



Ipilan Nickel Corporation

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Aseana, Paranaque City
Office: (632) 519 7888 Fax: (632) 519 7999

May 05, 2023

RED Lormelyn E. Claudio, CESO IV
DENR IV-B Regional Executive Director
DENR by the Bay 1515 L&S Bldg., Roxas Blvd.,
Manila

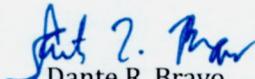
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Dear RED Claudio:

We are writing to transmit a certified true copy of Brooke's Point RTC Br. 165 Order, dated August 17, 2022, dismissing the criminal complaint for violation of P.D. 705 (Forestry Code of the Philippines) against Atty. Dante R. Bravo, INC President, and Engr. Ferdinand R. Libatique, former INC Resident Mine Manager. In dismissing the criminal case, the Court found that the 2017 tree cutting activities of INC were authorized and implemented under a valid Special Tree Cutting/ Earth-Balling Permit.

Thank you very much.

Very truly yours,


Dante R. Bravo

File

Republic of the Philippines
 Fourth Judicial Region
REGIONAL TRIAL COURT
 Balabac-Bataraza-Brooke's Point-Kalayaan-Quezon-Rizal-Sofronio Española, Palawan
BRANCH 165 (Single Sala)
 Brooke's Point, Palawan
 Official hotline: (048) 726-3480 | 0956-307-8033
 E-mail address: rtc2bpt165@judiciary.gov.ph

PEOPLE OF THE PHILIPPINES
 Plaintiff,

CRIM. CASE NO.
20-00576-BPT

-versus-

For: Viol. of Sec. 68, P.D.
 705, as amended by E.O.
 277 and R.A. 7161

ATTY. DANTE BRAVO, ENGR.
FERDINAND LIBATIQUE, AND
JOHN DOES,
 Accused.
 x-----x

ORDER

This resolves accused Atty. Dante Bravo's *Motion for Reconsideration & Supplemental Motion for Reconsideration sans the prosecution's Comment/Opposition.*

In his Motions, accused Bravo prays that this Court's Order dated April 30, 2021 be reconsidered and set aside, and that the Motion to Quash the Information dated December 26, 2019 be granted and the present case against the accused be dismissed. He avers:

1. In his *Motion and Supplemental Motion*, he stated several grounds on why the Criminal Information dated December 26, 2019 filed by Acting Provincial Prosecutor Ma. Victoria Sunega-Lagman should be quashed, to wit:
 - a. 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;

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- b. The Motion to Quash has sufficiently shown that the facts charged in the information do not constitute an offense;
- c. 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;
- d. The Motion to Quash has sufficiently demonstrated that the information does not conform substantially to the prescribed form; and
- e. The Consolidated Decision dated February 19, 2021 of the Office of the Ombudsman on the cases of "*Ipilan Nickel Corporation vs. Mary Jean D. Feliciano*" docketed as OMB-L-A-17-0719 and "*Ferdinand Libatique vs. Mary Jean D. Feliciano and Emma S. Tabangay*" docketed as OMB-L-A18-0330, conclusively found that: (1) INC operates with a valid Special Tree Cutting and Earth Balling Permit ("STCEBP"); (2) Mayor Mary Jean Feliciano whose statement forms the basis of the present case has no authority to determine whether or not a violation of the STCEBP has been committed by INC; and (3) Mayor Feliciano is guilty of oppression in violating INC's right to due process when she determined, without authority, that INC allegedly violated its STCEBP."

Despite the lapse of period, to date **no Comment/Opposition was filed by the prosecution.**¹

THE COURT'S RULING

After examining the prosecution's evidence and the arguments of the accused Atty. Dante Bravo & Engineer Ferdinand Libatique, this Court finds merit to warrant a reconsideration or reversal of its Order dated April 30, 2021.

¹ Court Orders dated June 16, 2021 & November 10, 2021

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While this Court had categorically ruled in the Order dated April 30, 2021, that the fundamental test in reflecting on the viability of a motion to quash under this particular ground is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in the law and in the examination thereof matters *aliunde* are not considered, the rule admits of exception when inquiry into facts outside the information may be allowed where the prosecution does not object to the presentation thereof.

In *Garcia v. Court of Appeals*², the Supreme Court in addressing the issue on whether or not facts outside the information itself may be introduced to prove factual and legal grounds, ruled in this wise:

“It is clear from this Section that a motion to quash maybe 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.** (Underlining and emphasis supplied)

Thus, in *People v. De la Rosa*³, this Court explained as follows:

“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 alone of said allegations whose truth and veracity are hypothetically admitted. However, as held in the case of *People v. Navarro*, 75 Phil 516, **additional facts not alleged in the information but admitted or not denied by the prosecution may**

² G.R. No. 110063, 27 January 1997

³ G.R. No. L-34112, 25 June 1980

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be invoked in support of the motion to quash. Former Chief Justice Moral supports this theory. (Underlining and emphasis supplied)

Here, accused Bravo and Libatique are facing indictment 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*. Lamentably, the Office of the Regional State Prosecutor of the Department of Justice even conceded via its Resolution dated February 22, 2021, that the tree-cutting subject of the present case “cannot be considered illegal.” Emphatically, this fact was never disputed nor controverted by the prosecution.

To add, even the Complaint dated July 14, 2017 admits that Ipilan Nickel Mining Corporation (INC) has the necessary *Mineral Production Sharing Agreement (“MPSA”)*, and the necessary *Special Tree Cutting and Earth Balling Permit (“STCEBP”)* to conduct mining operation. In this case, the said additional facts outside the information unqualifiedly shows 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 case.

Further, this Court may take judicial notice of the *Consolidated Decision* dated February 19, 2021 rendered by the Office of the Ombudsman on the cases of “*Ipilan Nickel Corporation vs. Mary Jean D. Feliciano*” docketed as OMB-L-A-17-0719 and “*Ferdinand Libatique vs. Mary Jean D. Feliciano and Emma S. Tabangay*” docketed as OMB-L-A18-0330 as cited in the accused *Supplemental Motion for Reconsideration* dated July 1, 2021, when it stated *in part*, that:

“Neither can Mayor Feliciano rely on the INC’s cutting of trees as basis for her orders. It is on record that INC was issued a Special Tree Cutting Permit and Earth Balling Permit with validity of one (1) year from issuance or until 25 May 2017. **Mayor Feliciano was quick to retort that INC violated the said permit without presenting any final order or decision from the DENR establishing said violations or revoking said permit. She seems to have arrogated to herself the power to establish violations of a**

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permit, which her office did not issue.

This is irregular, bordering on oppression, as it was even done without due process or giving INC an opportunity to explain its side.” (Underlining and emphasis supplied)

Based on the above-stated finding of facts by the Office of the Ombudsman, it is undisputed that INC operates with a valid *Special Tree Cutting Permit* and *Earth Barring Permit* contrary to the facts alleged in the *Criminal Information* for violation of Section 68 of Presidential Decree No. 705. Here is a unique scenario where two (2) prosecuting arms of the government, i.e., the *Department of Justice thru the Office of the Regional State Prosecutor* and the *Office of the Ombudsman* not only admitting the compliance of INC to the legal requirements in carrying out its mining operations but failing to dispute as well the accused assertions based on extraneous facts that the factual averments from the charge sheet do not constitute an offense.

With the *Consolidated Decision* of the Office of the Ombudsman taken in conjunction with the ruling of the Supreme Court in *Garcia v. Court of Appeals, et al.*, allowing facts outside the information to be introduced to prove that the allegations in the information do not constitute the offense charged, the Court has no recourse but to grant the prayer of the accused Atty. Bravo and Engineer Libatique to dismiss the case on the foregoing grounds, and on grounds already pleaded in their *Motion to Quash* and *Motion for Reconsideration*.

Moreover, it is significant to point out that the Criminal Information charged Atty. Bravo and Engineer Libatique of “being aware” of INC’s illegal tree cutting activities which is an act not punishable under P.D. No. 705 as amended, and which holds corporate officers liable only, if they ordered the commission of any of the punishable acts.

Anent the other ground in the Motion to Quash “that the information does not substantially conform to the prescribed form”, this Court finds the arguments of the accused in the Motion for Reconsideration as mere reiteration or rehash of those in their Motion to Quash hence it is unnecessary to discuss them anew.

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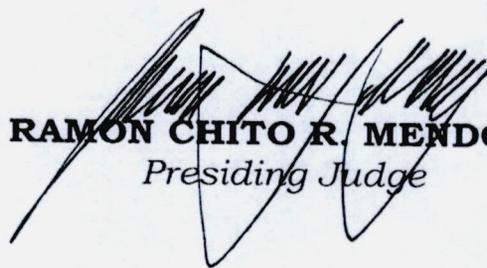
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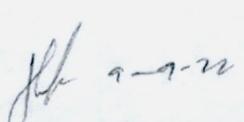
WHEREFORE, accused Atty. Dante Bravo & Engineer Ferdinand Libatique's⁴ *Motion for Reconsideration* is **GRANTED** and the present case against the said accused is hereby **DISMISSED**.

IT IS SO ORDERED.

Given this 17th day of August 2022. Tubtub, Brooke's Point, Palawan.


RAMON CHITO R. MENDOZA
Presiding Judge

Copy furnished:


OFFICE OF THE PROVINCIAL PROSECUTOR
New Justice Hall, Brgy. Tubtub, Brooke's Point, Palawan

MR. CONRADO CORPUZ
Public Complainant
CENRO - Brooke's Point, Palawan

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REGIONAL STATE PROSECUTOR ERNESTO C. MENDOZA
San Pablo City, Laguna

OFFICE OF THE OMBUDSMAN
Quezon City

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23 MAR 2023

⁴ Order of the Court dated November 10, 2021 previously dismissing this case against co-accused Engineer Ferdinand Libatique pursuant to Article 89, paragraph 1 of the Revised Penal Code; Notice of Death and Motion to Dismiss filed by Siguion Reyna Montecillo & Ongsiako dated September 27, 2021