



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 September 2020** which reads as follows:*

“G.R. Nos. 236308-09 (*Efren M. Canlas v. People of the Philippines and the Sandiganbayan (Third Division)*). – This resolves the Motion for Reconsideration¹ dated August 3, 2020 filed by Efren M. Canlas (petitioner). The instant motion assails the Resolution dated February 17, 2020 which dismissed the Petition for *Certiorari* under Rule 65 of the Rules of Court. The petition assailed the Resolutions dated September 25, 2017² and November 20, 2017³ of the Sandiganbayan Third Division which denied the two Motions to Quash Information⁴, and the Motion for Reconsideration⁵ filed by petitioner, respectively.

In seeking the Court’s reconsideration, petitioner argues that he raised a novel question of law. He explains, among others, that the only way a private person unrelated to public officers like him may be indicted for an alleged violation of Section 3(e) of Republic Act (RA) No. 3019 is, if he induced the accused public officers to commit the alleged violation, as stated in Section 4(b) thereof. He further explains that the offenses which private persons may be charged with are expressly mentioned in the law, specifically, Section 3 (b), (c), (d) and (k), Section 4 (a) and (b), and Section 5 of RA 3019. Thus, pursuant to the statutory construction principle “*expressio unius est exclusio alterius*,” that which is not included is deemed excluded.

¹ *Rollo*, pp. 205-221

² *Rollo*, pp. 36-46; penned by Presiding Justice Amparo M. Cabotaje-Tang with Associate Justices Sarah Jane T. Fernandez and Bernelito R. Fernandez, concurring.

³ *Id.* at 47-56.

⁴ *Id.* at 93-103 and 104-114.

⁵ *Id.* at 128-140.

Petitioner also argues that the doctrines previously laid down by the Court must be revisited and modified. He maintains that there should be a shift in the pernicious practice by the Ombudsman in charging private persons under Section 3 (e) of RA 3019 “in conspiracy” with public officers. For the petitioner, this has been inappropriately allowed by several jurisprudence on the matter, which necessitates a review of the petition by the Court.

The Court finds that these matters are a mere rehash of the arguments raised in the petition. These arguments have been sufficiently passed upon by the Court in its Resolution⁶ dated February 17, 2020.

To recall, the Court, reiterated the well-settled rule that “private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of RA 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.”⁷

Further, the Court in *Presidential Commission on Good Government vs. Office of the Ombudsman*⁸ discussed the elements of Section 3 (e) of RA 3019 - *i.e.*, (1) that the accused must be a public officer discharging administrative, judicial, or official functions, *or a private individual acting in conspiracy with such public officers*; (2) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

The Court also explained that in various cases, particularly *Singian, Jr. vs. Sandiganbayan (Third Division)*,⁹ *Uyboco vs. People*,¹⁰ and *PCGG vs. Navarro-Gutierrez*,¹¹ it had the occasion to affirm the indictment and/or conviction of a private individual, acting in conspiracy with public officers for violation of Section 3 (e) of RA 3019.

Thus, the Court did not find the need to revisit the doctrine that

⁶ *Id.* at 188-196

⁷ *Uyboco v. People*, 749 Phil. 987, 994 (2014), citing *People vs. Go*, 730 Phil. 362, 369 (2014).

⁸ G.R. No. 194619, March 20, 2019.

⁹ 514 Phil. 536 (2005).

¹⁰ *Uyboco v. People*, *supra* note 7.

¹¹ 772 Phil. 91 (2015).

private individuals may be held liable under Section 3 (e) of RA 3019 if they act in conspiracy with public officers, to refer the petition to the Court *en banc*, and to grant the Temporary Restraining Order prayed for by petitioner.

Petitioner's final argument in his Motion for Reconsideration is that he is a victim of the Ombudsman's pernicious practice of issuing "shotgun" indictments of private persons on a generic conspiracy charge, without any explanation of how he supposedly gave himself any unwarranted benefits. He maintains that private individuals like him who contract with the government are dragged into prosecutions for RA 3019 even if their participation in the contract is limited to signing the same and despite the absence of an allegation of any knowledge of the irregularity of the award of the contract to them.¹²

The Court finds no merit in petitioner's argument.

In this case, the two Informations¹³ filed against petitioner, along with public officers named therein before the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0080¹⁴ and SB-16-CRM-0084,¹⁵ sufficiently alleged the elements of Section 3 (e) of RA 3019. Specifically, the two Informations alleged that the accused, former Makati City Mayor Jejomar Binay and the other public officers of Makati City mentioned therein, in the performance of their official and/or administrative functions, conspired with petitioner, a private individual and the representative of Hilmarc's Construction Corporation (Hilmarc's), and causing undue injury to the Government by awarding Hilmarc's the contract for the Phases IV and V construction of the Makati City Hall Parking Building amounting to ₱649,275,681.73 and ₱141,649,366.00, respectively, through simulated public bidding.

Suffice it to state that a private individual's purported limited participation in the contract with the Government- *i.e.*, mere act of signing, and the alleged lack of knowledge of the irregularity of the contract entered into with the Government - goes into the defense of the indicted private individual that conspiracy does not exist as to him. In *Go v. The Fifth Division, Sandiganbayan*,¹⁶ the Court ruled that the absence (or presence) of any conspiracy among the accused

¹² *Rollo*, pp. 218-219.

¹³ *Id.* at 69-73 and 74-78.

¹⁴ *Id.* at 69-73.

¹⁵ *Id.* at 74-78.

¹⁶ 549 Phil. 783 (2007).

is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.

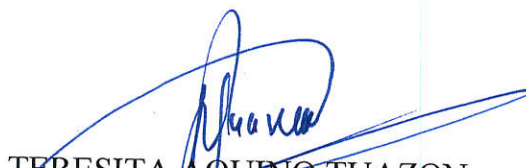
WHEREFORE, the Court resolves to **DENY** the Motion for Reconsideration.

The Resolution dated February 17, 2020 dismissing the petition for *certiorari* is **DEEMED FINAL**. No further pleadings or motions shall be entertained in this case.

Let an Entry of Judgment be made immediately.

SO ORDERED." (BALTAZAR-PADILLA, *J.*, on leave.)

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utah*
30 SEP 2020 *9/29*

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