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FIRST DIVISION

[G.R. Nos. 217592-93. July 13, 2020]

BENITO T. KEH and GAUDENCIO S. QUIBALLO, *petitioners*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; *CERTIORARI* IS NOT A VIABLE REMEDY FOR THE DENIAL OF A MOTION TO QUASH A CRIMINAL INFORMATION; QUASHAL OF THE INFORMATION AND THE CONSEQUENT DISMISSAL OF THE CASE AT BAR WITHOUT PREJUDICE, NOT PROPER. — [*C*]*ertiorari* is ordinarily not a viable remedy for the denial of a motion to quash a criminal information. Be that as it may, the pending petition for *certiorari* and *mandamus* in CA-G.R. SP No. 116798 has been mooted when the trial court eventually quashed the information which, in turn, gave rise to the petition in CA-G.R. CR No. 34411. The Court notes that the propriety of the action of the trial court in quashing the information is the lynchpin that will put to rest petitioners' present recourse. As the Court undertakes to bring such resolve, we declare the quashal of the information and the consequent dismissal of the case without prejudice to be out of order.

2. MERCANTILE LAW; THE CORPORATION CODE; SECTION 74, IN RELATION TO SECTION 144 THEREOF; CORPORATE BOOKS AND RECORDS TO BE KEPT; THE CORPORATION HAS THE DUTY TO KEEP AND PRESERVE A RECORD OF ALL BUSINESS TRANSACTIONS AND MINUTES OF ALL MEETINGS OF STOCKHOLDERS, MEMBERS, OR THE BOARD OF DIRECTORS OR TRUSTEES, ALONG WITH THE DUTY TO MAKE SUCH RECORD AVAILABLE TO ITS STOCKHOLDERS OR MEMBERS UPON WRITTEN REQUEST THEREFOR; VIOLATION THEREOF INVITES CRIMINAL PROSECUTION AGAINST THE ERRING OFFICERS; ELEMENTS THEREOF. — The underlying prosecution is for the alleged violation of Section 74 of the Corporation Code,

in relation to Section 144 thereof. Collectively, these provisions create the duty on the part of the corporation to keep and preserve a record of all business transactions and minutes of all meetings of stockholders, members, or the board of directors or trustees, along with the duty to make such record available to its stockholders or members upon written request therefor; a violation of these duties invites criminal prosecution against the erring officers to allow the eventual application of the prescribed penalties. Jurisprudence cites the elements of the subject offense as follows: First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes; Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and, Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; THE FUNDAMENTAL TEST IN DETERMINING THE SUFFICIENCY OF THE MATERIAL AVERMENTS IN AN INFORMATION IS WHETHER OR NOT THE FACTS ALLEGED THEREIN, WHICH ARE HYPOTHETICALLY ADMITTED, WOULD ESTABLISH THE ESSENTIAL ELEMENTS OF THE CRIME DEFINED BY LAW; EVIDENCE *ALIUNDE* OR MATTERS EXTRINSIC OF THE INFORMATION ARE NOT TO BE CONSIDERED; ELEMENTS OF THE OFFENSE OF VIOLATION OF SECTION 74, IN RELATION TO SECTION 144, OF THE CORPORATION CODE, SUFFICIENTLY ALLEGED IN THE INFORMATION IN THE CASE AT BAR. —** It is, indeed, fundamental that for purposes of a valid indictment, every element of which the offense is composed must be alleged in the information. Be

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that as it may, the criminal information is not meant to contain a detailed resumé of the elements of the charge in verbatim. Section 6, Rule 110 of the Revised Rules of Court only requires, among others, that it must state the acts or omissions so complained of as constitutive of the offense. Thus, the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not to be considered. Scrutinizing the subject information, the Court finds the allegations therein to be sufficient to propel a prosecution for the crime defined and punished under Section 74, in relation to Section 144, of the Corporation Code. *First*, that the first element of the offense is missing on its face is belied by the specific employment of the phrase "refuse, without showing any justifiable cause[,] to open to inspection x x x the corporate books and records," which reasonably implies that a prior request for access to information has been made upon petitioners. To be sure, refusal is understood quite simply as the act of refusing or denying; a rejection of something demanded, solicited, or offered for acceptance. In some cases, refusal is meant as a neglect to perform a duty which the party is required by law or his agreement to do. *Second*, that the information, in order to validly charge petitioners, should have alleged as well the fourth element of the offense is, to our mind, an undue exaction on the prosecutor to include extraneous matters that must be properly addressed during the trial proper. The fourth element of the offense unmistakably pertains to a matter of defense — specifically, a justifying circumstance — that must be pleaded by petitioners at the trial in open court rather than at the indictment stage. Thus, as a justifying circumstance which could potentially exonerate the accused from liability, its function is to merely take the burden of proof from the shareholder and place it on the corporation. It suffices to say that these matters have already been put forth before and addressed by the OCP in the resolution from which the subject information took off.

4. ID.; ID.; ID.; THE SUFFICIENCY OF THE ALLEGATIONS IN THE INFORMATION SERVES THE FUNDAMENTAL RIGHT OF THE ACCUSED TO BE INFORMED OF THE NATURE OF THE CHARGE AND TO ENABLE HIM TO SUITABLY AND ADEQUATELY PREPARE HIS

DEFENSE, AS HE IS PRESUMED TO HAVE NO INDEPENDENT KNOWLEDGE OF THE FACTS THAT CONSTITUTE THE OFFENSE. — Indeed, the sufficiency of the allegations in the information serves the fundamental right of the accused to be informed of the nature of the charge and to enable him to suitably and adequately prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense. In the instant petition, we find that petitioners, by the subject information, have been fully informed of the offense with which they have been charged and to which they have pleaded and have thus far been tried. Given the undue termination of petitioners' prosecution before the trial court, however, a remand for further proceedings is in order.

APPEARANCES OF COUNSEL

Francisco Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Petitioners Benito T. Keh and Gaudencio S. Quiballo assail the April 28, 2014 Decision[1] and the March 23, 2015 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 116798[3] and CA-G.R. CR No. 34411.[4] The assailed decision affirmed the August 25, 2011 Order[5] of the Regional Trial Court *(RTC)*

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[1] *Rollo*, pp. 98-117. Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[2] *Id.* at 119-120.

[3] Entitled *Benito T. Keh and Gaudencio S. Quiballo v. Presiding Judge Emma C. Matammu, etc., et al.*

[4] Entitled *People of the Philippines v. Benito T. Keh and Gaudencio S. Quiballo.*

[5] *Rollo*, pp. 834-837.

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of Valenzuela City, Branch 269, which directed to quash the subject criminal information. As the consequent dismissal is without prejudice, this petition for review on *certiorari*[6] now seeks the penultimate dismissal of the underlying criminal case — one for violation of Section 74, in relation to Section 144, of the Corporation Code.

Petitioners Keh and Quiballo, respectively the chairman/president and the corporate secretary of Ferrotech Steel Corporation, were charged before the Office of the City Prosecutor *(OCP)* of Valenzuela City with violation of Section 74, in relation to Section 144, of the Corporation Code, allegedly for their unjustified refusal to open the corporate books and records to one of their stockholders, Ireneo C. Quizon.[7] The OCP found probable cause, and resolved[8] to file the Information[9] before the RTC of Valenzuela City.

Petitioners filed a motion for reconsideration[10] of the OCP Resolution and, on that ground, filed a motion before the trial court for deferment of arraignment, suspension of proceedings, and quashal of the information; they likewise pleaded the trial

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[6] *Id.* at 26-90.

[7] Records, pp. 63-65.

[8] *Id.* at 4-5. Resolution dated January 5, 2010.

[9] *Id.* at 1. The indictment reads:

The undersigned State Prosecutor accuses BENITO T. KEH and GAUDENCIO S. QUIBALLO of the crime of "Violation of Section[s] 74 & 75 in relation to Sec. 144 of the Corporation [Code,]" committed as follows:

That on or about June 30, 2009 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being the Chairman/President and Corporate Secretary of Ferrotech Steel Corporation existing under Philippine Law and with principal office in Ugong, Valenzuela City, conspiring together and mutually helping one another, did then and there wil[l]fully, unlawfully and feloniously refuse, without showing any justifiable cause[,] to open to inspection to IRENEO C. QUIZON, a stockholder of said corporation[,] the [corporate] books and records of said corporation.

CONTRARY TO LAW.

[10] *Id.* at 379-397. Motions to Defer Proceedings, particularly Arraignment; to Determine Probable Cause; and/or to Quash the Information.

court to make its own determination of probable cause. The trial court denied this motion in its June 15, 2010 Order,[11] and set petitioners for arraignment instead.

Before they could be arraigned, petitioners filed Omnibus Motions[12] for inhibition of the presiding judge and for reconsideration of the June 15, 2010 Order on the ground that the information did not contain all the elements of the charge. Partially acting on the motion, the presiding judge voluntarily recused himself from the proceedings. The case was then raffled to Branch 269[13] which, in its November 9, 2010 Order,[14] denied the reconsideration sought on the ground that the proffered arguments related to evidentiary matters which ought to be brought to trial. As to the determination of probable cause, the trial court rightly declared that the trial court judge does determine probable cause but only with respect to the propriety of issuing a warrant of arrest.[15]

As the trial court declined to suspend the proceedings, to postpone the arraignment, and to quash the information and/or determine probable cause on its own, petitioners filed a Petition for *Certiorari* and *Mandamus* before the Court of Appeals against the June 15, 2010 and November 9, 2010 Orders. This petition was docketed as CA-G.R. SP No. 116798.[16]

Petitioners were arraigned and tried in the interim. The prosecution formally offered its evidence after having presented the principal complainant and sole witness, Ireneo Quizon, who openly professed the denial by petitioners of access to the corporate books despite his two written demands.[17]

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[11] *Id.* at 453-457.

[12] *Id.* at 459-469.

[13] Presided by Judge Emma C. Matammu.

[14] Records, pp. 537-538.

[15] *Id.* at 538.

[16] CA *rollo* (CA-G.R. SP No. 116798), pp. 3-25.

[17] Records, pp. 773-806, 808, and 810-815.

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Petitioners then filed Omnibus Motions *Ex Abundante Ad Cautelam* and Demurrer to Evidence,[18] still insisting on the quashal of the supposed defective Information, as well as on the dismissal of the case on improper venue and insufficiency of evidence. Agreeing with petitioners this time, the trial court, in its August 25, 2011 Order,[19] directed the quashal of the information for being defective. Accordingly, it dismissed the criminal case without prejudice as follows:

> WHEREFORE, the motion to quash the Information is hereby GRANTED. Accordingly, the instant case is hereby DISMISSED without prejudice.
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> SO ORDERED.[20]

Still feeling aggrieved, petitioners appealed to the Court of Appeals and bid for a dismissal with prejudice on the ground that the eventual re-filing of the case would amount to double jeopardy. Here, they reiterated the supposed defective and insufficient allegations contained in the information, and insisted on its quashal, as well as on the dismissal of the criminal case with prejudice. This appeal was docketed as CA-G.R. CR No. 34411.[21]

Disposing the two incidents, the Court of Appeals denied relief from petitioners in the assailed consolidated Decision as follows:

> WHEREFORE, in the light of the foregoing premises, We hereby DENY the appeal in CA-[G.R.] CR No. 34411 and DISMISS the Petition for *Certiorari* in CA-[G.R.] SP No. 116798.
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> SO ORDERED.[22]

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[18] *Id.* at 824-843.

[19] *Id.* at 857-860.

[20] *Id.* at 860.

[21] CA *rollo* (CA-G.R. CR No. 34411), pp. 24-47; and Notice of Appeal, records, pp. 862-864.

[22] *Rollo*, p. 117.

In their present bid to secure the dismissal of the case with prejudice, petitioners ascribe error to the Court of Appeals in (a) upholding the dismissal of the case without prejudice; (b) holding that there was no reason for the trial court to await the resolution of the OCP of the motion for reconsideration since there was no existing motion to impede the arraignment of petitioners; (c) holding that the trial court's order to rebuff the motion to quash was a mere interlocutory order and not subject to an appeal; and (d) ruling that *certiorari* and prohibition were improper remedies against an order denying a motion to quash.[23]

We deny the petition.

To start with, *certiorari* is ordinarily not a viable remedy for the denial of a motion to quash a criminal information.[24] Be that as it may, the pending petition for *certiorari* and *mandamus* in CA-G.R. SP No. 116798 has been mooted when the trial court eventually quashed the information which, in turn, gave rise to the petition in CA-G.R. CR No. 34411. The Court notes that the propriety of the action of the trial court in quashing the information is the lynchpin that will put to rest petitioners' present recourse. As the Court undertakes to bring such resolve, we declare the quashal of the information and the consequent dismissal of the case without prejudice to be out of order.

The underlying prosecution is for the alleged violation of Section 74[25] of the Corporation Code, in relation to

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[23] *Id.* at 62-64.

[24] See *Navaja v. Hon. De Castro, et al.*, 761 Phil. 142, 160 (2015).

[25] Sec. 74. *Books to be kept; stock transfer agent*. — Every corporation shall keep and carefully preserve at its principal office a record of all business transactions and minutes of all meetings of stockholders or members, or of the board of directors or trustees, in which shall be set forth in detail the time and place of holding the meeting, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent, and every act done or ordered done at the meeting. Upon the demand of any director, trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made.

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Section 144[26] thereof. Collectively, these provisions create the duty on the part of the corporation to keep and preserve a record

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The protest of any director, trustee, stockholder or member on any action or proposed action must be recorded in full on his demand.

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

Any officer or agent of the corporation who shall refuse to allow any director, trustees, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: Provided, That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and Provided, further, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

Stock corporations must also keep a book to be known as the "stock and transfer book," in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days.

No stock transfer agent or one engaged principally in the business of registering transfers of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines unless he secures a license from the Securities and Exchange Commission and pays a fee as may be fixed by the Commission, which shall be renewable annually: Provided, That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable.

[26] Sec. 144. Violations of the Code. Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall

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of all business transactions and minutes of all meetings of stockholders, members, or the board of directors or trustees, along with the duty to make such record available to its stockholders or members upon written request therefor; a violation of these duties invites criminal prosecution against the erring officers to allow the eventual application of the prescribed penalties.

Jurisprudence cites the elements of the subject offense as follows:

> First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;
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> Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;
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> Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,
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> Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[27]

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be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

[27] *Ang-Abaya, et al. v. Ang*, 593 Phil. 530, 543-544 (2008).

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Meanwhile, the criminal information filed by the OCP with the trial court alleged that petitioners —

> being the Chairman/President and Corporate Secretary of Ferrotech Steel Corporation x x x, conspiring together and mutually helping one another, did then and there wil[l]fully, unlawfully and feloniously refuse, without showing any justifiable cause[,] to open to inspection to IRENEO C. QUIZON, a stockholder of said corporation[,] the [corporate] books and records of said corporation.[28]

In its August 25, 2011 Order, the trial court perceived the above allegations to be insufficient to support the charge for which petitioners have thus far been prosecuted. It noted the absence in the subject indictment of the first and fourth elements of the offense, and held the same to be a fatal defect that inevitably should avoid the criminal information.[29] This pronouncement was validated in the assailed April 28, 2014 Decision of the Court of Appeals, where the appellate court went on to say that the information was not merely defective, but rather, it did not charge any offense at all.[30] We differ.

It is, indeed, fundamental that for purposes of a valid indictment, every element of which the offense is composed must be alleged in the information.[31] Be that as it may, the criminal information is not meant to contain a detailed resumé of the elements of the charge in verbatim. Section 6,[32] Rule 110 of the Revised Rules of Court only requires, among others, that it must state the acts or omissions so complained of as

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[28] Records, p. 1.

[29] *Id.* at 859.

[30] *Rollo*, p. 115.

[31] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003).

[32] Sec. 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

constitutive of the offense. Thus, the fundamental test in determining the sufficiency of the material averments in an information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not to be considered.[33]

Scrutinizing the subject information, the Court finds the allegations therein to be sufficient to propel a prosecution for the crime defined and punished under Section 74, in relation to Section 144, of the Corporation Code. *First*, that the first element of the offense is missing on its face is belied by the specific employment of the phrase "refuse, without showing any justifiable cause[,] to open to inspection x x x the corporate books and records," which reasonably implies that a prior request for access to information has been made upon petitioners. To be sure, refusal is understood quite simply as the act of refusing or denying; a rejection of something demanded, solicited, or offered for acceptance.[34] In some cases, refusal is meant as a neglect to perform a duty which the party is required by law or his agreement to do.[35]

Second, that the information, in order to validly charge petitioners, should have alleged as well the fourth element of the offense is, to our mind, an undue exaction on the prosecutor to include extraneous matters that must be properly addressed during the trial proper. The fourth element of the offense unmistakably pertains to a matter of defense — specifically, a justifying circumstance — that must be pleaded by petitioners at the trial in open court rather than at the indictment stage. Thus, as a justifying circumstance which could potentially exonerate the accused from liability, its function is to merely

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[33] *People v. Odtuhan*, 714 Phil. 349, 356 (2013).

[34] Webster's Third New International Dictionary of the English Language (1993).

[35] A Law Dictionary, Adapted to the Constitution and Laws of the United States, John Bouvier (1856). See also https://legal-dictionary.thefreedictionary.com/Refusal (last visited February 7, 2020).

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take the burden of proof from the shareholder and place it on the corporation.[36] It suffices to say that these matters have already been put forth before and addressed by the OCP in the resolution from which the subject information took off.[37]

Indeed, the sufficiency of the allegations in the information serves the fundamental right of the accused to be informed of the nature of the charge and to enable him to suitably and adequately prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[38] In the instant petition, we find that petitioners, by the subject information, have been fully informed of the offense with which they have been charged and to which they have pleaded and have thus far been tried. Given the undue termination of petitioners' prosecution before the trial court, however, a remand for further proceedings is in order.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The April 28, 2014 Decision of the Court of Appeals in CA-G.R. CR No. 34411 and CA-G.R. SP No. 116798 is **SET ASIDE**. Let this case be **REMANDED** to the Regional Trial Court of Valenzuela City, Branch 269, for further proceedings with deliberate dispatch.

SO ORDERED.

Caguioa, Reyes, Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[36] *Sy Tiong Shiou, et al. v. Sy Chim, et al.*, 601 Phil. 510, 525 (2009).

[37] Records, pp. 4-5.

[38] See *People v. Dimaano*, 506 Phil. 630, 649-650 (2005).