G.R. No. 229781 – LEILA M. DE LIMA, *Petitioner v.* HON. JUANITA GUERRERO, in her capacity as Presiding Judge, Regional Trial Court of Muntinlupa City, Branch 204, PEOPLE OF THE PHILIPPINES, P/DIR. GEN. RONALD M. DELA ROSA, in his capacity as Chief of the Philippine National Police (PNP), PSUPT PHILIP GIL M. PHILIPPS, in his capacity as Director, Headquarters Support Service, SUPT. ARNEL JAMANDRON APUD, in his capacity as Chief, PNP Custodial Service Unit, and all persons acting under their control, supervision, instruction or direction in relation to the orders that may be issued by the Court, *Respondents.*

Promulgated:
October 10, 2017

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SEPARATE CONCURRING and DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I.

Petitioner Leila M. De Lima (petitioner) is charged as a conspirator for the crime of Illegal Drug Trading, defined and penalized under Section 5 in relation to Section 3 (jj), Section 26 (b), and Section 28 of Republic Act No. (RA) 9165.[1] This much is clear from the caption, the prefatory, and accusatory portions of the Information,[2] which read:

PEOPLE OF THE PHILIPPINES, Plaintiff,	**Criminal Case No.** 17-165 (NPS No. XVI-INV-16J-00315 and NPS No. XVI-INV-16K-00336)
versus	**For:** ***Violation of the Comprehensive Dangerous Drugs Act of 2002, Section 5 in relation to Section 3(jj), Section 26(b), and Section 28, Republic Act No. 9165 (Illegal Drug Trading)***
LEILA M. DE LIMA x x x Accused.	

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INFORMATION

The undersigned Prosecutors, constituted as a Panel pursuant to Department Orders 706 and 790 dated October 14, 2016 and November 11, 2016, respectively, [accused] LEILA M. DE LIMA, RAFAEL MARCOS Z. RAGOS and RONNIE PALISOC DAYAN, for violation of

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1 Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (June 7, 2002).

2 *Rollo*, pp. 197-201.

Section 5, in relation to Section 3(jj), Section 26(b) and **Section 28, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002**, committed as follows:

> That within the period from November 2012 to March 2013, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, accused Leila M. De Lima, being then the Secretary of the Department of Justice, and accused Rafael Marcos Z. Ragos, being then the Officer-in-Charge of the Bureau of Corrections, by taking advantage of their public office, conspiring and confederating with accused Ronnie P. Dayan, being then an employee of the Department of Justice detailed to De Lima, all of them having moral ascendancy or influence over inmates in the New Bilibid Prison, did then and there commit **illegal drug trading,** in the following manner: De Lima and Ragos, with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 election; by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices, did then and there willfully and unlawfully trade and traffic dangerous drugs, and thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million (₱5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison.[3] (Emphases and underscoring supplied)

Illegal Drug Trading is penalized under Section 5, Article II of RA 9165, which reads in part:

> **Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.** – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, **trade**, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphases and underscoring supplied)

Although the said crime is punished under the same statutory provision together with the more commonly known crime of Illegal Sale of Dangerous Drugs, it is incorrect to suppose that their elements are the same. This is because the concept of "trading" is considered by the same statute as

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[3] Id.; emphases and underscoring supplied.

a distinct act from "selling." Section 3 (jj), Article I of RA 9165 defines "trading" as:

> (jj) Trading. – Transactions involving the **illegal trafficking** of dangerous drugs and/or controlled precursors and essential chemicals **using electronic devices** such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms **or acting as a broker** in any of such transactions whether for money or any other consideration in violation of this Act. (Emphases supplied)

Based on its textual definition, it may be gleaned that "trading" may be considered either as (**1**) an act of engaging in a transaction involving **illegal trafficking** of dangerous drugs ***using electronic devices***; or (**2**) acting as a ***broker*** in any of said transactions.

"Illegal trafficking" is defined under Section 3 (r), Article I as:

> (r) Illegal Trafficking. – The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.

Accordingly, it is much broader than the act of "selling," which is defined under Section 3 (ii), Article I as:

> (ii) Sell. – Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.

However, in order to be considered as a form of trading under the first act, it is essential that the mode of illegal trafficking must be done through the use of an electronic device.

Meanwhile, in its second sense, trading is considered as the act of brokering transactions involving illegal trafficking. According to case law:

> **A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. A broker is one whose occupation it is to bring parties together to bargain or to bargain for them, in matters of trade,** commerce or navigation. Judge Storey, in his work on Agency, defines a broker as an agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation for a

> compensation commonly called brokerage.[4] (Emphasis and underscoring supplied)

Essentially, a broker is a middleman whose occupation is to only bring parties together to bargain *or* bargain for them in matters of trade or commerce. He negotiates contracts relative to property with the custody of which he has no concern. In this sense, the act of brokering is therefore clearly separate and distinct from the transaction being brokered. As such, it may be concluded that brokering is already extant regardless of the perfection or consummation of the ensuing transaction between the parties put together by the broker.

As applied to this case, it is then my view that when a person brings parties together in transactions involving the various modes of illegal trafficking, then he or she may already be considered to be engaged in Illegal Drug Trading per Section 3 (jj), Article I of RA 9165. In this regard, he or she need not be a party to the brokered transaction.

In the Joint Resolution[5] dated February 14, 2017 of the Department of Justice (DOJ) Panel of Prosecutors (DOJ Resolution), the prosecution resonated the foregoing, to wit:

> In our criminal justice system, jurisprudence is replete with cases involving *illegal possession* and *selling* of prohibited drugs where the accused are caught *in flagrante delicto* during buy bust or entrapment operations.
>
> That is not so, however, in the instant cases of *illicit drug trade* where the foundation or substance of the crime was clearly established by clear and unequivocal testimonies of inmates who admitted that they took part in the illicit activities, instead of the usual buy bust or entrapment operations.
>
> **These testimonies point to the fact that orders for drugs were transacted inside NBP while deliveries and payments were done outside. These transactions were done with the use of electronic devices. This is typical of drug *trading* as distinguished from illegal *possession* or *sale* of drugs.**
>
> **At any rate, the recovery of several sachets of *shabu* from the *kubols* of Peter Co, Jojo Baligad and Clarence Dongail during the raid on 15 December 2014, strongly suggests the existence of the objects of drug *trading*. These drugs as well as the sums of money and cellular phones confiscated from inmates are pieces of evidence that would**

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4 *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp.*, 248 Phil. 727, 736 (1988), citations omitted.

5 *Rollo*, pp. 203-254. Signed by Senior Assistant State Prosecutor Peter L. Ong, Senior Assistant City Prosecutors Alexander P. Ramos and Evangeline P. Viudez-Canobas, Assistant State Prosecutor Editha C. Fernandez, and Associate Prosecution Attorney Roxanne F. Cu and approved by Prosecutor General Victor C. Sepulveda.

> **prove that illegal transactions involving *shabu* through the use of mobile phones were consummated**.[6]

As will be elaborated upon below, the Information reflects the charge of Illegal Drug Trading in the sense that it pins against herein petitioner (acting in conspiracy with her other co-accused, Rafael Marcos Z. Ragos and Ronnie Palisoc Dayan) her failure to exercise her duties as DOJ Secretary, which failure effectively allowed the illegal drug trade to exist in the National Bilibid Prison (NBP). Although petitioner was not alleged to have directly engaged as a broker for the sale, distribution or delivery of dangerous drugs, the prosecution basically theorizes that her knowledge of the existence of such scheme, and her failure to quell the same under her watch make her a co-conspirator in the crime of Illegal Drug Trading. In this relation, it is relevant to state that:

> It is common design which is the essence of conspiracy — conspirators may act separately or together in different manners but always leading to the same unlawful result. The character and effect of conspiracy are not to be adjudged by dismembering it and viewing its separate parts but only by looking at it as a whole — acts done to give effect to conspiracy may be, in fact, wholly innocent acts.[7]

Ultimately, it is incumbent upon the prosecution to present evidence to prove that their allegations against petitioner make her part of the conspiracy. As to what evidence will be adduced by the prosecution to this end is not yet relevant at this stage of the proceedings. Providing the details of the conspiracy – take for instance, what drugs were the objects of the trade inside the NBP – is clearly a matter of evidence to be presented at the trial. Therefore, the Information's absence of such detail does not negate the charge as one for Illegal Drug Trading.

In addition, it should be pointed out that all the incidents leading to the filing of the foregoing Information consistently revolved around the crime of Illegal Drug Trading: the complaints[8] (except that filed by Jaybee Sebastian [Sebastian]), the conduct of preliminary investigation,[9] and the DOJ Resolution against petitioner all pertain to the same crime. Accordingly, the DOJ, in the exercise of its prosecutorial function as an agency of the executive department, found probable cause and thus, decided to file the case before the Regional Trial Court (RTC) for the crime of Illegal Drug Trading. The discretion of what crime to charge a particular accused is a matter that is generally within the prerogative of the Executive

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6 See DOJ Resolution, p. 39; emphases and underscoring supplied.

7 *Yongco v. People*, 740 Phil. 322, 335 (2014).

8 See NPS No. XVI-INV-16J-00313 filed by Volunteers Against Crime and Corruption, NPS No. XVI-INV-16J-00315 filed by Reynaldo O. Esmeralda and Ruel M. Lasala, and NPS No. XVI-INV-16K-00336 and NPS No. XVI-INV-16L-00384 filed by National Bureau of Investigation; DOJ Resolution, pp. 1-2 and 4-5.

9 See NPS No. XVI-INV-16K-00331; DOJ Resolution, pp. 1 and 4. See also *rollo*, pp. 339-340.

Department, which this Court should not unduly interfere with. Jurisprudence states that:

> 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. 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.
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> 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.[10] (Emphases and underscoring supplied)

In light of the foregoing, it cannot therefore be said that petitioner was charged for a different crime, such as of Direct Bribery under Article 210 of the Revised Penal Code (RPC) although – as the Office of the Solicitor General (OSG) itself admits – "some of the elements of direct bribery may be present in the Information, *i.e.*, the accused are public officers and received drug money from the high-profile inmates."[11] Verily, the charge of Illegal Drug Trading is not only apparent from the language of the Information vis-à-vis the nature of the crime based on its statutory definition; it may also be deduced from the surrounding circumstances for which probable cause was found against the accused. As above-mentioned, the choice of what to charge a particular accused is the prerogative of the Executive, to which this Court must generally defer.

The peculiarity, however, in the foregoing Information is that while petitioner stands accused of the crime of Illegal Drug Trading, she is alleged to have committed the same "**in relation to her office**." As will be discussed below, because of this attending peculiarity, the case against petitioner falls within the jurisdiction of the *Sandiganbayan* and not the RTC, which is where the case was filed. Since the RTC has no jurisdiction over the subject matter, the case against petitioner, therefore, should be dismissed.

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[10] *Ampatuan, Jr. v. De Lima*, 708 Phil. 158, 163 (2013).
[11] See OSG's Memorandum dated April 12, 2017, p. 61.

II.

On its face, the Information states that petitioner, "**being then the Secretary of the Department of Justice**," "**by taking advantage of [her] public office**," "did then and there commit illegal drug trading, in the following manner: De Lima and Ragos, with the use of their power, position and authority, **demand, solicit and extort money** from the high profile inmates in the New Bilibid Prison to support the Senatorial bid of De Lima in the May 2016 [E]lection; **by reason of which, the inmates, not being lawfully authorized by law and through the use of mobile phones and other electronic devices**, did then and there willfully and unlawfully trade and traffic dangerous drugs, and **thereafter give and deliver to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading** amounting to Five Million [(₱]5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (₱100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison."[12] Based on these allegations, the crux of the Information is therefore petitioner's utilization of her Office to commit the subject crime vis-à-vis her failure to perform her official duties as DOJ Secretary to regulate the illegal activities within the NBP, which effectively paved the way for the said drug scheme to prosper without restriction. This is consistent with and more particularized in the DOJ Resolution, from which the present Information arose.

In the DOJ Resolution, petitioner is alleged to have demanded various amounts of money (which includes weekly/monthly *tara*)[13] from high-profile inmates (among others, Sebastian, Wu Tuan Yuan a.ka. Peter Co, and Hans Anton Tan)[14] in the NBP **in exchange for protections and/or special concessions** (among others, feigning ignorance about the *kubols*, the transfer of the *Bilibid* 19 to the National Bureau of Investigation (NBI) which helped Sebastian centralize the drug trade in the NBP, the bringing in of liquors and other prohibited items in the NBP, the use of Bilibid TV Channel 3 as Sebastian's office).[15] ***These protections and/or special concessions are intimately related to petitioner's office as she had no power or authority to provide the same were it not for her functions as DOJ Secretary***. Under Section 8[16] of RA 10575,[17] the DOJ – of which petitioner was the head of[18] –

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12 *Rollo*, pp. 197-198; emphases and underscoring supplied.

13 See DOJ Resolution; pp. 39-42.

14 See id. at 8, 20-22, and 23-24.

15 See id. at 15.

16 Sec. 8. *Supervision of the Bureau of Corrections.* – The Department of Justice (DOJ), having the BuCor as a line bureau and a constituent unit, shall maintain a relationship of administrative supervision with the latter as defined under Section 38 (2), Chapter 7, Book IV of Executive Order No. 292 (Administrative Code of 1987), except that the DOJ shall retain authority over the power to review, reverse, revise or modify the decisions of the BuCor in the exercise of its regulatory or quasi-judicial functions.

17 Entitled "AN ACT STRENGTHENING THE BUREAU OF CORRECTIONS (BUCOR) AND PROVIDING FUNDS THEREFOR," otherwise known as "THE BUREAU OF CORRECTIONS ACT OF 2013," approved on May 24, 2013.

shall exercise administrative supervision over the Bureau of Corrections (BuCor). For its part, the BuCor "shall be in charge of safekeeping and instituting reformation programs to national inmates sentenced to more than three (3) years."[19] Thus, being the head of the DOJ – the government agency exercising administrative supervision over the BuCor which is, in turn, in charge of the NBP – petitioner allegedly refused to properly exercise her functions to accommodate the various illicit activities in the NBP in exchange for monetary considerations and in ultimate fruition of the drug trade.

Case law holds that "as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, **there being no personal motive to commit the crime and had the accused would not have committed it had he not held the aforesaid office**, the accused is held to have been indicted for 'an offense committed in relation' to his office."[20]

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[18] Section 7, Chapter 2, Book IV of the Administrative Code of 1987 state the powers and functions of a Department Secretary, among others:

Sec. 7. *Powers and Functions of the Secretary.* — The Secretary shall:

(1) Advise the President in issuing executive orders, regulations, proclamations and other issuances, the promulgation of which is expressly vested by law in the President relative to matters under the jurisdiction of the Department;

(2) Establish the policies and standards for the operation of the Department pursuant to the approved programs of government;

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, However, that where the Department is regionalized on a department-wide basis, the Secretary shall appoint employees to positions in the second level in the regional offices as defined in this Code;

(7) Exercise jurisdiction over all bureaus, offices, agencies and corporations under the Department as are provided by law, and in accordance with the applicable relationships as specified in Chapters 7, 8, and 9 of this Book;

(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and

(9) Perform such other functions as may be provided by law.

[19] RA 10575, Section 4.

[20] *Rodriguez v. Sandiganbayan*, 468 Phil. 374, 387 (2004), citing *People v. Montejo*, 108 Phil. 613, 622 (1960); emphasis supplied.

In *Crisostomo v. Sandiganbayan*[21] (*Crisostomo*), this Court illumined that "**a public officer commits an offense in relation to his office if he perpetrates the offense while performing, though in an improper or irregular manner, his official functions and he cannot commit the offense without holding his public office**. In such a case, there is an intimate connection between the offense and the office of the accused. **If the information alleges the close connection between the offense charged and the office of the accused, the case falls within the jurisdiction of the *Sandiganbayan*.**"[22]

III.

Presidential Decree No. (PD) 1606,[23] as amended,[24] states:

> Section 4. *Jurisdiction.* – **The *Sandiganbayan* shall exercise exclusive original jurisdiction** in all cases involving:
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> a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
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> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
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> (a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads:
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> (b) City mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;
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> (c) Officials of the diplomatic service occupying the position of consul and higher;

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21 495 Phil. 718 (2005).

22 Id. at 729, citing *People v. Montejo*, supra note 20; emphases and underscoring supplied.

23 Entitled "REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS 'SANDIGANBAYAN' AND FOR OTHER PURPOSES" (December 10, 1978).

24 Amended by RA 8249, entitled "AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (February 5, 1997), and further amended by RA 10660 entitled "AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR," (April 16, 2015).

> (d) Philippine army and air force colonels, naval captains, and all officers of higher rank;
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> (e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;
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> (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;
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> (g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.
>
> (2) Members of Congress and officials thereof classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989;
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> (3) Members of the judiciary without prejudice to the provisions of the Constitution;
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> (4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and
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> (5) All other national and local officials classified as Grade '27' and higher under the Compensation and Position Classification Act of 1989.
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> b. **Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office**.
>
> c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.
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> x x x x (Emphases and underscoring supplied)

"The above law is clear as to the composition of the original jurisdiction of the *Sandiganbayan*. Under **Section 4 (a)**, the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the *Sandiganbayan* to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. Those that are classified as Grade 26 and below may still fall within the jurisdiction of the *Sandiganbayan* provided that they hold the

positions thus enumerated by the same law. x x x **In connection therewith, Section 4 (b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the *Sandiganbayan*.**"[25]

In *People v. Sandiganbayan,*[26] this Court distinguished that "[i]n the offenses involved in Section 4 (a), it is not disputed that public office is essential as an element of the said offenses themselves, **while in those offenses and felonies involved in Section 4 (b), it is enough that the said offenses and felonies were committed in relation to the public officials or employees' office**."[27] Hence, it is not necessary for public office to be a constituent element of a particular offense for the case to fall within the jurisdiction of the *Sandiganbayan*, for as long as an intimate connection exists between the said offense and the accused's public office.

This Court's disquisition in the case of *Crisostomo* is highly instructive on this matter:

> Indeed, murder and homicide will never be the main function of any public office. No public office will ever be a constituent element of murder. When then would murder or homicide, committed by a public officer, fall within the exclusive and original jurisdiction of the *Sandiganbayan*? *People v. Montejo* provides the answer. The Court explained that a public officer commits an offense in relation to his office if he perpetrates the offense while performing, though in an improper or irregular manner, his official functions and he cannot commit the offense without holding his public office. In such a case, there is an intimate connection between the offense and the office of the accused. If the information alleges the close connection between the offense charged and the office of the accused, the case falls within the jurisdiction of the *Sandiganbayan*. *People v. Montejo* is an exception that *Sanchez v. Demetriou* recognized.[28]

"Thus, the jurisdiction of the *Sandiganbayan* over this case will stand or fall on this test: Does the Information allege a close or intimate connection between the offense charged and [the accused]'s public office?"[29]

The Information against petitioner clearly passes this test. For indeed, it cannot be denied that petitioner could not have committed the offense of Illegal Drug Trading as charged without her holding her office as DOJ Secretary. **Her alleged complicity in the entire drug conspiracy hinges on**

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25 *People v. Sandiganbayan*, 645 Phil. 53, 63-64 (2010); emphases and underscoring supplied.
26 Id.
27 Id. at 67; underscoring supplied.
28 *Crisostomo*, supra note 21, at 729; citations omitted.
29 Id.; emphasis and underscoring supplied.

no other than her supposed authority to provide high-profile inmates in the NBP protections and/or special concessions which enabled them to carry out illegal drug trading inside the national penitentiary. As the OSG itself acknowledges, "during her tenure as Secretary of Justice, [petitioner] allowed the drug trade to fester and flourish inside the walls of the *Bilibid* so she can profit from the illicit commerce and finance her political aspirations."[30] The OSG even labels petitioner's participation as a form of "indispensable cooperation," without which the "inmates could not have plied their nefarious trade:"

> [Petitioner], Ragos, Dayan, petitioner's admitted lover, confabulated with the high-profile inmates of the national penitentiary to commit illegal drug trading through the use of mobile phones and other electronic devices. These inmates could not have plied their nefarious trade without the indispensable cooperation of [petitioner] and her DOJ factotums.[31]

Tested against the standards set by jurisprudence, petitioner evidently stands charged of an offense which she allegedly committed in relation to her office. Contrary to the OSG's assertions, this conclusion is not merely derived from the generic phrases "as Secretary of Justice" or "taking advantage of their public office,"[32] but rather, from the Information read as a whole, the overall context of the determination of the probable cause against her, and even the OSG's own characterization of petitioner's role in the entire conspiracy.

IV.

At this juncture, it deserves pointing out that under the most recent amendment to PD 1606, it is not enough that the accused, who should occupy any of the public positions specified therein, be charged of an offense either under Section 4 (a) or (b) of the same for the case to fall under the *Sandiganbayan*'s jurisdiction. Under RA 10660, entitled "An Act Strengthening Further the Functional and Structural Organization of the *Sandiganbayan*, Further Amending Presidential Decree No. 1606, as amended, and Appropriating Funds Therefor," approved on April 16, 2015, the *Sandiganbayan*'s special jurisdiction has now been limited to cases which (**a**) involve **damage to the government** and/or (**b**) allege **any bribery**,[33] and **in both cases**, should involve **an amount of not less than**

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30 See OSG's Comment with Opposition dated March 3, 2017, p. 2.

31 See id. at 44.

32 See id. at 40.

33 Notably, the *proviso* makes it clear that an allegation of "any bribery" would suffice. The word "any" literally and ordinarily means "whichever of a specified class might be chosen" (<https://www.google.com/search?q=any+define&ie=utf-8&oe=utf-8&client=firefox-b-ab&gfe_rd=cr&dcr=0&ei=V1bcWbrdL6nH8Ae06KW4DA> [last visited October 10, 2017]). The word "any" is used to generally qualify the succeeding term "bribery," which means that the allegation of bribery spoken of in the *proviso* does not necessarily pertain to Direct Bribery or any of the forms of bribery as defined and penalized under the RPC (under Chapter II, Section 2, Title VII, Book II of the Revised Penal Code). Thus, "any bribery" as used in Section 4 of PD 1606, as amended by RA 10660, should then be read in its common and non-technical acceptation – that is, any form of "corrupt payment,

₱1,000,000.00. If any of these conditions are not satisfied, then the case should now fall under the jurisdiction over the proper RTCs. The limiting *proviso* reads:

> Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: **(a) does not allege any damage to the government or any bribery**; or **(b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (₱1,000,000.00).**[34] (Emphasis supplied)

The intent behind this provision, *i.e.*, to streamline the anti-graft court's jurisdiction by making it concentrate on the "most significant cases filed against public officials," can be gleaned from the co-sponsorship speech of Senator Franklin Drilon during the deliberations of RA 10660:

> The second modification under the bill involves the streamlining of the anti-graft court's jurisdiction, which will enable the *Sandiganbayan* to concentrate its resources in resolving the most significant cases filed against public official. **The bill seeks to amend Section 4 of the law by transferring jurisdiction over cases which are classified as "minor" to the regional trial courts**, which have sufficient capability and competence to handle these cases. **Under this measure, the so-called "minor cases," although not really minor, shall pertain to those where the information does not allege any damage or bribe; those that allege damage or bribe that are unquantifiable; or those that allege damage or bribe arising from the same or closely related transactions or acts not exceeding One Million Pesos.** As of the last quarter of 2013, about 60% of the cases before the *Sandiganbayan* constitute what we call "minor cases." With this amendment, such court will be empowered to focus on the most notorious cases and will be able to render judgment in a matter of months.[35] (Emphases supplied)

Thus, as it now stands, an Information against a particular accused should not merely charge him or her of an offense in relation to his or her office, but moreover, should show that the offense involves some damage to the government or any bribe in an amount not less than ₱1,000,000.00 so as to place the case within the jurisdiction of the *Sandiganbayan*. Otherwise, the case falls within the jurisdiction of the proper RTCs.

Relatedly, the damage to the government and/or bribe should be "quantifiable." This was not only the Congressional intent as revealed in the deliberations, but this interpretation also logically squares with the ₱1,000,000.00 monetary threshold. Hence, an allegation of non-pecuniary

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receipt, or solicitation of a private favor for official action." (Black's Law Dictionary, 8th Edition, p. 204).

34 See Section 2 of RA 10660, amending Section 4 of PD 1606; emphasis supplied.

35 Record of the Senate, Vol. I, No. 59, February 26, 2014, pp. 22-23; emphases and underscoring supplied.

damage, such as the besmirchment of the public service, would not be enough to satisfy the condition.

While this amendment would have clearly applied to petitioner's case (as explained in the note below[36]), Section 5 of RA 10660 qualifies that the same shall apply to "cases arising from offenses committed after the effectivity of this Act." Given that the Information situates the alleged crime "within the period from November 2012 to March 2013,"[37] Section 4 of PD 1606, as amended by RA 8249, prior to its amendment by RA 10660, should apply.

V.

It is the position of the OSG that only the RTCs have jurisdiction over drug cases regardless of the position and circumstances of the accused public officer.[38] As basis, it mainly cites Sections 28 and 90 of RA 9165:

> Section 28. *Criminal Liability of Government Officials and Employees.* – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.
>
> Section 90. *Jurisdiction.* – The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

Section 28, however, only provides for the penalties against a government official found guilty of the unlawful acts provided in RA 9165. As it only relates to the imposition of penalties, Section 28 has nothing to do

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[36] In this case, the Information against petitioner alleges that she had committed some form of bribery in an amount exceeding ₱1,000,000.00. On its face, the Information states that petitioner, together with her co-accused, "with the use of their power, position and authority, demand, solicit and extort money from the high profile inmates in the New Bilibid Prison" (see *rollo*, p. 198). As above-discussed, petitioner, in her capacity as DOJ Secretary, provided protections and/or special concessions to high-profile inmates, which paved the way for the illegal drug trade to flourish and fester inside the NBP. Petitioner, however, did not betray her official duties as DOJ Secretary for free, as she instead, demanded a price for her misfeasance. As the Information reads, in exchange for such protections and/or special concessions, high-profile inmates "g[a]ve and deliver[ed] to De Lima, through Ragos and Dayan, the proceeds of illegal drug trading amounting to Five Million [(₱]5,000,000.00) Pesos on 24 November 2012, Five Million (₱5,000,000.00) Pesos on 15 December 2012, and One Hundred Thousand (P100,000.00) Pesos weekly "*tara*" each from the high profile inmates in the New Bilibid Prison" (id). These monetary considerations were intended "to support [her] Senatorial bid in the May 2016 [E]lection" (id.). The gravamen of bribery is basically, the demand of a public officer from another of money or any other form of consideration in exchange for the performance or non-performance of a certain act that is related to the public officer's official functions. Petitioner's acts of bribery are clearly attendant to the charge against her in the Information and, in fact, are more vivid when parsing through the DOJ Resolution.

[37] Id. at 197.

[38] See OSG's Comment with Opposition, p. 36.

with the authority of the courts to acquire jurisdiction over drugs cases. In fact – as it is the case here – the *Sandiganbayan* has jurisdiction over cases involving violations of RA 9165, provided that they are committed in relation to the qualified official's public office. Only that if said public official is found guilty, the *Sandiganbayan* is mandated to impose the maximum penalties provided for in RA 9165, including the accessory penalty of absolute perpetual disqualification from any public office. Hence, Section 28 is only relevant on the matter of what penalty would be imposed, which comes only at the end of the proceedings after a proper determination of guilt, and not as to the matter of which court should acquire jurisdiction over the case.

More apt to the issue of jurisdiction, however, is Section 90 of RA 9165 as also cited by the OSG. Section 90 states that specially designated courts among the existing RTCs are empowered "to exclusively try and hear cases involving violations of this Act", *i.e.*, RA 9165. Thus, as a general rule, these designated drug courts have exclusive jurisdiction to take cognizance of drugs cases.

The conferment of special jurisdiction to these drug courts should, however, yield when there is a more special provision of law that would apply to more peculiar situations. Our legal system subscribes to "[t]he principle of *lex specialis derogat generali* – general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail."[39]

In this case, it is my view that PD 1606, as amended, is the more special provision of law which should prevail over Section 90 of RA 9165. Petitioner's case does not only pertain to a regular violation of the Dangerous Drugs Act, which falls under the jurisdiction of the RTCs acting as special drugs courts. **Rather, it is a dangerous drugs case that is alleged to have been particularly committed by a public official with a salary grade higher than 27, in relation to her office**. This unique circumstance therefore relegates Section 90 as the general provision of law that should therefore give way to the application of Section 4 of PD 1606, as amended.

In fact, Section 4 (b) of PD 1606, as amended by RA 8249, is clear that **all** "**offenses**," apart from felonies, that are committed by public officials within the law's ambit fall under the exclusive jurisdiction of the *Sandiganbayan*:

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[39] *Jalosjos v. Commission on Elections*, 711 Phil. 414, 431 (2013).

> b. **Other offenses** or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office. (Emphasis supplied)

Article 3 of the RPC states that "[a]cts and omissions punishable by law are felonies." "The phrase 'punished by law' should be understood to mean 'punished by the Revised Penal Code' and not by special law. That is to say, the term 'felony' means acts and omissions punished in the revised Penal Code, **to distinguish it from the words 'crime' and 'offense' which are applied to infractions of the law punishable by special statutes.**"[40]

Thus, may it be for a felony under the RPC, or any other offense under any other special penal law – for instance, RA 9165 – the *Sandiganbayan* has jurisdiction over the case for as long as the offense is committed by a public official under the limiting conditions set forth in Section 4 of PD 1606, as amended.

It should be remembered that the *Sandiganbayan* is a special court whose authority stems from no less than the Constitution's mandate to hold certain public officials accountable. To recount, "[t]he creation of the *Sandiganbayan* was mandated by Section 5, Article XIII of the 1973 Constitution. By virtue of the powers vested in him by the Constitution and pursuant to Proclamation No. 1081, dated September 21, 1972, former President Ferdinand E. Marcos issued [PD] 1486. The decree was later amended by [PD] 1606, Section 20 of *Batas Pambansa* Blg. [(BP)] 129, [PD] 1860, and [PD] 1861."[41] "**It was promulgated to attain the highest norms of official conduct required of public officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain at all times accountable to the people**."[42]

"With the advent of the 1987 Constitution, the special court was retained as provided for in Section 4, Article XI[43] thereof. Aside from Executive Order Nos. 14 and 14-a, and [RA] 7080, which expanded the jurisdiction of the *Sandiganbayan*, [PD] 1606 was further modified by [RA] 7975, [RA] 8249, and just [in 2015], [RA] 10660."[44] "To speed up trial in the *Sandiganbayan*, [RA] 7975 was enacted for that Court to concentrate on the 'larger fish' and leave the 'small fry' to the lower courts. x x x [Thus, it] divested the *Sandiganbayan* of jurisdiction over public officials whose salary grades were at Grade '26' or lower, devolving thereby these cases to the lower courts, and retaining the jurisdiction of the *Sandiganbayan* only

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40 Reyes, L. B., The Revised Penal Code, Eighteenth Edition, p. 36; emphasis supplied.

41 *Duncano v. Sandiganbayan*, 764 Phil. 67, 72-73 (2015).

42 *Serana v. Sandiganbayan*, 566 Phil. 224, 240 (2008); emphasis and underscoring supplied.

43 Section 4. The present anti-graft court known as the *Sandiganbayan* shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

44 *Duncano v. Sandiganbayan*, supra note 41, at 73-74.

over public officials whose salary grades were at Grade '27' or higher and over other specific public officials holding important positions in government regardless of salary grade."[45]

Overall, it may be gathered from history that the overarching denominator which triggers the *Sandiganbayan*'s specialized competence is the necessity to properly hold high officials in government accountable for their misdeeds. In fact, the *Sandiganbayan*'s *raison d'être* is none other than its authority to try and hear criminal cases against **an exclusive set of public officials, for select acts that bear on their public office**. **This exclusivity, as impelled itself by Constitutional force, constitutes a greater specialty which demands sole cognizance by this special court**. Hence, for as long as these public officials are charged for offenses in relation to their office, and provided that the limiting conditions of the current amendments are satisfied, these cases should be considered as special cases that fall under the jurisdiction over the *Sandiganbayan*, to the exclusion of other courts, including the RTCs designated as special drugs courts. The conferment of jurisdiction over these special cases to the *Sandiganbayan* is further amplified by the express exclusion of such cases from the jurisdiction of all RTCs. Section 20 of BP 129[46] clearly states:

> Section 20. *Jurisdiction in criminal cases.* – Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, **except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter**. (Emphasis and underscoring supplied)

As a final point, allow me to express my reservations with the Court's ruling in *People v. Benipayo*,[47] wherein it was held that libel cases, although alleged to have been committed in relation to one's public office, should nonetheless fall within the jurisdiction of the RTCs, and not the *Sandiganbayan*. The Court, applying the implied repeal rule, reasoned in this wise:

> As we have constantly held in *Jalandoni, Bocobo, People v. Metropolitan Trial Court of Quezon City, Br. 32, Manzano*, and analogous cases, we must, in the same way, declare herein that the law, as it still stands at present, dictates that criminal and civil actions for damages in cases of written defamations shall be filed simultaneously or separately with the RTC to the exclusion of all other courts. A subsequent enactment of a law defining the jurisdiction of other courts cannot simply override, in

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45 Id. at 76-77, citing Record of the Senate, Vol. I, No. 24, September 25, 1996, p. 799.

46 Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE JUDICIARY REORGANIZATION ACT OF 1980" (August 14, 1981). This provision was modified accordingly to reflect the amendment in Presidential Decree No. 1860, entitiled "AMENDING THE PERTINENT PROVISIONS OF PRESIDENTIAL DECREE NO. 1606 AND *BATAS PAMBANSA BLG.* 129 RELATIVE TO THE JURISDICTION OF THE *SANDIGANBAYAN* AND FOR OTHER PURPOSES" (January 14, 1983).

47 604 Phil. 317 (2009).

> the absence of an express repeal or modification, the specific provision in the RPC vesting in the RTC, as aforesaid, jurisdiction over defamations in writing or by similar means. The grant to the *Sandiganbayan* of jurisdiction over offenses committed in relation to (public) office, similar to the expansion of the jurisdiction of the MTCs, did not divest the RTC of its exclusive and original jurisdiction to try written defamation cases regardless of whether the offense is committed in relation to office. The broad and general phraseology of Section 4, Presidential Decree No. 1606, as amended by Republic Act No. 8249, cannot be construed to have impliedly repealed, or even simply modified, such exclusive and original jurisdiction of the RTC.[48]

In so ruling, the Court relied on past cases which consistently held that libel cases should fall under the jurisdiction of the RTC. However, as will be explicated below, it is my view that these cases are improper authorities to arrive at this conclusion.

To contextualize, the cases cited in *Benipayo* largely revolved around the seeming conflict between (***a***) the expanded jurisdiction of the Municipal Trial Courts (MTC) to try criminal cases within an increased range of penalties, of which that provided for libel would then fall; and (***b***) the jurisdiction of the RTCs over libel cases as provided under Article 360 RPC.[49] These cases are:

(1) In *Jalandoni v. Endaya* (*Jalandoni*),[50] the amendment to the Judiciary Act by RA 3828[51] was cited by therein respondent to support his argument that the MTC had jurisdiction:

> [Respondent MTC Judge] did base his action on what for him was the consequence of the Judiciary Act as amended by **Republic Act No. 3828**, Section 87 of which would confer concurrent jurisdiction on municipal judges in the capital of provinces with the court of first instance where the penalty provided for by law does not exceed *prision correccional* or imprisonment for not more than six years or fine not exceeding six thousand pesos or both. Libel is one of those offenses included in such category. He would thus conclude that as the amendatory act came into effect on June 22, 1963, the provisions of Article 360 as last amended by Republic Act No. 1289 conferring exclusive jurisdiction on courts of first instance, was thus repealed by implication.[52] (Emphasis and underscoring supplied)

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48 Id. at 330-332; citations omitted.

49 Article 360 of the RPC provides in part: "[t]he criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense[.]"

50 154 Phil. 246 (1974).

51 Entitled "AN ACT TO AMEND CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED NINETY-SIX, OTHERWISE KNOWN AS 'THE JUDICIARY ACT OF 1948,' AND FOR OTHER PURPOSES" (June 22, 1963).

52 *Jalandoni*, supra note 50, at 250-251.

(**2**) In *Bocobo v. Estanislao* (*Bocobo*)[53] (which, in turn, cited the ruling in *Jalandoni*), therein respondents also invoked RA 3828 in a similar light:

> The further point was raised by respondents that under **Republic Act No. 3828**, concurrent jurisdiction was conferred on municipal judges in the capitals of provinces with a court of first instance, in which the penalty provided for by law does not exceed *prision correccional* or imprisonment for not more than six years or a fine of ₱6,000.00 or both, such fine or imprisonment being the penalty for libel by means of radio broadcast as provided under Article 355 of the Revised Penal Code. For then that would mean that there was an implied repeal of the earlier amendatory act, Republic Act No. 1289 vesting exclusive jurisdiction on courts of first instance. Such a point was raised and rejected in the *Jalandoni* opinion x x x.[54] (Emphasis and underscoring supplied)

(**3**) Later, in *People v. MTC of Quezon City and Red* (*Red*),[55] citing *Caro v. Court of Appeals* (*Caro*),[56] it was contended that RA 7691,[57] which similarly expanded the jurisdiction of the MTCs, divested the RTCs of their jurisdiction over libel cases. Notably, *Caro* also cited both the cases of *Bocobo* and *Jalandoni*:

> Anent the question of jurisdiction, [we find] no reversible error committed by public respondent Court of Appeals in denying petitioner's motion to dismiss for lack of jurisdiction. The [contention that] **R.A. No. 7691** divested the Regional Trial Courts of jurisdiction to try libel cases cannot be sustained. While libel is punishable by imprisonment of six months and one day to four years and two months (Art. 360, Revised Penal Code) which imposable penalty is lodged within the Municipal Trial Courts' jurisdiction under **R.A. No. 7691** (Sec. 32 [21]), said law, however, excludes [therefrom cases] falling within the exclusive original jurisdiction of the Regional Trial [Courts.] The Court in [*Bocobo vs. Estanislao*, and *Jalandoni vs. Endaya*,] correctly cited by the Court of Appeals, has laid down the rule that Regional Trial Courts have the exclusive jurisdiction over libel cases, hence, the expanded jurisdiction conferred by R.A. 7691 to inferior courts cannot be applied to libel cases.[58] (Emphases and underscoring supplied)

(**4**) And finally, in *Manzano v. Hon. Valera*[59] (*Manzano*), in turn, citing *Red*:

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53 164 Phil. 516 (1976).
54 Id. at 522.
55 333 Phil. 500 (1996).
56 See Court's Resolution dated June 19, 1996 in G.R. No. 122126.
57 Entitled "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA, BLG. 129, OTHERWISE KNOWN AS THE 'JUDICIARY REORGANIZATION ACT OF 1980,'" approved on March 25, 1994.
58 *Red*, supra note 55, at 505; citations omitted.
59 354 Phil. 66 (1998).

> The applicable law is still Article 360 of the Revised Penal Code, which categorically provides that jurisdiction over libel cases are lodged with the Courts of First Instance (now Regional Trial Courts).
>
> This Court already had the opportunity to rule on the matter in G.R. No. 123263, *People vs. MTC of Quezon City, Branch 32 and Isah V. Red* wherein a similar question of jurisdiction over libel was raised. In that case, the MTC judge opined that it was the first level courts which had jurisdiction due to the enactment of **R.A. 7691**.[60] (Emphasis and underscoring supplied)

In all of these cases, this Court essentially held that the provisions expanding the MTCs' jurisdiction, by virtue of a general increase of penalty range, could not have meant an implied repeal of Article 360 of the RPC, whose clear and categorical language should prevail over the latter. In fact, it was observed that RA 7691, invoked in *Red*, *Caro*, and *Manzano*, excluded from the MTCs' jurisdiction "cases falling within the exclusive original jurisdiction of Regional Trial Courts and of the *Sandiganbayan*."[61]

The foregoing factual milieu is clearly different from that in *Benipayo*. In those cases (*Jalandoni, et al.*), this Court was tasked to decide whether or not an expansion of jurisdiction would be enough to impliedly repeal a special provision of law specifically conferring jurisdiction over libel cases to the RTC. Such expansion of jurisdiction was merely a result of a general increase in penalty range, which did not, in any manner, take into account the peculiar nature of the case, or the need for special competence to try such case. In the end, it was not difficult to discern why the Court ruled that said special provision (*i.e.*, Article 360 of the RPC) had not been impliedly repealed. On the contrary, the Court in *Benipayo* should have taken into account that the contending provision in Section 4, PD 1606, as amended by RA 8249, vests unto the *Sandiganbayan* an even more special jurisdiction over "other offenses or felonies [(such as libel)] whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office." This latter provision, in contrast to the jurisdictional provisions in *Jalandoni, et al.*, does not merely connote a general increase in penalty range but rather, precisely takes into account the *Sandiganbayan*'s distinct competence to hear a peculiar class of cases, *i.e.*, felonies and offenses committed in relation to certain public offices. Accordingly, the Court, in *Benipayo*, should have addressed this substantial disparity, which, thus, renders suspect its application of the implied repeal rule.

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[60] Id. at 74.

[61] See Section 2, RA 7691.

In any event, it is my submission that Section 4 of PD 1606, as amended, did not impliedly repeal provisions specifically vesting unto the RTCs special jurisdiction over certain criminal cases. The rule on implied repeals, as articulated in *Benipayo*, is that:

> [F]or an implied repeal, a pre-condition must be found, that is, a substantial conflict should exist between the new and prior laws. Absent an express repeal, a subsequent law cannot be construed as repealing a prior one **unless an irreconcilable inconsistency or repugnancy exists in the terms of the new and old laws**. The two laws, in brief, must be **absolutely incompatible**.[62] (Emphases and underscoring supplied)

Here, Section 90 of RA 9165, (and even Article 360 on libel) is not absolutely repugnant or incompatible with Section 4 of PD 1606, as amended. The special jurisdiction of the RTCs over drugs and libel cases still remain. However, when these offenses fall under the more specific scenarios contemplated under Section 4 of PD 1606, as amended, then it is the *Sandiganbayan* which has jurisdiction over the case. In other words, **if it is a normal drugs or libel case, which was not committed by any of the public officers mentioned in Section 4, PD 1606, in relation to their office, and (under RA 10660) that no damage to the government and/or bribery involving an amount of not less than ₱1,000,000.00 was alleged, then clearly the said case falls within the jurisdiction of the RTCs; otherwise, under these very limited conditions, then the case falls within the jurisdiction of the *Sandiganbayan***. Accordingly, the various provisions can be reconciled relative to the specificity of context, which means that there is really no implied repeal. Again, "[i]mplied repeal by irreconcilable inconsistency takes place when the two statutes [that] cover the same subject matter x x x are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other."[63] As herein demonstrated, harmony can be achieved.

To my mind, this harmonization is, in fact, not only possible but is also reasonable. Cases that involve high-ranking public officials, who are alleged to have abused their public office, and in such manner, have caused substantial pecuniary damage to the government, may be considered as cases of greater public interest. Due to the heightened public interest attendant to these cases, it is therefore reasonable that the same be decided by a collegial body as compared to a singular judge of an RTC, which must not only function as a drugs court, but must also devote its attention to ordinary cases falling under its general jurisdiction. Jurisprudence exhibits that "[t]he *Sandiganbayan*, which functions in divisions of three Justices each, is a collegial body which arrives at its decisions only after deliberation, the exchange of view and ideas, and the concurrence of the required majority

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62 *Benipayo*, supra note 47, at 330.

63 *Mecano v. Commission on Audit*, G.R. No. 103982, December 11, 1992, 216 SCRA 500, 506.

vote."[64] The collegiality between justices (who – not to mention – hold the same rank as that of the justices of the Court of Appeals[65]) is a key feature of adjudication in the *Sandigabayan* that precisely meets the heightened public interest involved in cases cognizable by it. More significantly, as already intimated, the *Sandiganbayan* was created for one, sole objective: "to attain the highest norms of official conduct required of public officers and employees."[66] As such, no other court has undivided and exclusive competence to handle cases related to public office. Despite statistics[67] allegedly showing that no drug case has been yet filed before the *Sandiganbayan*,[68] its exclusive competence to deal with these special cases involving high-ranking public officials must prevail. These statistics only reflect matters of practice which surely cannot supplant statutory conferment.

Conclusion

In fine, for the reasons discussed above, petitioner's case falls within the jurisdiction of the *Sandiganbayan*. This finding therefore necessitates the dismissal of the case against her as it was erroneously filed with the RTC, which holds no jurisdiction over the same. It is well-settled that a court which has no jurisdiction over the subject matter has no choice but to dismiss the case. Also, whenever it becomes apparent to a reviewing court that jurisdiction over the subject matter is lacking, then it ought to dismiss the case, as all proceedings thereto are null and void. Case law states that:

> Jurisdiction over subject matter is essential in the sense that erroneous assumption thereof may put at naught whatever proceedings the court might have had. Hence, even on appeal, and even if the parties do not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. It is elementary that jurisdiction is vested by law and cannot be conferred or waived by the parties or even by the judge. It is also irrefutable that a court may at any stage of the proceedings dismiss the case for want of jurisdiction.[69]

With this fundamental lack of authority, it is unnecessary and, in fact, even inapt to resolve the other procedural issues raised herein.

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64 *Flores v. People*, 705 Phil. 119 (2013).

65 See Section 1 of PD 1606.

66 See second *Whereas* clause of PD 1606.

67 See *Sandiganbayan*'s Statistics on Cases Filed, Pending and Disposed Of as of June 30, 2017 <http://sb.judiciary.gov.ph/libdocs/statistics/filed_Pending_Disposed_June_30_2017.pdf> (last accessed on October 10, 2017).

68 See *Ponencia*, p. 40.

69 *Andaya v. Abadia*, G.R. No. 104033, December 27, 1993, 228 SCRA 705, 717.

WHEREFORE, I vote to **GRANT** the petition.

ESTELA M. PERLAS-BERNABE
Associate Justice