



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

SB-19-CRM-0048 to 0049
For: Violation of Section 3(e)
of Republic Act No. 3019,
as amended

FRANCISCO N. MAMBA, JR., et al.,
Accused.

Present:
Lagos, J. Chairperson,
Mendoza-Arcega and
Corpus-Mañalac, JJ.

Promulgated:

October 03, 2019 led

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RESOLUTION

CORPUS - MAÑALAC, J.:

For resolution is accused Francisco Mamba, Jr., et al.'s *Motion to Dismiss* dated September 9, 2019 and filed on September 13, 2019 as well as the *Comment* thereto filed by the prosecution on September 20, 2019.

Accused move to dismiss the *Informations* in these cases alleging that "the offenses charged therein comprise only a single continuing offense and two (2) separate prosecution for the same continuing offense violates the constitutional right of the [a]ccused against double jeopardy x x x (Sec. 21, Art. III)."

Earlier on June 18, 2019, the same accused had filed a *Motion to Quash* on the ground of inordinate delay, which this Court denied in a *Resolution* dated August 5, 2019, while the *Motion for Reconsideration* thereof was also denied by this Court for lack of merit on September 13, 2019.

In the present motion, accused Mamba, Jr., et al. allege that the two (2) *Informations* cover two (2) transaction payments of Php3,301,982.50 (SB-19-CRM-0048) and Php1,842,543.50 (SB-19-CRM-0049) made to *Feshan Phils., Inc.*, for the purchase of 3,333 bottles of Bio-Nature Liquid Organic Fertilizer at Php1,500.00 per bottle for a total amount of Php402,000,500.00. They opine that the same constitute only a single

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continuing offense involving two acts of payment for the same purpose, motivated by a single impulse and propelled by the same intent for exactly the same transaction, citing the case of *Santiago v. Vasquez*.¹

The prosecution counters the claim, however. Allegedly, double jeopardy attaches when a person is charged with an offense and the case is terminated either by acquittal or conviction or in any manner without the consent of the accused, so that the latter cannot again be charged with the same or identical offense. Here, the accused had not been placed in jeopardy by the mere filing of *Informations* in SB-19-CRM-0048 and SB-19-CRM-0049 that involve two (2) separate acts of the accused in giving unwarranted benefits to *Feshan Phils., Inc.*

RULING

The *Revised Guidelines for Continuous Trial of Criminal Cases* under Item III(2)(c) enumerates, among others, the *meritorious motions* that may be filed by the accused, *viz*:

- i. Motion to withdraw information x x x;
- ii. Motion to quash warrant of arrest;
- iii. Motion to suspend arraignment on the ground of an unsound mental condition under Sec. 11(a), Rule 116;
- iv. Motion to suspend proceedings on the ground of a prejudicial question x x x;
- v. Motion to quash information on the grounds that the facts charged do not constitute an offense, lack of jurisdiction, extinction of criminal liability, or **double jeopardy** under Sec. 3, par. (a), (b), (g), and (i), Rule 117;
- vi. Motion to discharge accused as a state witness x x x;
- vii. Motion to quash search warrant x x x;
- viii. Motion to dismiss on the ground that the criminal case is a Strategic Lawsuit Against Public Participation (SLAPP) x x x x **[emphasis supplied]**

Procedurally, the *Guidelines* treats double jeopardy as a ground allowable for a *meritorious motion*. On this score, the motion is given due course, albeit the same is denied for lack of substantive merit. As defined,² *meritorious motions* are those that “allege plausible grounds supported by relevant documents and/or competent evidence xxx.”

Contrary to accused’s claim, the simultaneous filing of two (2) separate *Informations* allegedly arising from the same transaction does not constitute double jeopardy.

For double jeopardy to set in, the following requisites must concur: (1) the first jeopardy must have attached prior to the second; (2) the first

¹ G.R. No. 109266, December 2, 1993

² Revised Guidelines in Continuous Trail of Criminal Cases, Item III(2)(c)

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jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.³ In *People vs. Obsania*,⁴ it was ruled that in order that the protection against double jeopardy may inure in favor of an accused, the following requisites must have obtained in the original prosecution: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge; and (d) the defendant was acquitted, or convicted, or the case against him was dismissed or otherwise terminated without his express consent.

Here, there is no double jeopardy to speak of as the first jeopardy has not attached yet, or has it been validly terminated. Apparently, the accused have not even been arraigned, convicted or acquitted of either of the offenses covered by the subject *Informations*, hence, there is no second jeopardy for the same or identical offense to consider.

The rule against double jeopardy prohibits twice placing a person in jeopardy of punishment for the same offense. The test is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether one offense necessarily includes or is necessarily included in the other, as provided in Section 7 of Rule 117 of the Rules of Court. An offense charged necessarily includes that which is proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter; and an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form a part of those constituting the latter.

As argued by the prosecution, the two (2) *Informations* in these cases involve two (2) acts of giving of unwarranted benefits to *Feshan Phils., Inc.* arising from the separate acts of payments to the latter that independently amount to Php3,301,982.50 and Php1,842,543.50, respectively. The first act is covered by the *Information* in SB-19-CRM-0048 and supported by disbursement vouchers, check and official receipts, which are distinct from the disbursement vouchers, check, official receipts used to support another act of payment to *Feshan Phils, Inc.* covered by the *Information* in SB-19-CRM-0049.

On the other hand, the determination of whether the offenses charged in SB-19-CRM-0048 and SB-19-CRM-0049 comprise only a single continuing offense, is evidentiary in nature and is better addressed in a full blown trial. Even assuming the acts covered by the two (2) *Informations* proceed from a single intent, and therefore, constitute a single offense, said circumstance does not necessarily result to the outright dismissal of the cases since there remains a single offense to be meted with a penalty. In the case of *Ambagan, Jr. v. People*,⁵ the Supreme Court held that:

³ Manantan vs. CA, GR No. 107125, January 29, 2001

⁴ G.R. No. L-24447 June 29, 1968

⁵ G.R. Nos. 233443-44, November 28, 2018

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X x [t]he two (2) Informations charging the petitioner for violation of Section 3(e), R.A. No. 3019 are strikingly identical xxx, the place, time, and manner of the commission of the offense are the same. The petitioner in the performance of the alleged criminal act is impelled by a singular purpose xxx Consequently, the acts alleged in the two (2) Informations constitute only one offense which should have been consolidated in one Information. **This does not mean however that both cases must be dismissed** as petitioner suggests. **Considering that there is but one offense, there is no place for the issue of double jeopardy to arise in the first place. The only implication of this pronouncement would be that the accused should, if found guilty, be meted with penalty for a single offense.** [emphasis supplied]

It therefore appears premature for this Court to rule on whether *delito continuado* exists in these cases. Such issue is evidentiary in character and cannot be simply determined in a motion to dismiss.

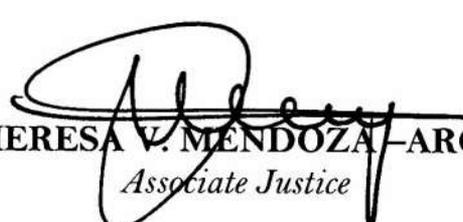
WHEREFORE, in light of the foregoing, this Court hereby **DENIES** the instant motion for lack of merit.

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice