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THIRD DIVISION

[G.R. No. 210488. January 27, 2020]

JOSE MIGUEL T. ARROYO, *petitioner, vs.* **THE HON. SANDIGANBAYAN FIFTH DIVISION and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED; NATURE OF THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE. — "Probable cause is defined as 'the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.'" x x x The Ombudsman's finding of probable cause does not rule on the issue of guilt or innocence of the accused. The Ombudsman is mandated to only evaluate the evidence presented by the prosecution and the accused, and then determine if there is enough reason to believe that a crime has been committed and that the accused is probably guilty of committing the crime. "The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints."

2. ID.; ID.; ID.; ID.; DOCTRINE OF NON-INTERFERENCE TO THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE, EMPHASIZED; OMBUDSMAN'S EXECUTIVE DETERMINATION OF PROBABLE CAUSE DISTINGUISHED FROM JUDICIAL DETERMINATION OF PROBABLE CAUSE. — [T]his Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers, thus: x x x **The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the**

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crime for which he [or she] was prosecuted." The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman. x x x Jurisprudence has consistently ruled in favor of non-interference in the Ombudsman's determination of the existence of probable cause, unless there is a clear showing of grave abuse of discretion. This policy is based on respect for the Ombudsman's mandate and on practical grounds. x x x The Ombudsman's executive determination of probable cause is different from the judicial determination of probable cause. x x x The determination of probable cause for the purpose of filing an information is a function within the exclusive sphere and competence of the Ombudsman. The courts must respect the exercise of discretion when an information filed against a person is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. Subsequently, when an information is filed with the court, the court acquires jurisdiction of the case and a judicial determination of probable cause is made by the judge for the purpose of issuing a warrant of arrest. At this stage, any motion to dismiss the case or to determine the conviction or acquittal of the accused is within the sound discretion of the court.

3. ID.; ID.; ID.; ID.; MOTIONS FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE ARE SUPERFLUITIES. — This Court has already settled that motions for judicial determination of probable cause are superfluities, because the rules already direct the judge to make a personal finding of probable cause. x x x [I]n *Leviste v. Almeda*: **To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.** Here, the Sandiganbayan has already determined, independently of any finding or recommendation by the Ombudsman, that probable cause exists in this case. In dismissing the Motion for Judicial Determination

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of Probable Cause and subsequently conducting the arraignment of petitioner, the Sandiganbayan has judicially determined that there is probable cause to proceed with the trial. Hence, a petition for *certiorari* questioning the validity of the preliminary investigation has been rendered moot.

4. ID.; ID.; ID.; ID.; ID.; THERE IS NO SHOWING IN THIS CASE THAT THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE WAS TAINTED WITH GRAVE ABUSE OF DISCRETION; IN FACT, THE OMBUDSMAN'S EVALUATION IS SUPPORTED BY EVIDENCE. — Petitioner's imputation that the Sandiganbayan has misappreciated evident facts, even if such evident facts were adjudged inaccurately, does not translate to jurisdictional error. Mere disagreement with the Ombudsman's findings is not enough reason to constitute grave abuse discretion. Petitioner must show that the preliminary investigation was conducted in such a way that amounted to a virtual refusal to perform the duty enjoined by law. In this case, there was nothing capricious, whimsical, or even arbitrary in the Sandiganbayan's findings and conclusions that the Office of the Ombudsman had sufficiently established probable cause for the filing of the Information against petitioner. Conversely, the evidence gathered and relied upon by respondent evinces a reasonable belief that petitioner is involved in the transaction. x x x The Ombudsman was able to discharge its duty and it extensively discussed the bases of its finding of probable cause against petitioner. The possible involvement of petitioner in the sale surfaced during the investigations, which raised questions and doubt and must be threshed out in a full-blown trial. Petitioner's counterarguments and controverting evidence also do not completely rule out and disprove his participation in the sale. To assail the Ombudsman's determination of probable cause, an allegation of grave abuse of discretion must be substantiated. "Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law[.]" To justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave and it must be so patent as to be equivalent to having acted without jurisdiction. In this

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case, there is no showing that the finding of probable cause was tainted with whim, caprice, or arbitrariness; but on the contrary, the evaluation is supported by evidence.

5. ID.; ID.; ID.; NATURE OF PRELIMINARY INVESTIGATION; LOWER QUANTUM OF EVIDENCE IS REQUIRED IN PRELIMINARY INVESTIGATION CONSIDERING THAT IT IS GEARED ONLY TO DETERMINE WHETHER OR NOT PROBABLE CAUSE EXISTS TO HOLD PETITIONER FOR TRIAL. — At the preliminary investigation, the Ombudsman determines probable cause which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence. A preliminary investigation is simply an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. x x x A preliminary investigation is merely inquisitorial, and is only conducted to aid the prosecutor in preparing the information. It is preparatory to a trial. An accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution. Even if there are alleged irregularities in an investigation's conduct, this neither renders the information void nor impairs its validity. Here, petitioner questions the evidence used during the preliminary investigation and raises the quantum of evidence required in insisting that there was a misappreciation of evidence. However, the conduct of preliminary investigation is geared only to determine whether or not probable cause exists to hold petitioner for trial. Considering the lower quantum of evidence required in preliminary investigations, this Court does not find grave abuse of discretion in the findings of the Sandiganbayan and the Ombudsman. Probable cause simply implies probability of guilt. It is based merely on opinion and reasonable belief. The preliminary investigation is not the proper venue to rule on petitioner's guilt or innocence. Probable cause is determined in a summary manner. Precisely, there is a trial to allow a full assessment of petitioner's case. In this case, petitioner's arguments are matters of evidence which are better subjected to the scrutiny of this Court after an extensive trial on the merits.

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APPEARANCES OF COUNSEL

Topacio Law Office for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Absent any clear showing of grave abuse of discretion, this Court will not interfere with the Office of the Ombudsman's finding of probable cause in its investigation of criminal complaints.

This resolves a Petition for *Certiorari*[1] assailing the Resolutions dated August 15, 2013[2] and November 6, 2013[3] issued by the Sandiganbayan in Criminal Case No. SB-12-CRM-0164, denying Jose Miguel T. Arroyo's (Arroyo) Motion for Judicial Determination of Probable Cause and subsequent Motion for Reconsideration. The assailed Resolutions[4] of the Sandiganbayan, promulgated on August 15, 2013, affirmed the Ombudsman's finding of probable cause for filing the charge against petitioner for the violation of Section 3(e) of Republic Act No. 3019,[5] otherwise known as the Anti-Graft and Corrupt Practices Act.

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[1] *Rollo*, pp. 3-45.

[2] *Id.* at 46-76. The Resolution was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Alexander G. Gesmundo and Associate Justice Amparo M. Cabotaje-Tang of the Fifth Division, Sandiganbayan.

[3] *Id.* at 362-366. The Resolution was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Alexander G. Gesmundo and Associate Justice Alex L. Quiroz of the Sandiganbayan, Fifth Division.

[4] *Id.* at 4.

[5] Republic Act No. 3019 (1960), Sec. 3(e) provides:

Section 3(e). Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

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On October 13, 2011, the Office of the Ombudsman issued Office Order No. 494, designating a Panel of Investigators composed of the Ombudsman personnel who were with the Field Investigation Office. It was mandated to investigate anomalies in the purchase of Light Operational Police Helicopters by the Philippine National Police in 2009.[6]

In a Complaint, the Office of the Ombudsman, through its Field Investigation Office, charged Arroyo, his brother Ignacio "Iggy" Arroyo (Iggy), Hilario De Vera (De Vera), and other officials of the Philippine National Police with violation of several administrative and penal laws, particularly:

(1) Section 3, par. (e) and (g) of the Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practice Act;[7]

(2) Articles 171 and 172 (Falsification by Public Officers) of the Revised Penal Code;[8] and

(3) Section 52 (A) paragraph 1 (Dishonesty), paragraph 2 (Gross Neglect of Duty) and Section 20 (Conduct Prejudicial to the Best Interest of Service) of the Civil Service Commission Resolution No. 9919636, otherwise known as the "Uniform Rules on Administrative Cases in the Civil Service."[9]

It was alleged in the Complaint that sometime in 2009, the Philippine National Police purchased from Manila Aerospace Products Trading Corporation (Manila Aerospace Corporation) one (1) fully-equipped Robinson R44 Raven II Light Police Operational Helicopter for ₱42,312,913.10 and two (2) standard Robinson R44 Raven I Light Police Operational Helicopters for ₱62,672,086.90, for a total of ₱104,985,000.00.[10] However,

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This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[6] *Id.* at 6.

[7] *Id.*

[8] *Id.* at 7.

[9] *Id.* at 381.

[10] *Id.* at 445-446.

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despite the requirements prescribed by the National Police Commission that the helicopters should be brand new, Manila Aerospace Corporation delivered only one (1) brand new Robinson Raven II helicopter while the two (2) standard Robinson Raven I helicopters it delivered were actually pre-owned by Arroyo, thereby causing undue injury to the government and giving unwarranted benefits to certain individuals.[11]

In response to the filing of the Complaint, the Ombudsman created a Special Investigating Panel to conduct a preliminary investigation. Subsequently, the Special Investigating Panel issued a Joint Resolution[12] recommending the filing of criminal and administrative cases against Arroyo and his co-accused.[13]

In an Information,[14] the Office of the Ombudsman charged Arroyo, among others, for alleged conspiracy with several Philippine National Police officers and personnel and other private persons in the commission of the crime, violating Section 3(e) of Republic Act No. 3019. The Information stated that the sale of the two (2) used helicopters, which were allegedly owned by Arroyo, caused undue injury to the Philippine National Police and the government in the amount of at least ₱34,632,187.50, representing the overpriced amount paid by the Philippine National Police.[15]

The Sandiganbayan Second Division, where the case was first raffled, granted the request of Arroyo to file a Motion for Reconsideration after leave of court.[16] In his Motion for Reconsideration, Arroyo alleged that he is not the owner of the two (2) helicopters and that he already divested himself of all shares in Lourdes T. Arroyo, Inc. (Arroyo, Inc.), the alleged

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[11] *Id.*

[12] *Id.* at 441-587, Joint Resolution of the Special Investigating Panel on the case *Field Investigation Office v. Ronaldo V. Puno, et al.*

[13] *Id.* at 7-8.

[14] *Id.* at 588-599.

[15] *Id.* at 597.

[16] *Id.* at 10.

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corporation who benefitted from the anomalous sale. However, Ombudsman denied this Motion for Reconsideration.[17]

Arroyo voluntarily surrendered before the Sandiganbayan and posted the bail bond to obtain his provisional liberty.[18] During arraignment, he pleaded not guilty as a condition precedent in obtaining authority to travel abroad. Subsequently, the criminal case was re-raffled to the Fifth Division.[19]

In an Order, the Office of the Ombudsman/Office of the Special Prosecutor resolved to deny Arroyo's motion for lack of merit.[20]

On May 27, 2013, Arroyo filed with the Sandiganbayan Fifth Division a Motion for Judicial Determination of Probable Cause,[21] praying for the dismissal of the criminal case on the ground of lack of probable cause. In this motion, he alleged that: (1) there is no evidence supporting the conclusion that he owned the two (2) helicopters; (2) the evidence on record shows that it was Archibald Po (Po) and/or his companies who owned the helicopters; (3) there is no evidence that points him as a party or participant, in any manner or degree, to the purchase of the helicopters; (4) there is absolutely no proof of conspiracy; (5) the denial of his Motion for Reconsideration has no valid basis; and (6) the lack of probable cause against him justifies the dismissal of the case.[22]

The Sandiganbayan issued a Resolution,[23] denying Arroyo's motion. It concluded that the prosecution sufficiently showed

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[17] *Id.* at 10, 612-613.

[18] *Id.* at 711.

[19] *Id.*

[20] *Id.* at 711.

[21] *Id.* at 77-105.

[22] *Id.* at 11.

[23] *Id.* at 46-76. The Resolution dated August 15, 2013 was penned by Associate Justice Roland B. Jurado and concurred in by Associate Justice Alexander G. Gesmundo and Associate Justice Amparo M. Cabotaje-Tang of the Sandiganbayan, Fifth Division.

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that, based on the evidence adduced, there is probable cause that Arroyo participated in the transaction. A part of the Resolution states:

> Based on the foregoing discussion, the existence of the elements of Section 3(e) of R.A. No. 3019 is undisputed. It is evident that: (1) all the accused are public officers, being members of the PNP, while Arroyo and De Vera are private individuals charged in conspiracy with the PNP officers; (2) the alleged acts were committed in relation to their public positions; (3) the transactions in question allegedly caused undue injury to the PNP *vis-á-vis* the accused public officers and the Government; (4) that the transaction gave unwarranted benefits, advantage and preference to Arroyo and De Vera; and, (5) the accused acted with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence in the purchase of two (2) units standard Robinson R44 Raven I helicopter and one (1) unit fully-equipped Robinson R44 Raven II helicopter.[24]

The Sandiganbayan explained that Arroyo cannot, as a matter of right, insist on a hearing for judicial determination of probable cause.[25] Arroyo cannot determine beforehand how cursory or exhaustive the judge's examination of the records should be, since the extent of the judge's examination depends on the exercise of his sound discretion as the circumstances of the case require. The Sandiganbayan further ruled that the proper procedure was followed in determining probable cause for filing the Informations and that, absent evidence to the contrary, it cannot reverse or overturn the Ombudsman's findings.[26]

Arroyo filed a Motion for Reconsideration,[27] but this motion was denied.[28]

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[24] *Id.* at 12.

[25] *Id.* at 61.

[26] *Id.*

[27] *Id.* at 367-377.

[28] *Id.* at 362-366. The Resolution dated November 6, 2013 was penned by Associate Justice Roland B. Jurado and concurred in by Alexander G. Gesmundo and Associate Justice Alex L. Quiroz of the Sandiganbayan, Fifth Division.

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On January 20, 2014, petitioner filed this Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court with prayer for temporary restraining order and/or preliminary injunction assailing the Resolutions issued by the Sandiganbayan Fifth Division.[29]

In a March 3, 2014 Resolution, this Court required the respondents to comment on Petition and on the prayer for temporary restraining order.[30]

Subsequently, respondent filed a Motion for Extension of Time to File Comment, which was granted by this Court.[31]

On June 23, 2014, respondent filed its Comment on the Petition for *Certiorari* and Prohibition.[32]

Subsequently, this Court issued a Resolution giving due course to the petition and requiring the parties to submit their respective memorandum.[33] Petitioner[34] and respondent[35] then filed their memoranda.

Petitioner argues that respondent committed grave abuse of discretion in disregarding the lack of evidence that he owned the two (2) Robinson R44 Raven helicopters with serial numbers 1372 and 1374.[36] He claims that it is erroneous for respondent to rely on the bare testimony of Po as to the helicopters' ownership.[37]

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[29] *Id.* at 5.

[30] *Id.* at 694.

[31] *Id.* at 695-703.

[32] *Id.* at 704-728.

[33] *Id.* at 743.

[34] *Id.* at 767-806.

[35] *Id.* at 745-766.

[36] *Id.* at 17.

[37] *Id.* at 18.

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He claims that the helicopters were neither owned by him nor by his family corporation, Arroyo, Inc. Rather, they actually belonged to Po's companies, LIONAIR and Asian Spirit. He adds that, based on the documents and testimonies of the witnesses, the sale of the helicopters was done without his slightest participation.[38]

Further, petitioner explains that the then First Family's use of the helicopters was due to a Fleet Lease Agreement entered into by Po's Company and Arroyo Inc., through petitioner's late brother, Iggy.[39]

He adds that Arroyo, Inc. advanced the money for the purchase of five (5) helicopters by way of loan in favor of Po and LIONAIR. Po's company and Arroyo, Inc. purportedly agreed to apply the rentals for Arroyo, Inc.'s use of the helicopters and the income earned from other lessees as payment of the loan advanced to LIONAIR.[40]

Moreover, petitioner argues that the Ombudsman failed to distinguish him from Arroyo, Inc. He alleges that during the material dates of the illegal sale, he did not have any interest in Arroyo, Inc.[41] Petitioner highlights Po's testimony, wherein he clarified at the Senate hearing that it was Arroyo, Inc., and not petitioner, who made the initial deposit.[42] The records show:

> 7. In paragraph 8 of your first Affidavit you said that you required that an initial deposit of $95,000.00 for each helicopter or a total of $475,000.00 for the five (5) helicopters be made. Who made the deposit to Robinson?
>
> **In my first affidavit, I made mention that it was FG thru Lionair who made the deposit. I wish to stress that I made a correction on this statement in my Supplemental Affidavit. It was LTA, Inc.**

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[38] *Id.* at 18.

[39] *Id.* at 24.

[40] *Id.* at 24.

[41] *Id.* at 26.

[42] *Id.* at 27.

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who made the initial deposit of $500,000.00 to Robinsons Helicopter. The payment was made thru wire transfer; a copy of the BDO Foreign Telegraphic Transfer was faxed to our office on December 11, 2003 by LTA, Inc.[43] (Emphasis in the original)

Long before the purchase of the helicopters by LIONAIR, petitioner had divested himself of any interest in Arroyo, Inc. Petitioner presents the March 15, 2001 Deed of Assignment of Shares of Stock which he executed in favor of Benito R. Araneta. A certification of divestment of interest was also issued by Regino Q. Ferraren, Jr., Arroyo, Inc.'s Corporate Secretary, evidencing that petitioner was neither a director, an officer, nor a stockholder of Arroyo, Inc. Petitioner adds that it was only on November 24, 2010, long after the sale to the Philippine National Police transpired, when he repurchased the shares from Benito R. Araneta.[44]

Petitioner also questions the purported trust relationship which allegedly governed him and Po, wherein petitioner was the supposed beneficial owner of the helicopters. In a criminal case, the speculative assumption of trusteeship suggested by complainant cannot be given credence over the overwhelming evidence of ownership of Po, LIONAIR, and Asian Spirit.[45] Petitioner argues that the criminal case must fail because he is neither the legal nor the beneficial owner of the helicopters sold to the Philippine National Police.[46]

He claims that the allegation of conspiracy rests on mere surmises and speculative conclusions. There is certainly no substantial proof that: (1) he instructed particular persons to perform particular acts leading to the anomalous procurement; (2) he wielded enormous influence on certain Philippine National Police personnel; or (3) that he performed acts that can be characterized as part of the scheme.[47]

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[43] *Id.*

[44] *Id.* at 29.

[45] *Id.*

[46] *Id.* at 34.

[47] *Id.*

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There could be no conspiracy between him and De Vera because it was not shown that he has ever met or even talked to De Vera. From De Vera's narration, he only dealt with Po when the helicopters were sold to the Philippine National Police.[48] There being no proof of conspiracy, it was an error on the Investigating Panel's part to have found probable cause against petitioner.[49]

Finally, petitioner questions the application of *Leviste v. Alameda*[50] to his case. He argues that the Sandiganbayan erred in dismissing his motion because jurisprudence dictates that an accused may assail a finding of probable cause when there is a clear grave abuse of discretion.[51]

In its Comment, respondent asserts that there was nothing capricious, whimsical, or even arbitrary in the findings and conclusions of the Office of the Ombudsman.[52] Respondent maintains that petitioner's arguments before the Sandiganbayan and this Court showed absolutely no evidence of any irregularity in the proceedings before the Ombudsman.[53]

A perusal of the records of the case will readily show that after a careful consideration of the complaint under oath, the supporting documents, and the counter-affidavits and controverting evidence submitted by petitioner, Ombudsman found probable cause to file the corresponding Information against him.[54]

Respondent argues that Ombudsman's finding of probable cause against petitioner is supported by the evidence presented

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[48] *Id.* at 36.

[49] *Id.* at 37.

[50] 640 Phil. 620 (2010) [Per *J.* Carpio Morales, Third Division].

[51] *Rollo*, pp. 37-39.

[52] *Id.* at 714.

[53] *Id.* at 716.

[54] *Id.*

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during the conduct of the preliminary investigation. It was found that petitioner had control over the helicopter and it appears that he only instructed Po to purchase the helicopters. Particularly, the investigation revealed that the flight dispatcher took instructions with regard to the flight of the helicopter either from petitioner or petitioner's immediate family members. The consent of petitioner was also sought by Po with respect to the supply of helicopters for the Philippine National Police. When the helicopters were sold to the Philippine National Police, Po allegedly remitted the proceeds to petitioner.[55]

Respondent further argues that petitioner still had interest in Arroyo, Inc. at the time of the transaction. Petitioner presented a Deed of Assignment dated March 15, 2001, indicating that he had assigned his shares of stock in Arroyo, Inc. to Benito Araneta. However, respondent stresses that the Deed of Assignment is not an evidence of a valid transfer, except between him and Araneta, inasmuch as the transfer of the shares of stock was not duly registered in the books. Thus, insofar as third parties are concerned, there is no valid transfer or divestment of petitioner's interest in Arroyo, Inc. in accordance with Section 63 of the Corporation Code.[56]

Moreover, respondent points out that there is a provision in the Deed of Assignment wherein petitioner merely appointed Benito Araneta as his proxy or representative.[57]

Respondent also argues that the documents cited by petitioner do not conclusively establish that Asian Spirit or LIONAIR was the true owner of the helicopters before they were sold to the Philippine National Police. During the hearing before the Senate Blue Ribbon Committee in 2011, Po, owner of LIONAIR and Asian Spirit, categorically stated that in 2003, petitioner instructed him to register the helicopters under the name of Asian Spirit only for tax purposes. In the testimony of Domingo

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[55] *Id.* at 719-720.

[56] *Id.* at 720.

[57] *Id.* at 721.

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Lazo, Flight Dispatcher of LIONAIR, he stated that it was either petitioner or his family who gave the rules or procedures in the use of the helicopters.[58]

Respondent further argues that there are ledgers covering May 2004 to May 2011 showing that LIONAIR collected and received from petitioner the total amount of ₱18,250,000.00, representing hangar fees, take-off and landing charges, expenses for maintenance, pilotage, gasoline, oil and lubricants, as well as fees for the renewal of aircraft registration and certificate of airworthiness.[59]

Moreover, respondent avers that considering the totality of evidence presented during the preliminary investigation, the Office of Ombudsman committed neither error nor grave abuse of discretion in bringing petitioner to trial. Similarly, respondent maintains that the documents in support of the indictment established the probability of petitioner's involvement in the transaction.[60]

The sole issue for this Court's resolution is whether or not the Sandiganbayan committed grave abuse of discretion in denying petitioner's motion, and affirming the finding of probable cause to indict him. Subsumed under this issue is whether or not the Ombudsman committed grave abuse of discretion in finding probable cause against petitioner.

The petition is dismissed.

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"Probable cause is defined as 'the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he

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[58] *Id.*

[59] *Id.* at 722.

[60] *Id.*

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was prosecuted.'"[61] In *Ganaden v. Ombudsman*,[62] this Court explained the nature of a finding of probable cause, thus:

> [A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.
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> *The term does not mean "actual and positive cause" nor does it import absolute certainty*. It is merely based on opinion and reasonable belief . . . . . Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.[63] (Emphasis in the original)

The Ombudsman's finding of probable cause does not rule on the issue of guilt or innocence of the accused. The Ombudsman is mandated to only evaluate the evidence presented by the prosecution and the accused, and then determine if there is enough reason to believe that a crime has been committed and that the accused is probably guilty of committing the crime.[64]

"The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints."[65] As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers, thus:

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[61] *Joson v. Office of the Ombudsman*, 784 Phil. 172, 185 (2017) [Per J. Leonen, Second Division].

[62] 665 Phil. 224 (2011) [Per J. Villarama, Jr., Third Division] citing *Galario v. Ombudsman*, 554 Phil. 86-111 (2007) [Per J. Chico-Nazario, Third Division].

[63] *Id.* at 230.

[64] *Id.*

[65] *Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69, 82 (2010) [Per J. Carpio, Second Division].

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Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"

An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.

The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."

The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint.[66] (Emphasis supplied, citations omitted)

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[66] *Dichaves v. Office of the Ombudsman*, 802 Phil. 564, 589-591 (2016) [Per *J.* Leonen, Second Division].

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Jurisprudence has consistently ruled in favor of non-interference in the Ombudsman's determination of the existence of probable cause, unless there is a clear showing of grave abuse of discretion. This policy is based on respect for the Ombudsman's mandate and on practical grounds. In *Roxas v. Vasquez*:[67]

> . . . This observed policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant[.][68]

The Ombudsman's executive determination of probable cause is different from the judicial determination of probable cause. In *De Lima v. Reyes*:[69]

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. **Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.**

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[67] 411 Phil. 276 (2001) [Per *J.* Ynares-Santiago, First Division].

[68] *Id.* at 288.

[69] 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division].

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The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[70] (Emphasis supplied, citations omitted)

The determination of probable cause for the purpose of filing an information is a function within the exclusive sphere and competence of the Ombudsman. The courts must respect the exercise of discretion when an information filed against a person is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.[71]

Subsequently, when an information is filed with the court, the court acquires jurisdiction of the case and a judicial determination of probable cause is made by the judge for the purpose of issuing a warrant of arrest. At this stage, any motion to dismiss the case or to determine the conviction or acquittal of the accused is within the sound discretion of the court.[72] In *Crespo v. Mogul*:[73]

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the

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[70] *Id.* at 647.

[71] *People v. Castillo*, 607 Phil. 754-768 (2009) [Per J. Quisumbing, Second Division].

[72] *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per J. Leonen, Second Division].

[73] *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, *En Banc*].

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same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[74]

This Court has already settled that motions for judicial determination of probable cause are superfluities, because the rules already direct the judge to make a personal finding of probable cause. In *Ramiscal, Jr. v. Sandiganbayan*:[75]

> [The rules] do not require cases to be set for hearing to determine probable cause for the issuance of a warrant for the arrest of the accused before any warrant may be issued. Section 6, Rule 112 mandates the judge to personally evaluate the resolution of the Prosecutor (in this case, the Ombudsman) and its supporting evidence, and if he/she finds probable cause, a warrant of arrest or commitment order may be issued within 10 days from the filing of the complaint or Information; in case the Judge doubts the existence of probable cause, the prosecutor may be ordered to present additional evidence within five (5) days from notice.
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> . . . . . .
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> The periods provided in the Revised Rules of Criminal Procedure are mandatory, and as such, the judge must determine the presence or absence of probable cause within such periods. The Sandiganbayan's determination of probable cause is made ex parte and is summary in nature, not adversarial. The Judge should not be stymied and distracted from his determination of probable cause by needless motions for determination of probable cause filed by the accused.[76]

This has been affirmed in *Leviste v. Almeda*:[77]

> **To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the**

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[74] *Id.* at 476.

[75] 530 Phil. 773 (2006) [Per *J.* Callejo, Sr., First Division].

[76] *Id.* at 797-798.

[77] 640 Phil. 620 (2010) [Per *J.* Carpio Morales, Third Division].

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resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.

> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted [sic] by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[78] (Emphasis supplied, citation omitted)

Here, the Sandiganbayan has already determined, independently of any finding or recommendation by the Ombudsman, that probable cause exists in this case. In dismissing the Motion for Judicial Determination of Probable Cause and subsequently conducting the arraignment of petitioner, the Sandiganbayan has judicially determined that there is probable cause to proceed with the trial. Hence, a petition for *certiorari* questioning the validity of the preliminary investigation has been rendered moot.

II

Nevertheless, even if this Court were to give due course to the petition, it must still fail absent any grave abuse of discretion on the part of the respondent.

In imputing grave abuse of discretion, petitioner maintains that his case is an exception to the rule on non-interference. Petitioner alleges that Sandiganbayan committed grave abuse of discretion in affirming the Ombudsman's finding of probable cause, specifically: (1) in disregarding the lack of evidence

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[78] *Id.* at 648-649.

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that he owned the two (2) helicopters sold to the Philippine National Police; (2) in relying on the testimony of one (1) person as to this; (3) in sustaining the finding that he gained benefit from the sale through Arroyo, Inc; and (4) in disregarding the lack of proof that he ever participated in the sale.

This Court disagrees. Petitioner's imputation that the Sandiganbayan has misappreciated evident facts, even if such evident facts were adjudged inaccurately, does not translate to jurisdictional error. Mere disagreement with the Ombudsman's findings is not enough reason to constitute grave abuse of discretion. Petitioner must show that the preliminary investigation was conducted in such a way that amounted to a virtual refusal to perform the duty enjoined by law.

In this case, there was nothing capricious, whimsical, or even arbitrary in the Sandiganbayan's findings and conclusions that the Office of the Ombudsman had sufficiently established probable cause for the filing of the Information against petitioner. Conversely, the evidence gathered and relied upon by respondent evinces a reasonable belief that petitioner is involved in the transaction.

In its August 15, 2013 Resolution,[79] the Sandiganbayan thoroughly discussed that the documents presented before it, specifically the attachments and annexes to the Complaint of the Panel of Investigators, enabled the Special Investigating Panel to determine the existence of probable cause against petitioner.

First, based on the evidence adduced, there is basis to maintain a reasonable belief that petitioner is the owner of the helicopters.

The Sandiganbayan found that the documents cited by petitioner do not conclusively show that Asian Spirit or LIONAIR was the true owner of the helicopters before they were sold to the Philippine National Police.[80] On the contrary, the assailed

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[79] *Rollo*, pp. 46-76.

[80] *Id.* at 69.

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Sandiganbayan Resolution is supported by the findings of the Special Investigation Panel. In the Panel's Joint Resolution,[81] it found that there is evidence that Po, the owner of Asian Spirit and LIONAIR, does not have complete control over the helicopters. Po alleged that petitioner instructed him to facilitate the purchase and sale of the helicopters and that he remitted the proceeds of the sale to petitioner. The Sandiganbayan also noted that petitioner and his family repeatedly used the helicopters and the LIONAIR's flight dispatcher took instructions from petitioner and his family as to the flight plan.[82] The Sandiganbayan was persuaded that these pieces of evidence are indicia of petitioner's ownership of the helicopters.[83]

The Sandiganbayan also relied on the statements of Po showing that petitioner instructed him in 2003 to register the helicopters under the name of Asian Spirit only for tax purposes. Moreover, the authenticity of the subsidiary ledger and flight log report was not disputed by petitioner.[84]

Furthermore, the Sandiganbayan relied on evidence indicating that petitioner has not totally divested himself of his interest in Arroyo, Inc.

It was found that although petitioner offered a Deed of Assignment dated March 15, 2001 showing that he had assigned his shares of stocks in Arroyo, Inc. to one Benito Araneta, the Deed of Assignment is not an evidence of a valid transfer, except between him and the named assignee in the deed.[85]

The Sandiganbayan pointed out that the certification attached to the deed never mentioned that the transfer of the shares of stock was duly registered in the books of Arroyo, Inc. Hence, insofar as third parties are concerned, there is no valid transfer

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[81] *Id.* at 719-720.

[82] *Id.* at 68-69.

[83] *Id.*

[84] *Id.*

[85] *Id.* at 68.

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or divestment of petitioner's interest in Arroyo, Inc. The Sandiganbayan also gave credence to the fact that petitioner became a shareholder of the corporation again on November 24, 2010.[86]

The Sandiganbayan also stressed that there is a stipulation in the Deed of Assignment wherein Benito Araneta, the supposed assignee was merely constituted as proxy of petitioner. Section 4 of the Deed of Assignment reads:

> . . . Upon the signing of this Deed, **the ASSIGNOR hereby appoints the ASSIGNEE as his duly constituted PROXY**, with full power and authority to represent and vote the Subject Shares at any and all stockholder's meetings, or at any adjournment thereof, on all matters that may be brought before said meetings, including the election of directors, **as fully to all intents and purposes as the ASSIGNOR might do it present and acting in person**[.][87] (Emphasis in the original)

The investigating panel noted that this evinces a reasonable belief that petitioner still had an interest in Arroyo, Inc.

With respect to the defense of petitioner that his use of the helicopters is consistent with a Fleet Lease Agreement, the Joint Resolution points to the findings of the Senate Blue Ribbon Committee which raised questions on the agreement's authenticity, thus:

> First, the lease agreement involved, among others, the helicopters sold to the PNP bearing serial numbers 1372 and 1374. Note that the lease agreement was notarized on March 16, 2004 and indicated the same day as the start of the lease period. However, the helicopters with serial numbers 1372 and 1374 only arrived in the Philippines on March 17, a day after the first day of the purported lease agreement.
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> Second, according to the testimony of Mr. Sia, he was simply asked to affix his signature, sometimes in the year 2005 or 2006, on the page containing his name. The entire lease document, drafted solely by the Arroyos, was not even given to him. This testimony

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[86] *Id.*

[87] *Id.* at 68.

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supports this Committee's belief that the lease agreement does not reflect a true agreement.

. . . . . .

Lastly, it makes no sense for any party to enter into lease agreement which would end on May 15, 2004 and the same party would continue to pay the lessor for the maintenance and operating expenses amounting to ₱18,250,000.00 until 2011.[88]

The Ombudsman was able to discharge its duty and it extensively discussed the bases of its finding of probable cause against petitioner. The possible involvement of petitioner in the sale surfaced during the investigations, which raised questions and doubt and must be threshed out in a full-blown trial. Petitioner's counterarguments and controverting evidence also do not completely rule out and disprove his participation in the sale.

To assail the Ombudsman's determination of probable cause, an allegation of grave abuse of discretion must be substantiated. "Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law[.]"[89] To justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave and it must be so patent as to be equivalent to having acted without jurisdiction.[90]

In this case, there is no showing that the finding of probable cause was tainted with whim, caprice, or arbitrariness; but on the contrary, the evaluation is supported by evidence.

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[88] *Id.* at 552.

[89] *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017) [Per *J.* Leonen, Second Division], citing *Tetangco v. Ombudsman*, 515 Phil. 230 (2006) [Per *J.* Quisumbing, Third Division].

[90] *Vergara v. Ombudsman*, 600 Phil. 26, 45 (2009) [Per *J.* Carpio, *En Banc*].

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III

At the preliminary investigation, the Ombudsman determines probable cause which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence.[91] A preliminary investigation is simply an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[92]

Estrada v. Office of the Ombudsman[93] is illustrative:

> The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[94]

This Court further discussed in *Cambe v. Office of the Ombudsman*,[95] thus:

> . . . [Preliminary investigation] is not the occasion for the full and exhaustive display of the prosecution's evidence. Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level." Accordingly,

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[91] *Trinidad v. Ombudsman*, 564 Phil. 382, 388 (2007) [Per *J*. Carpio Morales, *En Banc*].

[92] *Presidential Commission on Good Government v. Navarro-Gutierrez*, 771 Phil. 91, 101 (2015) [Per *J*. Perlas-Bernabe, First Division].

[93] 751 Phil. 821 (2015) [Per *J*. Carpio, *En Banc*].

[94] *Id.* at 864.

[95] 802 Phil. 190 (2016) [Per *J*. Perlas-Bernabe, *En Banc*].

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"owing to the initiatory nature of preliminary investigations, the technical rules of evidence should not be applied in the course of its proceedings." In this light, and as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay," and that even an invocation of the rule on res inter alios acta at this stage of the proceedings is improper.[96] (Citations omitted)

A preliminary investigation is merely inquisitorial, and is only conducted to aid the prosecutor in preparing the information. It is preparatory to a trial. An accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution. Even if there are alleged irregularities in an investigation's conduct, this neither renders the information void nor impairs its validity.[97]

Here, petitioner questions the evidence used during the preliminary investigation and raises the quantum of evidence required in insisting that there was a misappreciation of evidence. However, the conduct of preliminary investigation is geared only to determine whether or not probable cause exists to hold petitioner for trial. Considering the lower quantum of evidence required in preliminary investigations, this Court does not find grave abuse of discretion in the findings of the Sandiganbayan and the Ombudsman.

Probable cause simply implies probability of guilt. It is based merely on opinion and reasonable belief. The preliminary investigation is not the proper venue to rule on petitioner's guilt or innocence. Probable cause is determined in a summary manner. Precisely, there is a trial to allow a full assessment of petitioner's case. In this case, petitioner's arguments are matters of evidence which are better subjected to the scrutiny of this Court after an extensive trial on the merits.

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[96] *Id.* at 217.

[97] *De Lima v. Reyes*, 776 Phil. 623, 648 (2016) [Per *J.* Leonen, Second Division].

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Failing to demonstrate that the Sandiganbayan and the Ombudsman acted with grave abuse of discretion, this Court will not interfere with their findings of probable cause. Contrary to petitioner's claim, a review of the records of the case shows that the findings of the Ombudsman, as affirmed by the Sandiganbayan, are neither tainted with malice nor are they mere speculations and surmises. Conversely, the findings are sustained by evidence. Mere disagreement with the appreciation of the evidence by the Ombudsman does not translate to jurisdictional error.

To be clear, this Court does not make a ruling on petitioner's guilt or innocence. Here, the issue is whether there is grave abuse in the Sandiganbayan and Ombudsman's exercise of their prerogatives. We find that there is none. Hence, their findings must be respected.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Sandiganbayan's August 15, 2013 and November 6, 2013 Resolutions in relation to Criminal Case No. SB-12-CRM-0164 are **AFFIRMED**.

SO ORDERED.

Carandang, Zalameda, Lopez, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 225115. January 27, 2020]

DEL MONTE FRESH PRODUCE (PHILIPPINES), INC., *petitioner, vs.* **DEL MONTE FRESH SUPERVISORS UNION,** *respondent.*