EN BANC

G.R. No. 258563 – PEOPLE OF THE PHILIPPINES, Petitioner, **v. ULYSSES PALCONIT CONSEBIDO**, Respondent.

Promulgated:

April 2, 2025

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CONCURRING OPINION

GESMUNDO, *C.J.*:

I concur with the esteemed *ponente* and write this concurring opinion to expound on my reasons for such concurrence. In particular, I wish to elaborate on my views on the (1) proper interpretation of Section 281 of the National Internal Revenue Code (1997 NIRC), and (2) rule on the tolling of the prescriptive period for offenses under the 1991 Revised Rules on Summary Procedure or the 2022 Rules on Expedited Procedures in the First Level Courts.

The facts of this case, as culled from the *ponencia*, are as follows.

This is a Petition for Review on *Certiorari* filed by the People of the Philippines, through the Office of the Solicitor General, assailing the Court of Tax Appeals (CTA) *En Banc*'s January 6, 2021 Decision and January 5, 2022 Resolution affirming the April 2, 2019 and May 7, 2019 Resolutions of the CTA Second Division, which dismissed the Information for Willful Failure to File a Quarterly Value-Added Tax (VAT) Return in violation of Section 255, in relation to Section 114 of the 1997 NIRC against Ulysses Palconit Consebido (Consebido).[1]

The Information against Consebido, doing business under the name and style of SEVEN DIGIT CONSTRUCTION AND SUPPLIES, charged him with failing to file his quarterly VAT return for the 3rd quarter of taxable year 2008, resulting in a basic quarterly VAT deficiency of PHP 4,184,566.10 for the 3rd quarter of taxable year 2008.[2]

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1 *Ponencia*, pp. 1–2.
2 *Id.* at 3.

The CTA Second Division, in its April 2, 2019 Resolution dismissed the case on the ground of prescription, having been filed beyond the five-year prescriptive period in Section 281 of the 1997 NIRC. It denied the motion for reconsideration filed by the People in its May 7, 2019 Resolution. On review, the CTA *En Banc*, in its January 6, 2021 Decision, denied the petition and affirmed the ruling of the CTA Second Division. The People filed a motion for reconsideration, which the CTA *En Banc* likewise denied in its January 5, 2022 Resolution.[3]

The *ponencia* denied the petition. It held that the prescriptive period for violations of the 1997 NIRC not known at the time of its commission begin to run from its discovery. It observed that Section 281 of the 1997 NIRC, which governs prescription for violation of said law, is identical to Section 354 of the 1939 NIRC. It noted that the Court previously held in *Lim, Sr. v. Court of Appeals*[4] that said provision speaks of both discovery of the fraud and the institution of judicial proceedings for the five-year period to run. Thus, it stated that, based on *Lim, Sr.*, "the prescriptive period for violations of the 1939 NIRC where the date of its commission is unknown, shall begin to run from the discovery of its commission until an Information is filed with the court. Stated otherwise, the Information must be filed within five years from the discovery of the commission of the violation. This implies that the preliminary investigation does not toll the running of the prescriptive period."[5]

The *ponencia* re-examined the ruling in *Lim, Sr.* and clarified that under Section 281 of the 1997 NIRC, the prescription of criminal offenses where the commission of the violation is not known shall begin to run from its discovery. It explained that this ruling is to harmonize the second and third paragraphs of Section 281 of the 1997 NIRC. Thus, the institution of proceedings, specifically the commencement of preliminary investigation, shall interrupt the prescriptive period for offenses. It further explained that this clarification is necessary as a literal interpretation of the law should be rejected if it would lead to absurd results. Otherwise, prescription would not run pursuant to a literal reading of Section 281 of the 1997 NIRC, as it would both begin and be interrupted by the institution of proceedings. The *ponencia* urged that the Court must give effect to the clear intent of the Legislature to set a prescriptive period for violations of the 1997 NIRC.[6]

The *ponencia* further provided that, as suggested by Associate Justice Japar B. Dimaampao, the wording of Section 281 of the 1997 NIRC should be brought to the attention of the Legislature. Thus, it stated that a copy of the

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3 *Id.* at 3–4.
4 268 Phil. 680 (1990) [Per C.J. Fernan, Third Division].
5 *Ponencia*, pp. 5–7, 7.
6 *Id.* at 9–10.

Decision shall be given to the Senate of the Philippines and the House of Representatives for their appropriate action.[7]

The *ponencia*, nevertheless, found that the Discovery Rule does not apply to the instant case since the Bureau of Internal Revenue (BIR) had reasonable means to ascertain that Consebido failed to file his quarterly VAT return for the 3rd quarter of the taxable year of 2008. This is because the Provincial Government of Palawan, as the payor of Consebido, was required by law to report the payments made. Also, due to the Electronic Filing and Payment System in place since April 1, 2005, the BIR could have easily discovered that Consebido failed to file the same. Thus, the Discovery Rule does not apply. Rather, the prescriptive period should run from October 25, 2008, the date when Consebido purportedly failed to file his return. Thus, the complaint should have been filed with the Department of Justice (DOJ) on October 25, 2013. However, it was filed on January 30, 2014. Thus, the CTA *En Banc* did not err in affirming the dismissal of the complaint.[8]

The *ponencia* then clarified that the rule on the tolling of the prescriptive period for offense. It stated that "the filing of the criminal complaint before the DOJ shall toll the running of the prescriptive period for offenses under the 1997 NIRC, as amended, whether its commission was immediately known or unknown at the time of the violation."[9] It then revisited prevailing jurisprudence on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure as well as the 2022 Rules on Expedited Procedures in the First Level Courts. It observed that Rule III, Subsection B, Section 1 thereof states that "[t]he filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information."[10] Further, it noted that the DOJ issued Circular No. 028, titled the "2024 DOJ-National Prosecution Service (NPS) Rules on Summary Investigation and Expedited Preliminary Investigation," which applies when the penalty prescribed by the law is imprisonment of one day to six years, fine regardless of the amount, or both. In view of the foregoing, it pronounced that the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period. Nonetheless, it stated that this ruling shall apply prospectively.[11]

I concur in the *ponencia* that the CTA *En Banc* did not err in affirming the dismissal of the complaint. I also concur that the interpretation of Section 281 of the 1997 NIRC must be re-examined. Further, I agree with the

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7 *Id.* at 10.
8 *Id.* at 10–12.
9 *Id.* at 12–13.
10 *Id.* at 14.
11 *Id.* at 14–15.

ponencia's interpretation that the prescription for criminal offenses under the 1997 NIRC where the commission of the violation is not known shall begin to run from its discovery. I also concur that the prescription of any criminal offense, whether or not covered by the 1991 Revised Rules on Summary Procedure or the 2022 Rules on Expedited Procedures, shall be interrupted by the filing of the criminal complaint with the DOJ.

Allow me to expound on my position that the prevailing interpretation of Section 281 of the 1997 NIRC must be re-examined, as well as the rule on the tolling of the prescription of offenses covered by the Revised Rules on Summary Procedure or 2022 Rules on Expedited Procedures in the First Level Courts.

The prescription of criminal offenses under the 1997 NIRC where the commission of the violation is not known shall begin to run from its discovery.

The provision pivotal in the instant case is Section 281 of the 1997 NIRC, which reads as follows:

> Section 281. *Prescription for Violations of any Provision of this Code.* – All violations of any provision of this Code shall prescribe after five (5) years.
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> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, ***from the discovery thereof and the institution of judicial proceedings for its investigation and punishment***.
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> The prescription shall be ***interrupted when proceedings are instituted against the guilty persons*** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
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> The term of prescription shall not run when the offender is absent from the Philippines. (Emphasis supplied)

To be clear, Section 281 provides that any violation of any provision of the 1997 NIRC shall prescribe after five years. This period runs from the day of the commission of the violation of the law. If the day of the commission is not known, it shall run from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. This is known as the Discovery Rule. Meanwhile, the running of the prescriptive period shall be interrupted when proceedings are instituted against the guilty persons and

shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The source of confusion in Section 281 is the Discovery Rule, which provides that when the day of the commission of the violation of the law is not known, the prescriptive period of five years shall run from the discovery of the violation of the law ***and*** the institution of judicial proceedings for its investigation and punishment.

As the *ponencia* points out, this has been previously interpreted by the Court to mean that "tax cases … are practically imprescriptible for as long as the period from the discovery *and* institution of judicial proceedings for its investigation and punishment, *up to* the filing of the information in court does not exceed five (5) years."[12]

To my mind, such an interpretation leads to an absurd situation because it renders tax cases practically imprescriptible. Under such an interpretation, ***the running of the prescriptive period requires the concurrence of two events: (1) the discovery of the commission of a violation, and (2) the institution of judicial proceedings for its investigation and punishment.*** However, in the same breath, Section 281 states that the running of the prescriptive period shall be interrupted when proceedings are instituted against the guilty persons. Thus, ***the same event—the institution of judicial proceedings—gives rise to the running and the tolling of the prescriptive period. This leads to a situation where the prescriptive period does not run at all.*** Plainly, this is an absurd situation. The net effect of such an interpretation is to render the prescriptive period practically non-existent.

To this end, the Court has previously declared that the courts are not to give words a meaning which would lead to absurd or unreasonable consequences:

> It is a salutary principle in statutory construction that there exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, undefensible, wrongful, evil and injurious consequences.
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> ***Nothing is better settled than that courts are not to give words a meaning which would lead to absurd or unreasonable consequences.*** That is a principle that goes back to *In re Allen* decided on October 27, 1903, where it was held that ***a literal interpretation is to be rejected if it would be unjust or lead to absurd results***. That is a strong argument against its

[12] *Lim, Sr. v. Court of Appeals*, 268 Phil. 680, 689 (1990) [Per C.J. Fernan, Third Division].

> adoption. The words of Justice Laurel are particularly apt. Thus: "The fact that the construction placed upon the statute by the appellants would lead to an absurdity is another argument for rejecting it."
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> ... We have, here, then a case where the true intent of the law is clear that calls for the application of the cardinal rule of statutory construction that such intent of spirit must prevail over the letter thereof, for whatever is within the spirit of a statute is within the statute, since adherence to the letter would result in absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute.[13]

It is respectfully submitted that the prevailing interpretation of requiring the concurrence of two events—(1) the discovery of the commission of a violation, and (2) the institution of judicial proceedings for its investigation and punishment—for the five-year prescriptive period to run in instances where the Discovery Rule applies ***renders nugatory the very provision on prescription of violations of the 1997 NIRC*** as it makes tax cases practically imprescriptible. This could not have been the intention of the Legislature in providing for a prescriptive period to begin with.

Rather, I am of the mind that Section 281 should be interpreted to mean that, in instances the day of the commission of the violation of the 1997 NIRC is not known, ***the five-year prescriptive period shall run from the discovery of the commission of the violation of the law***. This view echoes the ruling of the Court in *People v. Duque*[14] and *Presidential Commission on Good Government [PCGG] v. Carpio Morales*,[15] both cited by the *ponencia*.[16]

In *Duque*, Napoleon Duque (Duque) was charged with and convicted of illegal recruitment under Section 38, in relation to Section 39 of Presidential Decree No. 442, as amended, known as The Labor Code of the Philippines. On appeal, Duque only raised the defense that the criminal offense for which he was convicted had already prescribed.

For this purpose, Section 2 of Act No. 3326, as amended, titled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run" is relevant. Section 2 of Act No. 3326 reads as follows:

> Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and ***if the same be not known at the***

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13 *Brent School, Inc. v. Zamora*, 260 Phil. 747, 762–763 (1990) [Per J. Narvasa, *En Banc*]. (Citations omitted)

14 287 Phil. 669 (1992) [Per J. Feliciano, Third Division].

15 46 Phil. 995 (2014) [Per J. Velasco, Jr., Third Division].

16 *Ponencia*, p. 8.

> ***time, from the discovery thereof and institution of judicial proceedings for its investigation and punishment***. (Emphasis supplied)

Interpreting the same in *Duque*, the Court declared that the phrase "institution of judicial proceedings for its investigation and punishment" may be either disregarded as surplusage or should be deemed preceded by the word 'until,'" viz.:

> In our view, the phrase "institution of judicial proceedings for its investigation and punishment" may be either disregarded as surplusage or should be deemed preceded by the word "until." Thus, Section 2 may be read as:
>
> > "Prescription shall begin to run from the day of the commission of the violation of the law; and if the same be not known at the time, from the discovery thereof;"
>
> or as:
>
> > "Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and *until* institution of judicial proceedings for its investigation and punishment."

Accordingly, the Court held that the prescriptive period began to run from the time the complainants and the Philippine Overseas Employment Administration discovered the recruitment activities of Duque. Thus, the offense of illegal recruitment had yet to prescribe when the complaint was filed with the Provincial Prosecutor's Office in April 1990 and when the Information was filed in court in May 1990.

The Court affirmed this interpretation in *PCGG*, which involved an affidavit-complaint filed by PCGG against Resorts Hotel Corporation (RHC) and the directors of the Development Bank of the Philippines before the Office of the Ombudsman for violation of Sections 3(e) and 3(g) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. The Ombudsman dismissed the complaint on the ground of prescription. Before the Court, PCGG argued that the offense had not yet prescribed since the prescriptive period only commenced to run on January 6, 2003 when it filed its affidavit-complaint with the Office of the Ombudsman, and not on January 4, 1993 when the crimes were discovered. PCGCC cited Section 2 of Act No. 3326 as basis for this argument. In rejecting said argument, the Court cited the ruling in *Duque*. The Court held that the prescriptive period ran from the date of discovery on January 4, 1993, when the Presidential Ad Hoc Fact-Finding Committee reported to the president its findings and conclusions anent the RHC loans.

Thus, the dismissal of PCGG's complaint is proper on the ground of prescription since PCGG filed its affidavit-complaint on January 6, 2003, a little over 10 years from the date of discovery of the crimes.

Duque and *PCGG* both centered on an interpretation of Section 2 of Act No. 3326, which is similarly worded as Section 281 of the 1997 NIRC. To my mind, the interpretation in *Duque* and *PCGG* is proper. Accordingly, in instances the day of the commission of the violation of the 1997 NIRC is not known, ***the five-year prescriptive period shall run from the discovery of the commission of the violation of the law.***

This interpretation ***gives life to the spirit of the law***. It respects the fact that the Legislature clearly intended for prescription to run against the State in the prosecution of offenses defined and punishable under the 1997 NIRC but which were not known on the day of its commission.

This interpretation is also ***consistent with the principle that statutes of limitation in criminal suits are to be liberally construed in favor of the defendant***. The rationale behind this principle is elucidated in the 1924 case of *People v. Moran*,[17] where the Court quoted with approval the discussion of Wharton on Criminal Pleading & Practice, 9th ed., 1889, sec. 316, page 215:

> We should at first observe that a mistake is sometimes made in applying to statute of limitation in criminal suits the construction that has been given to statutes of limitation in civil suits. The two classes of statutes, however, are essentially different. In civil suits the statute is interposed by the legislature as an impartial arbiter between two contending parties. In the construction of the statute, therefore, the is no intendment to be made in favor of either party. Neither grants the right to the other; there is therefore no grantor against whom the ordinary presumptions of construction are to be made. ***But it is otherwise when a statute of limitation is granted by the State. Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution. The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.*** Independently of these views, it must be

[17] 44 Phil. 387 (1923) [Per C.J. Araullo, First Division].

> remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subaltern, and to secure for criminal trials the best evidence that can be obtained. (Emphasis supplied)

The Court has defined a penal provision or statute as follows:

> A penal provision or statute has been consistently defined by jurisprudence as follows:
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> > A penal provision defines a crime or provides a punishment for one.
> >
> > Penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation.
> >
> > Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission.
> >
> > Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.[18] (Citations omitted)

Without a doubt, the 1997 NIRC contains penal provisions. The provisions under the 1997 NIRC's Title X,[19] Chapter II, titled "Crimes, Other Offenses and Forfeitures," clearly defines crimes and prescribes penalties for their violation. To this end, Section 281 of the 1997 NIRC provides for the prescriptive period of the offenses defined and punishable under the 1997 NIRC.

Since Section 281 provides for the prescriptive period for the prosecution of violations of penal provisions, it must be liberally construed in favor of the defendant. ***The prescriptive period of a penal provision is an***

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[18] *Inmates of the New Bilibid Prison v. De Lima*, 854 Phil. 675, 706–707 (2019) [Per J. Peralta, *En Banc*].

[19] Titled "Statutory Offenses and Penalties."

amnesty granted by the State in favor of the defendant. It is a surrender by the State of its right to prosecute and, as such, ***a liberal construction in favor of the defendant is proper***.

I am aware of the view advanced by the esteemed Justice Dimaampao that the "Congress deliberately chose to retain the reckoning point of prescriptive periods for tax offenses under the NIRC from both the discovery ***and*** the institution of judicial proceedings as it is understood in its modern meaning, i.e., the filing of an Information before the courts" since the provision has remained unchanged from its first iteration.[20]

While it is true that the formulation has remain unchanged, I am of the mind that ***retaining the prevailing interpretation effectively renders nugatory or lifeless the prescriptive period set by Congress itself***. This is because the same event, the institution of judicial proceeding, gives rise to the running and the tolling of the prescriptive period. In short, it appears that the prescriptive period does not begin to run at all. ***Section 281 of the 1997 NICR is rendered lifeless by such interpretation.*** Such a result is a disservice to the Legislature and defeats the entirety of the second paragraph of Section 281 of the 1997 NIRC.

Indeed, if the Court maintains the literal reading of the Discovery Rule under Section 281, the prescription of violations of the 1997 NIRC will never occur. Certainly, Congress did not intend a provision of the law to be ineffective and futile. The law does not require the impossible (*lex non cognit ad impossibilia*).[21]

Accordingly, I am of the view that the prescription of criminal offenses under the 1997 NIRC where the commission of the violation is not known shall begin to run from its discovery.

The prescriptive period of any criminal offense is tolled by the filing of the complaint with the prosecutor.

I now turn my attention to the *ponencia*'s discussion on the tolling of offenses covered by the 1991 Revised Rules on Summary Procedure or the 2022 Rules on Expedited Procedures in the First Level Courts.

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20 J. Dimaampao, Concurring and Dissenting Opinion, pp. 4–5.

21 *See Piccio v. House of Representatives Electoral Tribunal*, 912 Phil. 189, 223 (2021) [Per J. Caguioa, *En Banc*].

On this score, Section 11 of the 1991 Revised Rules on Summary Procedure, as well as Rule III, Subsection B, Section 1 of the 2022 Rules on Expedited Procedures in the First Level Courts, is relevant.

Section 11 of the 1991 Revised Rules on Summary Procedure provides that:

> III.
> Criminal Cases
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> Section 11. *How commenced.* – ***The filing of criminal cases falling within the scope of this Rule shall be either by complaint or by information:*** Provided, however, that in Metropolitan Manila and in Chartered Cities. such cases shall be commenced only by information, except when the offense cannot be prosecuted *de oficio*.
>
> The complaint or information shall be accompanied by the affidavits of the compliant and of his witnesses in such number of copies as there are accused plus two (2) copies for the court's files. If this requirement is not complied with within five (5) days from date of filing, the [case] may be dismissed. (Emphasis supplied)

Rule III, Subsection B, Section 1 of the 2022 Rules on Expedited Procedures in the First Level Courts, on the other hand, reads as follows:

> B. CRIMINAL CASES
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> Section 1. *How commenced; filing and service.* – ***The filing of criminal cases governed by the Rule on Summary Procedure shall either be by complaint or by information.***
>
> The complaint or information shall be accompanied by the judicial affidavits of the complainant and of his or her witnesses, in such number of copies as there are accused, plus ***one (1) copy for the court.***
>
> ***The complaint or information and other submissions of the parties may be filed with the court and served on the adverse party/ies, and judgments, resolutions, orders, and other court processes may be served to the parties, electronically with their consent, in accordance with the prevailing Rules and other Court issuances.*** (Emphasis supplied)

The foregoing are procedural rules promulgated by the Supreme Court in the exercise of its rule-making power granted by Article VIII, Section 5(5) of the 1987 Constitution.

Nonetheless, Article 91 of the Revised Penal Code is equally relevant to this discussion:

> Article 91. *Computation of prescription of offenses.* – The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and ***shall be interrupted by the filing of the complaint or information***, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
>
> The term of prescription shall not run when the offender is absent from the Philippine Archipelago. (Emphasis supplied)

On this score, it is notable that Article 91 mandates that the period of prescription is interrupted by the filing of the complaint ***or*** information.

It is important to note that, at the time the Revised Penal Code was approved, or on December 8, 1930 (effective on January 1, 1932), "the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace."[22]

At this juncture, it is proper to discuss the historical development of the conduct of preliminary investigation.

The 1940 Rules of Court expressly defined preliminary investigation in Rule 108, Section 1 as that inquiry or examination made in connection with a complaint or information imputing the commission of an offense cognizable by the Court of First Instance, viz.:

> Section 1. *Preliminary Investigation.* – ***Preliminary investigation is a previous inquiry or examination made before the arrest of the defendant by the judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance***, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial. (Emphasis supplied)

Section 2 of the same rule provides that every justice of the peace, municipal judge, or city fiscal has jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within their municipality or city, cognizable by the Court of First Instance, viz.:

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22 *Panaguiton, Jr. v. Department of Justice*, 592 Phil. 286, 295 (2008) [Per J. Tinga, Second Division]. (Citation omitted)

> Section 2. *Officers Authorized to Conduct Preliminary Investigation.* – ***Every justice of the peace, municipal judge or city fiscal shall have jurisdiction to conduct preliminary investigation of all offenses alleged to have been committed within his municipality or city, cognizable by the Court of First Instance.***
>
> The justice of the peace of the provincial capital or of the municipality in which the provincial jail is located, when directed by an order of the Court of First Instance, shall have jurisdiction to conduct such preliminary investigation of any offense committed anywhere within his province at the expense of the municipality wherein the same was committed. (Emphasis supplied)

Further, Section 4 of the same rule mandated judges of the Court of First Instance to conduct a preliminary investigation when a complaint or information is filed directly with it:

> Section 4. *Investigation by the Judge of the Court of First Instance.* – ***Upon complaint or information filed directly with the Court of First Instance, the judge thereof shall conduct a preliminary investigation*** in the manner provided in the following sections, and should he find a reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest and try the case on the merits. (Emphasis supplied)

In 1952, Republic Act No. 732[23] was enacted. It amended Section 1687 of the Administrative Code to provide for the authority of the provincial fiscal to conduct investigation in criminal matters:

> Section 2. Section sixteen hundred and eighty-seven of the Administrative Code is hereby amended to read as follows:
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> > Section 1687. *Authority of Fiscal to conduct investigation in criminal matter.* – ***A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. If the offense charged falls within the original jurisdiction of the Court of First Instance, the defendant shall not be entitled as a matter of right to preliminary investigation in any case where the provincial fiscal himself, after due investigation of the facts made in the presence of the accused if the latter so requested, shall have presented an information against:*** him in proper form and certified under oath by the said provincial fiscal that he conducted a proper preliminary

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[23] An Act To Further Amend Sections Sixteen Hundred and Seventy-Four and Sixteen Hundred and Eighty-Seven of The Revised Administrative Code (1952).

> investigation. To this end, he may, with due notice to the accused, summon reputed witnesses and require them to appear before him and testify and be cross-examined under oath by the accused upon the latter's request. The attendance or evidence of absent or recalcitrant witnesses who may be summoned or whose testimony may be required by the provincial fiscal under the authority herein conferred shall be enforced by proper process upon application to be made by the provincial fiscal to any Judge of First Instance of the Judicial District. But no witness summoned to testify under this section shall be compelled to give testimony to incriminate himself.
>
> The Provincial Fiscal shall also cause to be investigated the cause of sudden deaths which have not been satisfactorily explained and when there is suspicion that the cause arose from the unlawful acts or omissions of other persons, or from foul play. For that purpose, he may cause autopsies to be made and shall be entitled to demand and receive for purposes of such investigations or autopsies, the aid of the medico-legal section of the National Bureau of Investigation or of the District Health Officer and the different presidents of the sanitary divisions of the province. (Emphasis supplied)

In 1967, Republic Act No. 5180,[24] otherwise titled "An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and their Assistants, and by State Attorneys or their Assistants," was enacted. It provided for the statutory right to preliminary investigation. Section 1 thereof provides that "... no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants, or by a state attorney or his assistants, without first giving the accused a chance to be heard in a preliminary investigation conducted by him by issuing a corresponding subpoena."

In 1972, Presidential Decree No. 77[25] amended Section 1 of Republic Act No. 5180, viz.:

> 1. Section 1 of Republic Act No. 5180 is hereby amended to read as follows:
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> Section 1. Notwithstanding any provision of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines, no information for an offense

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24 Dated September 8, 1967.
25 Dated December 6, 1972.

> cognizable by the Court of First Instance shall be filed by the provincial or city fiscal or any of his assistants, or by the Chief State Prosecutor or his assistants, without first conducting a preliminary investigation[.]

In 1976, Presidential Decree No. 911[26] further amended Section 1 of Republic Act No. 5180, as amended by Presidential Decree No. 77. The amendments introduced focused on the procedure of preliminary investigation itself.

Meanwhile, Batas Pambansa Bilang No. 129, enacted in 1981, authorized judges of Metropolitan Trial Courts (MeTCs; except those in the National Capital Region), Municipal Trial Courts (MTCs), and Municipal Circuit Trial Courts (MCTCs) to conduct preliminary investigation of crimes alleged to have been committed within their respective territorial jurisdictions cognizable by the Regional Trial Court (RTC) in accordance with the procedure laid down in Presidential Decree No. 911.

The 1985 Rules on Criminal Procedure, in turn, provides that preliminary investigation may be conducted by the (1) provincial or city fiscals and their assistants, (2) judges of the MTCs and MCTCs, (3) national and regional state prosecutors, and (4) such other officers as may be authorized by law.[27] This was maintained in the 2000 Revised Rules on Criminal Procedure. In 2005, the Court removed the authority of judges of MTCs and MCTCs to conduct preliminary investigation.[28]

Nonetheless, in 2010, Republic Act No. 10071, otherwise known as the "Prosecution Service Act of 2010," was enacted. It created the NPS, "which shall be primarily responsible for the preliminary investigation and prosecution of all cases involving violations of penal laws under the supervision of the Secretary of Justice, subject to the provisions of Sections 4, 5 and 7 hereof."[29]

Cognizant of Republic Act No. 10071, the Court, on May 28, 2024, promulgated a Resolution in A.M. No. 24-02-09-SC recognizing the authority

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[26] Dated March 23, 1976.

[27] 1985 RULES ON CRIMINAL PROCEDURE (1985), Rule 112, sec. 2.

[28] *See* SC Administrative Matter No. 05-8-26-SC, August 30, 2005, sec. 2.

[29] REPUBLIC ACT NO. 10071, sec 3:

> Sec. 3. *Creation of the National Prosecution Service.* – There is hereby created and established a National Prosecution Service to be composed of the prosecution staff in the Office of the Secretary of Justice and such number of regional prosecution offices, offices of the provincial prosecutor and offices of the city prosecutor as are hereinafter provided, which shall be primarily responsible for the preliminary investigation and prosecution of all cases involving violations of penal laws under the supervision of the Secretary of Justice, subject to the provisions of Sections 4, 5 and 7 hereof.

of the DOJ to promulgate its own rules on the conduct of preliminary investigations and inquest proceedings. It repealed the pertinent provisions of Rule 112 of the 2000 Revised Rules on Criminal Procedure, as amended, inconsistent with the rules of the DOJ.

It is respectfully submitted that this historical examination of the pertinent legislative enactments and Court issuances reveal that the use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule III, Subsection B, Section 1 of 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, refers to the filing thereof for the conduct of preliminary investigation.

This is made even more evident when viewed from the fact that Article 91 of the Revised Penal Code was enacted in a factual milieu where "the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace."[30] It must be recalled that it was only in 1952 that Section 1687 of the Administrative Code was amended by Republic Act No. 732 to provide for the authority of the provincial fiscal to conduct investigation in criminal matters. Clearly, at the time of the enactment of Article 91 of the Revised Penal Code, the filing of the complaint or information principally contemplated a filing for purposes of the conduct of a preliminary investigation.

Concomitantly, the use of the phrase "complaint or information" in Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule III, Subsection B, Section 1 of the 2022 Rules on Expedited Procedures in the First Level Courts, for purposes of the tolling of the prescriptive period of offenses, must henceforth be construed to refer to the filing of the complaint or information before the prosecution office. It is the filing of such complaint or information before the prosecution office that institutes the criminal proceedings against the accused and tolls the prescriptive period of the offense.

Such a view is consistent with DOJ Department Circular No. 15, dated July 16, 2024, titled the "2024 DOJ-NPS Rules on Preliminary Investigations and Inquest Proceedings" and DOJ Department Circular No. 028, dated November 13, 2024, titled "2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation."

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[30] *Panaguiton, Jr. v. Department of Justice*, 592 Phil. 286, 295 (2008) [Per J. Tinga, Second Division]. (Citation omitted)

DOJ Department Circular No. 15 requires the conduct of a ***preliminary investigation*** proceeding for crimes or offenses where the penalty prescribed by law is ***at least six years and one day without regard to fine***.

On the other hand, DOJ Department Circular No. 028 provides that it governs the conduct of ***investigation*** of crimes or offenses in the NPS of the DOJ ***where the penalty prescribed by law is one day to six years, fine regardless of the amount, or both***.[31] Section 6 thereof provides that ***summary investigation*** is required for crimes or offenses where the penalty prescribed is ***one day to one year***, fine regardless of the amount or both. Further. Section 8 thereof provides that an ***expedited preliminary investigation*** is required where the penalty prescribed is ***one year and one day to six years***, without regard to fine, or both imprisonment and fine, if exclusively falling within the jurisdiction of first level courts such as MeTCs, MTCs, and MCTCs, ***provided that, if the cases are by law cognizable by the RTCs, they shall be subjected to regular preliminary investigation or inquest proceedings***.

I am aware of views expressed that such construction may lead to delay in the filing of the Information with the courts. To my mind, such concern is more apparent than real. After all, courts may hold the prosecutors accountable by the process and periods provided for under DOJ Department Circular Nos. 15 and 28.

In fine, I concur with the *ponencia* that (1) the prescription of criminal offenses under the 1997 NIRC where the commission of the violation is not known shall begin to run from its discovery, and (2) the prescriptive period of an offense is tolled by the filing of the complaint with the prosecutor for purposes of Article 91 of the Revised Penal Code, Section 11 of the 1991 Revised Rules on Summary Procedure, and Rule III, Subsection B, Section 1 of the 2022 Rules on Expedited Procedures in the First Level Courts.

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

ALEXANDER G. GESMUNDO
Chief Justice

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[31] 2024 DOJ-NPS Rules on Summary Investigation and Expedited Preliminary Investigation, Rule 1, sec. 2.