

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

CARMENCITA C. DAEP, AMEIFE  
L. LACBAIN, ARNOLD B.  
CALCIÑA, and ERNESTO M.  
MILLENA,

Petitioners,

- versus -

SANDIGANBAYAN - FOURTH  
DIVISION and PEOPLE OF THE  
PHILIPPINES,

Respondents.

G.R. No. 244649

Present:

LEONEN, J., Chairperson,  
HERNANDO,\*  
INTING,  
DELOS SANTOS, and  
LOPEZ, J., J.

Promulgated:

June 14, 2021

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DECISION

LOPEZ, J., J.:

The invocation of the constitutional right to a speedy disposition of cases is not without limitations. In determining whether dismissal is warranted on the ground of violation of this right, courts shall always take into account the facts and circumstances of the case. Only when the delay is inordinate shall the court grant relief.

This is a Petition for *Certiorari*<sup>1</sup> under Rule 65 of the Rules of Court filed by the People of the Philippines assailing the Resolutions dated October 16, 2018<sup>2</sup> and November 27, 2018<sup>3</sup> of the Sandiganbayan in SB-16-

\* On wellness leave.

<sup>1</sup> *Rollo*, pp. 3-15.

<sup>2</sup> Penned by Associate Justice Alex L. Quiroz, with Associate Justices Reynaldo P. Cruz and Bayani H. Jacinto, concurring; *id.* at 27-28.

<sup>3</sup> *Id.* at 19-20.

CRM-0459, which denied the Motion to Dismiss filed by petitioners on the ground of violation of their right to speedy disposition of cases.

### *The Facts*

On August 3, 2016, an Information<sup>4</sup> was filed before the Sandiganbayan charging petitioners with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, committed as follows:

#### INFORMATION

THE UNDERSIGNED Assistant Prosecutor of the Office of the Special Prosecutor, accuses **CARMENCITA CARRETAS DAEP, AMEIFE LUMEN LACBAIN, DIOSCORO ASAYTUNO ARDALES, ROBERTO TOLEDO ALVARES, ARNOLD BANZUELA CALSIÑA and ERNESTO MATA MILLENA** of violation of Section 3(e) of Republic Act (RA) No. 3019, as amended, committed as follows:

That from March to April 2004, or sometime prior or subsequent thereto, in the Municipality of Manito, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, accused Municipal Mayor CARMENCITA CARRETAS DAEP, Municipal Accountant AMEIFE LUMEN LACBAIN, Municipal Budget Officer and Bids and Awards Committee (BAC) Chairperson DIOSCORO ASAYTUNO ARDALES, Municipal Engineer and BAC Vice-Chairperson ROBERTO TOLEDO ALVAREZ, Revenue Collection Clerk I and BAC Member ARNOLD BANZUELA CALSIÑA[,] and Municipal Treasurer and BAC Member ERNESTO MATA MILLENA, all of [the] Municipality of Manito, Province of Albay, all public officers, committing the offense in the discharge of their official functions, taking advantage of their official positions, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, and conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefits, advantage or preference to HEXAPHIL AGRIVENTURES, INC. (Hexaphil), by awarding a contract for the purchase of 4,285 bottles of Hexaplus liquid fertilizer at ₱700.00 per bottle through direct contracting to Hexaphil, and causing the disbursement of public funds in the amount of TWO MILLION NINE HUNDRED NINETY[-]NINE THOUSAND FIVE HUNDRED PESOS (₱2,999,500.00) to Hexaphil, notwithstanding its ineligibility to transact business with the government, the absence of the conditions which justifies resort to the said alternative mode of procurement in violation of the Government Procurement Law and other pertinent government rules and regulations, and despite several irregularities and instances of fraud attending the transaction such as, but not limited to, the following: 1) Hexaphil was not registered with the Department of Trade and Industry; 2) Its

<sup>4</sup> *Id.* at 29-31.

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registration with the Securities and Exchange Commission was revoked; 3) Hexaphil had no record of business/permit registration in Laguna where it supposedly held office; 4) At the inception of the procurement process, accused BAC members and accused Daep already identified Hexaphil as supplier; and 5) Prior to the release of the first tranche on April 5, 2004, the Purchase Request No. 291 dated March 1, 2004 was already prepared indicating therein the brand "Hexaplus"; to the damage and prejudice of the Municipality of Manito and/or the government.

CONTRARY TO LAW.

Quezon City, Philippines, June 9, 2016.

On August 16, 2016, petitioners filed an Urgent Motion for Judicial Determination of Probable Cause<sup>5</sup> before the Sandiganbayan, alleging that they did not conspire with one another and gave unwarranted benefits to Hexaphil Agriventures, Inc. through manifest partiality, evident bad faith, and gross inexcusable negligence.<sup>6</sup> Moreover, they argued that since there was inordinate delay in the filing of the case, it should be dismissed outright.<sup>7</sup> According to petitioners, the complaint against them was filed on May 16, 2011. They timely filed their counter-affidavits on September 12, 2011, but the Resolution of the Office of the Ombudsman was issued only on October 22, 2014.<sup>8</sup> Petitioners averred that this unreasonable delay in the termination of the preliminary investigation<sup>9</sup> was violative of their right to due process and speedy disposition of cases.<sup>10</sup>

In a Resolution<sup>11</sup> dated February 1, 2017, the Sandiganbayan denied the Urgent Motion for Judicial Determination of Probable Cause. It ruled that probable cause exists to charge petitioners for violation of Section 3(e) of R.A. 3019.<sup>12</sup> The Sandiganbayan also held that there was no inordinate delay in the filing of the case. It said that while it took the Office of the Ombudsman approximately three (3) years to terminate the preliminary investigation, this was justified as the prosecution was able to explain that the case consists of complex issues, voluminous documents, and various witnesses.<sup>13</sup> The Sandiganbayan denied petitioners' Motion for Reconsideration in a Resolution<sup>14</sup> dated April 6, 2018.

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<sup>5</sup> *Id.* at 33-48.

<sup>6</sup> *Id.* at 35.

<sup>7</sup> *Id.* at 45.

<sup>8</sup> *Id.* at 46.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 47.

<sup>11</sup> *Id.* at 49-52.

<sup>12</sup> *Id.* at 50.

<sup>13</sup> *Id.* at 51.

<sup>14</sup> *Id.* at 60-61.

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On June 14, 2018, petitioners filed a Motion to Dismiss<sup>15</sup> before the Sandiganbayan, again raising that there was a violation of their constitutional right to speedy disposition of cases.<sup>16</sup> They stated that the facts of the case arose sometime in 2004. The complaint, however, was filed only in 2011 and the Information five (5) years after, or in 2016.<sup>17</sup>

The Sandiganbayan, in a Resolution<sup>18</sup> dated October 16, 2018, stated that the Motion to Dismiss is already the third motion filed by petitioners to have the case dismissed against them on the ground of inordinate delay. It found no need to discuss the same arguments all over again and denied the Motion to Dismiss. Petitioners moved for reconsideration, but it was denied in a Resolution<sup>19</sup> dated November 27, 2018.

Hence, this Petition.

Petitioners argue that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it did not dismiss the case on the ground of inordinate delay.<sup>20</sup> They contend that since the complaint was filed in 2011 but the Information was only filed in 2016, there was sufficient ground to dismiss the case.<sup>21</sup> They further allege that the prosecution failed to provide convincing and sufficient reasons for the delay in the termination of the preliminary investigation.<sup>22</sup> The delay, according to petitioners, caused them undue prejudice because their witnesses are no longer available and some of the documents they could have used for their defense cannot be found anymore.<sup>23</sup>

In its Comment,<sup>24</sup> the People, through the Office of the Special Prosecutor (OSP), counters that there was no inordinate delay amounting to a violation of petitioners' right to speedy trial.<sup>25</sup> Citing the balancing-of-interest test, the OSP argues that in determining whether the accused's right to speedy trial was violated, the following factors may be considered and balanced: (1) length of delay; (2) reasons for the delay; (3) assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.<sup>26</sup>

The OSP argues that the case filed against petitioners was one of the offshoot cases arising from a series of investigations over the "Fertilizer

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<sup>15</sup> *Id.* at 21-26.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 22.

<sup>18</sup> *Id.* at 27-28.

<sup>19</sup> *Id.* at 19-20.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> *Id.* at 9-10.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.* at 96-117.

<sup>25</sup> *Id.* at 107.

<sup>26</sup> *Id.* at 109, citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

Fund” scam involving the misuse of the ₱728 Million Fund under the Department of Agriculture’s GMA Program by high and low ranking government officials and bogus/dummy private organizations or entities.<sup>27</sup> Thus, the period that lapsed from the conduct of the preliminary investigation until the filing of the Information was necessitated by the complexity of financial interest and business dealing involved, the number of parties investigated, and the review of the voluminous documents and records in relation to the claims and defenses of the parties.<sup>28</sup> Moreover, the OSP argues that its heavy caseload justifies the delay in the disposition of its cases.<sup>29</sup>

As to the claim of undue prejudice by petitioners, the OSP avers that this is self-serving and unsubstantiated. It points out that petitioners are in fact currently on bail and are “at liberty to move and do so as they will.”<sup>30</sup> In sum, the OSP argues that a mere mathematical reckoning of the time involved is not sufficient.<sup>31</sup>

The petitioners filed a Reply,<sup>32</sup> insisting that because it took five (5) years and one (1) month before the preliminary investigation was concluded, there was inordinate delay, which was “blatantly intolerable and grossly prejudicial to [their] constitutional right... to a speedy disposition of cases.”<sup>33</sup>

The sole issue for this Court’s consideration is whether or not petitioners’ right to speedy disposition of cases was violated.

## I.

The right to a speedy disposition of cases is guaranteed by Section 16, Article III of the Constitution. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.<sup>34</sup>

This right is commonly invoked in fact-finding investigations and preliminary investigations conducted by the Ombudsman because while these proceedings do not form part of the criminal prosecution proper, the

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<sup>27</sup> *Id.* at 110.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 111.

<sup>30</sup> *Id.* at 113.

<sup>31</sup> *Id.* at 114.

<sup>32</sup> *Id.* at 125-130.

<sup>33</sup> *Id.* at 128.

<sup>34</sup> *Revelta v. People*, G.R. No. 237039, June 10, 2019, citing *Inocentes v. People*, 789 Phil. 318, 333-334 (2016).

respondent may already be prejudiced by such proceedings, and equally because the Ombudsman itself is constitutionally committed to act promptly on complaints filed before it.<sup>35</sup>

Neither the Constitution nor the applicable law in this case, R.A. No. 6770<sup>36</sup> provides for the specific period within which an action is deemed “prompt,” a deviation from which is considered violative of the right to a speedy disposition of cases. It is true that the Rules of Court<sup>37</sup> and the Rules of Procedure of the Office of the Ombudsman<sup>38</sup> provide for the periods within which preliminary investigation should be conducted by the Ombudsman. This Court, however, in a line of cases,<sup>39</sup> has ruled that a mere mathematical reckoning of the time involved is not sufficient, and that the fact that the preliminary investigation was terminated beyond the periods provided by the rules, is not, in itself, violative of the right to a speedy disposition of cases.

What jurisprudence teaches us is that the right to a speedy disposition of cases is a relative and flexible concept<sup>40</sup> and that the assertion of the right ultimately depends on the peculiar circumstances of the case.<sup>41</sup> Moreover, the right is deemed violated only when there is inordinate delay, such that the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable motive, a long period of time is allowed to elapse without the party having his case tried.<sup>42</sup>

Synthesizing relevant jurisprudence on the matter, this Court, in *Cagang v. Sandiganbayan*,<sup>43</sup> clarified the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked, thus:

*First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right

<sup>35</sup> *People v. Sandiganbayan*, G.R. No. 229656, August 19, 2019, citing *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, & 210141-42, July 31, 2018 and Article XI, Section 12 of the Constitution which states: “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.”

<sup>36</sup> Entitled “AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES,” also known as “The Ombudsman Act of 1989.”

<sup>37</sup> Sections 3 and 4, Rule 112.

<sup>38</sup> Section 4, Rule II.

<sup>39</sup> See *Cagang v. Sandiganbayan*, *supra* note 35; *People v. Sandiganbayan*, 829 Phil. 660 (2018); *Binay v. Ombudsman*, G.R. No. 213957-58, August 7, 2019; *Revuelta v. People*, *supra* note 34; *People v. Sandiganbayan*, G.R. No. 240776, November 20, 2019; *Castañeda v. People*, G.R. No. 241729, July 8, 2020.

<sup>40</sup> *Baya v. Sandiganbayan*, G.R. Nos. 204978-83, July 6, 2020.

<sup>41</sup> *Id.*

<sup>42</sup> *Republic v. Sandiganbayan*, G.R. No. 231144, February 19, 2020, citing *Ty-Dazo v. Sandiganbayan*, 424 Phil. 945, 950-951 (2002).

<sup>43</sup> *Supra* note 35.

to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

*Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

*Third*, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

*Fourth*, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

*Fifth*, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.

## II.

The records would disclose the chronology of relevant events as follows:

- I. On May 16, 2011, the Task Force Abono, Field Investigation Office (FIO) of the Ombudsman filed a complaint against petitioners and other persons<sup>44</sup> in relation to the “Fertilizer Fund Scam”<sup>45</sup> arising from the Department of Agriculture’s (DA’s) *Ginintuang Masaganang Ani (GMA)* Program under Republic Act No. 8435 or the Agriculture and Fisheries Modernization Act.
- II. On August 3, 2011, preliminary investigation commenced and an order requiring respondents therein to file their counter-affidavits within ten (10) days from receipt was issued.<sup>46</sup> Sometime in September 2011, petitioners filed their counter-affidavits.<sup>47</sup>
- III. On October 22, 2014, the Special Panel on Fertilizer Fund Scam (Special Panel) issued its Resolution.<sup>48</sup> The Ombudsman then approved the Resolution finding probable cause to charge petitioners with violation of Section 3(e) of R.A. 3019 on February 10, 2015.<sup>49</sup>
- IV. Petitioners subsequently filed a Motion for Reconsideration of the Ombudsman’s Resolution.<sup>50</sup>
- V. On April 27, 2015, petitioners also filed a pleading entitled Memorandum of Authorities, in support of its earlier Motion for Reconsideration.<sup>51</sup>
- VI. On June 16, 2015, petitioners’ counsel filed a Formal Entry of Appearance with Supplemental Motion for Reconsideration,<sup>52</sup> and raised for the first time the issue of inordinate delay in the conduct of preliminary investigation.

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<sup>44</sup> *Rollo*, pp. 9, 99.

<sup>45</sup> *Id.* at 99, 126.

<sup>46</sup> *Id.* at 100, 128.

<sup>47</sup> *Id.* at 9, 100.

<sup>48</sup> *Id.* at 10, 100.

<sup>49</sup> *Id.* at 100, 128.

<sup>50</sup> *Id.* at 67, 100.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 66, 100.



VII. On August 3, 2016, the Information <sup>53</sup> was filed with the Sandiganbayan.

Following the *Cagang* guidelines, this Court finds that the facts and circumstances surrounding the present case do not show that there was a violation of petitioners' right to speedy trial.

### ***Burden of Proof***

To determine which party has the burden of proof, we look at Sections 3 and 4,<sup>54</sup> Rule 112 of the Rules of Court and Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman.<sup>55</sup> These rules provide that

<sup>53</sup> *Id.* at 29.

<sup>54</sup> 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. . .

(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.

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(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. . .

(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.

Section 4. *Resolution of investigating prosecutor and its review.* — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. . . Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct any/other assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

<sup>55</sup> Section 4. *Procedure.* — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

within ten (10) days after investigation, the investigating prosecutor shall determine whether or not there is sufficient ground to hold respondent for trial. The investigating prosecutor must then forward his resolution within five (5) days to the Ombudsman, who shall act upon the resolution within ten (10) days from receipt.

In the present case, the Special Panel issued its Resolution on October 22, 2014 finding probable cause to indict petitioners, or more than three (3) years after the complaint was filed against petitioners and after they filed their counter-affidavits in September 2011. Moreover, the Resolution was approved by the Ombudsman only on February 10, 2015, and the Information was filed with the Sandiganbayan on August 3, 2016.

Thus, the preliminary investigation was officially terminated beyond the period provided by the rules. The burden of proof, therefore, lies on the prosecution to establish that (a) it followed the prescribed procedure in the conduct of preliminary investigation; (b) the complexity of the issues and the volume of evidence made the delay inevitable; and (c) that no prejudice was suffered by the accused as a result of the delay.

***a. The Special Panel followed the procedure for preliminary investigation***

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a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.

f) If, after the filing of the requisite affidavits and their supporting [pieces of evidence], there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Petitioners do not dispute that the Special Panel followed the proper procedure in the conduct of its preliminary investigation. After the complaint was filed, petitioners were required to submit their counter-affidavits. They filed their counter-affidavits,<sup>56</sup> and only after did the Special Panel issue its Resolution finding probable cause against petitioners. Subsequently, the Special Panel submitted its Resolution to the Ombudsman for approval in accordance with procedure. Thus, there was no irregularity that attended the conduct of the preliminary investigation proper.

b. *Considering that the case arose from the Fertilizer Fund Scam, the complexity of the issues involved and the volume of evidence made the delay inevitable*

Petitioners first raised the issue of inordinate delay before the Sandiganbayan when they filed their Urgent Motion for Judicial Determination of Probable Cause. In dismissing their claim, the Sandiganbayan held that the delay in the present case is not so great as to be classified as inordinate delay. It said that while it took the Ombudsman approximately three (3) years to conduct preliminary investigation, it was able to adequately explain that the case consists of complex issues, voluminous documents, and various witnesses.<sup>57</sup> Citing *Mendoza-Ong v. Sandiganbayan*,<sup>58</sup> the Sandiganbayan said:

The right to speedy disposition of cases, like the right to speedy trial, is violated only when the proceedings are attended by vexatious, capricious and oppressive delays. In the determination of whether said right has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. The conduct of both the prosecution and the defendant, the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are the factors to consider and balance. **A mere mathematical reckoning of time involved would not be sufficient.**

This Court finds no reason to deviate from the Sandiganbayan's findings.

The complaint against petitioners was one of the cases arising from the "PHP 728 Million Fertilizer Scam" involving the DA's GMA Program under R.A. No. 8435 or the Agriculture and Fisheries Modernization Act.

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<sup>56</sup> *Rollo*, pp. 9, 100.

<sup>57</sup> *Id.* at 51.

<sup>58</sup> 483 Phil. 451, 454 (2004). (Emphasis supplied).

*People v. Sandiganbayan*<sup>59</sup> also involved the issue of whether there is inordinate delay in the conduct of preliminary investigation of the Ombudsman in a case arising from the Fertilizer Fund Scam. In that case, a complaint dated May 2, 2011 was filed by the Task Force Abono against several officials of the Provincial Government of Pampanga and officers of Malayan Pacific Trading Corporation for supposed irregularities in the purchase of fertilizers. The Special Panel issued a Resolution on September 18, 2013 indicting respondents therein for violation of Sections 3(e) and 3(g) of R.A. 3019, which was approved by the Ombudsman on June 3, 2014. The Information was filed on November 4, 2015.

In ruling that there was no violation of accused's right to speedy disposition of cases, the Court also took into account that the complaint filed against them relates to a scam in the disbursement of government funds under the GMA Program involving several congressional districts or local government units nationwide. Thus, the Court said that the lapse of four (4) years and six (6) months, reckoned from the filing of the complaint, "was justified due to the complexity of the issue involved requiring a thorough study of the case to determine with probability who should be indicted."<sup>60</sup> It cited *Salcedo v. Sandiganbayan*,<sup>61</sup> where the Court did not find unreasonable the fact that the preliminary investigation took two (2) years, four (4) months, and twenty-eight (28) days, because what was involved was the alleged releases of government funds that are complex and numerous, necessitating a detailed investigation of the cases.

At this juncture, this Court takes judicial notice that at the time the complaint was filed against petitioners, similar complaints were also initiated by the Task Force Abono against other people who may have been involved in the Fertilizer Fund Scam. The GMA Program financed the acquisition of agricultural supplies and farm inputs/implements by identified congressional districts and local government units nationwide. Thus, considering the number of government officials and private persons that may have been involved, the volume of documents and records in the relevant transactions, and the intricacy of the issues, the disposition of the cases by the Ombudsman necessarily took some time. The influx of cases involving the Fertilizer Fund Scam also inevitably congested the dockets of the Ombudsman, which, of course, was simultaneously dealing with other complaints of different nature. It would not be unreasonable, therefore, to allow the Ombudsman some allowance for the supposed delay in the conduct of the preliminary investigation in the present case.

***c. The petitioners did not suffer prejudice as a result of the delay***

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<sup>59</sup> G.R. No. 229656, August 19, 2019.

<sup>60</sup> *Id.*

<sup>61</sup> G.R. Nos. 223869-960, February 13, 2019.

In *Republic v. Sandiganbayan*,<sup>62</sup> the Court held that “[a] claim of prejudice must have a conclusive and factual basis.”<sup>63</sup> Moreover, an accused cannot rely on pure speculation and mere generalization, rather, he or she must show an actual, specific, and real injury to his or her rights.

In this regard, this Court agrees with the OSP that petitioners’ claim of undue prejudice was self-serving and unsubstantiated. According to petitioners, they suffered undue prejudice because their witnesses are no longer available and some of the documents they could have used for their defense cannot be found anymore.<sup>64</sup> Aside from their bare assertion, however, petitioners failed to substantiate their claim. For one, petitioners failed to state who their supposed witnesses were and the reason for their unavailability. There was also no mention of what documents were allegedly no longer available, and how those would have helped the defense of the accused. The failure of petitioners to substantiate their allegations leaves this Court no choice but to conclude that the claimed undue prejudice is more imaginary than real. As held by the Court, “prejudice cannot be established by ‘conjectural supplications of prejudice or by dubious invocation of constitutional rights.’<sup>65</sup>

From the foregoing, this Court rules that while it took the Special Panel more than three (3) years to issue a Resolution, and another four (4) months for the Ombudsman to approve it, the delay was not inordinate, but was brought about only by the nature and peculiar circumstances of the case. While there was delay, it was not vexatious, capricious, and oppressive<sup>66</sup> as to constitute a violation of the petitioners’ right to speedy disposition of cases.

Lest it be misunderstood, this Court will not hesitate to dismiss a case on the ground of a violation of the constitutional right of the accused to a speedy disposition of cases. The invocation of this right, however, is not without limitations. In determining whether dismissal is warranted on the ground of violation of this right, courts shall always take into account the facts and circumstances of the case. Only when the delay is inordinate shall the court grant relief. After all, the administration of justice does not deal primarily with speed and delay, when reasonable under the circumstances, does not by itself violate the right of accused to a speedy disposition of cases.<sup>67</sup>

<sup>62</sup> *Supra* note 42.

<sup>63</sup> *Id.*, citing *People v. Sandiganbayan (First Division)*, G.R. Nos. 233557-67, June 19, 2019.

<sup>64</sup> *Rollo*, p. 14.

<sup>65</sup> *Republic v. Sandiganbayan*, *supra* note 42, citing *Alvizo v. Sandiganbayan*, 292-A Phil. 144, 156 (1993).

<sup>66</sup> *Id.*


<sup>67</sup> *People v. Sandiganbayan*, *supra* note 39.

**WHEREFORE**, premises considered, the Petition is **DISMISSED**. The Resolutions dated October 16, 2018 and November 27, 2018 of the Sandiganbayan in SB-16-CRM-0459 are hereby **AFFIRMED**. The Sandiganbayan is **DIRECTED** to **RESOLVE** SB-16-CRM-0459 with due and deliberate dispatch.


**SO ORDERED.**

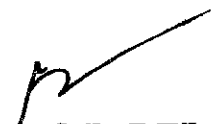
  
**JHOSEPH LOPEZ**  
Associate Justice

**WE CONCUR:**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice


On wellness leave  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

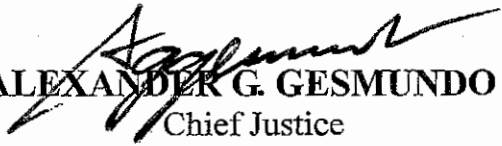
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Third Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

