTICE PERALTA:

Yeah.

ATTY. HILBAY:

But I think on the part of the lawyers, who handled the case down below, their reading of the situation was that it was already pointless.

JUSTICE PERALTA:

They may not act favorably, okay. But the case, well the court is already judicial in character because when the information is filed nobody can touch the information except the judge. Therefore, **if the information was already filed before the court, Senator De Lima could have filed a motion for leave of court to file motion for reconsideration.** So that the court should have required the public prosecutor to conduct a re-investigation upon orders of the court.

ATTY. HILBAY:

Again, pleading have been filed, we don't even know whether the court obliged...

x x x x

JUSTICE PERALTA:

Let's go further. If the information was already filed, this has always been the practice but sometimes they say, this is not an available remedy. Senator De Lima could have filed a motion for judicial determination of probable cause and invoke paragraph (a) of Rule 112, Section 6 [now Sec. 5]. Because the judge is mandated within ten (10) days to determine the existence of probable cause. And if he or she is not satisfied, then he could have required the prosecution to present additional evidence. If she is not yet satisfied, that would have caused for the dismissal of the case for lack of probable cause.

ATTY. HILBAY:

Yes.

JUSTICE PERALTA:

Which she did not do.

ATTY. HILBAY:
Again, Your Honor, there's so many channels by which this case...

JUSTICE PERALTA:
Yes, it's already judicial, you cannot already claim that the judge is bias, because the remedy is already judicial in character. So anyway...

ATTY. HILBAY:
You are correct, Your Honor.

x x x x

JUSTICE PERALTA:
I'll go to another point. Is it not? If there is a defect in the Information, because according to you, it's not clear. If they are charged with illegal trading or charged with attempt or conspiracy, is it not that the [proper] remedy should have been Rule 116, Section 9 of the Rules of Court, a **motion for bill of particulars**?

ATTY. HILBAY:
No, Your Honor, in fact, Your Honor, it is rather clear what the prosecutors intended to charge the petitioner. It is the OSG that has a new interpretation of the charge.

x x x x

JUSTICE PERALTA:

x x x x

So I'll go to another point. Now, why did you not file a **motion to quash the warrant of arrest on the ground of lack of probable cause** before coming to court? Is that a valid remedy under the rules?

ATTY. HILBAY:
Your Honor, the lawyers down below say that that was placed on record, those arguments, Your Honor.

JUSTICE PERALTA:
That was placed on record. Was there a motion actually, a motion to quash the warrant of arrest on the ground of lack of probable cause? Was there any made...?

ATTY. HILBAY:
I am told, Your Honor, that there were observations placed on record.

JUSTICE PERALTA:
And the problem observations because...

ATTY. HILBAY:
We are questioning the jurisdiction in the first place.

x x x[1]

The OSG is correct that there are available plain, speedy and adequate remedies for petitioner to assail the questioned orders of the respondent judge, as well as the DOJ. Direct resort before the Court through a Petition for *Certiorari* and Prohibition cannot be justified with a mere speculation that all the remedies available to petitioner before the DOJ or the respondent judge are pointless, and that they acted with bias and undue haste.

For another, petitioner violated the rules against forum shopping, and the pendency of her Motion to Quash the information before respondent judge renders her petition premature. In *Villamor, Jr. v. Judge Manalastas*,[2] the Court explained the concept of forum shopping as follows:

> As a rule, forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court other than by appeal or the special civil action of *certiorari*. Conceptually, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.
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> Forum shopping also exists when, as a result of an adverse decision in one forum or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than an appeal or *certiorari*.
>
> There is likewise forum shopping when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.
>
> *Litis pendentia* is a Latin term meaning "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.
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> There is *litis pendentia* when the following requisites are present: identity of the parties in the two actions; substantial identity in the causes of action and in the reliefs sought by the parties; and the identity between the two actions should be such that any judgment that may be rendered in one case, regardless of which party is successful, would amount to *res judicata* in the other.
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> Otherwise stated, the test is whether the two (or more) pending cases have identity of parties, of rights or causes of action, and of the reliefs sought. Willful and deliberate violation of the rule against it is a

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1 TSN, Oral Arguments – *En Banc*, G.R. No. 229781, Tuesday, March 14, 2017, pp. 64-74.

2 764 Phil. 456, 465-467 (2015).

> ground for summary dismissal of the case; it may also constitute direct contempt.
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> Appeals and petitions for *certiorari* are normally outside the scope of forum shopping because of their nature and purpose; they grant a litigant the remedy of elevating his case to a superior court for review.
>
> It is assumed, however, that the filing of the appeal or petition for *certiorari* is properly or regularly invoked in the usual course of judicial proceedings, and not when the relief sought, through a petition for *certiorari* or appeal, is still pending with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority, *e.g.*, a still pending motion for reconsideration of the order assailed via a petition for *certiorari* under Rule 65.

I agree with the *ponencia* that all the elements of forum shopping are present. *First*, there is substantial identity of parties in the criminal case before the respondent judge where the People of the Philippines is the complainant, while petitioner is one of the accused, and the petition at bar where the People is the respondent, while Sen. De Lima is the petitioner. *Second*, petitioner's prayers in her motion to quash and in this petition are essentially the same, *i.e.*, the nullification of the information and restoration of her liberty, on the grounds of lack of jurisdiction over the offense, the duplicity and insufficiency of the information, and the lack of probable cause to issue an arrest warrant against her. *Third*, due to the identity of issues raised in both cases, the Court's decision in this petition would amount to *res judicata* in the criminal case before the respondent judge with respect to the issues of jurisdiction over the offense and of the existence of probable cause to issue an arrest warrant against petitioner.

I further stress that what is also pivotal in determining whether forum shopping exists is the vexation caused the courts by a party who asks different courts to rule on the same or related issues and grant the same or similar reliefs, thereby creating the possibility of conflicting decisions being rendered by different courts upon the same issues.[3] The possibility of conflicting decisions between the Court and the respondent judge is real because Section 7 of Rule 65, as amended by A.M. No. 07-7-12-SC, requires the latter to proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court, absent a temporary restraining order or preliminary injunction, failing which may be a ground of an administrative charge. Section 1, Rule 116 pertinently provides that the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, and that the pendency of a motion to quash shall be excluded in computing the period. Considering that petitioner was arrested on February 24, 2017 and that no restraining

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[3] *Bandillon v. La Filipina Uygongco Corporation*, G.R. No. 202446, September 16, 2015, 770 SCRA 624, 649.

order has yet been issued since the filing of her Petition on February 27, 2017, respondent judge is expected to resolve the motion to quash; hence, the possibility that her resolution would be in conflict with the Court's decision.

Apropos to this case is *Estrada v. Office of the Ombudsman*[4] where petitioner Senator Jinggoy Ejercito Estrada raised in his Petition for *Certiorari* the same issues he raised in his Motion for Reconsideration of the Joint Resolution of the Ombudsman finding probable cause. While his motion for reconsideration was pending, Sen. Estrada did not wait for the resolution of the Ombudsman and instead proceeded to file his Petition. The Court ruled that Sen. Estrada's Petition is not only premature, but also constitutes forum shopping, because he resorted to simultaneous remedies by filing the Petition alleging violation of due process by the Ombudsman even as his motion for reconsideration raising the very same issue remained pending with the Ombudsman.

In this case, petitioner raised in her Petition for *Certiorari* and Prohibition the same issues she raised in her Motion to Quash, namely: (1) lack of jurisdiction over the offense charged; (2) the DOJ Panel's lack of authority to file the information; (3) the information charges more than one offense; (4) the allegations and the recitals of the facts do not allege the *corpus delicti* of the charge; (5) the information is based on testimonies of witnesses who are not qualified to be discharged as state witness; and (6) the testimonies of the witnesses are hearsay. Without waiting for the respondent judge's resolution of her motion to quash, petitioner filed her Petition. As in *Estrada*,[5] petitioner resorted to simultaneous remedies by filing her Petition raising the same issues still pending with the RTC, hence, the same must be dismissed outright on the grounds of prematurity and forum shopping.

The prematurity of the Petition at bar was further underscored during the Oral Arguments, considering that petitioner's motion to quash is still pending before the respondent judge:

> JUSTICE PERALTA:
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> If an Information is filed, you determine the existence of probable cause from the allegations of the Information, that's the first thing that the judge will do. If the allegations are properly alleged as to jurisdiction, it took place in Muntinlupa, so the place of the commission of the crime is there, the allegations of 9165 under Section 90 she says that is jurisdiction, so what's the problem?

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4 751 Phil. 821 (2015).

5 *Id.*

ATTY. HILBAY:

No subject matter, jurisdiction. Again, Your Honor, my point is…

JUSTICE PERALTA:

But that's not the basis of an issuance of a warrant of arrest precisely there is a motion to quash. **If you do not agree and there's no jurisdiction, your remedy is to file a motion to quash the Information…**

ATTY. HILBAY:

We did, Your Honor, file a motion to quash…

JUSTICE PERALTA:

That's the problem, it is pending, you come here. Why not wait for the RTC to determine as to whether or not there is jurisdiction over the person of the accused or over the subject matter? Because what you are saying is that, first determine jurisdiction. It is already there eh. The determination of probable cause will already include jurisdiction because that's alleged in the… she will not go beyond what's alleged in the Information. There is an allegation of jurisdiction eh. The crime is within the City of Muntinlupa, oh that's the jurisdiction over the place where the crime is committed.

ATTY. HILBAY:

Yeah, Your Honor, that's…

JUSTICE PERALTA:

You have the allegation in the Information, violation of Dangerous Drugs Act under Section 90, you have the accused, there is an allegation of relation to office. What's the problem?

ATTY. HILBAY:

She has subject matter jurisdiction, Your Honor.

JUSTICE PERALTA:

Yeah. In all the cases that came here on lack of probable cause, what happened in those cases is that the RTC first answered the queries posited by the accused that there is no probable cause. In the case of *Allado v. Diokno*, they filed a motion to determine probable cause. In the case of Senator Lacson, they filed a motion, and there were all hearings. Here, in this particular case, there is no hearing. So, how can we review the factual issues if in the first place these were not brought up in the RTC?

ATTY. HILBAY:

Your Honor, there are no factual issues here. The only issue is jurisdiction. There's no need…

JUSTICE PERALTA:

So, your issue is not lack of probable cause for the issuance of a warrant of arrest, but lack of jurisdiction. So if you go, if your position now is lack of jurisdiction, then go to the RTC. And then, file a motion to quash. That's what she was asking. That should have been heard in the RTC.

ATTY. HILBAY:
Your Honor...

x x x x

JUSTICE PERALTA:
So to me, the procedure should have been to go first to the RTC. And then, come, if you cannot get a favorable decision, to Court. Justice Jardeleza was saying there's no due process. I mean he did not say due process, but due process has been observed. The problem is she all waived her remedies. Hindi siya nag-file ng counter-affidavit. She did not file a counter-affidavit. She was given due process.

ATTY. HILBAY:
Yes.

JUSTICE PERALTA:
But she did not invoke all those remedies to comply with due process.

ATTY. HILBAY:
If I may, Your Honor, just clarify what happened so that we can now have full favor of the context of petitioner. She did not file a counter-affidavit precisely because she was questioning the jurisdiction of the Department of Justice. And yet, the Department of Justice, proceeded with undue haste, and filed the case before the court without jurisdiction. She filed a motion to quash before a court that has no jurisdiction. The court decided again with undue haste to issue warrant of arrest. What do you expect, Your Honor, the petitioner to do?

JUSTICE PERALTA:
That wouldn't have been a good basis of coming here because... That wouldn't have been a good basis of coming here.

ATTY. HILBAY:
Your Honor.

JUSTICE PERALTA:
... she was only speculating. She should have availed of the remedies and all of these have denied because they are biased and then, come here and then, release her. But this one, she did not follow.

ATTY. HILBAY:
Your Honor, what we're saying is that, we are now here, we have made out a very strong and clear case for an application of the exemptions of the procedures of this Court. Those exemptions are clearly stated in the jurisprudence of this Honorable Court.[6]

While petitioner also failed to justify that her case falls under the exceptions to the doctrine on hierarchy of courts, I posit that the issue of

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[6] TSN, Oral Arguments – En Banc, G.R. No. 229781, Tuesday, March 21, 2017. (Emphasis added)

jurisdiction over the offense should still be addressed due to its transcendental importance.

In *The Diocese of Bacolod v. Commission on Elections*,[7] the Court stressed that the doctrine of hierarchy of courts is not an iron-clad rule, and that it has full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. Recognized exceptions to the said doctrine are as follows:

> (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
> (b) when the issues involved are of transcendental importance;
> (c) cases of first impression where no jurisprudence yet exists that will guide the lower courts on the matter;
> (d) the constitutional issues raised are better decided by the Court;
> (e) where exigency in certain situations necessitate urgency in the resolution of the cases;
> (f) the filed petition reviews the act of a constitutional organ;
> (g) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and
> (h) the petition includes questions that are dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[8]

The petition at bench raises an issue of transcendental importance and a novel question of law, if not a case of first impression, namely: whether the Sandiganbayan has exclusive original jurisdiction over drug cases under R.A. No. 9165 committed by public officers or employees in relation to their office, pursuant to Presidential Decree No. 1606, Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "SANDIGANBAYAN" and for other purposes, as amended by R.A. No. 10660, revising Presidential Decree No. 1486 Creating a Special Court to be known as "SANDIGANBAYAN" and for other purposes. An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor.

It bears emphasis that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint or information, and cannot be granted by agreement of the parties, acquired

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7 751 Phil. 301, 330 (2015).

8 *Diocise of Bacolod v. Commission on Elections, supra,* at 331-335.

through, or waived, enlarged or diminished by any act or omission of the parties, or conferred by acquiescence of the court.[9] Considering that lack of jurisdiction over the subject matter of the case can always be raised anytime, even for the first time on appeal,[10] I see no reason for Us not to directly entertain a pure question of law as to the jurisdiction of the Sandiganbayan over drug-related cases, if only to settle the same once and for all. A decision rendered by a court without jurisdiction over the subject matter, after all, is null and void. It would be detrimental to the administration of justice and prejudicial to the rights of the accused to allow a court to proceed with a full-blown trial, only to find out later on that such court has no jurisdiction over the offense charged.

I take judicial notice of the Sandiganbayan Statistics on Cases Filed, Pending and Disposed of from February 1979 to May 31, 2017 which shows that out of the 34,947 cases filed and 33,101 cases disposed of, no case has yet been filed or disposed of involving violation of the Dangerous Drugs Law either under R.A. Nos. 6425 or 9165, thus:

NUMBER OF CASES FILED and DISPOSED OF ACCORDING TO NATURE OF OFFENSE (FEBRUARY, 1979 TO MAY 31, 2017)[11]

NATURE OF OFFENSE	TOTAL [Filed]	PERCENT DISTRIBUTION [Filed]	TOTAL [Disposed]	PERCENT DISTRIBUTION [Disposed]
Crimes Against Religious Worship	1	0.003	1	0.003
Arbitrary Detention	72	0.206	69	0.208
Violation of Domicile	18	0.051	20	0.061
Assault Resistance and Disobedience	10	0.029	13	0.040
Perjury	116	0.332	76	0.230
Falsification Cases	6096	17.444	6215	18.776
Mal/Misfeasance	7	0.020	7	0.021
Bribery	365	1.044	347	1.048
Malversation Cases	10336	29.576	10376	31.346
Infidelity of Public Officers in the Custody of Prisoners/Documents	552	1.580	548	1.656
Other Offense Committed by Public Officers	582	1.665	544	1.643
Murder	317	0.907	350	1.057
Homicide	203	0.581	220	0.665

9 *Republic v. Bantigue Point Development Corporation,* 684 Phil. 192, 199 (2012).
10 *Tumpag Jr. v. Tumpag*, 744 Phil. 423, 433 (2014).
11 http://sb.judiciary.gov.ph/statistics_report.html. Last visited on July 3, 2017.

Physical Injuries	169	0.484	170	0.514
Threats and Coercions	98	0.280	88	0.266
Kidnapping	2	0.006	2	0.006
Estafa Cases	4700	13.449	4974	15.027
Robbery	123	0.352	132	0.399
Theft	511	1.462	549	1.659
Malicious Mischief	20	0.057	16	0.048
Rape and Acts of Lasciviousness	21	0.060	18	0.054
Slander	16	0.046	17	0.051
Illegal Marriage	2	0.006	2	0.006
Violation of R.A. 3019	8322	23.813	6564	19.830
Violation of Presidential Decrees	476	1.362	381	1.151
Qualified Seduction	5	0.014	8	0.024
Unlawful Arrest	4	0.011	4	0.012
Adultery and Concubinage	1	0.003	1	0.003
Plunder	11	0.032	4	0.012
Others	1344	3.846	989	2.988
Special Civil Action	94	0.269	74	0.224
Civil Cases (including PCGG cases)	217	0.621	200	0.604
Appealed Cases	135	0.386	121	0.365
Special Proceedings	1	0.003	1	0.003
Total	34947	100.00	33101	100.00

Granted that petitioner is neither the first public official accused of violating R.A. No. 9165 nor is she the first defendant to question the finding of probable cause for her arrest, she is foremost in raising a valid question of law on the jurisdiction of the Sandiganbayan over drug-related cases committed by a public servant in relation to her office.

On substantive grounds, I find that the Regional Trial Court has exclusive original jurisdiction over the violation of Republic Act No. 9165 averred in the assailed Information. "Exclusive jurisdiction" refers to that power which a court or other tribunal exercises over an action or over a person to the exclusion of all other courts, whereas "original jurisdiction"

pertains to jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts.[12]

In support of my view that the RTC has exclusive original jurisdiction over dangerous drugs cases committed by public officials and employees in relation to their office, I found it conducive to consult other special cases within the RTC's exclusive and original jurisdiction, namely: libel and violations of the Intellectual Property Code (R.A. No. 8293), and the Dangerous Drugs Act of 1972 (R.A. No. 6425).

In *People of the Philippines v. Benipayo*,[13] the Court held that libel cases are within the RTC's exclusive original jurisdiction:

> As we have constantly held in *Jalandoni*, *Bocobo*, *People v. Metropolitan Trial Court of Quezon City, Br. 32*, *Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations shall be filed simultaneously or separately with the RTC **to the exclusion of all other courts**. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, **in the absence of an express repeal or modification**, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means. **The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to (public) office**, similar to the expansion of the jurisdiction of the MTCs, **did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office**. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.

In *Samson v. Daway*,[14] the Court ruled that certain violations of the Intellectual Property Code fall under the jurisdiction of the RTCs regardless of the imposable penalty:

> Section 163 of the same Code [R.A. No. 8293] states that actions (including criminal and civil) under Sections 150, 155, 164, 166, 167, 168 and 169 shall be brought before the proper courts with appropriate jurisdiction under existing laws, thus —
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> > SEC. 163. *Jurisdiction of Court.* — All actions under Sections 150, 155, 164 and 166 to 169 shall be brought before the *proper courts with appropriate jurisdiction under existing laws*. (Emphasis supplied)

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12 Black's Law Dictionary, Fifth Edition (1979).

13 604 Phil. 317, 330-332 (2009). (Emphasis added; citations omitted)

14 478 Phil. 784, 794 (2004).

The existing law referred to in the foregoing provision is Section 27 of R.A. No. 166 (The Trademark Law) which provides that jurisdiction over cases for infringement of registered marks, unfair competition, false designation of origin and false description or representation, is lodged with the Court of First Instance (now Regional Trial Court) —

> SEC. 27. *Jurisdiction of Court of First Instance.* — All actions under this Chapter [V — Infringement] and Chapters VI [Unfair Competition] and VII [False Designation of Origin and False Description or Representation], hereof shall be brought before the Court of First Instance.

We find no merit in the claim of petitioner that R.A. No. 166 was expressly repealed by R.A. No. 8293. The repealing clause of R.A. No. 8293, reads —

> SEC. 239. *Repeals.* — 239.1. All Acts and *parts of Acts inconsistent herewith*, more particularly Republic Act No. 165, as amended; *Republic Act No. 166*, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended, are hereby repealed. (Emphasis added)

Notably, the aforequoted clause did not expressly repeal R.A. No. 166 in its entirety, otherwise, it would not have used the phrases "parts of Acts" and "inconsistent herewith;" and it would have simply stated "Republic Act No. 165, as amended; Republic Act No. 166, as amended; and Articles 188 and 189 of the Revised Penal Code; Presidential Decree No. 49, including Presidential Decree No. 285, as amended are hereby repealed." It would have removed all doubts that said specific laws had been rendered without force and effect. The use of the phrases "parts of Acts" and "inconsistent herewith" only means that the repeal pertains only to provisions which are repugnant or not susceptible of harmonization with R.A. No. 8293. Section 27 of R.A. No. 166, however, is consistent and in harmony with Section 163 of R.A. No. 8293. Had R.A. No. 8293 intended to vest jurisdiction over violations of intellectual property rights with the Metropolitan Trial Courts, it would have expressly stated so under Section 163 thereof.

Moreover, the settled rule in statutory construction is that in case of conflict between a general law and a special law, the latter must prevail. **Jurisdiction conferred by a special law to Regional Trial Courts must prevail over that granted by a general law to Municipal Trial Courts.**

In the case at bar, **R.A. No. 8293 and R.A. No. 166 are special laws conferring jurisdiction over violations of intellectual property rights to the Regional Trial Court. They should therefore prevail over R.A. No. 7691, which is a general law. Hence, jurisdiction over the instant criminal case for unfair competition is properly lodged with the Regional Trial Court even if the penalty therefor is imprisonment**

of less than 6 years, or from 2 to 5 years and a fine ranging from ₱50,000.00 to ₱200,000.00.[15]

In *Morales v. CA*,[16] the Court held that the RTCs have exclusive jurisdiction over specific criminal cases, namely: (a) Art. 360 of the Revised Penal Code, as amended by R.A. Nos. 1289 and 4363 on written defamations or libel; (b) violations of the Presidential Decree on Intellectual Property (P.D. No. 49, as amended), and (c) Section 39 of R.A No. 6425, as amended by P.D. No. 44:

> Jurisdiction is, of course, conferred by the Constitution or by Congress. Outside the cases enumerated in Section 5(2) of Article VIII of the Constitution, Congress has the plenary power to define, prescribe and apportion the jurisdiction of various courts. Accordingly, Congress may, by law, provide that a certain class of cases should be exclusively heard and determined by one court. Such would be a special law and must be construed as an exception to the general law on jurisdiction of courts, namely, the Judiciary Act of 1948 as amended, or the Judiciary Reorganization Act of 1980. In short, the special law prevails over the general law.
>
> **R.A. No. 7691 can by no means be considered another special law on jurisdiction but merely an amendatory law intended to amend specific sections of the Judiciary Reorganization Act of 1980. Hence, it does not have the effect of repealing or modifying Article 360 of the Revised Penal Code; Section 57 of the Decree on Intellectual Property; and Section 39 of R.A. No. 6425, as amended by P.D. No. 44. In a manner of speaking, R.A. No. 7691 was absorbed by the mother law, the Judiciary Reorganization Act of 1980.**
>
> That Congress indeed did not intend to repeal these special laws vesting exclusive jurisdiction in the Regional Trial Courts over certain cases is clearly evident from the exception provided for in the opening sentence of Section 32 of B.P. Blg. 129, as amended by R.A. No. 7691. These special laws are not, therefore, covered by the repealing clause (Section 6) of R.A. No. 7691.[17]

Having in mind the foregoing jurisprudence, I submit that R.A. No. 10660 cannot be considered as a special law on jurisdiction but merely an amendatory law intended to amend specific provisions of Presidential Decree No. 1606, the general law on the jurisdiction of the Sandiganbayan. Hence, Section 90 of R.A. No. 9165, which specifically named RTCs designated as special courts to exclusively hear and try cases involving violation thereof, must be viewed as an exception to Section 4.b. of P.D. No. 1606, as amended by R.A. No. 10660, which is a mere catch-all provision on cases that fall under the exclusive original jurisdiction of the Sandiganbayan.

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15 Emphasis added and citations omitted.

16 347 Phil. 493, 506-507 (1997). (Emphasis ours)

17 Emphases added.

In other words, even if a drug-related offense was committed by public officials and employees in relation to their office, jurisdiction over such cases shall pertain exclusively to the RTCs. The broad and general phraseology of Section 4. b., P.D. No. 1606, as amended by R.A. No. 10660, cannot be construed to have impliedly repealed, or even simply modified, such exclusive jurisdiction of the RTC to try and hear dangerous drugs cases pursuant to Section 90 of R.A. No 9165.

Be that as it may, full reliance on the 1997 case of *Morales*[18] cannot be sustained because the prevailing law then was the Dangerous Drugs Act of 1972 (R.A. No. 6425), which clearly vests exclusive original jurisdiction over all cases involving said law upon the Circuit Criminal Court or the present day Regional Trial Court. R.A. No. 6425 was expressly repealed by Section 100 of the Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165), as amended:

> Sec. 100. Repealing Clause – **Republic Act No. 6425, as amended, is repealed** and all other laws, administrative orders, rules and regulations, or parts thereof inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.[19]

The appropriate question of law that ought to be resolved is whether pursuant to Section 90 of R.A. No. 9165, the RTC still has exclusive original jurisdiction over drug-related cases similar to the express grant thereof under Section 39 of R.A. No. 6425:

Article X Jurisdiction Over Dangerous Drugs Cases	Article XI Jurisdiction Over Dangerous Drugs Cases
Section 39. Jurisdiction of the Circuit Criminal Court. – The Circuit Criminal Court shall have **exclusive original jurisdiction** over all cases involving offenses punishable under this Act. x x x	Section 90. Jurisdiction. – The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to **exclusively try and hear cases** involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction. x x x

That the exclusive original jurisdiction of RTCs over drug cases under R.A. No. 6425 was not intended to be repealed is revealed in the interpellation during the Second Reading of House Bill No. 4433, entitled

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18 *Supra.*

19 Emphasis added.

"An Act Instituting the Dangerous Drugs Act of 2002, repealing Republic Act No. 6425, as amended":

Initially, Rep. Dilangalen referred to the fact sheet attached to the Bill which states that the measure will undertake a comprehensive amendment to the existing law on dangerous drugs -- RA No. 6425, as amended. Adverting to Section 64 of the Bill on the repealing clause, he then asked whether the Committee is in effect amending or repealing the aforecited law.

Rep. Cuenco replied that any provision of law which is in conflict with the provisions of the Bill is repealed and/or modified accordingly.

In this regard, Rep. Dilangalen suggested that if the Committee's intention was only to amend RA No. 6425, then the wording used should be "to amend" and not "to repeal" with regard to the provisions that are contrary to the provisions of the Bill.

Adverting to Article VIII, Section 60, on Jurisdiction Over Dangerous Drugs Case, which provides that the Supreme Court shall designate regional trial courts to have original jurisdiction over all offenses punishable by this Act, Rep. Dilangalen inquired whether it is the Committee's intention that certain RTC salas will be designated by the Supreme Court to try drug-related offenses, although all RTCs have original jurisdiction over those offenses.

Rep. Cuenco replied in the affirmative. He pointed that at present, the Supreme Court's assignment of drug cases to certain judges is not exclusive because the latter can still handle cases other than drug-related cases. He added that the Committee's intention is to assign drug-related cases to judges who will handle exclusively these cases assigned to them.

In this regard, Rep. Dilangalen stated that, at the appropriate time, he would like to propose the following amendment: "The Supreme Court shall designate specific salas of the RTC to try exclusively offenses related to drugs.

Rep. Cuenco agreed therewith, adding that the Body is proposing the creation of exclusive drug courts because at present, almost all of the judges are besieged by a lot of drug cases some of which have been pending for almost 20 years.

Whereupon, Rep. Dilangalen adverted to Section 60, Article VIII, lines 7 to 10 of the Bill, to wit: "Trial of the case under this section shall be finished by the court not later than ninety (90) days from the date of the filing of the information. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case. He then asked whether the Committee intends to make this particular provision merely directory or compulsory.

Rep. Cuenco answered that said provision is mandatory because if the case is not finished within 90 days, the Supreme Court can impose administrative sanctions on the judge concerned.

However, Rep. Dilangalen pointed out that the Constitution specifically provides that the Supreme Court shall decide certain cases from the time they are submitted for resolution within a specific period. The same is true with the Court of Appeals, RTC and MTC. Rep. Cuenco affirmed this view.

In line with the pertinent provision of the Constitution, Rep. Dilangalen pointed out that if the aforementioned provision of the Bill is made mandatory and those judges fail to finish their assigned cases within the required period, he asked whether they would be criminally charged.

In response, Rep. Cuenco explained that the power to penalize belongs to the Supreme Court and Congress has no power to punish erring judges by sending them to jail for the reason that they have not finished their assigned cases within the prescribed period. He stressed that administrative sanctions shall be imposed by the Supreme Court on the erring judges.[20]

Records of the Bilateral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1858 and House Bill No. 4433 (Comprehensive Dangerous Drugs Act of 2002) also show that Section 90 of R.A. No. 9165 does not repeal, but upholds the exclusive original jurisdiction of Regional Trial Court similar to that provided under Section 39 of R.A. No. 6425:

The CHAIRMAN (REP. CUENCO). xxx On other matters, we would like to propose the creation of drug courts to handle exclusively drug cases; the imposition of a 60-day deadline on courts within which to decide drug cases; and No. 3, provide penalties on officers of the law and government prosecutors for mishandling and delaying drug cases.

We will address these concerns one by one.

1. The possible **creation of drug courts to handle exclusively drug cases**. Any comments?

Congressman Ablan. Ah, first, the Chairman, the Chairman of the Senate Panel would like to say something.

THE CHAIRMAN (SEN. BARBERS). We have no objection to this proposal, Mr. Chairman. As a matter of fact, this is one of the areas where we come into an agreement when we were in Japan. However, I just would like to add a paragraph after the word "Act" in Section 86 of the Senate versions, Mr. Chairman. And this is in connection with the designation of special courts by "The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of

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20 JOURNAL NO. 72, Wednesday and Thursday, March 6 and 7, 2002, 12th Regular Congress, 1st Session. http://www.congress.gov.ph/legisdocs/printjournal.php?congnum=12&id=104, last visited July 10, 2017.

this Act. The number of court designated in each judicial region shall be based on the population and the number of pending cases in their respective jurisdiction." That is my proposal, Mr. Chairman.

THE CHAIRMAN (REP. CUENCO). We adopt the same proposal.

SEN. CAYETANO. Comment, comment.

THE CHAIRMAN (REP. CUENCO). Puwede ba 'yan. Okay, Sige, Senator Cayetano.

SEN. CAYETANO. Mr. Chairman, first of all, there is already an Administrative Order 104, if I'm not mistaken in 1996 designating special courts all over the country that handles heinous crimes, which includes, by the way, violations of the present Drugs Act, where the penalty is life to death.

Now, when it comes to crimes where the penalty is six years or below, this is the exclusive jurisdiction not of the RTC, not of the Regional Trial Court, but of the municipal courts.

So my observation, Mr. Chairman, I think, since there are already special courts, we need not created that anymore or ask the Supreme Court. And number two, precisely, because there are certain cases where the penalties are only six years and below. These are really handles by the municipal trial court.

As far as the 60-day period, again, in the Fernan law, if I'm not mistaken, there is also a provision there that all heinous crimes will have to be decided within 60 days. But if you want to emphasize as far as the speedy which all these crimes should be tried and decided, we can put it there. But as far as designated, I believe this may be academic because there are already special courts. And number two, we cannot designate special court as far as the municipal courts are concerned. In fact, the moment you do that, then you may limit the number of municipal courts all over the country that will only handle that to the prejudice of the other or several other municipal court that handles many of these cases.

THE CHAIRMAN (REP. CUENCO). Just briefly, a rejoinder to the comments made by Senator Cayetano. It is true that the Supreme Court has designated certain courts to handle exclusively heinous crimes, okay, but our proposal here is confined exclusively to drug cases, not all kinds of heinous crimes. There are many kinds of heinous crimes: murder, piracy, rape, et cetera. The idea here is to focus the attention of the court, that court and to handle only purely drug cases.

Now, in case the penalty provided for by law is below six years wherein the regional trial court will have no jurisdiction, then the municipal courts may likewise be designated as the trial court concerning those cases. The idea hear really is to assign exclusively a sala of a regional trial court to handle nothing else except cases involving illegal drug trafficking.

> Right now, there are judges who have been so designated by the Supreme Court to handle heinous crimes, but then they are not exclusive to drugs eh. And aside from those heinous crimes, they also handle other cases which are not even heinous. So the idea here is to create a system similar to the traffic courts which will try and hear exclusively traffic cases. So – in view of the gravity of the situation and in view of the urgency of the resolution of these drug cases because – the research that we have made on the drug cases filed is that, the number of decided cases is not even one percent of those filed. There have been many apprehensions, thousands upon thousands apprehensions, thousands upon thousands of cases filed in court but only one percent have been disposed of. The reason is that there is no special attention made or paid on these drug cases by our courts.
>
> So that is my humble observation, we have no problem.
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> THE CHAIRMAN (SEN. BARBERS). **I have no problem with that, Mr. Chairman, but I'd like to call your attention to the fact that my proposal in only for a designation because if it is for a creation that would entail another budget, Mr. Chairman. And almost always, the Department of Budget would tell us at the budget hearing that we lack funds, we do not have money. So that might delay the very purpose why we want the RTC or the municipal courts to handle exclusively the drug cases. That's why my proposal is designation not creation.**
>
> THE CHAIRMAN (REP. CUENCO). Areglado. No problem, designation. Approved.[21]

Contrary to petitioner's claim that Section 90 of R.A. No. 9165 merely grants the Supreme Court administrative authority to designate particular branches of RTCs to exclusively try drug cases, records of deliberation in Congress underscore the intention to confer to the RTCs exclusive original jurisdiction over drug cases. Section 90 of R.A. No. 9165 was worded to give emphasis on the Court's power to designate special courts to exclusively handle such cases, if only to avoid creation of drug courts which entails additional funds, the lack of which would defeat the very purpose of the law to prioritize prosecution of drug cases.

Meanwhile, the *ponencia* cannot rely on the *per curiam en banc* decision[22] in an administrative case, which named the RTC as having the authority to take cognizance of drug-related cases. This is because the Court did not declare definitively therein that the RTC's jurisdiction is exclusive and original, so as to preclude the Sandiganbayan from acquiring jurisdiction over such cases when committed by a public servant in relation to office. One of the issues in the said case is whether the respondent judge of a

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[21] Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 1858 and House Bill No. 4433 (Comprehensive Dangerous Drugs Act of 2002), April 29, 2002. (Emphasis supplied)

[22] *In Re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Br. 1, Cebu City*, 567 Phil. 103 (2009).

Municipal Trial Court in Cities (MTCC) has jurisdiction to order confinement and rehabilitation of drug dependents from the drug rehabilitation center. The Court held that if the drug dependent was a minor, his confinement, treatment and rehabilitation in a center would be upon order, after due hearing, by the RTC in accordance with Section 30 of R.A. No. 6425, and that pursuant to Section 54, in relation to Section 90 of R.A. No. 9165, the RTC similarly has jurisdiction over drug-related cases.

I also take exception to the *ponencia's* statement to the effect that petitioner's alleged solicitation of money from the inmates does not remove the charge from the coverage of R.A. No. 9165 as Section 27 thereof punishes government officials found to have benefited from the trafficking of dangerous drugs. Section 27 applies only to "**any elective local or national official**" found to have benefitted from the proceeds of the trafficking of such drugs or have received any financial or material contributions from natural or juridical person found guilty of trafficking of such drugs. In view of the principle that penal statutes should be liberally construed in favor of the accused and strictly against the State, Section 27 cannot be held to apply to appointive officials like petitioner, who was the Secretary of the Department of Justice at the time of the commission of the alleged crime.

On the issue of whether respondent Judge gravely abused her discretion in finding probable cause to issue a warrant of arrest against petitioner despite her pending motion to quash the information, I resolve the issue in the negative.

It is well settled that grave abuse of discretion is the capricious or whimsical exercise of judgment equivalent to lack of jurisdiction; the abuse of discretion being so patent and gross as to amount to an evasion of positive duty or virtual non-performance of a duty enjoined by law. As aptly pointed out by the *ponencia*, since Section 5,[23] Rule 112 gives the judge ten (10) days within which to determine probable cause to issue warrant of arrest by personally evaluating the resolution of the prosecutor and its supporting evidence, petitioner cannot fault the respondent judge for issuing a warrant of arrest within three (3) days from receipt of the case records. There is no law, jurisprudence or procedural rule which requires the judge to act first on

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[23] Sec. 5. When warrant of arrest may issue. — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

the motion to quash, whether or not grounded on lack of jurisdiction, before issuing an arrest warrant. No grave abuse discretion may be, therefore, imputed against the respondent judge for issuing a warrant of arrest despite a pending motion to quash.

It may not be amiss to point out that there used to be a period within which to resolve a motion to quash under Section 6, Rule 117 of the 1964 Rules of Court, which was a reproduction of Section 6, Rule 113 of the 1940 Rules of Court to wit: "**The motion to quash shall be heard immediately on its being made unless, for good cause, the court postpone the hearing.** All issues whether of law or fact, which arise on a motion to quash shall be tried by the court." However, the said provision no longer found its way in the subsequent rules on criminal procedure, *i.e.*, the 1985 Rules on Criminal Procedure and the present 2000 Revised Rules of Criminal Procedure. Considering that Section 1, Rule 117 of the present Rules provides that the accused may move to quash the information before entering his plea, while Section 1(g), Rule 116 thereof, states that the pendency of a motion to quash or other causes justifying suspension of the arraignment shall be excluded in computing the period to arraign the accused, I conclude that the motion to quash should, at the latest, be resolved before the arraignment, without prejudice to the non-waivable grounds to quash under Section 9,[24] Rule 117, which may be resolved at any stage of the proceeding.

At any rate, to sustain the contention that a judge must first act on a pending motion to quash the information before she could issue a warrant of arrest would render nugatory the 10-day period to determine probable cause to issue warrant of arrest under Section 5, Rule 112. This is because if such motion to quash appears to be meritorious, the prosecution may be given time to comment, and the motion will have set for hearing. Before the court could even resolve the motion, more than 10 days from the filing of the complaint or information would have already passed, thereby rendering ineffectual Section 5(a), Rule 112.[25]

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[24] Sec. 9. *Failure to move to quash or to allege any ground therefor.* – The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g) and (i) of section 3 of this Rule.

[25] Sec. 5. *When warrant of arrest may issue .— (a) By the regional Trial Court.* — **Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.** He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by a judge who conducted the preliminary investigation or when the complaint of information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis added)

On petitioner's claim that respondent judge did not determine personally the existence of probable cause in issuing the warrant of arrest, I agree with the affirmative ruling of the *ponencia* on this issue. It bears emphasis that Section 5, Rule 112 only requires the judge to personally evaluate the resolution of the prosecutor and its supporting evidence, and if she finds probable cause, she shall issue such arrest warrant or commitment order.

In *Allado v. Diokno*,[26] citing *Soliven v. Judge Makasiar*,[27] the Court stressed that the judge shall personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or, if on the basis thereof she finds no probable cause, may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion on the existence of probable cause. "Sound policy dictates this procedure, otherwise, judges would be unduly laden with preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their court."[28]

The Court added that the judge does not have to personally examine the complainant and his witnesses, and that the extent of her personal examination of the fiscal's report and its annexes depends on the circumstances of each case.[29] Moreover, "[t]he Court cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be sure, the judge must go beyond the Prosecutor's certification and investigation report whenever necessary. [S]he should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require."[30]

No clear and convincing evidence was presented by petitioner to overturn the disputable presumptions that official duty has been regularly performed and that a judge acting as such, was acting in the lawful exercise of jurisdiction,[31] when respondent judge issued the assailed Order, which appears to have complied with Section 5, Rule 112, as well as the doctrines in *Allado* and *Soliven*, thus:

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26 302 Phil. 213, 233 (1994).
27 249 Phil. 394 (1988).
28 *Soliven v. Judge Makasiar, supra*, at 399-400.
29 *Allado v. Judge Diokno, supra* note 26, at 234.
30 *Id.* at 234-235, citing *Lim v. Felix*, 272 Phil. 122 (1991).
31 Rule 131, Section 3 (m) and (n).

> After a careful evaluation of the herein Information and all the evidence presented during the preliminary investigation conducted in this case by the Department of Justice, Manila, the Court finds sufficient probable cause for the issuance of Warrants of Arrest against all accused x x x LEILA M. DE LIMA x x x.

There being no grave abuse of discretion on the part of the respondent judge in issuing a warrant of arrest despite the pendency of petitioner's motion to quash, it is my view that respondent judge should be ordered to resolve the same motion in order to give her opportunity to correct the errors raised by petitioner. After all, in exercise of its power of review, the Court is not a trier of facts,[32] and the issue of whether probable cause exists for the issuance of a warrant for the arrest of an accused is a question of fact, determinable as it is from a review of the allegations in the information, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the information.[33]

On the issue of whether the information sufficiently charges the crime of conspiracy to trade illegal drugs, petitioner argues in the negative thereof, thus: (1) the information only mentions that she allegedly demanded, solicited and extorted money from the NBP inmates; (2) the absence of any allegation of her actual or implied complicity with or unity of action and purpose between her and the NBP inmates in the illegal trade; (3) the proper designation of the offense would be direct bribery under Art. 210 of the RPC in view of the allegation that money was given in exchange for special consideration and/or protection inside the NBP; (4) there is no allegation of *corpus delicti*; and (5) the violation remains to be intimately connected with the office of the accused because she could have only collected money from convicts if she had influence, power, and position to shield and protect those who sell, trade, dispense, distribute dangerous drugs, from being arrested, prosecuted and convicted.

Section 6, Rule 110 of the Rules of Court states that a complaint of information is sufficient if it states: (1) the name of the accused; (2) the designation of the offense given by the statute; (3) the acts or omissions complained of as constituting the offense; (4) the name of the offended party; (5) the approximate date of the commission of the offense; and (6) the place where the offense was committed.

In relation to petitioner's arguments which revolve around the defect in the second and third requisites, Section 8, Rule 110 provides that the complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its

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32 *Navaja v. Hon. De Castro*, 761 Phil. 142, 155 (2015).

33 *Ocampo v. Abando*, 726 Phil. 441, 465 (2014).

qualifying and aggravating circumstances. Section 9, Rule 110 states that the acts or omissions complained of as constituting the offense and the qualifying circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged, as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

As held in *Quimvel v. People,*[34] the information must allege clearly and accurately the elements of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of specific crimes. Moreover, the main purpose of requiring the elements of a crime to be set out in the information is to enable the accused to suitably prepare her defense because she is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question her conviction based on facts not alleged in the information cannot be waived.

The Information charging petitioner with conspiracy to commit illegal drug trading, or violation of Section 5, in relation to Section 3 (jj), Section 26(b) and Section 28 of R.A. No. 9165, reads:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, 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 high profile inmates in the New Bilibid Prison.

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34 G.R. No. 214497, April 18, 2017.

In determining whether the afore-quoted acts or omissions constituting conspiracy to commit illegal drug trading are sufficiently alleged in the information, the respondent judge should carefully consider the definition of such crime under Section 5, in relation to Section 3(jj), Section 26(b) and Section 28 of R.A. No. 9165.

The crime of "illegal drug trading" is defined under Section 3(jj), while conspiracy to commit such crime is dealt with under Section 26(b):

> (jj) Trading. – Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.
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> x x x x
>
> SECTION 26. Attempt or Conspiracy. — Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:
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> x x x x
>
> (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

Significant note must be taken of Section 5, R.A. No. 9165 because it provides for the penalties for the various offenses covered, including "conspiracy to commit illegal drug trading," and identifies the persons who may be held liable for such offenses.

> SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
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> The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized

> by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.
>
> If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.
>
> For **drug pushers** who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.
>
> If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.
>
> The maximum penalty provided for under this Section shall be imposed upon any **person who organizes, manages** or acts as a **"financier"** of any of the illegal activities prescribed in this Section.
>
> The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a **"protector/coddler"** of any violator of the provisions under this Section.[35]

As can be gleaned from the foregoing provisions, the following persons may be held liable of conspiracy to commit illegal drug trading under Section 5 of R.A. No. 9165, namely:

> 1. Pusher - defined under Section 3(ff) as any person who sells, trades, administers, dispenses or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transaction, in violation of the law;
>
> 2. Organizer;
>
> 3. Manager;
>
> 4. Financier – defined under Section 3(q) as any person who pays for, raises or supplies money for, or underwrites any of the illegal activities prescribed under the law; and

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35 Emphasis added.

> 5. Protector or coddler – defined under Section 3(ee) as any person who knowingly or willfully consents to the unlawful acts provided for in under the law and uses his/her influence, power or position in shielding, harboring, screening or facilitating the escape of any person who he/she knows, or has reasonable grounds to believe on or suspects, has violated the provisions of the law in order to prevent the arrest, prosecution and conviction of the violator.

Respondent judge would also do well to bear in mind that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information.[36] In resolving a motion to dismiss based on lack of jurisdiction, the general rule is that the facts contained in the complaint or information should be taken as they are, except where the Rules of Court allow the investigation of facts alleged in a motion to quash such as when the ground invoked is the extinction of criminal liability, prescriptions, double jeopardy, or insanity of the accused.[37] In these instances, it is incumbent upon the trial court to conduct a preliminary trial to determine the merit of the motion to dismiss.[38]

Considering that petitioner's arguments do not fall within any of the recognized exceptions, respondent judge should remember that in determining which court has jurisdiction over the offense charged, the battleground should be limited within the four corners of the information. This is consistent with the rule that the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law.[39] Evidence *aliunde* or matters extrinsic to the information are not to be considered, and the defect in the information, which is the basis of the motion to quash, must be evident on its face.[40]

Moreover, in resolving the issue of whether the information filed against petitioner is sufficient or defective, respondent judge should recall *United States v. Ferrer*[41] where the Court ruled that when the complaint describes two acts which combined constitute but one crime, the complaint is not necessarily defective. "If the two or more acts are so disconnected as to constitute two or more separate and distinct offenses or crimes, then it would not be error to charge each of said acts in different complaints; but where the acts are so related as to constitute, in fact, but one offense, then

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36 *Macasaet v. People of the Philippines*, 492 Phil. 355, 373 (2005)
37 *Id.*
38 *Id.*
39 *People v. Odtuhan*, 714 Phil. 349, 356 (2013).
40 *Id.*
41 34 Phil. 277 (1916).

the complaint will not be defective if the crime is described by relating the two acts in the description of the one offense."[42]

Also on point is *United States v. Cernias*[43] where it was held that while it is true that each of those acts charged against the conspirators was itself a crime, the prosecutor in setting them out in the information did no more than to furnish the defendants with a bill of particulars of the facts which it intended to prove at the trial, not only as a basis upon which to found an inference of guilt of the crime of conspiracy but also as evidence of the extremely dangerous and wicked nature of that conspiracy.

In resolving the motion to quash, respondent judge should further be mindful of the following remedies under Sections 4, 5 and 6 of Rule 117 of the Rules of Court that the RTC may exercise with sound discretion as the court with exclusive original jurisdiction over drug cases:

> **SEC. 4.** ***Amendment of complaint or information.*** – If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.
>
> **SEC. 5.** ***Effect of sustaining the motion to quash.*** – If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this Rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.
>
> **SEC. 6.** ***Order sustaining the motion to quash not a bar to another prosecution; exception.*** – An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 3 (g) and (i) of this Rule.

All told, the Petition for *Certiorari* and Prohibition must be denied on the grounds of prematurity, forum shopping and for being improperly verified. Going over the records of Congressional deliberations due to the transcendental importance of the jurisdictional issue raised by petitioner,

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42 *United States v. Ferrer, supra,* at 279.

43 10 Phil. 682, 690 (1908), cited in *People v. Camerino, et al.,* 108 Phil. 79, 83 (1960).

however, I found that the RTC, not the Sandiganbayan, has exclusive original jurisdiction over all drug cases even if they were committed by public officials or employees in relation to their office. There being no grave abuse of discretion committed by the respondent judge in issuing a warrant of arrest despite the pendency of petitioner's motion to quash, the Court should order the respondent judge to resolve the motion to quash the information, taking into account the definition of conspiracy to commit illegal drug trading, the principles in determining the sufficiency of an information, and the remedies relative to a motion to quash under Sections 4, 5 and 6, Rule 117 of the Rules of Court.

WHEREFORE, I vote to **DENY** the Petition for *Certiorari* and Prohibition.

DIOSDADO M. PERALTA
Associate Justice