

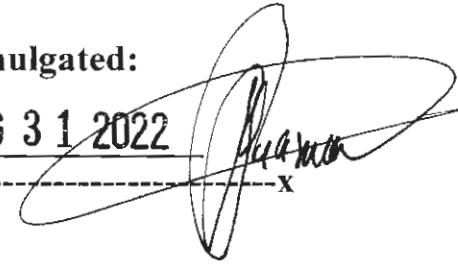
SECOND DIVISION

G.R. No. 208183 – REPUBLIC OF THE PHILIPPINES, Petitioner, v. LT. COL. GEORGE ABONITO RABUSA, SG-25, MA. DEBBIE AREVALO RABUSA, AND FELIX AREVALO, Respondents.

Promulgated:

AUG 31 2022

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I concur. The *ponencia's* application of Republic Act No. 1405 and its relevant exceptions correctly distinguishes between when the secrecy of bank deposits may or may not be maintained by the courts.

This involves a Petition for Forfeiture of Unlawfully Acquired Properties filed by the Office of the Ombudsman against Lt. Col. George A. Rabusa (Rabusa), whose Statements of Assets, Liabilities and Net Worth from 1990 to 2003 revealed a significant discrepancy between his and his wife's income and their family's reported expenses.¹ The Ombudsman investigated Rabusa's properties and discovered undeclared asset and expense items, which included "subscribed and paid-up capital shares" in his and his wife's names, vehicles registered in Rabusa's name, "capital contributions and savings" in the Armed Forces and Police Savings and Loan Association, Inc., bank deposits of both local and foreign currency in several financial institutions, a house and lot in Batangas, travel expenses to foreign countries, and the payment of insurance premiums for his two daughters.²

In total, the Ombudsman found assets amounting to PHP 43,096,081.90, which it deemed "manifestly out of proportion to Rabusa's declared salary and other lawful income."³

The Regional Trial Court dismissed the Petition after finding that the Republic failed to adduce a preponderance of evidence proving that Rabusa illegally accumulated his wealth.⁴ Instead, the trial court agreed with

¹ *Ponencia*, p 2.

² *Id.* at 3- 5.

³ *Id.* at 6.

⁴ *Id.*; Rollo, at 262-269. The Decision, promulgated on December 14, 2009 and docketed as Civil Case no. 04-1321, was penned by Presiding Judge Winlove M. Dumayas of Regional Trial Court Branch 59, Makati City.



Rabusa's arguments: (1) that his family's expenses were "reasonably augmented" by his wife's inheritance and accumulated donations from her father, and by her earnings from her own work; (2) that he sold one of his properties and took out a loan to sustain their expenses; and (3) that the funds in his Armed Forces of the Philippines Savings and Loan Association, Inc., account were a mix of his and his relatives' money, which sought to take advantage of the high interest rates offered to Association members.⁵

The Republic appealed the Regional Trial Court's Decision, arguing that the evidence proving the existence and contents of Rabusa's bank accounts should not have been declared inadmissible because "the money in the subject bank accounts [was] the subject of litigation[.]" Thus, the Republic's evidence fell within the exception to the rule prohibiting inquiry into bank accounts. The Republic further contested the trial court's acceptance of Rabusa's claims that the contents of the Armed Forces and Police Savings and Loan Association, Inc. accounts were composed of both his and his relatives' funds, and that the amounts paid for his daughters' insurance premiums came from the donations of one Corazon Pitcock.⁶

However, the Court of Appeals denied the prayer for forfeiture, holding that Republic Act No. 1405 protected Rabusa's bank accounts from inquiries that amounted to "a fishing expedition."⁷ Since Republic Act No. 1405 provides for a legitimate expectation of privacy in a person's bank accounts, the general rule of absolute secrecy should be upheld in the absence of any exceptions and consistent with the "present legal order" of avoiding an interpretation of these exceptions as authorizing "unbridled discretion . . . for unwarranted inquiry into bank accounts."⁸ Likewise, the Court of Appeals affirmed the trial court's factual findings on the source of the funds deposited in the Armed Forces and Police Savings and Loan Association, Inc. accounts, and those used to pay for the insurance policies of Rabusa's daughters. It maintained that the trial court was in the best position to weigh the evidence and ascertain the credibility of the witnesses presented.⁹

After the denial of its subsequent Motion for Reconsideration, the Republic assailed the Court of Appeals Decision through a Petition for Review on Certiorari. The Republic argued once more on the issue of whether it was proper for the lower courts to disregard the evidence adduced on Rabusa's bank accounts, despite the situation allegedly calling for the application of an exception to the law on secrecy of bank deposits.¹⁰

⁵ *Ponencia*, p. 6.

⁶ *Id.* at 7.

⁷ *Id.*; Rollo, pp. 45–54. The Decision, promulgated on November 26, 2012 and docketed as CA-G.R. CV No. 95545, was penned by Associate Justice Socorro B. Inting, with the concurrence of Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez (now a member of this Court), of the Court of Appeals' Ninth Division, Manila.

⁸ *Rollo*, p. 50.

⁹ *Id.* at 53.

¹⁰ *Ponencia*, p. 7.

As correctly held by the *ponencia*, the Court of Appeals' discussion on the rule on secrecy of bank deposits failed to apply the available exceptions. I concur with the *ponencia's* interpretation of the cases cited as part of the appellate court's rationale for denying the prayer for forfeiture.

The Court of Appeals upheld the "basic state policy" of bank deposit confidentiality by citing Section 2 of Republic Act No. 1405.¹¹ However, the same provision provides that a court order to examine these deposits (1) in cases of "bribery and dereliction of duty" of public officers, or (2) when the money in the account is "the subject matter of litigation," are both exceptions to the "absolute confidentiality" of bank deposits.

SECTION 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, *except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.* (Emphasis supplied)

The *ponencia* correctly discusses that *Philippine National Bank v. Gancayco* recognized that Section 8 of Republic Act No. 3019, as amended, includes cases of unexplained wealth as an additional exception to those provided by Section 2,¹² because the former is equivalent to a case of bribery and dereliction of duty:¹³

With regard to the claim that disclosure would be contrary to the policy making bank deposits confidential, it is enough to point out that while section 2 of Republic Act No. 1405 declares bank deposits to be "absolutely confidential" it nevertheless allows such disclosure in the following instances: (1) Upon written permission of the depositor; (2) In cases of impeachment; (3) Upon order of a competent court in cases of bribery or dereliction of duty of public officials; (4) In cases where the money deposited is the subject of the litigation. Cases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the policy as to the other. This policy expresses the notion

¹¹ *Rollo*, pp. 49–50.

¹² Republic Act No. 1405, sec. 2 states:

SECTION 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

¹³ *Ponencia*, p. 11.

that a *public office is a public trust* and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.¹⁴ (Emphasis supplied)

Here, however, despite the Regional Trial Court's issuance of subpoenas *duces tecum* and *ad testificandum* authorizing the bank accounts' examination,¹⁵ and the issue of illegally acquired properties pertaining to the contents of the same accounts, neither of the lower courts considered the evidence so adduced, so as to amount to an exception to Republic Act No. 1405, Section 2.

Instead, the Court of Appeals emphasized the existence of a "basic state policy" of considering "absolutely confidential all deposits of whatever nature[,] with banks and other financial institutions[.]"¹⁶ In support of this premise, the Court of Appeals referenced *BSB Group, Inc. v. Sally Go*, which prohibited the disclosure of bank account details in line with an "unwarranted inquiry or investigation."¹⁷

The Court of Appeals failed to fully appreciate the ruling in *BSB Group, Inc. v. Sally Go*. There, the evidence adduced through subpoenas *duces tecum* and *ad testificandum* were deemed irrelevant because they pertained to the contents of the accounts where Sally Go deposited the *proceeds of misappropriated checks*. However, Sally Go's ongoing criminal prosecution charged her with *qualified theft of cash*. The disclosure of information ordered by the subpoenas was, therefore, deemed "unwarranted," and the evidence procured were deemed inadmissible for *irrelevance*, because the accounts examined had *no relation to the criminal charges* for qualified theft of cash.

What indeed constitutes the subject matter in litigation in relation to Section 2 of R.A. No. 1405 has been pointedly and amply addressed in *Union Bank of the Philippines v. Court of Appeals*, in which the Court noted that *the inquiry into bank deposits allowable under R.A. No. 1405 must be premised on the fact that the money deposited in the account is itself the subject of the action*. Given this perspective, we deduce that *the subject matter of the action in the case at bar is to be determined from the indictment that charges respondent with the offense, and not from the evidence sought by the prosecution to be admitted into the records*. In the criminal Information filed with the trial court, respondent, unqualifiedly and in plain language, is charged with qualified theft by abusing petitioner's trust and confidence and stealing cash in the amount of P1,534,135.50. The said Information makes no factual allegation that in some material way involves the checks subject of the testimonial and documentary evidence sought to be suppressed. Neither do the allegations in said Information make mention of the supposed bank account in which the funds represented by the checks have allegedly been kept.

¹⁴ *Philippine National Bank v. Gancayco*, 122 Phil. 503, 508 (1965) [Per J. Regala, *En Banc*].

¹⁵ *Ponencia*, p. 8, *Rollo*, pp. 17-21.

¹⁶ *Rollo*, p. 50.

¹⁷ *Id.* at 49-50.

In other words, it can hardly be inferred from the indictment itself that the Security Bank account is the ostensible subject of the prosecution's inquiry. Without needlessly expanding the scope of what is plainly alleged in the Information, the subject matter of the action in this case is the money amounting to P1,534,135.50 alleged to have been stolen by respondent, and not the money equivalent of the checks which are sought to be admitted in evidence. Thus, it is that, which the prosecution is bound to prove with its evidence, and no other.

It comes clear that the admission of testimonial and documentary evidence relative to respondent's Security Bank account serves no other purpose than to establish the existence of such account, its nature and the amount kept in it. It constitutes an attempt by the prosecution at an impermissible inquiry into a bank deposit account the privacy and confidentiality of which is protected by law. On this score alone, the objection posed by respondent in her motion to suppress should have indeed put an end to the controversy at the very first instance it was raised before the trial court.¹⁸ (Citations omitted; emphasis supplied)

Thus, *BSB Group, Inc. v. Sally Go*'s discussion should *not* be read to mean that an inquiry into "the existence of [an] account, its nature and the amount kept in it" is an unwarranted inquiry per se. It is when the inquiry *has no relation* to the subject matter of a pending case, or to the types of cases recognized as exceptions by Section 2 of Republic Act No. 1405, that the secrecy of bank deposits must be upheld. Otherwise, a similar inquiry would fall within the scope of Republic Act No. 1405, Section 2's exceptions.¹⁹

Further, *BSB Group, Inc. v. Sally Go* involved the criminal prosecution of a person in her private capacity, which allowed this Court to discuss how the "right of privacy extends its scope to include an individual's financial privacy rights and personal financial matters[.]"²⁰

A final note. In any given jurisdiction where the right of privacy extends its scope to include an individual's financial privacy rights and personal financial matters, there is an intermediate or heightened scrutiny given by courts and legislators to laws infringing such rights. Should there be doubts in upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former. This attitude persists unless congress lifts its finger to reverse the general state policy respecting the absolutely confidential nature of bank deposits.²¹ (Citations omitted; emphasis supplied)

Respondents cannot claim a similar right to privacy in their bank accounts, as the pending investigation for illegally acquired properties

¹⁸ *BSB Group, Inc. v. Sally Go*, 626 Phil. 501, 516–517 (2010) [Per J. Peralta, Third Division].

¹⁹ *Id.* at 517.

²⁰ *Id.*

²¹ *Id.* at 517–518.

pertains to those acquired by Rabusa during his service as a public officer. This Court's discussion in *Philippine National Bank v. Gancayco*, that any person who discharges the duties of a public office "does so with full knowledge that his life, so far as relevant to his duty, is open to public scrutiny[,] is, therefore, more on point and defines more clearly the limit of "financial privacy rights," as it applies to public officers.²²

In further contrast, when the inquiry is directed at the whereabouts and recovery of *the very same money that had allegedly been illegally acquired*, then the deposits were *deemed the subject matter of the litigation* – an exception under Section 2 of Republic Act No. 1405 subject to disclosure. In *Mellon Bank, N.A. v. Magsino*:²³

Private respondents' protestations that to allow the questioned testimonies to remain on record would be in violation of the provisions of Republic Act No. 1405 on the secrecy of bank deposits, is unfounded. Section 2 of said law allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. *Inasmuch as Civil Case No. 26899 is aimed at recovering the amount converted by the Javiers for their own benefit, necessarily, an inquiry into the whereabouts of the illegally acquired amount extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition.*²⁴ (Emphasis supplied)

The allowance of the inquiry also extends to the bank accounts not only of the public official, but also their spouse and any dependents, pursuant to Section 8 of Republic Act No. 3019, as amended.

SECTION 8. *Prima facie evidence of und dismissal due to unexplained wealth.* – If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. *Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents* including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, *shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.* The circumstances hereinabove mentioned shall constitute a valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation wealth is completed.

²² *Philippine National Bank v. Emilio Gancayco*, 122 Phil. 503 (1965) [Per J. Regala, *En Banc*].

²³ 268 Phil. 697 (1990) [Per J. Fernan, Third Division].

²⁴ *Id.* at 713.

Thus, here, the subpoenas for respondents' bank account details were proper in support of the Petition for Forfeiture of Illegally Acquired Properties, and the evidence procured through the subpoenas should have been duly considered by the lower courts.

This is consistent with this Court's ruling in *Ejercito v. Sandiganbayan*,²⁵ where we not only clarified the applicability of the "court order" and "subject matter" exceptions to Republic Act No. 1405, Section 2, but also emphasized the absence of an exclusionary rule for evidence procured in supposed violation of the same law.

IN SUM, the Court finds that *the Sandiganbayan did not commit grave abuse of discretion in issuing the challenged subpoenas* for documents pertaining to petitioner's Trust Account No. 858 and Savings Account No. 0116-17345-9 for the following reasons:

1. *These accounts are no longer protected by the Secrecy of Bank Deposits Law, there being two exceptions to the said law applicable in this case, namely: (1) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials, and (2) the money deposited or invested is the subject matter of the litigation. Exception (1) applies since the plunder case pending against former President Estrada is analogous to bribery or dereliction of duty, while exception (2) applies because the money deposited in petitioner's bank accounts is said to form part of the subject matter of the same plunder case.*

2. *The "fruit of the poisonous tree" principle, which states that once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible, does not apply in this case. In the first place, R.A. 1405 does not provide for the application of this rule. Moreover, there is no basis for applying the same in this case since the primary source for the detailed information regarding petitioner's bank accounts — the investigation previously conducted by the Ombudsman — was lawful.*²⁶ (Emphasis supplied)

Consistent with this Court's ruling in *Ejercito v. Sandiganbayan*, that information obtained in violation of Republic Act No. 1405 is still admissible in evidence – as the law imposes only a penalty on the offender and does not impose an exclusionary rule on such evidence – the lower courts should not have disregarded the Republic's evidence on Rabusa's bank accounts. The same absence of an exclusionary rule should have also applied to the evidence of Rabusa's foreign currency deposits, notwithstanding the impropriety of their disclosure without consent from the depositor.

²⁵ 538 Phil. 684 (2006) [Per J. Carpio-Morales, *En Banc*].

²⁶ *Id.* at 725–726.

I agree that the lower courts may have validly considered and weighed the evidence regarding respondents' other assets and expenses, such as the Armed Forces and Police Savings and Loan Association, Inc. accounts, foreign travel expenses, and insurance premiums. However, a proceeding for forfeiture of illegally acquired wealth turns on a preponderance of evidence and the lower courts seriously erred in refusing to consider the evidence on respondents' bank accounts despite their production, consistent with the exceptions to the rule on secrecy of bank deposits. The records provide that the Regional Trial Court itself ordered the production of the very same evidence on respondents' bank accounts, which the court eventually admitted on formal offer but subsequently refused to consider.²⁷

Had the evidence on Rabusa's bank accounts been given due consideration, the lower courts would have had more basis upon which to decide the Petition for Forfeiture of Unlawfully Acquired Properties. The contents of respondents' bank accounts total to over PHP 10,000,000.00,²⁸ which deserves proper evaluation for a just and complete disposition of this case. Thus, I opine that the proceedings may benefit from a full hearing on the merits, consistent with giving meaning to the long-settled rule that public office is a public trust. The trial courts must bear this responsibility, as this Court cannot review questions of fact that require the re-examination of evidence.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Petition and to admit into evidence the proof of the bank accounts belonging to respondents Lt. Col. George Abonito Rabusa and Ma. Debbie Arevalo Rabusa.

I further vote to **REMAND** the case to the Regional Trial Court for reconsideration of the evidence on respondents' bank accounts.


MARVIC M.V.F. LEONEN
Senior Associate Justice

²⁷ *Ponencia*, p. 8; *Rollo*, pp. 17–21.

²⁸ *Ponencia*, p. 3.