



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

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THIRD DIVISION

ALBERT K.S. TAN II,
 Petitioner,

G.R. No. 242866

Present:

CAGUIOA, J., *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

July 6, 2022

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DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ (Petition) filed under Rule 45 of the Rules of Court, assailing the Decision² dated March 23, 2018 (Assailed Decision) and the Resolution³ dated October 23, 2018 of the Court of Appeals⁴ (CA) in CA-G.R. SP No. 140576, which granted herein respondent People of the Philippines' Petition for *Certiorari*,⁵ and remanded the case to the Regional Trial Court (RTC) of Makati City for re-raffling and for further presentation of evidence by the parties.

¹ *Rollo*, pp. 10-31.

² *Id.* at 34-50. Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring.

³ *Id.* at 32-33.

⁴ Second Division and Former Second Division, respectively.

⁵ *Rollo*, pp. 127-152.

Facts

AT Intergroupe, Inc. (ATII), represented by its corporate president petitioner Albert K.S. Tan II (Tan), applied for a loan with the Development Bank of the Philippines (DBP) to finance its purchase of materials and equipment which would form part of an automotive painting and finishing system to be exported to Indonesia.⁶ DBP approved an omnibus credit facility in favor of ATII in the total amount of ₱260,500,000.00, secured by a real estate mortgage over a property located in Parañaque City.⁷ The components of the credit facility were (a) an Export Advance/Packing Credit Facility in the amount of ₱190.5 Million; (b) an Import/Domestic Regular/Standby Letter of Credit/Trust Receipt Facility in the amount of ₱55 Million; and (c) Domestic Bills Purchase Line in the amount of ₱15 Million.⁸ In availing of (b) or the Letter of Credit/Trust Receipt Facility, ATII applied for, and DBP accordingly issued Domestic Letters of Credit, which were used by ATII to pay its suppliers for the materials it needed for the automotive system.⁹

For its part, ATII, represented by Tan, also executed three (3) trust receipts in favor of DBP covering the materials to be purchased. All of the trust receipts expressly contained the following undertaking:

And in consideration thereof, I/WE HEREBY AGREE TO HOLD THE SAID GOODS IN TRUST FOR THE SAID BANK AS ITS PROPERTY, with permission to sell them for its account at not less than the invoice value plus all charges and expenses, but without authority to make any other disposition whatsoever of the said goods, or any part thereof (or the proceeds thereof of title thereto) or in any manner to encumber the same by means of conditional sale, pledge, chattel mortgage, assignments, etc. In case of sale, I/WE further agree to hand the proceeds as soon as received to DBP, to apply against the relative acceptance (as described above) and for the payment of any other indebtedness of mine/ours whether due or not yet due to DBP.¹⁰

The items subject of the trust receipts were delivered to ATII.¹¹ ATII subsequently defaulted on the payment of its loan, and despite repeated demands by DBP, ATII failed to either pay the loan or turn over the items subject of the trust receipts to DBP.¹²

⁶ Id. at 35.

⁷ See Omnibus Credit Facility Agreement, CA *rollo*, pp. 83-95.

⁸ Id. at 84-85, 98, and 120.

⁹ Id. at 98-99.

¹⁰ Id. at 67 and 100.

¹¹ *Rollo*, p. 35.

¹² Id.; see also CA *rollo*, pp. 105-107.



DBP filed a criminal complaint¹³ against Tan and the other officers of ATII for three (3) counts of *Estafa* under Article 315 of the Revised Penal Code (RPC), in relation to Presidential Decree No. (PD) 115,¹⁴ before the Makati City Prosecutor's Office (OCP Makati). However, the complaint was dismissed because the OCP Makati found ATII's liability to DBP to be only civil in nature.¹⁵ DBP filed a Petition for Review with the Department of Justice (DOJ) praying that the criminal complaint be reinstated.¹⁶ The DOJ initially affirmed the findings of the OCP Makati, but subsequently reversed itself and granted DBP's Motion for Reconsideration.¹⁷

Hence, an Information¹⁸ against Tan was filed before and raffled to the RTC of Makati City, Branch 143, the accusatory portion of which states:

On the 7th of August 2007, in the [C]ity of Makati, the Philippines, accused as the responsible officer of [ATII] having executed the following to wit:

IC Nos.	TR Nos.	Description of the Goods covered by the Trust Receipt	Outstanding Principal Balance of Trust Receipts
DL 7010	TR[-]7022	One (1) unit Fabricated Stainless Steel Housing 24x46x56 Code No. P-ATI-054-07	[P]9,605,400[.00]
DL 7011	TR-7025	One (1) complete set of Overhead Trolley Conveyor Code No. SO-00688, One (1) Stainless Rail Code No. SO-00679 and One (1) Stainless Casing with Ultraviolet Indexer Hanger Code No. 00687	[P]38,444,000[.00]
DL 7012	TR-7030	Five (5) sets of Pallet Chain Conveyor Code No. PST-00347, Five (5) sets assembly of LPG Heating Equipment Code No. PUI-44354, Twenty-four (24) boxes PU Injection M/C Code No. SRI-004560 and Twenty-four (24) pallets DUCT Code No. IPH-3342	[P]6,312,050[.00]
		Total Amount	[P]54,361,450[.00]

¹³ See Affidavit Complaint, CA rollo, pp. 97-103.

¹⁴ PROVIDING FOR THE REGULATION OF TRUST RECEIPT TRANSACTIONS, otherwise known as the "TRUST RECEIPTS LAW," signed on January 29, 1973.

¹⁵ Rollo, pp. 12 and 35.

¹⁶ Id.

¹⁷ Id. at 36.

¹⁸ CA rollo, pp. 108-110.

in favor of the complainant [DBP] Trade Operations Financial Institutions herein represented by Ma. Teresita S. Tolentino with the express obligation on the part of the accused to sell aforesaid goods and to remit the sales proceed (sic) thereof or to return the goods, if unsold, to complainant on or before November 2007, but the accused once in possession of the same, far from complying with their (sic) obligation and with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same to their (sic) personal use and benefit despite demands made upon respondents (sic), failed and refused and still fail and refuse to remit the sale proceeds amounting to [P]54,361,450.00 or to return the goods equivalent to the value thereof, if unsold, to the damage and prejudice of complainant bank.

CONTRARY TO LAW.¹⁹

Tan filed a Motion to Dismiss²⁰ praying that the Information against him be quashed because his right to speedy disposition of cases was violated, and that the transaction between ATII and DBP was a simple loan transaction which is not criminal in nature. He argued that his case “languished in the preliminary investigation stage for six (6) years”²¹ and that the use of the trust arrangement in DBP’s Omnibus Credit Facility Agreement was an “unjust, inequitable and reprehensible contract of adhesion x x x to facilitate the collection of loans”²² despite other securities already existing to cover all of ATII’s obligations. Despite the filing of his motion, Tan was arraigned, at which he refused to enter a plea, and a plea of “not guilty” was entered for him.²³ The prosecution was given ten (10) days to file a Comment on Tan’s Motion to Dismiss.²⁴

Ruling of the RTC

On October 7, 2014, the RTC issued a Resolution²⁵ granting Tan’s Motion to Dismiss. The RTC explained:

Be that as it may, a Trust Receipt is considered as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased. The goods imported by the importer and retail dealer through the bank’s financing remain of their own property and risk and the old capitalist orientation of putting them in jail for estafa for nonpayment of the secured loan through the fiction of the trust receipt should no longer be permitted in this day and age. x x x

¹⁹ Id. at 108-109.

²⁰ Id. at 111-127.

²¹ Id. at 111-112. Emphasis omitted.

²² Id. at 122-123.

²³ *Rollo*, p. 13.

²⁴ Id.

²⁵ Id. at 79-81. Rendered by Judge Maximo M. De Leon.



A letter of credit-trust receipt arrangement is endowed with its own distinctive features and characteristics. Under that set-up, a bank extends a loan by the letter of credit, with the trust receipt as a security for the loan. In other words, the transaction involves a loan feature represented by the letter of credit, and a security feature which is in the covering trust receipt. If under the trust receipt, the bank is made to appear as the owner, it [is] but an artificial expedient, more of legal fiction than fact, for [if] it [is] really so, it could dispose of the goods in any manner it wants, which it cannot do, just to give consistency with the purpose of the trust receipt giving a stronger security for the loan obtained by the importer. To consider the bank as the true owner from the inception of the transaction would be to disregard the loan feature. The trust receipt arrangement does not convert the bank into an investor; it remains lender and creditor. This is so because the bank had previously extended a loan which the letter of credit represents to the importer. By that loan, the importer should be the real owner of the goods. A trust receipt, therefore, is a security arrangement, pursuant to which a bank acquires a security interest in the goods. It secures an indebtedness, and there can be no such thing as security interest that secure[s] an obligation x x x.²⁶

On October 23, 2014, DBP, with the conformity of the public prosecutor, filed a Motion for Reconsideration²⁷ questioning the dismissal of the case. Later, on October 28, 2014, DBP filed an Amended Motion for Reconsideration with Urgent Motion to Inhibit Presiding Judge²⁸ (Amended Motion). In a Resolution²⁹ dated March 2, 2015, the RTC denied DBP's motions.

On May 22, 2015, the Office of the Solicitor General (OSG) filed with the CA a Motion for Extension of Time to File Petition for *Certiorari*³⁰ which was granted on November 3, 2015.³¹ Within the extended period, the OSG filed a Petition for *Certiorari*³² assailing the dismissal of the criminal case against Tan.

Ruling of the CA

In its Assailed Decision, the CA reversed the RTC's Resolutions dated October 7, 2014 and March 2, 2015. The CA found that the transactions between ATII and DBP fall under the trust receipt transactions contemplated by PD 115. Contrary to the RTC's Resolutions, the CA said that PD 115 is not "an archaic piece of legislation which has no more use in today's commercial and economic transactions."³³ It found that DBP offered

²⁶ Id. at 80-81.

²⁷ Id. at 82-90.

²⁸ Id. at 91-100.

²⁹ Id. at 113-120.

³⁰ CA *rollo*, pp. 2-10.

³¹ Id. at 130-136.

³² Id. at 25-52.

³³ Id. at 43.

ample evidence during preliminary investigation which established probable cause to prosecute Tan for *Estafa* under Article 315 of the RPC in relation to PD 115,³⁴ and the outright dismissal of the case was improper.

As regards Tan's claim of violation of his right to speedy disposition of cases, the CA found nothing on record to show what happened during the period before the filing of the Information against Tan. Hence, the facts do not demonstrate any undue delay.³⁵

In all, the CA found that the outright dismissal of the case against Tan was done with grave abuse of discretion, and that the presiding judge of the RTC should have inhibited himself from further acting on the case upon motion of DBP, considering that his bias and partiality were evident in his dismissal of the case despite the existence of probable cause.³⁶ It also subsequently found Tan's motion for reconsideration lacking in merit, since it merely reiterated the issues already passed upon in the Assailed Decision.³⁷

Hence, this Petition.

Issues

The Court is asked to resolve the following issues:


1. Whether the Petition raises factual issues which are not proper in a petition for review on *certiorari* under Rule 45 of the Rules of Court;
2. Whether the CA committed grave abuse of discretion when it reversed the RTC's dismissal of the criminal case against Tan;
3. Whether there was a long and oppressive delay in the resolution of the preliminary investigation which violated Tan's right to speedy disposition of cases;
4. Whether double jeopardy had already set in in favor of Tan;
5. Whether the CA erred in declaring that the RTC should have granted the prosecution's Motion to Inhibit; and

³⁴ Id. at 44.

³⁵ Id. at 47.

³⁶ Id. at 47-49.

³⁷ See Resolution dated October 23, 2018, *supra* note 3.



6. Whether the CA committed grave abuse of discretion when it granted the OSG's Motion for Extension of Time to File Petition for *Certiorari*.

Ruling of the Court

The Petition has no merit.

At the outset, on the procedural matter, the OSG claims that the errors raised by Tan involve factual issues and entails review of evidentiary matters, which is inappropriate in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court disagrees.

Tan's Petition raises issues of law, particularly the proper interpretation and application of the prevailing rules on double jeopardy, inordinate delay *vis-à-vis* violations of one's right to speedy disposition of cases, and the authority of the CA to grant an extension of time to file a petition for *certiorari* under Rule 65 of the Rules of Court. Any allegations of fact were merely incidental and necessary in order to give context to the questions of law involved here. Hence, the Court deems it proper to proceed with resolving the substantial issues raised by the parties.

The CA rightly reversed the dismissal of the case by the RTC

Tan argues that the CA committed grave abuse of discretion when it reversed the RTC's Resolution dismissing the criminal case against him. According to Tan, the OSG failed to show grounds before the CA for *certiorari* to issue. On the other hand, the OSG argues that the CA did not act with abuse of discretion; rather, it was the RTC which abused its discretion when it dismissed the case against Tan outright. To the OSG, the outright dismissal deprived the State of its inherent prerogative to prosecute criminal cases, as well as its right to due process. The OSG points out that there was ample evidence to support a finding of probable cause for violation of PD 115, in relation to Article 315 of the RPC, against Tan, considering that the following were presented during preliminary investigation: (a) trust receipts bearing Tan's signature; (b) DBP's demand letter to Tan; (c) Tan's own admission that he received the goods in trust for DBP; and (d) Tan's failure to hand over to DBP the proceeds of the sale or the goods covered by the trust receipt.

The Court agrees with the OSG.



At its core, the RTC's decision to dismiss the criminal case against Tan is the notion that the transaction between ATII and DBP was a mere loan, and failure to abide by the terms and conditions of the trust receipts securing the same amounts only to a civil liability. The RTC primarily cited the case of *Sia v. People*³⁸ (*Sia*) as its basis.

First, its reliance on *Sia* is unwarranted. This case involved a trust receipt arrangement initiated **prior to the promulgation of PD 115**, and the Court, through then Associate Justice Pacifico P. De Castro, was tasked to resolve the question of whether the failure to turn over the money or goods subject of a trust receipt in that case would constitute *estafa* independently of PD 115, against an individual who was merely an officer of the entrustee, and not himself/herself individually a party to the trust receipt. In that case, the Court said that **the trust receipt arrangement gave rise only to civil liability before the promulgation of PD 115, since the provisions of Article 315(1)(b)³⁹ of the RPC did not cover the precise situation at hand.**

Second, PD 115 is categorical in its penal clauses, leaving no room for the RTC's interpretation that it imposes only civil liability upon an erring entrustee. Section 13 of PD 115 states:

Section 13. *Penalty clause.* – **The failure of an entrustee to turn over** the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed **of in accordance with the terms of the trust receipt shall constitute the crime of estafa**, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense. (Emphasis supplied)

³⁸ 206 Phil. 571 (1983).

³⁹ Article 315. Swindling (*Estafa*). – x x x

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

x x x x

Relevantly, Section 4 of PD 115 defines a trust receipt transaction as follows:

Section 4. *What constitutes a trust receipt transaction.* – A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as trustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the trustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: *Provided*, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the trustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or
2. In the case of instruments, (a) to sell or procure their sale or exchange; or (b) to deliver them to a principal; or (c) to effect the consummation of some transactions involving delivery to a depository or register; or (d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

PD 115 remains good law, there being no subsequent law repealing the same, nor any decision by the Court striking it down as unconstitutional. In fact, in a number of cases, the Court upheld and applied the provisions of PD 115 to cases similar to this, which involve failure of an trustee to turn over to the entruster the amounts or goods covered by a trust receipt.



For instance, in *Ng v. People*,⁴⁰ the Court found that therein petitioner was only civilly liable because there was reasonable doubt that he was guilty of *estafa*. The Court also clarified the nature of trust receipt transactions and the coverage and application of PD 115: that it applies regardless of whether the transaction is foreign or domestic, so long as the goods covered by the trust receipt are intended for sale.⁴¹

This same principle was applied in *Land Bank of the Philippines v. Perez, et al.*,⁴² where the goods covered by the trust receipts were not meant to be sold, but were materials to be used for construction projects. The Court also clarified the essential elements which must be proven in order to support a charge of *estafa* under Article 315(1)(b) of the RPC in relation to PD 115, noting that dishonesty or abuse of confidence was among such elements:

In order that the respondents “may be validly prosecuted for *estafa* under Article 315, paragraph 1(b) of the [RPC], in relation [to] Section 13 of the Trust Receipts Law, the following elements must be established: (a) they received the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to [the entrustor], or to return the goods if not sold; (b) they misappropriated or converted the goods and/or the proceeds of the sale; (c) they performed such acts with abuse of confidence to the damage and prejudice of Metrobank; and (d) demand was made on them by [the entrustor] for the remittance of the proceeds or the return of the unsold goods.”⁴³

Finally, as recent as September 5, 2018, the Court in *Osental v. People*⁴⁴ affirmed the conviction of an entrustee for *estafa* under Article 315(1)(b) of the RPC, in relation to PD 115.

Aside from its bare conclusion that the trust receipts between ATII and DBP gave rise only to civil liability, the RTC offered no analysis — whether in its Resolution dated October 7, 2014 (which granted Tan’s Motion to Dismiss) or in the Resolution dated March 2, 2015 (which denied the prosecution’s Motion for Reconsideration and Amended Motion) — on whether the evidence for the prosecution supported a finding of probable cause.

In its Assailed Decision, the CA observed that the following were offered by DBP during preliminary investigation in support of its complaint against Tan: (a) the trust receipts bearing the genuine signature of Tan; (b) the demand letter of DBP to return the goods; and (c) an admission by Tan

⁴⁰ 633 Phil. 304 (2010).

⁴¹ Id. at 318.

⁴² 687 Phil. 106 (2012).

⁴³ Id. at 120-121. Citations omitted.

⁴⁴ G.R. No. 225697, September 5, 2018, 879 SCRA 520.



himself that he received the goods in trust for DBP.⁴⁵ The CA also noted that the trust receipts categorically stated:

And in consideration thereof, I/WE HEREBY AGREE TO HOLD THE SAID GOODS IN TRUST FOR THE SAID BANK AS ITS PROPERTY, with permission to sell them for its account at not less than the invoice value plus all charges and expenses, but without authority to make any other disposition whatsoever of the said goods, or any part thereof (or the proceeds th[e]reof of title thereto) or in any manner [to] encumber the same by means of conditional sale, pledge, chattel mortgage, assignments, etc. In case of sale, I/WE further agree to hand the proceeds as soon as received to DBP, to apply against the relative acceptance (as described above) and for the payment of any other [indebtedness] of mine/ours whether due or not yet due to DBP.⁴⁶

The goods subject of the trust receipts were meant for sale, as they were to be exported to Indonesia as part of an automotive painting and finishing system.⁴⁷ This is consistent with Tan's own admission in his Motion to Dismiss filed before the RTC, where he stated that the goods were subject of

x x x a Sales and Purchase Agreement on Electrodeposition System under Purchase Contract No. 011105 with Broadwater (HK) Ltd ("Broadwater" for brevity) for the supply, fabrication and installation of a 10-step Cathodic Electro-Deposition Primer ("Contract" for brevity), complete with air-blow and oven drying facility including handling system (automotive painting and finishing system) to service the needs of Astra Indonesia. x x x⁴⁸ (Underscoring omitted)

The foregoing supports a finding of probable cause for *Estafa* under Article 315(1)(b) of the RPC, in relation to PD 115. It does not matter that the goods to be purchased using the credit extended by DBP to ATII would first be processed as part of the automotive painting and finishing system, since Section 4 of PD 115, in defining a trust receipt transaction, covers goods which are held by the trustee for the following purpose:

1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) **to manufacture or process the goods with the purpose of ultimate sale: *Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the trustee has complied fully with his obligation under the trust receipt;*** or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale[.] (Emphasis supplied)

⁴⁵ *Rollo*, p. 44.

⁴⁶ *Id.* at 42.

⁴⁷ *Id.* at 35.

⁴⁸ *Id.* at 60.

In conclusion, it was indeed error for the RTC to outrightly dismiss the criminal case against Tan.

Double jeopardy had not set in

Tan argues that the dismissal of the criminal case against him had already become final and executory, and operated as an acquittal. He points out that while the prosecution's original Motion for Reconsideration of the RTC's Resolution dated October 7, 2014 (which granted Tan's Motion to Dismiss) was filed within the reglementary period, the prosecution's Amended Motion was filed one day late.⁴⁹ According to Tan, since the Amended Motion had the effect of abandoning the original Motion for Reconsideration, the RTC's Resolution granting his Motion to Dismiss had become final and executory. He concludes that the prosecution's appeal to the CA violated Tan's right to double jeopardy.

The Court disagrees.

First of all, the Court does not subscribe to Tan's conclusion that the prosecution's Motion for Reconsideration was filed out of time because a subsequent Amended Motion was filed beyond the reglementary period by one day. Such a rigid interpretation of the rules should not be allowed lest parties be unduly silenced and substantial justice be denied.

More importantly, for the proscription against double jeopardy to operate, the following requisites must be present:

x x x (1) a valid indictment, (2) before a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent.⁵⁰

In Tan's case, the fifth requisite is lacking. It is clear that he was neither convicted nor acquitted by the trial court, since the criminal case against him was not concluded in a full-blown trial. Neither was the case dismissed or terminated without his express consent. On the contrary, it was dismissed upon his instance, through his Motion to Dismiss. Hence, double jeopardy does not attach.

The Court is not unaware of the rule that double jeopardy attaches even if the dismissal of the case was upon the accused's own motion, when the dismissal is based upon insufficiency of evidence or violation of the right

⁴⁹ Id. at 17.

⁵⁰ *Kho v. Summerville General Merchandising & Co., Inc.*, G.R. No. 213400, August 4, 2021, p. 9. Citation omitted.



to speedy disposition of cases.⁵¹ The reason for this, however, is that such dismissals operate as acquittals based on the merits. In contrast, the dismissal of the case against Tan was the RTC's baseless interpretation of PD 115, without an analysis of the sufficiency of the prosecution's evidence. The RTC's Resolution was also silent on the supposed issue of violation of Tan's right to speedy disposition of cases, which only goes to show that the dismissal of the case was not premised thereon. Indeed, no such conclusion can be made in Tan's case, as will be further discussed below.

Finally, the Court also observes that the RTC's dismissal of the case against Tan, in disregard of the law and of prevailing jurisprudence, deprived the prosecution of an opportunity to present evidence in support of its case. This all the more makes it appropriate to reverse the RTC's dismissal of the case lest the Court sanction a miscarriage of justice.

Tan failed to establish a violation of his right to speedy disposition of cases

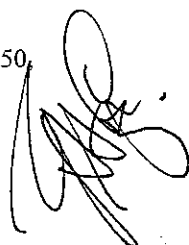
Tan faults the OCP Makati and the DOJ for taking a total of six (6) years before finally terminating the preliminary investigation of the charges against him. He argues that there were no controversial issues to be resolved in his case, considering that it was merely a violation of PD 115, in relation to Article 315 of the RPC. Furthermore, three (3) years of that period were used up by the DOJ in resolving DBP's Motion for Reconsideration, without explanation for the delay.

Preliminarily, the Court observes that Tan's Petition does not contain a statement or explanation of the salient developments of the proceedings before the OCP Makati and the DOJ. However, among the attachments of his petition is his Motion to Dismiss filed before the RTC, in which he alleges:

8. The unusually long and oppressive delay in the resolution of the instant case in the **preliminary investigation** from the time it was filed in **October 2008** before the [OCP Makati] until the instant Resolution by the DOJ in **March 2014** which spanned for almost **six (6) years**, is violative of the constitutional right of the accused to due process of law and speedy resolution of the case, among others;

8.1. The Complaint-Affidavit in the instant case as can be seen on the records was filed before the [OCP Makati] on **October 16, 2008**;

⁵¹ *People v. Sandiganbayan (Fourth Division)*, G.R. Nos. 232197-98, December 5, 2018, 888 SCRA 550, 561-562.



8.2. The [OCP Makati] thereafter issued Resolution dismissing the case for lack [of] probable cause. The Private Complainant (then Complainant before the OCP) filed its Motion for Reconsideration which was denied by the [OCP Makati];

8.3. The Private Complainant (then Complainant before the [OCP Makati]) elevated the case to the DOJ by way of a Petition for Review. The DOJ initially dismissed the appeal of the Private Complainant in a Resolution dated **May 23, 2011**;

8.4. The Private Complainant (then Complainant-Appellant before the DOJ) filed a Motion for Reconsideration which took the DOJ **three (3) years** to resolve before the same was granted in the resolution dated **March 27, 2014**[.]⁵² (Emphasis adopted from the original)

In the case of *Cagang v. Sandiganbayan, 5th Division, Quezon City, et al.*⁵³ (*Cagang*), the Court cautioned that inordinate delay in the termination of a preliminary investigation which would result in a dismissal of the case against the accused is not determined through “mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.”⁵⁴ *Cagang* further instructs that the Court must consider the time periods prescribed by the applicable laws or rules for the proceeding in question to determine whether there was indeed a delay.⁵⁵

Relevant to this case are Sections 3 and 4, Rule 112⁵⁶ of the Rules of Court which set time limits for the conduct of the various stages in the

⁵² *Rollo*, pp. 53-54.

⁵³ 837 Phil. 815 (2018).

⁵⁴ *Id.* at 877.

⁵⁵ *Id.* at 868-869.

⁵⁶ These Sections provide, in part:

Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

x x x x

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he[*/she*] finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

x x x x

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his[*/her*] counter-affidavit and that of his[*/her*] witnesses and other supporting documents relied upon for his[*/her*] defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him[*/her*] to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

preliminary investigation process. While the 2000 National Prosecution Service Rule on Appeal⁵⁷ does not provide time periods within which the DOJ must act on appeals from the findings of the Chief State Prosecutor, Regional State Prosecutors and Provincial/City Prosecutors in cases subject of preliminary investigation or reinvestigation, it is expected that the DOJ's action on such appeals will be done within a reasonable period of time.

In this case, Tan's allegations and the records of this case, *vis-à-vis* the time periods prescribed in Rule 112, are insufficient to support a finding that there was a violation of Tan's right to speedy disposition of cases. Tan counts the supposed six (6)-year delay from the filing of the Complaint Affidavit until the final resolution by the DOJ on the appeal from the OCP Makati's resolution. This is precisely the "mathematical reckoning" adverted to in *Cagang*. The six-year period Tan complains of does not take into consideration the time periods allowed to the parties for filing their respective pleadings, such as the respondent's Counter-Affidavit as required by Section 3 of Rule 112. While enveloped within the entire process of preliminary investigation, such periods of time set in favor of the parties should not be taken against the OCP Makati nor the DOJ.

Neither can the Court fault the complainant, DBP, for filing a Petition for Review before the DOJ, thereby prolonging the preliminary investigation stage against Tan. Seeking a review of the OCP Makati's initial dismissal of the case is a remedy allowed by the 2000 National Prosecution Service Rule

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- (e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

- (f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Section 4. *Resolution of investigating prosecutor and its review.* – If the investigating prosecutor finds cause to hold the respondent for trial, he/[she] shall prepare the resolution and information. He/[She] shall certify under oath in the information that he/[she], or as shown by the record, an authorized officer, has personally examined the complainant and his/[her] witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him/[her]; and that he/[she] was given an opportunity to submit controverting evidence. Otherwise, he/[she] shall recommend the dismissal of the complaint.

Within five (5) days from his/[her] resolution, he/[she] shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his/[her] deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

x x x x

⁵⁷ DOJ Department Circular No. 70, July 3, 2000.

on Appeal and DBP was acting within its rights when it availed of the said remedy. It was a necessary step in correcting the initial erroneous finding of lack of probable cause by the OCP Makati.

The CA erred in declaring that the RTC judge should have inhibited from resolving the case against Tan

Tan argues that the presiding judge of the RTC correctly denied the prosecution's Amended Motion for lack of factual and legal basis therefor. On the other hand, the OSG claims that, (a) disregarding the DOJ resolution finding probable cause against Tan, and (b) outrightly dismissing the Information against him, are acts which constitute bias and pre-judgment of the criminal case, and the presiding judge should not have refused to inhibit himself.

The Court disagrees that the presiding judge of the RTC should be faulted for not inhibiting from the case, as prayed for by the prosecution.

Section 1, Rule 137 of the Rules of Court provides:

Section 1. *Disqualification of judges.* – No judge or judicial officer shall sit in any case in which he[*/she*], or his[*/her*] wife[*/husband*] or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he[*/she*] is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he[*/she*] has been executor, administrator, guardian, trustee or counsel, or in which he[*/she*] has presided in any inferior court when his[*/her*] ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his[*/her*] sound discretion, disqualify himself[*/herself*] from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied)

Two kinds of inhibition are contemplated by the above provision. The first paragraph refers to compulsory inhibition, while the second paragraph refers to voluntary inhibition. The first paragraph effectively disqualifies a judge from hearing a case where any of the instances enumerated is present. On the other hand, the second paragraph explicitly submits the disqualification to the judge's exercise of his or her sound discretion. In this case, considering that none of the grounds in the first paragraph were alleged, the RTC judge in this case was being asked to inhibit on the basis of the second paragraph.



Jurisprudence has established various guidelines in the evaluation of a judge's exercise of discretion in deciding for or against voluntary inhibition. One consideration is whether the party moving for a judge's inhibition was deprived a fair and impartial trial.⁵⁸ Another is whether the judge had an interest, personal or otherwise, in the prosecution of the case in question.⁵⁹ The Court also looks into whether the bias and prejudice were shown to have stemmed from an extrajudicial source, the result of which the judge's opinion on the merits was formed on the basis of something outside of what the judge learned from participating in the case.⁶⁰ In every case, bias and prejudice, to be considered valid grounds for voluntary inhibition of judges, must be proved with clear and convincing evidence; bare allegations of partiality will not suffice.⁶¹

Here, the outright dismissal of the criminal case against Tan was indeed gravely erroneous. However, the dismissal was through the grant of a Motion to Dismiss filed by Tan, a relief recognized and made available to the accused under Rule 117 of the Rules of Court. Furthermore, it was never alleged, and it does not appear in the records, that the judge's dismissal of the case against Tan was due to his own interest in the outcome of the case or was based on extraneous information obtained outside of judicial proceedings. In other words, there is not enough evidence to conclude that the RTC judge was clearly biased or prejudiced against the prosecution and should have inhibited himself from resolving the case.

To be clear, while the CA erred in this respect, it is not enough to reverse its Assailed Decision, as the essence thereof is consistent with applicable laws and prevailing jurisprudence.

***The CA did not err in granting the
OSG's Motion for Extension of Time
to File Petition for Certiorari***

Finally, Tan also faults the CA for granting the Motion for Extension of Time to File Petition for *Certiorari* filed by the OSG. Tan cites *Laguna Metts Corporation v. Court of Appeals, et al.*,⁶² where the Court explained that A.M. No. 07-7-12-SC amended Section 4, Rule 65 of the Rules of Court, prohibiting the grant of extensions of time to file petitions for *certiorari*.⁶³

⁵⁸ *Te v. Court of Appeals*, 400 Phil. 126, 141 (2000).

⁵⁹ *Chin v. Court of Appeals*, 456 Phil. 440, 452 (2003).

⁶⁰ *Id.* See also *Gochan v. Gochan*, 446 Phil. 433 (2003), and *People v. Court of Appeals*, 369 Phil. 150, 157 (1999).

⁶¹ *Gochan v. Gochan*, *id.* at 459-460. See also *Republic of the Philippines v. Sereno*, 831 Phil. 271, 378 (2018), *Chavez v. Marcos*, 834 Phil. 219, 276-277 (2018), and *People v. Court of Appeals*, *id.*

⁶² 611 Phil. 530 (2009).

⁶³ *Id.* at 535-537.



Indeed, as amended, Section 4 of Rule 65 requires that petitions for *certiorari* shall be strictly filed within sixty (60) days from notice of judgment or order denying a motion for reconsideration. However, the Court has already explained that the amendment of Section 4 of Rule 65 does not operate to prohibit any and all extensions of time to file a petition for *certiorari* without regard to the particularities of each case. In *Mid-Islands Power Generation Corp. v. Court of Appeals, et al.*⁶⁴ — which was also cited by the CA in its Resolution⁶⁵ dated November 3, 2015 granting the OSG's motion for time — the Court said:

Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*, we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, *ipso facto*, make the filing of a motion for extension to file a Rule 65 petition absolutely prohibited. We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.

Indeed, we have relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest. Thus, in *Tan v. Ballena*, we pronounced:

It is a well-settled principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. In deciding a case, the appellate court has the discretion whether or not to dismiss the same, which discretion must be exercised soundly and in accordance with the tenets of justice and fair play, taking into account the circumstances of the case. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

The present Petition involves one of those exceptional cases in which relaxing the procedural rules would serve substantial justice and safeguard strong public interest. It concerns the operations and management of the Calapan Diesel Power Plant — a power-generating facility that supplies electricity to Oriental Mindoro. It was alleged that the dispute between the parties had already resulted in a reduced generation of power, which was supposedly producing electricity at less than 50% of its capacity. A TRO had already been issued previously, as there was an impending brownout in the entire province of Oriental Mindoro.

⁶⁴ 683 Phil. 325 (2012).

⁶⁵ *Supra* note 30.



Consequently, in order to protect strong public interest, this Court deems it appropriate and justifiable to relax the amendment of Section 4, Rule 65 under A.M. No. 07-7-12-SC, concerning the reglementary period for the filing of a Rule 65 petition. Considering that the imminent power crisis is an exceptional and meritorious circumstance, the parties herein should be allowed to litigate the issues on the merits. Furthermore, we find no significant prejudice to the substantive rights of the litigants as respondent was able to file the Petition before the CA within the 15-day extension it asked for. We therefore find no grave abuse of discretion attributable to the CA when it granted respondent Power One's Motion for Extension to file its Petition for *Certiorari*.⁶⁶

The CA, in granting the OSG's motion for time, observed that: (a) the language of PD 115 and decided cases⁶⁷ involving violations thereof acknowledge that failure to comply with the terms and conditions of trust receipts involves public interest; and (b) no significant prejudice to the substantive rights of the litigants would be caused by granting a fifteen (15)-day extension to the OSG, as prayed for. The Court agrees with these observations and finds that there was enough basis for the CA to grant an extension of time for the OSG to file its Petition for *Certiorari*.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated March 23, 2018 and the Resolution dated October 23, 2018 of the Court of Appeals in CA-G.R. SP No. 140576 are hereby **AFFIRMED**.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁶⁶ *Mid-Islands Power Generation Corp. v. Court of Appeals, et al.*, supra note 64, at 336-338.

⁶⁷ *Ching v. The Secretary of Justice*, 517 Phil. 151, 175 (2006), citing *Colinares v. Court of Appeals*, 394 Phil. 106, 119-120 (2000).

WE CONCUR:


HENRI JEAN PAUL B. INTING
Associate Justice

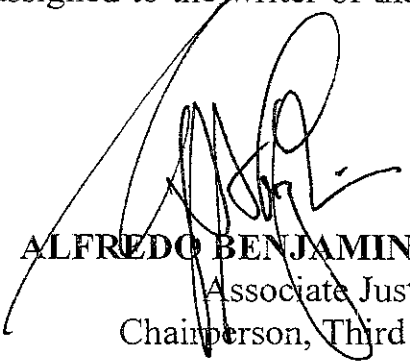

SAMUEL H. GAERLAN
Associate Justice


JADAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

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.


ALFREDO BENJAMIN S. CAGUTOA
Associate Justice
Chairperson, Third Division

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.


ALEXANDER G. GESMUNDO
Chief Justice