REPUBLIC OF THE PHILIPPINES
FOURTH JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH 165 – BROOKE'S POINT, PALAWAN

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

Criminal Case No. 20-00576-BPT
For Violation of Section 68 of P.D. 705 as amended by E.O. 277 and R.A. 7161

DANTE BRAVO, FERDINAND LIBATIQUE, and JOHN DOES,
Accused.

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MOTION FOR RECONSIDERATION
(Re: Order dated 30 April 2021)

Accused Atty. DANTE BRAVO ("Atty. Bravo") and Engr. FERDINAND LIBATIQUE ("Engr. Libatique"), in their capacities as officers of named corporate offender Ipilan Nickel Corporation ("INC") by counsel, respectfully state:

1. On 3 June 2021, the Accused, through counsel, received the Honorable Court's Order dated 30 April 2021 (the "Order") denying their Motion to Quash dated 18 January 2021 ("Motion to Quash"). Pursuant to the Revised Guidelines for Continuous Trial for Criminal Cases, they have five (5) days from such receipt, or until 8 June 2021, within which to file the present motion.

2. Atty. Bravo and Engr. Libatique respectfully seek the reconsideration of the Order on the following

GROUNDS

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN DISREGARDING MATTERS *ALIUNDE* IN RESOLVING THE MOTION TO QUASH. IN *GARCIA V. COURT OF APPEALS* (G.R. No. 119063, 27 January 1997), THE SUPREME COURT EXPRESSLY RULED THAT "FACTS OUTSIDE THE INFORMATION ITSELF MAY BE INTRODUCED" WHERE THE GROUND INVOKED IS THAT THE ALLEGATIONS IN THE INFORMATION DO NOT CONSTITUTE THE OFFENSE CHARGED.

II.

THE MOTION TO QUASH HAS SUFFICIENTLY SHOWN THAT THE FACTS CHARGED IN THE INFORMATION DO NOT CONSTITUTE AN OFFENSE.

III.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN OUTRIGHT DENYING THE MOTION TO QUASH, DESPITE ITS OWN FINDING THAT THERE WERE "FORMAL DEFECTS" IN THE INFORMATION, WITHOUT REQUIRING THE PROSECUTION TO AMEND THE SAME.

IV.

THE MOTION TO QUASH HAS SUFFICIENTLY DEMONSTRATED THAT THE INFORMATION DOES NOT CONFORM SUBSTANTIALLY TO THE PRESCRIBED FORM.

ARGUMENTS AND DISCUSSION

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN

DISREGARDING MATTERS *ALIUNDE* IN RESOLVING THE MOTION TO QUASH. IN *GARCIA V. COURT OF APPEALS* (G.R. No. 119063, 27 January 1997), THE SUPREME COURT EXPRESSLY RULED THAT "FACTS OUTSIDE THE INFORMATION ITSELF MAY BE INTRODUCED" WHERE THE GROUND INVOKED IS THAT THE ALLEGATIONS IN THE INFORMATION DO NOT CONSTITUTE THE OFFENSE CHARGED.

3. In denying the Motion to Quash, the Honorable Court explained that "the fundamental test on the viability of a motion to quash on the ground that the facts averred in the information do not amount to an offense is whether the facts asservated would establish the essential elements of the crime defined in the law. In this examination, matters *aliunde* are not considered."

4. With all due respect, reconsideration of the Order is warranted, taking into consideration the Supreme Court's ruling in *Garcia v. Court of Appeals et. al.*,[1] expressly stating that quashal of the Information may be based on factual and legal grounds outside the Information itself:

> It is clear from this Section that a motion to quash may be based on *factual and legal grounds*, and since extinction of criminal liability and double jeopardy are retained as among the *grounds* for a motion to quash in Section 3 of the new Rule 117, it necessarily follows that **facts outside the information itself may be introduced to prove such grounds. As a matter of fact, inquiry into such facts may be allowed where the ground invoked is that the allegations in the information do not constitute the offense charged.** Thus, in *People v. De la Rosa*, this Court stated:
>
> > As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis

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1 G.R. No. 119063, 27 January 1997.

> alone of said allegations whose truth and veracity are hypothetically admitted. However, as held in the case of People vs. Navarro, 75 Phil. 516, **additional facts not alleged in the information, but admitted or not denied by the prosecution may be invoked in support of the motion to quash.** Former Chief justice Moran supports this theory. *[Emphasis and underscoring supplied].*

5. The rationale behind allowing consideration of matters *aliunde*, in resolving motions to quash, was succinctly explained by the Supreme Court in *People v. De la Rosa,*[2] to wit:

> ... it would be pure technicality for the court to close its eyes to said facts and still give due course to the prosecution of the case already shown to be weak even to support possible conviction, and hold the accused to what would clearly appear to be a merely vexatious and expensive trial, on her part, and a wasteful expense of precious time on the part of the court, as well as of the prosecution.

6. In the present case, the Honorable Court itself, has noted in its Order that Accused Atty. Bravo and Engr. Libatique "were charged under the first category, *i.e.*, cutting, gathering, collecting or removing of trees from forest land or timber without the legal requirements as required under existing forest laws and regulations." *(Underscoring supplied.)* This is not true. As has been made known to this Honorable Court, no less than the Office of the Regional Prosecutor has categorically held in its Resolution dated 22 February 2021, that the tree-cutting subject of the present case "cannot be considered illegal."[3] Parenthetically, this fact was never denied, as it cannot really be denied by the Prosecution.

7. Even the Complaint dated 14 July 2017 categorically admits that INC has the necessary Mineral Production Sharing Agreement ("MPSA") *(See Paragraph 1 of the Complaint),* and the necessary Special Tree Cutting and Earth Balling Permit. ("STCEBP") *(See Paragraph 2 of the Complaint).* Put simply, the facts irrefutably demonstrate that INC did not violate the law because it had the requisite legal authority to carry out the tree cutting activities subject of the present

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2 G.R. No. L-34112, 25 June 1980.

3 Manifestation dated 8 April 2021.

case. And if INC was acting well within its rights, then there can be no basis to proceed with the prosecution of this case.

8. Thus, to borrow the words of the Supreme Court, it would now be "pure technicality for the court to close its eyes" to these admitted facts that INC possesses the legal requirements for its activities. As emphasized in *De la Rosa,* it is plainly "vexatious" and "wasteful" on the part of the Honorable Court and the Prosecution to still proceed with the trial, despite the existence of established facts which warrant the quashal of the information.

II.
THE MOTION TO QUASH HAS SUFFICIENTLY SHOWN THAT THE FACTS CHARGED IN THE INFORMATION DO NOT CONSTITUTE AN OFFENSE.

9. In this regard, Accused Atty. Bravo and Engr. Libatique replead by reference Paragraphs 3 to 24 of their Motion to Quash, as an integral part of the present motion.

10. It must be emphasized that the very Resolution which led to the filing of the Information against Atty. Bravo and Engr. Libatique could only cite the unwarranted assumption that they were "aware" of INC's activities to support the conclusion that out of all the officers and personnel of INC they should be the ones named as respondents in this case, thus:

> ...With the actions of the security personnel and that of the INC workers/personnel, **it would be hard to believe that the management of INC are *(sic)* not aware** of these tree cutting activities especially taking into consideration the letters received by respondents to stop its tree cutting activities and other related activities from government agencies...[4] *(Underscoring and emphasis supplied.)*

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4 Resolution dated 10 December 2019.

11. "Being aware," however, is not the same as causing or ordering the illegal tree cutting activities that INC is being accused of. More importantly, "being aware" is also not among the acts punished under P.D. No. 705. *Nullum crimen nulla poena sine lege.* There is no crime where there is no law punishing it.[5]

12. To reiterate, P.D. No. 705 holds corporate officers liable, only if they ordered the commission of any of the punishable acts. **The Information does not state that Atty. Bravo and/or Engr. Libatique issued such orders**. For this reason alone, the Information should have been quashed.

III.
WITH ALL DUE RESPECT, THE HONORABLE COURT ERRED IN OUTRIGHT DENYING THE MOTION TO QUASH, DESPITE ITS OWN FINDING THAT THERE WERE "FORMAL DEFECTS" IN THE INFORMATION, WITHOUT REQUIRING THE PROSECUTION TO AMEND THE SAME.

13. In denying the Motion to Quash, the Honorable Court stated in its Order, that "(t)he Court treats the failure of the Information to state the true names of other fictitious accused such as "John Doe" as unknown as mere formal defect which can be cured by amendment."[6]

14. The Honorable Court's recognition that the Information is indeed, defective, is tantamount to a declaration that there is merit in the arguments raised in the Motion to Quash filed by the Accused. With all due respect, the Honorable Court should have first required the Prosecution to amend the Information, as expressly outlined in Rule 117, Section 4, of the Revised Rules on Criminal Procedure:

> Section 4. Amendment of the complaint or information. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, **the court shall order that an amendment be made**. (4a)

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5 Evangelista v. People, G.R. Nos. 108135-36, 14 August 2000.

6 *Order* page 6 par. 2.

> If it is based on the ground that the facts charged do not constitute an offense, **the prosecution shall be given by the court an opportunity to correct the defect by amendment.** The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment. (n)

15. "The use of the word 'shall' underscores the mandatory character of the Rule. The term 'shall' is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory."[7] Applied herein, the Honorable Court, with all due respect, should have first required amendment of the Information. It was premature for the Honorable Court to have denied the Motion to Quash outright, as it remains to be seen whether the Prosecution will comply with the order to amend the Information, and if so, it also remains to be seen if, despite the amendment, the Information still suffers from defects.

16. As exemplified in *Gonzales v. Salvador et. al.*: "The amendment of an information under Section 4 of Rule 117 applies if the trial court finds that there is a defect in the information and the defect can be cured by amendment, in which case the court shall order the prosecution to amend the information."[8]

17. Further, in *De Lima v. Guerrero et. al.*, the Supreme Court ruled that: "**The failure of the trial court to order the correction of a defect in the Information curable by an amendment amounts to an arbitrary exercise of power.**"[9] In the present case, the Honorable Court did not even order the amendment of the Information and, instead, denied the Motion to Quash outright despite recognizing the formal defects of the Information. Without any action on the part of the Prosecution, the Information remains defective and should have been quashed by the Honorable Court for defects it has expressly recognized.

IV.
THE MOTION TO QUASH HAS SUFFICIENTLY DEMONSTRATED THAT

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7 *Enriquez v. Enriquez*, G.R. No. 139303, 25 August 2005.
8 G.R. No. 168340, 5 December 2006.
9 G.R. No. 229781, 10 October 2017.

THE INFORMATION DOES NOT CONFORM SUBSTANTIALLY TO THE PRESCRIBED FORM.

18. In this regard, Accused Atty. Bravo and Engr. Libatique replead by reference Paragraphs 25 to 36 of their Motion to Quash, as an integral part of the present motion.

19. Accused Atty. Bravo and Engr. Libatique pointed out in their Motion to Quash that the use of "John Doe" is allowed only "if his name cannot be ascertained." Rule 110, Section 7 of the Rules of Court likewise requires a "statement that his true name is unknown."

20. Stated otherwise, **if the names of the Accused are known, and can be ascertained, such names must be stated in the Information. Failure of the Information to state the name of the Accused, despite the fact that the same has been ascertained, is a clear ground for quashal.**

21. To reiterate, the use of "John Does" is permissible – but only if the circumstances stated under the Rules are present. It should not be countenanced, where, as in the present case, there is sufficient opportunity for the Prosecution to ascertain the names of the other Accused, and yet, failed to amend the Information and still insist on using "John Does."

22. Notably, the *Pinagsamang Sinumpaang Malayang Salaysay*, attached as Annex B to the Complaint dated 14 July 2017, narrates as follows:

> 5. ...Ang ilan sa mga taong nandon na aming inabutan ay sina ALFRED MARK ULAT na residente ng Brgy. Ipilan; JULIAN JONTILANO at FRANCISCO ESTRADA na parehong residente ng Barangay Maasin; RONIE ALLIE, ALIASER ISMAEL at MARK BALLENAS na mga residente ng Barangay Mambalot. Sila ang ilan sa naabutan namin na pumuputol ng mga maliliit na punong kahoy na may mga dalang itak at lagare at sila ay nakasuot ng PPE/Skull Guard or helmet na may nakasulat na Ipilan Nickel Corporation at Macro Asia Mining Corporation.

23. Inexplicably, the Prosecution never included the abovementioned names as Respondents in the preliminary investigation, and the aforementioned names are also nowhere to be found in the Information in the present case. It also bears stressing that, despite the fact that there were persons identified, supposedly wearing outfits and using equipment issued by Macro Asia Mining Corporation, none of the said persons and none of the officers of the said corporation was even summoned at the preliminary investigation and indicted in the present case.

24. The Prosecution's insistence on using "John Does" is clearly impermissible, as the names of those who were supposedly cutting the trees, are not unknown and were clearly ascertained. To insist on the validity of the Information is tantamount to manifest partiality, as it allows the aforementioned individuals to remain unimpleaded, while continuing to prosecute Atty. Bravo and Engr. Libatique, whose only involvement is limited to "being aware" of the activities of INC.

25. Moreover, it is worthy to note, as pointed out in the Motion to Quash, that the Information only identifies "the offended party and the government" as the offended party in this case. "The offended party" is obviously not an appellation or nickname, and is not even a fictitious name, which will, at the very least, enable the Accused to identify who the offended party is.

26. As previously stated, failure to identify the offended party with such specificity would deny the accused to due process considering the general rule that the civil action for the recovery of the civil liability arising from the offense charged is "deemed instituted with the criminal action."[10]

27. Furthermore, stating that the "government" is the offended party runs contrary to the fact that the MPSA, under which INC was operating, was likewise issued by the government. As the Complaint itself admits that the MPSA was validly issued, it is absurd to consider the government as an offended party, as it was also the one who issued the authority for INC to undertake its activities.

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10 Rule 111, Section 1, Rules of Court.

28. Finally, the Prosecution's failure to comment on the Motion to Quash should likewise constitute a waiver of its right to amend the Information accordingly. The Prosecution's failure to comment and amend the Information, despite the fact that the defects therein were brought to its attention, should be considered by the Honorable Court in granting the Motion to Quash.

PRAYER

WHEREFORE, premises considered, Accused ATTY. DANTE BRAVO and ENGR. FERDINAND LIBATIQUE respectfully pray that the *Order* dated 30 April 2021 be **RECONSIDERED,** and the *Information* dated 26 December 2019 be **QUASHED,** and the present case against the Accused be **DISMISSED.**

The Accused pray for other just and equitable relief.

Makati City for Brooke's Point, Palawan, 8 June 2021.

SIGUION REYNA, MONTECILLO & ONGSIAKO
Counsel for Accused Atty. Dante Bravo and Engr. Ferdinand Libatique
4th and 6th Floors, Citibank Center
8741 Paseo de Roxas, Makati City
Telephone No. 8810-0281/ Facsimile No. 8819-1498
general@smro-law.com

By:

CHRISTOPHER P. CAPUL
PTR No. 8546219; 12 January 2021; Makati City
IBP No. 139766; 8 January 2021; Manila I
Roll No. 59801; 04-19-11
MCLE Compliance VI No. 0026836; 06.14.19

FOR

EILYN E. MEDINA-GARCIA
PTR No. 8546226; 12 January 2021; Makati City
IBP No. 139772; 8 January 2021; Quezon City
Roll No. 64544; 28 April 2015
MCLE Compliance VI No. 0023948; 04.08.19

GREGORIO R. BILOG IV
IBP No. 8546237; 12 January 2021; Makati City
IBP No. 139781; 8 January 2021; Makati City
Roll No. 75101, 21 July 2020
Admitted to the Bar – 21 July 2020

COPY FURNISHED:

OFFICE OF THE MUNICIPAL PROSECUTOR
BROOKE'S POINT
Brooke's Point, Palawan

EXPLANATION

Undersigned counsel is constrained to file the original electronically, by registered mail, and by private courier, as well as serve copies of the foregoing by registered mail and private courier due to the considerable distance involved and due to the on-going public health emergency, which render personal filing and service impractical.

GREGORIO R. BILOG IV