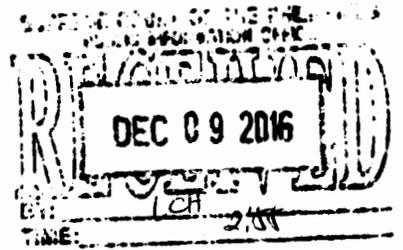




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



PEOPLE OF THE PHILIPPINES, **G.R. No. 160864**
Petitioner,

- versus -

EDUARDO M. COJUANGCO, JR.,
Respondent.

X ----- X

REPUBLIC OF THE PHILIPPINES, **G.R. No. 160897**
Petitioner,

Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA,* *JJ*.

EDUARDO M. COJUANGCO, JR.,
Respondent.

Promulgated:

NOV 16 2016

X ----- X

DECISION

SERENO, *CJ*:

Before this Court is a Petition¹ filed by the Office of the Special Prosecutor (OSP) on 23 December 2003 and a Petition for Review² filed by the Office of the Solicitor General (OSG) on 27 January 2004. Both Petitions, brought under Rule 45 of the 1997 Rules of Civil Procedure, prayed for the reversal of the Resolution³ of the Sandiganbayan dated

* On leave.

¹ *Rollo* (G..R. No. 160864), pp. 12-53.

² *Rollo* (G..R. No. 160897), pp. 21-109.

³ *Rollo* (G.R No. 160864), p. 59-67; Criminal Case No. 14161, penned by Associate Justice Ma. Cristina Cortez-Estrada, and concurred in by Presiding Justice Chairman Minita V. Chico-Nazario (now a retired member of this Court) and Associate Justice Diosdado M. Peralta (now a member of this Court.)

24 April 2003 and the subsequent Resolution⁴ dated 20 November 2003. In these Resolutions, the Sandiganbayan declared null and void the preliminary investigation conducted by the Presidential Commission on Good Government (PCGG) against Eduardo M. Cojuangco, Jr. (respondent) and the Information filed pursuant thereto in Criminal Case No. 14161.

FACTUAL ANTECEDENTS

The PCGG, through an Information⁵ dated 27 November 1989, charged respondent with violation of Section 4(b) in relation to Section 3(h) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act (R.A. 3019), *viz.*:

That on or about and during the period from 1973 to 1985, both dates inclusive, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the said accused, in his capacity as a private individual and being then a close associate of former President Ferdinand E. Marcos, did then and there willfully and unlawfully acted [sic] as nominee and/or dummy of the latter in acquiring shares of stock in the Bulletin Today Publishing Company and Liwayway Publishing Inc., both private corporations, thereby inducing and/or causing then President Ferdinand E. Marcos to directly or indirectly, participate in the management and control of and/or have pecuniary or financial interest in the said corporations.

CONTRARY TO LAW.⁶

An *ex parte* motion for the issuance of a warrant of arrest was thereafter filed by the PCGG with the Sandiganbayan. On 19 January 1990, the Sandiganbayan denied the motion, based on a finding that the PCGG's preliminary investigation had established no probable cause against respondent.⁷ The Sandiganbayan also ordered the PCGG to "undertake whatever steps it may deem necessary to sustain the Information" filed against respondent.

The PCGG assailed the Sandiganbayan Resolution before this Court through a Petition for *Certiorari* docketed as G.R. No. 91741.⁸ In a Resolution dated 29 March 1990, the Court found no grave abuse of discretion on the part of the Sandiganbayan in not issuing a warrant for respondent's arrest.⁹ The Petition was consequently dismissed,¹⁰ but the PCGG was given 60 days within which to "conduct further proceedings, if it so minded."¹¹

⁴ Id. at 68-78; Criminal Case No. 14161, penned by Associate Justice Ricardo R. Rosario, and concurred in by Presiding Justice Chairman Minita V. Chico-Nazario and Associate Justice Diosdado M. Peralta (now a member of this Court.)

⁵ Id. at 79-80.

⁶ Id. at 79.

⁷ Id. at 240.

⁸ Id.

⁹ *Rollo* (G.R. No. 160897), pp. 296-299.

¹⁰ Id.

¹¹ Id. at 299.

The PCGG, through its Security and Investigation Department, proceeded to gather additional evidence against respondent.¹² On the basis of the new evidence it obtained, the PCGG filed a *Manifestation with Ex Parte Motion to Admit the Amended Information* requesting the Sandiganbayan to allow the amendment of the Information to conform to the evidence.¹³ The original Information was amended to read as follows:

That on or about and during the period from 1973 to 1985, both dates inclusive, in Metro Manila, Philippines [sic], and within the jurisdiction of this Honorable Court, then former President Ferdinand E. Marcos (Deceased) unlawfully acquired shares of stock in the Bulletin Publishing Corporation, a private corporation, representing about fifty-four (54%) percent of its equity, which shares of stock were originally apportioned and issued in the names of his close associates, namely, Cesar Zalamea, Jose Y. Campos and Ramon Cojuangco (Deceased), all of whom unlawfully and willfully [sic] acted as his nominees and/or dummies in the said corporation, and thereafter, then former President Marcos, with the active participation and/or indispensable cooperation of Ramon Cojuangco, and in conspiracy with accused Eduardo Cojuangco, Jr. cancelled or caused to be cancelled the shares of stock assigned and issued to said Ramon Cojuangco and transferred or caused to be transferred the same shares of stock in favor of the said accused Eduardo Cojuangco, Jr., who in his capacity as private individual, conspiring and confederating with Cesar Zalamea and Jose Y. Campos, and acting in substitution of Ramon Cojuangco as an original/initial nominee and/or dummy, did then and there, willfully and unlawfully act and continue to act as nominee and/or dummy of the said former President in the said corporation, thereby knowingly causing former President Marcos to maintain his beneficial ownership of the controlling interest in, and to directly or indirectly participate in the management and control of the said corporation in which the latter was prohibited by the constitution and the law from having any financial or pecuniary interest.

CONTRARY TO LAW.¹⁴

On 8 June 1990, the Sandiganbayan issued a Resolution¹⁵ admitting the Amended Information and directing the issuance of a warrant for the arrest of respondent.¹⁶

On 20 June 1990, respondent filed a *Motion to Order the Dismissal of the Information in 'People v. Eduardo Cojuangco' Criminal Case No. 14161 (Sandiganbayan) and to Annul the Warrant of Arrest issued in G.R. No. 91741.*¹⁷ This motion to dismiss was treated by the Court as a Petition for *Certiorari* under Rule 65 of the Rules of Court and was accordingly docketed as G.R. No. 93884.¹⁸

¹² *Rollo* (G.R. No. 160864), p. 240.

¹³ *Id.* at 241.

¹⁴ *Id.* at 81-82.

¹⁵ *Id.* at 84-90.

¹⁶ *Id.* at 241.

¹⁷ *Id.* at 241.

¹⁸ *Id.* at 242.

In a Resolution dated 19 June 2001,¹⁹ the Court found no grave abuse of discretion on the part of Sandiganbayan in issuing a warrant of arrest against respondent. The Court declined to interfere with the finding of probable cause by the Sandiganbayan considering that the matter was addressed to the latter's sound discretion.²⁰ Instead, it directed the Sandiganbayan "to resume the proceedings in Criminal Case No. 14161 and dispose of the same with deliberate dispatch."²¹

In compliance with this Court's ruling, the Sandiganbayan issued a Resolution²² setting the arraignment of respondent and the pre-trial of the case on 18 and 19 September 2002, respectively.²³ However, the scheduled arraignment of the case did not push through. Instead, on 18 September 2002, the prosecution was directed to submit a Memorandum in support of its position that the Sandiganbayan had jurisdiction over respondent.²⁴ The arraignment and pre-trial of respondent were rescheduled for 7 November 2002.

The PCGG filed the required Memorandum on 1 October 2002.²⁵ Citing Executive Order No. 14 (E.O. 14), as amended, it argued that it was mandated to file all cases involving the ill-gotten wealth of former President Ferdinand E. Marcos and his family before the Sandiganbayan, which shall exercise exclusive and original jurisdiction over the same.²⁶

On 28 October 2002, respondent filed a Reply Memorandum addressing the arguments raised by the PCGG. In particular, he assailed the preliminary investigation it had conducted and the Information filed against him on the basis of this Court's pronouncements in *Cojuangco v. Presidential Commission on Good Governance*.²⁷ Respondent argued that the factual circumstances leading to the Court's Decision in *Cojuangco* were likewise present herein.

On 24 April 2003, the Sandiganbayan issued a Resolution that declared null and void the preliminary investigation conducted by the PCGG and the Information filed pursuant thereto. The Sandiganbayan found the investigation arbitrary and unjust, because the entity that had gathered the evidence to support the Information filed against respondent – the PCGG – was also the entity that had conducted the preliminary investigation of his case. Accordingly, the Sandiganbayan ruled that the circumstances fell squarely within the ruling in *Cojuangco*:

The circumstances of the instant case which fall squarely with that of *Cojuangco, Jr. vs. PCGG (supra)*, are peculiar, in the sense that the

¹⁹ Id. at 239-247.

²⁰ Id. at 246.

²¹ Id. at 247.

²² Id. at 91.

²³ Id. at 30.

²⁴ Id. at 92.

²⁵ Id. at 93-103.

²⁶ Id.

²⁷ G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 226.

PCGG itself which gathered the evidence and filed the complaint for purposes of preliminary investigation was the same entity which conducted the preliminary investigation in this case and which, according to the Supreme Court was arbitrary and unjust, thus ruling that the preliminary investigation conducted by the PCGG including the Information filed was null and void. x x x.

WHEREFORE, the Information docketed as Criminal Case No. 14161, filed by the PCGG against Eduardo M. Cojuangco, Jr., is hereby declared null and void. The PCGG is hereby directed to transmit the complaints and records of the instant case under I.S. No. 13 to the proper investigating official for appropriate action.

The arraignment and pre-trial on this case previously scheduled on April 28, 2003, is hereby cancelled.

SO ORDERED.²⁸

The prosecution moved for the reconsideration of the Resolution, but the motion was likewise denied by the Sandiganbayan in a subsequent Resolution dated 14 November 2003.²⁹

In separate Petitions for Review, the OSP and the OSG asked this Court to reverse and set aside the assailed Resolutions of the Sandiganbayan.³⁰ The two Petitions were consolidated by this Court on 21 January 2004.³¹

In their Petitions, the OSP and the OSG argue that the preliminary investigation conducted by the PCGG and the Information filed against respondent are valid based on the following grounds:

1. The PCGG is authorized to carry out the preliminary investigation against respondent in Criminal Case No. 14161 under E.O. No. 14.
2. The validity of the preliminary investigation conducted by the PCGG has been affirmed by this Court in the latter's Resolutions in G.R. Nos. 91741 and 93884. The finding therein constitutes the law of the case and cannot be disturbed.
3. The finding of probable cause by the Sandiganbayan leading to its issuance of a warrant of arrest against respondent confirmed that he had not been deprived of an impartial judge during the preliminary investigation proceedings.

THE ISSUE

We are called upon to determine whether the Sandiganbayan erred when it declared null and void the preliminary investigation conducted by

²⁸ *Rollo* (G.R. No. 160864), p. 66.

²⁹ *Id.* at 68

³⁰ *Rollo* (G.R. No. 160864), p. 51; *rollo* (G.R. No. 160897) p. 106.

³¹ *Rollo* (G.R. No. 160897), pp. 6-7.

the PCGG and the Information filed pursuant to that investigation.

OUR RULING

We DENY the Petitions. We find no error in the assailed Sandiganbayan Resolutions.

The Sandiganbayan correctly dismissed the Information filed against respondent, pursuant to this Court's ruling in Cojuangco v. PCGG.

In *Cojuangco*, this Court declared the preliminary investigation conducted by the PCGG in Criminal Cases No. 14398 and 14399 null and void on due process grounds. It was noted that prior to the conduct of the preliminary investigation, the PCGG had gathered evidence against respondent, issued a sequestration order against him, and filed a civil case for recovery of ill-gotten wealth based on the same facts involved in the criminal cases. Based on those circumstances, the Court found that the PCGG could not have possibly acted with the "cold neutrality of an impartial judge" during the preliminary investigation proceedings, since the latter had already formed conclusions on the matter. The Court stated in *Cojuangco*:

The Court cannot close its eyes to the glaring fact that in earlier instances, the PCGG had already found a *prima facie* case against the petitioner and intervenors when, acting like a judge, it caused the sequestration of the properties and the issuance of the freeze order of the properties of petitioner. Thereafter, acting as a law enforcer, in collaboration with the Solicitor General, the PCGG gathered the evidence and upon finding cogent basis therefor filed the aforesaid civil complaint. Consequently the Solicitor General filed a series of criminal complaints.

x x x x

The Court finds that under the circumstances of the case, the PCGG cannot inspire belief that it could be impartial in the conduct of the preliminary investigation of the aforesaid complaints against petitioner and intervenors. It cannot possibly preside in the said preliminary investigation with an even hand.

The Court holds that a just and fair administration of justice can be promoted if the PCGG would be prohibited from conducting the preliminary investigation of the complaints subject of this petition and the petition for intervention and that the records of the same should be forwarded to the Ombudsman, who as an independent constitutional officer has primary jurisdiction over cases of this nature, to conduct such preliminary investigation and take appropriate action.

All violators of the law must be brought before the bar of justice. However, they must be afforded due process and equal protection of the law, whoever they may be.

WHEREFORE, the petitions of Eduardo M. Cojuangco, Jr. and intervenors Maria Clara Lobregat, and Jose Eleazar, Jr. are hereby GRANTED. The PCGG is directed to transmit the complaints and records thereof under I.S. Nos. 74, 75, 79, 80, 81, 82, 83 and 84 to the Ombudsman for appropriate action. All proceedings of the preliminary investigation conducted by the PCGG of said complaints are hereby declared null and void including the informations which it filed in the Sandiganbayan against petitioner and intervenors docketed as Criminal Cases Nos. 14398 and 14399. The *status quo* order which this Court issued on March 12, 1990 is hereby made permanent and the PCGG is permanently prohibited from further conducting the preliminary investigation of the aforestated complaints. The Court makes no pronouncement as to costs.³²

The same factual circumstances obtain in this case.

As discussed earlier, the PCGG filed an Information against respondent for violation of R.A. 3019. The Information alleged that he had illegally acted as a nominee/dummy of former President Ferdinand E. Marcos in acquiring shares of stock in the Bulletin Today Publishing Company and Liwayway Publishing, Inc.³³ The PCGG found probable cause to file the Information after conducting a preliminary investigation of the charges filed against respondent.³⁴

Earlier, or on 20 July 1987, the PCGG had filed a complaint³⁵ for reconveyance, reversion, accounting, restitution and damages against respondent and several other persons before the Sandiganbayan. Entitled *Republic of the Philippines v. Eduardo M. Cojuangco, Jr., et al.*, and docketed as Civil Case PCG No. 0022, the complaint made the following allegations:

1. This is a civil action against Defendants Emilio T. Yap, Manuel G. Montecillo, Eduardo Cojuangco, Jr., Cesar C. Zalamea, Ferdinand E. Marcos and Imelda R. Marcos to recover from them ill-gotten wealth consisting of funds and other property which they, in unlawful concert with one another had acquired and accumulated in flagrant breach of trust and of their fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws of the Republic of the Philippines, thus resulting in their unjust enrichment during Defendant Ferdinand E. Marcos' 20 years of rule from December 30, 1965 to February 25, 1986, first as President of the Philippines under the 1935 Constitution and thereafter, as one-man ruler under martial law and Dictator under the 1973 Marcos-promulgated Constitution.

X X X X

12. Defendant Cesar C. Zalamea, by himself and/or in unlawful concert and active collaboration with Defendants Ferdinand E. Marcos and Imelda R. Marcos, among others:

³² *Cojuangco v Presidential Commission on Good Governance*, G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 227, 256-257.

³³ *Rollo* (G..R No. 160864), pp. 79-80.

³⁴ *See*: Certification of then PCGG Chairman Mateo Caparas, *Rollo* (G.R No. 160864), p. 82.

³⁵ *Rollo* (G.R. No. 160864), pp. 368-392.

(a) acted together with Defendant Eduardo Cojuangco, Jr., as the dummies, nominees and/or agents of the latter Defendant spouses in acquiring substantial shares in Bulletin Publishing Corporation in order to prevent disclosure and recovery of assets illegally obtained;³⁶

The Complaint was filed by the PCGG through its chairperson, Ramon A. Diaz, who verified the Complaint; and Solicitor General Francisco I. Chavez and Assistant Solicitor General Ramon S. Desuasido.³⁷ Notably, the acts alleged against respondent in the foregoing civil action also formed the basis of the Information in the instant case.

The PCGG, through its Security and Investigation Department, likewise gathered additional evidence against respondent during its reinvestigation of the case. The OSP itself alleged the following in its Petition:³⁸

Thus, the PCGG, through Atty. Domingo C. Palarca, conducted a reinvestigation of the case, gathering the following documents:

Annex 1 – Bulletin Publishing Corporation audited financial statement.

Annex 2 – Summary of Bulletin stockholders with their corresponding interest as of 22 August 1985.

Annex 3 – Board Resolution of 16 May 1985.

Annex 4 – Philtrust Check No. 332816 dated 14 June 1985 for ₱2,337,279.00 issued to Cesar Zalamea by the Bulletin Publishing Corporation.

Annex 5 – Philtrust Check No. 332817 dated 14 June 1985 for ₱2,337,279.00 issued to Jose Y. Campos by the Bulletin Publishing Corporation.

Annex 6 – Philtrust Check No. 332818 dated 14 June 1985 for ₱2,337,551.00 issued to accused Eduardo Cojuangco, Jr. by the Bulletin Publishing Corporation.

Annex 7 – Philtrust Check No. 333853 dated 23 August 1985 for ₱3,505,918.50 issued to Zalamea by the Bulletin Publishing Corporation.

Annex 8 – Philtrust Check No. 333854 dated 23 August 1985 for ₱3,505,918.50 issued by the Bulletin Publishing Corporation.

Annex 9 – Philtrust Check No. 333855 dated 23 August 1985 for ₱3,506,326.50 issued to Cojuangco by the Bulletin Publishing Corporation.³⁹

³⁶ Id. at 368-369, 380-381.

³⁷ Id. at 390-392.

³⁸ Id. at 25.

³⁹ Id. at 25-26.

Annex 10 – Philtrust Check No. 490479 dated 23 August 1985 for ₱5,813,197.50 issued to Zalamea by the Bulletin Publishing Corporation.

Annex 11 – Philtrust Check No. 490478 dated 23 August 1985 for ₱5,843,197.50 issued to Campos by the Bulletin Publishing Corporation.

Annex 12 – Philtrust Check No. 490477 dated 23 August 1985 for ₱5,843,877.50 [sic] issued to Cojuangco by the Bulletin Publishing Corporation.

As explained above, these additional pieces of evidence became the basis of the PCGG's reinvestigation and subsequent amendment of the Information in this case.

By these two acts of the PCGG – the filing of the civil complaint and the gathering of additional evidence – the present preliminary investigation and the reinvestigation proceedings have been rendered defective.

Considering that the PCGG initiated a civil complaint against respondent for the same acts alleged in the present Information, it is evident that it had already formed its conclusions even prior to conducting the preliminary investigation in this case. Further, since the PCGG itself gathered the additional evidence in support of the Information, the reinvestigation it carried out could not have been the fair and impartial review contemplated by law.

As this Court noted in *Cojuangco*, the PCGG cannot gather evidence against a respondent, file a criminal complaint, and then conduct a preliminary investigation of the case without contravening the basic tenets of due process. The due process violation was compounded by the fact that the PCGG had filed a civil complaint against the same respondent alleging substantially the same illegal or criminal acts:

In our criminal justice system, the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is to say the least arbitrary and unjust. It is in such instances that We say one cannot be "a prosecutor and judge at the same time." **Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor.** The circumstances of the instant petition are even worse. To repeat, the PCGG and the Solicitor General finding a *prima facie* basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. While ostensibly, it is only the Solicitor General who is the complainant in the criminal cases filed with the PCGG, in reality the PCGG is an unidentified co-complainant. Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of a *prima facie* finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of



coconut levy funds. **Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the “cold neutrality of an impartial judge,” as it has prejudged the matter.** Add to this the fact that there are many suits filed by petitioner and the intervenors against the PCGG and vice versa.⁴⁰ (Emphases supplied)

Consistent with the above-quoted Decision of this Court in *Cojuangco*, we find that respondent’s right to due process was violated in the preliminary investigation proceedings conducted by the PCGG in this case. The investigation conducted and the Information filed pursuant thereto must therefore be declared null and void.

The Resolutions of this Court in G.R. Nos. 91741 and 93884 neither affirmed nor recognized the validity of the preliminary investigation conducted by the PCGG.

We likewise find no merit in the argument of petitioners that the previous Resolutions of this Court in G.R. Nos. 91741 and 93884 recognized the validity of the PCGG’s preliminary investigation. A careful reading of the two Resolutions reveals that this Court made no such finding therein.

In G.R. No. 91741, this Court declined to interfere with the Sandiganbayan’s finding that there was no probable cause to hold respondent liable for violation of R.A. 3019. Indeed, the Court affirmed the Sandiganbayan’s Decision to allow the PCGG 60 days within which to conduct further proceedings in support of the Information.⁴¹ This pronouncement, however, does not *per se* affirm the validity of the preliminary investigation conducted by the PCGG. It must be emphasized that the PCGG’s participation in the gathering of evidence and the filing of a civil case against respondent, based on the same acts alleged in the Information had not been brought to the attention of the Court at the time. Furthermore, the Court’s directive to “conduct further proceedings” cannot be considered a license for the PCGG itself to gather evidence against respondent prior to conducting a reinvestigation of the case.

Similarly, the validity of the preliminary investigation was not discussed in G.R. No. 93884. In that case, the only issue brought before, and resolved by, the Court was whether the Sandiganbayan had acted with grave abuse of discretion in finding probable cause against respondent based on the Amended Information filed by the PCGG. The purported nullity of the Information was raised only in respondent’s Motion for Reconsideration. Having been belatedly raised, the Court no longer passed upon this new argument in its Resolution dated 29 January 2002.

⁴⁰ *Cojuangco Jr., v. Presidential Commission on Good Governance*, G.R. Nos. 92319-20, 2 October 1990, 190 SCRA 227-228.

⁴¹ See Dispositive Portion of the 29 March 1990 Resolution in G.R. No. 91741, *Rollo* (G.R. No. 160897), p. 299.



Considering that these two Resolutions are silent on the issue of the validity of the PCGG's preliminary investigation, there is as yet no pronouncement that might be considered the "law of the case" on this matter. Accordingly, the Sandiganbayan did not err in making its own determination of this issue.

The Sandiganbayan's earlier finding of probable cause and its issuance of a warrant of arrest against respondent did not validate the preliminary investigation proceedings conducted by the PCGG.

In their respective Petitions, the OSP and the OSG also point out that the Sandiganbayan itself had found probable cause to issue a warrant of arrest against respondent on the basis of the Amended Information filed by the PCGG. This ruling allegedly validated the preliminary investigation conducted by the PCGG and proved that respondent did not suffer a violation of his right to due process.

This contention is unmeritorious. The denial of due process in this case, as well as the resulting nullity of the preliminary investigation proceedings and the Information, cannot be cured by the Sandiganbayan's earlier finding of probable cause.

As a general rule, defects in the preliminary investigation proceedings, or even the absence thereof, will not render an Information null and void.⁴² An exception to this rule, however, was carved out for cases involving violations of the right to due process.⁴³ In *People of the Philippines v. Sierra, Jr.*, this Court held:

x x x In a 1969 decision, *People v. Figueroa*, after referring to the above Casiano doctrine, this Court, through Justice Teehankee, expressly negated the concept that the failure to conduct preliminary investigation would offend against such a constitutional right. **No other conclusion is warranted if there be adherence to the principle uninterruptedly adhered to that only where an accused is held to answer for a criminal offense in an arbitrary or oppressive manner is there a disregard thereof. The requirement of the proceeding being unjust or unreasonable must be met.** This is not to rule out cases where such infirmity could be predicated on a showing that the disregard of this procedural safeguard did infect the prosecution with unfairness. **In that sense, what was held in *People v. Monton*, as to such a failing nullifying the proceeding because of the due process protection could still be conceivably relied upon.**⁴⁴ (Citations omitted and boldface supplied)

The principle followed by this Court is that where there is a violation of basic constitutional rights, courts are ousted from jurisdiction. The

⁴² *San Agustin v. People of the Philippines*, G.R. No. 158211, 31 August 2004, 437 SCRA 392.

⁴³ See *People v. Monton*, G.R. No. L-23906, 22 June 1968, 23 SCRA 1024.

⁴⁴ *People v. Sierra, Jr.*, G.R. No. L-27611, 30 August 1972, 46 SCRA 726-727.

violation of a party's right to due process raises a serious jurisdictional issue, which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction.⁴⁵

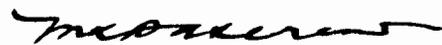
As a consequence of the nullity of the Information, any action taken by the Sandiganbayan pursuant thereto, including its initial determination of probable cause against respondent, is void and ineffective. A ruling on this point cannot validate, much less cure, the fatal defect in the preliminary investigation proceedings or in the Information filed by the PCGG.

Considering the foregoing, and in accordance with the ruling of this Court in *Cojuangco*, the records of this case should be forwarded to the Ombudsman, who has primary jurisdiction over cases of this nature, for the conduct of a preliminary investigation and for appropriate action.

One final observation. We are compelled to emphasize the fact that the legal points involved herein were already clarified by this Court in 1990 when it decided *Cojuangco*. We already declared in that case that it was improper for the PCGG to conduct preliminary investigations and initiate criminal proceedings against individuals whose properties were previously sequestered by the PCGG itself for the same acts and transactions. We made clear that the procedure adopted in *Cojuangco* could not be countenanced because it violated the basic tenets of due process. Not only did the Court expect the PCGG to act in accordance with this ruling in all future cases, it relied on the institution to rectify all past proceedings suffering from the same defect by transmitting the records of these cases to the Ombudsman for proper action. This would have allowed the criminal actions to proceed with dispatch.

WHEREFORE, the instant Petitions are **DENIED**. The Resolutions of the Sandiganbayan dated 24 April 2003 and 20 November 2003, which declared the preliminary investigation conducted by the PCGG and the Information filed pursuant thereto in Criminal Case 14161 null and void, are hereby **AFFIRMED**. The PCGG is directed to immediately transmit the Complaint and the records of the instant case to the Ombudsman for appropriate action. No pronouncement as to costs.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

⁴⁵ *Montoya v. Varilla*, G.R. No. 180146, 18 December 2008, 574 SCRA 831, 843; *Garcia v. Molina*, G.R. Nos. 157383 and 174137, 10 August 2010, 627 SCRA 540, 554.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

(On leave)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice