



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated 21 September 2022, which reads as follows:

“G.R. Nos. 227282-87 (*Celia C. Cuasay vs. Sandiganbayan [Seventh Division], People of the Philippines*). - Before the Court is a Petition for *Certiorari*¹ under Rule 65, Rules of Court, seeking to annul and set aside the 20 June 2016² and 8 August 2016³ Resolutions of the Sandiganbayan, Seventh Division, in Case Nos. SB-16-CRM-0173 to SB-16-CRM-0178, titled “*People of the Philippines v. Rodolfo Garong Valencia, et al.*,” which denied, among others, petitioner Celia C. Cuasay’s two Motions for Judicial Determination of Probable Cause⁴ both dated 4 May 2016, and subsequent Motion for Reconsideration⁵ dated 12 July 2016.

The instant case stemmed from the results of the investigation conducted by the National Bureau of Investigation (NBI), and recommendation filed with the Office of the Ombudsman (OMB) on 9 November 2013 for the prosecution of several public officers and private individuals, including Cuasay, for their alleged involvement in the Priority Development Assistance Fund (PDAF) scam.⁶ The NBI found that Cuasay, as the authorized representative of Representative Rodolfo G. Valencia of the First District of Oriental Mindoro in the 8th, 13th, 14th, and 15th Congress of the Philippines, received an aggregate amount of PhP 2,400,000.00 as Rep. Valencia’s commission for the projects chargeable to his PDAF in 2008.⁷

¹ *Rollo*, pp. 3-41.

² Penned by Chairperson Alexander G. Gesmundo (now the Chief Justice of this Court) and Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Zaldy V. Trespeses; *id.* at 42-59.

³ Penned by Chairperson Alexander G. Gesmundo (now the Chief Justice of this Court) and Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Zaldy V. Trespeses; *id.* at 60-67.

⁴ *Id.* at 950-997.

⁵ *Id.* at 1028-1042.

⁶ *Id.* at 68-88.

⁷ *Id.* at 77.

Pursuant to the recommendation of the NBI, the OMB conducted a preliminary investigation, docketed as OMB-C-C-13-0415. Allegedly, Cuasay was not notified of the proceedings; hence, she was not able to participate in the proceedings before the OMB.⁸

After the preliminary investigation, the OMB issued a Resolution⁹ dated 22 June 2015, finding probable cause against several public officers and private individuals, including Cuasay, for three counts of violation of Section 3 (e), Republic Act No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act, and three counts of Malversation of Public Funds under Article 217, Revised Penal Code (RPC).¹⁰ Particularly, the OMB found that Cuasay was a co-conspirator because she allegedly received Rep. Valencia's commissions for the projects chargeable to his PDAF.¹¹ The other respondents in OMB-C-13-0415 filed their corresponding motions for reconsideration, which the OMB denied in its 10 February 2016 Order.¹²

On 8 April 2016, three Informations¹³ for violations of Sec. 3 (e), R.A. No. 3019, and three Informations¹⁴ for Malversation of Public Funds penalized under Art. 217, RPC, were filed before the Sandiganbayan against several public officers and private individuals, including Cuasay. Specifically, Cuasay was accused of "submitting indorsement letter signed by **Valencia** to the office of **Napoles** [Janet Napoles] and receiving from Napoles and/or her cohorts kickbacks or commissions for **Valencia** and for herself."¹⁵

On 27 April 2016, the Sandiganbayan issued the warrants of arrest against all the accused, including Cuasay.¹⁶

Purportedly, Cuasay only came to know of the accusations filed against her through news reports. On 4 May 2016, Cuasay filed two Motions for Judicial Determination of Probable Cause,¹⁷ asking for the re-determination of the existence of probable cause and dismissal of the charges against her for palpable want of probable cause.¹⁸ The other accused likewise filed their respective motions.¹⁹

In its Resolution²⁰ dated 20 June 2016, the Sandiganbayan denied, among others, Cuasay's motions, the dispositive portion of which reads:

⁸ Id. at 11.

⁹ Id. at 810-890.

¹⁰ Id. at 883-885.

¹¹ Id. at 872-873.

¹² Id. at 891-919-A.

¹³ Id. at 920-934.

¹⁴ Id. at 935-949.

¹⁵ Id. at 923, 928, 932, 938, 943, 947; emphasis in the original.

¹⁶ Id. at 12.

¹⁷ Id. at 950-997.

¹⁸ Id.

¹⁹ Id. at 11.

²⁰ Id. at 42-59.

WHEREFORE, in view of the foregoing, the (i) the *Joint Omnibus Motion for Judicial Determination of Probable Cause and Motion for Bill of Particulars* filed by accused **Mario L. Relampagos, Rosario Nuñez, Lalaine Paule and Marilou Bare**; (ii) the *Consolidated Motion for Judicial Determination of Probable Cause with Urgent Motion to Suspend Proceedings* filed by accused **Janet Lim Napoles**; and (iii) the *Motion for Judicial Determination of Probable Cause* filed by accused **Celia C. Cuasay**, are all **DENIED** for lack of merit.

Meantime, the *Motion for Reduction of Bail* incorporated in the *Joint Omnibus Motion* filed by accused **Mario L. Relampagos, Rosario Nuñez, Lalaine Paule and Marilou Bare** is rendered moot in view of accused's posting of reduced cash bonds as indicated in the same Resolution dated April 27, 2016 of this Court.

Let the arraignment of said accused be set on **July 18, 2016 at 8:30 in the morning**.

SO ORDERED.²¹

The Sandiganbayan denied the motions filed by Cuasay, as well as the other motions of her co-accused, on the following grounds: first, the determination of probable cause sought by Cuasay is executive in nature which is the sole function of the OMB, not the Sandiganbayan;²² second, the validity of the Informations is not questioned;²³ third, the charges have become joint offenses because of the element of conspiracy;²⁴ fourth, presence or absence of conspiracy is evidentiary in nature and should be presented during trial;²⁵ and fifth, Cuasay was not denied due process because preliminary investigations can be conducted *ex-parte*.²⁶

On 8 August 2016, the Sandiganbayan denied Cuasay's Motion for Reconsideration.²⁷

Hence, the instant Petition filed by Cuasay raising the following issues:

1. Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to re-determine the existence of probable cause as against Cuasay, contrary to law and jurisprudence;
2. Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to apply *Salapuddin v. Court of Appeals*²⁸ to the instant case; and
3. Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not order the

²¹ Id. at 59; emphasis in the original.

²² Id. at 49.

²³ Id. at 50.

²⁴ Id. at 53.

²⁵ Id.

²⁶ Id. at 55.

²⁷ Id. at 60-67.

²⁸ 704 Phil. 577 (2013).

outright dismissal of the case against Cuasay on the ground of palpable want of probable cause.

Cuasay, then 60 years old, “and in the twilight of her life,”²⁹ submits that the Sandiganbayan has the power to determine the existence of probable cause and dismiss the case outright if the evidence on record fails to establish probable cause, pursuant to Rule 112, Revised Rules of Criminal Procedure.³⁰ Further, the ruling in *Salapuddin* should be applied to the case at bar for the only evidence available against her is the sworn statement of the supposed conspirator, Mr. Benhur Luy.³¹

The Office of the Solicitor General (OSG), and the OMB, through the Office of the Special Prosecutor (OSP), filed their Comments dated 9 June 2017³² and 19 June 2017,³³ respectively. The OSG submits that the OMB had “sufficient basis to declare the existence of a prima facie case” against Cuasay for her involvement in the anomalous transactions entered into by Congressman Valencia.³⁴ Further, the determination of probable cause during a preliminary investigation rests solely on the prosecution, which is the OMB in this case, and such determination is entitled to great respect, unless there are compelling reasons.³⁵ The OSG maintains that the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction considering there exist “factual basis and legal justification for the filing of the Informations” against Cuasay.³⁶

Meanwhile, the OMB stresses that motions for judicial determination of probable cause are unnecessary as the Sandiganbayan properly performed its function when it issued the warrant of arrest on 27 April 2016.³⁷ Moreover, there are other direct and material evidence against Cuasay which are the record/exhibits marked during the preliminary conference of the case, particularly Luy’s disbursement vouchers.³⁸

Cuasay filed her Replies³⁹ both dated 17 July 2017 to the OSG and the OSP’s Comments. In both her Replies, Cuasay maintains that Luy’s sole testimony, which is the basis of the OMB’s finding of probable cause against her, is insufficient to charge her.⁴⁰ She adds that the alleged disbursement vouchers have yet to be presented by the government to date.⁴¹ The OSP failed to present this alleged evidence during the preliminary investigation,

²⁹ *Rollo*, p. 16.

³⁰ *Id.* at 18-19.

³¹ *Id.* at 28.

³² *Id.* at 1124-1142.

³³ *Id.* at 1143-1164.

³⁴ *Id.* at 1128-1130.

³⁵ *Id.* at 1133.

³⁶ *Id.* at 1135.

³⁷ *Id.* at 1157.

³⁸ *Id.* at 1158.

³⁹ *Id.* at 1168-1216.

⁴⁰ *Id.* at 1173, 1201.

⁴¹ *Id.* at 1197.

when the OSP opposed Cuasay's motion, and in the proceedings before this Court.⁴²

There is merit in the Petition.

At the outset, let it be mentioned that while a motion for judicial determination of probable cause, the remedy availed by Cuasay, has been considered as a prohibited motion under Sec. 2 (b) (i), Revised Guidelines for Continuous Trial of Criminal Cases (Revised Guidelines),⁴³ which took effect on 1 September 2017, Cuasay filed her Motions for Judicial Determination of Probable Cause on 4 May 2016, or more than a year before the effectivity of the Revised Guidelines. Thus, the Sandiganbayan correctly took cognizance of the said motions.

Cuasay maintains that the Sandiganbayan has the power to determine the existence of probable cause and dismiss the case outright if the evidence on record fails to establish probable cause. She submits that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it failed to dismiss the case outright for palpable want of probable cause.

In *Leviste v. Hon. Alameda, et al.*,⁴⁴ the Court discussed the two kinds of determination of probable cause:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether that function has been correctly discharged by the public prosecutor, *i.e.*, whether he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. **If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant. Paragraph (a),**

⁴² Id. at 1197-1198

⁴³ A.M. No. 15-06-10-SC (2017).

⁴⁴ 640 Phil. 620, 647-648 (2010); citations omitted; underscoring in the original; emphasis supplied.

Section 5, Rule 112, the Rules of Court⁴⁵ outlines the procedure to be followed by the RTC.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.⁴⁶

In her Petition, Cuasay asserts that the only evidence on record against her is Luy's *Karagdagang Sinumpaang Salaysay*⁴⁷ dated 26 November 2013:⁴⁸

x x x x

62. T: Paano natanggap ni Rep. VALENCIA ang kanyang kickback?

S: Ako kasama din minsan si EVELYN DE LEON, Madame JANET o JAMES CHRISTOPHER NAPOLES ay inihahanda namin ang pera at inilalagay sa paperbag. Kinukuha ni Gng. CELIA CUASAY sa opisina ng JLN Corporation ang inihanda naming pera.

63. T: Sino si Gng. CELIA CUASAY?

S: Nanay ng classmate ni JAMES CHRISTOPHER NAPOLES. Si Gng. CELIA CUASAY ang kakilala ni Rep. Valencia at kaibigan din ni Madame JANET.

64. T: Kung sakali na makikita mo si CELIA CUASAY, makikilala mo ba siya?

S: Opo.

65. T: Saan nangyari ang pagtanggap o pagkuha ng kickback ni Rep. VALENCIA ni CELIA CUASAY?

S: Sa opisina ng JLN Corporation, sa 2502 Discovery Center, 25 ADB Ave., Ortigas Center Pasig City.

⁴⁵ Formerly Sec. 6, as amended by A.M. No. 05-8-26-SC (August 30, 2005) effective 3 October 2005, which reads:

(a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

⁴⁶ *Joson v. The Office of the Ombudsman, et al.*, 784 Phil. 172, 185, citing *Vergara v. The Hon. Ombudsman*, 600 Phil. 26 (2009).

⁴⁷ *Rollo*, pp. 629-653.

⁴⁸ *Id.* at 17.

66. T: Mayroon ka bang katibayan na natanggap ni Rep. VALENCIA ang kickback na sinasabi mo?

S: Mayroon po, ang voucher ay pirmado ni Gng. CELIA CUASAY para kay Rep. VALENCIA bilang katibayan na nakuha niya ang pera at kasabay noon ay ibibigay na niya ang endorsement letter na pirmado naman ni Rep. VALENCIA.

67. T: Maari mo sabihin kung nasaan ang voucher na pirmado ni CELIA CUASAY na katibayan na nakatanggap ng kickbacks si Rep. VALENCIA?

S: Naiwan po sa opisina ng JLN Corporation.

68. T: Paano mo nalaman o natandaan halaga ng kickback ni Rep. VALENCIA kung ang kopya ng dokumento na katibayan na tumanggap si Rep. VALENCIA ng kickback ay nasa opisina ng JLN Corporation?

S: Dahil bilang Finance Officer ay kasama sa trabaho ko ang paggawa ng Daily Financial Record. Ang nasabing record ay naka saved sa hard drive ng computer ko. Ang print out po nito ay naisubmit ko na sa Office of the Ombudsman.

69. T: Bukod kay Rep. VALENCIA, may alam ka pa ba na bilang Finance Officer na nakakuha ng kickback mula sa pakikipag transaksyon ni Rep. VALENCIA sa gobyerno gamit ang mga NGOs ni Madame JANET?

S: Si CELIA CUASAY bilang ahente ay nakakuha ng 5% na kickbacks, si ALAN JAVELLANA ng NABCOR at ANTONIO ORTIZ ng TRC bilang head ng implementing agencies ay nakakuha ng 10% na kickback. Ang porsiyento ng kickback ay base sa pondo mula kay Rep. VALENCIA.

70. T: Paano nakuha ni CELIA CUASAY ang kanyang kickback?

S: Si CELIA CUASAY mismo ang nagpupunta sa aming opisina sa JLN Corporation. Siya ang pumirma din sa voucher bilang katunayan na tinanggap niya ang kanyang kickback. Ako ang nag handa ng pera at pina check ko sa aking seniors na sina MERLINA SUÑAS, JO CHRISTINE NAPOLES, JAMES CHRISTOPHER NAPOLES, o minsan si Madame JANET bago ibigay ang pera sa kanya.⁴⁹

x x x x

A perusal of the records would show that Luy's statements were contradicted by the alleged employer of Cuasay, Rep. Valencia himself, her co-accused. In his Counter-Affidavit⁵⁰ dated 31 July 2014, Rep. Valencia stated that he has never employed Cuasay:

4. Ms. Celia Cuasay is a social acquaintance of mine whom I have not seen in many years. **She has never been employed by me, nor has she ever been my authorized agent for any transaction, public or private.** It is telling that in all other circumstance where Benhur Luy claims to have paid out to a government official's

⁴⁹ Id. at 643-644.

⁵⁰ Id. at 1084-1091.

alleged representative, that representative was the official's lawyer, or chief of staff, or office subordinate, or some other agent clothed with apparent authority.

X X X X

12. There is no evidence that I was paid kickback money at all. **Ms. Celia Cuasay is nothing to me – not an employee, not an agent, not even a close friend. If a man wants to commit a crime, would he take as a partner and confidant a mere passing acquaintance?** Would he ask that nodding acquaintance to receive money from him.⁵¹

Considering that the only accusatory evidence against Cuasay are Luy's bare statements which were contradicted by her co-accused, there is reason to believe that Cuasay may not have been involved in the PDAF scam. In *Salapuddin*, the Court excluded the accused Gerry A. Salapuddin from the Information on the ground of lack of direct material evidence establishing his participation in the conspiracy. The Court declared:

Indeed, probable cause requires less proof than necessary for conviction. Nonetheless, it demands more than bare suspicion and must rest on competent relevant evidence. A review of the records, however, show that **the only direct material evidence against Salapuddin, as he had pointed out at every conceivable turn, is the confession made by Ikram.** While the confession is arguably relevant, this is not the evidence competent to establish the probability that Salapuddin participated in the commission of the crime. On the contrary, as pointed out by the Secretary of Justice, **this cannot be considered against Salapuddin on account of the principle of *res inter alios acta alteri nocere non debet*** expressed in Section 28, Rule 130 of the Rules of Court:

Sec. 28. Admission by third-party. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

X X X X

The exception provided under Sec. 30, Rule 130 of the Rules of Court to the rule allowing the admission of a conspirator **requires the prior establishment of the conspiracy by evidence other than the confession. In this case, there is a dearth of proof demonstrating the participation of Salapuddin in a conspiracy** to set off a bomb in the Batasan grounds and thereby kill Congressman Akbar. Not one of the other persons arrested and subjected to custodial investigation professed that Salapuddin was involved in the plan to set off a bomb in the Batasan grounds. Instead, the investigating prosecutors did no more than to rely on

⁵¹ Id. at 1085-1086; emphasis supplied.

Salapuddin's association with these persons to conclude that he was a participant in the conspiracy, ruling thus:⁵²

x x x x

Similarly, in the instant case, it appears that the only evidence against Cuasay is the sworn testimony of the supposed conspirator, Luy.⁵³ The OSP counters that there are records of Luy, particularly disbursement vouchers, showing Cuasay's involvement in the PDAF scam.⁵⁴ However, a review of the records does not show the alleged disbursement vouchers signed by Cuasay. As argued by Cuasay, the alleged disbursement vouchers have yet to be presented, despite numerous opportunities given to the prosecution.

The present case should be distinguished from *Relampagos v. Sandiganbayan (Second Division)*,⁵⁵ where this Court held that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay." The Court likewise stressed that the determination of probable cause, for issuance of a warrant of arrest, uses a standard less stringent than that used for establishing the guilt of the accused, as long as the evidence presented shows a *prima facie* case against the accused.

In *Relampagos*, the Court banked on the findings of the Sandiganbayan that "the records revealed the participation of each petitioner in the elaborate scheme of guiding or channeling Cagas' PDAF allocations to inexistent or ghost projects and consequently enabled them to misappropriate Cagas' PDAF."⁵⁶

In this case, the evidence on record does not categorically establish the participation of Cuasay in the PDAF scam. In fact, it appears that there is no substantial basis for crediting the testimony of Luy considering that his statements were refuted by Rep. Valencia himself, and no other material evidence was presented to support his statements.

Moreover, unlike in *Relampagos* where the petitioners were government officials, who, as stated in their Joint Petition, had "limited participation in the release of the SAROs [Special Allotment Release Orders], i.e., as an alternate, or substitute signatory in the absence or unavailability of the DBM Secretary,"⁵⁷ Cuasay is a private individual who is "not an employee, not an agent, not even a close friend" of Rep. Valencia, her co-accused.⁵⁸

⁵² *Salapuddin v. Court of Appeals, et al.*, supra note 28, at 600-601; emphasis in the original.

⁵³ *Rollo*, p. 30.

⁵⁴ *Id.* at 1159-1160.

⁵⁵ G.R. No. 235480, 27 January 2021.

⁵⁶ *Id.*

⁵⁷ *Relampagos v. Sandiganbayan (Second Division)*, supra note 55.


⁵⁸ *Rollo*, p. 1086.

Thus, applying *Salapuddin* and considering that the evidence presented does not provide sufficient basis for even a *prima facie* finding of probable cause to believe that Cuasay participated in the PDAF scam, she may be excluded in the Information. In fine, the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it failed to dismiss the case against Cuasay on the ground of palpable want of probable cause.

WHEREFORE, the instant Petition is **GRANTED** and the Resolutions dated 20 June 2016 and 8 August 2016 of the Sandiganbayan in SB-16-CRM-0173 to SB-16-CRM-0178 insofar as the denial of the two Motions for Judicial Determination of Probable Cause both dated 4 May 2016 and Motion for Reconsideration dated 12 July 2016 are **REVERSED** and **SET ASIDE**. Let the name of **CELIA C. CUASAY** be stricken off and excluded from the Informations for violation of Section 3 (e), Republic Act No. 3019 and of Malversation of Public Funds under Article 217, Revised Penal Code.

SO ORDERED.” *Gesmundo, CJ., no part; Leonen, J., designated additional Member per Raffle dated 2 August 2022.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *at alas*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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OCT 03 2022

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