Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

DATU ANDAL AMPATUAN JR., Petitioner,	**G.R. No. 197291**
- *versus* -	Present:
SEC. LEILA DE LIMA, as Secretary of the Department of Justice, CSP CLARO ARELLANO, as Chief State Prosecutor, National Prosecution Service, and PANEL OF PROSECUTORS OF THE MAGUINDANAO MASSACRE, headed by RSP PETER MEDALLE, Respondents.	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR, and REYES, *JJ.*
	Promulgated: APR 03 2013

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D E C I S I O N

BERSAMIN, *J.*:

In matters involving the exercise of judgment and discretion, *mandamus* cannot be used to direct the manner or the particular way the judgment and discretion are to be exercised. Consequently, the Secretary of Justice may be compelled by writ of *mandamus* to act on a letter-request or a motion to include a person in the information, but may not be compelled by writ of *mandamus* to act in a certain way, *i.e.*, to grant or deny such letter-request or motion.

The Case

This direct appeal by petition for review on *certiorari* has been taken from the final order issued on June 27, 2011 in Civil Case No. 10-124777[1]

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[1] Entitled *Datu Andal Ampatuan, Jr. v. Secretary Leila De Lima, as Secretary of the Department of Justice, CSP Claro Arellano, as Chief State Prosecutor, National Prosecution Service, and Panel of Prosecutors of the Maguindanao Massacre, headed by DCSP Richard Fadullon,*

by the Regional Trial Court (RTC), Branch 26, in Manila, dismissing petitioner's petition for *mandamus.*[2]

Antecedents

History will never forget the atrocities perpetrated on November 23, 2009, when 57 innocent civilians were massacred in Sitio Masalay, Municipality of Ampatuan, Maguindanao Province. Among the principal suspects was petitioner, then the Mayor of the Municipality of Datu Unsay, Maguindanao Province. Inquest proceedings were conducted against petitioner on November 26, 2009 at the General Santos (Tambler) Airport Lounge, before he was flown to Manila and detained at the main office of the National Bureau of Investigation (NBI). The NBI and the Philippine National Police (PNP) charged other suspects, numbering more than a hundred, for what became aptly known as the Maguindanao massacre.[3]

Through Department Order No. 948, then Secretary of Justice Agnes Devanadera constituted a Special Panel of Prosecutors to conduct the preliminary investigation.

On November 27, 2009, the Department of Justice (DOJ) resolved to file the corresponding informations for murder against petitioner, and to issue subpoenae to several persons.[4] On December 1, 2009, 25 informations for murder were also filed against petitioner in the Regional Trial Court, 12th Judicial Region, in Cotabato City.[5]

On December 3, 2009, Secretary of Justice Devanadera transmitted her letter to Chief Justice Puno requesting the transfer of the venue of the trial of the Maguindanao massacre from Cotabato City to Metro Manila, either in Quezon City or in Manila, to prevent a miscarriage of justice.[6] On December 8, 2009, the Court granted the request for the transfer of venue.[7] However, on December 9, 2009, but prior to the transfer of the venue of the trial to Metro Manila, the Prosecution filed a manifestation regarding the filing of 15 additional informations for murder against petitioner in Branch 15 of the Cotabato City RTC.[8] Later on, additional informations for murder were filed against petitioner in the RTC in Quezon City, Branch 211, the new venue of the trial pursuant to the resolution of the Court.[9]

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2 *Rollo*, pp. 45-46.
3 Id. at 258.
4 Id. at 672-678.
5 Id. at 679-751.
6 Id. at 752.
7 Id. at 753-757.
8 Id. at 758-759.
9 Id. at 805-806.

The records show that petitioner pleaded *not guilty* to each of the 41 informations for murder when he was arraigned on January 5, 2010,[10] February 3, 2010,[11] and July 28, 2010.[12]

In the joint resolution issued on February 5, 2010, the Panel of Prosecutors charged 196 individuals with multiple murder in relation to the Maguindanao massacre.[13] It appears that in issuing the joint resolution of February 5, 2010 the Panel of Prosecutors partly relied on the twin affidavits of one Kenny Dalandag, both dated December 7, 2009.[14]

On August 13, 2010, Dalandag was admitted into the Witness Protection Program of the DOJ.[15] On September 7, 2010, the QC RTC issued its amended pre-trial order,[16] wherein Dalandag was listed as one of the Prosecution witnesses.[17]

On October 14, 2010, petitioner, through counsel, wrote to respondent Secretary of Justice Leila De Lima and Assistant Chief State Prosecutor Richard Fadullon to request the inclusion of Dalandag in the informations for murder considering that Dalandag had already confessed his participation in the massacre through his two sworn declarations.[18] Petitioner reiterated the request twice more on October 22, 2010[19] and November 2, 2010.[20]

By her letter dated November 2, 2010,[21] however, Secretary De Lima denied petitioner's request.

Accordingly, on December 7, 2010, petitioner brought a petition for *mandamus* in the RTC in Manila (Civil Case No. 10-124777),[22] seeking to compel respondents to charge Dalandag as another accused in the various murder cases undergoing trial in the QC RTC.

On January 19, 2011,[23] the RTC in Manila set a pre-trial conference on January 24, 2011 in Civil Case No. 10-124777. At the close of the pre-trial, the RTC in Manila issued a pre-trial order.

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10 Id. at 839.
11 Id. at 840.
12 Id. at 841.
13 Id. at 65-141.
14 Id. at 180-189.
15 Id. at 842.
16 Id. at 191-244.
17 Id. at 214.
18 Id. at 246-247.
19 Id. at 249.
20 Id. at 251.
21 Id. at 253.
22 Id. at 255-271.
23 Id. at 300.

In their manifestation and motion dated February 15, 2011[24] and February 18, 2011,[25] respondents questioned the propriety of the conduct of a trial in a proceeding for *mandamus*. Petitioner opposed.

On February 15, 2011, petitioner filed a motion for the production of documents,[26] which the RTC in Manila granted on March 21, 2011 after respondents did not file either a comment or an opposition.

Respondents then sought the reconsideration of the order of March 21, 2011.

On March 21, 2011,[27] the RTC in Manila issued a subpoena to Dalandag, care of the Witness Protection Program of the DOJ, requiring him to appear and testify on April 4, 2011 in Civil Case No. 10-124777.

On April 4, 2011, respondents moved to quash the subpoena.[28] Petitioner opposed the motion to quash the subpoena on April 15, 2011.[29] The parties filed other papers, specifically, respondents their reply dated April 26, 2011;[30] petitioner an opposition on May 12, 2011;[31] and respondents another reply dated May 20, 2011.[32]

On June 27, 2011,[33] the RTC of Manila issued the assailed order in Civil Case No. 10-124777 dismissing the petition for *mandamus*.[34]

Hence, this appeal by petition for review on *certiorari*.

Issues

Petitioner raises the following issues, to wit:

1. WHETHER THE PUBLIC RESPONDENTS MAY BE COMPELLED BY MANDAMUS TO INVESTIGATE AND PROSECUTE KENNY DALANDAG AS AN ACCUSED IN THE INFORMATIONS FOR MULTIPLE MURDER IN THE MAGUINADANAO MASSACRE CASES IN LIGHT OF HIS

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24 Id. at 331-334.
25 Id. at 336-340.
26 Id. at 415-417.
27 Id. at 418.
28 Id. at 452-457.
29 Id. at 459-466.
30 Id. at 468-476.
31 Id. at 478-485.
32 Id. at 487-492.
33 *Supra*, note 2.
34 *Rollo*, pp. 3-43.

ADMITTED PARTICIPATION THEREAT IN AFFIDAVITS AND OFFICIAL RECORDS FILED WITH THE PROSECUTOR AND THE QC RTC; and,

2. WHETHER THE SUBSEQUENT INCLUSION OF KENNY DALANDAG IN THE WITNESS PROTECTION PROGRAM JUSTIFIES EXCLUSION AS AN ACCUSED AND HIS NON-INDICTMENT FOR HIS COMPLICITY IN THE MAGUINDANAO MASSACRE NOTWITHSTANDING ADMISSIONS MADE THAT HE TOOK PART IN ITS PLANNING AND EXECUTION.[35]

The crucial issue is whether respondents may be compelled by writ of *mandamus* to charge Dalandag as an accused for multiple murder in relation to the Maguindanao massacre despite his admission to the Witness Protection Program of the DOJ.

Ruling

The appeal lacks merit.

The prosecution of crimes pertains to the Executive Department of the Government whose principal power and responsibility are to see to it that our laws are faithfully executed. A necessary component of the power to execute our laws is the right to prosecute their violators. The right to prosecute vests the public prosecutors with a wide range of discretion – the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors that are best appreciated by the public prosecutors.[36] The public prosecutors are solely responsible for the determination of the amount of evidence sufficient to establish probable cause to justify the filing of appropriate criminal charges against a respondent. Theirs is also the quasi-judicial discretion to determine whether or not criminal cases should be filed in court.[37]

Consistent with the principle of separation of powers enshrined in the Constitution, the Court deems it a sound judicial policy not to interfere in the conduct of preliminary investigations, and to allow the Executive Department, through the Department of Justice, exclusively to determine what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. By way of exception, however, judicial review may be allowed where it is clearly established that the public prosecutor committed grave abuse of discretion, that is, when he has exercised his discretion "in an arbitrary, capricious, whimsical or despotic

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35 Id. at 11.

36 *Soberano v. People*, G.R. No. 154629, October 5, 2005, 472 SCRA 125, 139-140; *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 598.

37 *Crespo v. Mogul*, No. L-53373, June 30, 1987, 151 SCRA 462, 410; *Paderanga v. Drilon,* G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.

manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law."[38]

The records herein are bereft of any showing that the Panel of Prosecutors committed grave abuse of discretion in identifying the 196 individuals to be indicted for the Maguindanao massacre. It is notable in this regard that petitioner does not assail the joint resolution recommending such number of individuals to be charged with multiple murder, but only seeks to have Dalandag be also investigated and charged as one of the accused based because of his own admissions in his sworn declarations. However, his exclusion as an accused from the informations did not at all amount to grave abuse of discretion on the part of the Panel of Prosecutors whose procedure in excluding Dalandag as an accused was far from arbitrary, capricious, whimsical or despotic. Section 2, Rule 110 of the *Rules of Court*, which requires that "the complaint or information shall be xxx against all persons who appear to be responsible for the offense involved," albeit a mandatory provision, may be subject of some exceptions, one of which is when a participant in the commission of a crime becomes a state witness.

The two modes by which a participant in the commission of a crime may become a state witness are, namely: (*a*) by discharge from the criminal case pursuant to Section 17 of Rule 119 of the *Rules of Court*; and (*b*) by the approval of his application for admission into the Witness Protection Program of the DOJ in accordance with Republic Act No. 6981 (*The Witness Protection, Security and Benefit Act*).[39] These modes are intended to encourage a person who has witnessed a crime or who has knowledge of its commission to come forward and testify in court or quasi-judicial body, or before an investigating authority, by protecting him from reprisals, and shielding him from economic dislocation.

These modes, while seemingly alike, are distinct and separate from each other.

Under Section 17, Rule 119 of the *Rules of Court*, the discharge by the trial court of one or more of several accused with their consent so that they can be witnesses for the State is made upon motion by the Prosecution before resting its case. The trial court shall require the Prosecution to present evidence and the sworn statements of the proposed witnesses at a hearing in support of the discharge. The trial court must ascertain if the following conditions fixed by Section 17 of Rule 119 are complied with, namely: (*a*) there is absolute necessity for the testimony of the accused whose discharge

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[38] *Glaxosmithkline Philippines, Inc. v. Khalid Mehmood Malik*, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 273; *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538 August 9, 2010, 627 SCRA 88, 101.

[39] Approved on April 24, 1991.

is requested; (*b*) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (*c*) the testimony of said accused can be substantially corroborated in its material points; (*d*) said accused does not appear to be most guilty; and (*e*) said accused has not at any time been convicted of any offense involving moral turpitude.

On the other hand, Section 10 of Republic Act No. 6981 provides:

> Section 10. State Witness. — Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:
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> a. the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
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> b. there is absolute necessity for his testimony;
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> c. there is no other direct evidence available for the proper prosecution of the offense committed;
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> d. his testimony can be substantially corroborated on its material points;
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> e. he does not appear to be most guilty; and
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> f. he has not at any time been convicted of any crime involving moral turpitude.
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> An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Section 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.

Save for the circumstance covered by paragraph (*a*) of Section 10, *supra*, the requisites under both rules are essentially the same. Also worth noting is that an accused discharged from an information by the trial court pursuant to Section 17 of Rule 119 may also be admitted to the Witness Protection Program of the DOJ provided he complies with the requirements of Republic Act No. 6981.

A participant in the commission of the crime, to be discharged to become a state witness pursuant to Rule 119, must be one charged as an accused in the criminal case. The discharge operates as an acquittal of the

discharged accused and shall be a bar to his future prosecution for the same offense, unless he fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge.[40] The discharge is expressly left to the sound discretion of the trial court, which has the exclusive responsibility to see to it that the conditions prescribed by the rules for that purpose exist.[41]

While it is true that, as a general rule, the discharge or exclusion of a co-accused from the information in order that he may be utilized as a Prosecution witness rests upon the sound discretion of the trial court,[42] such discretion is not absolute and may not be exercised arbitrarily, but with due regard to the proper administration of justice.[43] Anent the requisite that there must be an absolute necessity for the testimony of the accused whose discharge is sought, the trial court has to rely on the suggestions of and the information provided by the public prosecutor. The reason is obvious – the public prosecutor should know better than the trial court, and the Defense for that matter, which of the several accused would best qualify to be discharged in order to become a state witness. The public prosecutor is also supposed to know the evidence in his possession and whomever he needs to establish his case,[44] as well as the availability or non-availability of other direct or corroborative evidence, which of the accused is the 'most guilty' one, and the like.[45]

On the other hand, there is no requirement under Republic Act No. 6981 for the Prosecution to first charge a person in court as one of the accused in order for him to qualify for admission into the Witness Protection Program. The admission as a state witness under Republic Act No. 6981 also operates as an acquittal, and said witness cannot subsequently be included in the criminal information except when he fails or refuses to testify. The immunity for the state witness is granted by the DOJ, not by the trial court. Should such witness be meanwhile charged in court as an accused, the public prosecutor, upon presentation to him of the certification of admission into the Witness Protection Program, shall petition the trial court for the discharge of the witness.[46] The Court shall then order the discharge and exclusion of said accused from the information.[47]

The admission of Dalandag into the Witness Protection Program of the Government as a state witness since August 13, 2010 was warranted by the absolute necessity of his testimony to the successful prosecution of the

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40 Section 18, Rule 119, *Rules of Court.*

41 *People v. Tabayoyong*, No. L-31084, May 29, 1981, 104 SCRA 724, 739.

42 *Chua v. Court of Appeals*, G.R. No. 103397, August 28, 1996, 261 SCRA 112, 120; citing *U.S. v. De Guzman*, 30 Phil. 416 (1915) and *U.S. v. Bonete*, 40 Phil. 958 (1920).

43 *Ramos v. Sandiganbayan*, G.R. No. 58876, November 27, 1990, 191 SCRA 671, 682; *People v. De Atras*, No. L-27267, May 29, 1969, 28 SCRA 389, 392.

44 *People v. Ocimar*, G.R. No. 94555, August 17, 1992, 212 SCRA 646, 655.

45 *People v. Court of Appeals*, No. L-62881, August 30, 1983, 124 SCRA 338, 343.

46 Section 12, Republic Act No. 6981.

47 Id.

criminal charges. Apparently, all the conditions prescribed by Republic Act No. 6981 were met in his case. That he admitted his participation in the commission of the Maguindanao massacre was no hindrance to his admission into the Witness Protection Program as a state witness, for all that was necessary was for him to appear not the most guilty. Accordingly, he could not anymore be charged for his participation in the Maguindanao massacre, as to which his admission operated as an acquittal, unless he later on refuses or fails to testify in accordance with the sworn statement that became the basis for his discharge against those now charged for the crimes.

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against which it is directed is one addressed to the discretion of the tribunal or officer. In matters involving the exercise of judgment and discretion, *mandamus* may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised,[48] or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.[49]

As such, respondent Secretary of Justice may be compelled to act on the letter-request of petitioner, but may not be compelled to act in a certain way, *i.e.*, to grant or deny such letter-request. Considering that respondent Secretary of Justice already denied the letter-request, *mandamus* was no longer available as petitioner's recourse.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the final order issued on June 27, 2011 in Civil Case No. 10-124777 by the Regional Trial Court in Manila; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[48] See *Quarto v. Marcelo,* G.R. No. 169042, October 5, 2011, 658 SCRA 580, 594; *Angchangco, Jr. v. Ombudsman,* 335 Phil. 766 (1997).

[49] *Angchangco , Sr. v. Ombudsman,* supra, 771-772.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

MARIA LOURDES P. A. SERENO
Chief Justice