



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated February 27, 2023, which reads as follows:*

“G.R. No. 262967 (*Anastasiia Novopashina v. People of the Philippines*). – Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> dated October 14, 2022 filed by Anastasiia Novopashina (petitioner) assailing the Decision<sup>2</sup> dated October 11, 2021 and the Resolution<sup>3</sup> dated August 11, 2022 of the Court of Appeals (CA) in CA-G.R. SP No. 166532. The CA Decision affirmed the Orders dated October 15, 2019<sup>4</sup> and August 24, 2020<sup>5</sup> of the Regional Trial Court (RTC) of Pasay City, Branch 231 in Crim. Case No. R-PSY-16-13234-CR, which granted the prosecution’s Motion with Leave of Court to Amend Information and Admit Amended Information<sup>6</sup> (Motion to Amend Information) dated June 21, 2018.

**Facts**

On November 28, 2016, petitioner, a Russian national, was arrested without warrant upon her arrival at the Ninoy Aquino International Airport (NAIA), Terminal 3, Pasay City by the NAIA Inter-Agency Drug Interdiction Task Group for allegedly transporting cocaine. The operatives seized the 14 luggage and personal belongings of petitioner, which were found to contain suspicious white powdery substance, which, upon field test at the office of the NAIA operatives, was found to be cocaine. These were then brought to the laboratory for forensic examination, which yielded the same positive results for cocaine, a dangerous drug. Petitioner was detained at the custodial facility of the Philippine Drug Enforcement Agency.<sup>7</sup>

**Antecedent Proceedings**

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<sup>1</sup> *Rollo*, pp. 11-39.

<sup>2</sup> *Id.* at 41-51; penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Ronaldo Roberto B. Martin and Carlito B. Calpatura, concurring.

<sup>3</sup> *Id.* at 52-53.

<sup>4</sup> *Id.* at 273-275; penned by Presiding Judge Divina Gracia Lopez Peliño.

<sup>5</sup> *Id.* at 288-290.

<sup>6</sup> *Id.* at 254-258.

<sup>7</sup> *Id.* at 42.

After inquest proceedings on November 29, 2016, the Pasay City Prosecution Office found probable cause to indict her for violation of Section 5, Article II of Republic Act (R.A.) No. 9165.<sup>8</sup> Accordingly, an Information<sup>9</sup> was filed before the RTC, charging petitioner with transportation of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 28<sup>th</sup> day of **November 2016**, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously transport from one place to another a total of **12,781.90 grams of cocaine**, a dangerous drug.

CONTRARY TO LAW.<sup>10</sup> (Emphases in the original)

On February 7, 2017, petitioner filed a Petition for Bail<sup>11</sup> dated February 6, 2017 praying the conduct of a summary hearing to determine whether the evidence of guilt against petitioner is strong.

On March 7, 2017, petitioner was arraigned and she entered a plea of “not guilty” to the offense charged. The RTC, likewise, scheduled the pre-trial conference and initial hearing for the Petition for Bail.<sup>12</sup>

Thereafter, the prosecution proceeded to present the following witnesses during the hearings on the Petition for Bail: (1) Customs Examiner Mark John O. Almase; (2) Forensic Chemist Ronald Jefferson A. Narceda; (3) Arresting Officer Intelligence Agent 1 Joel D. Villorente; and (4) Intelligence Officer 3 Marjuvel M. Bautista.<sup>13</sup> After their presentation, the prosecution submitted its Formal Offer of Exhibits for the Petition for Bail, which was objected to by petitioner. Petitioner, thereafter, submitted her Memorandum in support of the Petition for Bail.<sup>14</sup>

On June 21, 2018, the prosecution filed the Motion to Amend Information, indicating that the 12,781.90 grams of cocaine was the gross weight, and thereafter, itemizing the amount of cocaine recovered from the belongings of petitioner.<sup>15</sup> The accusatory portion of the Amended Information<sup>16</sup> reads as follows:

That on or about the 28<sup>th</sup> day of November 2016, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there, willfully, unlawfully and feloniously transport from one place to another, a

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<sup>8</sup> Id.  
<sup>9</sup> Id. at 54-55.  
<sup>10</sup> Id. at 54.  
<sup>11</sup> Id. at 76-78.  
<sup>12</sup> Id. at 79.  
<sup>13</sup> Id. at 42  
<sup>14</sup> Id.  
<sup>15</sup> Id. at 254.  
<sup>16</sup> Id. at 259-261.

total gross weight of 12,781.90 grams of Cocaine imbedded and incorporated with: One (1) blue and gray mountaineering bag labeled OUTDOOR DOITE with markings EXB 'A' MOA 11-28-16 with signature containing white powdery substance embedded in the foam lining of bag strap with a gross weight of 3286.4 grams and further contains; One (1) rectangular black bag padding with markings EXH A-1 MOA 11-28-16 with signature written on a masking tape containing white powdery substance embedded in its padding with gross weight of 668.4 grams; One (1) airline bag tag with markings EXH A1 MOA 11-28-16 with signature; One (1) blue insulated jacket labeled ALLBASICS with markings EXH A2 MOA 11-28-16 with signature containing white powdery substance in the insulation material in the interior lining with a gross weight of 1252.0 grams; One (1) green insulated jacket labeled MITHOS with markings EXH A3 MOA 11-28-16 with signature containing white powdery substance in the insulation material in the interior lining with a gross weight of 1127.6 grams; One (1) maroon insulated jacket labeled MITHOS with markings EXH A4 MOA 11-28-16 with signature containing white powdery substance in the insulation material in the interior lining with gross weight of 938.8 grams; One (1) black backpack labeled LIIND with markings EXH A5 MOA 11-28-16 with signature written on a masking tape containing; One (1) rectangular black bag padding with markings EXH A5-1 MOA 11-28-16 with signature written on a masking tape containing white powdery substance embedded in its padding with gross weight of 343.5 grams; One (1) rectangular black bag padding with markings EXH A5-2 MOA 11-28-16 with signature written on a masking tape containing white powdery substance embedded in its padding with a gross weight of 226.6 grams; One rectangular black bag padding with markings EXH A5-3 MOA 11-29-1 with signature written on a masking tape containing white powdery substance embedded in its padding with a gross weight 294.5 grams; One rectangular black bag padding with markings EXH A5-4 MOA 11-29-16 with signature written on a masking tape containing white powdery substance embedded in its padding with a gross weight of 144.0 grams; One rectangular black bag padding with markings EXH A5-5 MOA 11-29-16 with signature written on a masking tape containing white powdery substance embedded in its padding with a gross weight of 262.0 grams; One (1) blue sleeping bag carrier labeled KLIMBER OUTDOOR with markings EXH A6 11-28-16 with signature labeled COLEMAN with markings EXH A6 11-28-16 with signature containing white powdery substance embedded in its padding with a gross weight of 4238.1 grams, a dangerous drug.

Contrary to law.<sup>17</sup> (Emphases and underscoring omitted)

On July 6, 2018, petitioner filed an Opposition<sup>18</sup> dated July 4, 2018, objecting to the Motion to Amend Information, primarily on the ground that the amendment sought to be introduced by the prosecution is substantial and could no longer be allowed after petitioner had already entered her plea, citing Section 14, Rule 110 of the Rules of Court.<sup>19</sup> Moreover, petitioner argued that even assuming that the amendments sought to be admitted by the prosecution are formal amendments, the same would prejudice the constitutional rights of petitioner.<sup>20</sup> According to petitioner the amendment of the information alters

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<sup>17</sup> Id. at 259-260.

<sup>18</sup> Id. at 265-270.

<sup>19</sup> Id. at 266.

<sup>20</sup> Id. at 265.

the theory of the prosecution as well as the very *corpus delicti* itself.<sup>21</sup>

### Ruling of the Regional Trial Court

In its Order<sup>22</sup> dated October 15, 2019, the RTC granted the Motion to Amend Information and admitted the Amended Information. The relevant portion of the foregoing Order is quoted hereunder:

The court believes that the amendments being sought for by the prosecution which is to indicate that the total gross weight of 12,781.90 grams of Cocaine as imbedded and incorporated with other things as specified in the Amended Information, will not prejudice the rights of the accused considering that they will not in any way affect the very essence of the offense and the gravity or range of the penalty provided therefor as the provision pronounces that the penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, unless authorized by law, is imposable regardless of the quantity and purity of the dangerous drugs involved. The amended information could not have caused surprise to the accused since the amendments do not change the nature and cause of accusation against her. The offense the accused probably committed and the acts or omissions involved remain the same under the original and the amended information, i.e., her unlawful and felonious transporting from one place to another a total of 12,781.90 grams of cocaine, a dangerous drug. Since they do not have the effect of charging an offense different from the one charged (Violation of Sec. 5, Article II, Republic Act 9165) in the information, nor do they tend to correct any defect in the trial court's jurisdiction over the subject-matter, the amendment sought is merely formal. The case being still on trial, the amendment sought for being formal and made timely with leave of court, the court is inclined to admit the same so as to conform to evidence.<sup>23</sup> (Emphases, underscoring, and italics omitted)

On October 31, 2019, petitioner filed her Motion for Reconsideration<sup>24</sup> of even date challenging the foregoing Order<sup>25</sup> of the RTC, which was eventually denied by the RTC in its Order<sup>26</sup> dated August 24, 2020. Moreover, the RTC scheduled that petitioner be re-arraigned on the Amended Information.<sup>27</sup>

On September 20, 2020, petitioner was arraigned on the Amended Information despite the objection of petitioner as to the admission of the Amended Information. Petitioner did not enter a plea. Thus, the RTC entered a plea of "not guilty" for petitioner.<sup>28</sup>

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<sup>21</sup> Id. at 267.

<sup>22</sup> Id. at 273-275.

<sup>23</sup> Id. at 274.

<sup>24</sup> Id. at 276-287.

<sup>25</sup> Id. at 273-275.

<sup>26</sup> Id. at 288-290.

<sup>27</sup> Id. at 290.

<sup>28</sup> Id. at 24.

On October 26, 2020, petitioner filed a Petition for *Certiorari*<sup>29</sup> dated October 22, 2020 with the CA alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC when it granted the prosecution's Motion to Amend Information and allowed a substantial amendment of the information.<sup>30</sup>

### Ruling of the Court of Appeals

In its Decision dated October 11, 2021, the CA affirmed the RTC Orders, the dispositive portion of which reads:

**WHEREFORE**, the foregoing premises considered, the Petition is **DENIED**. The Orders dated October 15, 2019 and August 24, 2020 of the Regional Trial Court, Branch 231, Pasay City in Criminal Case No. R-PSY-16-13234-CR (*People vs. Anastasi[i]a Novopashina*) are **AFFIRMED**.

*SO ORDERED*.<sup>31</sup> (Emphases and italics in the original)

The appellate court concluded that the amendment of the Information was formal, and thus, allowed even after the accused petitioner has already entered her plea. The CA, likewise, held that the amendment did not change the nature of the offense, nor would the variance in quantity or purity of the dangerous drug transported affect the imposable penalty under Section 5, Article II, of R.A. No. 9165.<sup>32</sup> Moreover, the CA held that the itemization of the seized items in the Amended Information would not prejudice petitioner, considering that she is fully aware and the records are clear that the seized cocaine were discovered in her luggage and personal belongings.<sup>33</sup> Accordingly, the CA ratiocinated that petitioner could not be prejudiced by the amendment of the Information given that no new facts or matters unknown to her were introduced as to deprive her of the opportunity to refute the same.<sup>34</sup>

Thus, petitioner filed a Motion for Reconsideration<sup>35</sup> dated November 25, 2021 questioning the above Decision of the CA, which was eventually denied by the CA in its Resolution<sup>36</sup> dated August 11, 2022.

Hence the present Petition for Review on *Certiorari*.<sup>37</sup>

### Issue

The primordial issue now before this Court is whether the RTC

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<sup>29</sup> Id. at 291-328.  
<sup>30</sup> Id. at 291.  
<sup>31</sup> Id. at 50.  
<sup>32</sup> Id. at 18.  
<sup>33</sup> Id.  
<sup>34</sup> Id. at 19.  
<sup>35</sup> Id. at 345-361.  
<sup>36</sup> Id. at 52-53.  
<sup>37</sup> Id. at 11-39.

committed grave abuse of discretion when it granted the prosecution's Motion to Amend Information and admitted the Amended Information.

### Ruling of the Court

Petitioner argues that the amendment of the Information was substantial and that the RTC should have denied the same as it was made after petitioner had already entered her plea, in violation of Section 14, Rule 110 of the Rules of Court.<sup>38</sup> In support of her argument, petitioner relies in this Court's ruling in *Lasoy v. Hon. Zenarosa*<sup>39</sup> (*Lasoy*), which allegedly held that a change in weight or quantity of the dangerous drug as alleged in the Information is a substantial amendment.<sup>40</sup> More particularly, petitioner argues that the amendment of the Information from a determinate quantity of cocaine to an indeterminate quantity incorporated in her luggage and personal belongings constitutes a substantial amendment.<sup>41</sup> In any event, petitioner argues that even if the amendment of the Information was formal, the same unduly prejudiced petitioner.<sup>42</sup>

We find no merit in the present petition.

The rules governing the amendment of an Information is set forth under Section 14, Rule 110 of the Rules of Court:

Section 14. *Amendment or substitution.* – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. **After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.**

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (Emphasis supplied)

From the foregoing, it is clear that after the accused has entered their plea, no substantial amendment is allowed. However, an amendment as to matters of form is permitted after the accused has entered their plea, provided that: (i) leave of court is obtained; and (ii) such amendment is not prejudicial to the rights of the accused.<sup>43</sup>

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<sup>38</sup> Id. at 26.

<sup>39</sup> 495 Phil. 339 (2005).

<sup>40</sup> *Rollo*, p. 28.

<sup>41</sup> Id. at 29-31.

<sup>42</sup> Id. at 33-35.

<sup>43</sup> *People v. Degamo*, 450 Phil. 159, 171 (2003).

In the instant case, there is no dispute that the Motion to Amend Information was granted and the Amended Information was admitted by the RTC after petitioner had already entered her plea. It is, thus, incumbent upon this Court to determine whether the amendment of the Information was substantial or merely formal.

In *Teehankee, Jr. v. Hon. Madayag*<sup>44</sup> (*Teehankee*), this Court held that a substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court.<sup>45</sup> The prohibition against substantial amendments is that it may prejudice the rights of the accused, which includes the constitutional right of the accused to be informed of the nature and cause of accusation against him.<sup>46</sup>

On the other hand, any amendment to an information which only states with precision something which has already been included in the original information, and therefore, adds nothing crucial for conviction of the crime charged is only a formal amendment that can be made at anytime.<sup>47</sup> It does not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation.<sup>48</sup>

Pertinently, in *Teehankee*, We considered the following as mere formal amendments: (a) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (b) an amendment which does not charge another offense different or distinct from that charged in the original one; (c) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (d) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.

Ultimately, the test of whether an amendment is only of form and an accused is not prejudiced by such amendment has been said to be whether or not a defense under the information as it originally stood would be equally available after the amendment is made, and whether or not any evidence the accused might have would be equally applicable to the information in the one form as in the other; if the answer is in the affirmative, the amendment is one of form and not of substance.<sup>49</sup>

After a review of the records this Court is convinced that only a formal amendment was introduced by the prosecution in the Amended Information.

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<sup>44</sup> 283 Phil. 956 (1992). See also *People v. Sandiganbayan*, G.R. No. 240621, July 24, 2019; *Corpus, Jr. v. Pamular*, 839 Phil. 731 (2018); and *People v. Degamo*, supra note 43.

<sup>45</sup> Id. at 966.

<sup>46</sup> *Dr. Mendez v. People*, 736 Phil. 181, 192 (2014).

<sup>47</sup> *Mayor Corpus, Jr. v. Judge Pamular*, 839 Phil. 731, 776 (2018).

<sup>48</sup> Id. at 776-777, citing *Ricarze v. Court of Appeals*, 544 Phil. 237 (2007).

<sup>49</sup> *Teehankee, Jr. v. Madayag*, supra at 966.

In the instant case, petitioner was charged with transportation of dangerous drugs under Section 5, Article II of R.A. No. 9165 in particular the transport of 12,781.90 grams of Cocaine. After petitioner had been arraigned and after hearing on her Petition for Bail, the prosecution amended the Information to indicate that the “12,781.90 grams of cocaine” was gross weight which was “imbedded and incorporated” in the itemized luggage and personal belongings seized from petitioner.

The clear import of the prosecution’s amendment is merely to specify and itemize the quantity of cocaine discovered from the luggage and personal belongings seized from petitioner. The allegation that petitioner was transporting cocaine remains the same and has already been included in the original information.

Petitioner is well aware that the charge against her is the transportation of dangerous drugs, under Section 5, Article II of R.A. No. 9165. The qualification of the 12,781.90 grams of cocaine as gross weight and the specification that the said dangerous drugs were imbedded and incorporated in the luggage and personal belongings of petitioner, are matters, which were already known to her.

Moreover, as correctly observed by the RTC and the CA, the foregoing amendment to the Information does not constitute a new charge, nor does it alter the nature of the crime or the imposable penalty.

Clear from the wording of Section 5, Article II of R.A. No. 9165 is that the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall transport any dangerous drug, ***regardless of the quantity involved***:

**Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy ***regardless of the quantity and purity involved***, or shall act as a broker in any of such transactions. (Emphasis and underscoring supplied)

Simply put, the quantity of dangerous drugs alleged in the information would not affect the nature nor the imposable penalty in a charge of transportation of dangerous drugs. Clearly, there is no substantial change in the prosecution’s theory so as to “surprise” petitioner and deprive her of her defense.

We, likewise, find no merit in petitioner’s reliance in Our ruling in *Lasoy*. Notably, at no point in the said case did this Court conclude that a



change as to the weight of the dangerous drugs alleged in the Information constitute a substantial amendment, contrary to the claim of petitioner. In fact, it was never an issue in the said case whether the amendment made by the prosecution was formal or substantial.

For proper context, in *Lasoy*, accused-petitioners therein were charged with the sale of 42.410 grams of dried marijuana fruiting tops. Thereafter, both accused pleaded guilty to the charged and were subsequently convicted and sentenced to suffer a term of six (6) months and one (1) day of imprisonment. Thus, both accused applied for probation. It was only after the foregoing that the prosecution filed a Motion to Admit Information alleging that instead of “42.410 grams” it should be “42.410 kilos” of dried marijuana fruiting tops.

This Court held in *Lasoy* that the prosecution’s Motion to Amend Information defied procedural rules not because the same was substantial, but because it was belatedly filed considering that the decision convicting accused therein had already attained finality. Thus, We held “[t]here is, therefore, no question that the amendment of an information by motion of the prosecution and at the time when the accused had already been convicted is contrary to procedural rules and violative of the rights of the accused.”<sup>50</sup>

Accordingly, We find the foregoing ruling holds no sway in the present case.

All told, We find that the CA committed no reversible error and the RTC committed no grave abuse of discretion amounting to lack or excess of jurisdiction in granting the prosecution’s Motion to Amend and admitting the Amended Information.

**WHEREFORE**, the instant Petition for Review on *Certiorari* dated October 14, 2022 is hereby **DENIED**. The Decision dated October 11, 2021 and the Resolution dated August 11, 2022 of the Court of Appeals in CA-G.R. SP No. 166532 are hereby **AFFIRMED**.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAEL DOMINGO C. BATTUNG III**  
Division Clerk of Court  
2/27/23

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<sup>50</sup> *Lasoy v. Hon. Zenarosa*, supra note 39 at 351.

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**G.R. No. 262967**

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