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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 107660. January 2, 1995]

RAMON C. LOZON, *petitioner, vs.* NATIONAL LABOR RELATIONS COMMISSION (Second Division) and PHILIPPINE AIRLINES, INC., *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; PD 902-A; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; INTRACORPORATE MATTERS. CONCERNING OFFICERS; CASE AT BAR.**— Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving - a. Intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments. Specifically, in this intra-corporate matters concerning the election or appointment of officers of a corporation, the decree provides: "SEC. 5. x x x It shall have original and exclusive jurisdiction to hear and decide cases involving: x x x (c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." Petitioner himself admits that "vice presidents are senior members of management," whose designations are no longer than just by means of ordinary promotions. In his own case, petitioner has been elected to the position of Senior Vice-President - Finance Group by PAL's board of directors at its organizational meeting held on 20 October 1989 pursuant to the By-laws, under which, he would serve for a term of one year and until his successor shall have been elected and qualified.

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2. **ID.; ID.; ID.; ID.; ID.; DISMISSAL OF CORPORATE OFFICER, INCLUDED.**— In *Fortune Cement Corporation, v. NLRC,* (193 SCRA 258) the court has quoted with approval the Solicitor General's contention that "a corporate officer's dismissal is always a corporate act and/or intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action." Not the least insignificant in the case at bench is that petitioner's dismissal is intertwined with still another intra-corporate affair, earlier so ascribed as the "two-billion-peso PALscam," that inevitably places the case under the specialized competence of the SEC and well beyond the ambit of a labor arbiter's normal jurisdiction under the general provisions of Article 217 of the Labor Code.

3. **ID.; ID.; ID.; ID.; ID.; REMUNERATION OF CLAIMS AND DAMAGES, INCLUDED.**— Petitioner contends that the jurisdiction of the SEC excludes its cognizance over claims for vacation and sick leaves, 13th month pay, Christmas bonus, medical expenses, car expenses, and other benefits, as well as for moral and exemplary damages and attorney's fees. *Dy v. NLRC,* (145 SCRA 211, 213) categorically states that the question of remuneration being asserted by an officer of a corporation is "not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact, a corporate controversy in contemplation of the Corporation Code." With regard to the matter of damages, in *Andaya v. Abadia* (228 SCRA 705; see also A & A Continental Commodities Philippines, Inc. *v.* SEC, 225 SCRA 341, 346) it was held: "x x x *While it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters such as those affecting the corporation, its directors, trustees, officers, shareholders, the issue of consequential damages*

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may just as well be resolved and adjudicated by the SEC." We here reiterate the above holdings for, indeed, controversies within the purview of Section 5 of P.D. No. 902-A must not be so constricted as to deny to the SEC the sound exercise of its expertise and competence in resolving all closely related aspects of such corporate disputes.

4. **REMEDIAL LAW; JURISDICTION; ESTOPPEL; NOT APPLICABLE IN CASE AT BAR.**— Petitioner maintains that PAL is estopped, nevertheless, from questioning the jurisdiction of the NLRC considering that PAL did not hold the dispute to be intracorporate until after the case had already been brought on appeal to the NLRC. There would not be much basis to indicate that PAL was "effectively barred by estoppel." As early as the initial stages of the controversy PAL had already raised the issue of jurisdiction *albeit* mistakenly at first on the ground that petitioner's recourse was an appeal to the Office of the President. The error could not alter the fact that PAL did question even then the jurisdiction of both the labor arbiter and the NLRC. It has long been the established rule, moreover, that jurisdiction over a subject matter is conferred by law, and the question of lack of jurisdiction may be raised at anytime even on appeal. In the recent case of La Naval Drug Corporation *vs.* Court of Appeal, G.R. No. 103200, 31 August 1994, this Court said: "Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court).This defense may be interposed at any time, during appeal (Roxas *vs.* Rafferty, 37 Phil. 957) or even after final judgment (Cruzcosa *vs.* Judge Concepcion, et al., 101 Phil. 146). In People *vs.* Casiano (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held: '"The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if

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> the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position — that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon.'"

APPEARANCES OF COUNSEL

Tanjuatco, Corpus, Tanjuatco, Tagle-Chua, Cruz and Aquino for petitioner.

The Solicitor General for respondents.

DECISION

VITUG, *J.*:

Petitioner Ramon C. Lozon, a certified public accountant, was a Senior Vice-President-Finance of private respondent Philippine Airlines, Inc. ("PAL"), when his services were terminated on 19 December 1990 in the aftermath of the much-publicized "two-billion-pesos PAL scam." Lozon started to work for the national carrier on 23 August 1967 and, for twenty-three years, steadily climbed the corporate ladder until he became one of its vice-presidents.[1]

His termination from the service was spawned by a letter sent some time in June 1990 by a member of PAL's board of directors, then Solicitor General Francisco Chavez, to PAL

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[1] Petitioner held the following positions: Technical Assistant to the Comptroller, August 23, 1967 to July 23, 1968; Director Corporate Acct. - July 24, 1968 to July 31, 1970; Comptroller - August 1, 1970 to July 15, 1975; Vice-President (Comptroller) - July 16, 1975 to May 15, 1979; Vice-President (Treasury) - May 16, 1979 to July 15, 1986; Vice-President (Finance & Treasurer) - July 16, 1986 to July 15, 1987 and Senior Vice-President (Finance Group) - June 9, 1987 (*Rollo*, p. 17)

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President Dante Santos. Chavez demanded an investigation of twenty-three irregularities allegedly committed by twenty-two high-ranking PAL officials. Among these officials was petitioner; he had been administratively charged by Romeo David, Senior Vice-President for Corporate Services and Logistics Group, for his (Lozon) purported involvement in four cases, labeled "Goldair," "Autographics," "Big Bang of 1983" and "Middle East."[2] Pending the investigation of these cases by a panel[3] constituted by then President Corazon C. Aquino, petitioner was placed under preventive suspension.

In the organizational meeting of the PAL board of directors on 19 October 1990, during which occasion Feliciano R. Belmonte, Jr., was elected chairman of the board while Dante G. Santos was designated president and chief executive officer,[4] the board deferred action on the election or appointment of some senior officers of the company who, like petitioner, had been charged with various offenses.

On 18 January 1991, the PAL board of directors issued two resolutions relative to the investigation conducted by the presidential investigating panel in the "Autographics" and "Goldair" cases. In "Autographics," petitioner was charged, along with three other officials,[5] with "gross inefficiency, negligence, imprudence, mismanagement, dereliction of duty, failure to observe and/or implement administrative and executive policies" and with the "concealment, or cover-up and prevention

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[2] *Rollo*, pp. 354-392.

[3] Composed of Judge Martin A. Ocampo from the Office of the President, as chairman, and Fiscals Cesar M. Solis and Henrick F. Gingoyon, both of the Prosecution Staff of the Department of Justice, as members.

[4] *Rollo*, pp. 351-352.

[5] Milagros A. Abad, vice-president, inflight services; Ricardo V. Puno, Jr., vice-president, legal department, and Daniel S. Pido, director, cabin crew services.

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of the seasonal discovery of the anomalous transactions" had with Autographics, Inc., resulting in, among other things, an overpayment by PAL to Autographics in the amount of around P12' million. Petitioner was forthwith considered "resigned from the service x x x for loss of confidence and for acts inimical to the interests of the company."[6] A similar conclusion was arrived at by the PAL board of directors with regard to petitioner in the "Goldair" case where he, together with six other PAL officials,[7] were charged with like "offenses" that had caused PAL's defraudation by Goldair, PAL's general sales agent in Australia, of 14.6 million Australian dollars.[8]

Aggrieved by the action taken by the PAL board of directors, petitioner, on 26 June 1991, filed with the National Labor Relations Commission ("NLRC") in Manila a complaint (docketed NLRC-NCR Case No. 00-06-03684-91) for illegal dismissal and for reinstatement, with backwages and "fringe benefits such as Vacation leave, Sick leave, 13th month pay, Christmas Bonus, Medical Expenses, car expenses, trip pass entitlement, etc., plus moral damages of P40 Million, exemplary damages of P10 Million and reasonable attorney's fees."[9]

On 09 August 1991,[10] the PAL board of directors also held petitioner as "resigned from the company" for loss of confidence and for acts inimical to the interests of the company in the "Big Bang of 1983" case for his alleged role in the irregularities that had precipitated the write-down (write-off) of assets amounting to P553 million from the books and financial statements of PAL.[11] In the "Middle East" case, the PAL board of directors,

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[6] *Rollo*, p. 366.

[7] Leslie W. Espino, Romeo R. Ines, Robin C. Dui, Josefina Sioson, Aida M. Quijano and Juan Ygoa.

[8] *Rollo*, p. 392.

[9] *Ibid.*, p. 78.

[10] The case was by then pending with the NLRC.

[11] *Ibid.*, p. 358. Charged with petitioner in this case were Romeo R. Ines, Robin Dui and Josefina Sioson.

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on the same date, suspended petitioner for six (6) months for his supposed involvement in the anomalous administration of commercial marketing arrangements in which PAL had lost an estimated P120 million.[12]

PAL defended the validity of petitioner's dismissal before the Labor Arbiter. It questioned at the same time the jurisdiction of the NLRC, positing the theory that since the investigating panel was constituted by then President Aquino, said panel, along with the PAL board of directors, became "a parallel arbitration unit" which, in legal contemplation, should be deemed to have substituted for the NLRC. Thus, PAL averred, petitioner's recourse should have been to appeal his case to the Office of the President.[13] On the other hand, petitioner questioned the authority of the panel to conduct the investigation, asseverating that the charges leveled against him were purely administrative in nature that could have well been ventilated under the grievance procedure outlined in PAL's Code of Discipline.

On 17 March 1992, Labor Arbiter Jose G. de Vera rendered a decision ruling for petitioner.[14] The decretal portion of the decision read:

"WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent Philippine Airlines, Inc., to reinstate the complainant to his former position with all the rights, privileges, and benefits appertaining thereto plus backwages, which as of March 15, 1992 already amounted to P2,632,500.00, exclusive of fringes. Further, the respondent company is ordered to pay complainant as follows: P5,000,000.00 as moral damages; P1,000,000.00 as exemplary damages, and attorney's fees equivalent to ten percent (10%) of all the foregoing awards.

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[12] *Ibid.*, p. 379. Petitioner was charged in this case to gether with Leslie W. Espino, Jose Maria G. Estrada, Romeo R. Ines, Ricardo V. Puno, Jr. and Doris Cuenca.

[13] *Ibid.*, p. 130.

[14] *Ibid.*, pp. 57-77.

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"SO ORDERED."[15]

A day after promulgating the decision, the labor arbiter issued a writ of execution. PAL filed a motion to quash the writ which petitioner promptly opposed. After the labor arbiter had denied the motion to quash, PAL filed a petition for injunction with the NLRC (docketed NLRC IC Case No. 00261-92). No decision was rendered by NLRC on this petition.[16]

Meanwhile, PAL appealed the decision of the labor arbiter by filing a memorandum on appeal,[17] assailing, once again, the jurisdiction of the NLRC but this time on the ground that the issue pertaining to the removal or dismissal of petitioner, a corporate officer, was within the exclusive and original jurisdiction of the Securities and Exchange Commission ("SEC"). Petitioner interposed a partial appeal praying for an increase in the amount of moral and exemplary damages awarded by the labor arbiter.[18]

On 24 July 1992, the NLRC rendered a decision (in NLRC NCR Case No. 00-06-03684-91)[19] dismissing the case on the strength of PAL's new argument on the issue of jurisdiction.[20] Petitioner's motion for reconsideration was denied by the NLRC.

The instant petition for *certiorari* filed with this Court raises these issues: (a) Whether or not the NLRC has jurisdiction over the illegal dismissal case, and (b) on the assumption that the SEC has that jurisdiction, whether or not private respondent is estopped from raising NLRC's lack of jurisdiction over the controversy.

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[15] *Rollo*, p. 76-77.

[16] *Ibid.*, p. 9.

[17] *Ibid.*, p. 157.

[18] *Ibid.*, p. 191.

[19] Penned by Commissioner Domingo H. Zapanta and concurred in by Commissioner Edna Bonto-Perez.

[20] *Rollo*, p. 40.

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We sustain NLRC's dismissal of the case.

Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving -

a. Intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments;

b. State and corporate affairs in relation to the legal existence of corporations, partnerships and associations or to their franchises; and

c. Investors and corporate affairs, particularly in respect of devices and schemes, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms; as well as

d. Petitions for suspension of payments filed by corporations, partnerships or associations possessing sufficient property to cover all their debts but which foresee the impossibility of meeting them when they respectively fall due, or possessing insufficient assets to cover their liabilities and said entities are upon petition or *motu proprio*, placed under the management of a Rehabilitation Receiver or Management Committee.

Specifically, in intra-corporate matters concerning the election or appointment of officers of a corporation, the decree provides:

"SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

"x x x x x x x x x;

"(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations."

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Petitioner himself admits that "vice presidents are senior members of management,"[21] whose designations are no longer than just by means of ordinary promotions. In his own case, petitioner has been elected to the position of Senior Vice-President - Finance Group by PAL's board of directors at its organizational meeting held on 20 October 1989 pursuant to the By-laws,[22] under which, he would serve for a term of one year and until his successor shall have been elected and qualified.[23] Petitioner, for reasons already mentioned, did not get to be re-elected thereafter.[24]

In *Fortune Cement Corporation v. NLRC,*[25] the Court has quoted with approval the Solicitor General's contention that "a corporate officer's dismissal is always a corporate act and/or intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action." Not the least insignificant in the case at bench is that petitioner's dismissal is intertwined with still another intra-corporate affair, earlier so ascribed as the "two-billion-peso PALscam," that inevitably places the case under the specialized competence of the SEC and well beyond the ambit of a labor arbiter's normal jurisdiction under the general provisions of Article 217 of the Labor Code.[26]

Petitioner contends that the jurisdiction of the SEC excludes its cognizance over claims for vacation and sick leaves, 13th month pay, Christmas bonus, medical expenses, car expenses,

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[21] In his position paper before the NLRC, *Rollo*, p. 107.

[22] *Ibid.*, pp. 291, 334-338.

[23] *Ibid.*, p. 345.

[24] On 23 October 1991, a certain Ricardo G. Paloma was instead elected Senior Vice-President for Finance (*Rollo*, pp. 393-395).

[25] 193 SCRA 258.

[26] See Macapalan *v.* Katalbas-Moscardon, 227 SCRA 49, 54 citing Viray *v.* Court of Appeals, 191 SCRA 308 and Union Glass & Container Corporation *v.* Securities and Exchange Commission, 126 SCRA 31.

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and other benefits, as well as for moral and exemplary damages and attorney's fees.[27] *Dy v. NLRC*[28] categorically states that the question of remuneration being asserted by an officer of a corporation is "not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact, a corporate controversy in contemplation of the Corporation Code." With regard to the matter of damages, in *Andaya v. Abadia*[29] where, in a complaint filed before the Regional Trial Court, the president and general manager of the Armed Forces and Police Savings and Loan Association ("AFPSLAI") questioned his ouster from the stewardship of the association, this Court, in dismissing the petition assailing the order of the trial court which ruled that SEC, not the regular courts, had jurisdiction over the case, has said:

"The allegations against herein respondents in the amended complaint unquestionably reveal intra-corporate controversies cleverly concealed, although unsuccessfully, by use of civil law terms and phrases. The amended complaint impleads herein respondents who, in their capacity as directors of AFPSLAI, allegedly convened an illegal meeting and voted for the reorganization of management resulting in petitioner's ouster as corporate officer. *While it may be said that the same corporate acts also give rise to civil liability for damages, it does not follow that the case is necessarily taken out of the jurisdiction of the SEC as it may award damages which can be considered consequential in the exercise of its adjudicative powers. Besides, incidental issues that properly fall within the authority of a tribunal may also be considered by it to avoid multiplicity of actions. Consequently, in intra-corporate matters*

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[27] Citing *Tan v. Securities and Exchange Commission*, 206 SCRA 740, where the Court, given the case settings, said that the SEC was not empowered to award damages but may only impose a fine and imprisonment under Sec. 56 of the Revised Securities Act (mistakenly referred to in the decision as the Corporation Code).

[28] 145 SCRA 211, 213.

[29] 228 SCRA 705; see also A & A Continental Commodities Philippines, Inc. *v.* SEC, 225 SCRA 341, 346.

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such as those affecting the corporation, its directors, trustees, officers, shareholders, the issue of consequential damages may just as well be resolved and adjudicated by the SEC." (Italics supplied.)

We here reiterate the above holdings for, indeed, controversies within the purview of Section 5 of P.D. No. 902-A must not be so constricted as to deny to the SEC the sound exercise of its expertise and competence in resolving all closely related aspects of such corporate disputes.

Petitioner maintains that PAL is estopped, nevertheless, from questioning the jurisdiction of the NLRC considering that PAL did not hold the dispute to be intracorporate until after the case had already been brought on appeal to the NLRC.

In the first place, there would not be much basis to indicate that PAL was "effectively barred by estoppel."[30] As early as the initial stages of the controversy PAL had already raised the issue of jurisdiction *albeit* mistakenly at first on the ground that petitioner's recourse was an appeal to the Office of the President. The error could not alter the fact that PAL did question even then the jurisdiction of both the labor arbiter and the NLRC.

It has long been the established rule, moreover, that jurisdiction over a subject matter is conferred by law,[31] and the question of lack of jurisdiction may be raised at anytime even on appeal.[32] In the recent case of La Naval Drug Corporation *vs.* Court of Appeals, G.R. No. 103200, 31 August 1994, this Court said:

"Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction

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[30] See Pantranco North Express, Inc. *v.* Court of Appeals, 224 SCRA 477, 491.

[31] Ilaw at Buklod ng Manggagawa (IBM) *v.* NLRC, 219 SCRA 536, 539 citing Tijam *v.* Sibonghanoy, 23 SCRA 29; Atlas Developer & Steel Industries, Inc. *v.* Sarmiento Enterprises, 184 SCRA 153.

[32] Zamora *v.* Court of Appeals, 183 SCRA 279.

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over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal (Roxas *vs.* Rafferty, 37 Phil. 957) or even after final judgment (Cruzcosa *vs.* Judge Concepcion, et al., 101 Phil. 146). Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In People *vs.* Casiano (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:

> "'The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same 'must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be permitted, on appeal, to assume an inconsistent position—that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon.'"

Petitioner points to "PAL's scandalous duplicity" in questioning the jurisdiction of the NLRC in this particular controversy while upholding it (NLRC's jurisdiction) in "Robin Dui *v.* Philippine Airlines" (Case No. 00-4-20267) pending before that Commission. We need not delve into whether or not PAL's conduct does indeed smack of opportunism; suffice it to say that *Robin Dui* is entirely an independent and separate case and, more than that, it is not before us in this instance.

WHEREFORE, the herein petition for *certiorari* is DISMISSED, and the decision appealed from is AFFIRMED, without prejudice to petitioner's seeking, if circumstances permit, a recourse in the proper forum. No costs.

SO ORDERED.

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Bidin, Romero, Melo, and *Vitug, JJ.*, concur.

Feliciano, (Chairman), J., on leave.

EN BANC

[G.R. No. 101545. January 3, 1995]

HERMENEGILDO M. MAGSUCI, *petitioner, vs.* THE HON. SANDIGANBAYAN (Second Division) and THE PEOPLE OF THE PHILIPPINES, *respondents.*

SYLLABUS

1. **CRIMINAL LAW; CONSPIRACY, EXPLAINED.**— There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence therefor must reasonably be strong enough to show a community of criminal design.

2. **ID.; ID.; NOT PRESENT IN CASE AT BAR.**— The actions taken by Magsuci involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all that he had foreknowledge of any irregularity committed by either or both Engr. Enriquez and Ancla. Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the