EN BANC

G.R. Nos. 212761-62 – SENATOR JOSE "JINGGOY" P. EJERCITO ESTRADA, *petitioner* v. OFFICE OF THE OMBUDSMAN, SANDIGANBAYAN, FIELD INVESTIGATION OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, AND ATTY. LEVITO D. BALIGOD, *respondents*.

G.R. Nos. 213473-74 – JOHN RAYMUND DE ASIS, *petitioner* v. CONCHITA CARPIO MORALES, in her official capacity as Ombudsman, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN, Fifth Division, *respondents*.

G.R. Nos. 213538-39 – JANET LIM NAPOLES, *petitioner* v. CONCHITA CARPIO MORALES, in her official capacity as Ombudsman, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN, Fifth Division, *respondents*.

Promulgated:
July 31, 2018

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the ponencia. In addition, I would like to emphasize the following:

The Ombudsman's determination of the existence of probable cause is entitled to great weight and respect. In a preliminary investigation, only the *probability* of an accused's guilt is ascertained. Upon the filing of an Information with the Sandiganbayan, the latter acquires jurisdiction over the case and retains full discretion on its disposition.

The Office of the Ombudsman is bestowed with broad investigatory and prosecutorial powers to act on complaints against public officials and government employees.[1] Considered as "the champion of the people and the

[1] CONST., art. XI, sec. 12 provides:
Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

preserver of the integrity of public service,"[2] the Ombudsman is specifically empowered under Article XI, Section 13 of the Constitution to exercise the following functions:

> Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
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> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
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> (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
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> (3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
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> (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
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> (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
>
> (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
>
> (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
>
> (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Section 15 of Republic Act No. 6770 amplifies the Office of the Ombudsman's investigative and prosecutorial powers. For instance, the Office of the Ombudsman may, in the exercise of its primary jurisdiction, step in and take over the investigation of cases from other agencies. It may also request assistance and information from other government agencies, issue subpoenas, and cite persons in contempt.[3]

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[2] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 415 Phil. 145, 151 (2001) [Per J. Pardo, En Banc].

[3] Rep. Act No. 6770, sec. 15 provides:
Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

Such broad investigative powers were vested on the Office of the Ombudsman to shield it from "the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers."[4]

In this regard and owing to the independent nature of its office, this Court has generally adopted a policy of non-interference with the Office of the Ombudsman's exercise of its functions, especially with regard to its

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(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: Provided, That the Ombudsman under its rules and regulations may determine what cases may not be made public: Provided, further, That any publicity issued by the Ombudsman shall be balanced, fair and true;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

(8) Administer oaths, issue *subpoena* and *subpoena duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

[4] *Deloso v. Domingo*, 269 Phil. 580, 586 (1990) [Per J. Griño-Aquino, En Banc].

finding of probable cause.[5] Practical considerations also dictate the exercise of judicial restraint. In *Dichaves v. Office of the Ombudsman*:[6]

> Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:
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> > [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[7] (Citations omitted)

This Court is not a trier of facts. Unless there is a clear showing of grave abuse of discretion on the part of the Office of the Ombudsman, this Court would defer to its sound discretion as it is in the best position to assess whether the filing of an Information is warranted.[8]

A preliminary investigation, as its name suggests, is a preparatory step in the prosecutorial process, where the prosecutor determines whether there is probable cause to file an Information in court. Its purpose is two (2)-fold. In *Salonga v. Cruz-Paño*:[9]

> The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials.[10]

The rules governing the conduct of a preliminary investigation are outlined in Rule 112, Section 3 of the Rules of Court:

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5 *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> [Per J. Leonen, Second Division]; *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017 [Per J. Leonen, Second Division]; *Cambe v. Office of the Ombudsman*, G.R. Nos. 212014-15, December 6, 2016 [Per J. Perlas-Bernabe, En Banc].

6 G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> [Per J. Leonen, Second Division].

7 Id. at 17.

8 Id. 16–17.

9 219 Phil. 402 (1985) [Per J. Gutierrez, Jr., En Banc].

10 Id. at 428.

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

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he 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.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his 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 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.

(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.

Preliminary investigations conducted by the Office of the Ombudsman are done in the same manner outlined above subject to the provisions under Section 4 of its Rules of Procedure.[11]

The investigating prosecutor may rely on the affidavits and supporting documents submitted by the parties. A hearing is not even mandatory. The prosecutor is given the discretion whether to set a hearing between the parties but only if certain facts or issues need to be clarified.

A preliminary investigation, therefore, is "merely inquisitorial."[12] It is neither an occasion for an exhaustive display of evidence[13] nor "the venue for the full exercise of the rights of the parties."[14] Whether the parties' evidence would pass the threshold of admissibility is not a matter that the prosecution should be concerned with at this stage. The prosecution needs only satisfy itself that there is reasonable belief to hold a person liable for a crime. Neither absolute nor moral certainty is required:[15]

> Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[16] (Citations omitted)

Given the exploratory nature of a preliminary investigation, the technical rules of evidence would not apply. For instance, the invocation of the *res inter alios acta* rule under Rule 130, Section 28 of the Rules of Court in the context of a preliminary investigation has been considered as improper.[17] In *Cambe v. Office of the Ombudsman*:[18]

> It should be borne in mind that probable cause is determined during the context of a preliminary investigation which is "merely an inquisitorial

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11 Rules of Procedure of the Office of the Ombudsman, Adm. Order No. 07, sec. 4.

12 *De Lima v. Reyes*, 776 Phil. 623 (2016) [Per J. Leonen, Second Division] *citing Pilapil v. Sandiganbayan*, 298 Phil. 368 (1993) [Per J. Nocon, En Banc].

13 *Paderanga v. Drilon*, 273 Phil. 290, 299 (1991) [Per J. Regalado, En Banc]; *Cambe v. Office of the Ombudsman*, G.R. Nos. 212014-15, December 6, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf> [Per J. Perlas-Bernabe, En Banc].

14 *People v. Narca*, 341 Phil. 696, 705 (1997) [Per J. Francisco, Third Division].

15 *See Paderanga v. Drilon*, 273 Phil. 290, 296–299 (1991) [Per J. Regalado, En Banc].

16 *Chan v. Secretary of Justice*, 572 Phil. 118, 132 (2008) [Per J. Nachura, Third Division].

17 *Estrada v. Office of the Ombudsman*, 751 Phil. 821 (2015) [Per J. Carpio, En Banc]; *Reyes v. Office of the Ombudsman*, G.R. Nos. 212593-94, March 15, 2016 [Per J. Perlas-Bernabe, En Banc].

18 G.R. Nos. 212014-15, December 6, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf> [Per J. Perlas-Bernabe, En Banc].

> mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it." It "is not the occasion for the full and exhaustive display of the prosecution's evidence." Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."[19] (Citations omitted)

A finding of probable cause can even rest on hearsay evidence. In *Estrada v. Office of the Ombudsman*:[20]

> [P]robable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay. *Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties.* However, in administrative cases, where rights and obligations are finally adjudicated, what is required is "substantial evidence" which cannot rest entirely or even partially on hearsay evidence. Substantial basis is not the same as substantial evidence because substantial evidence excludes hearsay evidence while substantial basis can include hearsay evidence.[21] (Emphasis supplied)

The Office of the Ombudsman's determination of the existence of probable cause during a preliminary investigation is an executive function,[22] which is different from the judicial determination of probable cause. In a criminal proceeding, there are two (2) instances where probable cause is determined. The first instance refers to the executive determination of probable cause, which is undertaken by the prosecution for the purpose of determining whether an Information charging an accused should be filed. The second instance refers to the judicial determination, which is assumed by a judge to determine whether a warrant of arrest should be issued.

In *People v. Castillo*:[23]

> *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 or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case,

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19 Id. at 16–17.

20 751 Phil. 821 (2015) [Per J. Carpio, En Banc].

21 Id. at 874.

22 *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> 17 [Per J. Leonen, Second Division].

23 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

> is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> *The judicial determination of probable cause, on the other hand, 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.
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> Corollary to the principle that a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so, the judge in turn should not override the public prosecutor's determination of probable cause to hold an accused for trial on the ground that the evidence presented to substantiate the issuance of an arrest warrant was insufficient. *It must be stressed that in our criminal justice system, the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.*
>
> Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.[24] (Citations omitted, emphasis supplied)

The prosecution determines the existence of probable cause independently from the court. The executive determination of probable cause concerns itself with the indictment of a person or the propriety of filing a criminal information.

Once an information is filed, jurisdiction over the case is vested on the court. The judge, upon assumption of jurisdiction, "does not act as an appellate court."[25] He or she does not review the determination made by the prosecutor. Courts "cannot pass upon the sufficiency or insufficiency of evidence to determine the lack or existence of probable cause."[26] Instead, the judge makes an independent assessment of the evidence to determine whether there is probable cause to issue a warrant of arrest.

In *De Lima v. Reyes*,[27] this Court held that a petition for certiorari questioning the regularity of a preliminary investigation becomes moot upon the filing of an information in court and the issuance of a warrant of arrest against the accused:

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24 Id. at 764–766.

25 *Mendoza v. People*, 733 Phil. 603, 611 (2014) [Per J. Leonen, Second Division].

26 *Parma, Jr. v. Office of the Deputy Ombudsman*, 576 Phil 558 (2008) [Per J. Velasco, Jr., Second Division] *citing Longos Rural Waterworks and Sanitation Association, Inc. v. Desierto*, 434 Phil. 618 (2002) [Per J. Austria-Martinez, First Division].

27 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

> Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court
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> . . . .
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> [It] would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent. The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause. . . .
>
> Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for *certiorari* questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.
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> The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.[28] (Citations omitted)

The pronouncement in *De Lima* has been affirmed subsequently in *Pemberton v. De Lima*[29] and *Cambe v. Office of the Ombudsman*.[30] In these cases, the trial courts already made a judicial determination of probable cause, which resulted in the issuance of a warrant of arrest.

Here, the Office of the Ombudsman found probable cause to indict petitioners for violation of Republic Act No. 7080 and Republic Act No. 3019. It issued the assailed Joint Order dated June 4, 2014 and Joint Resolution dated March 28, 2014. Accordingly, the corresponding Informations have been filed before the Sandiganbayan.[31]

This Court's ruling in *De Lima*, *Pemberton*, and *Cambe* should likewise apply in this case. Upon the filing of an Information, the prosecution loses

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28 Id. at 649–653.

29 784 Phil. 918 (2016) [Per J. Leonen, Second Division].

30 G.R. Nos. 212014-15, December 6, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf> [Per J. Perlas-Bernabe, En Banc].

31 *Ponencia*, p. 7.

jurisdiction over the case. The court to which the information is filed acquires jurisdiction and has full discretion on how the case should proceed.

Crespo v. Mogul[32] is instructive:

> *The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case.* When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
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> *The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court.* In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the *quasi-judicial* discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. The only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.
>
> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
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> However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possible designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.
>
> The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case

[32] 235 Phil. 465 (1987) [Per J. Gancayo, En Banc].

> leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.
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> *The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.* Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. *The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.* A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation. (Citations omitted, emphasis supplied)

Accordingly, I vote to **DENY** the Petitions for Certiorari. The Sandiganbayan should proceed to determine whether there is probable cause for the issuance of a warrant of arrest against petitioners in Criminal Case Nos. SB14CRM0256, SB14CRM0257, SB14CRM0258, SB14CRM0259, SB14CRM0260, SB14CRM0261, SB14CRM0262, SB14CRM0263, SB14CRM0264, SB14CRM0265, and SB14CRM0266.

MARVIC M.V.F. LEONEN
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court