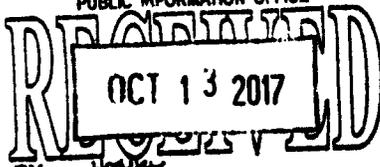


EN BANC

G.R. No. 229781 – SENATOR LEILA M. DE LIMA, *Petitioner*, v. HON. JUANITA GUERRERO, in her capacity as Presiding Judge, Regional Trial Court of Muntinlupa City, Branch 204, et al., *Respondents*.

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Promulgated:

October 10, 2017

BY: Hon. De la Cruz
TIME: 6:10 PM
X-----X

DISSENTING OPINION

CARPIO, J.:

The petition primarily seeks to: (a) annul the Order¹ dated 23 February 2017 and the issuance of Warrants of Arrest against petitioner Senator Leila M. De Lima and the others accused in Criminal Case No. 17-165,² and (b) enjoin respondent Judge Juanita Guerrero from conducting further proceedings in Criminal Case No. 17-165 until the Motion To Quash is resolved with finality.

Petitioner's Motion To Quash raised the following issues: (1) the Regional Trial Court (RTC) has no jurisdiction over the offense charged against petitioner; (2) the Department of Justice (DOJ) Panel has no authority to file the Information; (3) the Information charges more than one offense, and (4) the allegations and recital of facts, both in the Information and in the resolution of the DOJ Panel, do not allege the *corpus delicti* of the charge of violation of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act.

The petition should be **GRANTED** for the following substantive reasons:

- (1) The Information does not allege any of the essential elements of the crime of illegal sale or illegal trade of drugs under Section 5 of R.A. No. 9165, hence the charge of illegal trade of drugs is void *ab initio*;
- (2) The exclusive original jurisdiction over bribery, the offense actually alleged in the Information, lies with the Sandiganbayan; hence, the RTC has no jurisdiction over Criminal Case No. 17-165; and

¹ Finding sufficient probable cause for the issuance of Warrants of Arrest against all the accused in Criminal Case No. 17-165, namely, Leila M. De Lima, Rafael Marcos Z. Ragos, and Ronnie Palisoc Dayan.

² Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5, in relation to Sections 3(jj), 26(b), and 28, Republic Act No. 9165 (Illegal Drug Trading).

- (3) In the Memorandum of Agreement dated 29 March 2012 between the DOJ and the Ombudsman, the DOJ expressly recognizes the Ombudsman's primary jurisdiction to conduct preliminary investigations in complaints for crimes cognizable by the Sandiganbayan; hence, the DOJ Panel had no authority to file the Information.

Substantive Matters

The Information does not allege any of the essential elements of the crime of illegal sale or illegal trade of drugs.

The Information in Criminal Case No. 17-165 filed by the DOJ Panel before the RTC of Muntinlupa City on 17 February 2017 states:

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, accuse LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5 of R.A. No. 9165, in relation to Section 3(jj), Section 26(b), and Section 28, Republic Act No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, committed as follows:

That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: **De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates** in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; **by reason of which, the inmates**, not being lawfully authorized by law and through the use of mobile phones and electronic devices, did then and there willfully and **unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.

CONTRARY TO LAW.³ (Emphasis supplied)

³ Annex F of the Petition.

✓

The allegations in the Information against petitioner do not constitute an offense under any provision of R.A. No. 9165. The investigation and eventual prosecution of her case fall under Section 4(b) of Presidential Decree (P.D.) No. 1606, **specifically as amended by R.A. No. 10660, bringing her case within the exclusive original jurisdiction of the Sandiganbayan.**

For immediate reference, Section 5, as well as Sections 3(jj), 26(b), and 28 of R.A. No. 9165, is reproduced below:

Section 5. **Sale, Trading**, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the **sale, trading**, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall

be imposed upon any person, who acts as a “protector/coddler” of any violator of the provisions under this Section.

Section 3. **Definitions.** As used in this Act, the following terms shall mean:

X X X X

(jj) **Trading.** – Transactions involving the **illegal trafficking** of dangerous drugs and/or controlled precursors and essential chemicals **using electronic devices** such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

Section 26. Attempt or Conspiracy. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

X X X X

(b) **Sale, trading,** administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

X X X X

Section 28. Criminal Liability of Government Officials and Employees. – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and **employees.** (Emphasis supplied)

R.A. No. 9165 took effect on 7 June 2002. Our jurisprudence is replete with the enumeration of the **essential elements of the crime of illegal sale of drugs under Section 5 of R.A. No. 9165.** For the present case, I refer to the enumeration of these essential elements in a non-exhaustive recitation of cases prepared by the *ponente* and some incumbent Members of the Court.

In September 2009, the *ponente* affirmed the conviction of Hasanaddin Guiara.⁴

In the prosecution of illegal sale of shabu, the **essential elements** have to be established, to wit: **(1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.** (Emphasis supplied)

In December 2009, the *ponente* denied the parole of SPO3 Sangki Ara.⁵

For the successful prosecution of the illegal sale of shabu, the following **elements** must be established: **(1) the identity of the buyer**

⁴ *People v. Guiara*, 616 Phil. 290, 302 (2009), citing *People v. Gonzales*, 430 Phil. 504 (2002); *People v. Bongalon*, 425 Phil. 96 (2002); *People v. Lacap*, 420 Phil. 153 (2001); *People v. Tan*, 401 Phil. 259 (2000); *People v. Zheng Bai Hui*, 393 Phil. 68 (2000).

⁵ *People v. Ara*, 623 Phil. 939, 955 (2009), citing *Cruz v. People*, 597 Phil. 722 (2009).

and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. *What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.* (Emphasis supplied)

A few weeks later, the *ponente* enumerated the same elements in another case and affirmed the guilt of Victorio Pagkalinawan.⁶

It bears stressing that what is material to the prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti. In other words, the **essential elements** of the crime of illegal sale of prohibited drugs are: **(1) the accused sold and delivered a prohibited drug to another; and (2) he knew that what he had sold and delivered was a prohibited drug.** (Emphasis supplied)

The *ponente* affirmed the conviction of spouses Ewinie and Maria Politico in October 2010,⁷ thus:

In a successful prosecution for offenses involving the illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.** Such elements are present in this case. *What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug or the corpus delicti as evidence.* (Emphasis supplied)

In a January 2011 case,⁸ the *ponente* affirmed the conviction of Francisco Manlangit as a seller of shabu and cited the elements as written in *People v. Macatingag*.⁹

People v. Macatingag prescribed the requirements for the successful prosecution of the crime of illegal sale of dangerous drugs, as follows:

The **elements** necessary for the prosecution of illegal sale of drugs are **(1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. *What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.*** (Emphasis supplied)

In January 2011, the *ponente* affirmed the conviction of Carlo Magno Aure and Melchor Austriaco using the same enumeration of elements.¹⁰

⁶ *People v. Pagkalinawan*, 628 Phil. 101, 114 (2010), citing *People v. Pendatun*, 478 Phil. 201 (2004), further citing *People v. Cercado*, 434 Phil. 492 (2002); *People v. Pacis*, 434 Phil. 148 (2002).

⁷ *People v. Politico*, 647 Phil. 728, 738 (2010), citing *People v. Alberto*, 625 Phil. 545, 554 (2010) and *People v. Rivera*, 590 Phil. 894 (2008).

⁸ *People v. Manlangit*, 654 Phil. 427, 436 (2011).

⁹ 596 Phil. 376, 383-384 (2009).

¹⁰ *People v. Aure*, 654 Phil. 541, 553 (2011), citing *People v. Alberto*, 625 Phil. 545, 554 (2010), further

In the prosecution for the crime of illegal sale of prohibited drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.** (Emphasis supplied)

In the same month, the *ponente* affirmed the conviction of Nene Quiamanlon,¹¹ thus:

Significantly, in the prosecution for the crime of illegal sale of prohibited drugs under Sec. 5, Art. II of RA 9165, the following **elements** must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.** It is worth noting that *what is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.* (Emphasis supplied)

Jacquiline Pambid's conviction¹² was affirmed under the same enumeration of elements:

Essentially, all the **elements** of the crime of illegal sale of drugs have been sufficiently established, i.e., **(1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for it.** (Emphasis supplied)

The *ponente* used the enumeration of elements in the acquittal of Andrew Roble in April 2011.¹³

In the crime of sale of dangerous drugs, the prosecution must be able to successfully prove the following **elements**: **“(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.”** Similarly, *it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of corpus delicti.* *Corpus delicti* means the “actual commission by someone of the particular crime charged.” (Emphasis supplied)

In June 2011, the *ponente* acquitted Garry dela Cruz.¹⁴

For the prosecution of illegal sale of drugs to prosper, the following **elements** must be proved: **(1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and its payment.** *What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the corpus delicti.* (Emphasis supplied)

citing *People v. Dumlao*, 584 Phil. 732, 739 (2008).

¹¹ *People v. Quiamanlon*, 655 Phil. 695, 705 (2011), citing *People v. Alberto*, 625 Phil. 545, 554 (2010); citing *People v. Dumlao*, 584 Phil. 732, 739 (2008).

¹² *People v. Pambid*, 655 Phil. 719, 732 (2011), citing *People v. Gonzales*, 430 Phil. 504, 513 (2002); *People v. Bongalon*, 425 Phil. 96, 117 (2002); *People v. Lacap*, 420 Phil. 153, 175 (2001); *People v. Tan*, 401 Phil. 259, 269 (2000); *People v. Zheng Bai Hui*, 393 Phil. 68, 131 (2000).

¹³ *People v. Roble*, 663 Phil. 147, 157 (2011), citing *People v. Lorenzo*, 633 Phil. 393, 402-403 (2010); *People v. Ong*, 568 Phil. 114, 121-122 (2008); with remaining citations omitted.

¹⁴ *People v. De la Cruz*, 666 Phil. 593, 605-606 (2011).

In August 2011, the *ponente* affirmed the conviction of Adriano Pascua.¹⁵

In every case of illegal sale of dangerous drugs, the prosecution is obliged to establish the following **essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment.** *What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.* The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. (Emphasis supplied)

In October 2012, the *ponente* affirmed with modification the convictions of Asia Musa, Ara Monongan, Faisah Abas, and Mike Solalo,¹⁶ thus:

In determining the guilt of the accused for the sale of dangerous drugs, the prosecution is obliged to establish the following **essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment.** *There must be proof that the transaction or sale actually took place and that the corpus delicti be presented in court as evidence.* (Emphasis supplied)

The *ponente* repeated these essential elements in his decision in *People v. Adrid*,¹⁷ a March 2013 case. This time, the *ponente* acquitted Edgardo Adrid and cited the elements as written in his previous *ponencia* in *People v. Politico*.¹⁸

In every prosecution for illegal sale of dangerous drugs under Sec. 5, Art. II of RA 9165, the following **elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it.** As it were, the dangerous drug itself forms an integral and key part of the *corpus delicti* of the offense of possession or sale of prohibited drugs. Withal, it is essential in the prosecution of drug cases that the identity of the prohibited drug be established beyond reasonable doubt. This means that on top of the elements of possession or illegal sale, the fact that the substance illegally sold or possessed is, in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. (Emphasis supplied)

In similar manner, I also quote from the *ponencias* of other members of this Court to illustrate that any conviction or acquittal under Section 5 of R.A. No. 9165 goes through the test of proving the same essential elements. I limited my examples to the Justices' latest promulgated *ponencias* on the subject.

¹⁵ *People v. Pascua*, 672 Phil. 276, 283-284 (2011), citing *People v. Midenilla*, 645 Phil. 587, 601 (2010), citing *People v. Guiara*, 616 Phil. 290, 302 (2009).

¹⁶ *People v. Musa*, 698 Phil. 204, 215 (2012), citing *People v. Pascua*, 672 Phil. 276 (2011).

¹⁷ 705 Phil. 654, 670 (2013).

¹⁸ *Supra* note 7.

In *People v. Arce*,¹⁹ penned by Chief Justice Sereno, the Court sustained the conviction of accused-appellant Adalton Arce. The Joint Judgment of the Court of Appeals convicted Arce of violating Sections 5 and 11, Article II of R.A. No. 9165.

In every prosecution for the illegal sale of marijuana, the following **elements** must be proved: **(1) the identity of the buyer and the seller; (2) the object and the consideration; and (3) the delivery of the thing sold and the payment therefor.**

On the other hand, in a prosecution for the illegal possession of marijuana, the following elements must be proved: (1) that the accused was in possession of the object identified as a prohibited or regulated drug; (2) that the drug possession was not authorized by law; and (3) that the accused freely and consciously possessed the drug.

For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that their integrity is well preserved – from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. The fact that the substance said to have been illegally sold or possessed was the very same substance offered in court as exhibit must be established. (Emphasis supplied)

In *People v. Cloma*,²⁰ my *ponencia* found accused-appellant Randy Cloma guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

For the successful prosecution of the offense of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the following **elements** must be proven: **(1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment for it. *The prosecution must establish proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti.***

All the required elements are present in this case. SPO1 Ellevera testified that he was the poseur-buyer in the buy-bust operation. He identified Cloma as the seller of the shabu. SPO1 Ellevera confirmed the exchange of the five hundred peso (P500) marked money and shabu. Hence, the illegal sale of drugs was consummated. In *People v. Gaspar*, we held that the delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated. (Emphasis supplied)

In *People v. Ocfemia*,²¹ penned by Justice Leonardo-De Castro, the Court found accused-appellant Giovanni Ocfemia guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

¹⁹ G.R. No. 217979, 22 February 2017. Citations omitted.

²⁰ G.R. No. 215943, 16 November 2016. Citations omitted.

²¹ 718 Phil. 330 (2013).

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: **(1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof.** *What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.*²² (Emphasis supplied)

In *People v. Barte*,²³ penned by Justice Peralta, the Court found accused-appellant Mercelita Arenas guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. No. 9165.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: **(1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing.** *What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.* We find all the elements necessary for appellant's conviction for illegal sale of shabu clearly established in this case.

PO3 Rimando, the poseur-buyer, positively identified appellant as the person whom he caught *in flagrante delicto* selling white crystalline substance presumed to be shabu in the buy-bust operation conducted by their police team; that upon appellant's receipt of the ₱2,000.00 buy-bust money from PO3 Rimando, she handed to him the two sachets of white crystalline substance which when tested yielded positive results for shabu. Appellant's delivery of the shabu to PO3 Rimando and her receipt of the marked money successfully consummated the buy-bust transaction. The seized shabu and the marked money were presented as evidence before the trial court. (Emphasis supplied)

Justice Peralta also added, for good measure, that: "Public prosecutors are reminded to carefully prepare the criminal complaint and Information in accordance with the law so as not to adversely affect the dispensation of justice."

In *People v. Barte*,²⁴ penned by Justice Bersamin, the Court acquitted accused-appellant Eddie Barte of violation of Section 5, Article II of R.A. No. 9165.

After thorough review, we consider the appeal to be impressed with merit. Thus, we acquit the accused-appellant.

In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. In this instance, therefore,

²² Id. at 345.

²³ G.R. No. 213598, 27 July 2016, 798 SCRA 680, 689. Citations omitted.

²⁴ G.R. No. 179749, 1 March 2017. Citations omitted.



the Court is not limited to the assigned errors, but can consider and correct errors though unassigned and even reverse the decision on grounds other than those the parties raised as errors.

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In the prosecution of the crime of selling a dangerous drug, the following **elements** must be proven, to wit: **(1) the identities of the buyer, seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.** On the other hand, the essential requisites of illegal possession of dangerous drugs that must be established are the following, namely: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug. (Emphasis supplied)

In *People v. Ismael*,²⁵ penned by Justice Del Castillo, the Court acquitted accused-appellant Salim Ismael of violation of Sections 5 and 11, Article II of R.A. No. 9165.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must establish the following **elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.** *What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.*

On the other hand, for illegal possession of dangerous drugs, the following elements must be established: “[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.”

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. “The chain of custody rule performs this function as it ensures that necessary doubts concerning the identity of the evidence are removed.”

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In sum, we find that the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the provisions of Section 21, RA 9165 were not complied with. This Court is thus constrained to acquit the appellant based on reasonable doubt. (Emphasis supplied)

²⁵ G.R. No. 208093, 20 February 2017. Citations omitted.

In *Belmonte v. People*,²⁶ penned by Justice Perlas-Bernabe, the Court found accused-appellant Kevin Belmonte guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: **(a) identity of the buyer and the seller, the object, and the consideration; and (b) delivery of the thing sold and the payment.**

In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. (Emphasis supplied)

In *Lescano v. People*,²⁷ penned by Justice Leonen, the Court acquitted accused-appellant Howard Lescano of violation of Sections 5 and 11, Article II of R.A. No. 9165.

The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled:

In actions involving the illegal sale of dangerous drugs, the following **elements** must first be established: **(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.**²⁸ (Emphasis supplied)

Justice Leonen ended his *ponencia* in Lescano with a quote from *People v. Holgado*,²⁹ which he also wrote:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial “big fish.” We are swamped with cases involving small fry who have been arrested for minuscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.³⁰

²⁶ G.R. No. 224143, 28 June 2017. Citations omitted.

²⁷ G.R. No. 214490, 13 January 2016, 781 SCRA 73.

²⁸ Id. at 82-83.

²⁹ 741 Phil. 78 (2014).

³⁰ Id. at 100.

Finally, in *People v. Cutura*,³¹ penned by Justice Tijam, the Court found accused-appellant Jose Cutura guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

To secure a conviction for illegal sale of dangerous drugs, like shabu, the following **elements** must be established: **(1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and its payment. *The prosecution must also prove the illegal sale of the dangerous drugs and present the corpus delicti in court as evidence.***

In this case, the prosecution duly established the following: (1) the identity of the buyer - PO3 Marcial, the seller - accused-appellant, the object of the sale one sachet of shabu which is an illegal drug, and the consideration - the two pieces of marked two hundred peso bills; and (2) PO3 Marcial positively identified accused-appellant as the one who transacted and sold the shabu to him in exchange for the marked money. He caught accused-appellant *in flagrante delicto* selling the shabu during a buy-bust operation. The seized item was sent to the crime laboratory and yielded positive results for presence of a dangerous drug. The seized sachet of shabu was likewise presented in court with the proper identification by PO3 Marcial. Evidently, what determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. (Emphasis supplied)

To be sure, the stage in the prosecution of petitioner is different from those in the cases cited as examples above. Petitioner has yet to go into trial, while the accused-appellants in the above-mentioned cases have already been through this Court's review.

However, the Information in Criminal Case No. 17-165, as filed against petitioner, clearly and egregiously does not specify any of the essential elements necessary to prosecute the crime of illegal sale of drugs under Section 5, or of illegal trade of drugs under Section 5 in relation to Section 3(jj). **Indisputably, the Information does not identify the buyer, the seller, the object, or the consideration of the illegal sale or trade. The Information also does not make any allegation of delivery of the drugs illegally sold or traded nor of their payment. The Information does not state the kind and quantity of the drugs subject of the illegal sale or trade.**

Without these essential elements alleged in the Information, the actual sale or trade of dangerous drugs can never be established. For without the identities of the seller and buyer, and without an allegation on the kind and quantity of the drugs and the consideration of the sale, as well as the delivery of the object of the sale and the payment, there is no sale or trade of dangerous drugs that can be established during the trial. As this Court has repeatedly held:

³¹ G.R. No. 224300, 7 June 2017. Citations omitted.

x x x. **What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.**³² (Emphasis supplied)

In illegal sale of drugs, the *corpus delicti* is “**the actual sale**”³³ of the dangerous drugs, which must be alleged in the Information. This can be done only if the Information alleges the identities of the seller and buyer, the kind and quantity of the drugs which constitute the object of the sale, the consideration, the delivery of the dangerous drugs and the payment.

In short, it is simply impossible for the Information, as presently worded, to make out a case of illegal sale or illegal trade of dangerous drugs under Section 5 of R.A. No. 9165, which is the governing provision of R.A. No. 9165 prescribing the essential elements and penalties of the illegal sale or illegal trade of drugs.

The present Information against petitioner alleges only the “use of electronic devices” but does not allege any of the essential elements of “illegal sale” under Section 5. This Court cannot allow a prosecution for “illegal trade” of drugs where none, **repeat absolutely none**, of the essential elements of “illegal sale” of drugs is present. **In short, in the present Information for the offense of “illegal trade” of drugs, only the circumstance of “use of electronic devices” is alleged, with no allegation on the identity of the seller, identity of the buyer, the kind and quantity of the illegal drugs sold or traded, the consideration and the delivery of the illegal drugs, and the actual payment.** To allow such prosecution is obviously contrary to the constitutional due process requirement that the accused shall “**be informed of the nature and cause of the accusation against him,**” as expressly mandated in Section 14(2), Article III in the Bill of Rights of the Constitution.

In *People v. Caoile*,³⁴ penned by Justice Leonardo-De Castro, and *People v. PO2 Valdez*,³⁵ penned by Justice Bersamin, the Court emphasized that “**every element of the offense must be stated in the information.**” Both cases cited the case of *People v. Dimaano*,³⁶ in which the Court elaborated:

For complaint or information to be sufficient, it must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. What is controlling is not the title of the complaint, nor the designation of the

³² *People v. De Jesus*, 695 Phil. 114, 124 (2012), citing *People v. Opiana*, 750 Phil. 140, 147 (2015); *People v. Salonga*, 717 Phil. 117, 125 (2013); *People v. Unisa*, 674 Phil. 89, 108 (2011); *People v. Gaspar*, 669 Phil. 122, 135 (2011); *People v. Berdadero*, 636 Phil. 199, 206-207 (2010); *People v. Dilao*, 555 Phil. 394, 409 (2007).

³³ *People v. Uy*, 392 Phil. 773 (2000).

³⁴ 710 Phil. 564 (2013).

³⁵ 703 Phil. 519 (2013).

³⁶ 506 Phil. 630 (2005).

offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the crime charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. **No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense.**³⁷ (Emphasis supplied)

In the present petition, the *ponente* himself believes in the importance of the accused's constitutional right to "be informed of the nature and cause of the accusation" against him. In his *ponencia* in *Lim v. People*,³⁸ the *ponente* acquitted petitioner in that case. The Information there alleged that petitioner knew of the alleged theft of the thing sold, which is the first part of the third element of the crime of fencing. However, the trial court convicted petitioner on the ground that he should have known that the thing sold was derived from the proceeds of theft, which pertains to the second part of the third element of the crime of fencing. To support his decision to reverse the trial court and acquit petitioner, the *ponente* wrote:

We find that the conviction of petitioner violated his constitutional right to be informed of the nature and cause of the accusation against him.

In *Andaya v. People of the Philippines*, we ruled that:

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and

³⁷ Id. at 649-650.

³⁸ G.R. No. 211977, 12 October 2016.

underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.

x x x x

From the foregoing, we find that the CA erred in affirming the trial court's findings and in convicting herein petitioner. It is necessary to remember that in all criminal prosecutions, the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. It has the duty to prove **each and every element of the crime charged in the information** to warrant a finding of guilt for the said crime. Furthermore, the information must correctly reflect the charges against the accused before any conviction may be made.

In the case at bar, the prosecution failed to prove the first and third essential elements of the crime charged in the information. Thus, petitioner should be acquitted due to insufficiency of evidence and reasonable doubt.³⁹ (Emphasis in the original)

Thus, as the *ponente* himself correctly stated in *Lim v. People*, the accused has the **“constitutional right to be informed of the nature and cause of the accusation against him.”** In the same case, the *ponente* reiterated and affirmed the hornbook doctrine, by quoting *Andaya v. People*, that it is **“fundamental that every element constituting the offense must be alleged in the information.”** The purpose of requiring the allegation in the Information of all the essential elements of the offense is to comply with the constitutional requirement that the accused must be **“informed of the nature and cause of the accusation”** against him.

In *Dela Chica v. Sandiganbayan*,⁴⁰ the Court held that an Information is not sufficient unless it accurately and clearly alleges all the elements of the crime charged. The Court explained:

The issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency has long been settled. **It is fundamental that every element of which the offense is composed must be alleged in the information. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.** Section 6, Rule 110 of the Revised Rules of Court requires, *inter alia*, that the information must state the acts or omissions so complained of as constitutive of the offense. Recently, this Court emphasized that the test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.

³⁹ Id. Citations omitted.

⁴⁰ 462 Phil. 712 (2003).

What facts and circumstances are necessary to be stated in the information must be determined by reference to the definitions and the essentials of the specific crime.⁴¹ (Emphasis supplied)

Indeed, there can be no dispute whatsoever that each and every essential element of the offense charged must be alleged in the Information. This, in fact and in law, is axiomatic. Nothing can be more fundamental than this in initiating any criminal prosecution, as the right to be informed of the “**nature and cause of the accusation**” is a fundamental right of an accused enshrined in the Bill of Rights of the Constitution.

Failure to allege any of the essential elements of the offense invariably means that probable cause cannot be determined on the basis of the Information, both as to the commission of the offense and as to the issuance of the warrant of arrest. In *Baltazar v. People*,⁴² probable cause is defined as:

Probable cause is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.⁴³

Clearly, it is impossible for the presiding judge to determine the existence of probable cause for the issuance of a warrant of arrest where the Information does not allege any of the essential elements of the offense. Under Section 5⁴⁴ of Rule 112 of the Revised Rules of Criminal Procedure, the Regional Trial Court judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. As held in *People v. Sandiganbayan*,⁴⁵ “[t]he absence of probable cause for the issuance of a warrant of arrest is not a ground for the quashal of the Information but is a ground for the dismissal of the case.”

Here, the present Information against petitioner does **not** allege any of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs. In short, the Information does not charge the offense of illegal sale or illegal trade of drugs. Ineluctably, the present Information against petitioner is patently **void** to charge petitioner of illegal sale or illegal trade of dangerous drugs. The trial court’s only recourse is to dismiss

⁴¹ Id. at 719-720.

⁴² 582 Phil. 275 (2008).

⁴³ Id. at 290.

⁴⁴ Sec. 5. *When warrant of arrest may issue.* – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

x x x x

⁴⁵ 482 Phil. 613, 630 (2004).

the Information with respect to the charge of trade of dangerous drugs.

In *People v. Pangilinan*,⁴⁶ **Justice Peralta recognized that an information that fails to allege the essential elements of the offense is void.** In *People v. Pangilinan*, Justice Peralta quoted from this Court's ruling in *People v. Dela Cruz*.⁴⁷

The allegation in the information that accused-appellant "willfully, unlawfully and feloniously commit sexual abuse on his daughter [Jeannie Ann] either by raping her or committing acts of lasciviousness on her" is not a sufficient averment of the acts constituting the offense as required under Section 8, for these are conclusions of law, not facts. **The information in Criminal Case No. 15368-R is therefore void for being violative of the accused-appellant's constitutionally-guaranteed right to be informed of the nature and cause of the accusation against him.**⁴⁸ (Emphasis supplied)

Thus, Justice Peralta unequivocally acknowledges that the failure to allege in the Information the essential elements of the offense, a failure that violates the constitutional right of the accused to be informed of the nature and cause of the accusation against him, renders the Information **void**. After quoting from *People v. Dela Cruz*, Justice Peralta stated further in *People v. Pangilinan*:

The right to be informed of the nature and cause of the accusation against an accused cannot be waived for reasons of public policy. Hence, it is imperative that the complaint or information filed against the accused be complete to meet its objectives. As such, an indictment must fully state the elements of the specific offense alleged to have been committed.⁴⁹

The *ponencia* insists that the crime of **illegal sale** of drugs under Section 5 of R.A. No. 9165 is **separate and distinct** from the crime of **illegal trade** of drugs in Section 3(jj) of R.A. No. 9165.⁵⁰ The *ponencia* asserts that the Information charges petitioner for illegal trade of drugs under Section 3(jj), not under Section 5. This is gross error.

The title of Section 5 expressly states "**Sale, Trading x x x of Dangerous Drugs.**" The text itself of Section 5 penalizes the unauthorized "**sale, trade**" of drugs. **Indeed, the sale of drugs means the trade of drugs.** Section 3(jj) defines "[t]rading" of drugs to refer to "[t]ransactions involving the illegal trafficking of dangerous drugs x x x **using electronic devices.**" Thus, Section 3(jj) describes illegal "trading" of drugs as the illegal sale, illegal trade or illegal trafficking of drugs "**using electronic devices.**" In illegal trade of drugs, there is an illegal sale of drugs but this illegal act is committed "**using electronic devices.**"

⁴⁶ 676 Phil. 16 (2011).

⁴⁷ 432 Phil. 988 (2002)

⁴⁸ Id. at 28. Citations omitted.

⁴⁹ Supra note 46 at 28. Citations omitted.

⁵⁰ *Ponencia*, pp. 27-30.

Significantly, Section 3(r) defines “**Illegal Trafficking**” as “[t]he illegal cultivation, culture, delivery, administration, dispensation, manufacture, **sale, trading**, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.” **Thus, illegal trafficking of dangerous drugs means the illegal sale or illegal trading of dangerous drugs.** Section 3(jj) defines “**trading**” of dangerous drugs as the “**illegal trafficking**” of dangerous drugs. Thus, the “**trading**” of dangerous drugs means “illegal trafficking,” which under Section 3(r) means the “**sale, trading**” of dangerous drugs. **Section 5 punishes the illegal sale or illegal trade of dangerous drugs. In short, the illegal sale, illegal trade, and illegal trafficking of dangerous drugs refer to the same crime that is punished under Section 5 of R.A. No. 9165.**

R.A. No. 9165 does not provide a separate or higher penalty when the illegal sale or illegal trade of drugs is committed with the use of electronic devices. With or without the use of electronic devices, the crime committed is illegal sale or illegal trade of drugs **if all the essential elements of illegal sale or illegal trade of drugs in Section 5 are present.** The circumstance of ‘use of electronic devices’ is not an essential element of illegal sale or illegal trade of drugs in Section 5. Certainly, the crime of illegal trade of drugs can be committed even without the use of electronic devices. **To trade in illegal drugs is to sell or to traffic in illegal drugs.** The use of electronic devices does not create a separate crime or even qualify the crime of illegal sale of drugs. The penalty for illegal sale or illegal trade of drugs is the same. The circumstance of “use of electronic device” does not increase the penalty or create a separate penalty.

The Information in Criminal Case No. 17-165 accused petitioner, together with Rafael Marcos Z. Ragos and Ronnie Palisoc Dayan, “for violation of Section 5, in relation to Sections 3(jj), 26(b), and 28 of R.A. No. 9165.” The crime of illegal sale or illegal trade of dangerous drugs is governed by Section 5, and not Section 3(jj) which merely defines the term “trading” to include the illegal sale of drugs with the use of electronic devices. Section 5 reads:

Section 5. **Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.** - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred



thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade**, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the **sale, trading**, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a “financier” of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a “protector/coddler” of any violator of the provisions under this Section. (Emphasis supplied)

Contrary to the position of the *ponencia*, the crimes of “illegal sale” and “illegal trade” of drugs are both violations of Section 5, except that “illegal trade” involves the use of electronic devices in the sale of drugs. Thus, “trading” is defined in Section 3(jj) as “[t]ransactions involving the illegal trafficking of dangerous drugs x x x **using electronic devices** such as, but not limited to, text messages, email, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.”

Section 3(jj) falls under Section 3 on “Definitions.” Section 3 is not the operative provision that prescribes the essential elements of the crime and its penalty. Section 3(jj) does not penalize “illegal trade” of drugs; it is Section 5 that penalizes “illegal trade” of drugs. Section 3(jj) has the same status as the other terms defined in Section 3 - they are mere definitions and do not prescribe the essential elements of an act that constitutes a crime to which a penalty is attached by law for the commission of such act. No person can be charged and convicted for violating a term

defined in Section 3 separate and distinct from the provision of law prescribing the essential elements of the offense and penalizing such offense.

Clearly, the essential elements of “illegal sale” of drugs are the same as the essential elements of “illegal trade” and “illegal trafficking” of drugs, with the additional circumstance of use of electronic devices to facilitate the sale of drugs in case of “illegal trade” or “illegal trafficking.” However, this additional circumstance of “use of electronic devices” is not an essential element of the crime that is punished under Section 5. After all, “to trade” or “to traffic” in drugs means to sell drugs. **Thus, the Information charging the accused of “illegal trade” must allege all the essential elements of the offense of “illegal sale,”** and if the prosecution wants to be more specific, the Information can also allege the circumstance that there was “use of electronic devices” to facilitate the illegal sale. The absence of an allegation of “use of electronic devices” will not take the offense out of Section 5.

The circumstance of “use of electronic devices” is not an essential element of the crime under Section 5. **There is also no provision whatsoever in R.A. No. 9165 that makes this circumstance a separate crime or qualifies the crime of illegal sale under Section 5.** *Nullum crimen sine lege.* No crime without a law.⁵¹ To repeat, there is no provision in R.A. No. 9165 defining and penalizing the circumstance of “use of electronic devices” in the sale or trade of dangerous drugs as a separate and distinct offense from Section 5. **To charge petitioner, as the ponencia does, under Section 3(jj) for “illegal trade,” separate and distinct from the offense under Section 5, is to charge petitioner with a non-existent crime.** Section 3(jj) merely defines the “trading” of dangerous drugs. To repeat, no person can be charged and convicted for violating a definition in the law separate and distinct from the provision of law prescribing the essential elements of the crime and its penalty.

The *ponencia* mistakenly invokes *People v. Benipayo*.⁵² In the 2009 *People v. Benipayo* case, this Court concluded that the RTC had exclusive original jurisdiction to try a written defamation complaint against an impeachable officer to the exclusion of the Ombudsman and the Sandiganbayan. At that time, R.A. No. 8249 was then the most recent law that amended Presidential Decree (P.D.) No. 1606. On 16 April 2015, P.D. No. 1606 was further amended by R.A. No. 10660, which is now the latest amendment to P.D. No. 1606. R.A. No. 10660 has the same enumeration of public officers as R.A. No. 8249.

R.A. No. 10660 took out of the jurisdiction of the RTC cases involving public officials with salary grade 27 or higher where there is

⁵¹ *Causing v. COMELEC*, 742 Phil. 539 (2014); *Rimando v. Commission on Elections*, 616 Phil. 562 (2009); *Evangelista v. People*, 392 Phil. 449 (2000).

⁵² 604 Phil. 317 (2009).

allegation of damage to the government or bribery in an amount exceeding ₱1,000,000, and these cases now fall under the exclusive original jurisdiction of the Sandiganbayan. This amendment in R.A. No. 10660 now applies to the case of petitioner, taking her case out of the jurisdiction of the RTC since in the present Information there is an allegation of bribery exceeding ₱1,000,000 and petitioner had salary grade 31 as then Secretary of Justice.

In the present case, the *ponencia* attempts to replicate the logic of *People v. Benipayo* to conform with its strained conclusion that the RTC has exclusive original jurisdiction to try Senator De Lima. However, it is clear as day that *People v. Benipayo* does not apply to the present case because R.A. No. 10660, enacted **after** *People v. Benipayo* was decided, has already taken the present case out of the jurisdiction of the RTC.

In *People v. Benipayo*, this Court declared that it is “unnecessary and futile” to determine whether a crime is committed in relation to office when -

x x x. The grant to the Sandiganbayan of jurisdiction over offenses committed in relation to (public) office, similar to the expansion of the jurisdiction of the MTCs, did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.⁵³

However, *People v. Benipayo* has clearly been superseded by R.A. No. 10660 which takes out of the exclusive original jurisdiction of the RTC cases involving public officials with Salary Grade 27 or higher where there is an allegation of damage to the government or bribery in an amount exceeding ₱1,000,000. In the present Information against petitioner, there is an allegation of bribery exceeding ₱1,000,000 and petitioner then had Salary Grade 31. This clearly takes the case out of the exclusive original jurisdiction of the RTC.

The Sandiganbayan has jurisdiction over bribery, the crime actually alleged in the Information.

In insisting on the jurisdiction of the RTC, the *ponencia* sets aside R.A. No. 10660 **as if this law does not exist at all**. R.A. No. 10660 was approved on 16 April 2015, a date later than the approval of R.A. No. 9165. Section 2 of R.A. No. 10660 further amended Section 4 of P.D. No. 1606 to read as follows:

⁵³ Id. at 331-332.

SEC. 4. Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

“a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

“(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade ‘27’ and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

“(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads:

“(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

“(c) Officials of the diplomatic service occupying the position of consul and higher;

“(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

“(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

“(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

“(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

“(2) Members of Congress and officials thereof classified as Grade ‘27’ and higher under the Compensation and Position Classification Act of 1989;

“(3) Members of the judiciary without prejudice to the provisions of the Constitution;

“(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

“(5) All other national and local officials classified as Grade ‘27’ and higher under the Compensation and Position Classification Act of 1989.

“b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

“c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

“Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).

“Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

“In cases where none of the accused are occupying positions corresponding to Salary Grade ‘27’ or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Sampan Lg. 129, as amended.

“The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

“The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

“The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman,

through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

“In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

“Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.” (Emphasis supplied)

Section 4 of P.D. No. 1606, as amended by R.A. No. 10660, explicitly states that the **Sandiganbayan** “**shall exercise exclusive original jurisdiction in all cases**” involving:

(1) Violations of R.A. No. 3019,⁵⁴ as amended, R.A. No. 1379,⁵⁵ and Chapter II, Section 2 (Bribery), Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials of the executive branch with **Salary Grade 27 or higher**, and other officials specifically enumerated under Section 4a(1)(a) to (g) and (2) to (5);

(2) **Other offenses or felonies**, whether simple or complexed with other crimes, **committed in relation to their office** by the public officials and employees mentioned in subsection “a”; and

(3) Civil and criminal offenses filed pursuant to and in

⁵⁴ Anti-Graft and Corrupt Practices Act.

⁵⁵ An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

connection with Executive Order Nos. 1,⁵⁶ 2,⁵⁷ 14⁵⁸ and 14-A,⁵⁹ issued in 1986.

When R.A. No. 10660, the latest amendment to Section 4 of P.D. No. 1606, mandated that the Sandiganbayan “**shall exercise exclusive original jurisdiction in all cases**” involving the offenses specified in the amended Section 4, it meant **all cases without exception unless specifically excepted in the same or subsequent law. When the law says “all cases,” it means there is no exception. R.A. No. 10660 wiped out all previous exceptions in all laws prior to R.A. No. 10660, and the only exceptions now are those found in Section 4 as amended by R.A. No. 10660.**

*Black’s Law Dictionary*⁶⁰ defines “all” in this manner:

All. Means **the whole of** – used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. **The whole number or sum of** – used collectively, with a plural noun or pronoun expressing an aggregate. **Every member of individual component of; each one of** – used with a plural noun. In this sense, all is used generically and distributively. “All” refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves.

Clearly, when the law says “all cases,” the law means the whole number of cases, every one and each one of the cases. There is no exception, unless the same or subsequent law expressly grants an exception.

In the same Section 4 of P.D. No. 1606, as amended by R.A. No. 10660, the law states the exceptions granting the **Regional Trial Court exclusive original jurisdiction** where the information:

- (1) does not allege any damage to the government or any bribery; or
- (2) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding ₱1,000,000.

In cases where none of the accused is occupying positions with Salary Grade 27 or higher, or military or PNP officers mentioned in Section 4a(1)(d) and (e), the exclusive original jurisdiction is vested in the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, as the case may be.

⁵⁶ Creating the Presidential Commission on Good Government.

⁵⁷ Regarding the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees.

⁵⁸ Vesting in the Sandiganbayan original and exclusive jurisdiction over all criminal and civil suits filed by the Presidential Commission on Good Government.

⁵⁹ Amending Executive Order No. 14.

⁶⁰ Fifth edition, 1979, page 68.

Thus, the Sandiganbayan has **exclusive original jurisdiction** in “**all cases**” of bribery where the accused is a public official with a Salary Grade 27 or higher and the amount involved exceeds ₱1,000,000. Furthermore, the Sandiganbayan also exercises **exclusive original jurisdiction** in “**all cases**” involving **other offenses or felonies committed in relation to their office** by the officials and employees enumerated under Section 4a, a situation applicable to petitioner Senator De Lima.

At the time that the alleged crime was committed, Senator De Lima was Secretary of Justice with Salary Grade 31.⁶¹ Her alleged acts of demanding, soliciting, and extorting money from high profile inmates in the New Bilibid Prison were committed in relation to her office, as the Information expressly alleges that she used her “**power, position and authority**” in committing the offense. The unnamed high profile inmates are detained in the New Bilibid Prison. The New Bilibid Prison is a facility under the administration of the Bureau of Corrections.⁶² The Bureau of Corrections, in turn, is a line bureau and a constituent unit of the Department of Justice.⁶³ The amounts in the Information exceed ₱10,000,000 (ten million pesos), because aside from the ₱5,000,000 given twice, Senator De Lima also allegedly received ₱100,000 (one hundred thousand pesos) weekly from the unnamed inmates.

As previously discussed, the Information does not allege any of the essential elements of the crime of illegal sale or illegal trade of drugs. Instead, what is apparent is that the crime alleged in the Information is **direct bribery**. Article 210 of the Revised Penal Code defines direct bribery as:

Art. 210. *Direct Bribery*. – Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of [not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the

⁶¹ <http://www.dbm.gov.ph/wp-content/uploads/2012/03/Manual-on-PCC-Chapter-5.pdf> (accessed 10 July 2017).

⁶² <http://www.bucor.gov.ph/facilities/nbp.html> (accessed 10 July 2017).

⁶³ See also Section 4, Chapter 1, Title III, Book IV of Executive Order No. 292.

Section 8, Republic Act No. 10575, The Bureau of Corrections Act of 2013 reads:

Supervision of the Bureau of Corrections. – The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38(2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

officer shall suffer the penalties of prison *correccional* in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

The elements of direct bribery are:

1. The offender is a public officer;
2. The offender accepts an offer or a promise or receives a gift or present by himself or through another;
3. Such offer or promise is accepted, or the gift or present is received by the public officer with a view to committing some crime, or in consideration of the execution of an unjust act which does not constitute a crime, or to refrain from doing something which is his official duty to do; and
4. The act which the offender agrees to perform or which he executes is connected to the performance of his official duties.⁶⁴

The Information stated that: (1) The accused petitioner was the DOJ Secretary and the Officer-in-Charge of the Bureau of Corrections at the time of the alleged crime; (2) Petitioner demanded, solicited and extorted money from the high profile inmates; (3) Petitioner took advantage of her public office and used her power, position and authority to solicit money from the high profile inmates; (4) Petitioner received more than ₱10,000,000 (ten million pesos) from the high profile inmates; (5) “By reason of which” – referring to the payment of extortion money, the unnamed inmates were able to unlawfully trade in drugs. Thus, based on the allegations in the Information, the crime allegedly committed is direct bribery and not illegal sale or illegal trade of drugs.

Clearly, based on the allegations in the Information, jurisdiction lies with the Sandiganbayan and not with the RTC since petitioner allegedly used the “power, position and authority” of her office as then Secretary of Justice. Even if the Information designated the offense charged against petitioner as “*Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5, in relation to Section 3(jj), Section 26(b) and Section 28, Republic Act No. 9165 (Illegal Drug*

⁶⁴ *Tad-y v. People*, 504 Phil. 51 (2005); *Mugno v. COMELEC*, 439 Phil. 339 (2002).

***Trading*),” such caption in the Information is not controlling since it is the description of the crime charged and the particular facts alleged in the body of the Information that determine the character of the crime.**⁶⁵

As explained by this Court in *People v. Dimaano*:⁶⁶

x x x. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the description of the [offense] charged and the particular facts therein recited. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment.⁶⁷

The *ponencia* further insists that as a **co-principal and co-conspirator**, petitioner is liable for the acts of her co-principals and co-conspirators even if the Information does not allege that petitioner actually participated in the illegal trafficking of dangerous drugs but simply alleges that petitioner allowed the NBP inmates to do so.⁶⁸ The Information does not identify the actual “illegal traffickers” of drugs who are supposedly unnamed high profile inmates in the New Bilibid Prison. The Information does not also identify the buyers of the dangerous drugs, or the kind and quantity of the dangerous drugs illegally sold or traded. There is further no allegation on the delivery of the illegal drugs or payment for the illegal sale or trade of the drugs. How can petitioner be made liable as co-principal and co-conspirator when there is no allegation whatsoever that she committed an act constituting part of the illegal sale or trade of drugs and not one of the essential elements of the crime of illegal sale or illegal trade of dangerous drugs is alleged in the Information for “violation of Section 5, in relation to Sections 3(jj), 26(b), and 28 of R.A. No. 9165?”

Certainly, an allegation of conspiracy in the Information does not do away with the constitutional requirement that the accused must be “informed of the nature and cause of the accusation” against her. The fundamental requirement that the Information must allege each and every essential element of the offense charged applies whether or not there is a charge of conspiracy. *National Housing Corporation v. Juco*⁶⁹ defined “every” as follows:

“Every” means each one of a group, *without exception*. It means all possible and all, taken one by one. (Italicization in the original)

In the present case, petitioner cannot be held liable for conspiracy in the illegal sale or illegal trade of dangerous drugs where none of the essential elements of the crime of illegal sale or illegal trade of dangerous

⁶⁵ *People v. Amistoso*, 701 Phil. 345 (2013).

⁶⁶ 506 Phil. 630 (2005).

⁶⁷ *Id.* at 649.

⁶⁸ *Ponencia*, pp. 26-27.

⁶⁹ No. L-64313, 17 January 1985, 134 SCRA 172, 182.

drugs is alleged in the Information. Besides, the Information does not even allege that petitioner **actually participated in the commission of acts constituting illegal sale or illegal trade of dangerous drugs** to make her liable as a co-principal and co-conspirator.

Petitioner's alleged co-conspirators and co-principals who actually conducted and performed the illegal sale or illegal trade of dangerous drugs are not even charged as John Does or Jane Does in the Information. Without the inclusion in the Information of the co-principals and co-conspirators who allegedly actually conducted and performed the illegal sale or illegal trade of dangerous drugs, petitioner cannot be charged with conspiracy. In conspiracy to illegally sell or illegally trade dangerous drugs, the identity of the actual sellers or traders must not only be alleged in the Information, but such actual sellers or traders must also be charged in the Information, either by name or as John Does or Jane Does. Without an actual seller or trader of the dangerous drugs identified in the Information, the petitioner cannot properly prepare for her defense. Without an actual seller or trader of the dangerous drugs charged in the Information, the illegal sale or illegal trade of dangerous drugs cannot be proven. **It is self-evident that in any sale or trade of goods or services, there must be an actual seller and actual buyer.** There is no illegal sale or illegal trade of dangerous drugs if there is no actual seller and actual buyer of the dangerous drugs.

The Ombudsman has primary jurisdiction over complaints for crimes cognizable by the Sandiganbayan.

Finally, the acts of the DOJ Panel violated the Memorandum of Agreement between the Department of Justice and the Office of the Ombudsman.

On 29 March 2012, the Office of the Ombudsman and the Department of Justice signed a Memorandum of Agreement⁷⁰ (MOA) which stated that **the Ombudsman has "primary jurisdiction in the conduct of preliminary investigation and inquest proceedings over complaints for crimes cognizable by the Sandiganbayan."** The MOA also provided a list of cases which fall under the exclusive original jurisdiction of the Sandiganbayan.⁷¹ If a complaint involving one of the enumerated cases is

⁷⁰ http://www.ombudsman.gov.ph/docs/references/OMB-DOJ_MOA.pdf (accessed 10 July 2017).

⁷¹ Annex A of the MOA provides as follows:

"Sec. 4 of RA 8249 provides that the Sandiganbayan shall have original exclusive jurisdiction over:

- I.) **Violations of RA 3019** (Anti-graft and Corrupt Practices Law);
- II.) **RA 1379** (Forfeiture of Illegally Acquired Wealth);
- III.) **Crimes by public officers or employees embraced in Ch. II, Sec. 2, Title VII, Bk. II of the RPC** (Crimes committed by Public Officers) namely:
 - a) **Direct Bribery** under Art. 210 as amended by BP 871, May 29, 1985;
 - b) **Indirect Bribery** under Art. 211 as amended by BP 871, May 29, 1985;
 - c) **Qualified Bribery** under Art. 211-A as amended by RA 7659, December 13, 1993;

filed before the DOJ, the DOJ shall advise the complainant to file it directly with the Ombudsman.

Based on the MOA, the DOJ should have turned over to the Ombudsman the preliminary investigation of petitioner on four grounds. *First*, there is an allegation of bribery against the public officer, which is alleged in the Information against petitioner. *Second*, the offense charged was allegedly committed in relation to the public officer's public office, which is alleged in the Information against petitioner. *Third*, the public officer has Salary Grade 27 or higher, which is the situation of petitioner.

-
- d) **Corruption of public officials** under Art. 212 where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
- 1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758) specifically including:
 - i. Provincial governors, vice-governors, members of the sangguniang panlalawigan, provincial treasurers, assessors, engineers and other provincial department heads;
 - ii. City mayors, vice-mayors, members of the sangguniang panglungsod, city treasurers, assessors, engineers and other department heads;
 - iii. Officials of the diplomatic service occupying the position of consul and higher;
 - iv. Philippine Army and Air force colonels, naval captains and all officers of higher rank;
 - v. Officers of the PNP while occupying the position of Provincial Director and those holding the rank of Senior Superintendent or higher;
 - vi. City and provincial prosecutors and their assistants, officials and the prosecutors in the Office of the Ombudsman and special prosecutor;
 - vii. President, directors or trustees or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;
 - 2) Members of Congress and Officials thereof classified as Grade 27 and up under Compensation and Classification Act of 1989;
 - 3) Members of the Judiciary without prejudice to the provisions of the Constitution;
 - 4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution;
 - 5) **All other national and local officials classified as Grade 27 and higher under the Compensation and Position Classification Act of 1989.**
- IV.) **Other offenses or felonies whether simple or complexed with other crimes committed in relation to their office by the public officials and employees mentioned above;**
- V.) Civil and Criminal Cases filed pursuant to and in connection with EO 1, 2, 14 & 14-A issued in 1986;
- VI.) Petitions for issuance of Writ of mandamus, prohibition, certiorari, habeas corpus, injunction and other ancillary writs and processes in aid of its appellate jurisdiction; Provided, jurisdiction is not exclusive of the Supreme Court;
- VII.) Petitions for Quo Warranto arising or that may arise in cases filed or that may be filed under EO 1, 2, 14 & 14-A;
- VIII.) OTHERS provided the accused belongs to SG 27 or higher:
- a) Violation of RA 6713 – Code of Conduct and Ethical Standards
 - b) Violation of RA 7080 – THE PLUNDER LAW
 - c) Violation of RA 7659 – The Heinous Crime Law
 - d) RA 9160 – Violation of The Anti-Money Laundering Law when committed by a public officer.
 - e) PD 46 referred to as the gift-giving decree which makes it punishable for any official or employee to receive directly or indirectly and for the private person to give or offer to give any gift, present or other valuable thing on any occasion including Christmas, when such gift, present or valuable thing is given by reason of his official position, regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition is the throwing of parties or entertainment in honor of the official or employee or his immediate relatives.
 - f) PD 749 which grants immunity from prosecution to any person who voluntarily gives information about any violation of Art. 210, 211 or 212 of the RPC, RA 3019, Sec. 345 of the NIRC, Sec. 3604 of the Customs and Tariff Code and other provisions of the said Codes

Fourth, there is an allegation of corruption by a public officer, which is alleged in the Information as committed by unnamed high profile inmates.

In any of the first three circumstances, the MOA expressly states that exclusive original jurisdiction belongs to the Sandiganbayan. In the fourth circumstance, exclusive original jurisdiction belongs to the Sandiganbayan if the public officer has Salary Grade 27 or higher, which is the situation of petitioner. Thus, any one of these four circumstances is a ground for the turn over of petitioner's preliminary investigation to the Ombudsman. The DOJ obviously failed to comply with its obligation under the MOA. In short, the DOJ under the terms of the MOA had no authority to conduct the preliminary investigation in Criminal Case No. 17-165 against petitioner.

Procedural Matters

*The prosecution's dilemmas:
incurable defects in the Information,
effective denial of the Motion To Quash,
duplicity of offenses in the Information.*

Pages 41 to 44 of the *ponencia* instruct the DOJ prosecutors how to correct the patent defects in the Information filed against petitioner should this Court order its quashal. The *ponencia* cites Rule 117, Sections 4 and 5 of the Revised Rules of Criminal Procedure to justify petitioner's continued detention.

Section 4. *Amendment of complaint or information.* – If the motion to quash is based on an alleged defect of the complaint or information which **can be cured by amendment**, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Section 5. *Effect of sustaining the motion to quash.* – If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new

penalizing abuse or dishonesty on the part of the public officials concerned and other laws, rules and regulations penalizing graft, corruption and other forms of official abuse and who willingly testifies against the public official or employee subject to certain conditions.”
(Emphasis supplied)



information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (Emphasis supplied)

The *ponencia* also cites *Dio v. People*⁷² and emphasizes its statement that “failure to provide the prosecution with the opportunity to amend is an arbitrary exercise of power.” The *ponencia* further states that “in the case at bar where petitioner has not yet been arraigned, the court a quo has the power to order the amendment of the February 17, 2017 Information filed against petitioner.”

The *ponencia*'s statements tend to mislead. The *ponencia* overlooked procedural errors in its suggestions. The defects in the Information cannot be cured by mere amendment.

An Information cannot be amended to vest jurisdiction upon a court.

The trial court can only order the prosecution to amend the Information as provided under Section 4 of Rule 117 if the trial court finds that there is a defect in the Information which “**can be cured by amendment.**”⁷³ An amendment of the Information to vest jurisdiction upon a court is not allowed.⁷⁴ As held in *Gonzales v. Judge Salvador*:⁷⁵

Not all defects in an information can be cured by amendment, however. In *Agustin v. Pamintuan*, this Court held that the absence of any allegation in the information that the therein offended party was actually residing in Baguio City at the time of the commission of the alleged offense or that the alleged libelous articles were printed and first published in Baguio City is a substantial defect, which cannot be amended after the accused enters his plea. **Amendment of the information to vest jurisdiction upon a court is not permissible.**⁷⁶ (Emphasis supplied)

Thus, assuming that the RTC has exclusive original jurisdiction over all cases involving violations of R.A. No. 9165, the trial court cannot order the prosecution to amend the Information from one which charges direct bribery in an amount exceeding ₱1,000,000 and is cognizable by the Sandiganbayan to one which charges illegal trade of dangerous drugs in order to vest jurisdiction in the RTC, even assuming that the RTC has such jurisdiction which it does not have over petitioner, considering her salary grade and the allegation that she used her public office.

⁷² G.R. No. 208146, 8 June 2016, 792 SCRA 646.

⁷³ Section 4, Rule 117; *Gonzales v. Judge Salvador*, 539 Phil. 25 (2006).

⁷⁴ *Agustin v. Hon. Pamintuan*, 505 Phil. 103 (2005).

⁷⁵ 539 Phil. 25 (2006).

⁷⁶ *Id.* at 36.

*The Information as regards
the charge of illegal trade of
dangerous drugs is void ab initio.*

Dio v. People allowed the correction of the defect in the Information of failure to allege venue. In the present case, however, the defect lies in the failure to allege even at least one of the elements of the crime. There was no allegation of any element of the crime of illegal trade of dangerous drugs. There was no specified seller, no specified buyer, no specified kind of dangerous drug, no specified quantity of dangerous drugs, no specified consideration, no specified delivery, and no specified payment. All that the Information alleged was the use of cellular phones, which is not even an essential element of the crime of illegal trade of dangerous drugs. If, as in the present case, the Information failed to mention even one element of the alleged crime, then the defect is so patent that it cannot ever be cured. There is complete and utter absence of the essential elements of the crime. Section 4 of Rule 117 allows an amendment of the Information if the defect “**can be cured by amendment.**” A defective Information can be cured if it alleges some, but not all, of the essential elements of the offense. However, if the Information does not allege any of the essential elements at all, the Information is void *ab initio* and is not merely defective. As held in *Leviste v. Hon. Alameda*:⁷⁷

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. **An information which is void ab initio cannot be amended to obviate a ground for quashal.** An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.⁷⁸ (Emphasis supplied)

An amendment that cures a defective Information is one that supplies a missing element to complete the other essential elements already alleged in the Information. But when none of the other elements is alleged in the Information, there is nothing to complete because not a single essential element is alleged in the Information.

*The Information already charges
direct bribery.*

The Court is also precluded from ordering an amendment of the present Information under Section 4 of Rule 117. The amendment under this section applies only when the defect in the Information can be cured by amendment, such as when the facts charged do not constitute any offense at all. **In the present case, the Information already charges an offense, which is direct bribery.** Thus, even if the prosecution specifies the seller,

⁷⁷ 640 Phil. 620 (2010).

⁷⁸ Id. at 640.



the buyer, the kind of dangerous drugs, the quantity of dangerous drugs, the consideration, the delivery, and the payment, the Information charging illegal trade of drugs would still be void. The Information would be void for **duplicity of offense**, because it would then charge petitioner with two crimes: direct bribery and illegal trade of drugs. Duplicity of offense is prohibited under Rule 110, Section 13 of the Revised Rules of Criminal Procedure, which states that “[a] **complaint or information must charge only one offense**, except when the law prescribes a single punishment for various offenses.” There is nothing in our laws which states that there should be a single punishment for the two offenses of direct bribery and illegal trade of drugs.

*No prematurity since this petition
is for certiorari under Rule 65*

The *ponencia* claims that the present petition is **premature** under Section 5(2), Article VIII of the Constitution which empowers this Court to “review x x x on appeal or certiorari x x x final judgments or orders of lower courts x x x in [a]ll cases in which the jurisdiction of any lower court is in issue.” The *ponencia* has fallen into grievous error.

Section 5(2), Article VIII of the Constitution refers to ordinary appeals, or to petitions for review under Rule 45 of the Rules of Court. The present petition for certiorari is an **original action under Rule 65**, and is expressly allowed under Section (1), Article VII of the Constitution, which provides:

Sec. 5. The Supreme Court shall have the following powers:

(1) **Exercise original jurisdiction x x x over petitions for certiorari**
x x x. (Emphasis supplied)

A petition for certiorari under this Section as provided in Rule 65 is an **original action** that waits for no final judgment or order of a lower court because what is assailed is the lower court’s absence of jurisdiction over the subject matter or its grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner is assailing an error of jurisdiction, not an error of judgment or order. Absence, lack or excess of jurisdiction is the very basis for a petition for certiorari under Rule 65.

What the *ponencia* wants is for petitioner, who is being held for a non-bailable offense, to wait for the final judgment or order of the trial court on the merits of the case before resorting to this Court on the fundamental and purely legal issue of jurisdiction. That obviously would not be a plain, speedy and adequate remedy as petitioner would be detained during the entire duration of the trial of the case. *Certiorari* under Rule 65 is properly available when “there is no appeal, nor plain, speedy and adequate remedy



in the ordinary course of law.”⁷⁹ There can be no appeal because there is still no final judgment or order of the RTC. Unless there is resort to certiorari under Rule 65, petitioner will continue to be deprived of her liberty for the duration of the trial. The situation of petitioner in this case is precisely why the certiorari under Rule 65 was created.

In fact, Section 1 of Rule 41 expressly provides that the “aggrieved party may file an appropriate special civil action as provided in Rule 65” to assail “[a]n interlocutory order”⁸⁰ of a regional trial court. The Warrant of Arrest issued by respondent Judge Guerrero, like a search warrant, is an interlocutory order since it does not dispose of a case completely but leaves something more to be done in the criminal case, that is, the determination of the guilt or innocence of the accused.⁸¹ There can be no prematurity when petitioner assails in the present petition for certiorari under Rule 65 that the Warrant of Arrest issued against her was a grave abuse of discretion on the part of Judge Guerrero.

*Issuance of Warrant of Arrest
effectively denied the Motion To Quash*

The *ponencia* also insists that petitioner should have waited for Judge Guerrero’s resolution on her Motion To Quash before proceeding to this Court. This is error. There is no longer any need to wait for the trial court’s resolution on the Motion To Quash because the trial court had issued a Warrant of Arrest against petitioner **after** petitioner filed her Motion To Quash. We stated in *Mead v. Argel*:⁸²

x x x. In *Pineda vs. Bartolome*, the ground invoked was duplicity of offenses charged in the information. In the case at bar, the petitioner assails the very jurisdiction of the court wherein the criminal case was filed. Certainly, there is a more compelling reason that such issue be resolved soonest, in order to avoid the court’s spending precious time and energy unnecessarily in trying and deciding the case, and to spare the accused from the inconvenience, anxiety and embarrassment, let alone the expenditure of effort and money, in undergoing trial for a case the proceedings in which could possibly be annulled for want of jurisdiction. Even in civil actions, We have counseled that when the court’s jurisdiction is attacked in a motion to dismiss, it is the duty of the court to resolve the same as soon as possible in order to avoid the unwholesome consequences mentioned above.

⁷⁹ Section 1, Rule 65, Rules of Court.

⁸⁰ Rule 41, Section 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. **No appeal may be taken from: (a) x x x; (b) An interlocutory order; x x x. In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.** (Emphasis supplied)

⁸¹ *Marcelo v. De Guzman*, 200 Phil. 137 (1982). See also *People v. Tan*, 623 Phil. 1 (2009).

⁸² 200 Phil. 650, 658 (1982).

The Information against petitioner was filed before the RTC of Muntinlupa City on 17 February 2017. Petitioner filed a Motion To Quash on 20 February 2017. Judge Guerrero found probable cause and issued Warrants of Arrest against petitioner and her co-accused on 23 February 2017.

Section 5(a) of Rule 112 of The Revised Rules of Criminal Procedure reads:

Sec. 5. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

x x x x

*Maza v. Turla*⁸³ emphasized these options when it said:

A plain reading of the provision shows that upon filing of the information, the trial court judge has the following options: (1) dismiss the case if the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.

By issuing the Warrant of Arrest, Judge Guerrero found probable cause that petitioner most likely committed the offense of illegal trade of dangerous drugs. This means that Judge Guerrero believed that the Information alleged all the essential elements of the offense charged, her court had jurisdiction over the offense charged, the DOJ Panel had authority to file the Information, and the Information does not charge more than one offense. **In effect, Judge Guerrero already ruled on the merits of petitioner's Motion To Quash.**

Thus, Judge Guerrero's issuance of the Warrant of Arrest is an effective denial of petitioner's Motion To Quash. Issuance of the Warrant of Arrest means that the trial court judge accepted the contents of the Information as well as the evidence supporting it, and found probable cause. However, it is a legal impossibility for the judge to find probable cause when the Information does not allege any of the essential elements of the offense charged. It is an oxymoron to say that the Information does not

⁸³ G.R. No. 187094, 15 February 2017, citing *Ong v. Genio*, 623 Phil. 835, 843 (2009).

allege any of the essential elements of the offense charged and yet there is probable cause that the accused committed the offense charged, justifying the issuance of the Warrant of Arrest.

Clearly, there was an effective denial of petitioner's Motion To Quash when Judge Guerrero issued the Warrant of Arrest. The rule is that any order of an amendment of a defective Information must be contained in the same order as the denial of the Motion To Quash.⁸⁴ Thus, there is no longer any room for the amendment of the Information at Judge Guerrero's level since she already effectively denied the Motion To Quash.

Moreover, the effective denial of petitioner's Motion To Quash through the issuance of the Warrant of Arrest is a proper subject matter of a petition for certiorari under Rule 65 in relation to Rule 41. A denial of a Motion To Quash is an interlocutory order.⁸⁵ To repeat, **Section 1 of Rule 41 provides that the "aggrieved party may file an appropriate special civil action as provided in Rule 65" to assail "[a]n interlocutory order"**⁸⁶ where the judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction. This is exactly what petitioner has done in the present petition.

As Justice Peralta held in *People v. Pangilinan*, an Information that fails to allege the essential elements of the offense is **void**. A judge who finds probable cause, and issues a warrant of arrest, based on such void Information certainly commits grave abuse of discretion amounting to lack or excess of jurisdiction. **For Judge Guerrero to issue the Warrant of Arrest despite the failure of the Information to allege any of the essential elements of the offense is an extreme case of grave abuse of discretion that must be struck down by this Court in the appropriate case, and that appropriate case is the present petition for certiorari under Rule 65.**

No Forum-Shopping

The *ponencia* insists that petitioner violated the rule against forum-shopping when she filed the present case against Judge Guerrero before this Court while her Motion To Quash was still pending before Judge Guerrero. However, as we have previously shown, Judge Guerrero's issuance of a Warrant of Arrest **after** petitioner filed her Motion To Quash is a denial of petitioner's Motion To Quash. **Contrary to the *ponencia's* assertion,**

⁸⁴ *Gonzales v. Judge Salvador*, 539 Phil. 25 (2006).

⁸⁵ *People v. Macandog*, 117 Phil. 216 (1963); *Perez v. Court of Appeals*, 250 Phil. 244 (1988).

⁸⁶ Rule 41, Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable. **No appeal may be taken from: (a) x x x; (b) An interlocutory order; x x x. In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.** (Emphasis supplied)

there is no longer any Motion To Quash pending before the trial court.

Moreover, the *ponencia* still cannot declare that the petition filed before the Court of Appeals also violates the rule against forum-shopping. Page 3 of the *ponencia* states that -

On January 13, 2017, petitioner filed before the Court of Appeals a *Petition for Prohibition and Certiorari assailing the jurisdiction of the DOJ Panel* over the complaints against her. The petitions, docketed as CA-G.R. No. 149097 and CA-G.R. No. 149385, are currently pending with the Special 6th Division of the appellate court. (Emphasis supplied)

There is a clear recognition that petitioner filed the case in the Court of Appeals to question the jurisdiction of the DOJ Panel, and not the jurisdiction of Judge Guerrero. There is no identity of parties, neither is there an identity of reliefs. Thus, there is obviously no forum-shopping.

A Final Word

The Information glaringly does not charge the non-bailable offense of illegal trade of drugs since not a single essential element of this particular offense is alleged in the Information. What the Information actually charges is the bailable offense of direct bribery. Yet petitioner is held without bail. Worse, direct bribery falls under the exclusive original jurisdiction of the Sandiganbayan, not the RTC that issued the Warrant of Arrest that keeps petitioner under detention for the non-existent, non-bailable offense of illegal trade of drugs as charged in the present Information.

Based on the Information itself, the accusation of illegal trade of drugs against petitioner is blatantly a **pure invention**. This Court, the last bulwark of democracy and liberty in the land, should never countenance such a **fake charge**. To allow the continued detention of petitioner under this Information is one of the grossest injustices ever perpetrated in recent memory in full view of the Filipino nation and the entire world.

The charge against petitioner under the present Information is like charging petitioner as a co-principal and co-conspirator in the crime of kidnapping for ransom with murder, where the Information alleges that petitioner received part of the ransom money from the perpetrators of the crime who are high profile inmates in the New Bilibid Prison, but the Information does **not** allege the identity of the actual kidnappers and killers, the identity of the victim, the fact of death of the victim or the *corpus delicti*, how the victim was killed, and the amount of the ransom money. Obviously, such an Information is void *ab initio* to charge anyone for the offense of kidnapping for ransom with murder. Such an Information, like the present Information under consideration, would be **laughable** if not for the non-bailable detention of the accused.



ACCORDINGLY, I vote to **GRANT** the petition for prohibition and certiorari. The Order dated 23 February 2017, and the Warrants of Arrest against petitioner Senator Leila M. De Lima and the other accused in Criminal Case No. 17-165, issued by respondent Judge Juanita Guerrero of the Regional Trial Court of Muntinlupa City, Branch 204, should be annulled and respondent judge should be enjoined from conducting further proceedings in Criminal Case No. 17-165. The Department of Justice should be directed to refer the direct bribery charge against petitioner Senator Leila M. De Lima and her co-accused to the Ombudsman for appropriate action. The Director-General of the Philippine National Police should be directed to immediately release from detention petitioner Senator Leila M. De Lima and all other accused in Criminal Case No. 17-165.



ANTONIO T. CARPIO
Associate Justice