



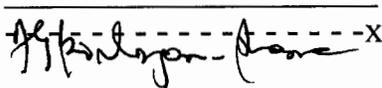
Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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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, P/Supt. 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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CONCURRING OPINION

MARTIRES, J.

Glaring in this petition is petitioner’s violation of the rule against forum shopping and the cavalier manner in which she flaunts her disregard of the law.

THE PETITION

After the surprising revelations made during the inquiries separately conducted by the Senate and the House of Representatives on the proliferation of drug syndicates at the New Bilibid Prison (NBP), the Volunteers Against Crime and Corruption (VACC) filed a complaint on 11 October 2016, against petitioner Leila M. de Lima (*De Lima*), among others, for violation of Section 5, in relation to Sec. 26(b) of Republic Act (R.A.) No. 9165¹ before the Department of Justice (DOJ); and later filed with the DOJ its supplemental complaint, docketed as NPS No. XVI-INV-16J-00313.

¹ Entitled “An Act Instituting The Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes.” Also known as the “Comprehensive Dangerous Drugs Act Of 2002.”



Subsequently, Reynaldo Esmeralda and Ruel M. Lasala, former National Bureau of Investigation (*NBI*) Deputy Directors, filed their complaint for violation of Sec. 5, in relation to Sec. 26(b) of R.A. No. 9165, docketed as NPS No. XVI-INV-16J-00315, against De Lima and former Bureau of Corrections (*BuCor*) Officer-in-Charge, Rafael Marcos Ragos (*Ragos*).

Another complaint, docketed as NPS No. XVI-INV-16K-00331, was filed by Jaybee Niño Sebastian against De Lima, among others, for violation of Sec. 3(e) and (k) of R.A. No. 3019, Sec. 5(a) of R.A. No. 6713, R.A. No. 9745, Presidential Decree (*P.D.*) No. 46, and Article 211 of the Revised Penal Code (*RPC*).

On 10 November 2016, the NBI also filed a complaint, docketed as NPS No. XVI-INV-16-K-00336, against De Lima, among others, for violation of Sec. 5, in relation to Sec. 26(b) of R.A. No. 9165, Arts. 210 and 211-A of the RPC, Sec. 27 of R.A. No. 9165, Sec. 3(e) of R.A. No. 3019, Sec. 7(d) of R.A. No. 6713, and P.D. No. 46.

The four cases having been consolidated, the DOJ Panel of Investigators (*DOJ Panel*), created pursuant to Department Order No. 706, proceeded with the conduct of the preliminary investigation which De Lima questioned by filing her *Omnibus Motion to Immediately Endorse the Cases to the Office of the Ombudsman and for the Inhibition of the Panel of Prosecutors and the Secretary of Justice*. De Lima asserted that the Office of the Ombudsman has the exclusive authority and sole jurisdiction to conduct the preliminary investigation. Corollary thereto, De Lima, during the hearing on 21 December 2016, manifested that she would not submit any counter-affidavit; hence, the DOJ Panel, in order to expedite the proceedings, declared the pending incidents and the complaints submitted for resolution.

In the meantime, another complaint, docketed as NPS No. XVI-INV-16-L-00384, was filed by the NBI against De Lima, among others, for violation of Sec. 5, in relation to Sec. 26, R.A. No. 9165.

On 13 January 2017, De Lima filed before the Court of Appeals (*CA*) a Petition for Prohibition and a Petition for Certiorari, docketed as CA-G.R. SP Nos. 149097, and 149358 respectively, assailing the jurisdiction of the DOJ Panel.

On 17 February 2017, the DOJ Panel filed three Informations against De Lima and several other accused before the Regional Trial Court (*RTC*) of Muntinlupa City. One of these informations, docketed as Criminal Case No. 17-165, and raffled to RTC, Branch 204, charged De Lima, Ragos, and

Ronnie Palisoc Dayan (*Dayan*) with violation of Sec. 5 in relation to Sec. 3 (jj), 26(b) and 28 of R.A. No. 9165, viz:

That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high-profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there wilfully 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.²

As a result of the filing of the information, De Lima, on 20 February 2017, filed a Motion to Quash raising, among other issues, the RTC’s lack of jurisdiction over the offense charged against her and the DOJ’s lack of authority to file the information.

On 23 February 2017, respondent Judge Juanita Guerrero (*Judge Guerrero*)³ issued an Order finding probable cause for the issuance of a warrant of arrest against De Lima, Ragos, and Dayan. The following day, the warrant, which recommended no bail, was served by the Philippine National Police (*PNP*) Investigation and Detection Group on De Lima. Corollary thereto, Judge Guerrero issued an Order committing De Lima to the custody of the PNP Custodial Center.

De Lima now comes before the Court with this Petition for Certiorari and Prohibition with Application for a Writ of Preliminary Injunction, and Urgent Prayer for Temporary Restraining Order and Status Quo Ante Order under Rule 65 of the Rules of Court raising the following issues:

- I. Whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned Order and Warrant of Arrest both dated 23 February 2017, despite the

² *Rollo*, pp. 197-201.

³ Presiding Judge of the RTC, Branch 204, Muntinlupa City.



pendency of petitioner's Motion to Quash that seriously questions the very jurisdiction of the court.

- II. Whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed Order and Warrant of Arrest in clear violation of constitutional and procedural rules on issuing an arrest warrant.
- III. Whether respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when, without basis in fact and in law, respondent judge found probable cause against petitioner and thereby issued an arrest warrant against her.⁴

and pleading for the following reliefs:

- a. Granting a writ of certiorari annulling and setting aside the Order dated 23 February 2017, the Warrant of arrest dated the same, 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 the 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 a 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 23 February 2017, thereby recalling both processes and restoring petitioner to her liberty and freedom.⁵

If only on the ground of forum shopping, the petition should have been dismissed outright.

I. The rule against forum shopping was violated by petitioner.

In *Heirs of Marcelo Sotto v. Palicte*,⁶ the Court, consistent with its ruling on forum shopping, declared the following:

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or

⁴ *Rollo*, p. 22.

⁵ *Id.* at 66.

⁶ 726 Phil. 651 (2014).



successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.” Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.⁷

In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, namely: “(a) [there is] identity of parties, or at least such parties who represent the same interests in both actions; (b) [there is] identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) [that] the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.”⁸

The parties in the present petition and the pending motion to quash⁹ in Criminal Case No. 17-165 before the RTC, Branch 204, Muntinlupa City, are the same, viz: De Lima is the petitioner in the case before the Court and the accused in Criminal Case No. 17-165; while the respondents in this case have substantial identity with the plaintiff before the trial court.

There is identity of the arguments on which De Lima anchored her motion to quash and her present petition, viz: the RTC has no jurisdiction over the offense charged; it is the Office of the Ombudsman and not the DOJ Panel that has authority to file the case; and the allegations in the information do not allege the *corpus delicti* of the charge of Violation of R.A. No. 9165. Consequently, the reliefs prayed for in the petition and the motion to quash are basically the same, i.e., the information in Crim. Case No. 17-165 should be nullified and that her liberty be restored.

Predictably, the decision by the Court of the petition renders academic the motion to quash, while a resolution of the motion to quash moots the petition.

In *Brown-Araneta v. Araneta*,¹⁰ the Court laid down the following teaching:



⁷ Id. at 653-654.

⁸ *Daswani v. Banco de Oro Universal Bank*, G.R. No. 190983, 29 July 2015, 764 SCRA 160, 169-170.

⁹ *Rollo*, pp. 256-295.

¹⁰ 719 Phil. 293 (2013).

The evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, the Court adheres to the rules against forum shopping, and a breach of these rules results in the dismissal of the case.¹¹(underlining supplied)

Applying this teaching to the present case, the Court has no option but to dismiss this petition considering the blatant breach by De Lima of the rules against forum shopping.

Notably, in the *Verification And Certification Against Forum Shopping* which De Lima attached to her present petition, she stated:

x x x x

3. I hereby certify that I have not commenced any actions or proceedings involving the same issues as this Petition before the Supreme Court, the Court of Appeals, or any divisions thereof, or before any other courts, tribunals or agencies, aside from the following, the pendency of which is part of the basis for filing this *Petition*:

a. The *Motion to Quash* I filed before Branch 204 of the Regional Trial Court of Muntinlupa City last 20 February 2017 in Criminal Case No. 17-165, entitled "*People v. De Lima, et al.*" and

b. *The Petition for Prohibition and Certiorari* I filed before the Court of Appeals (currently pending before its Sixth Division) last 13 January 2017, docketed as CA G.R. No. 149097, entitled "*De Lima v. Panel of Prosecutors of DOJ, et al.*"¹²

By De Lima's own admission, she has a pending motion to quash before the RTC and a petition¹³ before the CA which formed part of her bases in filing her petition before the Court. For sure, by declaring her pending motion to quash before the RTC and petition before the CA, De Lima was complying with Circular No. 28-91,¹⁴ which requires that a certification on forum shopping be attached to a petition filed with the Court. But the equally significant truth is that she has resorted to forum shopping by taking advantage of a variety of competent tribunals, and trying her luck in several different fora until she obtains a favorable result; thus, a ground for the outright dismissal of the present petition. 

¹¹ Id. at 316-317.

¹² *Rollo*, pp. 69-70.

¹³ Id. at 144-195.

¹⁴ The subject of the Circular reads: "Additional requisites for petitions filed with the Supreme Court and the Court of Appeals to prevent forum-shopping or multiple filing of petitions and complaints."

In relation to forum shopping, the Rules of Court prescribes the specific sequence and hierarchical order by which reliefs may be availed of by the parties, viz:

The Rules of Court, the code governing judicial procedure, prescribes the remedies (actions and special proceedings) that may be availed of for the myriad reliefs that persons may conceivably have need of and seek in this jurisdiction. But that the adjective law makes available several remedies does not imply that a party may resort to them simultaneously or at his pleasure or whim. There is a sequence and a hierarchical order which must be observed in availing of them. Impatience at what may be felt to be the slowness of the judicial process, or even a deeply held persuasion in the rightness of one's cause, does not justify short-cuts in procedure, or playing fast and loose with the rules thereof.¹⁵

The rules and jurisprudence dictate that petitioner should have allowed the lower courts to resolve the issues she brought forth before them prior to the filing of this petition. It is thus beyond comprehension how the petitioner, who describes herself as a "sitting Senator of the Republic, a former Secretary of Justice and Chairperson of the Commission on Human Rights, and a prominent member of the legal profession"¹⁶ would tread on a precarious situation and risk to squander the remedies which the law accorded her by trifling with the orderly administration of justice unless she is trying to give us the impression that the lofty positions she claims to occupy or to have held has covered her with the habiliments of a privileged litigant.

II. The RTC has jurisdiction over Criminal Case No. 17-165.

a. RTC has jurisdiction over crimes involving illegal drugs.

Under R.A. No. 6425,¹⁷ or the Dangerous Drugs Act of 1972, the Circuit Criminal Courts (CCCs) were vested with the exclusive original jurisdiction over all cases involving offenses punishable under the Act. However, with the abolition of the CCCs as a result of the enactment of Batas Pambansa (B.P.) Blg. 129,¹⁸ the Court issued Circular No. 20¹⁹ designating certain branches of the RTCs as special criminal courts to exclusively try, among other cases, "Violations of RA 6425 of the

¹⁵ *Gatmaytan v. CA*, 335 Phil. 155, 168 (1997).

¹⁶ *Rollo*, p. 5.

¹⁷ Approved on 4 April 1972.

¹⁸ Entitled "An Act Reorganizing the Judiciary, Appropriating funds Therefor, and For Other Purposes."

¹⁹ Dated 7 August 1987.



Dangerous Drugs Act of 1972, as amended, cognizable by Regional Trial Courts under Batas Pambansa Blg. 129.”

With the passage of R.A. No. 9165, the Court was tasked to designate special courts from among the existing RTCs in each judicial region to exclusively try and hear cases involving breaches of the Act or, to be specific, on the violations of the Comprehensive Dangerous Drugs Law of 2002, viz:

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. (underlining supplied)

Pertinently, in A.M. No. 05-9-03-SC, the Court declared that the jurisdiction of the RTCs designated as special drug courts shall be exclusive of all other courts not so designated.

Indeed, a reading of R.A. No. 9165 will confirm that only the RTC is empowered to hear and decide violations of the Act, viz:

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.

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. (underlining supplied)

Evidently, the legislature would not have taken great pains in including Sec. 90 in R.A. No. 9165, which explicitly specified the RTC as having exclusive jurisdiction over drug cases; and Sec. 20, that distinctly recognized RTC's authority to try these cases, if its intent was likewise to

confer jurisdiction to the Sandiganbayan or other trial courts the cases involving violations of the Act.

That the exclusive jurisdiction of the RTC relative to violation of R.A. No. 9165 extends not only to private individuals but also to government officials and employees is readily verified by the following provisions:

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. – 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), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized 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 acts as provided for in this Act.

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.

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

It is noteworthy that Secs. 27 and 28 did not qualify that the public officer or employee referred to therein excludes those within the exclusive jurisdiction of the Sandiganbayan as enumerated in R.A. No. 8249, the law enforced at the time of the approval of R.A. No. 9165. Elsewise stated, conspicuously absent in R.A. No. 9165 is the distinction between a public officer covered by the exclusive original jurisdiction of the Sandiganbayan and those of the other trial courts. The absence of this distinction is significant – it settles the issue that violations of the provisions of R.A. No. 9165 by a public officer or employee, regardless of his position, brings him to the exclusive jurisdiction of the RTC. *Ubi lex non distinguit nec nos*



distinguere debemus. Where the law does not distinguish, courts should not distinguish.²⁰

Moreover, Secs. 27 and 28 are clear and therefore must be given their literal meaning. Jurisprudence²¹ instructs as follows:

The plain meaning rule or *verba legis*, derived from the maxim *index animi sermo est* (speech is the index of intention), rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will, and preclude the court from construing it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum*. From the words of a statute there should be no departure.²²

Considering therefore that the charge in Criminal Case No. 17-165 is for violation of the provisions of R.A. No. 9165, it is beyond the shadow of doubt that this case, notwithstanding the position and salary grade of De Lima during the time material to the crime charged, falls within the exclusive jurisdiction of the RTC.

**b. Crim. Case No. 17-165
involves the charge of
violation of R.A. No. 9165.**

Jurisprudence²³ provides for the definition of jurisdiction, viz:

Jurisdiction is the basic foundation of judicial proceedings. The word “jurisdiction” is derived from two Latin words “*juris*” and “*dico*” — “I speak by the law” — which means fundamentally the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies. Bouvier’s own definition of the term “jurisdiction” has found judicial acceptance, to wit: “Jurisdiction is the right of a Judge to pronounce a sentence of the law in a case or issue before him, acquired through due process of law;” it is “the authority by which judicial officers take cognizance of and decide cases.”

In *Herrera v. Barretto*, x x x this Court, in the words of Justice Moreland, invoking American jurisprudence, defined “jurisdiction” simply as the authority to hear and determine a cause the right to act in a case. “Jurisdiction” has also been aptly described as the *right to put the wheels of justice in motion* and to proceed to the final determination of a cause upon the pleadings and evidence.



²⁰ *Amores v. House of Representatives*, 636 Phil. 600, 609 (2010).

²¹ *Philippine Amusement and Gaming Corp. v. Philippine Gaming Jurisdiction, Inc.*, 604 Phil. 547 (2009).

²² *Id.* at 553.

²³ *People v. Mariano*, 163 Phil. 625 (1976).

“Criminal Jurisdiction” is necessarily the authority to hear and try a particular offense and impose the punishment for it.

The conferment of jurisdiction upon courts or judicial tribunals is derived exclusively from the constitution and statutes of the forum.²⁴ x x x

The general rule is that jurisdiction is vested by law and cannot be conferred or waived by the parties.²⁵ Simply put, jurisdiction must exist as a matter of law.²⁶

To determine the jurisdiction of the court in criminal cases, the complaint must be examined for the purpose of ascertaining whether or not the facts set out therein and the punishment provided for by law fall within the jurisdiction of the court where the complaint is filed. The jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information, and not by the findings the court may make after the trial.²⁷

Section 6, Rule 110 of the Rules of Court, provides that an information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense.²⁸ The information must allege clearly and accurately the elements of the crime charged.²⁹

Likewise, it is well-settled that the averments in the complaint or information characterize the crime to be prosecuted and the court before which it must be tried.³⁰ Entrenched in jurisprudence is the dictum that the real nature of the criminal charge is determined not from the caption or preamble of the information, or from the specification of the provision of law alleged to have been violated, which are mere conclusions of law, but by the actual recital of the facts in the complaint or information.³¹

With the above jurisprudence and the provision of the Rules of Court as yardstick, we now evaluate the information in Criminal Case No. 17-165.



²⁴ Id. at 629-630.

²⁵ *Garcia v. Ferro Chemicals, Inc.*, 744 Phil. 590, 605 (2014).

²⁶ *People v. Sandiganbayan*, 482 Phil. 613, 626 (2004).

²⁷ *Buaya v. Polo*, 251 Phil. 422, 425 (1989).

²⁸ *Enrile v. Manalastas*, 746 Phil. 43, 54 (2014).

²⁹ *Guinhawa v. People*, 505 Phil. 383, 399-400 (2005).

³⁰ *Buaya v. Polo*, supra note 27.

³¹ *Consigna v. People*, 731 Phil. 108, 119 (2014).

The information charges that, *sometime from November 2012 to March 2013, in Muntinlupa City, De Lima, Ragos, and Dayan, in conspiracy with each other, committed illegal drug trading, a violation of Sec. 26(b)³² in relation to Secs. 5,³³ 3(jj),³⁴ and 28³⁵ of R.A. No. 9165.*

The information further provides that offense was committed as follows: *“De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high-profile inmates in the New Bilibid Prison to support the senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there wilfully 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.”*



³² Section 26. *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x

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

x x x x

³³ 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.

x x x x

³⁴ 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, 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.

³⁵ 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.

Since it is axiomatic that jurisdiction is determined by the averments in the information,³⁶ the evident sufficiency of the allegations supporting the charge against De Lima for violation of Sec. 5 in relation to Secs. 3 (jj), 26(b) and 28 of R.A. No. 9165, firmly secures the exclusive jurisdiction of the RTC over the case pursuant to Sec. 90 of the same Act.

c. The jurisdiction of the Sandiganbayan.

Section 5, Article XIII of the 1973 Constitution directed the creation of the Sandiganbayan, viz:

Section 5. The National Assembly 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.

On 11 June 1978, President Ferdinand E. Marcos (*Pres. Marcos*) issued P.D. No. 1486³⁷ creating the Sandiganbayan. By virtue of P.D. No. 

³⁶ *Serana v. Sandiganbayan*, 566 Phil. 224, 250 (2008).

³⁷ Entitled "Creating A Special Court To Be Known As Sandiganbayan And For Other Purposes." The jurisdiction of the Sandiganbayan under this P.D. were as follows:

Section 4. *Jurisdiction.* Except as herein provided, the Sandiganbayan shall have original and exclusive jurisdiction to try and decide:

- (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.

1606³⁸ issued by Pres. Marcos on 10 December 1978, the jurisdiction of the Sandiganbayan was modified as follows:

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 action shall be recognized; Provided, however, that, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had therefore 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

Exception from the foregoing provisions during the period of material 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.

³⁸ Entitled "Revising Presidential Decree No. 1486 Creating a Special Court to be known as Sandiganbayan and For Other Purposes."

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.

With the passage of B.P. Blg. 129, the exclusive original jurisdiction of the Sandiganbayan over the offenses enumerated in Sec. 4 of P.D. No. 1606 expanded to embrace all such offenses irrespective of the imposable penalty.

On 14 January 1983, Pres. Marcos signed P.D. No. 1860³⁹ conferring original and exclusive jurisdiction upon the Sandiganbayan for offenses enumerated in Sec. 4 of P.D. No. 1606 if punishable by a penalty higher than *prision correccional* or its equivalent, and original and exclusive jurisdiction with the appropriate court in accordance with the provisions of B.P. Blg. 129⁴⁰ for other offenses.

By virtue of P.D. No. 1861,⁴¹ which was signed by Pres. Marcos on 23 March 1983, the Sandiganbayan was vested with exclusive appellate from the final judgments, resolutions or orders of the RTCs in cases originally decided by them in their respective territorial jurisdiction, and by way of petition for review, from the final judgments, resolutions or orders of the RTCs in the exercise of their appellate jurisdiction over cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, in their respective jurisdiction.

Under the 1987 Constitution, the Sandiganbayan was mandated to continue to function and exercise its jurisdiction.⁴² With the issuance of Executive Order (*E.O.*) Nos. 14⁴³ and 14-A, the Sandiganbayan exercised exclusive original jurisdiction over civil and criminal cases filed by the Presidential Commission on Good Government (*PCGG*), and under R.A. No. 7080,⁴⁴ the plunder cases.



³⁹ Entitled "Amending the Pertinent Provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 Relative to the Jurisdiction of the Sandiganbayan and For Other Purposes."

⁴⁰ Judiciary Reorganization Act of 1980.

⁴¹ Entitled "Amending The Pertinent Provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 Relative to the Jurisdiction of the Sandiganbayan and For Other Purposes."

⁴² Article XI, Section 4.

⁴³ Entitled "Defining the Jurisdiction over cases involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees, Effective on May 7, 1986."

⁴⁴ Entitled "An Act Defining and Penalizing the Crime of Plunder" approved on 12 July 1991.

Through R.A. No. 7975⁴⁵ and R.A. No. 8249,⁴⁶ the jurisdiction of the Sandiganbayan was further defined. At present, the exclusive original jurisdiction of the anti-graft court is specified in R.A. No. 10660⁴⁷ as follows:

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

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

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

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

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

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

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

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

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



⁴⁵ Entitled “An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, Amending for that Purpose Presidential Decree No. 1606, as Amended” approved on 30 March 1995.

⁴⁶ Entitled “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” approved on 5 February 1997.

⁴⁷ Entitled “An Act Strengthening further the Functional and Structural Organization of the Sandiganbayan, further amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor” approved 16 April 2015.

- (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.

Noteworthy, the then exclusive and original jurisdiction of the Sandiganbayan as provided for in P.D. 1606, i.e., violations of R.A. Nos. 3019 and 1379,⁴⁸ and in Chapter II, Sec. 2, Title VII, Book II of the RPC, had expanded. At present, for an offense 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;



⁴⁸ Entitled "An Act Declaring Forfeiture in Favor of the State any property found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor" approved on 18 June 1955.

- (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 Sec. 4;
- (3) the offense committed is in relation to the office;⁴⁹ and,
- (4) the Information contains an allegation as to:
- (a) any damage to the government or any bribery; or
- (b) damage to the government or bribery arising from the same or closely related transactions or acts in an amount exceeding One million pesos (P1,000,000.00).⁵⁰

Evaluated against the above enumeration, the charge against De Lima for Violation of Sec. 5,⁵¹ in relation to Secs. 3(jj),⁵² 26(b)⁵³ and 28⁵⁴ of R.A. No. 9165 does not fall within the jurisdiction of the Sandiganbayan. Although De Lima, as earlier stated, was a high-ranking public officer with salary grade 31 during the time material to the acts averred in the information, the charge against her, however, does not involve a violation of



⁴⁹ *Adaza v. Sandiganbayan*, 502 Phil. 702, 714 (2005).

⁵⁰ Pursuant to R.A. No. 10660.

⁵¹ 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.

x x x x

⁵² 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, 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.

⁵³ Section 26. *Attempt or Conspiracy.* - Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x

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

x x x x

⁵⁴ 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.

the Anti-Graft and Corrupt Practices Act, the law on ill-gotten wealth, the law on bribery or the sequestration cases.

Jurisprudence dictates the stringent requirement that the charge be set forth with such particularity as will reasonably indicate the exact offense which the accused is alleged to have committed in relation to his office.⁵⁵ For sure, the mere allegation that the offense was committed by the public officer in relation to his office would not suffice. That phrase is merely a conclusion of law, not a factual averment that would show the close intimacy between the offense charged and the discharge of the accused's official duties.⁵⁶

The information in this case proves that the crime for which De Lima is charged was not committed in relation to her office. The glaring absence of an allegation in the information that the violation of the pertinent provisions of R.A. No. 9165 was in relation to De Lima's office ***underscores the fact that she is being charged under this Act and not for any other offense based on the same facts.*** Moreover, nothing from the information can judiciously show the relationship between the offense charged and the discharge by De Lima of her official duties. To stress, for an offense to be committed in relation to the office, the relation between the crime and the office must be direct and not accidental, such that the offense cannot exist without the office.⁵⁷

The phrase "in relation to their office" as used in Sec. 4 of R.A. No. 8249, the precursor of R.A. No. 10660, had been explained by the Court as follows:

As early as *Montilla vs. Hilario*, this Court has interpreted the requirement that an offense be committed in relation to the office to mean that "the offense cannot exist without the office "or" that the office must be a constituent element of the crime" as defined and punished in Chapter Two to Six, Title Seven of the Revised Penal Code (referring to the crimes committed by the public officers). *People vs. Montejo* enunciated the principle that the offense must be intimately connected with the office of the offender and perpetrated while he was in the performance, though improper or irregular of his official functions. The Court, speaking 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 –

x x x the offense therein charged is intimately connected with (the accused's) respective offices and was perpetrated while they were in the performance though improper or irregular, of their official functions. Indeed (the accused)

⁵⁵ *Lacson v. Executive Secretary*, 361 Phil. 251, 282 (1999).

⁵⁶ *Id.*

⁵⁷ *Adaza v. Sandiganbayan*, supra note 49 at 715.



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 of respondent Leroy S. Brown obeyed his instructions because he was their superior officer, as Mayor of Basilan City.

The cited rulings in *Montilla vs. Hilario* and in *People vs. Montejo* were reiterated in *Sanchez vs. Demetriou*, *Republic vs. Asuncion*, and *Cunanan vs. Arceo*. The case of *Republic vs. Asuncion* categorically pronounced that the fact that offense was committed in relation to the office must be alleged in the information:

That the public officers or employees committed the crime in relation to their office, must, however, be alleged in the information for the Sandiganbayan to have jurisdiction over a case under Section 4(a)(2). This allegation is necessary because of the unbending rule that jurisdiction is determined by the allegations of the information.

For this purpose what is controlling is not whether the phrase “committed in violation to public office” appears in the information; what determines the jurisdiction of the Sandiganbayan is the specific factual allegation in the information that would indicate 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.⁵⁸ (underlining supplied)

For sure, the crime of Violation of R.A. No. 9165 can be committed by De Lima even if she is not a public officer. A review of R.A. No. 9165 validates that the acts involved therein can be committed by both private individuals and government officers and employees. ***In the same vein, the respective offices of De Lima, Ragos, and Dayan, as DOJ Secretary, BuCor OIC, and employee of the DOJ, respectively, were not constituent elements of the crime of illegal drug trading. True, there was a mention in the information relative to the offices held by De Lima, Ragos, and Dayan, and allegations as to their taking advantage of their office and use of their positions, but these were palpably included by the DOJ Panel for the purpose of applying Sec. 28 of R.A. No. 9165 relative to the imposition of the maximum penalties of the unlawful acts provided for in the law and the absolute perpetual disqualification from any public office of the accused.***

d. The ruling in *Photokina v. Benipayo* as it is applied in the present petition.



⁵⁸ *Soller v. Sandiganbayan*, 409 Phil. 780, 791-792 (2001).

Of utmost significance at this point is the case of *People and Photokina Marketing Corp. v. Benipayo*.⁵⁹ Alfredo Benipayo (*Benipayo*), then Chairman of the Commission on Elections (*COMELEC*), delivered a speech at the University of the Philippines which the Manila Bulletin subsequently published. Believing that it was the one being alluded to in the speech, Photokina Marketing Corporation (*Photokina*) filed through its representative a libel case against Benipayo before the Office of the City Prosecutor of Quezon City (*OCP-QC*). Finding probable cause for libel against Benipayo, the OCP-QC filed an information, docketed as Crim. Case No. Q-02-109407, with the RTC of Quezon City (*RTC-QC*). Subsequently, Photokina filed another complaint against Benipayo before the OCP-QC relative to the statements he made in a talk show. This led to the filing by the OCP-QC of an information for libel, docketed as Criminal Case No. Q-02-109406, before the RTC-QC.

Benipayo moved for the dismissal of the two cases against him. He asserted that the RTC-QC had no jurisdiction over his person as he was an impeachable officer; thus, he could not be criminally prosecuted before any court during his incumbency. Likewise, he posited that even if he can be criminally prosecuted, it was the Office of the Ombudsman that should investigate him, and that the case should be filed with the Sandiganbayan.

Albeit Benipayo was no longer an impeachable officer since his appointment was not confirmed by Congress, the RTC dismissed Crim. Case No. Q-02-109407 for lack of jurisdiction. It ruled that it was the Sandiganbayan that had jurisdiction over the case to the exclusion of all other courts because the alleged libel was committed by Benipayo in relation to his office, i.e., the speech was delivered in his official capacity as COMELEC Chairman. In the same vein, the RTC ordered the dismissal of Criminal Case No. Q-02-109406 on the ground that it had no jurisdiction over the person of Benipayo. Aggrieved with the dismissal of these cases, the People and Photokina repaired to the Court.

The Court took note of the fact that both the People and Photokina, on one hand, and Benipayo, on the other, were harping on the wrong premise as to which between the RTC and the Sandiganbayan had jurisdiction over the offense by extensively arguing on whether the offense of libel was committed by Benipayo in relation to his office. The Court declared that the parties and the trial court failed to primarily ascertain whether the current laws confer on both the Sandiganbayan and the RTC jurisdiction over libel cases; otherwise if the said courts do not have concurrent jurisdiction to try the offense, it would be pointless to still determine whether the crime was committed in relation to office.



⁵⁹ 604 Phil. 317 (2009).

The Court ruled that Art. 360 of the RPC, as amended by R.A. No. 4363,⁶⁰ is explicit on which court has jurisdiction to try cases of written defamations, thus:

The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance [now, the Regional Trial Court] of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense x x x.

In addition thereto, on 21 October 1996, the Court issued Administrative Order (AO) No. 104-96 which conferred exclusive jurisdiction with the RTC to try libel cases, viz:

RE: DESIGNATION OF SPECIAL COURTS FOR KIDNAPPING, ROBBERY, CARNAPPING, DANGEROUS DRUGS CASES AND OTHER HEINOUS CRIMES; INTELLECTUAL PROPERTY RIGHTS VIOLATIONS AND JURISDICTION IN LIBEL CASES.

x x x x

C

LIBEL CASES SHALL BE TRIED BY THE REGIONAL TRIAL COURTS HAVING JURISDICTION OVER THEM TO THE EXCLUSION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS.
(underlining supplied)

Hence, in granting the petition and in ordering that Criminal Cases Nos. Q-02-109406 and Q-02-109407 be reinstated and remanded to the RTC-QC for further proceedings, the Court judiciously resorted to the provisions of Article 360 of the RPC and AO No. 104-96, as these explicitly provided for the exclusive jurisdiction of the RTC over libel cases, and the catena of cases that breathe life to these laws.

With the legal teaching in *Benipayo*, there is neither rhyme nor reason to still establish whether De Lima committed the charge against her in relation to her office considering that by explicit provision of R.A. No. 9165, it is the RTC that has exclusive original jurisdiction over violations of the Act. **Simply put, the exclusive original jurisdiction of the RTC over breaches of R.A. No. 9165 extends to any government officer or employee, regardless of his position and salary grade, and whether or not the same was committed in relation to his office.**

⁶⁰ Entitled "An Act to Further Amend Article Three Hundred Sixty of the Revised Penal Code," which was approved on 19 June 1965.

It is a basic tenet in statutory construction that a special law prevails over a general law.⁶¹ In *Benipayo*,⁶² the Court pronounced that “[l]aws vesting jurisdiction exclusively with a particular court, are special in character and should prevail over the Judiciary Act defining the jurisdiction of other courts (such as the Court of First Instance) which is a general law.” Applying this pronouncement to the present petition, it is unquestionable that, relevant to the present charge against De Lima, it is R.A. No. 9165 as it vests exclusive original jurisdiction with the RTC to try drug cases, which is the special law and thus should prevail over R.A. No. 10660.

**e. The offense of bribery
vis-à-vis the violation
of the provisions of
R.A. No. 9165.**

An innovation brought about by the passage of R.A. No. 10660 is that, in the desire of Congress to improve the disposition of cases of the anti-graft court, it streamlined the jurisdiction of the Sandiganbayan by vesting in the RTC 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 ₱1,000,000.00.

It is unmistakable that in the case at bar, there was no allegation in the information as to any damage to the government.

On “bribery,” in his co-sponsorship speech⁶³ for the immediate approval of Senate Bill No. 2138 or the “Act Further Amending Presidential Decree No. 1606,” Senate President Franklin Drilon (*Sen. Drilon*) stated that the bill seeks to introduce three innovations in the Sandiganbayan, viz: first, the introduction of the “justice-designate” concept; second, the transfer of so-called minor cases to the RTCs; and last, a modification of the voting requirement in rendering decision. Specifically as to the second, Sen. Drilon expressed the following:

The second modification under the bill involves the streamlining of the anti-graft court’s jurisdiction, which will enable the Sandiganbayan to concentrate its resources on resolving the most significant cases filed against public officials. The bill seeks to amend Section 4 of the law by transferring jurisdiction over cases that are classified as “minor” to the regional trial courts, which have the sufficient capability and competence to handle these cases. Under this measure, the so-called “minor cases,” although not really minor, shall pertain to those where the information does not allege any damage or **bribe**; those that allege damage or **bribe**

⁶¹ *Remo v. The Hon. Secretary of Foreign Affairs*, 628 Phil. 181, 191 (2010).

⁶² *Supra* note 59 at 329.

⁶³ Session No. 59, 26 February 2014, pp. 32-33.



that are unquantifiable; or those that allege damage or **bribe** arising from the same or closely related transactions or acts not exceeding One Million Pesos.⁶⁴ (emphasis supplied)

The interpellation⁶⁵ of the bill yielded the following pertinent discussion:

On line 33 of page 3, Sen. Angara asked what cases would still fall under the Metropolitan Trial Court (MTC) and the Metropolitan Circuit Trial Court (MCTC) as he noted that cases would still be referred to the RTC if the damages do not exceed P1 million. Senator Pimentel replied that the officials enumerated under PD 1606 will be tried before the Sandiganbayan, and the bill seeks to divide the cases into the following: 1) if the information does not allege any damage or **bribe**, it would go to the RTC; 2) if the information alleges damage or **bribe** that is not quantifiable it would go to the RTC; and 3) if there is an allegation of damage or **bribe** but the amount is not more than P1 million, it would go to the RTC. He pointed out that the amendment only concerns the RTC and Sandiganbayan. (emphasis supplied)

Clearly, what is contemplated in R.A. No. 10660 is the giving of bribe and not necessarily the offenses on Bribery enumerated in Chapter II, Section 2, Title VII, Book II of the Revised Penal Code. "Bribe" is defined as "[a]ny money, goods, right in action, property, thing of value, or any preferment, advantage, privilege or emolument, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to induce or influence action, vote, or opinion of person in any public or official capacity. A gift, not necessarily of pecuniary value, is bestowed to influence the conduct of the receiver."⁶⁶

The position that the "bribery" referred to in R.A. No. 10660 pertains to the "bribe" and not necessarily to Bribery as penalized under Art. 210 to 211-A of the RPC finds support in the truth that there are likewise corrupt acts under R.A. No. 3019 where bribe is involved and thus may fall under the exclusive original jurisdiction of the RTC, viz:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction



⁶⁴ Id. at 33.

⁶⁵ Session No. 62, 5 March 2014, pp. 72-73.

⁶⁶ Blacks Law Dictionary, Sixth Ed., p. 191.

between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

x x x x

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

While the information in Criminal Case No. 17-165 states that De Lima and Ragos demanded, solicited, and extorted money from the high-profile inmates in the NBP to support her senatorial bid in the 2016 elections, appreciation of all the whole allegations therein points towards an accusation for Violation of Sec. 26(b) in relation to Secs. 5, 3(jj) and 28 of R.A. No. 9165; hence, within the original exclusive jurisdiction of the RTC. To stress, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.⁶⁷ Jurisdiction cannot be based on the findings the court may make after the trial.⁶⁸

It is significant to state that there are averments in the information in Criminal Case No. 17-165 that conceivably conform to the other elements of bribery, i.e., (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 is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer.⁶⁹ As it is, the averments on some of the elements of bribery in the information merely formed part of the description on how illegal drug trading took place at the NBP. Irrefragably, the elements of bribery, as these are found in the information, simply completed the picture on the manner by which De Lima,

⁶⁷ *Navaja v. De Castro*, 761 Phil. 142, 150-151 (2015), citing *Foz, Jr. v. People*, 618 Phil. 120, 129 (2009).

⁶⁸ *Buaya v. Polo*, supra note 27.

⁶⁹ *Balderama v. People*, 566 Phil. 412, 419 (2008).

Ragos, and Dayan conspired in violating Section 5 in relation to Sections 3(jj), 26(b) and 28 of R.A. No. 9165.

On this point, Sec. 27 of R.A. No. 9165 is again quoted:

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. –
x x x

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. (emphasis supplied)

Readily apparent is that the elements of bribery are equally present in Sec. 27 of R.A. No. 9165. By benefiting from the proceeds of drug trafficking, an elective official, whether local or national, regardless of his salary grade, and whether or not the violation of Sec. 27 of R.A. No. 9165 was committed in relation to his office, automatically brings him to the fold of R.A. No. 9165; thus, within the exclusive jurisdiction of the RTC.

But notwithstanding the charge against De Lima before the RTC for Violation of Sec. 5 in relation to Secs. 3(jj), 26(b) and 28 of R.A. No. 9165, there is nothing that would bar the DOJ Panel to recommend to the Office of the Ombudsman the filing of an information before the Sandiganbayan involving the same facts covered by Crim. Case No. 17-165, if the evidence so warrants. The legal teaching in *Soriano v. People*⁷⁰ finds its significance, viz:

Jurisprudence teems with pronouncements that a single act or incident might offend two or more entirely distinct and unrelated provisions of law, thus justifying the filing of several charges against the accused.

In *Loney v. People*, this Court, in upholding the filing of multiple charges against the accused, held:



⁷⁰ 609 Phil. 31 (2009).

As early as the start of the last century, this Court had ruled that a single act or incident might offend against two or more entirely distinct and unrelated provisions of law thus justifying the prosecution of the accused for more than one offense. The only limit to this rule is the Constitutional prohibition that no person shall be twice put in jeopardy of punishment for “the same offense.”In *People v. Doriquez*, we held that two (or more) offenses arising from the same act are not “the same” —

x x x if one provision [of law] requires proof of an additional fact or element which the other does not, x x x. Phrased otherwise, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other.

x x x x

Consequently, the filing of the multiple charges against petitioners, although based on the same incident, is consistent with settled doctrine.⁷¹ (underscoring supplied)

It must be emphasized that the Sandiganbayan, whose present exclusive original jurisdiction is defined under R.A. No. 10660, is unquestionably an anti-graft court, viz:

Section 4. The present **anti-graft court** known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.⁷² (emphasis supplied)

On the one hand, by explicit provision of R.A. No. 9165,⁷³ the RTC had been conferred with the exclusive jurisdiction over violations of the Act. Only the specially designated RTC, to the exclusion of other trial courts, has been expressly vested with the exclusive authority to hear and decide violations of R.A. No. 9165. Even the Sandiganbayan, which is likewise a trial court, has not been conferred jurisdiction over offenses committed in relation to the Comprehensive Drugs Act of 2002.

The rationale in designating certain RTCs as drug courts is easily discernible – it would enable these courts to acquire and thereafter apply the expertise apposite to drug cases; thus, prompting the effective dispensation of justice and prompt resolution of cases.



⁷¹ Id. at 42-43.

⁷² 1987 Constitution, Article XI.

⁷³ Section 90.

Parenthetically, a relevant issue that arises is which between the Office of the Ombudsman or the DOJ would have jurisdiction to conduct the preliminary investigation in this case. De Lima posits that it should be the Office of the Ombudsman.

Since the complaint against De Lima is for violation of R.A. No. 9165, there is a need to review the provisions of the Act.

Section 90 of R.A. No. 9165 pertinently provides that “[t]he DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act.” While De Lima was a high-ranking public officer during the time material to the charge against her, this however was not a valid justification to remove her from the authority of the DOJ which has been vested by R.A. No. 9165 with exclusive jurisdiction to handle the drug case, i.e., inclusive of the conduct of preliminary investigation and the filing of information with the RTC.

To put more emphasis on the jurisdiction of the DOJ to conduct preliminary investigation in this case, we note Sec. 2 of R.A. No. No. 6770,⁷⁴ otherwise known as “The Ombudsman Act of 1989,” that provides:

Section 2. Declaration of Policy. — The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, efficiency, act with patriotism and justice and lead modest lives. (underscoring supplied)

From this quoted provision of the law, it is evident that the intent in creating the Office of the Ombudsman was to prevent and eradicate graft and corruption in government. Understandably, the cases handled by the Office of the Ombudsman pertain mainly to graft and corruption.

To a certain extent, violations of R.A. No. 9165 may likewise constitute an infringement by a public officer or employee, if it is committed in relation to his office, of the provisions of the RPC or special laws, specifically R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. Consequently, a public officer or employee, in addition to being charged for violation of R.A. No. 9165, may likewise be prosecuted for the offenses committed under the RPC or other special laws. At that instance, concurrent jurisdiction is vested with the DOJ and the Office of the Ombudsman to conduct preliminary investigation. But if it is the

⁷⁴ Entitled “An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and For Other Purposes.”



Sandiganbayan, pursuant to R.A. No. 10660, that has jurisdiction over the person of the accused, the Office of the Ombudsman shall have primary jurisdiction over the complaint and, in the exercise of its primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of the case.⁷⁵

To the point of being repetitive, the charge against De Lima was beyond doubt for violation of R.A. No. 9165; hence, by applying Sec. 90 of the Act, it was clearly within the realm of DOJ to conduct the preliminary investigation of the complaint against her and to file the corresponding information.

To recapitulate, R.A. No. 9165 is explicit that only the RTCs designated by the Court to act as special courts shall have exclusive jurisdiction to hear and try cases involving violations of the Act.

By applying our ruling in *Benipayo*, it is firmly settled that only the specially designated courts of the RTC shall have exclusive original jurisdiction over violations of R.A. No. 9165 committed by a public officer or employee, regardless of his position or salary grade, and whether or not he committed this in relation to his office. Since R.A. No. 9165 does not distinguish as to the position of the public officer or employee involved, or whether or not he committed the violation in relation to his office, so shall the Court not distinguish. It cannot be gainsaid therefore that the charge against De Lima, regardless of her rank and salary grade at the time material to the case, and whether or not she committed the charge of violation of R.A. No. 9165 in relation to her office, is within the exclusive jurisdiction of the RTC.

In the same vein, Sec. 90 of R.A. No. 9165 categorically states it is the DOJ that shall exclusively handle cases involving violations of the Act. As it has been established that the complaint against De Lima is for violation of R.A. No. 9165, it was only appropriate that the DOJ handled the preliminary investigation of the case and filed the corresponding information. It would be procedurally infirm for the Office of the Ombudsman to invade the exclusive jurisdiction of the DOJ.

In addition to the charge under R.A. No. 9165, should the evidence against a public officer or employee, regardless of his position and salary grade, support a finding for probable cause for violation of other laws committed in relation to his office, he should be prosecuted accordingly. In that instance, his position and salary grade would be of primordial consideration in determining the office that should conduct the preliminary investigation and the court that should hear and try the case.

⁷⁵ R.A. No. 6770, Sec. 15(1).



In relation thereto, if the public officer or employee holds a position enumerated in R.A. No. 10660 or falls within the exclusive jurisdiction of the Sandiganbayan, the Office of the Ombudsman shall have primary jurisdiction over the complaint; and in the exercise of its jurisdiction, it may take over at any stage from any investigatory office the investigation of the case. Should there be a finding of probable cause by the Office of the Ombudsman, the information should be filed with the Sandiganbayan.

If the position of the public officer or employee is not included in the enumeration in R.A. No. 10660, the Office of the Ombudsman and the DOJ shall have concurrent jurisdiction over the complaint, and the information should be filed with the proper trial court.

De Lima asserted in her petition that based on the findings of the DOJ Panel, the crime she had committed was Direct Bribery. Whether or not she can be held liable for Direct Bribery or for violation of other laws, in addition to violation of R.A. No. 9165, is best left to the determination of the DOJ.

I therefore vote to dismiss the petition.

A handwritten signature in black ink, appearing to read "Punyan", is written below the text.