SECOND DIVISION

[G.R. Nos. 172070-72, June 01, 2007]

VICENTE P. LADLAD, NATHANAEL S. SANTIAGO, RANDALL B. ECHANIS, AND REY CLARO C. CASAMBRE, PETITIONERS, VS. SENIOR STATE PROSECUTOR EMMANUEL Y. VELASCO, SENIOR STATE PROSECUTOR JOSELITA C. MENDOZA, SENIOR STATE PROSECUTOR AILEEN MARIE S. GUTIERREZ, STATE PROSECUTOR IRWIN A. MARAYA, AND STATE PROSECUTOR MERBA A. WAGA, IN THEIR CAPACITY AS MEMBERS OF THE DEPARTMENT OF JUSTICE PANEL OF PROSECUTORS INVESTIGATING I.S. NOS. 2006-225, 2006-226 AND 2006-234, JUSTICE SECRETARY RAUL M. GONZALEZ, DIRECTOR GENERAL ARTURO C. LOMIBAO, IN HIS CAPACITY AS CHIEF, PHILIPPINE NATIONAL POLICE, P/CSUPT. RODOLFO B. MENDOZA, JR., AND P/SUPT. YOLANDA G. TANIGUE, RESPONDENTS.

[G.R. NOS. 172074-76]

LIZA L. MAZA, JOEL G. VIRADOR, SATURNINO C. OCAMPO, TEODORO A. CASIÑO, CRISPIN B. BELTRAN, AND RAFAEL V. MARIANO, PETITIONERS, VS. RAUL M. GONZALEZ, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE, JOVENCITO R. ZUÑO, IN HIS CAPACITY AS CHIEF STATE PROSECUTOR, THE PANEL OF INVESTIGATING PROSECUTORS COMPOSED OF EMMANUEL Y. VELASCO, JOSELITA C. MENDOZA, AILEEN MARIE S. GUTIERREZ, IRWIN A. MARAYA AND MERBA A. WAGA (PANEL), RODOLFO B. MENDOZA, IN HIS CAPACITY AS ACTING DEPUTY DIRECTOR, DIRECTORATE FOR INVESTIGATION AND DETECTIVE MANAGEMENT (DIDM), YOLANDA G. TANIGUE, IN HER CAPACITY AS ACTING EXECUTIVE OFFICER OF DIDM, THE DEPARTMENT OF JUSTICE (DOJ), AND THE PHILIPPINE NATIONAL POLICE (PNP), RESPONDENTS.

[G.R. NO. 175013]

CRISPIN B. BELTRAN, PETITIONER, QUISUMBING, J., CHAIRPERSON, VS. PEOPLE OF THE PHILIPPINES, SECRETARY RAUL M. GONZALEZ, IN HIS CAPACITY AS THE SECRETARY OF JUSTICE AND OVERALL SUPERIOR OF THE PUBLIC PROSECUTORS, HONORABLE ENCARNACION JAJA G. MOYA, IN HER CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 146, AND HONORABLE ELMO M. ALAMEDA, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 150, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

These are consolidated petitions for the writs of prohibition and certiorari to enjoin petitioners' prosecution for Rebellion and to set aside the rulings of the Department of Justice (DOJ) and the Regional Trial Court of Makati City (RTC Makati) on the investigation and prosecution of petitioners' cases.

The Facts

Petitioner in G.R. No. 175013, Crispin B. Beltran (Beltran), and petitioners in G.R. Nos. 172074-76, Liza L. Maza (Maza), Joel G. Virador (Virador), Saturnino C. Ocampo (Ocampo), Teodoro A. Casiño (Casiño), and Rafael V. Mariano (Mariano),[1] are members of the House of Representatives representing various party-list groups.[2] Petitioners in G.R. Nos. 172070-72 are private individuals. Petitioners all face charges for Rebellion under Article 134 in relation to Article 135 of the Revised Penal Code in two criminal cases pending with the RTC Makati.

G.R. No. 175013 (The Beltran Petition)

Following the issuance by President Gloria Macapagal-Arroyo of Presidential Proclamation No. 1017 on 24 February 2006 declaring a "State of National Emergency," police officers[3] arrested Beltran on 25 February 2006, while he was en route to Marilao, Bulacan, and detained him in Camp Crame, Quezon City. Beltran was arrested without a warrant and the arresting officers did not inform Beltran of the crime for which he was arrested. On that evening, Beltran was subjected to an inquest at the Quezon City Hall of Justice for Inciting to Sedition under Article 142 of the Revised Penal Code based on a speech Beltran allegedly gave during a rally in Quezon City on 24 February 2006, on the occasion of the 20th anniversary of the EDSA Revolution. The inquest was based on the joint affidavit of Beltran's arresting officers who claimed to have been present at the rally. The inquest prosecutor[4] indicted Beltran and filed the corresponding Information with the Metropolitan Trial Court of Quezon City (MeTC).[5]

The authorities brought back Beltran to Camp Crame where, on 27 February 2006, he was subjected to a second inquest, with 1st Lt. Lawrence San Juan (San Juan), this time for Rebellion. A panel of State prosecutors[6] from the DOJ conducted this second inquest. The inquest was based on two letters, both dated 27 February 2006, of Yolanda Tanigue (Tanigue) and of Rodolfo Mendoza (Mendoza). Tanigue is the Acting Executive Officer of the Criminal Investigation and Detection Group (CIDG), Philippine National Police (PNP), while Mendoza is the Acting Deputy Director of the CIDG. The letters referred to the DOJ for appropriate action the results of the CIDG's investigation implicating Beltran, the petitioners in G.R. Nos. 172074-76, San Juan, and several others as "leaders and promoters" of an alleged foiled plot to overthrow the Arroyo government. The plot was supposed to be carried out jointly by members of the Communist Party of the Philippines (CPP) and the Makabayang Kawal ng Pilipinas (MKP), which have formed a "tactical alliance."

On 27 February 2006, the DOJ panel of prosecutors issued a Resolution finding probable cause to indict Beltran and San Juan as "leaders/promoters" of Rebellion. The panel then filed an Information with the RTC Makati. The Information alleged that Beltran, San Juan, and other individuals "conspiring and confederating with each other, x x x, did then and there willfully, unlawfully, and feloniously form a tactical alliance between the CPP/NPA, renamed as Partidong Komunista ng Pilipinas (PKP) and its armed regular members as Katipunan ng Anak ng Bayan (KAB) with the Makabayang Kawal ng Pilipinas (MKP) and thereby rise publicly and take up arms against the duly constituted government, x x x."[7] The Information, docketed as Criminal Case No. 06-452, was raffled to Branch 137 under Presiding Judge Jenny Lind R. Aldecoa-Delorino (Judge Delorino).

Beltran moved that Branch 137 make a judicial determination of probable cause against him.[8] Before the motion could be resolved, Judge Delorino recused herself from the case which was re-raffled to Branch 146 under Judge Encarnacion Jaja-Moya (Judge Moya).

In its Order dated 31 May 2006, Branch 146 sustained the finding of probable cause against Beltran.[9] Beltran sought reconsideration but Judge Moya also inhibited herself from the case without resolving Beltran's motion. Judge Elmo M. Alameda of Branch 150, to whom the case was re-raffled, issued an Order on 29 August 2006 denying Beltran's motion.

Hence, the petition in G.R. No. 175013 to set aside the Orders dated 31 May 2006 and 29 August 2006 and to enjoin Beltran's prosecution.

In his Comment to the petition, the Solicitor General claims that Beltran's inquest for Rebellion was valid and that the RTC Makati correctly found probable cause to try Beltran for such felony.

G.R. Nos. 172070-72 and 172074-76 (The Maza and Ladlad Petitions)

Based on Tanigue and Mendoza's letters, the DOJ sent subpoenas to petitioners on 6 March 2006 requiring them to appear at the DOJ Office on 13 March 2006 "to get copies of the complaint and its attachment." Prior to their receipt of the subpoenas, petitioners had quartered themselves inside the House of Representatives building for fear of being subjected to warrantless arrest.

During the preliminary investigation on 13 March 2006, the counsel for the CIDG presented a masked man, later identified as Jaime Fuentes (Fuentes), who claimed to be an eyewitness against petitioners. Fuentes subscribed to his affidavit before respondent prosecutor Emmanuel Velasco who then gave copies of the affidavit to media members present during the proceedings. The panel of prosecutors[10] gave petitioners 10 days within which to file their counter-affidavits. Petitioners were furnished the complete copies of documents supporting the CIDG's letters **only** on 17 March 2006.

Petitioners moved for the inhibition of the members of the prosecution panel for lack of impartiality and independence, considering the political milieu under which petitioners were investigated, the statements that the President and the Secretary of Justice made to the media regarding petitioners' case,[11] and the manner in which the prosecution panel conducted the preliminary investigation. The DOJ panel of prosecutors denied petitioners' motion on 22 March 2006. Petitioners sought reconsideration and additionally prayed for the dismissal of the cases. However, the panel of prosecutors denied petitioners' motions on 4 April 2006.

Petitioners now seek the nullification of the DOJ Orders of 22 March 2006 and 4 April 2006.

Acting on petitioners' prayer for the issuance of an injunctive writ, the Court issued a status quo order on 5 June 2006. Prior to this, however, the panel of prosecutors, on 21 April 2006, issued a Resolution finding probable cause to charge petitioners and 46 others with Rebellion. The prosecutors filed the corresponding Information with Branch 57 of the RTC Makati, docketed as Criminal Case No. 06-944 (later consolidated with Criminal Case No. 06-452 in Branch 146), charging petitioners and their co-accused as "principals, masterminds, [or] heads" of a Rebellion.[12] Consequently, the petitioners in G.R. Nos. 172070-72 filed a supplemental petition to enjoin the prosecution of Criminal Case No. 06-944.

In his separate Comment to the Maza petition, the Solicitor General submits that the preliminary investigation of petitioners was not tainted with irregularities. The Solicitor General also claims that the filing of Criminal Case No. 06-944 has mooted the Maza petition.

The Issues

The petitions raise the following issues:

1. In G.R. No. 175013, (a) whether the inquest proceeding against Beltran for Rebellion was valid and (b) whether there is probable cause to indict Beltran for Rebellion; and

2. In G.R. Nos. 172070-72 and 172074-76, whether respondent prosecutors should be enjoined from continuing with the prosecution of Criminal Case No. 06-944.[13]

The Ruling of the Court

We find the petitions meritorious.

On the Beltran Petition

The Inquest Proceeding against Beltran for Rebellion is Void.

Inquest proceedings are proper only when the accused has been lawfully arrested without

warrant.[14] Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides the instances when such warrantless arrest may be effected, thus:
Arrest without warrant; when lawful.— A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

x x x x

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.
The joint affidavit of Beltran's arresting officers[15] states that the officers arrested Beltran, without a warrant,[16] for Inciting to Sedition, and not for Rebellion. Thus, the inquest prosecutor could only have conducted – as he did conduct – an inquest for Inciting to Sedition and no other. Consequently, when another group of prosecutors subjected Beltran to a second inquest proceeding for Rebellion, they overstepped their authority rendering the second inquest void. None of Beltran's arresting officers saw Beltran commit, in their presence, the crime of Rebellion. Nor did they have personal knowledge of facts and circumstances that Beltran had just committed Rebellion, sufficient to form probable cause to believe that he had committed Rebellion. What these arresting officers alleged in their affidavit is that they saw and heard Beltran make an allegedly seditious speech on 24 February 2006.[17]

Indeed, under DOJ Circular No. 61, dated 21 September 1993, the initial duty of the inquest officer is to determine if the arrest of the detained person was made "in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113."[18] If the arrest was not properly effected, the inquest officer should proceed under Section 9 of Circular No. 61 which provides:
Where Arrest Not Properly Effected.— Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he shall:

a) recommend the release of the person arrested or detained;
b) note down the disposition on the referral document;
c) prepare a brief memorandum indicating the reasons for the action taken; and
d) forward the same, together with the record of the case, to the City or Provincial Prosecutor for appropriate action.

Where the recommendation for the release of the detained person is approved by the City or Provincial Prosecutor **but the evidence on hand warrant the conduct of a regular preliminary investigation, the order of release shall be served on the officer having**

custody of said detainee and shall direct the said officer to serve upon the detainee the subpoena or notice of preliminary investigation, together with the copies of the charge sheet or complaint, affidavit or sworn statements of the complainant and his witnesses and other supporting evidence. (Emphasis supplied)
For the failure of Beltran's panel of inquest prosecutors to comply with Section 7, Rule 112 in relation to Section 5, Rule 113 and DOJ Circular No. 61, we declare Beltran's inquest void.[19] Beltran would have been entitled to a preliminary investigation had he not asked the trial court to make a judicial determination of probable cause, which effectively took the place of such proceeding.

There is No Probable Cause to Indict Beltran for Rebellion.

Probable cause is 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."[20] To accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.[21] However, in the few exceptional cases where the prosecutor abused his discretion by ignoring a clear insufficiency of evidence to support a finding of probable cause, thus denying the accused his right to substantive and procedural due process, we have not hesitated to intervene and exercise our review power under Rule 65 to overturn the prosecutor's findings.[22] This exception holds true here.

Rebellion under Article 134 of the Revised Penal Code is committed –
[B]y rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.
The elements of the offense are:

1. That there be a (a) public uprising and (b) taking arms against the Government; and

2. That the purpose of the uprising or movement is either –

   (a) to remove from the allegiance to said Government or its laws:

   (1) the territory of the Philippines or any part thereof; or
   (2) any body of land, naval, or other armed forces; or

   (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[23]

Thus, by its nature, rebellion is a crime of the masses or multitudes involving crowd action done in furtherance of a political end.[24]

The evidence before the panel of prosecutors who conducted the inquest of Beltran for Rebellion consisted of the affidavits and other documents[25] attached to the CIDG letters. We have gone over these documents and find merit in Beltran's contention that the same are insufficient to show probable cause to indict him for Rebellion. The bulk of the documents consists of affidavits, some of which were sworn before a notary public, executed by members of the military and some civilians. Except for two affidavits, executed by a certain Ruel Escala (Escala), dated 20 Febuary 2006,[26] and Raul Cachuela (Cachuela), dated 23 February 2006,[27] none of the affidavits mentions Beltran.[28] In his affidavit, Escala recounted that in the afternoon of 20 February 2006, he saw Beltran, Ocampo, Casiño, Maza, Mariano, Virador, and other individuals on board a vehicle which entered a chicken farm in Bucal, Padre Garcia, Batangas and that after the passengers alighted, they were met by another individual who looked like San Juan. For his part, Cachuela stated that he was a former member of the CPP and that (1) he attended the CPP's "10th Plenum" in 1992 where he saw Beltran; (2) he took part in criminal activities; and (3) the arms he and the other CPP members used were purchased partly from contributions by Congressional members, like Beltran, who represent party-list groups affiliated with the CPP.

The allegations in these affidavits are far from the proof needed to indict Beltran for taking part in an armed public uprising against the government. What these documents prove, at best, is that Beltran was in Bucal, Padre Garcia, Batangas on 20 February 2006 and that 14 years earlier, he was present during the 1992 CPP Plenum. None of the affidavits stated that Beltran committed specific acts of promoting, maintaining, or heading a rebellion as found in the DOJ Resolution of 27 February 2006. None of the affidavits alleged that Beltran is a leader of a rebellion. Beltran's alleged presence during the 1992 CPP Plenum does not automatically make him a leader of a rebellion.

In fact, Cachuela's affidavit stated that Beltran attended the 1992 CPP Plenum as "Chairman, Kilusang Mayo Uno (KMU)." Assuming that Beltran is a member of the CPP, which Beltran does not acknowledge, mere membership in the CPP does not constitute rebellion.[29] As for the alleged funding of the CPP's military equipment from Beltran's congressional funds, Cachuela's affidavit merely contained a general conclusion without any specific act showing such funding. Cachuela merely alleged that *"ang mga ibang mga pondo namin ay galing sa mga party list na naihalal sa Kongreso tulad ng BAYAN MUNA – pimumunuan nila SATUR OCAMPO at CRISPIN BELTRAN, x x x."*[30] Such a general conclusion does not establish probable cause.

In his Comment to Beltran's petition, the Solicitor General points to Fuentes' affidavit, dated 25 February 2006,[31] as basis for the finding of probable cause against Beltran as Fuentes provided details in his statement regarding meetings Beltran and the other petitioners attended in 2005 and 2006 in which plans to overthrow violently the Arroyo government were allegedly discussed, among others.

The claim is untenable. Fuentes' affidavit was not part of the attachments the CIDG referred to the DOJ on 27 February 2006. Thus, the panel of inquest prosecutors did not have Fuentes' affidavit in their possession when they conducted the Rebellion inquest against Beltran on that day. Indeed, although this affidavit is dated 25 February 2006, the CIDG first presented it only during the preliminary investigation of the other petitioners on 13 March 2006 during which Fuentes subscribed to his statement before respondent prosecutor Velasco.

Respondent prosecutors later tried to remedy this fatal defect by *motu proprio* submitting to Branch 137 of the RTC Makati Fuentes' affidavit as part of their Comment to Beltran's motion for judicial determination of probable cause. Such belated submission, a tacit admission of the dearth of evidence against Beltran during the inquest, does not improve the prosecution's case. Assuming them to be true, what the allegations in Fuentes' affidavit make out is a case for Conspiracy to Commit Rebellion, punishable under Article 136 of the Revised Penal Code, not Rebellion under Article 134. Attendance in meetings to discuss, among others, plans to bring down a government is a mere preparatory step to commit the acts constituting Rebellion under Article 134. Even the prosecution acknowledged this, since the felony charged in the Information against Beltran and San Juan in Criminal Case No. 06-452 is Conspiracy to Commit Rebellion and not Rebellion. The Information merely alleged that Beltran, San Juan, and others conspired to form a "tactical alliance" to commit Rebellion. Thus, the RTC Makati erred when it nevertheless found probable cause to try Beltran for Rebellion based on the evidence before it.

The minutes[32] of the 20 February 2006 alleged meeting in Batangas between members of MKP and CPP, including Beltran, also do not detract from our finding. Nowhere in the minutes was Beltran implicated. While the minutes state that a certain "Cris" attended the alleged meeting, there is no other evidence on record indicating that "Cris" is Beltran. San Juan, from whom the "flash drive" containing the so-called minutes was allegedly taken, denies knowing Beltran.

To repeat, none of the affidavits alleges that Beltran is promoting, maintaining, or heading a Rebellion. The Information in Criminal Case No. 06-452 itself does not make such allegation. Thus, even assuming that the Information validly charges Beltran for taking part in a Rebellion, he is entitled to bail as a matter of right since there is no allegation in the Information that he is a leader or promoter of the Rebellion.[33] However, the Information in fact merely charges Beltran for "conspiring and confederating" with others in forming a "tactical alliance" to commit rebellion. As worded, the Information does not charge Beltran with Rebellion but with Conspiracy to Commit Rebellion, a bailable offense.[34]

On the Ladlad and Maza Petitions

The Preliminary Investigation was Tainted With Irregularities.

As in the determination of probable cause, this Court is similarly loath to enjoin the

prosecution of offenses, a practice rooted on public interest as the speedy closure of criminal investigations fosters public safety.[35] However, such relief in equity may be granted if, among others, the same is necessary (a) to prevent the use of the strong arm of the law in an oppressive and vindictive manner[36] or (b) to afford adequate protection to constitutional rights.[37] The case of the petitioners in G.R. Nos. 172070-72 and 172074-76 falls under these exceptions.

The procedure for preliminary investigation of offenses punishable by at least four years, two months and one day is outlined in Section 3, Rule 112 of the Revised Rules of Criminal Procedure, thus:
Procedure.—The preliminary investigation shall be conducted in the following manner:

(a) **The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public,** each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (Emphasis supplied)

Instead of following this procedure **scrupulously**, as what this Court had mandated in an earlier ruling, "so that the constitutional right to liberty of a potential accused can be protected from any material damage,"[38] respondent prosecutors nonchalantly disregarded it. Respondent prosecutors failed to comply with Section 3(a) of Rule 112 which provides that the complaint (which, with its attachment, must be of such number as there are respondents) be accompanied by the affidavits of the complainant and his witnesses, subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public. Respondent prosecutors treated the unsubscribed letters of Tanigue and Mendoza of the CIDG, PNP as complaints[39] and accepted the affidavits attached to the letters even though some of them were notarized by a notary public without any showing that a prosecutor or qualified government official was unavailable as required by Section 3(a) of Rule 112.

Further, Section 3(b) of Rule 112 mandates that the prosecutor, after receiving the complaint, must determine if there are grounds to continue with the investigation. If there is none, he shall dismiss the case, otherwise he shall "issue a subpoena to the respondents." Here, after receiving the CIDG letters, respondent prosecutors peremptorily issued subpoenas to petitioners requiring them to appear at the DOJ office on 13 March 2006 "to secure copies of the complaints and its attachments." During the investigation, respondent prosecutors allowed the CIDG to present a masked Fuentes who subscribed to an affidavit before respondent prosecutor Velasco. Velasco proceeded to distribute copies of Fuentes' affidavit not to petitioners or their counsels but to members of the media who covered the proceedings. Respondent prosecutors then required petitioners to submit their counter-affidavits in 10 days. It was **only** four days later, on 17 March 2006, that petitioners received the complete copy of the attachments to the CIDG letters.

These uncontroverted facts belie respondent prosecutors' statement in the Order of 22 March 2006 that the preliminary investigation "was done in accordance with the Revised Rules o[f] Criminal Procedure."[40] Indeed, by peremptorily issuing the subpoenas to petitioners, tolerating the complainant's antics during the investigation, and distributing copies of a witness' affidavit to members of the media knowing that petitioners have not had the opportunity to examine the charges against them, respondent prosecutors not only trivialized the investigation but also lent credence to petitioners' claim that the entire

proceeding was a sham.

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand. Thus, we have characterized the right to a preliminary investigation as not "a mere formal or technical right" but a "substantive" one, forming part of due process in criminal justice.[41] This especially holds true here where the offense charged is punishable by *reclusion perpetua* and may be non-bailable for those accused as principals.

Contrary to the submission of the Solicitor General, respondent prosecutors' filing of the Information against petitioners on 21 April 2006 with Branch 57 of the RTC Makati does not moot the petitions in G.R. Nos. 172070-72 and 172074-76. Our power to enjoin prosecutions cannot be frustrated by the simple filing of the Information with the trial court.

On Respondent Prosecutors' Lack of Impartiality

We find merit in petitioners' doubt on respondent prosecutors' impartiality. Respondent Secretary of Justice, who exercises supervision and control over the panel of prosecutors, stated in an interview on 13 March 2006, the day of the preliminary investigation, that, **"We [the DOJ] will just declare probable cause, then it's up to the [C]ourt to decide** x x x."[42] Petitioners raised this issue in their petition,[43] but respondents never disputed the veracity of this statement. This clearly shows pre-judgment, a determination to file the Information even in the absence of probable cause.

A Final Word

The obvious involvement of political considerations in the actuations of respondent Secretary of Justice and respondent prosecutors brings to mind an observation we made in another equally politically charged case. We reiterate what we stated then, if only to emphasize the importance of maintaining the integrity of criminal prosecutions in general and preliminary investigations in particular, thus:

[W]e cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public's perception of the impartiality of the prosecutor be enhanced.[44]

WHEREFORE, we **GRANT** the petitions. In G.R. No. 175013, we **SET ASIDE** the Order dated 31 May 2006 of the Regional Trial Court, Makati City, Branch 146 and the Order dated 29 August 2006 of the Regional Trial Court, Makati City, Branch 150. In G.R. Nos. 172070-72 and 172074-76, we **SET ASIDE** the Orders dated 22 March 2006 and 4 April 2006 issued by respondent prosecutors. We **ORDER** the Regional Trial Court, Makati City, Branch 150 to **DISMISS** Criminal Case Nos. 06-452 and 06-944.

SO ORDERED.

Quisumbing, (Chairperson), J., concur.
Tinga, J., in the result.
Carpio-Morales, J., on official leave.
Velasco, Jr., J., no part to relationship to resp. Velasco.

---

[1] Beltran is also one of the petitioners in G.R. Nos. 172074-76.

[2] Beltran and Mariano represent Anakpawis; Virador, Casiño, and Ocampo represent Bayan Muna; and Maza represents Gabriela.

[3] Police Chief Inspector Rino V. Corpuz, Police Inspector Honesto Gaton, and SPO1 Arnold J. Casumpang.

[4] Atty. Ben V. Dela Cruz.

[5] During the inquest and in a motion filed with the MeTC, Beltran protested his detention, invoking his parliamentary immunity from arrest under Section 11, Article VI of the 1987 Constitution since Inciting to Sedition is punishable with a maximum penalty of less than six years. Finding merit in Beltran's motion, the MeTC ordered Beltran's release in its Order of 13 March 2006. This ruling was never implemented.

[6] Composed of Attys. Emmanuel Y. Velasco, Rosalina P. Aquino, Aileen Marie S. Gutierrez, Irwin A. Maraya, and Maria Cristina P. Rilloraza.

[7] *Rollo* (G.R. No. 175013), pp. 84-85; Annex "I." The Information reads in full:
That prior to February 24, 2006 and dates subsequent thereto, in Makati City and within the jurisdiction of this Honorable Court (and other parts of the Philippines) the above named accused 1Lt. LAWRENCE SAN JUAN, being then a member of the Philippine Army, CRISPIN BELTRAN y BERTIZ, duly elected member of the House of Representatives, together with several other JOHN/JANE DOES whose present identities and whereabouts are presently unknown, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously, form a tactical alliance between the CPP/NPA, renamed as Partidong Komunista and Pilipinas (PKP) and its armed regular members as Katipunan ng Anak ng Bayan (KAB) with the Makabayang Kawal ng Pilipinas (MKP) and thereby rise publicly and take up arms against the duly constituted government, such as, but not limited to, conducting bombing activities and liquidation of military and police personnel, for the purpose of removing allegiance from the Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers and prerogatives and ultimately to overthrow President Gloria Macapagal Arroyo and the present duly constituted Government.

[8] Pending resolution of Beltran's motion, the DOJ sought leave from Branch 137 to file an Amended Information in Criminal Case No. 06-452, impleading additional 46 defendants, including the petitioners in G.R. Nos. 172074-76 and 172070-72 and encompassing crimes committed since the 1960s. On petitioners' motion, Branch 137 expunged the Amended Information for being an entirely new Information.

[9] *Rollo* (G.R. No. 175013), p. 59; Annex "A." The Order of 31 May 2006 pertinently reads: "After examining the record of this case, the Court finds probable cause to believe that accused 1st Lt. Lawrence San Juan, P.A. and Crispin Beltran y Bertiz committed the crime charged. Let a commitment order be issued."

[10] Composed of Attys. Emmanuel Y. Velasco, Joselita C. Mendoza, Aileen Marie S. Gutierrez, Irwin A. Maraya, and Merba A. Waga.

[11] *Rollo* (G.R. Nos. 172074-76), pp. 99-102; Annexes "K" and "L." The President was quoted by a daily, thus: "They [petitioners in the Maza petition] have committed a crime. They are committing a continuing crime. And we have laws to deal with that. x x x." (The Philippine Star, 12 March 2006, p. 1). Respondent Gonzalez was also reported to have said: "We will just declare probable cause, then it's up to the Court to decide. x x x." (The Philippine Star, 14 March 2006, p. 6)

[12] *Rollo* (G.R. Nos. 172070-72), pp. 540-541; Annex "11."

[13] The Solicitor General claims that the petitioners in the Maza petition (except Beltran) are guilty of forum-shopping for having filed with the Court of Appeals a petition for certiorari and prohibition (docketed as CA G.R. SP No. 93975) "demanding the conduct of preliminary investigation." However, the records show that the petition in CA G.R. SP No. 93975 sought the nullification of a DOJ Order, dated 1 March 2006, apparently relating to the warrantless arrest of Maza, Ocampo, Casiño, Mariano, and Virador. Also, the Court of Appeals considered CA G.R. SP No. 93975 "closed and terminated" in its Resolution of 28 June 2006.

[14] Section 7, Rule 112 provides: "*When accused lawfully arrested without warrant.*— **When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing Rules.** In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule." (Emphasis supplied)

[15] *Rollo* (G.R. No. 175013), pp. 540-541; Annex "PP-1." Beltran's arrest was later declared illegal by the MeTC for violating Beltran's parliamentary immunity from arrest under Section 11, Article VI of the Constitution. It appears the prosecution did not appeal from this ruling.

[16] Beltran also claims that on the night of his arrest, his jailors showed him a warrant of arrest, dated 7 October 1985, issued by the Regional Trial Court of Quezon City, Branch 84, in connection with Criminal Case No. Q-21905 for "inciting to rebellion" which had been archived in October 1985.

[17] Even under the rulings in *Garcia-Padilla v. Enrile* (No. L-61388, 20 April 1983, 121 SCRA 472 also reported as *Parong v. Enrile*, 206 Phil. 392) and *Umil v. Ramos* (G.R. No. 81567, 9 July 1990, 187 SCRA 811) where the Court characterized Rebellion as a "continuing offense" thus allowing the warrantless arrest of its perpetrators, Beltran's inquest for Rebellion remains void as he was not arrested for committing such felony.

[18] "Section 8. *Initial Duty of the Inquest Officer*.— The Inquest Officer must first determine if the arrest of the detained person was made in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure, as amended, x x x."

[19] *Larranaga v. Court of Appeals*, 346 Phil. 241 (1997); *Go v. Court of Appeals*, G.R. No. 101837, 11 February 1992, 206 SCRA 138.

[20] *Cruz, Jr. v. People*, G.R. No. 110436, 27 June 1994, 233 SCRA 439.

[21] *Acuña v. Deputy Ombudsman for Luzon*, G.R. No. 144692, 31 January 2005, 450 SCRA 232.

[22] See *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192; *Salonga v. Cruz-Paño*, No. L-59524, 18 February 1985, 134 SCRA 438.

[23] II L. B. REYES, THE REVISED PENAL CODE 84 (14th ed., 1998).

[24] *People v. Lovedioro*, 320 Phil. 481 (1995).

[25] Including official receipts, publications, articles, inventories, and photocopies of ID pictures.

[26] *Rollo* (G.R. No. 175013), pp. 690-693; Annex "PP-27."

[27] Id., pp. 605-615; Annex "PP-14."

[28] The affidavits mainly concern the organization and recruitment of members of MKP, the aborted participation of MKP members in a rally on 24 February 2006, and the criminal activities of CPP members.

[29] See *Buscayno v. Military Commissions Nos. 1, 2, 6 and 25*, 196 Phil. 41 (1981); *People v. Hernandez*, 120 Phil. 191 (1964).

[30] *Rollo* (G.R. No. 175013), p. 613.

[31] *Rollo* (G.R. Nos. 172070-72), pp. 59-67; Annex "D."

[32] *Rollo* (G.R. No. 175013), pp. 657-674; Annex "PP-18."

[33] Article 135 of the Revised Penal Code pertinently provides:

"Any person who promotes, maintains, or heads a rebellion or insurrection shall suffer the penalty of *reclusion perpetua*.
Any person merely participating or executing the commands of others in rebellion, insurrection or *coup d'etat* shall suffer the penalty of *reclusion temporal*."

[34] Under Article 136 of the Revised Penal Code, Conspiracy to Commit Rebellion is punishable by *prision correccional* in its maximum period and a fine which shall not exceed five thousand pesos (P5,000).

[35] *Hernandez v. Albano*, 125 Phil. 513 (1967).

[36] *Dimayuga v. Fernandez*, 43 Phil. 304 (1922).

[37] *Hernandez v. Albano*, supra.

[38] *Webb v. De Leon*, 317 Phil. 758 (1995).

[39] Defined under Section 3, Rule 110 of the Revised Rules of Criminal Procedure as "**sworn** written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated." (Emphasis supplied)

[40] *Rollo* (G.R. Nos. 172074-76), pp. 61-62; Annex "A."

[41] *Go v. Court of Appeals*, supra note 19.

[42] *Rollo* (G.R. No. 172074-76), p. 102.

[43] Id., pp. 16-17.

[44] *Tatad v. Sandiganbayan*, No. L-72335-39, 21 March 1988, 159 SCRA 70, 81.