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[G.R. No. 68086. September 24, 1986]

AUGUSTO GASPAR, *petitioner, vs.* **HONORABLE SANDIGANBAYAN, THIRD DIVISION, HONORABLE TANODBAYAN AND ZENAIDA LANTING,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; PROCEDURAL DUE PROCESS; OBSERVED IN CASE AT BAR.** — While his allegation with respect to the motion to revive is true, still the records shows that before the initial filing of the information, there was a preliminary investigation conducted by the Tanodbayan, and in this investigation, petitioner was given all the opportunity to present his evidence. The evidence presented before the Tanodbayan during this preliminary investigation was the same evidence subsequently utilized by the Tanodbayan, when it considered petitioner's motion for reinvestigation, as well as private respondent's request for reconsideration of the dismissal. Under these circumstances petitioner cannot claim that he had been denied due process.

2. **ID.; ID.; DOUBLE JEOPARDY; NOT PRESENT IN CASE AT BAR.** — This contention is meritless, for if sustained, the requisites for double jeopardy would be nullified. The next query is — is there actual double jeopardy in the case at bar? Our answer is — there is none, for among other things petitioner had not yet pleaded to the offense.

3. **ID.; TANODBAYAN; NOT REQUIRED TO CONDUCT ANOTHER PRELIMINARY INVESTIGATION OF A CASE UNDER REVIEW.** — There is no rule or law requiring the Tanodbayan to conduct another preliminary investigation of a case under review by it. On the contrary, under Presidential Decree No. 911, in relation to Rule 12, Administrative Order No. VII, the Tanodbayan may, upon review, reverse the findings of the investigator, and thereafter "where he finds a *prima facie* case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted, without the necessity of conducting another preliminary investigation.

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DECISION

PARAS, *J.*:

Petitioner for certiorari with prayer for the issuance of a writ of preliminary injunction to annul and set aside the following Orders and Resolutions of respondent Sandiganbayan and respondent Tanodbayan, to wit:

(a) Resolution dated June 21, 1984 re-entering into the docket of the court, Criminal Case No. 8550;

(b) Resolution dated July 11, 1984 denying petitioner's oral motion to quash;

(c) Order dated January 25, 1984 issued by Special Prosecutor Marina S. Buzon denying private respondent's letters-requests for reconsideration of the dismissal of the case but which denial was disapproved by Tanodbayan Bernardo D. Fernandez who granted reconsideration and ordered that the corresponding charge against petitioner be filed anew;

(d) Motion to revive dated June 20, 1984 filed by Prosecutor Marina S. Buzon,

issued in connection with Criminal Case No. 8550 entitled "*People of the Philippines versus Augusto L. Gaspar*", and to restrain the respondents from further proceeding with the arraignment and trial of the said case.

The record shows that in an Information dated October 4, 1983, petitioner Augusto L. Gaspar was charged before the Sandiganbayan with the crime of Falsification of Public/Official Document, defined and penalized under Article 171 paragraph 4, of the Revised Penal Code. The Information reads as follows —

"That on or about the 24th day of August, 1982 in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court accused Augusto L. Gaspar, being then the Chief Security Section, Parks Development Office, Office of the City Mayor of Manila, taking advantage of his official position did then and there wilfully, unlawfully and feloniously falsify his Personal Data Sheet (CS Form No. 212) a public/official document, by stating therein that he finished second year

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Accounting at the University of the East, which he attended from 1963-1965, when in truth and in fact, as the accused well knows, said statement was false as he did not finish second year accounting at said university as he was only enrolled thereat for the second semester of 1964-65, earning only 36 units in the college of Business Administration and taking up only one subject in Accounting, thus making an untruthful statement in a narration of facts wherein the accused had the legal obligation to disclose the truth, as the preparation of his Personal Data Sheet was required in connection with his promotion to the position of Administrative Officer II, Parks Development Office, with the wrongful intent of falsely enhancing his qualifications to the prejudice of other qualified aspirants to the same position.

Contrary to Law."

The case was docketed as Criminal Case No. 8550 and assigned to the Third Division of the Sandiganbayan. The arraignment of the accused was set for October 12, 1983. However, upon motion of petitioner who alleged that he had a pending motion for reinvestigation with the Tanodbayan, and without objection from the prosecution, the Sandiganbayan cancelled the arraignment and reset the same to December 12, 1983.

Acting on the motion for reinvestigation, the Tanodbayan thru Special Prosecutor Cristina J. Corral-Paterno recommended the dismissal of the charge. Deputy Tanodbayan Manuel C. Herrera concurred with the recommendation and the same was approved by Tanodbayan Bernardo D. Fernandez. On the basis thereof, the Tanodbayan filed with the Sandiganbayan a motion to dismiss Civil Case No. 8550.

On December 14, 1983, the Sandiganbayan issued a Resolution dismissing the case, which Resolution is hereinbelow reproduced as follows —

"For resolution is a "Motion to Dismiss" filed by the Prosecuting Fiscal alleging that she has taken this stand "after a review of the evidence submitted and taking into consideration the decision of this Honorable Court in Criminal Cases 6653, 6654, and 5924". Accompanying the motion is an "Order" issued by said Prosecuting Fiscal recommending the dismissal of this case because she is of the belief that not all the elements constitutive of the crime charged could be established by the evidence submitted to

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her. This "Order" was approved by the Honorable Tanodbayan on December 9, 1983.

The private complainant has furnished Us with a copy of her letter to the Honorable Tanodbayan dated December 12, 1983 wherein she took exception to the findings of the prosecuting fiscal.

It is evident, therefore, from the record that the Prosecution is convinced that it does not have sufficient evidence to prove all the elements necessary to show the commission of the crime charged in the information.

We find the Motion well taken in view of Our stand in the cases cited in the motion and considering that the same bears the imprimatur of the Honorable Tanodbayan, we feel that it should be granted.

WHEREFORE, the above-entitled case is hereby dismissed with costs *de officio*. The bond filed by the accused for his temporary liberty is cancelled and released.

SO ORDERED."

Meanwhile, and more specifically on December 12, 1983, complainant Zenaida Lanting wrote Tanodbayan Bernardo D. Fernandez requesting that the decision dismissing the case be reconsidered. This was followed-up by another letter dated December 14, 1983. Both letters were treated by the Tanodbayan as a motion for reconsideration.

On January 25, 1984, Special Prosecutor Marina L. Buzon issued an order denying complainant's motion for reconsideration. Deputy Tanodbayan Manuel C. Herrera concurred with this recommendation, but Tanodbayan Bernardo D. Fernandez disapproved the same, ruling thus —

"DISAPPROVED. The accomplishment of a Personal Data Sheet being required by Civil Service Rules and Regulations which have the force and effect of law, complainant's motion for reconsideration is GRANTED and let the corresponding charge be filed anew."

Accordingly, on June 21, 1984 Special Prosecutor Marina L. Buzon filed a Motion to Revive Criminal Case No. 8550. Acting on the said motion, the Sandiganbayan issued a Resolution dated June 21, 1984, re-entering into the docket of the court said Criminal Case No. 8550, and simultaneously ordering the issuance of a warrant of arrest against petitioner.

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The case was then set for arraignment and trial. But rather than enter a plea to the offense charged, petitioner verbally moved to quash the case on the ground of previous acquittal. This was denied by the Sandiganbayan in its Order dated July 11, 1984, "for lack of merit there having been no arraignment and trial yet." Following the issuance of this Order, petitioner interposed the present petition with this Court contending that —

(1) With respect to respondent Sandiganbayan it committed two (2) reversible errors; first, in granting the motion of the prosecution to revive the information; and second, in denying petitioner's motion to quash the information.

The first error imputed to the Sandiganbayan is premised on the alleged violation of petitioner's right to procedural due process because there was no notice and hearing on the motion to revive.

We find this contention untenable. While his allegation with respect to the motion to revive is true, still the records shows that before the initial filing of the information, there was a preliminary investigation conducted by the Tanodbayan, and in this investigation, petitioner was given all the opportunity to present his evidence. The evidence presented before the Tanodbayan during this preliminary investigation was the same evidence subsequently utilized by the Tanodbayan, when it considered petitioner's motion for reinvestigation, as well as private respondent's request for reconsideration of the dismissal. Under these circumstances petitioner cannot claim that he had been denied due process.

The other alleged error of the Sandiganbayan consists in its denial of petitioner's oral motion to quash. Thus, petitioner argues that since the prosecution prayed for the dismissal of the information without any condition or reservation to refile it, the dismissal was conclusive and definite. Thus, it is contended that the dismissal, although admittedly not strictly constitutive of double jeopardy, allegedly had the effect of double jeopardy.

Again, this contention is meritless, for if sustained, the requisites for double jeopardy would be nullified.

The next quary is — is there actual double jeopardy in the case at bar? Our answer is — there is none, for among other things petitioner *had not yet pleaded* to the offense.

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(2) With respect to respondent Tanodbayan, Two (2) errors are likewise imputed by petitioner: one, in granting private respondent's request for reconsideration; and two, in filing a motion to revive the information.

It is the submission of petitioner that he was denied due process because he was not given the opportunity to contest the motion for reconsideration and the motion to revive the information.

There is no merit in this contention. As already discussed, the petitioner was given the opportunity to be heard and to present all his evidence during the preliminary investigation. On the basis thereof the Tanodbayan filed an information. On the basis of the same evidence without any additional evidence or argument submitted by both parties the Tanodbayan asked for its dismissal and later revived it. Under these circumstances, petitioner may not be heard to say he was denied due process.

Moreover, there is no rule or law requiring the Tanodbayan to conduct another preliminary investigation of a case under review by it. On the contrary, under Presidential Decree No. 911, in relation to Rule 12, Administrative Order No. VII, the Tanodbayan may, upon review, reverse the findings of the investigator, and thereafter "where he finds a *prima facie* case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted, without the necessity of conducting another preliminary investigation."

WHEREFORE, in view of all the foregoing, the petition is dismissed; and the assailed resolutions and orders are hereby upheld. The restraining order earlier issued is lifted. Costs against petitioner.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and *Feliciano, JJ.,* concur.