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, PEOPLE OF THE PHILIPPINES, P/DIR. GEN. RONALD M. DELA ROSA, in his capacity as Chief of the Philippine National Police, PSUPT. PHILIP GIL M. PHILIPPS, in his capacity as Director, Headquarters Support Service, SUPT. ARNEL JAMANDRON APUD, in his capacity as Chief, PNP Custodial Service Unit, and ALL PERSONS ACTING UNDER THEIR CONTROL, SUPERVISION, INSTRUCTION OR DIRECTION IN RELATION TO THE ORDERS THAT MAY BE ISSUED BY THE COURT,** Respondents.

Promulgated:
October 10, 2017

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DISSENTING OPINION

LEONEN, *J.:*

"For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others." [1]

Nelson Mandela
Prisoner of Conscience for 27 years
Long Walk to Freedom

I dissent.

The majority's position may not have been surprising. Yet, it is deeply disturbing. With due respect, it unsettles established doctrine, misapplies unrelated canons, and most importantly, fails to render a good judgment: law deployed with sound reasons taking the full context of the case as presented.

Reading the law and the jurisprudence with care, it is the Sandiganbayan, not the respondent Regional Trial Court, that has jurisdiction over the offense as charged in the Information. The Information alleged acts of petitioner when she was Secretary of the Department of Justice. That the alleged acts were done during her tenure, facilitated by her office, and would not have been possible had it not been for her rank, is also

[1] NELSON MANDELA, LONG WALK TO FREEDOM 385 (1994).

clear in the information. The alleged crime she had committed was in relation to her office.

The legislative grant of jurisdiction to the Sandiganbayan can be no clearer than how it is phrased in Section 4 of Presidential Decree 1606 as amended by Republic Act No. 8249[2]:

> Section 4. Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
> ....
>
> b. Other offenses of 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.[3]

Jurisdiction over crimes committed by a Secretary of Justice in relation to his or her office is explicit, unambiguous and specifically granted to the Sandiganbayan by law.

On the other hand, the majority relies upon ambiguous inferences from provisions which do not categorically grant jurisdiction over crimes committed by public officers in relation to their office. They rely on Section 90 of Republic Act No. 9165,[4] which states:

> Section 90. Jurisdiction. – The Supreme Court ***shall designate special courts from among the existing Regional Trial Courts in each judicial region*** to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.[5] (Emphasis supplied)

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2 An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes (1997).

3 Subsection (A) in Section 4 includes "[o]fficials of the executive branch occupying the positions of regional director and higher". This includes the Secretary of Justice. Republic Act No. 8249 by qualifying certain crimes to be referred to the Regional Trial Court also supports the interpretation that Section 4 [B] includes all crimes committed in relation to their office.

4 Comprehensive Dangerous Drugs Act (2002).

5 Similarly, sections 20, 61 and 62 also refers to the Regional Trial Court but are not exclusive grants of jurisdiction only to the Regional Trial Court.
Rep. Act No. 9165, sec. 20, 61 and 62 provides:
Section 20. Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals. —
....
After conviction in the *Regional Trial Court* in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income: Provided, however, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.
SECTION 61. Compulsory Confinement of a Drug Dependent Who Refuses to Apply Under the Voluntary Submission Program. —
....

There is no express grant of jurisdiction over any case in Republic Act No. 9165. Section 90 only authorizes the Supreme Court to designate among Regional Trial Courts special courts for drug offenses. Section 90 has not authorized the Supreme Court to determine which Regional Trial Court will have jurisdiction because Article VIII, Section 2 of the Constitution assigns that power only to Congress.[6]

The general grant of jurisdiction for all crimes for Regional Trial Courts is in Batas Pambansa Blg. 129, Section 20, which provides:

> Section 20. Jurisdiction in criminal cases. – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, ***except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.*** (Emphasis supplied)

A responsible reading of this general grant of criminal jurisdiction will readily reveal that the law qualifies and defers to the specific jurisdiction of the Sandiganbayan. Clearly, Regional Trial Courts have jurisdiction over drug-related offenses while the Sandiganbayan shall have jurisdiction over crimes committed by public officers in relation to their office even if these happen to be drug-related offenses.

Respondent Regional Trial Court could not have cured its lack of jurisdiction over the offense by issuing a warrant of arrest. Nor could it also

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A petition for the confinement of a person alleged to be dependent on dangerous drugs to a Center may be filed by any person authorized by the Board with the *Regional Trial Court* of the province or city where such person is found.

Section 62. Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation. — If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.
In the event the Board determines, after medical examination, that public interest requires that such drug dependent be committed to a center for treatment and rehabilitation, it shall file a petition for his/her commitment with the *regional trial court* of the province or city where he/she is being investigated or tried: Provided, That where a criminal case is pending in court, such petition shall be filed in the said court. The court shall take judicial notice of the prior proceedings in the case and shall proceed to hear the petition. If the court finds him to be a drug dependent, it shall order his/her commitment to a Center for treatment and rehabilitation. The head of said Center shall submit to the court every four (4) months, or as often as the court may require, a written report on the progress of the treatment. If the dependent is rehabilitated, as certified by the Center and the Board, he/she shall be returned to the court, which committed him, for his/her discharge therefrom.

[6] CONST., art. VIII, sec. 2 provides:
Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.
No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

not have been cured by an amendment of the Information. The Regional Trial Court could only have acted on the Motion to Quash and granted it. To cause the issuance of a warrant of arrest was unnecessary and clearly useless. Being unreasonable, it was arbitrary. Such arbitrariness can be addressed by this original Petition for Certiorari and Prohibition.

Even the issuance of the Warrant of Arrest was unconstitutional. Respondent Regional Trial Court Judge Juanita Guerrero did not conduct the required personal examination of the witnesses and other pieces of evidence against the accused to determine probable cause. She only examined the documents presented by the prosecution. Under the current state of our jurisprudence, this is not enough considering the following: (a) the crime charged was not clear, (b) the prosecution relied on convicted prisoners; and (c) the sworn statements of the convicted prisoners did not appear to harmonize with each other.

In the context of the facts of this case, the reliance of the respondent judge only on the documents presented by the prosecution falls short of the requirements of Article III, Section 1 of the Constitution,[7] *Soliven v. Makasiar*,[8] *Lim v. Felix*,[9] and *People v. Ho*[10] among others. Having failed to determine probable cause as required by the Constitution, her issuance of the warrant of arrest was likewise arbitrary.

Therefore, the Petition should be granted.

I

The Regional Trial Court does not have jurisdiction over the offense charged.

Jurisdiction in a criminal case is acquired over the subject matter of the offense, which should be committed within the assigned territorial competence of the trial court.[11] Jurisdiction over the person of the accused, on the other hand, is acquired upon the accused's arrest, apprehension, or voluntary submission to the jurisdiction of the court.[12]

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7 CONST., art. III, sec. 1 provides:
Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

8 249 Phil. 394 (1988) [Per Curiam, En Banc].

9 272 Phil. 122 (1992) [Per J. Gutierrez, Jr., En Banc].

10 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].

11 *See Cruz v. Court of Appeals*, 436 Phil. 641, 654 (2002) [Per J. Carpio, Third Division] *citing* 4 OSCAR M. HERRERA, REMEDIAL LAW 3 (1992).

12 *See Valdepeñas v. People*, 123 Phil. 734 (1966) [Per J. Concepcion, En Banc].

Jurisdiction over the offense charged "is and may be conferred *only by law*."[13] It requires an inquiry into the provisions of law under which the offense was committed and an examination of the facts as alleged in the information.[14] An allegation of lack of jurisdiction over the subject matter is primarily a question of law.[15] Lack of jurisdiction may be raised at any stage of the proceedings, even on appeal.[16]

Jurisdiction over a criminal case "is determined by the allegations of the complaint or information,"[17] and not necessarily by the designation of the offense in the information.[18] This Court explained in *United States v. Lim San*:[19]

> From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the information and proved in the trial is not the crime characterized by the fiscal in the caption of the information. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not, "Did you commit a crime named murder?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. If the accused performed the acts alleged in the manner alleged, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.[20]

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13 *See Cruz v. Court of Appeals*, 436 Phil. 641, 654 (2002) [Per J. Carpio, Third Division].

14 *Soller v. Sandiganbayan*, 409 Phil. 780, 789 (2001) [Per J. Gonzaga-Reyes, Third Division] *citing* CAMILO QUIAZON, PHILIPPINE COURTS AND THEIR JURISDICTIONS 36 (1993).

15 *See Gala v. Cui*, 25 Phil. 522 (1913) [Per J. Moreland, First Division].

16 *See United States v. Castañares*, 18 Phil. 210 (1911) [Per J. Carson, En Banc].

17 *Colmenares v. Hon. Villar*, 144 Phil. 139, 142 (1970) [Per J. Reyes, J.B.L., En Banc].

18 *See Santos v. People*, 260 Phil. 519 (1990) [Per J. Cruz, First Division].

19 17 Phil. 273 (1910) [Per J. Moreland, First Division].

20 Id. at 278–279.

Petitioner stands charged for violation of Republic Act No. 9165, Article II, Section 5[21] in relation to Article I, Section 3(jj),[22] Article II, Section 26 (b),[23] and Article II, Section 28.[24] The Information filed against her read:

INFORMATION

> The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, [accused] LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of Section 5, 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:
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> > That within the period of 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

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[21] Rep. Act No. 9165, art. II, sec. 5 provides:

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 (P500,000.00) to Ten million pesos (P10,000,000.00) 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 (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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.

[22] Rep. Act No. 9165, art. I, sec. 3(jj) provides:

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

. . . .

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, e-mail, 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.

[23] Rep. Act No. 9165, art. II, sec. 26(b) provides:

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:

. . . .

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

[24] Rep. Act No. 9165, art. II, sec. 28 provides:

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.

> 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 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 other 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 (P5,000.000.00) Pesos on 24 November 2012, Five Million (P5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (P100,000.00) Pesos weekly "tara" each from the high profile inmates in the New Bilibid Prison.
>
> CONTRARY TO LAW.[25]

According to the ponencia and the Office of the Solicitor General, petitioner is charged with the crime of "Conspiracy to Commit Illegal Drug Trading."[26] There is yet no jurisprudence on this crime or a definitive statement of its elements. The ponencia insists that while illegal sale of dangerous drugs defined under Section 3(ii) is a different crime from illegal trading of dangerous drugs defined under Section 3(jj), illegal trading is essentially the same as the crime defined under Section 3(r).[27] For reference, Sections 3(ii), (jj), and (r) read:

> (ii) Sell. – Any act of giving away any **dangerous drug and/or controlled precursor and essential chemical** whether for money or any other consideration.
>
> (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.
>
> (r) Illegal Trafficking. – The 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**. (Emphasis supplied)

A plain reading of the three provisions, however, shows that all three (3) crimes necessarily involve (1) dangerous drugs, (2) controlled precursors, or (3) essential chemicals. These are the *corpus delicti* of the crime. Without the dangerous drug, controlled precursor, or essential

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[25] Annex F of the Petition, pp. 1–2.
[26] *Ponencia*, p. 24.
[27] Id. at 27–28.

crimes, none of the acts stated would be illegal. Thus, in *People v. Viterbo*:[28]

> As the dangerous drug itself forms an integral and key part of the corpus delicti of the crime, **it is therefore essential that the identity of the prohibited drug be established beyond reasonable doubt.**[29] (Emphasis in the original)

Similarly, in *People v. Dimaano*:[30]

> **In cases involving violations of the Comprehensive Dangerous Drugs Act of 2002, the prosecution must prove "the existence of the prohibited drug[.]"** "[T]he prosecution must show that the integrity of the corpus delicti has been preserved," because "the evidence involved — the seized chemical — is not readily identifiable by sight or touch and can easily be tampered with or substituted."[31] (Emphasis supplied)

In illegal sale of drugs, it is necessary to identify the buyer and the seller, *as well as the dangerous drug involved.* Illegal trading, being a different crime, does not only require the identities of the buyer and seller but also requires the identity of the broker: Regardless of the additional element, the fact remains that the essential element in all violations of Republic Act No. 9165 is the dangerous drug itself. The failure to identify the *corpus delicti* in the Information would render it defective.

The ponencia, however, insists that the offense designated in the Information and the facts alleged are that of illegal drug trading and not any other offense, stating:

> Read, as a whole, and not picked apart with each word or phrase construed separately, the Information against De Lima go beyond an indictment for Direct Bribery under Article 210 of the [Revised Penal Code]. As Justice Martires articulately explained, the averments on solicitation of money in the Information, which may be taken as constitutive of bribery, form "part of the description on how illegal drug trading took place in the [National Bilibid Prisons]." The averments on how petitioner asked for and received money from the [Bilibid] inmates simply complete the links of conspiracy between her, Ragos, Dayan, and the [Bilibid] inmates in willfully and unlawfully trading dangerous drugs through the use of mobile phones and other electronic devices under

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28 739 Phil. 593 (2014) [Per J. Perlas-Bernabe, Second Division].

29 Id. at 601 citing *People v. Adrid*, 705 Phil. 654 (2013) [Per J. Velasco, Jr., Third Division].

30 G.R. No. 174481, February 10, 2016, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/174481.pdf> [Per J. Leonen, Second Division].

31 Id. at 10 *citing People v. Laba*, 702 Phil. 301 (2013) [Per J. Perlas-Bernabe, Second Division]; *People v. Watamama*, 692 Phil. 102, 106 (2012) [Per J. Villarama, Jr., First Division]; and *People v. Guzon*, 719 Phil. 441 (2013) [Per J. Reyes, First Division].

> Section 5, in relation to Section 3 (jj), Section 26 (b), and Section 28 of [Republic Act No.] 9165.[32]

The Information alleges crucial facts that do not merely "complete the links of conspiracy." It alleges that petitioner "being then the Secretary of the Department of Justice . . . by taking advantage of [her] public office, conspiring and confederating with accused Ronnie P. Dayan," "all of them having moral ascendancy or influence over inmates in the New Bilibid Prison," "did then and there commit illegal drug trading" "with the use of their power, position and authority," "demand[ed], solicit[ed] and extort[ed] money from the high profile inmates in the New Bilibid Prison Prison to support the Senatorial bid in the May 2016 election."[33] The Information further provides that "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" were given and delivered to petitioner.

Petitioner was the Secretary of Justice where she exercised supervision over the Bureau of Corrections,[34] the institution in charge of New Bilibid Prison. Petitioner is alleged to have raised money for her senatorial bid by ordering the inmates to engage in an illicit drug trade where "those who cooperate will be given protection, but those who refuse will meet an [sic] unwelcome consequences."[35] The relationship between the public office and the probability of the commission of the offense, thus, becomes a critical element in the determination of jurisdiction. The public office held by petitioner at the time of the alleged commission of the offense cannot be overlooked since it is what determines which tribunal should have jurisdiction over the offense, as will be discussed later.

II

Jurisdiction is conferred by law. Article VIII, Section 2, first paragraph of the Constitution reads:

> ARTICLE VIII
> Judicial Department
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> . . . .

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32 *Ponencia*, p. 26.

33 Annex F of the Petition, pp. 1–2.

34 Rep. Act No. 10575, sec. 8. 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.

35 Annex G of the Petition, p. 40, DOJ Resolution.

> SECTION 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

Under Batas Pambansa Blg. 129,[36] Regional Trial Courts have exclusive original jurisdiction over all criminal cases, except those under the exclusive concurrent jurisdiction of the Sandiganbayan:

> Sec. 20. Jurisdiction in criminal cases. Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, ***except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.*** (Emphasis supplied)

The Sandiganbayan was created under Presidential Decree No. 1486[37] as a special court with the original and exclusive jurisdiction to hear and decide crimes and offenses committed by public officers. Its creation was intrinsically linked to the principle of public accountability in the 1973 Constitution.[38]

Under its current structure, it is composed of seven (7) divisions, with three (3) justices per division.[39] This composition was designed precisely to hear and decide the cases of public officers, considering that the accused may have immense political clout. Instead of the case being heard by only one (1) magistrate who might succumb to political power, the case is heard in a division of three (3) magistrates acting as a collegial body. In an ideal setting, the Sandiganbayan's structure makes it more difficult for a powerful politician to exert his or her influence over the entire court.

Thus, in order to determine which tribunal must try the criminal offense committed by a public officer, it must first be determined whether the Sandiganbayan exercises exclusive and concurrent jurisdiction over the offense.

Under the 1973 Constitution, the Sandiganbayan had jurisdiction over cases involving graft and corruption as may be determined by law:

> ARTICLE XIII
> ACCOUNTABILITY OF PUBLIC OFFICERS
>
> . . . .

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[36] The Judicial Reorganization Act of 1980.

[37] Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes (1978).

[38] *See* Pres. Decree No. 1486 (1978), Whereas Clauses.

[39] *See* Rep. Act No. 10660 (2015), sec. 1.

> SEC. 5. The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.[40]

Originally, its jurisdiction was stated in Presidential Decree No. 1486. Section 4 provided:

> SECTION 4. Jurisdiction. — Except as herein provided, the Sandiganbayan shall have original and exclusive jurisdiction to try and decide:
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> (a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act and Republic Act No. 1379;
>
> (b) Crimes committed by public officers or employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code;
>
> (c) ***Other crimes or offenses committed by public officers or employees including those employed in government-owned or controlled corporations in relation to their office; Provided, that, in case private individuals are accused as principals, accomplices or accessories in the commission of the crimes hereinabove mentioned, they shall be tried jointly with the public officers or employees concerned.***
>
> Where the accused is charged of an offense in relation to his office and the evidence is insufficient to establish the offense so charged, he may nevertheless be convicted and sentenced for the offense included in that which is charged.
>
> (d) Civil suits brought in connection with the aforementioned crimes for restitution or reparation of damages, recovery of the instruments and effects of the crimes, or forfeiture proceedings provided for under Republic Act No. 1379;
>
> (e) Civil actions brought under Articles 32 and 34 of the Civil Code.
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> Exception from the foregoing provisions during the period of martial law are criminal cases against officers and members of the Armed Forces of the Philippines, and all others who fall under the exclusive jurisdiction of the military tribunals. (Emphasis supplied)

This provision was subsequently amended in Presidential Decree No. 1606[41] to read:

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[40] CONST. (1973), art XIII, sec. 5.

[41] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and for Other Purposes (1978).

SECTION 4. Jurisdiction. — The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

(b) Crimes committed by public officers and employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c) ***Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office.***

The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than prision correccional, or its equivalent, except as herein provided; in other offenses, it shall be concurrent with the regular courts.

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.

Where an accused is tried for any of the above offenses and the evidence is insufficient to establish the offense charged, he may nevertheless be convicted and sentenced for the offense proved, included in that which is charged.

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, 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, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had theretofore been filed separately with a regular court but judgment therein has not yet been rendered and the criminal case is hereafter filed with the Sandiganbayan, said civil action shall be transferred to the Sandiganbayan for consolidation and joint determination with the criminal action, otherwise, the criminal action may no longer be filed with the Sandiganbayan, its exclusive jurisdiction over the same notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction; Provided, further, that, in cases within the concurrent jurisdiction of the Sandiganbayan and the regular courts, where either the criminal or civil action is first filed with the regular courts, the corresponding civil or criminal action, as the case may be, shall only be filed with the regular courts of competent jurisdiction.

> Excepted from the foregoing provisions, during martial law, are criminal cases against officers and members of the armed forces in the active service. (Emphasis supplied)

Republic Act No. 8249[42] further amended Presidential Decree No. 1486 to grant the Sandiganbayan exclusive original jurisdiction over violations of Republic Act No. 3019 (graft and corruption), Republic Act No. 1379 (ill-gotten wealth), bribery under the Revised Penal Code, and the Executive Orders on sequestration:

> SECTION 4. Section 4 of the same decree is hereby further amended to read as follows:
>
> Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
>
> A. Violations of Republic Act No. 3019, as amended, other 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 city department heads;
>
> (b) City mayor, 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 superintended or higher;
>
> (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

[42] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purposes Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes (1997).

(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 up 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 Constitutional Commission, 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 of 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.

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 officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional 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 Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or order 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 thereafter 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 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)

The question of whether the amended jurisdiction of the Sandiganbayan included all other offenses was settled in *Lacson v. Executive Secretary,*[43] where this Court stated that **the Sandiganbayan would have jurisdiction over all other penal offenses, "provided it was committed in relation to the accused's official functions,"**[44] thus:

> A perusal of the aforequoted Section 4 of R.A. 8249 reveals that to fall under the exclusive original jurisdiction of the Sandiganbayan, the following requisites must concur: (1) the offense committed is a violation of (a) R.A. 3019, as amended (the Anti-Graft and Corrupt Practices Act), (b) R.A. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery), (d) Executive Order Nos. 1, 2, 14, and 14-A, issued in 1986 (sequestration cases), or (e) other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph a of Section 4; and (3) the offense committed is in relation to the office.
>
> Considering that herein petitioner and intervenors are being charged with murder which is a felony punishable under Title VIII of the Revised Penal Code, the governing provision on the jurisdictional offense is not paragraph a but paragraph b, Section 4 of R.A. 8249. This paragraph b pertains to "other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of [Section 4, R.A. 8249] in relation to their office." *The phrase "other offenses or felonies" is too broad as to include the crime of murder, provided it was committed in relation to the accused's official functions. Thus, under said paragraph b, what determines the Sandiganbayan's jurisdiction is the official position or*

[43] 361 Phil. 251 (1999) [Per J. Martinez, En Banc].
[44] Id. at 270.

> *rank of the offender that is, whether he is one of those public officers or employees enumerated in paragraph a of Section 4.* The offenses mentioned in paragraphs a, b and c of the same Section 4 do not make any reference to the criminal participation of the accused public officer as to whether he is charged as a principal, accomplice or accessory. In enacting R.A. 8249, the Congress simply restored the original provisions of P.D. 1606 which does not mention the criminal participation of the public officer as a requisite to determine the jurisdiction of the Sandiganbayan.[45] (Emphasis supplied)

The Sandiganbayan's jurisdiction, however, was recently amended in Republic Act No. 10660.[46] Section 2 of this law states:

> SECTION 2. Section 4 of the same decree, as amended, is hereby further amended to read as follows:
>
> 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;

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[45] Id. at 270–271.

[46] An Act Strengthening Further the Functional and Structural Organization of the Sandiganbayan, Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor (2015).

(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 (P1,000,000.00).

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 Pambansa Blg. 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)

Republic Act No. 10660 retained the Sandiganbayan's exclusive original jurisdiction over offenses and felonies committed by public officers in relation to their office. It contained, however, a new proviso:

> 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 (P1,000,000.00).

Inversely stated, *Regional Trial Courts do not have exclusive original jurisdiction over offenses where the information alleges damage to the government or bribery, or where the damage to the government or bribery exceeds ₱1,000,000.00.*

The Office of the Solicitor General proceeds under the presumption that offenses under Republic Act No. 9165 were under the exclusive original jurisdiction of the regional trial courts, citing Article XI, section 90, first paragraph of the law:[47]

> ARTICLE XI
> JURISDICTION OVER
> DANGEROUS DRUGS CASES
>
> SEC. 90. Jurisdiction. –The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The phrase "exclusive original jurisdiction" does not appear anywhere in the cited provision. The Office of the Solicitor General attributes this to the previous drug law, Republic Act No. 6425,[48] which stated:

> ARTICLE X
> Jurisdiction Over Dangerous Drug Cases
>
> Section 39. Jurisdiction of the Circuit Criminal Court. The Circuit Criminal Court shall have exclusive original jurisdiction over all cases involving offenses punishable under this Act.
>
> . . . .

Republic Act No. 6425, however, has been explicitly repealed in the repealing clause of Republic Act No. 9165.[49] The current drug law does not provide exclusive original jurisdiction to the Regional Trial Courts.

The ponencia, however, attempts to rule otherwise ***without citing any legal basis*** for the conclusion. It states in no uncertain terms:

> In this case, RA 9165 specifies the RTC as the court with the jurisdiction to "exclusively try and hear cases involving violations of (RA 9165)."[50]

This citation in the ponencia has no footnote. Further examination shows that this was not quoted from any existing law or jurisprudence but from the Concurring Opinion of Justice Peralta[51] in this case. What the

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47 *Comment*, p. 30.
48 The Dangerous Drugs Act (1972).
49 Rep. Act No. 9165, sec. 100.
50 *Ponencia*, p. 39.
51 Id. at 34, citing the Concurring Opinion of J. Peralta, p.12.

ponencia cites instead are the following provisions of Republic Act No. 9165:

> Section 20. Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals. – Every penalty imposed for the unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical, the cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment, shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not liable for the unlawful act, but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act.
>
> After conviction in the Regional Trial Court in the appropriate criminal case filed, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense and all the assets and properties of the accused either owned or held by him or in the name of some other persons if the same shall be found to be manifestly out of proportion to his/her lawful income: Provided, however, That if the forfeited property is a vehicle, the same shall be auctioned off not later than five (5) days upon order of confiscation or forfeiture.
>
> During the pendency of the case in the Regional Trial Court, no property, or income derived therefrom, which may be confiscated and forfeited, shall be disposed, alienated or transferred and the same shall be in custodia legis and no bond shall be admitted for the release of the same.
>
> . . . .
>
> Section 62. Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation. – If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.
>
> In the event he Board determines, after medical examination, that public interest requires that such drug dependent be committed to a center for treatment and rehabilitation, it shall file a petition for his/her commitment with the regional trial court of the province or city where he/she is being investigated or tried[.]

None of these provisions explicitly states that only the Regional Trial Court has exclusive and original jurisdiction over drug offenses. It merely ***implies*** that the Regional Trial Court has jurisdiction over the drug offenses.

It was likewise inaccurate to cite *Morales v. Court of Appeals*[52] as basis considering that it involved Republic Act No. 6425, not Republic Act No. 9165. This Court in that case stated the change of status from "Court of First Instance" to "Regional Trial Court" did not abolish its exclusive original jurisdiction over drug offenses *under Republic Act No. 6425*. This Court did not explicitly state that this provision in Republic Act No. 6425 was carried over in Republic Act No. 9165.

The ponencia likewise anchors its "legal basis" for the Regional Trial Court's exclusive and original jurisdiction on Section 90 of Republic Act No. 9165:

> SEC. 90. Jurisdiction. –The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The phrase "exclusively" in Section 90 of Republic Act No. 9165 only pertains to the limited operational functions of the specially designated courts. Thus, in the Concurring Opinion in *Gonzales v. GJH Land*:[53]

> In this court's August 1, 2000 Resolution in A.M. No. 00-8-01-SC, this court designated certain Regional Trial Court branches as "Special Courts for drugs cases, which shall hear and decide all criminal cases in their respective jurisdictions involving violations of the Dangerous Drugs Act [of] 1972 (R.A. No. 6425) as amended, regardless of the quantity of the drugs involved."
>
> This court's Resolution in A.M. No. 00-8-01-SC made no pretenses that it was creating new courts of limited jurisdiction or transforming Regional Trial Courts into courts of limited jurisdiction. Instead, it repeatedly referred to its operational and administrative purpose: efficiency. Its preambular clauses emphasized that the designation of Special Courts was being made because "public policy and public interest demand that [drug] cases ... be expeditiously resolved[,]" and in view of "the consensus of many that the designation of certain branches of the Regional Trial Courts as Special Courts to try and decide drug cases . . . may immediately address the problem of delay in the resolution of drugs cases." Moreover, its dispositive portion provides that it was being adopted "pursuant to Section 23 of [the Judiciary Reorganization Act of 1980], [and] in the interest of speedy and efficient administration of justice[.]"
>
> Consistent with these operational and administrative aims, this court's October 11, 2005 Resolution in A.M. No. 05-9-03-SC, which addressed the question of whether "special courts for dr[u]g cases [may]

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52 347 Phil. 493 (1997) [Per J. Davide, Jr. En Banc].

53 772 Phil. 483 (2015) [Per J. Perlas-Bernabe, En Banc].

be included in the raffle of civil and criminal cases other than drug related cases[,]" stated:

> The rationale behind the exclusion of dr[u]g courts from the raffle of cases other than drug cases is to expeditiously resolve criminal cases involving violations of [R.A. No.] 9165 (previously, of [R.A. No.] 6435). Otherwise, these courts may be sidelined from hearing drug cases by the assignment of non-drug cases to them and the purpose of their designation as special courts would be negated. The faithful observance of the stringent time frame imposed on drug courts for deciding dr[u]g related cases and terminating proceedings calls for the continued implementation of the policy enunciated in A.M. No. 00-8-01-SC.
>
> To reiterate, at no point did this court declare the Regional Trial Court branches identified in these administrative issuances as being transformed or converted into something other than Regional Trial Courts. They retain their status as such and, along with it, the Judiciary Reorganization Act of 1980's characterization of them as courts of general jurisdiction. However, this court, in the interest of facilitating operational efficiency and promoting the timely dispensation of justice, has opted to make these Regional Trial Court branches focus on a certain class of the many types of cases falling under their jurisdiction.[54] (Citations omitted)

Designation of special courts does not vest exclusive original jurisdiction over a particular subject matter to the exclusion of any other court. It is Congress that has the power to define and prescribe jurisdiction of courts. This power cannot be delegated even to the Supreme Court. Thus, in Article VIII, Section 2 of the Constitution:

> Section 2. ***The Congress*** shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof. (Emphasis supplied)

Thus, the Congress passed Batas Pambansa Blg. 129, which grants the Regional Trial Courts exclusive original jurisdiction over criminal cases that do not fall under the exclusive concurrent jurisdiction of the Sandiganbayan. The Sandiganbayan has exclusive original jurisdiction over all other offenses committed by public officers in relation to their office. Moreover, Regional Trial Courts may have exclusive original jurisdiction where the Information does not allege damage to the government or bribery, or where damage to the government or bribery does not exceed ₱1,000,000.00.

The ponencia's invocation of Section 27 of Republic Act No. 9165 is *non sequitur*. The mention of the phrase "public officer or employee" does

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[54] Concurring Opinion of J. Leonen in *Gonzales v. GJH Land*, 772 Phil. 483, 534–535 (2015) [Per J. Perlas-Bernabe, En Banc]

not automatically vest exclusive jurisdiction over drugs cases to the Regional Trial Courts. Section 27 reads:

> Section 27. Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed. – . . . .
>
> Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or –controlled corporations.

Petitioner was not an elective local or national official at the time of the alleged commission of the crime. She was an appointive official. This section would not have applied to her.

Simply put, ***there is no law which gives the Regional Trial Court exclusive and original jurisdiction over violations of Republic Act No. 9165***. The Sandiganbayan, therefore, is not prohibited from assuming jurisdiction over drug offenses under Republic Act No. 9165.

The determination of whether the Sandiganbayan has jurisdiction depends on whether the offense committed is intimately connected to the offender's public office. In *Lacson*, this Court stated that it is the specific factual allegation in the Information that should be controlling in order to determine whether the offense is intimately connected to the discharge of the offender's functions:

> The remaining question to be resolved then is whether the offense of multiple murder was committed **in relation to the office** of the accused PNP officers.
>
> In ***People vs. Montejo***, we held that an offense is said to have been committed **in relation to the office** if it (the offense) is intimately connected with the office of the offender and perpetrated while he was in the performance of his official functions. This intimate relation between the offense charged and the discharge of official duties **must be alleged in the Information.**
>
> As to how the offense charged be stated in the information, Section 9, Rule 110 of the Revised Rules of Court mandates:

> SEC. 9. *Cause of Accusation.* The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition not necessarily in the terms of the statute defining the offense, but 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.

As early as 1954, we pronounced that the factor that characterizes the charge is the **actual recital of the facts**. The real nature of the criminal charges is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, **they being conclusions of law**, but by the **actual recital of facts** in the complaint or information.

The noble object of written accusations cannot be overemphasized. This was explained in ***U.S. v. Karelsen***:

> The object of this written accusations was First, To furnish the accused with such a description of the charge against him as will enable him to make his defense, and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause, and third, to inform the court of the **facts alleged** so that it may decide whether they are sufficient in law to support a conviction if one should be had. **In order that this requirement may be satisfied, facts must be stated, not conclusions of law** Every crime is made up of **certain acts** and **intent these must be set forth in the complaint with reasonable particularity of time, place, names** (plaintiff and defendant) **and circumstances.** In short, **the complaint must contain a specific allegation** of **every fact** and **circumstance necessary to constitute the crime charged.**
>
> It is essential, therefore, that the accused be informed of the facts that are imputed to him as **he is presumed to have no independent knowledge of the facts that constitute the offense.**
>
> . . . .
>
> . . . **For the purpose of determining jurisdiction, it is these allegations that shall control**, and not the evidence presented by the prosecution at the trial.

In the aforecited case of ***People vs. Montejo***, it is noteworthy that the phrase committed in relation to public office does not appear in the information, which only signifies that the said phrase is not what determines the jurisdiction of the *Sandiganbayan.* What is **controlling** is the **specific factual allegations** in the information that would indicate the close intimacy between the discharge of the accused's official duties and the commission of the offense charged, in order to qualify the crime as having been committed in relation to public office.

> Consequently, for failure to show in the amended informations that the charge of murder was intimately connected with the discharge of official functions of the accused PNP officers, the offense charged in the subject criminal cases is plain murder and, therefore, within the exclusive original jurisdiction of the Regional Trial Court, not the *Sandiganbayan.*[55] (Emphasis in the original)

Even when holding public office is not an essential element of the offense, the offense would still be considered intimately connected to the public officer's functions if it "was perpetrated while they were in the performance, though improper or irregular, of their official functions:"[56]

> In *Sanchez v. Demetriou*, the Court elaborated on the scope and reach of the term "offense committed in relation to [an accused's] office" by referring to the principle laid down in *Montilla v. Hilario*, and to an exception to that principle which was recognized in *People v. Montejo*. The principle set out in *Montilla v. Hilario*, is that an offense may be considered as committed in relation to the accused's office if "the offense cannot exist without the office" such that "the office [is] a constituent element of the crime as . . . defined and punished in Chapter Two to Six, Title Seven of the Revised Penal Code." In *People v. Montejo*, the Court, through Chief Justice Concepcion, said that "although public office is not an element of the crime of murder in [the] abstract," the facts in a particular case may show that
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> > ". . . the offense therein charged is intimately connected with [the accuseds'] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, [the accused] had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. The co-defendants or respondent Leroy S. Brown obeyed his instructions because he was their superior officer, as Mayor of Basilan City."
>
> In the instant case, public office is not, of course, an element of the crime of murder, since murder may be committed by any person whether a public officer or a private citizen. In the present case, however, the circumstances quoted above found by the RTC bring petitioner Cunanan's case squarely within the meaning of an "offense committed in relation to the [accused's] public office" as elaborated in the Montejo case. It follows that the offense with which petitioner Cunanan is charged falls within the exclusive and original jurisdiction of the Sandiganbayan, and that the RTC

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[55] *Lacson v. Executive Secretary*, 361 Phil. 251, 278–284 (1999) [Per J. Martinez, En Banc] citing *People v. Montejo*, 108 Phil. 613 (1960) [Per J. Concepcion, En Banc]; *Republic vs. Asuncion*, 301 Phil. 216 (1994) [Per J. Davide, Jr., En Banc]; *People vs. Magallanes*, 319 Phil. 319 (1995) [Per J. Davide, Jr., First Division]; *People vs. Cosare,* 95 Phil 657, 660 (1954)[Per J. Bautista Angelo, En Banc]; *People vs. Mendoza*, 256 Phil. 1136 (1989) [Per J. Fernan, Third Division]; *US v. Karelman*, 3 Phil. 223, 226 (1904) [Per J. Johnson, En Banc].

[56] *Cunanan v. Arceo*, 312 Phil. 111, 118 (1995) [Per J. Feliciano, Third Division].

> of San Fernando, Pampanga had no jurisdiction over that offense.[57] (Citations omitted)

The Information clearly acknowledges that petitioner was the Secretary of Justice when the offense was allegedly committed. As Secretary of Justice, she exercised administrative supervision over the Bureau of Corrections,[58] the institution in charge of the New Bilibid Prison. The preliminary investigation concluded that the inmates participated in the alleged drug trade inside the New Bilibid Prison based on privileges granted or punishments meted out by petitioner.[59] This, in turn, leads to the conclusion that the offense was committed due to the improper or irregular exercise of petitioner's functions as Secretary of Justice. If she were not the Secretary of Justice at the time of the commission of the offense, she would not have been able to threaten or reward the inmates to do her bidding.

The Information alleges that petitioner received ₱5,000,000.00 on November 24, 2012, another ₱5,000,000.00 on December 15, 2012, and ₱100,000.00 weekly from the high profile inmates of the New Bilibid Prison "by taking advantage of [her] public office" "with the use of [her] power, position and authority," to "demand, solicit and extort money from the high profile inmates in the New Bilibid Prison Prison to support the Senatorial bid in the May 2016 election." None of these allegations actually corresponds to the crime of conspiracy to commit drug trading. It corresponds instead to **direct bribery** under Article 210 of the Revised Penal Code:

> 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 minimum and medium periods and a fine of 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.
>
> . . . .

The elements of direct bribery are:

> [1] That the accused is a public officer; [2] that he received directly or through another some gift or present, offer or promise; [3] that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his official duty to do, and [4] that the crime or act relates to the exercise of his functions as a public officer.[5] The promise

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57 Id. at 118–119.

58 Rep. Act No. 10575, sec. 8.

59 Annex G of the Petition, p. 40, DOJ Resolution.

> of a public officer to perform an act or to refrain from doing it may be express or implied.[60]

I agree with Justice Perlas-Bernabe that Republic Act No. 10660 only refers to "any bribery" without specific mention of Direct Bribery under Article 210 of the Revised Penal Code. However, pending a conclusive definition of the term, resort must be made to existing penal statutes. The elements of Article 210 sufficiently correspond to the allegations in the Information. What is essential in bribery is that a "gift, present or promise has been given in consideration of his or her commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his or her official duty to do."

The allegations in the Information, thus, place the jurisdiction of the offense squarely on the Sandiganbayan. To reiterate, the Regional Trial Court may exercise exclusive original jurisdiction only in cases where the Information does not allege damage to the government or any bribery. If the Information alleges damage to the government or bribery, the Regional Trial Court may only exercise jurisdiction if the amounts alleged do not exceed ₱1,000,000.00.

III

Not having jurisdiction over the offense charged, the Regional Trial Court committed grave abuse of discretion in determining probable cause and in issuing the warrant of arrest.

There are two (2) types of determination of probable cause: (i) executive; and (ii) judicial.[61]

Executive determination of probable cause answers the question of whether there is "sufficient ground to engender a well-founded belief that a crime has been committed, and the respondent is probably guilty, and should be held for trial."[62] It is determined by the public prosecutor after preliminary investigation when the parties have submitted their affidavits and supporting evidence. If the public prosecutor determines that there is probable cause to believe that a crime was committed, and that it was committed by the respondent, it has the quasi-judicial authority to file a criminal case in court.[63]

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60 *Manipon v. Sandiganbayan*, 227 Phil. 253 (1986) [Per J. Fernan, En Banc] citing *Maniego vs. People*, 88 Phil. 494 (1951) [Per J. Bengzon, En Banc] and *US vs. Richards*, 6 Phil. 545 (1906) [Per J. Willard, First Division].

61 *People v. Castillo*, 607 Phil. 754, 764 (2009) [Per J. Quisimbing, Second Division].

62 RULES OF COURT, Rule 112, sec. 1.

63 *People v. Castillo*, G.R. No. 171188, June 19, 2009, 607 Phil. 754, 764 (2009) [Per J. Quisimbing, Second Division].

On the other hand, judicial determination of probable cause pertains to the issue of whether there is probable cause to believe that a warrant must be issued for the arrest of the accused, so as not to frustrate the ends of justice. It is determined by a judge after the filing of the complaint in court.[64] In this instance, the judge must evaluate the evidence showing the facts and circumstances of the case, and place himself or herself in the position of a "reasonably discreet and prudent man [or woman]" to assess whether there is a lawful ground to arrest the accused.[65] There need not be specific facts present in each particular case.[66] But there must be sufficient facts to convince the judge that the person to be arrested is the person who committed the crime. [67]

This case involves the exercise of judicial determination of probable cause.

IV

Arrest is the act of taking custody over a person for the purpose of making him or her answer for an offense.[68]

Except in specific instances allowed under the law, a judge must first issue a warrant before an arrest can be made. In turn, before a warrant can be issued, the judge must first determine if there is probable cause for its issuance.

"No warrant of arrest shall issue except upon probable cause, supported by oath or affirmation."[69]

This rule has been recognized as early as the 1900s[70] and has been enshrined in the Bill of Rights of the 1935, the 1973, and the present 1987 Constitution of the Philippines.[71]

Under the 1935 Constitution, the issuance of a warrant was allowed only upon the judge's determination of probable cause after examining the complainant and his witnesses under oath or affirmation. Thus:

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64 Id. at 765.
65 *Allado v. Diokno*, 302 Phil. 213, 235 (1994) [Per J. Belosillo, First Division].
66 *U.S. v. Ocampo*, 18 Phil. 1, 42 (1910) [Per J. Johnson, En Banc]; Act of Congress of July 1, 1902, otherwise known as The Philippine Bill, §5.
67 Id.
68 RULES OF COURT, Rule 113, sec. 1.
69 *U.S. v. Ocampo*, 18 Phil. 1, 37 (1910) [Per J. Johnson]; Act of Congress of July 1, 1902, otherwise known as The Philippine Bill, §5.
70 Id.
71 CONST. (1935), art. III, sec. 1(3); CONST. (1972), art. IV, sec. 3; CONST., art. III, sec. 2.

ARTICLE III
Bill of Rights

SECTION 1. (3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and *no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.*

The 1973 Constitution, on the other hand, specified the types of warrants that may be issued. Likewise, it allowed other responsible officers authorized by law to determine the existence of probable cause:

ARTICLE IV
Bill of Rights

SECTION 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.*

When the present 1987 Constitution was enacted, the authority to issue warrants of arrest again became exclusively the function of a judge. Moreover, it specified that the judge must do the determination of probable cause *personally*:

ARTICLE III
Bill of Rights

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be* ***determined personally*** *by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.*

V

Thus, in determining probable cause for the issuance of a warrant of arrest, there are two (2) Constitutional requirements: (i) the judge must make

the determination, and (ii) the determination must be personal, after examining under oath or affirmation the complainant and his witnesses.[72]

Jurisprudence affirms that the judge alone determines the existence of probable cause for the issuance of a warrant of arrest.[73]

Confusion arises on the interpretation of the personal determination by the judge of probable cause.

The word "personally" is new in the 1987 Constitution. In the deliberations of the Constitutional Commission:[74]

> FR. BERNAS: Thank you, Madam President.
> ....
> Section 2 is the same as the old Constitution.
>
> The provision on Section 3 reverts to the 1935 formula by eliminating the 1973 phrase "or such other responsible officer as may be authorized by law," and also adds the word PERSONALLY on line 18. In other words, warrants under this proposal can be issued only by judges. I think one effect of this would be that, as soon as the Constitution is approved, the PCGG will have no authority to issue warrants, search and seizure orders, because it is not a judicial body. So, proposals with respect to clipping the powers of the PCGG will be almost unnecessary if we approve this. We will need explicit provisions extending the power of the PCGG if it wants to survive.
> ....
>
> MR. SUAREZ: Mr. Presiding Officer, I think the Acting Floor Leader is already exhausted. So I will get through with my questions very quickly. May I call the *sponsor's attention to Section 3, particularly on the use of the word "personally." This, I assume, is on the assumption that the judge conducting the examination must do it in person and not through a commissioner or a deputy clerk of court.*
>
> FR. BERNAS: *Yes, Mr. Presiding Officer.*
>
> MR. SUAREZ: The other point is that the Committee deleted the phrase "through searching questions" which was originally proposed after the word "affirmation." May we know the reason for this, Mr. Presiding Officer.
>
> FR. BERNAS: The sentiment of most of the members of the Committee was that it would still be understood even without that phrase.
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> MR. SUAREZ: For purposes of record, does this envision a situation where the judge can conduct the examination personally even in his own

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[72] 1987 Constitution, Article III, Section 2.

[73] *People v. Honorable Enrique B. Inting, et al.*, 265 Phil. 817, 821 (1990) [Per J. Gutierrez, Jr., *En Banc*].

[74] Record of the 1986 Constitutional Commission No. 032 (1986).

> residence or in a place outside of the court premises, say, in a restaurant, bar or cocktail lounge? I ask this because I handled a case involving Judge Pio Marcos in connection with the Golden Buddha case, and I remember the search warrant was issued at 2:00 a.m. in his residence.
>
> FR. BERNAS: May I ask Commissioner Colayco to answer that question from his vast experience as judge?
>
> MR. COLAYCO: We have never come across an incident like that. But we always make sure that the application is filed in our court. It has to be done there because the application has to be registered, duly stamped and recorded in the book.
>
> MR. SUAREZ: *So it is clear to everybody that when we said "it shall be determined personally by the judge after examination under oath or affirmation" that process must have to be conducted in the court premises.*
>
> MR. COLAYCO: *Not only in the court premises but also in the courtroom itself. We do that at least in Manila.*
>
> MR. SUAREZ: Thank you, Mr. Presiding Officer.
>
> MR. COLAYCO: For the information of the body, the words "searching questions," if I am not mistaken, are used in the Rules of Court.
>
> FR. BERNAS: The phrase is not yet used in the Rules of Court. [75]

In adding the word "personally" to the provision, the Constitutional Commission deliberations envisioned a judge personally conducting the examination in the courtroom, and not through any other officer or entity.

In the 1988 case of *Soliven v. Makasiar*,[76] this Court clarified the operation of this requirement given that documents and evidence are available also after the prosecutor's preliminary investigation:

> The second issue, raised by petitioner Beltran, calls for an interpretation of the constitutional provision on the issuance of warrants of arrest. ...
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> ...
>
> The addition of the word "personally" after the word "determined" and the deletion of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law", has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

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[75] Record of the 1986 Constitutional Commission No. 032 (1986).

[76] 249 Phil. 394 (1988) [Per Curiam Resolution]

> What the Constitution underscores is the *exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause.* In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.
>
> Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.[77]

Thus, in this earlier case, this Court implied that the actual personal examination of the complainant and his witnesses is not necessary if the judge has the opportunity to personally evaluate the report and the supporting documents submitted by the fiscal, or require the submission of supporting affidavits of witnesses if the former is not sufficient.[78]

This standard for determining probable cause was further explained in *Lim, Sr. v. Felix*,[79] where this Court ruled that a judge may not issue an arrest warrant solely on the basis of the prosecutor's certification that probable cause exists.[80] The evidence must be available to the judge for perusal and examination.

In *Lim, Sr. v. Felix*, a complaint was filed in the Municipal Trial Court of Masbate against several accused for the murder of Congressman Moises Espinosa and his security escorts.[81] The Municipal Trial Court of Masbate issued an arrest warrant after evaluating the affidavits and answers of the prosecution's witnesses during the preliminary investigation.[82] The Provincial Prosecutor of Masbate affirmed this finding, and thus filed separate Informations for murder with the Regional Trial Court of Masbate.[83]

Later, the case was transferred to the Regional Trial Court of Makati.[84]

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77 Id. at 399–400.
78 Id. at 399.
79 272 Phil.122 (1991) [Per J. Gutierrez, Jr., En Banc].
80 Id. at 138.
81 Id. at 126.
82 Id. at 127.
83 Id. at 128.
84 Id.

In the Regional Trial Court of Makati, several of the accused manifested that some of the witnesses in the preliminary investigations recanted their testimonies.[85] Thus, they prayed that the records from the preliminary investigation in Masbate be transmitted to the court, and moved for the court to determine the existence of probable cause.[86]

Despite the motions and manifestations of the accused, the Regional Trial Court of Makati issued arrest warrants.[87] It found that since two (2) authorized and competent officers had determined that there was probable cause and there was no defect on the face of the Informations filed, it may rely on the prosecutor's certifications.[88]

This Court reversed the trial court's ruling and held that the prosecutor's certification was not enough basis for the issuance of the warrant of arrest.[89] While the judge may consider the prosecutor's certification, he or she must make his or her own personal determination of probable cause.[90] There is grave abuse of discretion if the judge did not consider any evidence before issuing an arrest warrant.[91] In such a case, there is no compliance with the Constitutional requirement of personal determination because the only person who made the determination of probable cause is the prosecutor.[92]

In ruling as such, *Lim, Sr. v. Felix*, discussed that the extent of the judge's personal determination depends on what is required under the circumstances: [93]

> The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. *The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require.* To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. *He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.*
>
> It is worthy to note that petitioners Vicente Lim, Sr. and Susana Lim presented to the respondent Judge documents of recantation of witnesses whose testimonies were used to establish a *prima facie* case against them. Although, the general rule is that recantations are not given

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85 Id. at 129.
86 Id. at 128.
87 Id. at 129.
88 Id.
89 Id. at 130.
90 Id. at 130.
91 Id. at 137.
92 Id. at 136.
93 Id.

> much weight in the determination of a case and in the granting of a new trial, the respondent Judge before issuing his own warrants of arrest should, at the very least, have gone over the records of the preliminary examination conducted earlier in the light of the evidence now presented by the concerned witnesses in view of the "political undertones" prevailing in the cases. ...
>
> We reiterate that in making the required personal determination, a Judge is not precluded from relying on the evidence earlier gathered by responsible officers. *The extent of the reliance depends on the circumstances of each case and is subject to the Judge's sound discretion.* However, the Judge abuses that discretion when having no evidence before him, he issues a warrant of arrest.[94] (Emphasis supplied)

The extent of the judge's examination for the determination of probable cause, thus, depends on the circumstances of each case.[95] It may be extensive or not extensive, but there must always be a personal determination.[96]

The consideration of the prosecutor's certification is also discretionary.[97] While any preliminary finding of the prosecutor may aid the judge in personally determining probable cause, the judge is not bound to follow it.[98] The judge may disregard it and if he or she is not satisfied with the evidence presented, he may require the submission of additional affidavits to help him determine the existence of probable cause.[99]

In *People v. Honorable Enrique B. Inting, et al.*, this Court even went as far as to say:

> By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.[100]

Thus, this Court ruled that "[t]he warrant issues not on the strength of the certification standing alone but because of the records which sustain it.[101]

It, thus, follows that the judicial determination of probable cause must be supported by the records of the case.

PLA

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94 Id. at 136–137.
95 Id. at 136.
96 Id.
97 Id. at 130.
98 Id.
99 Id. at 131. *citing Placer v. Villanueva*, 211 Phil. 615 (1983)[Per J. Escolin, Second Division].
100 *People v. Honorable Enrique B. Inting, et al.*, 265 Phil. 817, (1990) [Per J. Gutierrez, Jr., *En Banc*].
101 *Lim, Sr. v. Felix*, 272 Phil.122, 135 (1991) [Per J. Gutierrez, Jr., En Banc].

In *Allado v. Diokno*,[102] this Court invalidated an arrest warrant after it found that the issuing judge's determination was not supported by the records presented.

In that case, two (2) lawyers were implicated in the kidnapping and murder of German national Eugene Alexander Van Twest (Van Twest) on the basis of a sworn confession of one Escolastico Umbal (Umbal). Umbal claimed that the two (2) lawyers were the masterminds of the crime, while he and several others executed the crime in exchange for ₱2,500,000.00. [103]

The Presidential Anti-Crime Commission conducted an investigation. After evaluating the evidence gathered, the Chief of the Presidential Anti-Crime Commission referred the case to the Department of Justice for the institution of criminal proceedings.[104]

The matter was referred to a panel of prosecutors who eventually issued a resolution recommending the filing of informations against the accused.[105]

The case was filed in the Regional Trial Court of Makati and raffled to Branch 62 presided by Judge Roberto C. Diokno (Judge Diokno).[106]

Judge Diokno issued a warrant of arrest against the two (2) lawyers.[107]

However, this Court found that there was not enough basis for the issuance of the warrant of arrest.[108] It ruled that the evidence was insufficient to sustain the finding of probable cause.[109] It noted that several inconsistencies were blatantly apparent, which should have led to the non-issuance of the arrest warrant.[110]

This Court found that the corpus delicti was not established. Van Twest's remains had not been recovered and the testimony of Umbal as to how they burned his body was "highly improbable, if not ridiculous." [111] It noted that the investigators did not even allege that they went to the place of the burning to check if the remains were there. [112]

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[102] 301 Phil. 213 (1994) [Per J. Belosillo, First Division].
[103] Id. at 222.
[104] Id. at 222–223.
[105] Id. at 225.
[106] Id.
[107] Id. at 226.
[108] Id. at 224.
[109] Id. at 229.
[110] Id. at 231.
[111] Id. at 229.
[112] Id. at 230.

It observed that Van Twest's own counsel doubted the latter's death, such that even after Van Twest's alleged abduction, his counsel still represented him in judicial and quasi-judicial proceedings, and manifested that he would continue to do so until Van Twest's death had been established. [113]

It also noted that Van Twest was reportedly an "international fugitive from justice" and, thus, there was a possibility that his "death" may have been staged to stop the international manhunt against him. [114]

This Court also considered the revoked admission of one (1) of the accused, the Presidential Anti-Crime Commission's finding on the crime's mastermind, the manner by which the accused obtained a copy of the resolution of the panel of prosecutors, the timing of Umbal's confession, and its numerous inconsistencies and contradictions.[115] This Court observed "the undue haste in the filing of the information and the inordinate interest of the government" and found that "[f]rom the gathering of evidence until the termination of the preliminary investigation, it appears that the state prosecutors were overly eager to file the case and secure a warrant for the arrest of the accused without bail and their consequent detention. [116]

This Court then elucidated that good faith determination and mere belief were insufficient and could not be invoked as defense by the judge.[117] There must be sufficient and credible evidence.[118] Thus:

> Clearly, probable cause may not be established simply by showing that a trial judge subjectively believes that he has good grounds for *his action. Good faith is not enough. If subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be 'secure in their persons, houses, papers and effects' only in the fallible discretion of the judge.* On the contrary, *the probable cause test is an objective one,* for in order that there be probable cause the facts and circumstances must be such as would warrant a belief by a reasonably discreet and prudent man that the accused is guilty of the crime which has just been committed. This, as we said, is the standard. Hence, if upon the filing of the information in court the trial judge, after reviewing the information and the documents attached thereto, finds that no probable cause exists must either call for the complainant and the witnesses themselves or simply dismiss the case. There is no reason to hold the accused for trial and further expose him to an open and public accusation of the crime when no probable cause exists.

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[113] Id.
[114] Id. at 231.
[115] Id.
[116] Id. at 236.
[117] Id. at 235 citing *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed. 2d. 142 (1964).
[118] Id.

> But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion. If they really believed that petitioners were probably guilty, they should have armed themselves with facts and circumstances in support of that belief; for *mere belief is not enough.* They should have presented *sufficient and credible evidence* to demonstrate the existence of probable cause. For *the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.* As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. *It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.*"
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> ....
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> Indeed, the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of prosecutors. And, whether it is preliminary investigation by the prosecutor, which ascertains if the respondent should be held for trial, or a preliminary inquiry by the trial judge which determines if an arrest warrant should issue, the bottomline is that there is a *standard in the determination of the existence of probable cause, i.e., there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged.* Judges and prosecutors are not off on a frolic of their own, but rather engaged in a delicate legal duty defined by law and jurisprudence. [119] (Emphasis supplied, citations omitted)

It further emphasized the need for the government to be responsible with the exercise of its power so as to avoid unnecessary injury and disregard of rights: [120]

> The facts of this case are fatefully distressing as they showcase the seeming immensity of government power which when unchecked becomes tyrannical and oppressive. Hence the Constitution, particularly the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend. Needless injury of the sort inflicted by government agents is not reflective of responsible government. Judges and law enforcers are not, by reason of their high and prestigious office, relieved of the common obligation to avoid deliberately inflicting unnecessary injury.
>
> The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators

[119] Id. at 235–237.
[120] Id. at 238.

> of the law. This is essential for its self-preservation, nay, its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute is not a *carte blanche* for government agents to defy and disregard the rights of its citizens under the Constitution. *Confinement, regardless of duration, is too high a price to pay for reckless and impulsive prosecution.* Hence, even if we apply in this case the "multifactor balancing test" which requires the officer to weigh the manner and intensity of the interference on the right of the people, the gravity of the crime committed and the circumstances attending the incident, still we cannot see probable cause to order the detention of petitioners.
>
> The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political power. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities. Certainly, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former. Thus, relief may be availed of to stop the purported enforcement of criminal law where it is necessary to provide for an orderly administration of justice, to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights.
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> ...
>
> Let this then be a constant reminder to judges, prosecutors and other government agents tasked with the enforcement of the law that in the performance of their duties they must act with circumspection, lest their thoughtless ways, methods and practices cause a disservice to their office and aim their countrymen they are sworn to serve and protest. We thus caution government agents, particularly the law enforcers, to be more prudent in the prosecution of cases and not to be oblivious of human rights protected by the fundamental law. While we greatly applaud their determined efforts to weed society of felons, let not their impetuous eagerness violate constitutional precepts which circumscribe the structure of a civilized community. (Citations omitted, emphasis supplied) [121]

The powers granted to the judge are discretionary, but not arbitrary.[122] Verily, there is grave abuse of discretion when the judge fails to personally examine the evidence, refuses to further investigate despite "incredible accounts" of the complainant and the witnesses, and merely relies on the prosecutor's certification that there is probable cause.[123]

Thus, it found that given the circumstances and the insufficient evidence found against the two (2) lawyers, there is no sufficient basis for issuing the warrant of arrest.[124]

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[121] Id. at 237–239.
[122] Id. at 228.
[123] Id. at 233.
[124] Id. at 229.

The later case of *Ho v. People*[125] illustrates the necessity of the judge's independent evaluation of the evidence in determining the existence of probable cause.

In *Ho v. People*,[126] this Court ruled that a judge cannot solely rely on the report and recommendation of the investigating prosecutor in issuing a warrant of arrest. The judge must make an independent, personal determination of probable cause through the examination of sufficient evidence submitted by the parties during the preliminary investigation. [127]

In this case, the Sandiganbayan relied on the "facts and evidence appearing in the resolution/memorandum of responsible investigators/ prosecutors."[128] It issued the warrant of arrest after reviewing: (i) the information filed by the Office of the Ombudsman; (ii) the investigating officer's resolution, and (iii) the prosecution officer's memorandum.[129]

The Sandiganbayan noted that the memorandum and the resolution showed the proper holding of a preliminary investigation and the finding of probable cause by the authorized officials. It found that the resolution outlined and evaluated the facts, law, and submitted evidence before it recommended the filing of the Information. It likewise stated that "the Ombudsman will not approve a resolution just like that, without evidence to back it up." [130]

This Court found that this is not sufficient to be considered an independent and personal examination required under the Constitution and jurisprudence. [131]

This Court noted that the Sandiganbayan's examination did not include a review of the supporting evidence submitted at the preliminary investigation. This Court also observed that the memorandum and the resolution did not have the same recommendations as to who was to be indicted.[132] This Court found that the Sandiganbayan checked no documents from either of the parties, not even the documents which was the basis of the Ombudsman in determining the existence of probable cause.[133]

This Court, thus, ruled that the Sandiganbayan committed grave abuse of discretion in issuing the arrest warrant. The Ombudsman's findings and

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125 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].
126 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].
127 Id. at 611.
128 Id. at 610.
129 Id. at 609.
130 Id. at 609.
131 Id. at 613.
132 Id. at 609.
133 Id. at 613.

recommendation could not be the only basis of the Sandiganbayan.[134] The latter was obliged to verify the sufficiency of the evidence.[135] It must determine the issue of probable cause on its own and base it on evidence other than the findings and recommendation of the Ombudsman.[136]

This Court explained:

> In light of the aforecited decisions of this Court, such justification cannot be upheld. Lest we be too repetitive, we only wish to emphasize three vital matters once more: *First*, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, *i.e.* whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.
>
> *Second*, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide *independently*. Hence, he must have supporting evidence, *other than* the prosecutor's *bare* report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.
>
> *Lastly*, it is not required that the *complete* or *entire* records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have *sufficient* supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the

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134 Id.
135 Id. at 604.
136 Id. at 613.

> legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to *personally* determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[137] (Emphasis in the original, citations omitted)

Ho v. People[138] reiterated the rule that the objective of the prosecutor in determining probable cause is different from the objective of the judge. The prosecutor determines whether there is cause to file an Information against the accused. The judge determines whether there is cause to issue a warrant for his arrest. Considering this difference in the objectives, the judge cannot rely on the findings of the prosecutor, and instead must make his own conclusion. Moreover, while the judge need not conduct a new hearing and look at the entire record of every case all the time, his issuance of the warrant of arrest must be based on his independent judgment of sufficient, supporting documents and evidence. [139]

VI

The determination of the existence of probable cause for the issuance of a warrant of arrest is different from the determination of the existence of probable cause for the filing of a criminal complaint or information. The first is a function of the judge and the latter is a function of the prosecutor.

The delineation of these functions was discussed in *Castillo v. Villaluz*:[140]

> Judges of Regional Trial Courts (formerly Courts of First Instance) no longer have authority to conduct preliminary investigations. That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964, was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985, which deleted all provisions granting that power to said Judges. We had occasion to point this out in *Salta v. Court of Appeals*, 143 SCRA 228, and to stress as well certain other basic propositions, namely: (1) that the conduct of a preliminary investigation is "not a judicial function . . . (but) part of the prosecution's job, a function of the executive," (2) that wherever "there are enough fiscals or prosecutors to conduct preliminary investigations, courts are counseled to leave this job which is essentially executive to them," and the fact "that a certain power is granted does not necessarily mean that it should be indiscriminately exercised."

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137 Id. at 611–612.
138 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].
139 Id. at 611.
140 253 Phil. 30 (1989) [Per J. Narvasa, First Division].

> The *1988 Amendments* to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988, did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.
>
> This is not to say, however, that somewhere along the line RTC Judges also lost the power to make a *preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest* (or search warrant). Such a power — indeed, it is as much a duty as it is a power — has been and remains vested in every judge by the provision in the Bill of Rights in the 1935, the 1973 and the present (1987) Constitutions securing the people against unreasonable searches and seizures, thereby placing it beyond the competence of mere Court rule or statute to revoke. The distinction must, therefore, be made clear while an RTC Judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for the filing of a criminal complaint or information, he retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest. It might be added that this distinction accords, rather than conflicts, with the *rationale* of *Salta* because both law and rule, in restricting to judges the authority to order arrest, recognize that function to be judicial in nature.[141] (Citations omitted)

Given this difference, this Court has explicitly ruled that the findings of the prosecutor do not bind the judge. In *People v. Honorable Enrique B. Inting, et al.*:[142]

> First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor for the Election Supervisor to ascertain. *Only the Judge and the Judge alone makes this determination.*
>
> Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. *By itself the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stereographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.*
>
> And third, Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper — whether or not there is

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[141] Id. at 31–33.

[142] 265 Phil. 817 (1990) [Per J. Gutierrez, Jr., En Banc].

> reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the Prosecutor.[143] (Emphasis supplied)

Thus, the determination of probable cause by the judge is not inferior to the public prosecutor. In fact, this power of the judge is constitutionally guaranteed.

The Constitution clearly mandates that the judge must make a personal determination of probable cause, and jurisprudence has expounded that it must be made independently from the conclusion of the prosecutor. While the basis of their findings may be the same in that they can consider the same evidences and documents in coming to their conclusions, their conclusions must be separate and independently made.[144]

The finding of the public prosecutor may only aid the judge in the latter's personal determination, but it cannot be the basis, let alone be the limitation, of the judge in his finding of the existence or absence of probable cause. [145]

Thus, the judge does not need a clear-cut case before he or she can deny the issuance of a warrant of arrest. There is no rule that a warrant of arrest must be issued automatically if the prosecutor's findings of fact and evaluation of evidence show that there is probable cause to indict the accused. There is no presumption that the Information filed by the prosecutor is sufficient for the issuance of the arrest warrant. The judge does not need to consider or be limited by the authority of the public prosecutor before it can decide to deny or grant the issuance of the warrant of arrest.

The Constitution requires the judge's personal determination. This means that he must make his own factual findings and come up with his own conclusions, based on the evidence on record, or the examination of the complainant and the witnesses. The judge's basis for the grant of the arrest warrant depends on whatever is necessary to satisfy him on the existence of probable cause.

Thus, what will satisfy the judge on the existence of probable cause will differ per case. The circumstances of the case, the nature of the proceedings, and the weight and sufficiency of the evidence presented, may affect the judge's conclusion.

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[143] Id. at 821–822.
[144] *Lim, Sr. v. Felix*, 272 Phil. 122, 135 (1991) [Per J. Gutierrez, Jr., En Banc].
[145] Id. at 136.

The judge is given a wide latitude of discretion. Necessarily, the procedure by which the judge determines probable cause is not automatic, cursory, or ministerial.[146] In some cases, he or she may find it sufficient to review the documents presented during the preliminary investigation. In others, it may be necessary to call a hearing to examine the complainant and the witnesses personally. A judge may not just conduct the examination on each case in the same manner. The standard is his or her own satisfaction of the existence of probable cause.

The doubt in the nature of the offense charged in the Information and the nature and the content of the testimonies presented would have put a reasonable judge on notice that it was not sufficient to depend on the documents available to her. The complexity of this case should have led her to actually conduct a physical hearing, call the witnesses, and ask probing questions.

After all, even Justices of this Court were left bewildered by what was charged, leaving this Court divided between Direct Bribery, Illegal Trading, or even Illegal Trafficking. The Solicitor General himself proposed that it was Conspiracy to Commit Ilegal Trading which was being charged.

Furthermore, a substantial majority of the witnesses are convicts under the charge of the Bureau of Prisons and subject to the procedures of the Board of Pardons and Parole. All these agencies are under the Secretary of Justice who recused because he already took a public stance on the guilt of the accused. It would have been reasonable for a competent and independent judge to call the witnesses to test their credibility. Clearlym the life of convicts can be made difficult or comfortable by any present administration.

Thus, it was grave abuse of discretion for respondent judge not to personally examine the witnesses in the context of the facts of this case. The issuance of the Warrant of Arrest was, therefore, invalid. The Warrant is void ab initio for being unconstitutional.

VII

Assuming that the trial court had jurisdiction over the offense charged in the Information and that the judge properly went through the preliminary investigation, still, the evidence presented by the prosecution and re-stated in

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[146] *Placer v. Villanueva*, 211 Phil. 615, 621 (1983) [Per J. Escolin, Second Division].

the ponencia does not actually prove that there was probable cause to charge petitioner with conspiracy to commit illegal drug trading or illegal drug trading:

> The foregoing findings of the DOJ find support in the affidavits and testimonies of several persons. For instance, in his Affidavit dated September 3, 2016, NBI agent Jovencio P. Ablen, Jr. narrated, viz:
>
> > 21. On the morning of 24 November 20 12, I received a call from Dep. Dir. Ragos asking where I was. I told him I was at home. He replied that he will fetch me to accompany him on a very important task.
> >
> > 22. Approximately an hour later, he arrived at my house. I boarded his vehicle, a Hyundai Tucson, with plate no. RGU910. He then told me that he will deliver something to the then Secretary of Justice, Sen. Leila de Lima. He continued and said "Nior confidential 'to. Tayong dalawa Zang ang nakakaalam nito. Dadalhin natin yung quota kay lola. 5M 'yang nasa bag. Tingnan mo."
> >
> > 23. The black bag he was referring to was in front of my feet. It [was a] black handbag. When I opened the bag, I saw bundles of One Thousand Peso bills.
> >
> > 24. At about 10 o'clock in the morning, we arrived at the house located at Laguna Bay comer Subic Bay Drive, South Bay Village, Paranaque City.
> >
> > 25. Dep. Dir. parked his vehicle in front of the house. We both alighted the vehicle but he told me to stay. He then proceeded to the house.
> >
> > 26. From our parked vehicle, I saw Mr. Ronnie Dayan open the gate. Dep. Dir. Ragos then handed the black handbag containing bundles of one thousand peso bills to Mr. Dayan.
> >
> > 27. At that time, I also saw the then DOJ Sec. De Lima at the main door of the house. She was wearing plain clothes which is commonly known referred to as "duster."
> >
> > 28. The house was elevated from the road and the fence was not high that is why I was able to clearly see the person at the main door, that is, Sen. De Lima.
> >
> > 29. When Dep. Dir. Ragos and Mr. Dayan reached the main door, I saw Mr. Dayan hand the black handbag to Sen. De Lima, which she received. The three of them then entered the house.
> >
> > 30. After about thirty (30) minutes, Dep. Dir. Ragos went out of the house. He no longer has the black handbag with him.

> 31. We then drove to the BuCor Director's Quarters in Muntinlupa City. While cruising, Dep. Dir. Ragos told me "Nior 'wag kang maingay kahit kanino at wala kang Nakita ha" to which I replied "Sabi mo e. e di wala akong Nakita."
>
> 32. On the morning of 15 December 2012, Dep. Dir. Ragos again fetched me from my house and we proceeded to the same house located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City.
>
> 33. That time, I saw a plastic bag in front of my feet. I asked Dep. Dir. Ragos "Quota na naman Sir?" Dep. Dir. Ragos replied "Ano pang ba, 'tang ina sila lang meron."

. . . .

Petitioner's co-accused, Rafael Ragos, recounted on his own Affidavit dated September 26, 2016 a similar scenario:

> 8. One morning on the latter part of November 2012, I saw a black handbag containing a huge sum of money on my bed inside the Director's Quarters of the BuCor. I looked inside the black handbag and saw that it contains bundles of one thousand peso bills.
>
> 9. I then received a call asking me to deliver the black handbag to Mr. Ronnie Dayan. The caller said the black handbag came from Peter Co and it contains "Limang Manok" which means Five Million Pesos (Php5,000,000.00) as a "manok" refers to One Million Pesos (Phpl ,000,000.00) in the vernacular inside the New Bilibid Prison.
>
> 10. As I personally know Mr. Dayan and knows that he stays in the house of the then DOJ Sec. Leila M. De Lima located at Laguna Bay corner Subic Bay Drive, South Bay Village, Paranaque City, I kn[e]w I had to deliver the black handbag to Sen. De Lima at the said address.
>
> 11. Before proceeding to the house of Sen. De Lima at the above-mentioned address, I called Mr. Ablen to accompany me in delivering the money. I told him we were going to do an important task.
>
> 12. Mr. Ablen agreed to accompany me so I fetch[ed] him from his house and we proceeded to the house of Sen. De Lima at the above mentioned address.
>
> 13. While we were in the car, I told Mr. Ablen that the important task we will do is deliver Five Million Pesos (Php5,000,000.00) "Quota" to Sen. De Lima. I also told him that the money was in the black handbag that was on the floor of the passenger seat (in front of him) and he could check it, to which Mr. Ablen complied.

> 14. Before noon, we arrived at the house of Sen. De Lima located at Laguna bay corner Subic Bay Drive, South Bay Village, Paranaque City.
>
> 15. I parked my vehicle in front of the house. Both Mr. Ablen and I alighted from the vehicle but I went to the gate alone carrying the black handbag containing the Five Million Pesos (Php5,000,0000.00).
>
> 16. At the gate, Mr. Ronnie Dayan greeted me and opened the gate for me. I then handed the handbag containing the money to Mr. Dayan.
>
> 17. We then proceeded to the main door of the house where Sen. De Lima was waiting for us. At the main door, Mr. Dayan handed the black handbag to Sen. De Lima, who received the same. We then entered the house.
>
> 18. About thirty minutes after, I went out of the house and proceeded to my quarters at the BuCor, Muntinlupa City.
>
> 19. One morning in the middle part of December 2012, I received a call to again deliver the plastic bag containing money from Peter Co to Mr. Ronie Dayan. This time the money was packed in a plastic bag left on my bed inside my quarters at the BuCor, Muntinlupa City. From the outside of the bag, I could easily perceive that it contains money because the bag is translucent.
>
> 20. Just like before, I fetched Mr. Ablen from his house before proceeding to the house of Sen. De Lima located at Laguna Bay corner Subic bay Drive, South Bay Village, Paranaque City, where I know I could find Mr. Dayan.
>
> 21. In the car, Mr. Ablen asked me if we are going to deliver "quota." I answered yes.
>
> 22. We arrived at the house of Sen. De Lima at the above mentioned address at noontime. I again parked in front of the house.
>
> 23. I carried the plastic bag containing money to the house. At the gate, I was greeted by Mr. Ronnie Dayan. At that point, I handed the bag to Mr. Dayan. He received the bag and we proceeded inside the house.

. . . .

The source of the monies delivered to petitioner de Lima was expressly bared by several felons incarcerated inside the NBP. Among them is Peter Co, who testified in the following manner:

> 6. Noong huling bahagi ng 2012, sinabi sa akin ni Hans Tan na nanghihingi ng kontribusyon sa mga Chinese sa Maximum Security Compound ng NBP si dating DOJ

> Sec. De Lima para sa kanyang planong pagtakbo sa senado sa 2013 Elections. Dalawang beses akong nagbigay ng tig-P5 Million para tugunan ang hiling ni Sen. De Lima, na dating DOJ Secretary;
>
> 7. Binigay ko ang mga halagang ito kay Hans Tan para maibigay kay Sen. Leila De Lima na dating DOJ Secretary. Sa parehong pagkakataon, sinabihan na lang ako ni Hans Tan na naibigay na ang pera kay Ronnie Dayan na siyang tumatanggap ng pera para kay dating DOJ Sec. De Lima. Sinabi rin ni Hans Tan na ang nagdeliver ng pera ay si dating OIC ng BuCor na si Rafael Ragos.
>
> 8. Sa kabuuan, nakapagbigay ang mga Chinese sa loob ng Maximum ng Pl0 Million sa mga huling bahagi ng taong 2012 kay dating DOJ Sec. De Lima para sa kanyang planong pagtakbo sa senado sa 2013 Elections. Ang mga perang it ay mula sa pinagbentahan ng illegal na droga. [147]

The evidence presented to the trial court does not show that petitioner conspired to trade illegal drugs in the New Bilibid Prison. On the contrary, it alleges that petitioner received certain amounts of money from Jovencio P. Ablen, Jr., co-accused Rafael Ragos, and inmate Wu Tian Yuan/Peter Co. The allegation that the money came from the sale of illegal drugs was mentioned in passing by an inmate of the New Bilibid Prison, presently incarcerated for violation of Republic Act No. 6425 or the Dangerous Drugs Act of 1972.

Most of the evidence gathered by the Department of Justice came from convicts of the New Bilibid Prison, who have not personally appeared before the Department of Justice but were merely presented to the House of Representatives during a hearing in aid of legislation. Their testimonies were likewise inconsistent:

> JUSTICE LEONEN:
> All the facts in the Affidavits are actually corroborated by each other, correct?
>
> SOLICITOR GENERAL CALIDA:
> Yes, Your Honor.
>
> JUSTICE LEONEN:
> Because I read every Affidavit that is contained there, and it was difficult for me and my staff to actually create a timeline, or there was a corroboration of substantial points. For example, do you have the Affidavit of Diaz with you?
>
> SOLICITOR GENERAL CALIDA:
> Right now, Your Honor?

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[147] *Ponencia*, pp. 48–51 *citing* the affidavits of Jovencio P. Ablen, Jr., Rafael Ragos, and Wu Tian Yuan/Peter Co.

JUSTICE LEONEN:
Right now.

SOLICITOR GENERAL CALIDA:
I don't have it, Your Honor.

. . . .

JUSTICE LEONEN:
In any case, Counsel, paragraph 28 of the Affidavit of Diaz, states the source of the money that he has supposed to have given through intermediaries to De Lima. And it is very clear there that he says, it did not come from drugs. Except that there is a subsequent question, paragraph 29, which actually shows that it was the investigator that suggested by a leading question that drugs were involved. In any case, I'm just saying that there is such an affidavit which actually says that. And based on the Affidavit itself, would you say that any judge really wanting to be impartial, should have called that witness in order to ask more searching questions of that witness?

SOLICITOR GENERAL CALIDA:
Pardon me and forgive me for asking this, Your Honor, but are we now assessing the . . . . .

JUSTICE LEONEN:
We are not assessing . . . . .

SOLICITOR GENERAL CALIDA:
. . . . . substantive evidence, Your Honor?

JUSTICE LEONEN:
We are not assessing the substance of the evidence, unless you are not familiar with it. We are not assessing it, we are just looking at the exceptions for the doctrine that the judge only relies on the document, and that the judge, in many cases of certiorari, have been told by this Court, that he or she should have called the witnesses when there were indicators that relying on the documents were not sufficient. That's a doctrine, that is *Lim v. Felix*, that is *Haw v. People*, that is *People v. Ho*. I am just asking you whether it is your opinion, right for Guerrero, or whether there was grave abuse of discretion in the determination of probable cause, that she did not call the witnesses. Considering that it was not clear where the sources of funds were coming from, case in point, the Affidavit of Diaz. In other words, I'm not saying that Diaz was telling the truth. I'm just saying that based on the Affidavit, there is doubt.[148]

There is nothing on record to support the finding of probable cause. Instead, the trial court issued a one (1)-page Order, which reads:

> After a careful evaluation of the herein Information and all the evidence presented during the preliminary investigation conducted in this case by the Department of Justice, Manila, the Court finds sufficient

[148] TSN Oral Arguments, March 28, 2017, pp. 58–59.

> probable cause for the issuance of Warrants of Arrest against all the accused LEILA M. DE LIMA . . .[149]

These evidence sufficiently engender enough doubt that there is probable cause to support illegal trading, illegal trafficking, or even conspiracy to commit illegal trading. It was, therefore, error and grave abuse of discretion for respondent judge to have issued the Warrant of Arrest.

VIII

A writ of prohibition may issue to enjoin criminal prosecutions to prevent the use of the strong arm of the law.

In *Dimayuga v. Fernandez*:[150]

> It is true, as respondents contend, that, as a general rule, a court of equity will not restrain the authorities of either a state or municipality from the enforcement of a criminal law, and among the earlier decisions, there was no exception to that rule. By the modern authorities, an exception is sometimes made, and the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.
> . . . .
>
> The writ of prohibition is somewhat sui generis, and is more or less in the sound legal discretion of the court and is intended to prevent the unlawful and oppressive exercise of legal authority, and to bring about the orderly administration of justice.[151]

Again, in *Aglipay v. Ruiz*:[152]

> The statutory rule, therefore, in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals but will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority. Not infrequently, "the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions."[153]

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149 "Annex ___."

150 43 Phil. 304 (1922) [Per J. Johns, First Division].

151 Id. at 306–307.

152 64 Phil. 201 (1937) [Per J. Laurel, First Division].

153 Id. *citing Dimayuga v. Fernandez*, 43 Phil. 304 (1922) [Per J. Johns, First Division]. *See also Planas v. Gil*, 67 Phil. 62 (1939) [Per J. Laurel, En Banc]; *University of the Philippines v. City Fiscal of Quezon City*, 112 Phil. 880 (1961) [Per J. Dizon, En Banc]; *Lopez v. The City Judge*, 124 Phil. 1211 (1966) [Per J. Dizon, En Banc]; *Ramos v. Central Bank*, 222 Phil. 473 (1971) [Per Reyes, J.B.L., En Banc];

Ramos v. Hon. Torres[154] explained further:

> [I]t is well-settled that, as a matter of general rule, the writ of prohibition will not issue to restrain criminal prosecution. Hence, in *Hernandez v. Albano*, we called attention to the fact that:
>
> > ". . . a Rule — now of long standing and frequent application — was formulated that ordinarily criminal prosecution may not be blocked by court prohibition or injunction. Really, if at every turn investigation of a crime will be halted by a court order, the administration of criminal justice will meet with an undue setback. Indeed, the investigative power of the Fiscal may suffer such a tremendous shrinkage that it may end up in hollow sound rather than as a part and parcel of the machinery of criminal justice."
>
> This general rule is based, inter alia:
>
> > ". . . on the fact that the party has an adequate remedy at law by establishing as a defense to the prosecution that he did not commit the act charged, or that the statute or ordinance on which the prosecution is based is invalid, and, in case of conviction, by taking an appeal."
>
> It is true that the rule is subject to exceptions. As pointed out in the *Hernandez* case:
>
> > "We are not to be understood, however, as saying that the heavy hand of a prosecutor may not be shackled — under all circumstances. The rule is not an invariable one. Extreme cases may, and actually do, exist where relief in equity may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional, or was 'held invalid.'"[155]

The vindictive and oppressive manner of petitioner's prosecution is well documented. Petitioner submitted to this Court a listing of attacks made against her by President Rodrigo R. Duterte. President Duterte made 37 statements about petitioner on 24 different occasions from August 11, 2016 to November 28, 2016, accusing her of being involved in the drug

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Fortun v. Labang, 192 Phil. 125 (1981) [Per J. Fernando, Second Division]; and *Santiago v. Vasquez*, 282 Phil. 171 (1992) [Per J. Regalado, En Banc].

[154] 134 Phil. 544 (1968) [Per J. Concepcion, En Banc].

[155] Id. at 550–551 *citing Hernandez v. Albano*, 125 Phil. 513 (1967) [Per J. Sanchez, En Banc] and *Gorospe v. Penaflorida*, 101 Phil. 892 (1957) [Per J. Bautista Angelo, En Banc].

trade and repeatedly threatening to jail her. Excerpts of those statements included:

> "You elected a senator, kayong mga Pilipino na . . . [w]ho was into narco-politics, who was being financed from the inside." – Speech during the oathtaking of MPC, MCA, and PPA, September 26, 2016[156]
>
> "the portals of the national government has been opened by her election as senator because of the drug money. We are now a narco-politics." – Media Interview before his departure for Vietnam, September 28, 2016[157]
>
> "The portals of the invasion of drugs into the national government started with De Lima." – Speech at the Oathtaking of Newly-appointed Officials and LMP, October 11, 2016[158]
>
> "the portals of the national government have been opened to drug influence. . . Look at De Lima. Do you think those officials who testified against her are lying?" – Press Conference with the Malacañang Press Corps, Beijing, October 19, 2016[159]
>
> "with the election of De Lima . . . the national portals of narcopolitics has entered into the political life of our country." – Meeting with the Filipino Community in Tokyo, Japan, October 25, 2016[160]
>
> "De Lima opened the portals of narcopolitics that started in the National penitentiary." Launching of the Pilipinong may Puso Foundation, Waterfront Hotel, Davao City, November 11, 2016[161]
>
> "Now the portals of the national government has been opened to the creeping influence of drug[s]. You must remember that Leila, si Lilia or whatever the name is, was the Secretary of Justice herself and she allowed the drug industry to take place." – Speech at the 80th Founding Anniversary of the NBI, Ermita, Manila, November 14, 2016[162]
>
> "sadly, it was Sen. Leila De Lima who opened the 'portals of the national government to the contamination of narco politics.'" – During his meeting with Rep. Gloria Arroyo in Malacañang, November 28, 2016[163]
>
> "I will destroy her in public" - Media interview, Davao City, August 11, 2016[164]
>
> "I will tell the public the truth of you" – Press Conference, August 17, 2016[165]

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156 Annex A of the Compliance, pp. 5–6.
157 Id. at 4–5.
158 Id. at 4.
159 Id. at 3.
160 Id. at 2.
161 Id. at 1.
162 Id. at 1.
163 Id.
164 Id. at 19.
165 Id. at 18.

"De Lima, you are finished." – Media Interview, Ahfat Seafood Plaza 1, Bajada, Davao City, August 24, 2016[166]

"She will be jailed." – Speech during the oathtaking of MPC, MCA, and PPA, September 26, 2016[167]

"De Lima, do not delude yourself about her kneeling down. I warned her 8 months ago, before the election." –Speech during the 115th Anniversary of the PCG, Port Area, Manila, October 12, 2016[168]

"She will rot in jail." – Meeting with the Filipino Community in Tokyo, Japan, October 25, 2016[169]

"[My sins] was just to make public what was or is the corruption of the day and how drugs prorate [sic] inside our penal institutions, not only in Muntinlupa but sa mga kolonya." Media Briefing before his departure for Malaysia, NAIA Terminal 2, November 9, 2016[170]

"her driver herself, who was her lover, was the one also collecting money for her during the campaign." – Speech during the 115th Police Service Anniversary, August 17, 2016[171]

"But in fairness, I would never state here that the driver gave the money to her. But by the looks of it, she has it." – Speech during the 115th Police Service Anniversary, August 17, 2016[172]

"The crux of the matter is, if I do not talk about that relationship with De Lima to her driver, then there is no topic to talk about. Because what is really very crucial is the fact of that relationship with her driver, which I termed 'immoral' because the driver has a family and a wife, gave rise—that connection gave rise to the corruption of what was happening inside the national penitentiary." – Media Interview, Davao City, August 21, 2016[173]

"These illegal things which you saw on TV almost everyday for about a month, do you think that without De Lima giving [her driver] the authority to allow the inmates to do that?" – Media Interview, Davao City, August 21, 2016[174]

"She is lying through her teeth because now that she is . . . You know in all her answers, she was only telling about drugs, now she denied there are leads about drugs, but she never said true or false about the driver. And the driver is the connect—lahat naman sa loob sinasabi . . . ang driver." – Media Interview, Davao City, August 21, 2016[175]

"From the looks of it, it would be unfair to say that si De Lima was into drug trafficking but by implication kasi she allowed them through her

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166 Id. at 14.
167 Id. at 5.
168 Id. at 3.
169 Id.
170 Id. at 2.
171 Id. at 17.
172 Id.
173 Id. at 14–15.
174 Id. at 15.
175 Id. at 16.

> driver, pati sila Baraan, I was correct all along because I was supplied with a matrix." – Speech during his visit to the 10th ID, Philippine Army, Compostela Valley, September 20, 2016[176]
>
> "Ang tao, hindi talaga makapigil eh. Magregalo ng bahay, see. It has never been answered kung kaninong bahay, sinong gumastos. Obviously, alam natin lahat. But that is how narco-politics has set in." Speech at the Oathtaking of Newly-appointed Officials and LMP, October 11, 2016[177]

The current Secretary of Justice, Vitaliano Aguirre, actively participated in the Senate and House of Representatives inquiry on the alleged proliferation of the drug trade in the New Bilibid Prison, repeatedly signing off on grants of immunity to the inmates who testified.[178]

Even the Solicitor General, Jose Calida, was alleged to have visited one (1) of the New Bilibid Prison inmates, Jaybee Sebastian, to seek information on petitioner:

> May mga bumisita sa akin at tinatanong ang mga inpormasyon na ito at isa dito ay si Solicitor General Calida. Kami ay nagkaharap kasama ang kanyang grupo at nagbigay ako ng mga importanteng inpormasyon. Upang lubos ko silang matulungan ako ay humiling na malipat muli sa maximum kasama si Hanz Tan. Kinausap ni SOLGEN Calida sa telepono si OIC Ascuncion at pinakausap nya kami ni Hanz Tan ay dadalhin sa maximum sa lalong madaling panahon o ASAP ngunit hindi ito nangyari.[179]
>
> Minsan kong kinausap ang mga kapwa ko bilanggo sa Bldg. 14 at kinumbinsi ko sila na samahan akong magbigay linaw sa ginagawang imbestigasyon hingil sa paglaganap ng droga sa bilibid bunsod ito ng pakikipag-usap sa akin ni Sol Gen. Calida at Miss Sandra Cam.[180]

It is clear that the President, the Secretary of Justice, and the Solicitor General were already convinced that petitioner should be prosecuted even before a preliminary investigation could be conducted. The vindictive and oppressive manner by which petitioner was singled out and swiftly taken into custody is an exceptional circumstance that should have placed the courts on guard that a possible miscarriage of justice may occur.

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176 Id. at 9.
177 Id. at 4.
178 *See* Annex 6 of the Compliance of the Office of the Solicitor General.
179 Compliance of the Office of the Solicitor General, Sinumpaang Salaysay by Sebastian, p. 15.
180 Compliance of the Office of the Solicitor General, Pinag-isang Sinumpaang Kontra Salaysay by Sebastian, p. 12.

IX

Under Rule 117 of the Rules of Court, an accused may file a motion to quash an Information on the basis that the trial court had no jurisdiction over the offense charged. Section 3 provides:

> Section 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:
>
> (a) That the facts charged do not constitute an offense;
>
> (b) That the court trying the case has no jurisdiction over the offense charged;
>
> (c) That the court trying the case has no jurisdiction over the person of the accused;
>
> (d) That the officer who filed the information had no authority to do so;
>
> (e) That it does not conform substantially to the prescribed form;
>
> (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
>
> (g) That the criminal action or liability has been extinguished;
>
> (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
>
> (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

On February 20, 2017, petitioner filed a Motion to Quash before the Regional Trial Court of Muntinlupa, alleging that the trial court had no jurisdiction over the offense charged in the Information filed against her. While the Motion was pending, the trial court issued an Order dated February 23, 2017 finding probable cause against petitioner. Warrants of arrest were issued for her and her co-accused.[181]

The ponencia submits that the filing of a Petition for Certiorari and Prohibition before this Court questioning the trial court's jurisdiction to issue the warrants of arrest was premature, considering that the trial court had yet to act on petitioner's Motion to Quash.[182] This Court cited as basis *Solid Builders v. China Bank*,[183] *State Investment House v. Court of Appeals*,[184]

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[181] *Ponencia*, p. 4.
[182] Id. at 15.
[183] 708 Phil. 96 (2013) [Per J. Leonardo-De Castro, First Division].
[184] 527 Phil. 443 (2006) [Per J. Corona, Second Division].

Diaz v. Nora,[185] *Republic v. Court of Appeals*,[186] *Allied Broadcasting Center v. Republic*,[187] and *De Vera v. Pineda*.[188] None of these cases, however, actually involved a pending motion to quash in a criminal prosecution.

In *Solid Builders*, a civil case, Solid Bank appealed the Court of Appeals decision on the ground that it effectively enabled China Bank to foreclose on its mortgages despite the allegedly unconscionable interest rates. This Court held that their appeal was premature since the trial court had yet to make a determination of whether the stipulated penalty between the parties was unconscionable.[189]

In *State Investment House*, a civil case, the assailed rulings by the Court of Appeals did not actually make a determination on the issue of prescription. Thus, this Court found premature a petition for certiorari alleging that the Court of Appeals should not have ruled on the issue of prescription.[190]

In *Diaz*, a labor case, a petition for mandamus was filed to compel the Labor Arbiter to issue a writ of execution of his or her decision. The Labor Arbiter did not act on the motion for the issuance of a writ of execution since an appeal of the decision was filed before the National Labor Relations Commission. Diaz, however, contended that the appeal was not perfected. This Court found the petition for mandamus premature since the proper remedy should have been the filing of a motion to dismiss appeal before the National Labor Relations Commission and a motion to remand the records to the Labor Arbiter.[191]

In *Republic*, a civil case, this Court held that a writ of injunction cannot issue when there is no right yet to be violated.[192] In *Allied Broadcasting*, a special civil action, this Court held that the constitutionality of a law cannot be subject to judicial review if there is no case or controversy.[193] In *De Vera*, a special civil action, this Court held that a petition for certiorari questioning the conduct of investigation of the Integrated Bar of the Philippines is premature when the Investigating Commissioner has not yet submitted a report of the findings to the Board of Governors.[194]

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185 268 Phil. 433 (1990) [Per J. Gancayco, First Division].
186 383 Phil. 398 (2000) [Per J. Mendoza, Second Division].
187 268 Phil. 852 (1990) [Per J. Gancayco, En Banc].
188 288 Phil. 318 (1992) [Per J. Padilla, En Banc].
189 *Solid Builders v. China Bank*, 709 Phil. 96, 117 (2013) [Per J. Leonardo-De Castro, First Division].
190 *State Investment House v. Court of Appeals*, 527 Phil. 443, 451 (2006) [Per J. Corona, Second Division].
191 *Diaz v. Nora*, 268 Phil. 433, 437–438 (1990) [Per J. Gancayco, First Division].
192 *Republic v. Court of Appeals*, 383 Phil. 398, 410–412 (2000) [Per J. Mendoza, Second Division].
193 *Allied Broadcasting Center v. Republic*, 268 Phil. 852, 858 (1990) [Per J. Gancayco, En Banc].
194 *De Vera v. Pineda*, 288 Phil. 318, 328 (1992) [Per J. Padilla, En Banc].

Here, the Motion to Quash filed by petitioner before the trial court specifically assails the trial court's lack of jurisdiction over subject matter. Regardless of whether the Motion is denied or granted, it would not preclude this Court from entertaining a special civil action assailing the trial court's lack of jurisdiction over the offense charged.

If the Motion to Quash is denied, the remedy of certiorari and prohibition may still be available. As a general rule, the denial of a motion to quash is not appealable and the case proceeds to trial. This rule, however, admits of exceptions. In *Lopez v. The City Judge*,[195] this Court granted a petition for prohibition of a denial of a motion to quash on the basis of lack of jurisdiction, stating:

> On the propriety of the writs prayed for, it may be said that, as a general rule, a court of equity will not issue a writ of certiorari to annul an order of a lower court denying a motion to quash, nor issue a writ of prohibition to prevent said court from proceeding with the case after such denial, it being the rule that upon such denial the defendant should enter his plea of not guilty and go to trial and, if convicted, raise on appeal the same legal questions covered by his motion to quash. In this as well as in other jurisdictions, however, this is no longer the hard and fast rule.
>
> The writs of certiorari and prohibition, as extraordinary legal remedies, are, in the ultimate analysis, intended to annul void proceedings; to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. Thus, in *Yu Kong Eng vs. Trinidad* . . . We took cognizance of a petition for certiorari and prohibition although the accused in the case could have appealed in due time from the order complained of, our action in the premises being based on the public welfare and the advancement of public policy. In *Dimayuga vs. Fajardo* . . . We also admitted a petition to restrain the prosecution of certain chiropractors although, if convicted, they could have appealed. We gave due course to their petition for the orderly administration of justice and to avoid possible oppression by the strong arm of the law. And in *Arevalo vs. Nepomuceno* . . . the petition for certiorari challenging the trial court's action admitting an amended information was sustained despite the availability of appeal at the proper time.
>
> More recently, We said the following in *Yap vs. the Hon. D. Lutero etc.* :
>
> . . . .
>
> > "Manifestly, the denial, by respondent herein, of the motion to quash the information in case No. 16443, may not be characterized as 'arbitrary' or 'despotic', or to be regarded as amounting to 'lack of jurisdiction'. The proper procedure, in the event of denial of a motion to quash, is for the accused, upon arraignment, to plead not guilty and reiterate his defense of former jeopardy, and, in case of conviction, to appeal therefrom, upon the ground that he had been twice put in jeopardy of punishment, either for the

[195] 124 Phil. 1211 (1966) [Per J. Dizon, En Banc].

> same offense, or for the same act, as the case may be. However, were we to require adherence to this pretense, the case at bar would have to be dismissed and petitioner required to go through the inconvenience, not to say the mental agony and torture, of submitting himself to trial on the merits in case No. 16443, apart from the expenses incidental thereto, despite the fact that his trial and conviction therein would violate one of his constitutional rights, and that, on appeal to this Court, we would, therefore, have to set aside the judgment of conviction of the lower court. This would, obviously, be most unfair and unjust. Under the circumstances obtaining in the present case, the flaw in the procedure followed by petitioner herein may be overlooked, in the interest of a more enlightened and substantial justice."
>
> Indeed, the lack of jurisdiction of the City Court of Angeles over the criminal offense charged being patent, it would be highly unfair to compel the parties charged to undergo trial in said court and suffer all the embarrassment and mental anguish that go with it.[196]

If the trial court grants the Motion to Quash and finds that it had no jurisdiction over the offense charged, the court cannot, as the ponencia states, "simply order that another complaint or information be filed without discharging the accused from custody"[197] under Rule 117, Section 5, unless the order is contained in the same order granting the motion. Rule 117, Section 5 reads:

> 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 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.

In *Gonzales v. Hon. Salvador*:[198]

> The order to file another information, if determined to be warranted by the circumstances of the case, must be contained in the same order granting the motion to quash. If the order sustaining the motion to quash does not order the filing of another information, and said order becomes final and executory, then the court may no longer direct the filing of another information.[199]

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196 Id. at 1217–1219.
197 *Ponencia*, p. 18.
198 539 Phil. 25 (2006) [Per J. Carpio Morales, Third Division].
199 Id. at 34–35.

Thus, if the trial court has no jurisdiction, any subsequent order it issues would be void. It is for this reason that lack of jurisdiction can be raised at any stage of the proceedings, even on appeal.[200] In a criminal case, any subsequent order issued by a court not having jurisdiction over the offense would amount to a harassment suit and would undoubtedly violate the constitutional rights of the accused.

The ponencia also failed to take note that petitioner amended her prayer in her Memorandum. The Petition states:

> WHEREFORE, premises considered, and in the interest of substantial justice and fair play, Petitioner respectfully prays the Honorable Court that judgment be rendered:
>
> a. Granting a writ of certiorari annulling and setting aside the Order dated 23 February 2017, the Warrant of Arrest dated the same date, and the Order dated 24 February 2017 of the Regional Trial Court-Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled People of the Philippines versus Leila M. De Lima et al;
>
> b. Granting a writ of prohibition enjoining and prohibiting respondent judge from conducting further proceedings until and unless the Motion to Quash is resolved with finality;
>
> c. Issuing an order granting the application for the issuance of temporary restraining order (TRO) and a writ of preliminary injunction to the proceedings; and
>
> d. Issuing a Status Quo Ante Order restoring the parties to the status prior to the issuance of the Order and Warrant of Arrest, both dated February 23, 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.[201]

Petitioner's Memorandum, however, states:

> WHEREFORE, premises considered, and in the interest of substantial justice and fair play, Petitioner respectfully prays the Honorable Court that judgment be rendered:
>
> a. Granting a writ of certiorari annulling and setting aside the Order dated 23 February 2017, the Warrant of Arrest dated the same date, and the Order dated 24 February 2017 of the Regional Trial Court-Branch 204, Muntinlupa City, in Criminal Case No. 17-165 entitled People of the Philippines versus Leila M. De Lima et al; and
>
> b. Ordering the immediate release of Petitioner from detention.

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[200] *See United States v. Castañares*, 18 Phil. 210 (1911) [Per J. Carson, En Banc].
[201] Petition, p. 64.

> Petitioner likewise prays for other just and equitable reliefs.[202]

Issues raised in previous pleadings but not raised in the memorandum are deemed abandoned.[203] The memorandum, "[b]eing a summation of the parties' previous pleadings . . . alone may be considered by the Court in deciding or resolving the petition."[204] Thus, it is inaccurate for the ponencia to insist that petitioner's prayer in the Petition was "an unmistakable admission that the RTC has yet to rule on her Motion to Quash."[205] Petitioner's Memorandum does not mention the relief cited by the ponencia in her Petition, and thus, should be considered abandoned. Petitioner, therefore, does not admit that the Regional Trial Court must first rule on her Motion to Quash before seeking relief with this Court.

In any case, by issuing the Warrant of Arrest, the trial court already acted on the Motion to Quash by assuming jurisdiction over the offense charged. It would have been baffling for the trial court to find probable cause, issue the warrant of arrest, and then subsequently find the Information defective and grant the Motion to Quash. The relief sought by petitioner in the quashal of the Information would have been rendered moot once the trial court determined that it had the competence to issue the Warrant of Arrest.

X

Petitioner did not violate the rule on forum shopping since a question of lack of jurisdiction may be raised at any stage of the proceeding. The purpose of the rule on forum shopping is to prevent conflicting decisions by different courts on the same issue. Considering the novelty of the issue presented, a direct recourse to this Court despite the pendency of the same action in the trial court should be allowed.

In *City of Makati v. City of Taguig*,[206] this Court previously discussed the origins and purpose of the rule on forum shopping:

> *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* explained that:
>
> > Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or

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202 Memorandum for Petitioner, p. 61.
203 *See* A.M. No. 99-2-04-SC (2000).
204 A.M. No. 99-2-04-SC (2000).
205 *Ponencia*, p. 15.
206 G.R. No. 208393, June 15, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208393.pdf> [Per J. Leonen, Second Division].

> substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.

First Philippine International Bank v. Court of Appeals recounted that forum shopping originated as a concept in private international law:

> To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of forum non conveniens was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
>
> In this light, Black's Law Dictionary says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to Words and Phrases, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."

Further, *Prubankers Association v. Prudential Bank and Trust Co.* recounted that:

> The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[207]

[207] Id. citing *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation* , 457 Phil. 740 (2003) [Per J. Bellosillo, Second Division]; *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280 (1996) [Per J. Panganiban, Third Division]; and *Prubankers Association v. Prudential Bank and Trust Co.*, 361 Phil. 744 (1999) [Per J. Panganiban, Third Division].

There is forum shopping when "there is identity of parties, rights or causes of action, and reliefs sought."[208] This Court, as discussed, is not precluded from entertaining a pure question of law, especially in this instance where the issue is a novel one. The rationale for the rule on forum shopping is to prevent conflicting decisions by different tribunals. There would be no conflicting decisions if this Court decides with finality that the trial court had no jurisdiction over the offense charged in the Information. It would be unjust to allow the trial court to proceed with the hearing of this case if, at some point, this Court finds that it did not have jurisdiction to try it in the first place.

XI

Petitioner substantially complied with the requirements of the verification in her Petition.

Rule 7, Section 4 of the Rules of Court requires all pleadings to be verified.[209] A pleading which lacks proper verification is treated as an unsigned pleading and shall, thus, be the cause for the dismissal of the case.[210] The requirement of verification is merely formal, not jurisdictional, and in proper cases, this Court may simply order the correction of a defective verification.[211] "Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith."[212]

The ponencia insists on an unreasonable reading of the Rules, stating that petitioner's failure to sign the Verification in the presence of the notary invalidated her Verification.[213] It cites *William Go Que Construction v. Court of Appeals*[214] and states that "[w]ithout the presence of the notary upon the signing of the Verification and Certification against Forum Shopping, there is no assurance that the petitioner swore under oath that the allegations in the petition have been made in good faith or are true and correct, and not merely speculative."[215]

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[208] *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per J. Reyes, Second Division] citing *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

[209] RULES OF COURT, Rule 7, sec. 4 provides:
Section 4. Verification. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit .

[210] *See* RULES OF COURT, Rule 7, sec. 4 and sec. 5.

[211] *See Jimenez vda. De Gabriel v. Court of Appeals*, 332 Phil. 157, 165 (1996) [Per J. Vitug, First Division].

[212] *Shipside v. Court of Appeals*, 404 Phil. 981, 994–995 (2001) [Per J. Melo, Third Division].

[213] *Ponencia*, pp. 9–10.

[214] G.R. No. 191699, April 19, 2016, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/april2016/191699.pdf> [Per J. Perlas-Bernabe, First Division].

[215] *Ponencia*, p. 11.

The events which transpired in this case, however, are different than that of *William Go Que Construction*. Here, the petitioner and the notary public knew each other. There was no question as to their identities. The notary public's affidavit likewise states that she met with petitioner on the day of the notarization. Even with the difficulties presented by petitioner's detention, the notary public still required petitioner's staff to provide proof of identification.[216]

No one is questioning petitioner's identification or signature in the Petition. No one alleges that she falsified her signature in the Petition or that the notary public was unauthorized to notarize the Petition. The evil sought to be prevented by the defective verification, therefore, is not present in this case.

The ponencia's insistence on its view of strict compliance with the requirements of the *jurat* in the verification is a hollow invocation of an ambiguous procedural ritual bordering on the contrived. Substantial justice should always prevail over procedural niceties without any clear rationale.

XII

A direct resort to this Court will not be entertained if relief can be obtained in a lower court, owing to the doctrine of the hierarchy of courts. As aptly discussed in *Diocese of Bacolod v. Commission on Elections*:[217]

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review

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[216] *See* Memorandum for Petitioner, pp. 59–60.

[217] 751 Phil. 301 (2015) [Per. J. Leonen, En Banc].

> of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.
>
> In other words, the Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent should not be emasculated by the doctrine in respect of the hierarchy of courts. That has never been the purpose of such doctrine.[218]

Diocese of Bacolod, however, clarified that the doctrine of hierarchy of courts is not iron-clad. There are recognized exceptions to its application. Thus, in *Aala v. Uy*:[219]

> Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[220]

The doctrine of hierarchy of courts does not apply in this case. The issue before this Court is certainly a novel one. This Court has yet to determine with finality whether the regional trial court exercises exclusive jurisdiction over drug offenses by public officers, to the exclusion of the Sandiganbayan. Likewise, the question of jurisdiction pertains to a pure question of law; thus, allowing a direct resort to this Court.

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[218] Id. at 329 *citing Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987) [Per J. Cruz, En Banc*]. J.M. Tuason & Co., Inc. et al. v. Court of Appeals, et al.*,113 Phil. 673, 681 (1961) [Per J. J.B.L. Reyes, En Banc]; and *Espiritu v. Fugoso*, 81 Phil. 637, 639 (1948) [Per J. Perfecto, En Banc].

[219] G.R. No. 202781, January 10, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/january2017/202781.pdf> [Per J. Leonen, En Banc].

[220] Id. at 15 *citing The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 331–335 (2015) [Per. J. Leonen, En Banc].

Also, a direct resort to this Court is also allowed to "prevent the use of the strong arm of the law in an oppressive and vindictive manner."[221] This Court would be in the best position to resolve the case as it presents exceptional circumstances indicating that it may be "a case of persecution rather than prosecution."[222]

XIII

This would have been a simple and ordinary case had the petitioner's reaction been different.

The Petitioner here is known to be a vocal critic of this administration. She drew attention to many things she found wrong. She had been the subject of the colorful ire of the President of the Republic of the Philippines and his allies.

Publicly, through media and even before his Department could conduct the usual preliminary investigation, the Secretary of Justice himself already took a position and presented his case against the accused before a committee of the House of Representatives by personally conducting the examination of currently incarcerated individuals and serving sentence. This Court takes judicial notice that the Department of Justice has supervision and control over the Board of Pardons and Parole, the Bureau of Prisons, and the Witness Protection Program.

The public was treated to the witnesses of government as well as other salacious details of the life of the accused even before any formal investigation related to this case happened. It is true that the Secretary of Justice recused but the preference of the leadership of the Executive Branch was already made known so clearly, so colorfully, and so forcefully. It is reasonable to suspect that her case is quintessentially the use of the strong arm of the law to silence dissent.

Even in strong democracies, dissenting voices naturally find themselves in the minority. Going against the tide of majority opinion, they often have to face threats that may be deployed to silence them. It is then that they will repair to this Court for succor. After all, sacred among this Court's duties is the protection of everyone's fundamental rights enshrined in every corner of our Constitution.

It should not be this institution that wavers when this Court finds rights clearly violated. It is from the courage of our position and the clarity

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[221] *Dimayuga v. Fernandez*, 43 Phil. 304, 306–307 (1922) [Per J. Johns, First Division].
[222] *Brocka v. Enrile*, 270 Phil. 271, 277–279 (1990) [Per J. Medialdea, *En Banc*].

in our words that empowers our people to find their voice even in the most hostile of environments. To me, what happened in this case is clear enough. The motives are not disguised.

It is this that makes this case special: if we fail to call this case what it truly is, then it will not only be the petitioner who will be in chains.

None of us will be able to claim to be genuinely free.

ACCORDINGLY, I vote to **GRANT** the Petition.

MARVIC M.V.F. LEONEN
Associate Justice