Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

POLICE SUPERINTENDENT HANSEL M. MARANTAN, Petitioner, -versus- **DEPARTMENT OF JUSTICE, DEPARTMENT OF JUSTICE SECRETARY LEILA M. DE LIMA, NATIONAL PROSECUTION SERVICE (REPRESENTED BY PROSECUTOR GENERAL CLARO A. ARELLANO), and MEMBERS OF THE PANEL OF PROSECUTORS (SENIOR DEPUTY STATE PROSECUTOR THEODORE VILLANUEVA, CITY PROSECUTOR VIMAR BARCELLANO, ASSISTANT STATE PROSECUTOR HAZEL DECENA-VALDEZ, ASSISTANT STATE PROSECUTOR NIVEN CANLAPAN, AND PROSECUTION ATTORNEY CESAR ANGELO CHAVEZ III),** Respondents.	**G.R. No. 206354** Present: PERALTA, *J., Chairperson,* LEONEN, REYES, A., JR., HERNANDO, and CARANDANG,* *JJ.* **Promulgated:** **March 13, 2019**

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* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

DECISION

LEONEN, *J.*:

A petition for certiorari, pertaining to the regularity of a preliminary investigation, becomes moot after an information is filed and a trial court issues an arrest warrant upon finding probable cause against the accused.[1]

This resolves a Petition for Certiorari and Prohibition[2] praying that the Department of Justice be prohibited from proceeding with the preliminary investigation in NPS Docket No. XVI-INV-13C-00092 due to its lack of impartiality and independence, in violation of Police Superintendent Hansel M. Marantan (Marantan)'s right to due process and equal protection of the laws.

News outlets reported that on January 6, 2013, a shootout occurred in Atimonan, Quezon between the combined forces of the Philippine National Police PRO-4A (police personnel) and the Armed Forces of the Philippines' First Special Forces Battalion (armed forces personnel) on one (1) side, and 13 fully armed men riding a convoy of vehicles on the other.[3]

Then President Benigno Simeon C. Aquino III (President Aquino) ordered the National Bureau of Investigation to investigate what was called the Atimonan Encounter.[4] While the investigation was ongoing, and before all the involved police and armed forces personnel filed their affidavits recounting the incident, then Department of Justice Secretary Leila De Lima (Department of Justice Secretary De Lima) made public pronouncements on the Atimonan Encounter, reportedly mentioning Marantan's name.[5]

Alarmed by Department of Justice Secretary De Lima's statements, Marantan, together with a number of soldiers represented by their respective counsel, wrote the head of the National Bureau of Investigation on January 18, 2013. They requested that, upon the investigation's conclusion, any action against those allegedly responsible for the shooting incident be referred to the Office of the Ombudsman instead of the Department of Justice.[6]

On March 6, 2013, Department of Justice Secretary De Lima submitted to then President Aquino a report stating that the National Bureau

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1 *Secretary De Lima v. Reyes*, 776 Phil. 623 (2016) [Per J. Leonen, Second Division].
2 *Rollo*, pp. 3–62. Filed under Rule 65 of the Rules of Court.
3 Id. at 306, Memorandum of Petitioner.
4 Id.
5 Id. at 306–307.
6 Id. at 320. The cited page erroneously indicated "2016."

of Investigation would file criminal charges against the involved police and armed forces personnel.[7]

On March 11, 2013, the Department of Justice, through Prosecutor General Claro A. Arellano (Prosecutor General Arellano) of the National Prosecution Service, issued Department of Justice Office Order No. 208, convening a Panel of Prosecutors (the Panel) to conduct the preliminary investigation in NPS Docket No. XVI-INV-13C-00092.[8]

On March 12, 2013, Marantan filed a Letter-Motion with Department of Justice Secretary De Lima, through Prosecutor General Arellano, and copy furnished Senior Deputy State Prosecutor Theodore M. Villanueva (Senior Deputy State Prosecutor Villanueva), praying that the Department of Justice inhibit from conducting the preliminary investigation, and instead forward its records to the Office of the Ombudsman for appropriate action.[9]

On March 19, 2013, Marantan and his co-respondents in NPS Docket No. XVI-INV-13C-00092 were directed through a Subpoena to appear before the Panel on April 8, 2013 for a preliminary investigation hearing.[10]

As alleged by Marantan, on March 26, 2013, a copy of the Subpoena, along with its attachments, was delivered to the Philippine National Police Holding and Accountability Unit, the method by which the Subpoena was served upon him and his co-respondents.[11]

On April 4, 2013, the counsel of Marantan and Special Police Officer 1 Arturo C. Sarmiento received a letter from Senior Deputy State Prosecutor Villanueva, on behalf of Department of Justice Secretary De Lima, denying the Letter-Motion.[12]

Thus, on April 8, 2013, Marantan filed this Petition.[13] Two (2) days later, he filed an Urgent Manifestation[14] stating that on April 8, 2013, after he had filed the Petition, the Panel had conducted the preliminary investigation in NPS Docket No. XVI-INV-13C-00092. He alleged that during the preliminary investigation, the Panel furnished him, through counsel, copies of the attachments to the Subpoena earlier served upon them. Petitioner asked that the Petition be raffled immediately so that his prayer for injunctive relief could be resolved.[15]

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7 Id. at 325.
8 Id.
9 Id.
10 Id. at 326.
11 Id.
12 Id.
13 Id. at 3.
14 Id. at 113–116.
15 Id. at 114.

On November 8, 2013, respondents filed their Comment,[16] attaching, among others, an August 30, 2013 Omnibus Resolution[17] issued by the Panel in NPS Docket No. XVI-INV-13C-00092.

In its Omnibus Resolution, the Panel found probable cause to charge petitioner, along with his co-respondent police officers, with the crime of multiple murder. It found evidence that they had killed the victims in conspiracy, enumerating the reasons and factual basis for such conclusion.[18] It found that the checkpoint itself was highly suspicious and irregular.[19] Moreover, the physical evidence did not support the claim that there was a shootout—it belied the possibility that the victims fired at the officers from within their vehicles, or that there was a legitimate firefight.[20]

Further, the Panel explained its bases for finding that the killing was attended by evident premeditation, taking advantage of superior strength, treachery, and with the aid of armed men. The Panel found that: (1) the police personnel had put up a suspicious three (3)-layered checkpoint, which ensured that the subjects would not be missed, and that no outsiders would witness the incident; (2) petitioner had been monitoring the movements of the convoy the day before the incident; (3) the police personnel ensured the presence of the armed forces personnel at the checkpoint operation and capitalized on their capabilities and resources; and (4) the sheer number of bullets fired at the victims indicated that the police personnel had taken advantage of superior strength of firearms and manpower.[21]

The Panel noted the accounts of the armed forces personnel who were involved in the Atimonan Encounter, particularly those of Lieutenant Colonel Monico Abang (Lieutenant Colonel Abang) and Lieutenant Rico Tagure (Lieutenant Tagure), in relation to the actions of their co-respondent, Police Senior Inspector Carracedo (Carracedo):

> Sensing that there were no more gunfire coming from where two SUVs were located, respondent Abang shouted "CEASEFIRE!", which the troops obeyed. Respondent Carracedo then approached respondent Tagure and the latter heard the former utter, "*I-clear natin, i-clear natin*". Respondent Tagure presumed that respondent Carracedo meant that they have to ensure that the threat has stopped. They then approached the SUVs and when respondent Carracedo failed to open the doors of the first Montero, he asked respondent Tagure to break the glass, which he did.

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16 Id. at 179–245.
17 Id. at 195–239.
18 Id. at 230.
19 Id. at 226.
20 Id. at 227–228.
21 Id. at 231.

> Thinking that there could still be alive occupants inside the SUV, respondent Tagure broke the glass window of the right second row of the first Montero. He, however, noticed that all the occupants were already dead. He then proceeded to the second Montero and also broke its window when he heard someone moaning. Respondent Tagure then uttered, "*May buhay pa, sir. Sir dalhin natin sa ospital*", and thereafter instructed respondents Docdoc and Lumalang to bring the wounded passengers to the hospital. Afterwards, respondents Abang, Macalinao and Tagure heard one of the members of the PNP saying "*Clear, Clear.*"
>
> Respondent Abang then heard successive gunshots fired in the air at the vicinity of the two (2) Monteros, and when he glanced at the said direction, he saw respondent Carracedo firing the victims' guns in the air and thereafter returning them to the place where, or the person from whom, he found them. In opposition to what he saw, he repeatedly shouted "*Walang gagalaw sa mga gamit at mga ebidensya!*".[22] (Emphasis in the original)

The Panel found no probable cause to charge the armed forces personnel observing that even they were surprised by what the police personnel had done. It held that though they could have kept the irregularity to themselves, the armed forces personnel still revealed during the investigation what Carracedo had done at the crime scene.[23]

Respondents also attached to their Comment the Information filed before the trial court against petitioner for, among others, multiple murder. The Information read:

> The undersigned prosecutors of the Department of Justice accuse the above-named persons of the crime of MULTIPLE MURDER as defined and penalized under Article 248 of the Revised Penal Code of the Philippines, as amended, committed as follows:
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> > "That on or about January 6, 2013, in the Municipality of Atimonan, Province of Quezon, and within the jurisdiction of this Honorable Court, the above-named accused, conniving, confederating, conspiring and mutually helping one another, each performing acts to achieve a common intent, design and purpose, did then and there, willfully, maliciously, unlawfully, feloniously, with intent to kill, and by means of treachery, with evident premeditation, abuse of superior strength in number of men and firearms, and while armed with firearms of different make, type and caliber, without any justifiable reason, simultaneously and in concert shoot and fire upon PSupt. Alfredo P. Consemino, SPO1 Gruet Alinea Mantuano, PO1 Jeffrey Tarinay Valdez, 1Lt. Jimbeam Justiniani y Dyico, SSgt. Armando Aranda Lescano, Victorino Siman Atienza, Jr., Conrado Redreska Decillo, Tirso Pada Lontok, Jr., Leonardo

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22 Id. at 220.

23 Id. at 229–230.

> Catapang Marasigan, Maximo Manalastas Pelayo, Paul Arcedillo Quiohilag, Gerry Ancero Siman, and Victor Rimas Siman, who were all seated inside two separate vehicles, in defenseless and disadvantageous positions, inflicting upon them gunshot wounds that caused their deaths, to the damage and prejudice of their heirs.
>
> That the following circumstances aggravated the commission of the offense, to wit: that accused took advantage of their public position; and that the crime was committed by a band.
>
> CONTRARY TO LAW.[24]

Petitioner filed his Reply.[25] Then, the parties filed their respective memoranda.[26]

Petitioner insists that he has compelling reasons to justify the non-application of the principles of hierarchy of courts and exhaustion of administrative remedies[27] due to respondent Department of Justice Secretary De Lima's alleged prejudgment of the case. Moreover, he claims that it would have been futile to file a motion for reconsideration because his Letter-Motion for inhibition was denied by respondent Senior Deputy State Prosecutor Villanueva "acting for and [o]n behalf of respondent Sec. De Lima[.]"[28] He maintains that respondent Department of Justice Secretary De Lima's public pronouncements showed prejudgment of the case. This, he claims, tainted his constitutional right to due process to stand before an impartial tribunal.[29]

Petitioner prays that this Court issue an injunctive relief to restrain the continuation of proceedings in NPS Docket No. XVI-INV-13C-00092, and to annul and set aside Office Order No. 208, its corresponding Subpoena, and the April 3, 2013 Letter-Denial. He also prays that respondent Department of Justice Secretary De Lima be prohibited from proceeding with the preliminary investigation, and be directed to forward the case records to the Office of the Ombudsman.[30]

However, the act sought to be enjoined had already been accomplished with the conclusion of the preliminary investigation in NPS Docket No. XVI-INV-13C-00092, the issuance of the August 30, 2013

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24 Id. at 240–241. The Information was signed by Assistant State Prosecutors Hazel C. Decena-Valdez and Niven R. Canlapan, City Prosecutor Vimar M. Barcellano, Prosecution Attorney Cesar Angelo A. Chavez III, Senior Deputy State Prosecutor Theodore M. Villanueva, and approved by Prosecutor General Claro A. Arellano.

25 Id. at 277–292.

26 Id. at 303–361 and 363–378.

27 Id. at 327–329.

28 Id. at 329.

29 Id. at 332–333.

30 Id. at 58–59.

Omnibus Resolution, and the filing of the Information against petitioner. Thus, petitioner prayed in his Memorandum that this Court annul and set aside the preliminary investigation and Omnibus Resolution, along with the Department of Justice Office Order No. 208, Subpoena, and Letter-Denial.[31]

Respondents argue that the Petition should be dismissed outright as petitioner disregarded the hierarchy of courts[32] and failed to exhaust all administrative remedies.[33] They point out that his claims of prejudgment are highly speculative[34] considering that there is no showing that the Panel had prejudged the case or that respondent Department of Justice Secretary De Lima had exerted any pressure on the Panel to rule a certain way.[35] They maintain that jurisdiction over the preliminary investigation lies with respondent Department of Justice, not the Office of the Ombudsman.[36]

Lastly, as to petitioner's prayer for injunctive relief, respondents point out that a writ of preliminary injunction is not issued when the act sought to be enjoined has already been consummated; in this case, with the issuance of the Omnibus Resolution on August 30, 2013.[37]

The issues for this Court's resolution are:

First, whether or not this case constitutes an exception to the rule on judicial hierarchy;

Second, whether or not this case constitutes an exception to the principle of exhaustion of administrative remedies;

Third, whether or not respondent Department of Justice committed grave abuse of discretion in denying petitioner Hansel M. Marantan's letter-request for inhibition;

Fourth, whether or not the Panel of Prosecutors committed grave abuse of discretion during the preliminary investigation; and

Finally, whether or not the case became moot when an Information was filed before the trial court against petitioner.

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31 Id. at 357.
32 Id. at 367–370.
33 Id. at 370–371.
34 Id. at 372.
35 Id. at 372–373.
36 Id. at 373–375.
37 Id. at 375.

This Court denies the Petition.

I

Direct invocation of this Court's original jurisdiction to issue a writ of certiorari is allowed only for special and important reasons that must be clearly and specifically set out in the Petition.

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[38] this Court provided circumstances of when it might take cognizance of a case, despite a failure to exhaust remedies before the lower courts:

> For this Court to take cognizance of original actions, parties must clearly and specifically allege in their petitions the special and important reasons for such direct invocation. One such special reason is that the case requires "the proper legal interpretation of constitutional and statutory provisions." Cases of national interest and of serious implications, and those of transcendental importance and of first impression have likewise been resolved by this Court on the first instance.
>
> In exceptional cases, this Court has also overlooked the rule to decide cases that have been pending for a sufficient period of time. This Court has resolved original actions which could have been resolved by the lower courts in the interest of speedy justice and avoidance of delay.
>
> Generally, the rule on hierarchy of courts may be relaxed when "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." For all other cases, the parties must have exhausted the remedies available before the lower courts. A petition filed in violation of the doctrine shall be dismissed.[39] (Citations omitted)

Petitioner insists that this case in an exception to the rule on judicial hierarchy because it is this Court's duty to decide whether the other branches of government have committed grave abuse of discretion. He asserts that respondent Department of Justice Secretary De Lima's statements, bias, prejudice, and prejudgment of the case led to a premature pronouncement of petitioner's guilt, tainting the preliminary investigation. Respondent Department of Justice, he claims, lacked objectivity and would commit grave abuse of discretion should it conduct the preliminary investigation.[40]

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38 G.R. No. 202275, July 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf> [Per J. Leonen, En Banc].

39 Id. at 22–23.

40 *Rollo*, p. 328.

In other words, petitioner claims exemption from the rule on judicial hierarchy simply because this case involves respondents' grave abuse of discretion amounting to lack or excess of jurisdiction.

This argument fails to convince. Grave abuse of discretion amounting to lack or excess of jurisdiction is precisely the scope of a petition for certiorari. This case is no such exception that it would merit a direct resort to this Court. This Court fails to see how public welfare, public policy, or the broader interest of justice demands the exercise of our jurisdiction here. In the same vein, this Court does not see why petitioner's prayer could not have been granted by the Court of Appeals, which has concurrent original jurisdiction over petitions for certiorari under Rule 65 of the Rules of Court. Thus, this case is dismissible due to petitioner's failure to adhere to the rule on judicial hierarchy.

Similarly, petitioner failed to file a motion for reconsideration before filing his petition for certiorari. This case is dismissible for petitioner's failure to exhaust all administrative remedies.[41]

Petitioner claims that this case constitutes an exception to the rule on exhaustion of administrative reliefs because: (1) the filing of a motion for reconsideration of the Letter-Denial would be useless; (2) he ran the risk of having the motion for reconsideration being treated as his counter-affidavit and the case being submitted for resolution; and (3) the prayer for relief was urgent because of the proximity of the date of the preliminary investigation.[42]

These circumstances do not constitute any of the recognized exceptions to the rule on exhaustion of administrative reliefs.

Petitioner's claim that filing a motion for reconsideration would be useless is highly speculative and fails to convince. He names the risk of having the motion for reconsideration as being treated as a counter-affidavit. However, if he was truly concerned about this, he could have included his version of events and his reasons for seeking respondents' inhibition from the preliminary investigation in his motion for reconsideration. Nothing had prevented him from doing so.

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41 *Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas*, G.R. No. 200678, June 4, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/200678.pdf> [Per J. Leonen, Third Division] *citing Estate of Salvador Serra Serra v. Heirs of Hernaez*, 503 Phil. 736, 743 (2005) [Per J. Ynares-Santiago, Third Division].

42 *Rollo*, pp. 330–331.

Likewise, the proximity of the date of preliminary conference does not excuse him from filing a motion for reconsideration. Preliminary investigation is not a penalty to be suffered and, as will be discussed later, is only intended to assist the prosecution in determining if there is sufficient basis to: (1) charge a person with an offense; and (2) prevent a harassment suit that both prejudices a respondent and wastes government resources.

Consequently, petitioner has no basis to invoke an exception to the rule on exhaustion of administrative reliefs.

II

Without legal basis for its inhibition from the preliminary investigation, respondent Department of Justice's refusal to inhibit was not grave abuse of discretion.

Petitioner's reliance[43] on *Cojuangco, Jr. v. Presidential Commission on Good Government*[44] is misplaced. It is true that in *Cojuangco, Jr.*, the impartiality of a person who presides over a preliminary investigation is a requisite of due process. However, this Court held that the Presidential Commission on Good Government (the Commission) could not be deemed impartial in its preliminary investigation because, prior to the preliminary investigation, it had already sequestered petitioner Eduardo Cojuangco, Jr.'s (Cojuangco) properties. It had earlier determined *prima facie* that the properties constituted ill-gotten wealth, and/or were acquired per an allegedly anomalous disposition or misuse of coconut levy funds. Subsequently, the Commission filed a Civil Complaint against petitioner Cojuangco for ill-gotten wealth and unjust enrichment at the expense of the Filipino people, through misuse, misappropriation, and dissipation of the coconut levy funds.

The Civil Complaint pertained to the transactions subject of the criminal complaints filed by the Solicitor General, upon the preliminary investigation to be conducted by the Commission in *Cojuangco, Jr.* This Court found that, under those unique circumstances, the Commission could not be considered an impartial judge, and thus, could not be allowed to conduct the preliminary investigation of its own complaint.

In *Cojuangco, Jr.*, because the Commission was an interested party in the civil case it filed, it could not be an impartial judge in the preliminary investigation. Moreover, although the majority did not consider the purpose of the Commission's creation, the separate concurring opinion of then

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43 Id. at 336.

44 268 Phil. 235 (1990) [Per J. Gancayco, En Banc].

Associate Justice Hugo Gutierrez, Jr. noted that the very purpose for its creation was to recover the ill-gotten wealth of former President Ferdinand Marcos, his relatives, and cronies. Thus, it could not be an impartial judge.

Respondent Department of Justice and the National Bureau of Investigation were not created with any interests against petitioner. Accordingly, *Cojuangco, Jr.* is not squarely applicable here.

Moreover, the National Bureau of Investigation and respondent Department of Justice do not, by virtue of having conducted an earlier investigation, become interested parties so as to preclude the latter from conducting an ensuing preliminary investigation. In *Santos-Concio v. Department of Justice*,[45] this Court held that this would be a ridiculous proposition:

> *It was the NBI, a constituent unit of the DOJ, which conducted the criminal investigation. It is thus foolhardy to inhibit the entire DOJ from conducting a preliminary investigation on the sheer ground that the DOJ's constituent unit conducted the criminal investigation.*
>
> Moreover, the improbability of the DOJ contradicting its prior finding is hardly appreciable. It bears recalling that the Evaluating Panel found no sufficient basis to proceed with the conduct of a preliminary investigation. Since the Evaluating Panel's report was not adverse to petitioners, prejudgment may not be attributed "vicariously," so to speak, to the rest of the state prosecutors. Partiality, if any obtains in this case, in fact weighs heavily in favor of petitioners.
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> . . . .
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> Continuing, petitioners point out that long before the conclusion of any investigation, Gonzalez already ruled out the possibility that some other cause or causes led to the tragedy or that someone else or perhaps none should be made criminally liable; and that Gonzalez had left the preliminary investigation to a mere determination of who within ABS-CBN are the program's organizers who should be criminally prosecuted.
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> Petitioners even cite President Arroyo's declaration in a radio interview on February 14, 2006 that "[*y*]*ang* stampede *na iyan, Jo, ay isang trahedya na pinapakita yung kakulangan at pagkapabaya . . . nagpabaya ang organisasyon na nag*-organize *nito*."
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> To petitioners, the declarations admittedly made by Gonzalez tainted the entire DOJ, including the Evaluating and Investigating Panels, since the Department is subject to the direct control and supervision of Gonzalez in his capacity as DOJ Secretary who, in turn, is an alter ego of the President.
>
> Petitioners thus fault the appellate court in not finding grave abuse of discretion on the part of the Investigating Panel members who "refused

[45] 567 Phil. 70 (2008) [Per J. Carpio-Morales, Second Division].

> to inhibit themselves from conducting the preliminary investigation despite the undeniable bias and partiality publicly displayed by their superiors."
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> Pursuing, petitioners posit that the bias of the DOJ Secretary is the bias of the entire DOJ. They thus conclude that the DOJ, as an institution, publicly adjudged their guilt based on a pre-determined notion of supposed facts, and urge that the Investigating Panel and the entire DOJ for that matter should inhibit from presiding and deciding over such preliminary investigation because they, as quasi-judicial officers, do not possess the "cold neutrality of an impartial judge."
>
> . . . .
>
> To follow petitioner's theory of institutional bias would logically mean that even the NBI had prejudged the case in conducting a criminal investigation since it is a constituent agency of the DOJ. And if the theory is extended to the President's declaration, there would be no more arm of the government credible enough to conduct a criminal investigation and a preliminary investigation.[46] (Emphasis supplied, citations omitted)

The National Bureau of Investigation, which is under the Department of Justice, was specifically empowered to investigate crimes and offenses as public interest may require.[47] Accordingly, a checkpoint operation jointly conducted by the police and armed forces personnel, which results in as many deaths as the Atimonan Encounter, is a matter of public interest proper for investigation by the National Bureau of Investigation.

Moreover, respondent Department of Justice Secretary De Lima's assailed statements, as submitted by petitioner, do not appear to show her bias against petitioner, or that she conducted the investigation aiming to persecute him. Rather, they reflect an evolving opinion based on the National Bureau of Investigation's investigation.

In a January 10, 2013 article, she said:

> [T]he National Bureau of Investigation said that it will look into the alleged link of "jueteng" in Southern Tagalog to the incident in Quezon.
>
> This was bared by Justice Secretary Leila de Lima when she met with NBI officials to officially kick off the investigation.
>
> "It will be inevitable to pursue that lead if it comes out in the investigation," De Lima said.
>
> De Lima added that it was essential for probers to find out where the 13 slain men that included a ranking police official and two police officers came and were headed to.

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46 Id. at 81–90.

47 Republic Act No. 157 (1947), sec. 1.

> De Lima said there were "nagging questions" about the incident. "Were they gun-for-hires involved in illegal numbers game? [Were] they about to deliver money and what was it for?" she said.
>
> Justice Secretary noted that there were issues surrounding the check point by the joint police-military team, which included injured Police Superintendent Hansel Marantan, that also need to be addressed.
>
> "What is the basis of involving Army personnel in that kind of operation? Was it a legitimate operation? Did they just want to check on the presence of loose firearms? The group of Marantan – who coordinated with them and what exactly was their mission?" she asked.
>
> De Lima said the initial findings of police investigators about the reported violation of standing rules and regulations and rules of engagement in manning checkpoints were "very telling."
>
> She said that the lack of a signage, and the non-wearing of uniforms were indications that there were violations.
>
> "But our focus will be to determine if it was a shootout or rubout," she added.
>
> She added that the NBI would also look into the reported involvement of Marantan in previous shootout incidents.[48]

Another January 10, 2013 article attached to the Petition partly read:

> Justice Secretary Leila de Lima said suspicion about the involvement of the parties in jueteng is something that should not be ignored.
>
> "Hindi siguro maiiwasan kung yun ang lumabas, kasi kailangang sagutin ang katanungan: Ano ba talaga ang operasyon na 'yun? Bakit nila kailangang abangan ang grupo na 'yun? What is exactly the tip na natanggap allegedly ng group ni Marantan? So gun for hire sila, involved sa illegal numbers (game)? Saan sila pupunta, meron ba silang idi-deliver na pera, at para sa ano yun? Dahil nga may involved na uniformed men na in active service na may licensed firearms, di maiiwasan na titingnan yan. At ang pinaka-motibo din, at bakit si Marantan ang parang nagpasimuno ng team?" she said.[49]

A January 16, 2013 article quoted respondent Department of Justice Secretary De Lima as having recognized that she did not have the entire picture yet:

> **NBI breakthrough**

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48 *Rollo*, p. 83. The article was published in Manila Standard Today.

49 Id. at 88. The article was published on the Malaya Business website.

> Justice Secretary Leila de Lima said she thought the NBI agents had scored a breakthrough in their investigation.
>
> "We know more or less what happened. It may not be the real picture yet, but the NBI has enough information and enough evidence to come up with a conclusion," De Lima said in an interview at the NBI headquarters Tuesday.
>
> De Lima declined to comment on the Inquirer report of the initial findings of the NBI that what happened during the Jan. 6 incident constituted "unjustified killings."
>
> "Since it's initial and partial it's not wise for me to be disclosing it," De Lima said. She added that the NBI would assess and compare its own investigation from that of the PNP's. She said the NBI report would not be ready until Friday because of the delay in the turnover of PNP evidence.[50] (Emphasis in the original)

A January 18, 2013 article recounted respondent Department of Justice Secretary De Lima's comments after the National Bureau of Investigation re-enacted the Atimonan Encounter:

> De Lima joined the re-enactment yesterday morning of the killing of 13 persons last Jan. 6 at the boundary of Atimonan and Plaridel towns in Quezon.
>
> Security forces said the 13, in a two-vehicle convoy, refused to stop at a checkpoint set up on Maharlika Highway and opened fire first, prompting the security team to return fire.
>
> As two eyewitnesses recounted, however, there was initially no checkpoint sign.
>
> Instead a military truck blocked the highway, forcing three vehicles to slow down. A policeman in civilian clothes approached the lead vehicle, a Mitsubishi Montero sport utility vehicle, and ordered all the passengers to get out. No one did.
>
> A third vehicle made a U-turn and managed to flee. And just in time. As recounted by the witnesses, a man in civilian clothes shouted, "Fire! Fire!"
>
> For about 20 seconds, the joint police-military contingent sprayed the lead SUV with bullets. A shot rang out from inside the vehicle, and the security forces resumed firing.
>
> Two men got out from the second Montero SUV. Believed to be environmentalist Tirso Lontok Jr. and Air Force 1Lt. Jim Beam Justiniani, the two raised their hands in surrender. They were shot at close range by a man in uniform with a rifle and another in civilian clothes with a handgun.
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> A man then ordered the security team to resume firing, this time to

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[50] Id. at 91. The article was published on Inquirer.net.

include the second vehicle. This third shooting phase lasted about 10 seconds.

When the shooting was over, the lead vehicle had 186 bullet holes; the second had 50.

All 13 men were killed, although the security team claimed two died on the way to a hospital.

. . . .

"Based on eyewitness accounts and other circumstances, it would not be erroneous to say that they were killed in cold blood," De Lima told The STAR yesterday.

Earlier after the re-enactment, she also told reporters, "Definitely, no shootout."

The witnesses told probers of the National Bureau of Investigation (NBI) that the checkpoint sign was placed along the highway in Barangay Lumutan only when the shooting started.

At least three eyewitnesses and their families have been placed on the governmen[t]'s Witness Protection Program.

De Lima, whose department has jurisdiction over the NBI, said the witnesses had initially refused to surface, fearing for their safety.

"What we can say at this point is that our witnesses are credible," she said. "These are eyewitnesses and we see no reason to doubt them. Earlier at the site, they were very certain in their narration of the incident."

The witnesses were reportedly on a slow-moving truck that was overtaken by the slain men's convoy.

With the eyewitnesses' story, De Lima said it was inevitable that the NBI would look into the possibility that the security forces tampered with the crime scene and planted guns on the slain men to make it appear that they opened fire first.

She expressed hope that the security forces involved – about 50 soldiers and policemen reportedly led by Superintendent Hansel Marantan – would cooperate with the NBI.

Marantan was the only member of the security team who was wounded. He has refused to turn over his gun to probers or subject himself to questioning and physical examination.

A police fact-finding team had earlier complained that the Calabarzon police command, which has jurisdiction over the provinces of Cavite, Laguna, Batangas, Rizal and Quezon, had refused to cooperate with the investigation.[51]

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[51] Id. at 95. The article was published in The Philippine Star.

From this article, it appears that respondent Department of Justice Secretary De Lima's opinion that there had been no shootout was not based on an ulterior motive against petitioner, but rather, based strictly on the National Bureau of Investigation's re-enactment, which was apparently done without petitioner's cooperation.

In a January 19, 2013 article, respondent Department of Justice Secretary De Lima addressed the claims that she had prejudged the case:

> "That is not an issue anymore," De Lima said. "I don't think that should be an issue."
>
> She said her critics, Supt. Hansel Marantan, leader of the police team at the checkpoint who has been suspended, and the lawyer of the Army soldiers who had backed up the policemen, should just answer questions about the killings.
>
> "If I were them, instead of raising various issues, they should just answer the main issue at hand, the one about the incident," De Lima said.
>
> "They should face it and answer it, not divert it by questioning the actuations of the secretary of justice. That style is an old tactic," she said.
>
> . . . .
>
> De Lima said she was just answering questions from reporters who wanted to know after the reenactment what she thought happened at the checkpoint.
>
> **What do you call it?**
>
> "I was asked by the media what's on my mind. I said if you observed closely, you'll know what happened. It could be a rubout, ambush or massacre. We will look for a better term and we will put it in the NBI report," she said.
>
> She said Marantan's side of the story was crucial because he was the team leader and was one of the three police officers who prepared the case operational plan (coplan). He was also the only one of the three who was at the checkpoint.
>
> "Did he have any motive or is it just like that [as narrated]?" De Lima said.
>
> She said the NBI had arrived at several theories and was just validating them.
>
> De Lima said she had instructed the NBI to work double time and finish its report, as President Aquino expected it by the middle of next week at the latest.
>
> **To trace Siman's moves**

> De Lima said the investigators were "backtracking" to trace the movements of Victor "Vic" Siman, the target of the police operation, on Jan. 6. Establishing his whereabouts and his contacts before getting to Atimonan in the afternoon of that day is important to determining the motive for the attack on him, De Lima said.
>
> "Since our findings, based on eyewitness accounts, was that there was really no shootout, then what was that mission all about? Was that operation specifically conducted to liquidate those elements?" she said.
>
> "If [the people who were killed] had [criminal] records, assuming that they are part of a syndicate whether engaged in illegal numbers game or guns for hire, there was a process for it," she said.
>
> "If there's a basis for the accusations, they should get a warrant and arrest them. Now if the situation calls for it, they can effect warrantless arrest, but by all means conduct it not like that. We are a government governed by laws, a civilized society, not the Wild, Wild West where they can just neutralize anybody they want to," she said.
>
> De Lima said just because the other side was the first to open fire did not mean that the law enforcers could fire back indiscriminately.[52] (Emphasis in the original)

From these statements, this Court cannot conclude that respondent Department of Justice Secretary De Lima's public reaction to an ongoing investigation is tantamount to bias against petitioner.

Moreover, this Court notes that as stated in a January 16, 2013 article submitted by petitioner, he refused to participate in the investigation by the National Bureau of Investigation:

> The PNP turned over a two-inch thick report to NBI Director Rojas, whose agency was tasked by President Aquino to look into the Jan. 6 incident to ensure an impartial investigation as dozens of policemen and military personnel were involved.
>
> **Exhaustive PNP report**
>
> "This report is clear, declarative, and exhaustive and the entire force of the PNP fact-finding team was utilized (here). There is one important component that was not included, not because of the shortcomings of the PNP but because of circumstances beyond our control which, is Superintendent Marantan," Roxas said.
>
> He said that Marantan, who had been involved in three previous sensational gun battles that had left 27 people dead, had refused to undergo an investigation when the PNP team went to the hospital where he was being treated for wounds purportedly sustained in Atimonan.
>
> "He did not agree to answer their questions. He did not allow them to

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52 Id. at 97. The article was published in the Philippine Daily Inquirer.

> inspect his wounds, even the slugs recovered from his body, he did not allow to be released (by the hospital) that's why I am advising Superintendent Marantan to undergo the process," Roxas said.[53] (Emphasis in the original)

Unexplained refusal to cooperate with the Philippine National Police, along with not allowing even the inspection of the slugs recovered from his body, raises serious doubt as to petitioner's earnestness in seeking proper investigation.

In the absence of any legal basis to require respondent Department of Justice to inhibit from this case, this Court cannot deem its denial of petitioner's request as grave abuse of discretion.

III

Petitioner has failed to show that respondent Department of Justice committed grave abuse of discretion in finding probable cause against him.

This Court agrees that respondent Department of Justice Secretary De Lima's conduct before the Information was filed in court could have been better. However, petitioner failed to show that she had any ulterior motives or bias against him. Her statements did not appear to be based on a prejudice against petitioner, but were simply reactions to an ongoing investigation that had developed as the investigation proceeded.

Besides, respondent Department of Justice Secretary De Lima's conduct is relevant here only insofar as it affected the preliminary investigation. The relevant issues in determining whether grave abuse of discretion attended the preliminary investigation are: (1) whether petitioner had been so fundamentally deprived of an opportunity to be heard in relation to the purposes of preliminary investigation; (2) whether the infirmities were so fatal that they effectively deprived petitioner of any opportunity to be heard during the judicial examination, pre-trial, and trial; and (3) whether there would be a public policy interest in suspending the criminal action.[54]

The process of preliminary investigation is essentially one (1)-sided, as it serves only to assist the prosecution to summarily decide whether there was sufficient basis to: (1) charge a person with an offense; and (2) prevent a harassment suit that both prejudices a respondent and wastes government resources. During the preliminary investigation, the prosecution only needs to determine whether it has *prima facie* evidence to sustain the filing of the

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[53] Id. at 89. The article was published on Inquirer.net.

[54] *See* J. Leonen, Separate Concurring Opinion in *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 891 (2015) [Per J. Carpio, En Banc].

information.[55]

Here, petitioner failed to show any basis to find that the Omnibus Resolution, which found probable cause to charge him with murder, was erroneous. He broadly claims that the Panel was not an impartial tribunal and, because their superior had already prejudged petitioner to be guilty, they had no choice but to arrive at the same conclusion and tailor their resolution fit to find probable cause against petitioner.[56] However, aside from failing to establish respondent Department of Justice Secretary De Lima's bias against him, petitioner also failed to show that the Panel's conclusion was wrong, much less tainted with grave abuse of discretion.

The Panel's conclusions appear to have been well-reasoned and evidence-based. It listed the evidence and circumstances it relied on to conclude that the police personnel had, in conspiracy, killed the victims.[57] It arrived at this conclusion for the following reasons, among others:

(1) petitioner had been in charge of the checkpoint operation, monitoring the movements of the occupants of the two (2) Monteros and briefing the armed forces personnel that the occupants were armed, dangerous, and engaged in criminal activities;

(2) the plan to eliminate the victims became apparent when petitioner, together with his co-respondents in the preliminary investigation, put up the highly irregular three (3)-layered checkpoint;

(3) petitioner and a co-respondent in the investigation purposely sought the assistance of the armed forces personnel due to petitioner's fear that they would be outnumbered. The Panel found this strange given that the checkpoint's purpose was regular, which was to check on passing motorists for possible violation of laws and regulations;

(4) the results of the forensic examinations and investigations support the conclusion that there was no legitimate firefight between the victims and the combined police and armed forces personnel at the checkpoint;

(5) the continuous actuations of the accused police personnel showed an intention to muddle the evidence and mislead or influence the investigation; and

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55 Id.
56 *Rollo*, pp. 347–349.
57 Id. at 226–228.

(6) that a significant number of cartridges from the crime scene did not match the submitted firearms of the police and armed forces personnel, as well as those from the victims, showing that the respondents must have used other firearms aside from those officially-issued to mislead the outcome of the investigation.[58]

The Panel also found that the checkpoint itself was highly suspicious and irregular. The Panel explained:

> We note that, (1) the first, second, and third layers of the checkpoint were placed at a distance of more or less three hundred (300) meters from each other, or at such a distance and location that they could barely, if totally not, see each other, and (2) the second layer was actually manned by uniformed military, instead of PNP, personnel. While respondent Gollod may have indeed worn a light blue PNP shirt, the same was however covered by the tactical vest which covered his official uniform. The policies regarding PNP checkpoints mandates the PNP officers manning a checkpoint to be highly visible in their complete police uniform.
>
> It appears from the record that the setting of the three-layered checkpoint was deliberately sought by respondents-PNP officers to trap a specific subject – the Vic Siman group. True enough, when the convoy passed the first layer, the PNP personnel manning the same immediately informed, through radio, the second or middle layer such that by the time the convoy approached the latter, they were already on their toes.[59]

The Panel further provided several reasons on how the physical evidence did not support the claim that there was a shootout:

> *First*, it should be noted that the results of forensic and chemical examinations of the Monteros show that there was no possibility that the occupants of the Monteros could have fired from within the vehicles due to the complete absence of burns, smudges, and soot in their interiors. Forensic analysis attests that had there been any shot fired by any of the passengers inside the Monteros, the same could have produced gun powder residues inside the vehicles cars (*sic*) due to the proximity of the passengers to any point of the cars' interiors.
>
> *Second*, the marks of smudging, soot and tattooing on the first Montero where the NBI found four (4) secondary bullet entrances, show that the gunshots were made at a distance of eight (8) to thirty-six (36) inches from the muzzle of the gun. In the same vein, the two (2) secondary bullet entrances on the second Montero revealed no signs of smudging, soot and tattooing. Clearly then, these gunshots came from outside the said vehicles. Besides, all eight (8) exit points found on the first Montero tested negative for gun powder residue, which also means that the gunshots preceding these exit points did not come from inside the said vehicle.

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58 Id. at 226–228.
59 Id. at 226.

> *Third*, the NBI also submitted credible evidence proving that some of the victims were shot at close range, thereby negating the version of the police that there was a legitimate firefight.
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> . . . .
>
> (8) The narration of PSupt. Jerry Valeroso that he heard victim Consemino say "Ano yun?" while they were conversing on the phone, which was followed by the ticking sound of metal hitting glass, shows that the victims were caught by surprise when they were fired upon at the checkpoint. These sounds that he heard only became significant after he learned about the Atimonan incident. He realized that the ticking sound[s] were the sound[s] of bullets hitting the glass windows of the vehicle that victim Consemino was riding.
>
> (9) It appears from the narrations of the witnesses, as well as of the respondents, that the Monteros were parked parallel to the official vehicles used in the checkpoints. In fact, the respondents claimed that when the alleged shootout erupted, they took cover using their parked vehicles. Surprisingly, the vehicles of the police operatives where they sought cover were unharmed. There [were] no markings that the said vehicles were hit by any bullet or any indication that [they were] involved in a gunfire. It is axiomatic that if a shootout indeed took place, the vehicles of the police operatives should have at least sustained some damage.[60]

The Panel found that the killing was attended by evident premeditation, taking advantage of superior strength, treachery, and with the aid of armed men. This was because: (1) the police personnel put up a suspicious three (3)-layered checkpoint, which ensured that the subjects would not be missed, and that no outsiders would witness the incident; (2) petitioner had been monitoring the movements of the convoy the day prior to the incident; (3) the police personnel ensured the presence of the armed forces personnel at the checkpoint operation and capitalized on the soldiers' capabilities and resources; and (4) the sheer number of bullets fired at the victims indicated that the police had taken advantage of superior strength of firearms and manpower.[61]

The Panel also noted the accounts of the armed forces personnel who were involved in the Atimonan Encounter, particularly those of Lieutenant Colonel Abang and Lieutenant Tagure on the actions of Carracedo:

> Sensing that there were no more gunfire coming from where two SUVs were located, respondent Abang shouted "CEASEFIRE!", which the troops obeyed. Respondent Carracedo then approached respondent Tagure and the latter heard the former utter, "*I-clear natin, i-clear natin*". Respondent Tagure presumed that respondent Carracedo meant that they have to ensure that the threat has stopped. They then approached the

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60 Id. at 227–228.

61 Id. at 231.

> SUVs and when respondent Carracedo failed to open the doors of the first Montero, he asked respondent Tagure to break the glass, which he did.
>
> Thinking that there could still be alive occupants inside the SUV, respondent Tagure broke the glass window of the right second row of the first Montero. He, however, noticed that all the occupants were already dead. He then proceeded to the second Montero and also broke its window when he heard someone moaning. Respondent Tagure then uttered, "*May buhay pa, sir. Sir dalhin natin sa ospital*", and thereafter instructed respondents Docdoc and Lumalang to bring the wounded passengers to the hospital. Afterwards, respondents Abang, Macalinao and Tagure heard one of the members of the PNP saying "*Clear, Clear.*"
>
> Respondent Abang then heard successive gunshots fired in the air at the vicinity of the two (2) Monteros, and when he glanced at the said direction, he saw respondent Carracedo firing the victims' guns in the air and thereafter returning them to the place where, or the person from whom, he found them. In opposition to what he saw, he repeatedly shouted "*Walang gagalaw sa mga gamit at mga ebidensya!*".[62] (Emphasis in the original)

The Panel found no probable cause to charge the armed forces personnel because they themselves were surprised by what the police personnel did. They even revealed Carracedo's irregular actions at the crime scene, although they could have kept those to themselves.[63]

Petitioner has not shown how any of these conclusions were erroneous. There was also no proof that respondent Department of Justice Secretary De Lima exerted any pressure on the Panel to align its findings with her public declarations or to adhere to any pre-determined result.

IV

A case is rendered moot when, because of supervening events, this Court is left with no justiciable controversy to resolve, and a declaration on it would be of no practical use or value.[64]

In *Secretary De Lima v. Reyes*,[65] this Court reiterated its ruling in *Crespo v. Mogul*[66] that once an information is filed before a court, that court acquires jurisdiction over the case. Notably, a petition questioning the preliminary investigation of an accused becomes moot once an information based on the preliminary investigation is filed before a trial court, which, in turn, would complete its own determination of probable cause.[67] After this

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62 Id. at 220.
63 Id. at 229–230.
64 *Timbol v. Commission on Elections*, 754 Phil. 578, 584 (2015) [Per J. Leonen, En Banc].
65 776 Phil. 623 (2016) [Per J. Leonen, Second Division].
66 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].
67 *See Secretary De Lima v. Reyes*, 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

judicial determination, the question of an accused's guilt or innocence would rest with the trial court's own sound discretion.[68]

Here, an information against petitioner has already been filed before the Regional Trial Court. Consequently, whether the case should be dismissed, or whether petitioner should be acquitted or convicted, is for the trial court to determine.[69] Resolving whether public respondent Department of Justice should have inhibited from conducting the preliminary investigation and forwarded the case records to the Office of the Ombudsman would be of no practical use and value here.

WHEREFORE, the Petition for Certiorari and Prohibition is **DISMISSED** for being **MOOT AND ACADEMIC**, and for failure to show that respondents acted with grave abuse of discretion.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

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68 *Napoles v. De Lima*, 790 Phil. 161 (2016) [Per J. Leonen, Second Division] citing *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

69 Id.

ATTESTATION

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

DIOSDADO M. PERALTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice