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procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative authority' (42 Am. Jur., 581)."

In the present case, the disputed property is the subject of applications for free patents. Both parties had already invoked the jurisdiction of the Bureau of Lands when the private respondents suddenly filed a case in court and moved to enjoin the agency from acting on the administrative case. Orderly procedure requires that the Bureau of Lands, on a matter within its competence and expertise, should first resolve the issues it.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The order of the lower court dated November 10, 1977 is hereby SET ASIDE. The restraining order issued by this Court is made permanent.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and Paras, JJ., concur.

EN BANC

[G.R. Nos. 60613-20. August 29, 1986]

ROLANDO MANGUBAT, ANTONIO CENIZA, ULDARICO ENCENZO, RUFINO NUNEZ, ANGELINA ESCANO, MANUEL DE VEYRA, BASILISA GALVAN, MATILDE JABALDE, JOSEFINA LUNA, JOSE SAYSON, LEONILA DEL ROSARIO, ENGRACIA ESCOBAR, ABELARDO CARDONA, and LEONARDO TORDECILLA, *petitioners, vs.* **THE SANDIGANBAYAN (First Division), THE PEOPLE OF THE PHILIPPINES, and DELIA PREAGIDO,** *respondents.*

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SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTION; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT COMMITTED IN CASE AT BAR.**— Given the actuality that when the Sandiganbayan ordered Delia Preagido's discharge as a state witness on March 5, 1982, her appeal from her conviction of other crimes involving moral turpitude was still pending before this Court and had not yet been finally decided, it cannot be said that said Court acted with grave abuse of discretion, correctible by *certiorari*, in ruling that despite her convictions, "Preagido has still in her favor the constitutional presumption of innocence x x x (and until) a promulgation of final conviction is made, this constitutional mandate prevails." It is a ruling not bereft of legal or logical foundation and can not, in any sense, be characterized as a whimsical, or capricious exercise of judgment.

2. **ID.; CRIMINAL PROCEDURE; DISCHARGE OF DEFENDANT TO TESTIFY AS WITNESS FOR THE GOVERNMENT OPERATES AS AN ACQUITTAL IN THE CRIMINAL CASE.**— Having been discharged from the information in order to turn state's evidence pursuant to Section 9, Rule 119, Delia Preagido can no longer be "un-discharged," to coin a word, or reverted back to the status of an accused, upon the adverse resolution, some years afterwards, of her appeal from her conviction of crimes involving moral turpitude. Her discharge as state witness, coupled with her act of testifying as witness for the People in accordance with her prior representations to the public prosecutor, operated as an acquittal which forever precludes her reinclusion as defendant in the criminal cases whence she was discharge — i.e., Criminal Cases Numbered 889, 927, 1052, 1116, 1540 and 1582 — or being charged anew for the same offenses, for an attempt or frustration thereof, or for crimes necessarily included in or necessarily including those offenses. This is settled law.

3. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ERROR IN THE DISCHARGE OF DEFENDANTS DOES NOT AFFECT THEIR COMPETENCY AS A WITNESS OR RENDER TESTIMONY INADMISSIBLE.**— The error of the Sandiganbayan, in directing Delia Preagido's discharge despite its awareness of her conviction of other crimes and the pendency

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of her appeal therefrom, if error it be, does not make Delia Preagido incompetent as a witness, or render her testimony totally untrustworthy, although it may indicate a need for caution in its assessment. Before her discharge (or even without being discharged) as a state witness pursuant to Section 9, Rule 119, Delia Preagido was not incompetent to testify in the criminal cases in which she is one of the accused. Theoretically, she had the option to testify either for the prosecution or the defense, or refuse to take the stand altogether, and this would be true regardless of whether or not she had been convicted of a crime involving moral turpitude. Where the motion for the discharge of one of the accused as state witness is granted, and it be afterwards shown that the discharge was erroneous (i.e, he was in fact one of the most guilty, or had been convicted by final and executory judgment of a crime involving moral turpitude), this would not ordinarily constitute ground for reversal on appeal of the conviction of the co-accused, or render him incompetent as a witness or his testimony inadmissible. The correctness of a trial court's determination of the existence or non-existence of the grounds prescribed by the Rules for discharge of one or some of several defendants, or the propriety of the order issued on the basis thereof, affects only the criminal liability of the persons proposed for discharge or actually discharged, but not in any sense their competence as witness of the admissibility of their testimony.

APPEARANCES OF COUNSEL

Rodolfo U. Jimenez for petitioners De Veyra, Del Rosario, Escobar, Cardona and Tordecilla.

RESOLUTION

NARVASA, J.:

Petitioners seek reconsideration of the Decision of this Court *en banc* promulgated on April 20, 1985 (135 SCRA 732) which declined to nullify on *certiorari*, as rendered in grave abuse of discretion, a resolution of the Sandiganbayan ordering the discharge of an accused to be utilized as state witness under Section 9, Rule 119 of the Rules of Court, said decision having been promulgated upon the following essential facts, to wit:

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1. In Cases Numbered 889, 927, 1052, 1116, 1540 and 1582 of the Sandiganbayan, a motion was filed by the prosecution for the discharge of three (3) of several accused to be utilized as state witnesses in accordance with Section 9, Rule 119 of the Rules of Court.

2. The motion was opposed by some of the other defendants only as regards one of the proposed state witnesses, Delia Preagido, on the ground *inter alia* that she had been previously convicted in other cases by the Sandiganbayan of 126 counts of estafa thru falsification of public/commercial documents, although she had seasonably appealed her conviction to the Supreme Court by filing the requisite petition for review.[1]

3. By order dated March 5, 1982, the Sandiganbayan overruled the opposition and directed the discharge of Delia Preagido and the two (2) others proposed as state witnesses, observing that –

> "With respect to the fact that Delia Preagido had been previously convicted by this Court in (other) cases x x x suffice it to state that these cases are still on appeal with the Supreme Court. Preagido has still in her favor the constitutional presumption of innocence. Until a promulgation of final conviction is made, this constitutional mandate prevails. x x x"

4. The Sandiganbayan thereafter received the direct testimony of Delia Preagido as state witness, over the objection of the defense; but cross-examination was deferred to give the objectors an opportunity to impugn before the Supreme Court the Sandiganbayan's acts in question.[2]

5. At the time Preagido was discharged and gave direct testimony as a state witness, the Sandiganbayan and the defense lawyers were quite evidently unaware of the precise status of Preagido's appeal.[3] The fact is that Preagido's appeal was not finally judged until November 12, 1985 when this Court resolved to

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[1] Docketed as G.R. Nos. 52528-52654.

[2] This they have since done by instituting the instant action.

[3] The record discloses that as of March 5, 1982, the last notice served on the Sandiganbayan (on December 4, 1980) was that of this Court's Resolution dated November 20, 1980 which among others granted petitioners' new counsel leave to file a SECOND MOTION FOR RECONSIDERATION

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> deny with finality her *third* motion for reconsideration — of the Resolution of August 27, 1980 which, like an earlier one dated February 22, 1980, denied her petition for review — after which entry of judgment was made on November 21, 1985.[4]

In their motion for reconsideration of the aforesaid Decision dated April 20, 1985, petitioners argue that:

1) Delia Preagido "had become disqualified from turning state witness by reason of her conviction" of other crimes involving moral turpitude; and
2) "the qualification of non-conviction of any offense involving moral turpitude is as equally important as, if not more important than, the requirement of absolute necessity of the testimony. It should be so because it cuts deep into one's probity for truth. A witness infirmed by moral turpitude is obviously untrustworhty;" an error in the discharge of an accused who had been previously convicted would not "erase the moral turpitude so that the witness, otherwise untrustworthy, may now be trustworthy."

Given the actuality that when the Sandiganbayan ordered Delia Preagido's discharge as a state witness on March 5, 1982, her appeal from her conviction of other crimes involving moral turpitude was still pending before this Court and had not yet been finally decided, it cannot be said that said Court acted with grave abuse of discretion, correctible by *certiorari*, in ruling that despite her convictions, "Preagido has still in her favor the constitutional presumption of innocence x x x (and until) a promulgation of final conviction is made, this constitutional mandate prevails." It is a ruling not bereft of legal or logical foundation and can not, in any sense, be characterized as a whimsical, or capricious exercise of judgment.[5]

AND/OR MOTION FOR NEW TRIAL and required respondents to comment thereon.

[4] This was seven (7) months after this Court had dismissed the petition at bar on April 20, 1985: see opening statement of this resolution.

[5] *Alafriz v. Nable*, 72 Phil. 280, cited in *Sichangco v. Board of Commissioners of Immigration*, 94 SCRA 61; *Palma v. Q & S Inc.*, 123 Phil. 960, cited in Phil. Law Dictionary, 2d ed.

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At any rate, the act can no longer be undone. Having been discharged from the information in order to turn state's evidence pursuant to Section 9, Rule 119, Delia Preagido can no longer be "un-discharged," to coin a word, or reverted back to the status of an accused, upon the adverse resolution, some years afterwards, of her appeal from her conviction of crimes involving moral turpitude. Her discharge as state witness, coupled with her act of testifying as witness for the People in accordance with her prior representations to the public prosecutor, operated as an acquittal which forever precludes her reinclusion as defendant in the criminal cases whence she was discharged - i.e., Criminal Cases Numbered 889, 927, 1052, 1116, 1540 and 1582 — or being charged anew for the same offenses, for an attempt or frustration thereof, or for crimes necessarily included in or necessarily including those offenses. This is settled law.[6]

Nor may the error of the Sandiganbayan, assuming it to be one, in directing Delia Preagido's discharge despite its awareness of her conviction of other crimes and the pendency of her appeal therefrom, be considered a reversible one.[7] In any event, the error, if error it be, does not make Delia Preagido incompetent as a witness, or render her testimony totally untrustworthy,[8] although it may indicate a need for caution in its assessment.[9] This, too, is settled law. Thus, regardless of whether her acquittal

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[6] Sec. 11, Rule 119, Rules of Court of 1964; *People v. Taruc*, 115 Phil. 113; *Bernardo v. del Rosario*, 10 SCRA 140, 144; *People v. Ompad*, 26 SCRA 750; *People v. Tabayoyong*, 104 SCRA 71.

[7] *vide*, *People v. Marcellana*, 44 Phil. 591; *People v. Castaneda*, 63 Phil. 480; *People v. Bautista*, 106 Phil. 39.

[8] *vide*, *U.S. v. Abanzado*, 37 Phil. 658; *U.S. v. Alabot*, 38 Phil. 698; *People v. Badilla*, 48 Phil, 718, 735-736; *People vs. Castañeda*, 63 Phil. 480; *People v. Pardo*, 79 Phil. 568; *People v. Mendiola*, 82 Phil. 740; *People v. Faltado*, 84 Phil, 89; 94-95; *People v. Bacsa*, 104 Phil. 136, 140-141; *People v. Bautista*, 106 Phil. 38, 44; *People v. Manigbas*, 109 Phil. 469, 478; *People v. Jamero*, 24 SCRA 206; *People v. Ompad*, 26 SCRA 750.

[9] *vide*, *People v. Castañeda*, 63 Phil. 480, 485, *supra*, *People v. Jamero*, 24 SCRA 206, *supra; People v. Ompad*, 26 SCRA 750, *supra*.

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could be adjudged erroneous in the light of subsequently discovered facts, Delia Preagido's competency as a witness cannot be seriously contested. She cannot, in the premises, be kept away from the witness box at the instance of her co-accused.

Before her discharge (or even without being discharged) as a state witness pursuant to Section 9, Rule 119, Delia Preagido was not incompetent to testify in the criminal cases in which she is one of the accused. Theoretically, she had the option to testify either for the prosecution or the defense, or refuse to take the stand altogether invoking, in the latter case, the provisions of Section 1, (e) and (f), Rule 115; and this would be true regardless of whether or not she bad been convicted of a crime involving moral turpitude. Of course, her act of giving evidence for the prosecution without being first discharged as a state witness would not operate as an acquittal or otherwise affect her contingent criminal liability; and her testimony thus given would have been admissible against herself and her co-accused.

On the other hand, if the motion filed by the Fiscal for her discharge as a state witness under said Section 9 of Rule 119 had been denied for one reason or another – e.g., she was shown to be the most guilty, or to have been convicted by final and executory judgment of a crime involving moral turpitude — the failure of the motion would not have rendered her incompetent as a witness. She might subsequently still have opted to depose as a witness for the defense, or even for the prosecution; and no attempt to disqualify her or her testimony on the ground that she had been found unworthy to be discharged as a state witness would have been proper.

Again, where, as here, the motion for her discharge as state witness were granted, and it be afterwards shown that her discharge was erroneous (i.e., she was in fact one of the most guilty, or had been convicted by final and executory judgment of a crime involving moral turpitude), this would not as aforestated ordinarily constitute ground for reversal on appeal of the conviction of her co-accused, or render her incompetent as a witness or her testimony inadmissible.

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In fine, the correctness of a trial court's determination of the existence or non-existence of the grounds prescribed by the Rules for discharge of one or some of several defendants, or the propriety of the order issued on the basis thereof, affects only the criminal liability of the persons proposed for discharge or actually discharged, but not in any sense their competency as witness or the admissibility of their testimony.[10]

Finally, the rule does not make the testimony of the state witness conclusive, any more than does an error in the application of the rule make the testimony essentially worthless. The state witness' testimony is subject to the same objections, and the same standards of assessment, as that of any other witness.[11] All that has been done in the premises is to make available to the prosecution, and to put on record, Delia Preagido's knowledge of the relevant facts. In no sense has the prerogative or the capacity of the defense been diminished or otherwise restricted, to expose her testimony as incredible, or contradict her declarations by other proof.

WHEREFORE, the Court resolves to deny the motion for reconsideration and to declare the denial final.

SO ORDERED.

Feria, Fernan, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and *Paras, JJ.,* concur.

Teehankee, C.J. and *Yap, J.,* took no part.

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[10] *vide, U.S. v. Abanzado,* 37 Phil. 658, 668-669, *supra*; *U.S. v. Alabot,* 30 Phil 693, 701, *supra*; *People v. Castañeda,* 63 Phil 480, 484, *supra.*

[11] *vide, People v. Dugundong,* 108 Phil. 682, 687, *People v. Tabayoyong,* 104 SCRA 724, 739-740.