EN BANC

G.R. No. 212140-41 – SENATOR JINGGOY EJERCITO ESTRADA, Petitioner, **v. OFFICE OF THE OMBUDSMAN, FIELD INVESTIGATION OFFICE (FIO)-OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION (NBI), and ATTY. LEVITO D. BALIGOD,** Respondent.

Promulgated:

January 21, 2015

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CONCURRING OPINION

LEONEN, *J.*:

I concur with the ponencia. The petition should be dismissed for failure to show grave abuse of discretion on the part of the Ombudsman. It is unorthodox and contrary to existing doctrine to suspend the proceedings in a court that has acquired jurisdiction simply on the basis of an alleged error on the part of the Ombudsman.[1]

I agree that the fundamental constitutional norm of "due process of law" embeds the social value of fairness. I disagree, however, with the approach proposed by both Justices Velasco and Brion in their dissents that will clinically remove the preliminary investigation from the entire process of holding the accused to account through a process of criminal trial. The approach they propose also detaches the formalities of procedure from the preliminary investigation's purpose.

In my view, the relevant questions to ask are the following:

First, has the petitioner been so fundamentally deprived of his opportunity to be heard in the light of the purposes of a preliminary investigation?

Second, assuming that aspects of the opportunity to be heard were less than ideally observed, are these infirmities so fatal that these deprive petitioner of all opportunities to be heard during the course of judicial examination, i.e., pre-trial and trial?

Third, granting without conceding that there were infirmities in the preliminary investigation, will there be a public policy interest in suspending

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[1] I acknowledge Justice Velasco and Justice Brion's doubts regarding my use of these adjectives. I maintain my views and reading of doctrines in this separate opinion.

the criminal action? Or would it in effect be detrimental to the fundamental rights of both the prosecution and the petitioner?

I

The grant of the opportunity to be heard in a preliminary investigation must relate to the purpose for which a preliminary investigation is created. To declare that the judicial proceedings in a criminal procedure will be affected by alleged irregularities in a preliminary investigation misapprehends the nature and purpose of a preliminary investigation.

Due process takes a different form in a preliminary investigation as compared with its form in a criminal action. In *Artillero v. Casimiro*:[2]

> The law is vigilant in protecting the rights of an accused. Yet, notwithstanding the primacy put on the rights of an accused in a criminal case, even they cannot claim unbridled rights in [p]reliminary [i]nvestigations. In *Lozada v. Hernandez*, we explained the nature of a [p]reliminary [i]nvestigation in relation to the rights of an accused, to wit:
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> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. *The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law."*[3] (Emphasis supplied)

The right to due process of accused respondent in a preliminary investigation is merely a statutory grant. It is not a constitutional guarantee. Thus, the validity of its procedures must be related to the purpose for which it was created.

Salonga v. Cruz-Paño[4] clarifies the purpose of a preliminary investigation:

> The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense

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2 G.R. No. 190569, April 25, 2012, 671 SCRA 357 [Per J. Sereno, Second Division].

3 Id. at 369, *citing Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per J. Reyes, En Banc]; *U.S. v. Yu Tuico*, 34 Phil. 209 (1916) [Per J. Moreland, En Banc]; *People v. Badilla*, 48 Phil. 718 (1926) [Per J. Ostrand, En Banc]; II MORAN, RULES OF COURT 673 (1952); *U.S. v. Grant and Kennedy*, 18 Phil. 122 (1910) [Per J. Trent, En Banc].

4 219 Phil. 402 (1985) [Per J. Gutierrez, Jr., En Banc].

> and anxiety of a public trial, and also to protect the state from useless and expensive trials.[5]

Thus, the right of a respondent to present counter-affidavits and to confront the witnesses against him or her in a preliminary investigation is merely to assist the prosecution to decide in a summary manner whether there is basis for supporting a charge and preventing a harassment suit that prejudices respondent and wastes the resources of the state. The process is essentially one-sided, that is, it only serves to assist the prosecution in determining whether it has *prima facie* evidence to sustain the filing of an information. In *Salonga*:

> The term "*prima facie* evidence" denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counter-balance the presumption of innocence to warrant a conviction.[6]

Due to the preliminary nature of the proceedings, it would be erroneous to insist that the due process safeguards in *Ang Tibay v. Court of Industrial Relations*[7] apply in a preliminary investigation.

It can be recalled that in *Ang Tibay*, this court observed that although quasi-judicial agencies "may be said to be free from the rigidity of certain procedural requirements[,] [it] does not mean that it can, in justifiable cases before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character."[8] It presupposes that the administrative investigation has the effect of an adjudication on respondent's guilt or innocence.

A preliminary investigation is not a quasi-judicial proceeding similar to that conducted by other agencies in the executive branch. The prosecutor does not pass judgment on a respondent; he or she merely ascertains if there is enough evidence to proceed to trial. It is a court of law which ultimately decides on an accused's guilt or innocence.

It would also be erroneous to conclude that the prosecutor performs a quasi-judicial function merely on the basis that the proceeding is similar to that in courts. This court clarified the similarities in *Bautista v. Court of Appeals*:[9]

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5 Id. at 428, *citing Trocio v. Manta*, 203 Phil. 618 (1982) [Per J. Relova, First Division] and *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per J. Laurel, En Banc].

6 *Salonga v. Cruz-Paño*, 219 Phil. 402, 415–416 (1985) [Per J. Gutierrez, En Banc].

7 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

8 Id. at 641–642.

9 413 Phil. 159 (2001) [Per J. Bellosillo, Second Division].

> Petitioner submits that a prosecutor conducting a preliminary investigation performs a quasi-judicial function, citing *Cojuangco v. PCGG*, *Koh v. Court of Appeals*, *Andaya v. Provincial Fiscal of Surigao del Norte* and *Crespo v. Mogul*. In these cases this Court held that the power to conduct preliminary investigation is quasi-judicial in nature. But this statement holds true only in the sense that, like quasi-judicial bodies, the prosecutor is an office in the executive department exercising powers akin to those of a court. Here is where the similarity ends.
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> A closer scrutiny will show that preliminary investigation is very different from other quasi-judicial proceedings. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."
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> . . . .
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> *[T]he prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal*.[10] (Emphasis supplied)

Preliminary investigation, in cases of public officers, is outlined in Republic Act No. 6770[11] or The Ombudsman Act of 1989, and Administrative Order No. 7[12] or The Rules of Procedure of the Office of the Ombudsman. Section 18 of Republic Act No. 6770 mandates the Office of the Ombudsman to formulate its rules of procedure. The procedure for preliminary investigations is outlined in Rule II, Section 4 of Administrative Order No. 7:

> Sec. 4. PROCEDURE. — Preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:
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> a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or

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[10] Id. at 167–169, *citing Cojuangco v. Presidential Commission on Good Government*, 268 Phil. 235 (1990) [Per J. Gancayco, En Banc]; *Koh v. Court of Appeals*, 160-A Phil. 1034 (1975) [Per J. Esguerra, First Division]; *Andaya v. Provincial Fiscal of Surigao del Norte*, 165 Phil. 134 (1976) [Per J. Fernando, Second Division]; *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per J. Gancayco, En Banc]; *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per J. Sarmiento, En Banc]; *Tandok v. Judge Resultan*, 256 Phil. 485 (1989) [Per J. Padilla, Second Division].

[11] Rep. Act No. 6770 (1989), otherwise known as An Act for Providing for the Functional and Structural Organization of the Office of the Ombudsman and for Other Purposes.

[12] Adm. Order No. 07 (1990), otherwise known as Rules of Procedure of the Office of the Ombudsman.

> supporting witnesses to execute affidavits to substantiate the complaints.
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> b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.
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> c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.
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> d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.
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> e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.
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> f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.
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> g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.
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> No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Furthermore, the Rules of Court, Rule 112, Section 1 of the Rules of Criminal Procedure describes the process as:

> Section 1. *Preliminary investigation defined; when required.*

> — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

The opportunity to be heard and to defend one's self is satisfied by the filing of respondent's counter-affidavits. There is no right granted to a respondent in a preliminary investigation to be furnished with the counter-affidavits of his or her co-respondents, save for the provision where he or she "shall have access to the evidence on record,"[13] regardless of whether or not he or she files a counter-affidavit. It contemplates a situation wherein the evidence on record only consists of complainant's evidence, to which respondent shall have access "[i]n any event."[14] Given the purpose of a preliminary investigation, this should already be the extent of due process granted to him or her by law.

The Ombudsman may avail herself of information provided by the respondent to the case contained in his or her counter-affidavits against another respondent. To require that the Ombudsman conduct her summary investigation with all the rigors of a criminal trial would be more than what is statutorily required. Besides, all she needs to determine is whether there is sufficient probable cause that will give confidence in moving forward with the prosecution.

II

Assuming without conceding that there were irregularities in the preliminary investigation, any alleged infirmity in the preliminary investigation does not deprive the petitioner of his opportunity to be heard during the course of judicial examination.

Preliminary investigation is not part of the criminal action. It is merely preparatory and may even be disposed of in certain situations.[15] The "invalidity or absence of preliminary investigation does not affect the jurisdiction of the court."[16] Thus, in *People v. Narca*:[17]

> It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the

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13 Adm. Order No. 7 (1990), Rule II, sec. 4(c).
14 Adm. Order No. 7 (1990), Rule II, sec. 4(c).
15 *See* RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec. 7.
16 *People v. Narca*, 341 Phil. 696, 705 (1997) [Per J. Francisco, Third Division], *citing Romualdez v. Sandiganbayan*, 313 Phil. 871 (1995) [Per C.J. Narvasa, En Banc]*; People v. Gomez*, 202 Phil. 395 (1982) [Per J. Relova, First Division].
17 341 Phil. 696 (1997) [Per J. Francisco, Third Division].

> records of the case in court. Parties may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating officer. In fact, a preliminary investigation may even be conducted ex-parte in certain cases. Moreover, in Section 1 of Rule 112, the purpose of a preliminary investigation is only to determine a well grounded belief if a crime was "probably" committed by an accused. In any case, *the invalidity or absence of a preliminary investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair the validity of the information or otherwise render it defective.*[18] (Emphasis supplied)

Similarly, in *Drilon v. Court of Appeals*,[19] this court clarified the role and function of preliminary investigation.

> Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. *The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.* It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[20] (Emphasis supplied)

Any irregularities that may have been committed during a preliminary investigation should not deprive the parties — both the prosecution and the accused — of their rights to due process and to trial. A criminal trial is a separate proceeding from that of the preliminary investigation. The courts will judge and act at their own instance, independently of the conclusions of the prosecutor since:

> a finding of probable cause does not ensure a conviction, or a conclusive finding of guilt beyond reasonable doubt. The allegations adduced by the prosecution will be put to test in a full-blown trial where evidence shall be analyzed, weighed, given credence or disproved.[21]

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18 Id. at 705, *citing Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per J. Reyes, En Banc]; RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec.8; RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec. 3(e); RULES OF CRIMINAL PROCEDURE (2000), Rule 112, sec. 3(d); *Mercado v. Court of Appeals*, 315 Phil. 657 (1995) [Per J. Quiason, First Division]; *Rodriguez v. Sandiganbayan*, 205 Phil. 567 (1983) [Per J. Escolin, En Banc]; *Webb v. De Leon*, 317 Phil. 758 (1995) [Per J. Puno, Second Division]; *Romualdez, v. Sandiganbayan*, 313 Phil. 871 (1995) [Per C.J. Narvasa, En Banc]; *People v. Gomez*, 202 Phil. 395 (1982) [Per J. Relova, First Division].

19 327 Phil. 916 (1996) [Per J. Romero, Second Division].

20 Id., *citing Salonga v. Cruz-Paño*, 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per J. Laurel, En Banc]; *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 92 [Per J. Regalado, En Banc]; concurring opinion of J. Francisco in *Webb v. De Leon*, 317 Phil. 758, 809–811 (1995) [Per J. Puno, Second Division].

21 *Drilon v. Court of Appeals*, 327 Phil. 916 (1996) [Per J. Romero, Second Division].

Thus, after determination of probable cause by the Sandiganbayan, the best venue to fully ventilate the positions of the parties in relation to the evidence in this case is during the trial. The alleged violation of due process during the preliminary investigation stage, if any, does not affect the validity of the acquisition of jurisdiction over the accused.

There is, of course, a fundamental difference between a government agency allegedly committing irregularities in the conduct of a preliminary investigation and the failure of a government agency in conducting a preliminary investigation. The first is a question of procedure while the second involves a question of whether the government agency deprived respondent of a statutory right.

It is, thus, erroneous for the dissenting opinions to cite *Uy v. Ombudsman*,[22] *Yusop v. Sandiganbayan*,[23] and *Larrañaga v. Court of Appeals*[24] and to insist that irregularities in the conduct of a preliminary investigation deprived petitioner of his constitutional rights. These cases involve situations where a regular preliminary investigation was never conducted despite repeated requests.

In this case, the preliminary investigation was conducted by the Office of the Ombudsman in the regular course of its duties. The only question involved is whether petitioner has the right to be furnished copies of the affidavits of his co-respondents in the preliminary investigation despite the absence of this requirement in the rules of procedure.

III

The right to due process of law applies to both the prosecution representing the people and the accused. Even as the Constitution outlines a heavy burden on the part of law enforcers when a person is "under investigation for the commission of an offense"[25] and when a person is

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22 578 Phil. 635 (2008) [Per J. Brion, En Banc].

23 405 Phil. 233 (2001) [Per J. Panganiban, Third Division].

24 351 Phil. 75 (1998) [Per J. Puno, Second Division].

25 CONST., art. III, sec. 12, which provides:
Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against them. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

actually under prosecution,[26] it does not do away with the guarantee of fairness both for the prosecution and the accused.

In *People v. Court of Appeals and Jonathan Cerbo*,[27] this court stated:

> *The rights of the people from what could sometimes be an "oppressive" exercise of government prosecutorial powers do need to be protected when circumstance so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process.* Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties.[28] (Emphasis supplied)

A defect in the procedure in the statutory grant of a preliminary investigation would not immediately be considered as a deprivation of the accused's constitutional right to due process. Irregularities committed in the executive determination of probable cause do not affect the conduct of a judicial determination of probable cause.

The Constitution mandates the determination by a judge of probable cause to issue a warrant of arrest against an accused. This determination is done independently of any prior determination made by a prosecutor for the issuance of the information.

Article III, Section 2 of the Constitution states:

> ARTICLE III
> BILL OF RIGHTS
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> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.* (Emphasis supplied)

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[26] CONST., art. III, sec. 14, which provides:
Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear and unjustifiable.

[27] 361 Phil. 401 (1999) [Per J. Panganiban, Third Division].

[28] Id. at 420–421.

It is a constitutional requirement that before a warrant can be issued, the judge must first determine the existence of probable cause. The phrase "to be determined personally" means that the judge determines the existence of probable cause himself or herself. This determination can even be *ex parte* since the Constitution only mentions "after examination under oath or affirmation of the complainant and the witnesses he [or she] may produce."

The judicial determination of probable cause is considered separate from the determination of probable cause by the prosecutor in a preliminary investigation. In *People v. Inting*:[29]

> Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. *The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the Prosecutor.*[30] (Emphasis supplied)

The difference between the executive determination of probable cause and the judicial determination of probable cause is doctrinal and has been extensively explained by this court. In *Ho v. People*:[31]

> Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e. whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.
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> Second, since their objectives are different, *the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest.* Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to

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29 G.R. No. 88919, July 25, 1990, 187 SCRA 788 [Per J. Gutierrez, En Banc].
30 Id. at 792–793.
31 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].

> charge the accused of an offense and hold him for trial. However, *the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land.* Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.
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> Lastly, *it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge.* We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. *Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest.* This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[32] (Emphasis supplied)

The issuance of the warrant of arrest is based on an independent assessment by the Sandiganbayan of the evidence on hand, which may or may not be the same evidence that the prosecutor relies on to support his or her own conclusions. Hence, irregularities in the conduct of the preliminary investigation — for purposes of the criminal procedure — are negated upon the issuance of the warrant of arrest. The Sandiganbayan has, independent of the preparatory actions by the prosecutor, determined for themselves the existence of probable cause as to merit the arrest of the accused, acquire jurisdiction over his or her person, and proceed to trial.

Once the information is filed and the court acquires jurisdiction, it is the Sandiganbayan that examines whether, despite the alleged irregularity in the preliminary investigation, there still is probable cause to proceed to trial.

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[32] Id. at 611–612, *citing* RULES OF CIVIL PROCEDURE, Rule 112, sec. 6(b) and the dissenting opinion of J. Puno in *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 623–642 (1996) [Per J. Davide, Jr., En Banc].

The actions or inactions of the Ombudsman or the investigating prosecutor do not bind the court.

In *Crespo v. Mogul*,[33] this court clearly stated that:

> [t]he filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. *When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.*
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> The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.
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> *Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.*
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> However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.
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> The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary**,** *it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under*

[33] 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

> *such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.*
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> *The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.* A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[34] (Emphasis supplied)

Thus, after the Sandiganbayan has determined for itself the existence of probable cause, it is also within its authority to issue the warrant of arrest. The Sandiganbayan should proceed with due and deliberate dispatch to proceed to trial in order to provide the accused with the fullest opportunity to defend himself or herself.

ACCORDINGLY, I vote that the petition be **DENIED.** The Sandiganbayan should proceed with the cases docketed as SB-14-CRM-0239 and SB-14-CRM-0256 to SB-14-CRM-0266 with due and deliberate dispatch.

MARVIC M.V.F. LEONEN
Associate Justice

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[34] Id. at 474–476, *citing Herrera v. Barretto*, 25 Phil. 245 (1913) [Per J. Moreland, En Banc]; *U.S. v. Limsiongco*, 41 Phil. 94 (1920) [Per J. Malcolm, En Banc]; *De la Cruz v. Moir*, 36 Phil. 213 (1917) [Per J. Moreland, En Banc]; RULES OF COURT, Rule 110, sec. 1; RULES OF CRIMINAL PROCEDURE (1985), sec. 1; 21 C.J.S. 123; Carrington; *U.S. v. Barreto*, 32 Phil. 444 (1917) [Per Curiam, En Banc]; *Asst. Provincial Fiscal of Bataan v. Dollete*, 103 Phil. 914 (1958) [Per J. Montemayor, En Banc]; *People v. Zabala*, 58 O. G. 5028; *Galman v. Sandiganbayan*, 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc]; *People v. Beriales*, 162 Phil. 478 (1976) [Per J. Concepcion, Jr., Second Division]; *U.S. v. Despabiladeras*, 32 Phil. 442 (1915) [Per J. Carson, En Banc]; *U.S. v. Gallegos*, 37 Phil. 289 (1917) [Per J. Johnson, En Banc]; *People v. Hernandez*, 69 Phil. 672 (1964) [Per J. Labrador, En Banc]; *U.S. v. Labial*, 27 Phil. 82 (1914) [Per J. Carson, En Banc]; *U.S. v. Fernandez*, 17 Phil. 539 (1910) [Per J. Torres, En Banc]; *People v. Velez*, 77 Phil. 1026 (1947) [Per J. Feria, En Banc].